



## TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of Service (“Terms and Conditions”) apply to all related services (the “Services”) provided by Testament<sup>3</sup> or its affiliates (“Testament<sup>3</sup>”) to its customer or its affiliates (“Customer”) under the Service Contract into which these Terms and Conditions are incorporated.

### 1. The Premises.

To allow Testament<sup>3</sup> to install the equipment being purchased and start providing service, Customer states that:

- it owns the premises or otherwise has the power to authorize Testament<sup>3</sup> to install the purchased equipment where it is being installed;
- the premises comply with all applicable codes, regulations and laws and will continue to do so during the Term (defined below);
- Customer will make the premises available without interruption during Testament<sup>3</sup> normal working hours and will maintain the premises in a safe and sanitary condition suitable for work to be performed by Testament<sup>3</sup> representatives without jeopardizing their health or safety;
- Customer will provide Testament<sup>3</sup> with unswitched 110 AC between the feed and electrical outlets for power equipment in locations designated by Testament<sup>3</sup>;
- Customer will make arrangements for lifting and replacing carpeting, if required, for Testament<sup>3</sup> installation of floor mats or wiring;
- the installation will require drilling into various walls and other parts of the premises;
- Testament<sup>3</sup> may not be able to conceal any or all equipment or wiring; and
- Testament<sup>3</sup> is not responsible for property damage, personal injury, illness or other loss due to water intrusion, mold, fungi, wet or dry rot or bacteria that may result from the installation services

## 2. Term.

Unless the Service Contract states otherwise, the term of the Service Contract commences upon Acceptance Date of the Services and continues for the time period indicated in the Service Contract unless terminated early in accordance with these Terms and Conditions (the “Term”). Testament<sup>3</sup> shall notify Customer when Services have been delivered to Customer and Customer shall have 5 days to accept Services or to give Testament<sup>3</sup> notice that it does not accept Services, otherwise Services are deemed to be accepted. At expiration, the Term will automatically renew for successive renewal terms of one (1) year each, unless either Testament<sup>3</sup> or Customer gives written notice to the other of its election not to renew the Term at least thirty (30) days before the expiration of the then-current Term.

## 3. Rates and Charges.

The rates and charges for the Services are as set forth in the Service Contract. All rates and charges set for in any quote are subject to final approval by Testament<sup>3</sup>. Testament<sup>3</sup> will invoice Customer for all non-recurring charges and monthly recurring charges at the time of service installation, with monthly recurring charges billed at the beginning of the month and usage charges billed at the conclusion of the month. All bills are due and payable upon receipt. If Customer does not pay the amount due within 30 days of the invoice date, Customer shall pay a late fee of 1.5% per month on the unpaid balance plus a \$35 administration fee each month that the account is not brought to good standing. Customer acknowledges that if there are two Consecutive missed payments and/or a total of 4 missed payments occurs within a rolling 12 month consecutive period, at the discretion of Testament<sup>3</sup> and notification within 30 days of the breach of contract to the customer; Customer will forfeit any and all discounts given within the contract and the remainder of the contract will revert to full pricing for the remainder of the contract term in addition to the late fee and administrative fee stated above.

## 4. Taxes and Surcharges.

In addition to the rates and charges for the Service(s), Customer shall pay all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services (other than income taxes payable by Testament<sup>3</sup>, for which Testament<sup>3</sup> is responsible). Customer shall also pay all surcharges in effect from time to time, including USF, as required or permitted by applicable law, regulation or tariff and/or as specified on Testament<sup>3</sup> website at [www.testament3.com](http://www.testament3.com). If Customer provides Testament<sup>3</sup> with a valid tax-exemption certificate, Testament<sup>3</sup> shall exempt Customer from the collection of taxes to the extent warranted by such certificate(s). No exemption will be available to Customer for any period prior to the date that the Customer presents a valid exemption certificate to Testament<sup>3</sup>.

## 5. Termination.

(a) Either party may terminate the Service Contract upon written notice to the other party if (i) the other party dissolves or becomes insolvent or bankrupt, or (ii) any bankruptcy, reorganization, insolvency or similar proceeding is instituted by or against the other party and not dismissed within thirty (30) days, (iii) the other party makes an assignment for the benefit of creditors; (iv) the other party suspends the transaction of its usual business or consents to the appointment of a trustee or receiver; or (v) a trustee or receiver of the other party is appointed.

(b) Testament<sup>3</sup> may terminate the Service Contract and its provision of Services on written notice to Customer if Customer fails to timely pay amounts due or materially breaches any other obligation under the testament3.com Service Contract. In the event of termination under this section, Customer shall pay to Testament<sup>3</sup> the amounts due for termination liability in accordance with section 6 of these Terms and Conditions.

(c) Customer's breach of any other agreement between Testament<sup>3</sup> and Customer, including any payment obligation to Testament<sup>3</sup>, is a material breach of the Service Contract and a basis on which Testament<sup>3</sup> may terminate the Service Contract under these Terms and Conditions. Likewise, Customer's breach of the Service Contract is a material breach by Customer of all other agreements it has entered into with Testament<sup>3</sup> and a basis on which Testament<sup>3</sup> may terminate any of those agreements under these Terms and Conditions. In the event of termination under this section, Customer shall pay to Testament<sup>3</sup> the amounts due for termination liability in accordance with section 6 of these Terms and Conditions.

(d) Customer may terminate the Service Contract before expiration of the Term, but only by

(a) providing Testament<sup>3</sup> with written notice to that effect at least thirty (30) days prior to the effective date of termination, and

(b) paying to Testament<sup>3</sup> the amounts due for termination liability in accordance with section 6 of these Terms and Conditions.

## 6. Termination Liability.

If the Service Contract is terminated before expiration of the Term, then except as provided in the next sentence, Customer shall pay to Testament<sup>3</sup>, immediately upon demand, all sums then due and owing under the Service Contract plus the following:

(b. Residential) an assessed early termination fee of \$500.00,

(c. Commercial) an amount equal to the recurring Monthly Charges (as listed in the Service Contract) multiplied by the number of months remaining in the term of the contract.

Despite the preceding sentence, Customer will not be liable for termination liability in the case of either of the following:

(a) non-renewal of the Term by Testament<sup>3</sup> or Customer in accordance with section 1 of these Terms and Conditions,

(b) permitted termination by Customer under the SLA, but in either such case Customer shall pay all charges incurred prior to the effective date of expiration or non-renewal of the Service Contract.

## 7. Compliance with Laws.

Each party shall comply with all applicable laws, regulations, court decisions and administrative rulings regarding the provision or use of the Services, and its failure to do will be a material breach of the Service Contract.

## 8. Warranty.

THE QUALITY OF SERVICES PROVIDED HERE UNDER SHALL BE CONSISTENT WITH COMMON INDUSTRY STANDARDS AND APPLICABLE GOVERNMENT REGULATIONS. TESTAMENT<sup>3</sup> MAKES NO OTHER WARRANTIES ABOUT THE SERVICES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND CUSTOMER MAY NOT RELY ON ANY STATEMENT TO THE CONTRARY BY ANY PERSON. THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE CONTRACT DOCUMENTS.

## 9. Unauthorized Use of Services.

Customer, and not Testament<sup>3</sup>, shall bear the risk of loss arising from any illegal, unauthorized or fraudulent use of Services provided to Customer under the Contract Documents.

## 10. Limitations of Liability.

(a) IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES. INCLUDING DAMAGES FOR LOSS OF REVENUE, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THE CONTRACT DOCUMENTS AND/OR THE PERFORMANCE OR NONPERFORMANCE THEREUNDER. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY TO PAY ALL CHARGES THAT COME DUE UNDER THE CONTRACT DOCUMENTS. THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE CONTRACT DOCUMENTS.

(b) TESTAMENT<sup>3</sup>'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY SERVICE PROVIDED TO CUSTOMER (INCLUDING THE MAINTENANCE, INSTALLATION, DELAY, TERMINATION, INTERRUPTION, OR RESTORATION OF ANY SUCH SERVICE) OR BREACH OF THE CONTRACT DOCUMENTS, WHETHER IN AN ACTION FOR OR ARISING OUT OF CONTRACT, TORT, INDEMNITY OR STRICT LIABILITY, IS LIMITED AS FOLLOWS:

(i) FOR A SERVICE QUALITY CLAIM (INCLUDING INTERRUPTION IN SERVICE), THE OUTAGE CREDIT UNDER THE SLA;

(ii) FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY CAUSED BY TESTAMENT<sup>3</sup>'S NEGLIGENT ACTS OR OMISSIONS, OR FOR ANY DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF TESTAMENT<sup>3</sup>, THE AMOUNT OF PROVEN DIRECT DAMAGES; AND

(iii) FOR ALL OTHER CLAIMS NOT OTHERWISE COVERED ABOVE, THE AMOUNT OF PROVEN DIRECT DAMAGES NOT TO EXCEED THE AMOUNT OF CHARGES APPLICABLE UNDER THE SERVICE CONTRACT DOCUMENTS FOR THE PERIOD DURING WHICH SERVICES WERE AFFECTED. IN NO EVENT SHALL TESTAMENT<sup>3</sup>'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF THE SERVICE CONTRACT DOCUMENTS EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO TESTAMENT<sup>3</sup> THEREUNDER. THIS SECTION WILL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

(c) Testament<sup>3</sup> shall not be liable for any damages arising out of or relating to: interoperability, interaction, access or interconnection problems with applications, equipment, services, content or networks not provided by Testament<sup>3</sup>; Service interruptions or lost or altered messages or transmissions (except to the extent credit allowances are specified in the applicable SLA); or unauthorized access to or theft, alteration, loss or destruction of Customer's, users' or third parties' applications, content, data, programs, information, network or systems.

(d) Service Provided by Testament<sup>3</sup>. Testament<sup>3</sup> is solely responsible for providing the Service. Neither Testament<sup>3</sup> nor any of its other affiliates will have any liability to Customer on account of the Service.

(e) No insurance; waiver of subrogation. Testament<sup>3</sup> is not an insurer and is not providing Customer with insurance of any type. The fees and charges paid by Customer under the Service Contract are based upon the value of the equipment and services provided by Testament<sup>3</sup> and the limited scope of Testament<sup>3</sup>'s responsibilities and potential liabilities under the Service Contract. Customer shall purchase insurance as it deems appropriate, and in the event of any loss, damage or injury, will look exclusively to its insurer (if any) for compensation. Customer waives, for itself and its insurer, all claims of subrogation and recovery against Testament<sup>3</sup> arising out of the payment of any claim for loss, damage or injury.

(f) No guarantee; no liability. Testament<sup>3</sup>'s equipment and the Service neither cause nor eliminate the events they are designed to detect or avert, including (by way of example and not limitation) fires, floods, burglaries, robberies, and medical problems. TESTAMENT<sup>3</sup> MAKES NO GUARANTY OR WARRANTY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THAT THE EQUIPMENT AND SERVICE PROVIDED WILL DETECT OR AVERT SUCH EVENTS OR THEIR CONSEQUENCES. Testament<sup>3</sup> does not undertake any risk that Customer or its property, or the person or property of any third party, may be subject to injury or loss if such an event occurs. Customer shall bear the risk of such events, and waives, discharges, and promises not to sue or bring any claim of any type against Testament<sup>3</sup> for loss, damage or injury relating in any way to the equipment or Service provided by Testament<sup>3</sup>.

(g) The provisions of this section 9 apply no matter how the loss, damage, injury or other consequences occurs, even if due to the performance or nonperformance by Testament<sup>3</sup> of its obligations under the Contract Documents or from negligence (active or otherwise), strict liability, violation of any applicable consumer protection law or any other theory of liability or alleged fault on the part of Testament<sup>3</sup>, its agents or employees.

(h) If any other person, including Customer's subrogating insurer, makes any claim or files any lawsuit against Testament<sup>3</sup> in any way related to the equipment or Service provided by Testament<sup>3</sup>, Customer shall indemnify, defend and hold Testament<sup>3</sup> harmless from any and all such claims and lawsuits, including the payment of all damages, expenses, costs and attorneys' fee. Customer's duty to defend is separate and distinct from its duty to indemnify and hold harmless and arises upon the assertion of a claim or demand against Testament<sup>3</sup> regardless of whether Testament<sup>3</sup> has been found liable or incurred any expense.

(i) Customer shall not bring any claim, suit or action against Testament<sup>3</sup> more than one year after the date of the incident that resulted in the loss, damage or injury, or the shortest duration permitted under applicable law if greater than one year.

(j) The provisions of this Section 9 apply to and benefit Testament<sup>3</sup> its agents, employees, contractors and affiliates.

#### 11. Force Majeure.

Except with respect to Customer's payment obligations, notwithstanding any other provision of the Contract Documents, neither Testament<sup>3</sup> nor Customer shall be liable to the other party for any delay or failure in performance of the Service Contract to the extent such delay or failure is caused by fire, flood, explosion, accident, war, strike, embargo, government requirement, civil or military authority, Act of God, inability to secure materials or labor or any other causes beyond its reasonable control (each, a Force Majeure). Any such delay or failure shall suspend the Service Contract until the Force Majeure ceases.

#### 12. Relationship of Parties.

Neither the Service Contract nor the provision of Services shall be deemed to create any joint venture, partnership or agency between Testament<sup>3</sup> and Customer, which are independent contractors and shall not be deemed to have any other relationship by virtue of the Service Contract or the provision of Services. Neither Testament<sup>3</sup> nor Customer shall have, or hold itself out as having, the power or authority to bind or create liability for the other, intentionally, negligently or otherwise.

13. Testament<sup>3</sup> Facilities. Equipment and facilities furnished by Testament<sup>3</sup> are and remain its property and Customer shall return all such equipment and facilities to Testament<sup>3</sup> on expiration or termination of the Service Contract or as earlier requested by Testament<sup>3</sup>, in good condition, reasonable wear and tear expected. Customer shall reimburse Testament<sup>3</sup> for any loss of, or damage to, Testament<sup>3</sup>'s equipment or facilities on the Customer's premises, except loss or damage caused by Testament<sup>3</sup>'s own employees, agents, or contractors.

#### 14. Notices.

All notices or other communications under the Contract Documents shall be in writing and shall be given by personal delivery, by certified mail, return receipt requested, or by nationally recognized overnight courier (with signature for receipt), addressed Testament<sup>3</sup> at 74 Terry Acres, Mansfield, PA 16933, or to Customer at the address set forth in the Service Contract, or to such other address as either party may later designate in writing. Notice shall be deemed given upon receipt.

#### 15. Entire Agreement; Interpretation.

The Contract Documents, including any Addendum attached thereto, represent the entire agreement of the parties with respect to their subject matter and supersede all other agreements or understandings, written or oral, between the parties relating to the Service. Testament<sup>3</sup> is bound by modifications to the Contract Documents only if in writing signed by authorized representatives of both parties. In case of any conflict between the provisions of these Terms and Conditions and any other document, the provisions of these Terms and Conditions shall take precedence unless otherwise indicated in a writing signed by both parties, except that specific information in a Service Contract shall prevail as to that Service with respect to price, Term, renewal terms, locations and availability and other Service-specific terms contained in the Service Contract. The Service Contract, and any amendment of the terms thereof, may be signed in counterparts, each of which (including fax or PDF versions) shall constitute an original and all of which together shall constitute one and the same instrument. As used in the Contract Documents, with respect to any matter or thing, “includes,” “including” and other words of like import mean “including without limitation” such matter or thing.

#### 16. Waiver.

No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the party to which it is attributed. No consent by a party to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to or waiver of any subsequent breach or default.

#### 17. CPNI.

Under federal law, Customer has the right, and Testament<sup>3</sup> has a duty, to protect the confidentiality of information about the amount, type, and destination of Customer's service usage (“CPNI”). Customer hereby consents to the sharing of Customer's CPNI or other personal information with Testament<sup>3</sup> and its affiliates, agents and contractors, solely for the purpose of developing or bringing to Customer's attention any products and services, or in the event of any merger, sale of some or all of the company assets or acquisition as well as in any insolvency, bankruptcy or receivership proceeding in which CPNI or other personal information would be transferred as one of the business assets of the company. This consent survives the expiration or termination of the Contract Documents and is valid until revoked by Customer. To remove this consent at any time, Customer must give notice to Testament<sup>3</sup> at 74 Terry Acres, Mansfield, PA 16933 Attn: Customer Service and provide the following information: (1) Customer name, (2) Service billing address, (3) Telephone number including area code, and (4) Service account number. Removing consent will not affect the Customer's current Service.



18. Assignment.

Customer may not assign its rights or delegate its duties under the Contract Documents without the prior written consent of Testament<sup>3</sup>. A change of control event affecting Customer is deemed an assignment of the Contract Documents that requires the prior written consent of Testament<sup>3</sup>.

19. Governing Law.

The Contract Documents will be governed by and construed in accordance with the laws of the State of Pennsylvania without regard to principles of conflicts of laws. The parties each hereby consent to personal jurisdiction in the state and federal courts in Tioga County, Pennsylvania.

20. Partial Invalidity.

If a tribunal having jurisdiction holds any provision of the Contract Documents to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render the Contract Documents unenforceable in their entirety, but instead the Contract Documents will be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of such agreement, the parties shall promptly engage in good faith negotiations to agree upon a substitute for such provision.

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