



## SEMPERON CORPORATION

### TERMS AND CONDITIONS GOVERNING SERVICE

Thank you for choosing Semperon as your provider. This agreement is between Semperon and Customer. All services or products (Services) provided by Semperon shall be governed by the terms and conditions herein.

#### **1. Intended Use**

Customer agrees to use the Services only for lawful purposes. Unauthorized transmission or storage of any information, data, or material in violation of any Federal or State law or regulation, including without limitation to illicit transmission or use of copyrighted material, obscene material, material protected by trade secrets or materials designed to harass or interfere with others, is strictly prohibited. Customer shall strictly comply with the rules of any other network Customer accesses through the use of the Services. Semperon has no obligation to monitor the content of communications sent, posted, linked or otherwise conveyed by Customer but reserves the right to do so including, but not limited to, where directed to do so by law enforcement authorities. For the purposes of this Agreement, to the extent that an employee or third party uses the Services provided hereunder use by such employee, agent or third party use shall be deemed Customer's use for the purposes of this Agreement.

#### **2. Prohibited Uses**

Customer is expressly prohibited from reselling or transferring the Services or Semperon equipment to any other person for any purpose, without express written permission from Semperon in advance. In addition, Customer is expressly prohibited from using the Services for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, call centers, or for uses that result in excessive usage inconsistent with normal business usage patterns. If Semperon determines that Customer is reselling the Services or engaging in any of the aforementioned practices, Semperon reserves the right, without advance notice, to immediately terminate or modify the Services, or to change Customer's calling plan to a different offer on a prospective basis, and in addition, to assess additional charges for each month in which excessive usage occurred.

#### **3. Fraudulent Use**

Semperon shall not be liable for any loss, damage or be obligated to provide any refunds to Customer as a result of any fraudulent use of the Service by any third party or person. Customer understands and agrees that it is financially responsible for all outstanding fees and charges relating to the use of the Service, whether or not such usage was expressly authorized

Customer is solely responsible for the security of any device connected to the Service and shall take security precautions to ensure that there is no unauthorized access or misuse of the Service. It is the responsibility of Customer to notify Semperon of any unauthorized use or any other breach of security. Semperon will not be liable for any loss or damage from Customer's failure to comply with this security obligation.

#### **4. Use of Semperon Network Services**

Customer shall access the Semperon network provided in connection with the Services in accordance with the manuals or instructions provided by Semperon. Customer shall not make any alterations or additions to equipment provided under this Agreement, or any accompanying documents, or attempt to maintain or repair it. Semperon will not be liable for Customer errors in utilizing Semperon self-provisioning and management tools made available by Semperon via its web portal. Such equipment shall be used by Customer only at the site location(s) designated in the Customer Order Form (the "Registered Location(s)") and shall not be resold, removed or relocated by Customer, (except within the Registered Location to which the equipment was originally registered), except as expressly authorized in writing by Semperon.



## **5. E911 Acknowledgment**

**LIMITATIONS ON SERVICE: EMERGENCY DIALING (E911) VIA THE SERVICE MAY BE ADVERSELY AFFECTED BY USE OF THE PUBLIC INTERNET, RELOCATION OF THE IP-COMPATIBLE EQUIPMENT FROM THE REGISTERED LOCATION(S), USE OF NUMBERS OUTSIDE THE RATE CENTER TO WHICH THEY ARE ASSIGNED, LOSS OF ELECTRICAL POWER, BROADBAND CONNECTION FAILURE, OR DELAY IN ADVISING SEMPERON OF A CHANGE IN REGISTERED LOCATION. CUSTOMER IS ENCOURAGED TO ENSURE THAT A TRADITIONAL LANDLINE SERVICE IS RETAINED FOR BACK-UP CALL PURPOSES AND THAT ALL SITE USERS ARE AWARE OF THESE LIMITATIONS AND THE LOCATION OF THE EMERGENCY BACK-UP PHONE(S).**

**CUSTOMER ACKNOWLEDGES THAT THE EQUIPMENT IS REGISTERED TO THE REGISTERED LOCATION AND THAT EMERGENCY SERVICES, INCLUDING, WITHOUT LIMITATION, E911 CALLS, WILL BE AFFECTED IF EQUIPMENT IS MOVED TO ANOTHER LOCATION. EMERGENCY PERSONNEL WILL NOT BE ABLE TO ACCURATELY LOCATE THE PREMISES FROM WHICH THE CALL ORIGINATED. IN ADDITION, WHERE CUSTOMER REQUESTS A PHONE NUMBER OUTSIDE ITS RATE CENTER, EMERGENCY SERVICES WILL BE SIMILARLY AFFECTED.**

**SEMPERON OFFERS INTERNET CONNECTIVITY SERVICES TO ITS CUSTOMERS. INTERNET CONNECTIVITY PROVIDED BY THIRD PARTY PROVIDERS IS NOT A PART OF THE SERVICES AND NO WARRANTIES OF ANY KIND ARE MADE WITH RESPECT THERETO. FOR THE AVOIDANCE OF DOUBT, IF CUSTOMER CHOOSES TO USE THE PUBLIC INTERNET FOR VOICE CALLS (OR VOICE CALL SIGNALING), THE CUSTOMER RECOGNIZES THAT THE QUALITY OF VOICE CALLS MAY BE ADVERSELY AFFECTED AND THAT CUSTOMER MAY NOT BE ABLE TO COMPLETE CERTAIN OUTBOUND CALLS, INCLUDING, WITHOUT LIMITATION LOCAL, INTERNATIONAL AND EMERGENCY (E911).**

## **6. IP Addresses**

Internet Protocol numbers ("IP numbers") provided or assigned by Semperon in connection with the Services at all times remain the property of Semperon and are not portable, and Customer shall have no rights with respect thereto. Assignment of IP Numbers is subject to ICANN guidelines and is not guaranteed, and Semperon may modify such assignments at any time in its sole discretion. Customer shall provide an accurate host count at the time of the contract signing; such count shall be subject to verification by Semperon.

## **7. Software**

Any software incorporated into or provided for use in or with Semperon Services (whether initially, as part of maintenance or support or otherwise) is not sold, but rather is licensed solely for Customer's internal use in or with any applicable product strictly in accordance with the documentation and any other use restrictions applicable for that product. Such license (i) is non-exclusive, (ii) is non-sublicensable, (iii) is subject to the terms and conditions of this Agreement and (iv) does not include the right to (and Customer will not, directly or indirectly) modify, reverse engineer (except to the extent applicable statutory law expressly prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software (except as specifically authorized in documentation provided by Semperon for purposes of installation, support or maintenance), or to use the software or product for the benefit of any third party. Any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the Customer shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms herein.

## **8. Hardware**

Unless otherwise agreed by Customer and Semperon in writing, all Non-Purchased Equipment (phones, PBX's, routers, switches, firewalls, and other related infrastructure) delivered to and utilized by Customer will remain the property of Semperon. Customer will have no ownership rights for this equipment and shall not manipulate, disassemble, tamper with or otherwise modify the Non-Purchased Equipment or any components thereof, including, without limitation, any software contained therein.

## **9. Maintenance**

Semperon shall provide Customer notification of no-cost feature and function updates for the previously purchased options as they become generally available without additional charge to Semperon's customers. The contents of all updates shall be decided upon by Semperon in its sole discretion. New features or features not currently subscribed by Customer are available at Semperon's then-current list price. Semperon reserves the right to subcontract all or part of its obligations hereunder.



## **10. Order Acceptance**

Unless otherwise stated on the Customer Order Form, the Service Term shall commence on the Service Commencement Date. This is the date that Semperon notifies Customer in writing that the Services are operational. Customer has seventy-two (72) hours from its receipt of Semperon's notice to advise Semperon, in writing, that the Services are not performing in accordance with Semperon's specifications. Such notice shall describe with specificity the deficiencies in the Services. If Customer fails to notify Semperon within the timeframe referenced above, then the Services will be deemed accepted, and billing will commence, as of the date of Semperon's notice. For the avoidance of doubt, Semperon may commence billing for the Services even if the Services is not operational if the delay is solely due to Customer's failure to provide information, access, equipment or other services necessary to operate the Services.

## **11. Service Term:**

- a)** The initial term of the Services, ("Service Term") shall be for the period stated in the signed Semperon Service Agreement from the Service Commencement Date, as set forth, and shall be renewable on an annual basis,
- b)** Following completion of the Initial Service Term, (unless noted otherwise on the Semperon Service Agreement) the Agreement will automatically renew annually for a twelve (12) month Service Term until such time as either Party provides advance written notice to the other of its intent to terminate the Agreement. Such notice shall be provided at least sixty (60) calendar days prior to the end of the Initial Service Term or annual renewal Service Term termination date.

## **12. Payment**

- a)** Customer agrees to pay for the initial Services at the rates specified on the Customer Order Form, or on any amendment hereto executed by the Parties. Additional Services added by the Parties via an accepted purchase order shall be charged at Semperon's then-current list price unless otherwise agreed by Semperon. Notwithstanding anything contained herein to the contrary, Semperon shall be entitled to invoice Customer, and Customer shall be obligated to make payments, as of the Service Commencement Date, except only in cases of delay or non-acceptance directly attributable to Semperon. Delays in implementing the Services or faults attributable to Customer or its third party suppliers shall not relieve Customer of its payment obligations.
- b)** Variable rate charges including but not limited to inbound 800, directory and operator assistance, outbound U.S. long distance, international calling, conferencing, calling card calls and one-time charges are subject to change upon thirty (30) days prior written notice and shall be billed monthly in arrears. Fixed monthly recurring charges including seat charges and Equipment lease (if applicable) are fixed during the initial Service Term of this Agreement and shall be billed monthly in advance.
- c)** Fixed non-recurring charges, such as collocation, installation, training, access costs and minimum commitments shall be billed in advance each month. The invoice for the first month's fixed charges will be issued upon Service Commencement Date acceptance, as described herein. If the Service Commencement Date does not occur on the first day of the month, the invoice will be prorated based on the number of days remaining in that month.
- d)** Equipment purchases - Semperon will stage and configure Customer's equipment (when applicable) prior to Services Installation. Upon receipt of the equipment, Semperon will configure the Services and deliver the equipment to the Locations designated on the Customer Order Form. Unless specified in the Customer Order Form, Semperon will select the mode of shipment and the carrier. Semperon shall include shipping and insurance charges on invoices to Customer, which shall be Customer's sole responsibility. All risk of loss or damage to the hardware and Software while in transit shall be borne by and be the sole responsibility of Customer with all such shipping costs to be borne solely by Customer. Equipment purchases will be billed upon shipment.
- e)** All charges are due within fifteen (15) days of the invoice date.

## **13. Late Payments**

Overdue accounts are subject to a finance charge of the lesser of 1.5 percent per month or the maximum allowed by law. Accounts shall be deemed in default if not timely paid. If Customer's payment is returned to Semperon unpaid due to insufficient funds, Customer shall be subject to a returned check charge of \$35. If Customer fails to pay invoices in full when due, Semperon may terminate or suspend Services to Customer without any penalty or liability to Semperon. Such termination or suspension shall not relieve Customer from its obligation to make payment under this Agreement. In the event that Semperon suspends Services to Customer, an account reinstatement fee of \$99 shall be required to reactivate each of such Services. Claims of fraudulent use of the Services or bad debt shall not operate to relieve Customer of its obligation to pay any charges when due.



#### **14. Disputed Invoices / Remedy**

If Customer has a bona fide, good faith dispute with any of the amounts on an invoice ("Disputed Amounts"), Customer must pay all amounts not in dispute, and provide Semperon with a written request for a billing adjustment together with all supporting documentation (in the form requested by Semperon) within thirty (30) days from the date of invoice on which the disputed amount first appeared. If Semperon does not receive this information within this thirty (30) day period, Customer's right to billing adjustment shall be waived. If Semperon denies, in good faith, Customer's dispute after reviewing the supporting documentation the Customer submits, Customer must remit all disputed amounts within fifteen (15) days of the date of Semperon's written determination pending the outcome of any arbitration proceedings. If the parties cannot resolve the dispute after forty-five (45) days, either party may seek arbitration in accordance with the process described herein. While Customer may dispute any portion of an invoice, Customer may not withhold more than thirty percent (30%) of Customer's invoice, except in the case of gross billing errors (e.g., Customer's bill reflects a charge for \$5,000 rather than \$500).

Disputes shall be submitted for arbitration in Chester County, Pennsylvania, before a single arbitrator agreed upon by the parties, or, if they are unable to agree, a single arbitrator appointed by American Arbitration Association ( AAA ). Such arbitration shall be governed by the commercial rules of the AAA. The arbitrator's decision will be final and entered into any court of competent jurisdiction. Each party shall be responsible for its attorney's fees and costs in connection with such arbitration.

#### **15. Rates.**

- a) Semperon reserves the right to pass through to Customer any additional fees or charges created by a change in regulation, new tax or similar surcharge or a change in the telephone or telecommunications fees with respect to Services that Semperon purchases from a third party to provide the Services. Such change in rates shall not give rise to any right of Customer termination.
- b) Semperon may, in its sole discretion, change rates and fees by notifying Customer sixty (60) calendar days in advance of the effective date, provided, however, that Customer may terminate this Agreement by providing Semperon written notice of termination during the sixty (60) calendar days following the date of such notice. Such cancellation shall be without penalty only if it explicitly references the rate change. For the avoidance of doubt, changes in rates or fees resulting from a Customer-initiated add, move, or change to the Services shall not constitute a rate increase by Semperon and shall not give rise to any right of cancellation by Customer.

#### **16. Termination / Breach**

- a) Semperon may suspend Services or, in its sole discretion, terminate this Agreement immediately without liability to Customer if: (i) Customer is in default of its payment obligations hereunder and has failed to remedy such default within ten (10) days of the date of Semperon's written notice thereof; or (ii) Customer is in violation of any Federal or State law or regulation for Unauthorized transmission or storage of any information and fails to remedy its non-compliance within seventy-two (72) hours of Semperon's written notice thereof. No such termination or suspension shall relieve Customer of its obligations to make any payments when due.
- b) In addition to Semperon's rights set forth in a), either Party may terminate this Agreement in the event that the other Party has committed a material breach of its obligations under this Agreement and has failed to remedy such breach within thirty (30) days of its receipt of the non-breaching Party's written notice thereof.
- c) If Customer cancels the Services before the end of the Service Term without cause as outlined, such cancellation shall be deemed a breach of this Agreement it is expressly understood and agreed by Customer that the charges for the Services purchased by Customer hereunder are based on the Customer's term commitment. The early termination fees set forth below represent the Parties' good faith estimate of Semperon's damages in the event Customer terminates this Agreement prior to the end of any Service Term.
  - i. Customer shall be responsible for One Hundred Percent (100%) of any and all fixed monthly charges for the Services through the end of the Service Term and
  - ii. all fees to third-party telecommunications providers that Semperon committed to pay in connection with Customer's commitment under this Agreement for the duration of the Agreement.



- d)** In the event that Semperon terminates this Agreement for cause as set forth within this document or elsewhere in the Agreement, then Customer shall be liable to pay to Semperon the following early termination fees, which represent a reasonable estimation of Semperon's damages in the event of Customer's early termination or breach of this Agreement:
- i. an amount equal to One Hundred Percent (100%) of any and all fixed monthly charges for the Services through the end of the Service Term. and,
  - ii. all fees to third-party telecommunications providers that Semperon committed to pay in connection with Customer's commitment under this Agreement for the duration of the Agreement.
- e)** In the event of any termination of this Agreement by either party, regardless of cause, Customer shall, at its sole cost and expense, return any and all Leased Equipment or Non-Purchased Equipment otherwise provided by Semperon within five (5) working days from the termination date in good working order, reasonable wear and tear accepted. Customer shall be liable to Semperon for any damage to the Equipment.

#### **17. Confidentiality and Intellectual Property**

Customer acknowledges and agrees that any proprietary property or content, including any copyrights, trademarks, service marks, patents or other intellectual property, that has been or will be provided by Semperon to Customer shall remain the sole and exclusive property of Semperon, and no license or other interest with respect thereto is hereby granted to Customer.

#### **18. Warranties and Liability**

- a)** SEMPERON MAKES NO WARRANTY THAT THE OPERATION OF ANY PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER, EXPRESSLY ACKNOWLEDGES AND AGREES THAT ALL USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK. SEMPERON MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, FOR THE GOODS, SERVICES OR SOFTWARE IT PROVIDES. SEMPERON ALSO DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- b)** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE, HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, LOST GOODWILL OR LOST PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- c)** THE TOTAL LIABILITY OF SEMPERON UNDER THIS AGREEMENT, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT EXCEEDING THE TOTAL PAYMENTS PAYABLE BY CUSTOMER FOR THE SERVICES IN THE THREE SUCCESSIVE MONTHS IMMEDIATELY BEFORE THE MONTH IN WHICH THE CLAIM ARISES. CUSTOMER ACKNOWLEDGES THAT THE FEES PAID BY IT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SEMPERON WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THIS LIMITATION OF ITS LIABILITY.
- d)** SEMPERON SHALL HAVE NO LIABILITY ARISING FROM THE USE OF ITS SERVICES IN COMBINATION WITH THE SERVICES, PRODUCTS OR EQUIPMENT PROVIDED BY CUSTOMER OR THIRD PARTIES.
- e)** For those Services for which Semperon offers a system of credits or rebates for Services interruptions, regardless of cause, such credits or rebates shall be Customer's sole remedy for service interruptions.

#### **19. Indemnification**

Customer will defend, indemnify and hold Semperon harmless from and against any and all liabilities, causes of action, lawsuits, penalties, claims or demands ("Claims") brought by third parties and resulting from or arising out of Customer's use of the Services.

#### **20. Third Party Vendors**

To the extent that Semperon is acting as a reseller with respect to hardware and software offered under this Agreement ("Equipment"), Semperon will provide Customer with the same warranties and support Services that Semperon receives from its vendors and such vendors. Malfunctioning equipment will be repaired or replaced, at Semperon's option.



**21. Force Majeure**

Semperon shall not be liable if its failure to perform under the Agreement is caused by damages, losses or other factors beyond Semperon's control, including without limitation, failure or impairment of essential facilities, governmental action, war, civil disturbance, weather, general material shortages, labor strikes or walkouts, acts of God or other similar events.

**22. No Waiver**

Semperon's failure to enforce any right hereunder shall not be deemed a waiver of such right or any other right hereunder.

**23. Assignment**

Customer may not assign its rights or obligations under the Agreement without the express written consent of Semperon. Semperon may assign or novate all or part of its rights, benefits (including, without limitation, the benefits of this clause), interest, obligations and liabilities in connection with the Agreement to any party.

**24. Modification**

Except as may be stated otherwise herein, this Agreement may only be modified by an instrument in writing duly executed by authorized representatives of each of the Parties, making specific reference to this Agreement. No custom, industry standard or course of dealing between the Parties shall in any way serve to vary or alter the terms and conditions of this Agreement.

**25. Relationship of the Parties/No Joint Venture**

The Parties declare and agree that each Party is engaged in a business that is independent from that of the other party and that nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent or employer and employee relationship between the Parties hereto.

**26. Governing Law/Choice of Venue**

This Agreement and the rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, excluding its laws relating to conflicts of laws. The Parties agree that the Federal District Court for Eastern District of Pennsylvania, State or Federal Court located in Chester County, Pennsylvania as appropriate shall have exclusive jurisdiction over any case or controversy arising hereunder and shall be the proper forum in which to adjudicate such case or controversy.

**27. Survival**

The obligations of this Agreement which by their nature should survive the expiration or termination, of this Agreement, shall survive.

**28. Severability**

If any portion of this Agreement shall be deemed invalid or unenforceable, such invalidity or non-enforceability shall not invalidate or render unenforceable any other portion of this Agreement.

**29. No Third Party Beneficiaries**

No provision of this Agreement is intended, nor shall any be interpreted, to provide any person not a party to this Agreement with any remedy, claim, liability, reimbursement or cause of action or create any other third-party beneficiary rights.

**30. Notice**

Notice to Semperon shall be deemed given to Semperon upon actual delivery when delivered to Semperon at 967 East Swedesford Road, Suite 409, Exton, PA 19341 or such other address as may be select by Semperon from time to time.