



RETAIL CUSTOMER AGREEMENT

This Retail Customer Agreement (the “Agreement”) is by and between **Global Crossing Telecommunications, Inc.**, a Michigan corporation, with offices at 225 Kenneth Drive, Rochester, NY 14623 USA (“us”) and [INSERT FULL CUSTOMER NAME], a [INSERT STATE OR COUNTRY] corporation, with its principal office at [INSERT FULL ADDRESS] (“you”).

1. DEFINITIONS. In this Agreement, “you” and “your” refer to the customer whose name and address is set out in the preamble above, and “we”, “us” and “our” refers to Global Crossing Telecommunications Inc.

2. RELATIONSHIP TO OTHER DOCUMENTS. This Agreement constitutes the agreement between you and us for the provision of services by us to you over our Network¹ (the “Services”). Details of specific Services ordered by you, including your specific requirements for each Service, will be set out in our standard ordering document(s) for each specific Service referencing this Agreement (“Order Forms”). Completed Order Forms will be binding only (i) when signed by both of us or (ii) when transmitted to us by you via email and acknowledged and accepted by us. Additional capacity or locations for a Service previously ordered will be ordered by you using an additional Order Form. A product description and (if applicable to the specific Service), a Service Level Agreement (together, the “SLA”) for each specific Service shall apply when that Service is ordered by you. Our General Terms and Conditions (the “General Terms and Conditions”), together with the SLA applicable to each type of Service provided by us, are made a part of this Agreement, and are set out at www.globalcrossing.com/terms. When you sign this Agreement and use a Service, you agree to be bound by the General Terms and Conditions and the SLA applicable to that Service. We reserve the right to amend the General Terms and Conditions and SLAs at any time provided that such amendments do not materially affect the level or quality of Service provided to you or your entitlements under the service level agreement provided for in an SLA. Any such amendment will be effective from the start of the next billing cycle for your Service following the date on which the revised General terms and Conditions or SLA is posted at the above URL. Except as otherwise may be agreed in writing between you and us, your continued use of a Service following any such amendment will constitute your agreement to be bound by the terms of the revised SLA.

2.1 In the event of a conflict between or among the terms of documents relating to a Service, the following will be the order of priority: First, any signed Local Country Agreement for Latin American Services (if any) referred to in the General Terms and Conditions; Second, this Agreement; Third, the General Terms and Conditions; Fourth, the applicable SLA, except where the specific terms of an SLA provide that such terms shall apply notwithstanding any provisions to the contrary in a Local Country Agreement, the General Terms and Conditions or this Agreement; and Fifth, the Order Form for the applicable Service.

3. TERM. This Agreement is effective on the date upon which it is countersigned by our authorized representative (the “Effective Date”), and will remain in full force and effect until (a) no more Services are provided to you by us or (b) it is terminated in accordance with its terms. An initial term (a “Service Term”) for each Service ordered or for each individual circuit ordered as part of a Service, and for any local access circuit ordered by you (each a “Circuit”) will be agreed and specified on the applicable Order Form. The Service Term for a Service or Circuit will start on the date upon which we notify your contact (as listed on the applicable Order Form) with responsibility for co-ordination of Service delivery (the “Project Manager”) by writing (which may include email) that the Service or Circuit is available for your use (the “Service Commencement Date”), unless you notify us within 48 hours of receipt of such notification of your non-acceptance on the basis that agreed technical specifications for the Service or Circuit have not been met. In that case, further tests of the Service / Circuit will be conducted and a new Service Commencement Date will be agreed upon, provided that any use by you of a Service / Circuit for other than testing purposes following notice of non-acceptance will be deemed to constitute acceptance of that Service / Circuit.

3.1 Subject to any contrary terms in an SLA, at the end of the Service Term (or any extension) for any Service or Circuit (in either case, the “Service Expiration Date”), the term for that Service or Circuit will automatically be extended on the same terms and at the same rates and charges, on a month to month basis until terminated by either party on forty-five (45) days’ written notice to the other, unless (i) you notify us in writing (at the address specified in Section 14 below) at least forty five (45) days before the applicable Service Expiration Date that you do not wish the Service Term to renew, but wish to terminate it on the Service Expiration Date, in which case we will terminate that Service / Circuit, and any associated local access circuits, on the Service Expiration Date; or (ii) we agree in writing to extend the Service Term for some other mutually agreed renewal period. At any time following the renewal of a

¹ “Network” or “Global Crossing Network” means the telecommunications network and undersea or terrestrial fiber optic systems owned or operated by Global Crossing from time to time over which we provide services for carriage of your traffic or for other Services under this Agreement.

Service or Circuit on a month to month basis in accordance with this Section 3.1, (i) either party shall have the right to terminate that Service or Circuit (and any charges for any associated local access circuits) upon thirty (30) days' written notice to the other and (ii) we shall have the right to increase the rates and charges for that Service or Circuit (and any charges for any associated local access circuits) upon thirty (30) days' written notice to you.

4. CHARGES AND PAYMENT. You agree to pay the charges for each Service, as set out in an Order Form and/or in a pricing appendix forming part of this Agreement, commencing on the Service Commencement Date for each Service ordered. Acceptance by us of any orders for Services is conditional upon credit approval by our credit & collections department and agreement on the credit limit to be listed following the signature blocks for this Agreement, which limit may not be exceeded at any time without our prior written authorization. As a condition of acceptance by us of an order placed by you, we may require the payment of a deposit, the provision of a bank or other guarantee, or the provision of a letter of credit. Any such condition will be agreed with you and specified on the relevant Order Form. We reserve the right to review your payment history at any time and, as a condition of accepting orders for new Services, to change the credit limit accordingly.

4.1 If any of the rates or charges for Services to be provided to you under this Agreement are conditional upon a monthly, annual or term usage/volume commitment, minimum revenue commitment or minimum usage guarantee (a "MUG"), the amount of that MUG, and the term for which it applies, as agreed with you, will be either set out in the Order Form for the applicable Service or will be set out in a signed appendix to this Agreement. You agree that if your purchases of Global Crossing Services should be less than the MUG amount (if any) for the relevant period (or less than the aggregate MUG in the event that more than one MUG applies), you will pay us a shortfall charge (the "Shortfall Charge") equal to the monthly MUG amount (or the aggregate of all MUGs, as applicable) less all Qualifying Amounts paid by you to us during the applicable period. You agree that the Shortfall Charge is a reasonable approximation of the benefit of this Agreement to us, and is not a penalty. Unless otherwise agreed between you and us (i) all MUGs take effect on the day following the date of issue of your second invoice for the applicable Service (so that the charges set out in the third invoice for a Service will count towards the applicable MUG), and (ii) "Qualifying Amounts", which shall count towards achievement of MUGs, shall, subject to Section 4.2 below, include all amounts paid by you to us for Services of any kind.

4.2 The following amounts are *not* included in calculating or achieving any MUG and do not constitute Qualifying Amounts: (a) Surcharges (as that term is defined in the General Terms and Conditions); (b) non-recurring charges; (c) charges for local access circuits provided by us (via third party facilities); and (d) any third party charges which are passed through to you under the terms of this Agreement. In addition, any SLA credits granted to you under an SLA shall be disregarded for purposes of calculating whether or not you have met your MUG commitment.

4.3 Invoices are due and payable thirty (30) days from date of invoice and will be paid in the manner set out in our invoice. You agree to pay all undisputed charges due under this Agreement without counterclaim, set-off or deduction. Should you reasonably dispute an invoiced amount, you must notify us of the amount in dispute before the payment due date for that invoice, setting out the nature of the dispute, including (i) the date and number of the disputed invoice, (ii) the amount in dispute, (iii) the reason for the dispute and (iv) supporting documentation, as appropriate. You must pay any undisputed portion of the invoice within the time period specified in this Section. Except as otherwise provided, any late payment by you of an undisputed invoice may, following the expiry of the notice period referred to in Section 5, result in us automatically applying an interest charge to the amount outstanding at an interest rate of six percent (6%) per annum over the one (1) month US \$ LIBOR rate on the date of invoice, as published from time to time in the Wall Street Journal, or the maximum percent permitted under law, if less. Invoiced amounts not disputed within forty-five (45) days are conclusively deemed undisputed and accepted by you.

5. TERMINATION AND TERMINATION CHARGES. Either we or you may terminate any or all of this Agreement and/or the Service(s) immediately on notice, if the other (i) is the subject of a bankruptcy order, becomes insolvent, makes any arrangement or composition with or assignment for the benefit of its creditors, goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, has a receiver or administrator appointed over its assets, or if the equivalent of any such events, under the laws of any relevant jurisdiction, occurs to the other party; (ii) commits a material breach of this Agreement, which is capable of remedy, and fails to remedy the breach within fifteen (15) days' written notice to do so; or (iii) commits a material breach of this Agreement which cannot be remedied. In addition, we may terminate (i) this Agreement; (ii) any Service; or (iii) both, (a) if you fail to make any payment in accordance with Section 4 having been given seven (7) days' written notice of such non-payment or (b) for your breach of our Acceptable Use Policy, per the General Terms and Conditions.

5.1 On the occurrence of any of the events detailed in Section 5 giving us a right to terminate this Agreement or Service(s), we may suspend Service(s), without prejudice to our right to terminate this Agreement or the applicable Service. If Services are suspended pursuant to the foregoing sentence, all monthly recurring charges payable in respect of the suspended Services (including monthly recurring charges payable in respect of related local access circuits) shall

continue to accrue. If we terminate a Service and/or this Agreement under this Section as a result of a payment default by you, we shall have the right to retain your equipment on our premises (if any) pending satisfaction in full of your payment obligations under this Agreement.

5.2 **Early termination.** If a MUG applies to your use of our Services under this Agreement, then you may terminate any Service to which that MUG applies at any time without incurring any early termination charges provided (a) the terms of the applicable MUG shall continue to apply, and (b) termination of local access circuits provided by us shall be subject to the provisions of Section 6 of the General Terms and Conditions. If no MUG applies to a Service, then on termination of that Service or a circuit provided as part of that Service, before the end of the original Service Term for which it was ordered or any renewal term for which it was re-ordered by you (a, “**Renewal Term**”), either (a) by you other than pursuant to either your right to do so under this Agreement because of our breach or under the terms of an SLA, or (b) by us because of your breach, you agree to pay (i) 100% of the Monthly Recurring Charges (“**MRCs**”) remaining for the Service Term or Renewal Term, as applicable, for which that Service or circuit was ordered by you and (ii) the charges relating to the early termination of local access circuits (if any) provided for in Section 6 of the General Terms and Conditions. You agree that the termination fees provided for in this Section 5 are based on an agreed revenue expectation and are not a penalty.

5.3 **Termination of Orders prior to installation.** If you cancel your order for a Service (including a local access circuit) for any reason prior to the agreed Ready for Service Date, as that term is defined in the General Terms and Conditions (other than because of a breach by us), you agree (i) to pay us fifty percent (50%) of any non recurring installation charge(s) for that Service (if any), and (ii) to reimburse us for all reasonable costs incurred by us in deploying any dedicated circuit(s), including any termination or cancellation charges levied on us by the underlying local access provider of local access circuit orders terminated.

6. WARRANTY AND LIMITATIONS. We warrant that we will (i) at all times provide Services in compliance with all laws and regulations applicable to the provision of the Services by us to you, and (ii) perform the Services with commercially reasonable skill and care and in a workmanlike manner and will use commercially reasonable efforts to restore Services in case of failure. We make no other warranty or guarantee, express or implied, under this Agreement or otherwise, and we expressly disclaim all other warranties or conditions, express or implied, including, but not limited to any implied warranties or conditions of merchantability, satisfactory quality, and/or fitness for a particular purpose.

6.1 In no circumstances shall either we or you (or our respective Affiliates², subcontractors or agents) be liable for indirect, consequential, reliance, or special loss or damages or for lost revenues, lost savings, lost business opportunity or lost profits of any kind.

6.2 Save for any liability we may have under the indemnification provisions in section 7.1 below, in no circumstances shall we (or our respective Affiliates, subcontractors or agents) be liable for any of the following, even if informed of their possibility and regardless of the form of action, whether in contract, warranty, strict liability or tort, including, without limitation, negligence of any kind, whether active or passive:

- (i) third party claims against you;
- (ii) any loss, damage, delay or Service failure attributable to any party other than us or our Affiliates, agents or subcontractors; or
- (iii) a failure of your equipment (not covered by our Managed Network Services offering) or applications or their inability to work with the Services.

6.3 Without prejudice to your entitlement to service level credits which may be provided for in an SLA, our entire aggregate liability for any and all claims of whatever nature arising out of the provision of Services under, or otherwise arising in connection with, this Agreement (including claims of negligence), including, but not limited to, damage to real or personal property, shall not exceed the greater of (a) five million dollars (\$5,000,000) or (b) all amounts paid by you to us under this Agreement, provided that the foregoing limitations shall not apply for death or personal injury caused by us or any other liability which may not by applicable law be excluded or limited.

7. INDEMNIFICATION. For the purposes of this Section, “**Losses**” means all losses, liabilities, damages and costs (including Taxes, as such term is defined in the General Terms and Conditions) and all related costs and expenses (including reasonable attorney’s fees and disbursements and costs of investigation, litigation and settlement).

² “**Affiliate**” means an entity controlling, controlled by, or under common control with, directly or indirectly, a party to this Agreement.

7.1 Indemnification by Global Crossing. Subject to Section 7.3 below, we shall indemnify, defend and hold you and your officers, directors, employees, agents, successors and assigns harmless from and against any and all Losses arising out of or relating to:

- (i) a claim by a third party that the Services or any equipment, products and hardware software, materials or other services provided to you by us or our Affiliates or subcontractors infringe upon the proprietary rights of such third party; provided only, (a) that our obligations under this sub-section 7.1(i) are expressly conditioned upon the action not arising from (1) the unauthorized modification of a Service by you or a third party, (2) our modification of a Service in accordance with your specific instructions, or (3) infringing items of your or a third party's origin, design or selection, and (b) that we shall have no obligations under this sub-section 7.1(i) to the extent that the action is based upon the operation, combination or use of a Service in breach of the terms of this Agreement or the applicable SLA;
- (ii) a breach by us or our Affiliates of Federal, state, local or other applicable laws or regulations;
- (iii) a breach by us or our Affiliates of any subcontracting arrangements with our subcontractors;
- (iv) a breach by us of the confidentiality provisions of this Agreement; and/or
- (v) the death or injury of or damage to any person, or real or personal, tangible or intangible personal property to the extent such injury or damage is proximately caused by our negligence or willful misconduct or that of our Affiliates or subcontractors.

7.2 By Customer. Subject to Section 7.3 below, you agree to indemnify, defend and hold us, our Affiliates providing Services to you, and our respective officers, directors, employees, agents, successors and assigns, harmless from and against any and all Losses arising out of or relating to:

- (i) a violation by you of Federal, state, local or other applicable laws or regulations;
- (ii) the death or injury of or damage to any person, or real or personal, tangible or intangible personal property to the extent such injury or damage is proximately caused by your negligence or willful misconduct; or
- (iii) a claim by a third party that the content, use and/or publication of information and communications transmitted by you or your customers or authorized end-users using the Services, or accessible to third parties through the use by you or your customers or authorized end-users of the Services ("Content") infringes upon the rights of such third party, regardless of the form of action, whether in contract, tort, warranty, or strict liability and whether in respect of copyright infringement or any manner of intellectual property claims, defamation claims, claims of publication of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing material, or claims of infringement of data protection legislation.

We use industry standard tools and technology to assist in protecting the integrity and security of our Network. In support of such protection, we deploy technology in our Network, which may include intrusion detection and/or packet inspection, which assist (on an anonymous basis only) in identifying and defending against malicious data traffic, including, but not limited to, data of the type which is prohibited by our Acceptable Use Policy ("Malicious Traffic"). Notwithstanding the foregoing, you acknowledge and agree that (i) that we are only an intermediary for the transmission of Content (which may include Malicious Traffic), (ii) that we play a passive role as a conduit of Content for you and third parties, (iii) that we are unable to exercise any editorial or other control over any Content and (iv) that we neither initiate the transmission of Content, select the receivers of Content, nor monitor, select or modify Content. In addition, we do not make any warranties or representations that the use of any of the technology referred to in this provision will identify or prevent any Malicious Traffic in our Network or otherwise protect the integrity and security of our Network. We expressly disclaim to the maximum extent permitted by law any liability for damage to your or a third party's computer equipment or network infrastructure that may arise as a result of our transmitting Malicious Traffic through our Network except where such damage arises as a result of the gross negligence or willful misconduct of us or our employees.

7.3 Indemnification Procedures. If any claim in respect of Losses is asserted or any civil, criminal, administrative or investigative action or proceeding (any such claim, action or proceeding, a "Claim") is threatened or commenced, in each case against any party seeking indemnification under this Section 7, (the "Indemnified Party"), the Indemnified Party will promptly notify the indemnifying Party (the "Indemnifying Party") in writing thereof. Any failure or delay by the Indemnified Party in giving such written notice shall not constitute a breach of this Agreement and shall not excuse the Indemnifying Party's obligation under this Section, except to the extent (if any) that the Indemnifying Party is prejudiced by such failure or delay. If the Indemnifying Party acknowledges in writing an indemnification obligation under this Section, it will be entitled to elect, within thirty (30) days after its receipt of such notice, to assume sole control over the investigation, defense and settlement of such Claim at its own cost, risk and expense. Neither the Indemnifying Party nor the Indemnified Party shall enter into a settlement of a Claim without the prior written consent of the other, which consent shall not be unreasonably withheld. After notice of a Claim by the Indemnified Party, if the Indemnifying Party does not elect to assume sole control of the defense of such Claim, the Indemnified Party will have the right to defend such Claim in such reasonable manner as it may deem appropriate, at the cost, risk and expense of

the Indemnifying Party. The Indemnifying Party will have the right to participate in such defense at its own cost and expense. Each party, at its own cost and expense, agrees to provide reasonable cooperation and assistance to the other party in the investigation, defense and settlement of any Claim, including but not limited to providing access to relevant information and employees.

8. FORCE MAJEURE. Neither we nor you will be held responsible for any delay or failure in performance of any part of this Agreement if and to the extent that such delay or failure is caused by: fire, flood, lightning, explosion, war, act of terrorism, strike, embargo, labor dispute, government requirement, civil or military authority, act of God or nature, inability to secure materials or transportation facilities, act or omission of third party carriers or suppliers, act or failure to act of any Governmental authority, computer viruses or worms, computer sabotage, 'Denial of Service' attacks, DNS spoofing attacks and/or other hacking attacks of a similar nature (provided the party claiming such cause has taken commercially reasonable steps to prevent such hacking attacks), or any other causes beyond our respective reasonable control, whether or not similar to the foregoing. The occurrence of an event of force majeure within the meaning of this Section shall not relieve you of your obligation to pay us for Services used by you prior to the occurrence of such event, or which may become due by you thereafter on account of your continued use of such Services after such occurrence. Failure of either you or us to perform under this Agreement because of the occurrence of an event of force majeure the effect of which lasts more than forty five (45) days shall, upon twenty-four (24) hours notice to the other party, be grounds for termination of the Service(s) affected by that event, but not of the entire Agreement.

9. NO WAIVER. The waiver by either you or us of any breach of this Agreement by the other in a particular instance will not operate as a waiver of subsequent breaches of a same or different kind. The failure of either you or us to exercise any rights under this Agreement in a particular instance will not operate as a waiver of right to exercise the same or different rights in any subsequent instance.

10. SEVERABILITY. If any provision of this Agreement is held to be invalid or unenforceable, it will be severed from this Agreement, and the remaining provisions will remain in full force and effect and we and you will promptly negotiate a replacement. The headings of sections and paragraphs herein are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

11. INDEPENDENT CONTRACTORS. Under this Agreement, we and you will be independent contractors, maintaining complete control over our respective personnel and operations. Except as expressly stated in this Agreement, nothing will be deemed to create a partnership between you and us, nor make you our agent or legal representative, or visa versa, nor create any fiduciary relationship between you and us.

12. NO THIRD PARTY BENEFICIARIES. This Agreement is not intended to be for the benefit of any third party, is not enforceable by any third party, and will not confer on any third party any remedy, claim, right of action or other right.

13. ASSIGNMENT AND SUBCONTRACTING. Neither we nor you may assign our respective rights under this Agreement without the prior written consent of the other, except that (i) we may freely assign our rights under this Agreement to one of our Affiliates, and may freely assign our right to receive payments hereunder, and (ii) you may freely assign your rights (but not your obligations, including, for the avoidance of doubt, payment obligations) under this Agreement to one of your Affiliates. Any attempted assignment, transfer or other disposition by you or us in violation of this Section will be null, void and of no force and effect. Additionally, we may, without your consent, subcontract the provision of a Service, or a portion of a Service, provided that we will continue to be liable to you for the performance of such subcontractors in accordance with the terms of this Agreement.

14. NOTICES. Notices of Service or Circuit availability and any notices of termination of Services by us under Section 3.1 shall be made (by email) to your Project Manager. Notice of termination of Services under Section 3.1 shall take effect forty-five (45) days after receipt by you. Termination / disconnection requests by you must be made by submitting (by email) a completed Service Disconnect Request Form to the Global Crossing customer service manager ("CSM") assigned to your account. Service Disconnect request Forms are available upon request from the CSM. All such termination / disconnect requests shall take effect forty-five (45) days after receipt thereof by the CSM, provided that in the case of local access circuits and other service elements which are provided by third party subcontractors to us, all such requests shall take effect sixty (60) days after receipt by the CSM. All other notifications, requests, demands and other communications required or permitted under this Agreement (including notices of breach and/or termination of this Agreement) must be in writing and addressed to the recipient at the address specified in the preamble to this Agreement, or such other address as may be notified by either you or us to the other for that purpose. Notice will be deemed given (i) on delivery, when delivered in person or by courier during a business day, otherwise on the next business day after delivery, (ii) the same day, when sent by facsimile during a business day, otherwise on the

next business day after transmission, provided that the sender has a transmission report confirming transmission of the correct number of pages to the other party's facsimile number, or (iii) five (5) business days after deposit in the mail.

15. GOVERNING LAW. Subject only to the provisions of any Local Country Agreement, this Agreement, the General Terms and Conditions and the SLAs will be construed and enforced in accordance with the law of the state of New York. We both agree that any action related to this Agreement may be brought and maintained in a Federal or State court of competent jurisdiction located in Monroe County, New York without regard to that state's choice of law principles. We each consent to the jurisdiction and venue of such courts and waive any right to object to such jurisdiction and venue. We each waive, to the fullest extent permitted by applicable law, any right either of us has to a trial by jury in any legal proceeding directly or indirectly arising out of or related to this Agreement or the Services or transactions contemplated hereby (whether based in contract, tort or any other theory).

16. EXECUTION IN COUNTERPARTS. To the extent permitted by applicable law, the parties will conduct transactions using an electronic commerce approach under which the parties will electronically transmit and receive legally binding purchase and sale obligations. This Agreement may be executed by exchange of facsimile copies of the Agreement and in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement among the parties.

17. ENTIRE AGREEMENT AND AMENDMENTS. This Agreement, including the General Terms and Conditions and the SLA applicable to each Service ordered by you, together with each executed Order Form, constitutes the entire agreement between you and us concerning the provision of Services by us to you, and supersedes all prior agreements, proposals, representations, statements or understandings, whether written or oral, concerning such Services. Except as provided for in Section 2 above, no modification or waiver of any of the terms of this Agreement will be binding unless set out in a written agreement or amendment referencing this Agreement and signed by both you and us. Any terms and conditions purportedly imposed by any standard purchase order or document used by you shall be void and of no effect. The section headings used in this Agreement are for convenience of reference only and shall not be considered in the interpretation of this Agreement.

IN WITNESS WHEREOF, we and you, through duly authorized representatives, have executed this Agreement for effectiveness on the Effective Date referred to in Section 3 above.

[INSERT FULL CUSTOMER NAME]

GLOBAL CROSSING TELECOMMUNICATIONS, INC.

By _____

By _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Additional Provisions	Detail	Initials for Each Party
Initial Credit Limit	US\$ENTER DOLLAR AMOUNT	