

DEFINITIONS AND GENERAL TERMS

These Definitions and General Terms (these "Definitions and General Terms") are incorporated by reference into that certain Master Service Agreement entered into between the Seller and the Buyer are a part of the Master Service Agreement for all purposes as fully set forth therein as expressly provided in the Master Service Agreement, effective as of the Effective Date of the Service Order form.

1. DEFINITIONS. In addition to terms defined elsewhere in the Master Service Agreement or other part of the Agreement and unless otherwise provided to the contrary in the Master Service Agreement, as applicable, capitalized terms shall have the following meanings, provided, however, that to the extent capitalized terms are defined in a Product Supplement, such terms shall have the meaning assigned to them therein regarding the Services to which such Product Supplement applies:

"Address for Notices" for Buyer shall be the address set forth on the Service Order form for General Notices. "Address for Notices" for Seller and its Affiliates shall be the address set forth on the Master Service Agreement for General Notices. Either Party may change its Address for Notices by giving notice of the same in accordance with the Master Service Agreement.

"Affiliate" shall mean, with respect to any entity, any other entity controlling, controlled by or under common control with such entity, whether directly or indirectly through one or more intermediaries. "Control" and its derivatives, with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of a particular entity, whether through the ownership of voting securities or by contract or otherwise.

"Agreement" shall mean the Master Service Agreement, these Definitions and General Terms, and the applicable Product Supplements, together with all other referenced schedules, exhibits, website or tariff provisions and attachments in effect as of the Effective Date, all Service Orders accepted by Seller, and all FOCs issued by Seller.

"Applicable Law" shall mean any law, statute, order, decree, rule, injunction, license, permit, consent, approval, agreement or regulation of any Government Authority, or other legislative or administrative action of a Government Authority, or a final decree, judgment or order of a court which relates, directly or indirectly, to the provision of the Services, to the goods or services used by Seller, or to the performance of work or obligations hereunder or the interpretation or application of the Agreement.

"Availability Factor" for any applicable Service shall have the meaning set forth in the Product Supplement for such Service.

"Bankrupt" means any entity, if such entity (1) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, debt restructuring, liquidation or similar law, or has any such petition filed or commenced against it, (2) makes an assignment or any general arrangement for the benefit of creditors, (3) otherwise becomes bankrupt or insolvent (however evidenced), (4) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (5) is generally unable to pay its debts as they fall due.

"BBER" means Background Bit Error Ratio, which is the percentage of bits received in error compared to the total number of bits received.

"BIP" shall mean Bit Interleaved Parity or the method commonly used in the telecommunications industry to monitor Errored Seconds or Severely Errored Seconds in SONET optical fiber transmission systems.

"Business Day" means a day, other than a Saturday or Sunday, or legally recognized holiday, on which most commercial banks are open for business with the public in any of the providers serving areas in Arizona, California, or Nevada.

"Buyer" means the entity as specified on the Master Service Agreement as such.

"Change in Law" shall mean the adoption, enactment or application to Buyer or Seller of any Applicable Law not existing or not affecting Buyer or Seller on the Effective Date, or any change in any Applicable Law or the application or interpretation thereof after the Effective Date.

"Chronic Service Outage" shall have the meaning set forth in the Product Supplement for such Service.

"Commencement Date" shall have the meaning set forth in the Master Service Agreement.

"Customer Not Ready Charge" shall mean a charge set forth in the applicable Product Supplement or in the applicable Service Order that Buyer must pay to Seller with regard to Buyer's refusal, failure or inability to permit the representatives of Seller or third parties to deliver the applicable Service, including without limitation (a) the failure of Buyer or its Users to have any necessary equipment in place for Seller to provide the Service or (b) the refusal, failure or inability of Buyer or its Users to permit Seller or such third parties to install any necessary equipment, to activate a circuit, to cross connect facilities that are necessary to provide the Service, or to otherwise complete its obligations.

"Errored Seconds" shall have the meaning set forth in the definitions regarding path performance monitoring established by the American National Standards Institute (ANSI) T1 .231-1997.

"Error Free Seconds" shall have the meaning set forth in the definitions regarding path performance monitoring established by the American National Standards Institute (ANSI) T1 .231-1997.

"Expedite Charge" shall mean a charge that Buyer must pay to Seller with regard to expediting the provisioning of a Service in less than the Provisioning Interval or as otherwise agreed by the Parties.

"Facility," "Facilities" or "Seller's Facilities" shall mean the facility(ies) that are (a) owned or leased by Seller and (b) for network facilities, on which it owns and operates its optronic and/or electronic equipment. For avoidance of doubt, the Facilities shall not include any facilities provided by the incumbent local exchange carrier nor any facilities through which a third party, including without limitation an incumbent local exchange carrier, provides services to Seller.

"FCC" shall mean the Federal Communications Commission of the United States of America or any other federal agency that succeeds to the responsibilities and authority of the Federal Communications Commission.

"Firm Order Confirmation" or "FOC" shall mean the confirmation form that Seller provides to Buyer to confirm the Scheduled Service Date and other details of the Service to be provided.

"Government Authority" shall mean any federal, state, or local legislative body, department, office, instrumentality, agency, board, commission, or court having jurisdiction over a Party or any portion of the work or obligations under this Agreement, including but not limited to the FCC and any PUC or other state utility governing body.

"Installation Notification" shall mean notification from Seller to Buyer that Buyer's Service is available for use. The notification may or may not be officially labeled as an Installation Notification, depending on the Service involved, and depending on adjustments to the document title Seller may perform from time to time. The notification is a commercial service notification and Seller will not be required to send same to the official Address for Notices.

"Mean Time to Repair" or "MTTR" for any Service shall have the meaning set forth in the Product Supplement for such Service.

"Party" shall mean either Seller (including its applicable Affiliate(s)) or Buyer and "Parties" shall collectively mean both Seller and Buyer. "Performance Assurance" shall mean collateral in the form of (i) cash, (ii) irrevocable letters of credit in favor of Seller issued and maintained by a major U.S. commercial bank or foreign bank with a U.S. office having a credit rating of at least A- by Standard & Poor's Credit Market Services, a division of the McGraw-Hill Companies, or A3 by Moody's Investor Service, Inc. (or successors thereto) in form and content acceptable to Seller, in its sole discretion, and continuing in full force and effect without disaffirmation, rejection, or repudiation by the issuer thereof, (iii) third party guaranty, or (iv) any other collateral agreed to by Buyer and Seller. Seller shall not be required to pay interest on or create a separate account for any Performance Assurance tendered.

"Person" means an individual, partnership, corporation, limited liability company, association, organization, business trust, joint stock company, trust, unincorporated association, joint venture, firm or other entity, or a government or any political subdivision or agency, department, or instrumentality thereof.

"Point of Demarcation" shall mean the interface between the Facilities and the facilities of another party, including Buyer, its Users, or another carrier, which will designate the point at which Seller's responsibility to provide Service ends and the Buyer's responsibilities commence. The Point of Demarcation will be identified on a Service Order, or otherwise designated by Seller.

"Provisioning Interval" for any applicable Service shall have the meaning set forth in the Product Supplement for such Service, as such period may be extended due to Force Majeure Events, any failure of Buyer to comply with the terms of this Agreement, or any fault or negligent act or omission of Buyer, or its User or any other party (other than Seller, and Seller's vendors, contractors, or Affiliates).

"Recurring Charges" shall mean the charges or fees under this Agreement that are recurring monthly or on the basis of some other defined period

"Scheduled Service Date" shall mean the later of either (a) the expiration of the Provisioning Interval set forth in the applicable Product Supplement for any Service provided entirely on Seller's Facilities, or (b) the expiration of any maximum provisioning interval set forth in the applicable third party's tariff or contract, whichever is applicable, for any Service that has any portion provided on Third Party Facilities; and such Scheduled Service Date shall be extended on a day for day basis due to (i) any Force Majeure Event, (ii) any failure of Buyer to comply with the terms of this Agreement, or (iii) any fault or negligent act or omission of Buyer, its User or any other party. Notwithstanding the foregoing sentence, the Parties may instead expressly agree upon a Scheduled Service Date for the commencement of the applicable Service provided that Buyer sets forth a Scheduled Service Date in the Service Order and Seller sends a FOC for such Service Order. In the unlikely event the Scheduled Service Date or Provisioning Interval or other date of service stated in the FOC conflicts with any requested service date on the Service Order, the FOC date shall govern as the Scheduled Service Date, subject to agreement of the parties to expedite or delay such date.

"Service" or "Services" shall mean the service or services provided by Seller to Buyer pursuant to this Agreement. When referring to a particular Service, it shall mean the particular service as set forth on a Service Order.

"Service Order" shall mean the form pursuant to which Buyer requests Services under this Agreement, as provided by Seller, and as accepted and agreed to by Seller. Buyer acknowledges and agrees that Seller may reject any Service Order submitted by Buyer to Seller in Seller's sole and absolute discretion.

"Service Outage" for any Service shall have the meaning set forth in the Product Supplement for such Service.

"Severely Errored Seconds" or "Severe Errored Seconds" shall have the meaning set forth in the definitions regarding path performance monitoring established by the American National Standards Institute (ANSI) T1.231-1997.

"Supp Charge" shall mean a charge that Buyer must pay to Seller with regard to Buyer's exercise of its right to defer the Scheduled Service Date in accordance with the applicable Product Supplement or as otherwise agreed by the Parties.

"Third Party Facilities" shall mean the facilities, including but not limited to telecommunication and information network facilities and colocation facilities, owned and/or operated by third parties over which all or a portion of the Services may be provided under this Agreement.

"Transmission Problem" for any Service shall have the meaning set forth in the Product Supplement for such Service.

"User" means anyone (including Buyer Affiliates) who uses or accesses any Service purchased by Buyer under this Agreement, including Buyer's customers, if any.

2. REGULATORY MATTERS. Each of Seller and Buyer represents and warrants to the other that it (i) is certified to do business in all jurisdictions in which it conducts business (ii) has all requisite corporate and other authority to execute this Agreement and respective Service Orders and otherwise perform its obligations under this Agreement, and (iii) is in good standing in all such jurisdiction. This Agreement is subject to, and the Parties agree to comply with, all applicable federal, state, and local laws, and regulations, rulings, and orders of governmental agencies, including, but not limited to, the Communications Act of 1934, the Telecommunications Act of 1996, the Rules and Regulations of the FCC, and those of all applicable state public utility or service commissions ("PUC"). Buyer agrees to cooperate with Seller if requested to assist Seller in complying with any law, regulation, or other legal requirement, as determined by Seller. Buyer covenants and agrees that it and all Users shall not use any Services for any illegal purpose or in any other unlawful manner. Buyer hereby warrants and represents that more than ten percent (10%) of the transmissions on each circuit-based Service provided hereunder shall be interstate transmissions or foreign transmissions as those terms are defined in 47 USC Sections 153(17) and 153(22) and that Buyer's uses for the Services will include use of the internet. If any Change in Law (a) prohibits Seller's performance under this Agreement, (b) makes Seller's performance illegal, impossible, uneconomical or impractical, (c) effects a change which has a significant adverse impact upon Seller's performance of its obligations under this Agreement, or (d) effects a change on any supplier, contractor, or landlord of Seller (or other party upon which Seller relies for purposes of providing Services hereunder) that materially impacts Seller's ability to provide the Services consistent with the original economic bargain between the Parties, then Seller shall have the right, at its sole discretion, to increase its rates for Services to reflect the increased costs resulting from such Change in Law, if applicable, or cease performance of any Service(s) covered by this sentence upon thirty (30) days' prior written notice (or less if required by law). The Parties will continue to perform all such obligations under this Agreement that are not so prohibited, impossible, impractical, uneconomical or adversely affected; provided, however, that if Seller determines that the performance of the remaining obligations would not reasonably maintain the essential purpose of this Agreement, then Seller shall have the right, at its sole discretion, to terminate this Agreement upon thirty (30) days' prior written notice without penalty or liability.

3. FORCE MAJEURE. Neither Party will be in breach or liable for any delay or failure in its performance under this Agreement (except with respect to any payment obligations under this Agreement) to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that: (a) the non-performing Party will give the other Party notice as soon as reasonably practicable of the occurrence of the Force Majeure Event; and (b) the Party whose performance is delayed or prevented will proceed with all commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance. For purposes of this Agreement, a "Force Majeure Event" shall mean any act or event that (i) renders it impossible or impractical for the affected Party to perform its obligations under the Agreement, and (ii) is beyond the reasonable control of the affected Party. By way of example and not limitation, a Force Majeure Event may include catastrophic storms or floods, lightning, earthquakes and other acts of God, wars, civil disturbances, revolts, insurrections, terrorist activity, sabotage, theft, vandalism, cable cuts or other actions by third parties, commercial embargoes, transportation disasters, fires, explosions, failures of suppliers, actions of a Governmental Authority that were not requested, promoted or caused by the affected Party, loss of a right to use intellectual property or a determination that provision or use of the Services infringes or may infringe the intellectual property rights of a third party, and Changes in Law. If any portion of a Service is provided on Third Party Facilities, then in no event shall any Force Majeure Event occurring on such Third-Party Facilities or the unavailability, incompatibility, delay in installation, or other impairment of Third-Party Facilities excuse Buyer's obligation to pay Seller all rates and charges applicable to the Services, whether or not such Services are useable by Buyer.

4. INSURANCE. Buyer agrees to keep in full force and effect during the term of the Agreement and any Service Order thereunder insurance of such types and amounts as are customary for companies its size in its industry.

5. DISPUTE RESOLUTION. Buyer hereby consents to the sole and exclusive jurisdiction of, and venue shall be in, the federal and state courts

having a situs in Oklahoma City, Oklahoma. FOR THE SAKE OF EXPEDIENCY AS A MATERIAL CONSIDERATION OF THIS AGREEMENT, BOTH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO HAVE A JURY TRIAL REGARDING ANY DISPUTE RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED OR NOT PROVIDED HEREUNDER AND AGREE NOT TO REQUEST A JURY IN ANY SUCH TRIAL.

6. **MISCELLANEOUS.** (a) **Notices.** Any notice required or desired to be given regarding this Agreement shall be in writing and may be given by personal delivery, by overnight courier service, by facsimile transmission or by certified mail. A notice shall be deemed to have been given (i) on the third (3rd) Business Day after mailing if such notice was deposited in the United States mail, certified, postage prepaid, addressed to the Party to be served at its Address for Notices; (ii) on the next Business Day when deposited with a commercial overnight service, prepaid and addressed to the Party to be served at its Address for Notices, or (iii) when delivered if given by personal delivery to the Party at its Address for Notice, (iv) if sent by facsimile, at the date and time of transmission as indicated on the facsimile transmission confirmation if sent during normal business hours of the notified party, or if not, on the .next business day, with confirmation sent in any manner permitted under (i), (ii), or (iii) above, and (v) in all other cases when actually received at the Party's Address for Notices. The Address for Notices for Buyer shall be the address set forth on the first page of the Agreement. The Address for Notices for Seller and/or its respective Affiliates shall be the address set forth on the first page of the Agreement. Additionally, in the case of default or potential default by Buyer based on lack of sufficient payment, Seller may provide notice to Buyer via electronic communication, using an email address by which Seller had previously communicated with Buyer personnel.

(b) **Assignment.** This Agreement (or any rights hereunder) shall not be pledged, mortgaged, encumbered, assigned, delegated, or otherwise transferred (including, without limitation, a transfer due to a change of control), in whole or in part, by Buyer without first obtaining the prior written consent of Seller, which consent shall not be unreasonably withheld. Any assignment, pledge, mortgage, encumbrance, delegation or transfer hereunder of Buyer's rights or obligations without Seller's consent shall be null and void, shall entitle Seller to suspend or terminate some or all the Services provided hereunder at its option upon five (5) calendar days prior written notice to Buyer and shall constitute a default of a material obligation. In the event Buyer is receiving Services from more than one Affiliate of Seller and Seller desires to assign this Agreement with regard to certain Services to one or more of such Affiliates, Seller may do so, and Buyer acknowledges that this Agreement will be deemed assigned with regard to such Services to the Seller Affiliate named from time to time on the invoice for such Services. To the extent requested by Seller, Buyer will promptly cooperate in executing any additional documentation to demonstrate its agreement with each assignee, including executing an MSA substantially similar to this Agreement, but in the name of the assignee.

(c) **Governing Law.** This agreement shall be governed by and interpreted in accordance with the laws of the state of Oklahoma, without giving effect to the choice of law principles of the state of Oklahoma. The parties agree that this agreement shall be deemed to have been entered into and be performable in the state of Oklahoma.

(d) **Non-Waiver: No Partnership or Third-Party Beneficiaries: Severability.** No waiver by any Party of any of its rights with respect to the other Party or with respect to this Agreement or any matter or default arising in connection with this Agreement, shall be construed as a waiver of any other right, matter, or default. Any waiver shall be in writing signed by the waiving Party. Any delay or omission of either Party to exercise any right hereunder shall not impair the exercise of any such right, or any like right, accruing to it thereafter. The failure of either Party to perform its obligations hereunder shall not release the other Party from the performance of such obligations except to the extent of such Party's express termination and suspension rights set forth in this Agreement. Neither Party shall be deemed to be the employee, agent, partner, joint venturer, or fiduciary of any other Party under or in connection with this Agreement. This Agreement is made and entered into for the sole benefit of the Parties, and their permitted successors and assigns, and no User or any other Person shall be a direct or indirect legal beneficiary of, have any rights under, or have any direct or indirect cause of action or claim in connection with this Agreement. If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby and the Parties shall promptly negotiate to restore this Agreement as near as possible to its original intent and economic effect.

(e) **Interpretations.** Unless expressly provided for elsewhere in this Agreement, this Agreement shall be interpreted in accordance with the following provisions: (i) Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning. If a word or phrase is not capitalized, then the word or phrase shall be interpreted in accordance with its commonly used meaning, provided that any words or phrases having well-known technical or trade meanings shall be interpreted in accordance with such technical or trade meanings. (iii) A reference to a person, corporation, trust, estate, partnership, or other entity includes any of them. (iv) The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. (v) A reference to any agreement or document (including without limitation a reference to this Agreement) is to the agreement or document as properly amended. (vi) A reference to any Party to this Agreement or another agreement or document includes the Party's authorized successors and assigns. (vii) A reference to legislation or to a provision of legislation includes a modification or reenactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it. (viii) The Master Service Agreement, these Definitions and General Terms, the Exhibits, the Product Supplements, the Service Orders, and the FOCs issued hereunder are complementary and should be read together to avoid inconsistent interpretations. However, in the event of irreconcilable conflicts between the terms of such documents, the following descending order of precedence shall prevail: (A) the FOC (solely for the Services that are the subject thereof), (B) Service Order (solely for the Services that are the subject thereof), (C) the Master Service Agreement, (D) these Definitions and General Terms, (E) the Product Supplements, and (F) any other documentation made part of the Agreement. (ix) Any facsimile or electronic message that is permitted to be delivered under this Agreement shall be valid and have the same force and effect as an original writing and the Parties waive any and all claims against the inadmissibility of such facsimiles or electronic messages. (x) If this Agreement references the ability of the Parties to determine and agree upon certain provisions on an individual case basis or in the Service Order and the Parties do not specify such provisions in writing in the Service Order or otherwise, then neither Party shall have any obligation with respect to such provisions for the applicable Service.