



Master Service Agreement

This Master Service Agreement ("Agreement") is effective as of the date of the Service Order entered ("Effective Date") by and between Network Innovations, LLC ("NITEL") and the customer identified on the Service Order ("Customer"). This Agreement sets forth the general terms and conditions applicable to Customer's purchase of communications services ("Service(s)") from NITEL. This Agreement consists of the General Terms and Conditions stated herein ("Terms and Conditions") and any written amendments to the Agreement executed by both parties ("Amendments"); the applicable NITEL Service Guide(s) currently located at <http://www.nitelusa.com/service-guide> ("Service Guide"); the Service Level Agreements currently located at <http://www.nitelusa.com/sla.htm> (collectively referred to as the "SLA"); any Service Orders placed hereunder; and the NITEL Acceptable Use Policy located at <http://www.nitelusa.com/aup.htm> ("AUP"). In the event of any inconsistency among these documents, precedence will be as follows: (1) Amendments, (2) Service Guide(s) and AUP, (3) Service Order(s), (4) Terms and Conditions, (5) SLA(s).

GENERAL TERMS AND CONDITIONS

1. Service Orders & Term. Customer must submit requests for Service in a manner and on a form designated by NITEL ("Service Order"). Each Service Order will state the term for which Service is requested (the "Initial Service Term") and the pricing for the Service. Upon expiration of the Initial Service Term, the Service will renew for a period equal to the Initial Service Term ("Renewal Term") unless terminated by Customer or NITEL. Prior to renewal, either party may provide the other with written notice of non-renewal thirty (30) days prior to the end of the Initial Service Term (or any subsequent Renewal Term). The Initial Service Term and any Renewal Term are collectively referred to herein as "Service Term." If Customer wishes to terminate (disconnect) a Service for any reason, Customer is required to follow the disconnection process set forth in the Service Guide. After the Initial Service Term, NITEL may modify the rate for a Service upon thirty (30) days prior written notice to Customer.

2. Orders. To request Service, Customer may request from NITEL a Service Order. If Customer wishes to move forward with the provision of the requested Service(s), Customer shall sign and return the Service Order to NITEL. For purposes of Service Orders, upon Customer's signature, the Service Order will become binding, subject to an engineering review.

3. Service Installation and Acceptance.

a. NITEL will issue Firm Order Commitment (the "FOC") date for a Service to the Customer. Customer acknowledges that FOC dates can change from time to time for various reasons. If NITEL changes the FOC date, NITEL will provide Customer with the updated FOC date. NITEL's inability or failure to deliver any ordered Service by the FOC date will not be a default under the Agreement, and NITEL will not be liable to Customer as a result of NITEL's inability or failure to deliver the Service.

b. The "Service Commencement Date" refers to the date that the Service is available for use by Customer, subject to the following Service acceptance process. After NITEL notifies Customer that a Service is available, Customer may test the Service to determine if the Service is operating in accordance with the technical specifications set forth in the applicable SLA. If Customer provides NITEL with written notice that a Service is in material non-compliance with the applicable SLA within five (5) business days after NITEL notifies Customer that the Service is available, then NITEL will promptly take such reasonable action as is necessary to correct any such non-compliance in the Service and the Service Commencement Date shall be the date of correction. Any non-compliance notice must contain information describing the nature of the material non-compliance with the technical specifications for the Service(s) in question. If Customer does not deliver such a non-compliance notice within the five (5) business day period, Customer shall be deemed to have accepted the Service, and billing will commence on the original Service Commencement Date.

4. Service Cancellation. If a Service is cancelled prior to the Service Commencement Date, Customer will pay to NITEL a charge equal to any charges incurred by NITEL from the underlying service providers, in addition to any cancellation charges listed in the Service Guide.

5. Service Disconnection. In order to disconnect a Service, Customer must submit a request through the My Nitel portal. Registration for the My Nitel portal may be required. Such termination is effective 45 days after NITEL's receipt of the notice, unless otherwise agreed upon by NITEL and Customer.

6. Credit Review & Deposits. Provision of Services is subject to NITEL's credit approval of Customer. Based on the credit check, NITEL may, in its sole discretion, require that Customer provide a deposit as a condition of purchasing Services. Additionally, during the Service Term, if Customer fails to make timely payment for Services, NITEL may require adequate assurance of future payment (e.g., a deposit or other acceptable form of security) as a condition of continuing NITEL's Services. Customer's failure to provide adequate assurances required by NITEL is a material breach of the Agreement. NITEL may provide Customer's payment history or other billing/charge information to credit reporting agencies or industry



clearinghouses.

7. Invoices and Disputes. Customer must pay all applicable Monthly Recurring Charges (“MRCs”), Non-Recurring Charges (“NRCs”), and other fees set forth in the applicable Service Order or pricing attachment, or invoice. Invoices are delivered monthly and payment is due 30 days after the invoice date (the “Due Date”). Fixed charges are billed in advance and usage-based charges are billed in arrears. Billing for partial months is prorated. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law, whichever is less (“Late Fee”). Customer is responsible for all Service charges, even if incurred as the result of unauthorized use. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount by the Due Date and submit written notice of the disputed amount (detailing the nature of the dispute, the Services and invoice(s) disputed). Customer must submit disputes in writing within 60 days of the date of the invoice or the right to dispute is waived. If a dispute is resolved against Customer, Customer will pay the disputed amounts plus the Late Fee from the initial Due Date. Customer will be liable to NITEL for all costs and expenses incurred in collecting amounts due to NITEL, including legal fees.

8. Taxes and Fees. Except to the extent Customer provides a valid tax exemption certificate prior to the delivery of Service, Customer shall be responsible for the payment of any and all applicable taxes or fees (however designated). Customer shall also be responsible to pay any taxes or fees that become applicable retroactively. If Customer is required by applicable law to make any deduction or withholding from any payment due hereunder to NITEL, then the gross amount payable by Customer to NITEL will be increased so that, after any such deduction or withholding for taxes, the net amount received by NITEL will not be less than NITEL would have received had no such deduction or withholding been required.

9. Regulatory Activity. The parties acknowledge that the respective rights and obligations of each party as set forth in this Agreement are based on applicable law and regulations as they exist on the date of the Agreement's execution. The parties agree that in the event of any legislative, regulatory, or judicial order, rule, or regulation, or decision in any arbitration or other dispute resolution proceeding, or other legal or regulatory action that materially affects the provisions of this Agreement or the economic terms of the Agreement, NITEL may, by providing written notice to the Customer, require that the affected provisions of the Agreement be renegotiated in good faith. If Customer refuses to enter such renegotiations, or the parties are unable to reach resolution on new Agreement terms, NITEL may, in its sole discretion, terminate this Agreement, in whole or in part, upon sixty (60) days written notice to Customer.

10. Use of Service. Customer may use Services for any lawful purpose consistent with NITEL's then current AUP available at <http://www.nitelusa.com/aup.htm>. NITEL is not responsible for any information provided by Customer to third parties and Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services. Customer will not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof, nor permit any third party access to the Services in exchange for compensation of any kind. For the avoidance of doubt, this prohibition includes Customer bundling the Services with any services or components of Customer that are then sold to end users of any kind.

11. Service Interruptions. In the event of an interruption of Service, NITEL will use reasonable efforts to restore Service promptly. Whenever an interruption occurs, NITEL shall have no liability or obligation unless and until Customer has notified NITEL or unless NITEL network personnel have actual knowledge of such condition. In the event of an interruption of Service, NITEL's liability shall be limited to its obligation to issue service credits as described in Section 12 of the Agreement. The duration of any interruption will be calculated from the time the report of the interruption is made to NITEL. In the event of any interruption, Customer shall immediately grant NITEL's employees, agents, and/or contractors access to Customer's premises and all pertinent equipment therein and fully assist and cooperate with NITEL in remedying the interruption.

12. Service Level Agreements. Service Level Agreements (“SLAs”) and additional terms for Services are listed at <http://www.nitelusa.com/sla.htm> and/or in the applicable Service Guide(s) and are incorporated herein by reference to the extent Customer orders those Services. The SLAs set forth Customer's exclusive sole remedies for any claim relating to a Service including any failure to meet any objectives set forth in the SLA. NITEL's records and data shall be the basis for all SLA calculations and determinations. The maximum amount of credit in any calendar month under an SLA shall not exceed the MRC, which, absent the credit, would have been charged by NITEL for the affected Service in that month.

13. Termination. Upon either party's (i) failure to perform any non-monetary provision of the Agreement that is not corrected by the non-performing party within thirty (30) days after having received notice from the other party or (ii) becoming the subject of a bankruptcy, liquidation or other insolvency proceeding or upon commencement of any other action against such party with respect to creditors in the nature of bankruptcy, insolvency or liquidation, the other party may, at its option, terminate the Agreement and any or all underlying Services, suspend all or any Service(s), and/or require a deposit, advanced payment, or other satisfactory assurances as a condition of continuing to provide Services. Additionally, if Customer fails to meet any of its payment obligations (including failure to pay a required deposit) that is not corrected in full

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by Customer within five (5) days after receipt of written notice from NITEL, NITEL may, at its option, terminate the Agreement and any or all underlying Services, suspend all or any Service, and/or require a deposit, advanced payment, or other satisfactory assurances as a condition of continuing to provide Services. NITEL may also pursue all other rights and remedies available to it under the Agreement, at law or in equity, including but not limited to payment of early termination charges.

14. Termination Liability. Unless otherwise specified in an applicable Service Guide, if NITEL terminates the Agreement or any Service(s) due to Customer's default, or if Customer terminates the Agreement or any Service(s) prior to the expiration of such Service's specified Service Term, Customer will pay to NITEL an early termination charge equal to (i) all recurring and non-recurring charges specified in the applicable Service Order Form(s) for the balance of each Service's specified Service Term, plus; (ii) any charges levied by the underlying service provider in connection with the termination that NITEL does not recover under clause (i) of this Section 14; plus (iii) all non-recurring and recurring charges that were waived or discounted by NITEL. Customer agrees that these terms provide a reasonable approximation of NITEL's damages and are not a penalty. In the event that Customer has signed a Minimum Monthly Commitment ("MMRC") Addendum to this Agreement, Customer will remain liable to pay NITEL the entirety of the MMRC for the agreed upon term of such Addendum.

15. Indemnification and Limitations on Liability.

a. Subject to the limitations contained in this Agreement, NITEL shall defend, indemnify and hold Customer, its Affiliates, and their respective employees, directors, officers, and agents harmless from and against any losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of a claim or demand by a third party ("Claims") incurred as a result of damage to tangible personal property or real property, any personal injuries (including death), to the extent such Claim is caused by the gross negligence or willful misconduct of NITEL while working at a Customer location. For purposes of this provision, any claims by any end-user of the Services shall not be included in the definition of Claims.

b. Subject to the limitations contained in this Agreement, Customer will indemnify, defend and hold NITEL, its Affiliates and each of its respective owners, directors, officers, employees and agents, harmless from and against any and all claims, suits, expenses, losses, demands, actions, causes of action, judgments, fees and costs, of any kind or nature whatsoever (Claims), to the extent such Claim arises on account of or in connection with Customer's and its users use or sharing of the Service, including with respect to: (i) any content transmitted over NITEL's network; (ii) libel, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications via the Service; (iii) for patent infringement arising from Customer's combining or connection of Customer provided equipment to use the Service; or (iv) for damage arising out of the gross negligence or willful misconduct of Customer.

c. To the extent a party may be entitled to indemnification under this Agreement (an "Indemnified Party"), such Indemnified Party shall (i) promptly notify the other party (the "Indemnifying Party") in writing of any pending or threatened Claim that gives rise to a right of indemnification (an "Action") and (ii) cooperate in every reasonable way to facilitate the defense or settlement of such Action. The Indemnified Party shall have the right, at its own expense, to appoint its own counsel who shall be entitled to participate in any settlement negotiations or litigation regarding any matter for which it is entitled to be indemnified hereunder. The Indemnifying Party shall have the right to settle any Action; provided, however, that to the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such Action without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

d. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF NITEL AND ITS AGENTS, SUPPLIERS, AND LICENSORS HEREUNDER EXCEED THE AMOUNT OF SERVICE CHARGES PAID BY THE CUSTOMER DURING THE THREE (3) MONTHS PRIOR TO THE ACCRUAL OF THE MOST RECENT CLAIM. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY DAMAGES WHATSOEVER FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, THE COST OF PURCHASING REPLACEMENT SERVICES, OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT. NITEL WILL HAVE NO LIABILITY FOR ANY CLAIM AGAINST CUSTOMER BY A THIRD PARTY IN CONNECTION WITH OR FOR RESPONDING TO EMERGENCY 911 OR OTHER EMERGENCY REFERRAL CALLS. NOTWITHSTANDING THE FOREGOING LIMITS OF LIABILITY, A PARTY'S LIABILITY WILL NOT BE LIMITED WITH RESPECT TO CLAIMS ARISING FROM (1) A PARTY'S PAYMENT OBLIGATIONS, INCLUDING EARLY TERMINATION CHARGES; OR (2) A PARTY'S INDEMNIFICATION OBLIGATIONS.

e. CUSTOMER AGREES THAT THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION ARE FAIR AND REASONABLE IN THE CIRCUMSTANCES OF THE AGREEMENT AND THAT NITEL WOULD NOT HAVE ENTERED INTO THE AGREEMENT BUT FOR CUSTOMER'S AGREEMENT TO LIMIT NITEL'S LIABILITY IN THE MANNER AND

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TO THE EXTENT PROVIDED FOR IN THIS SECTION.

f. NITEL and its agents, suppliers, and licensors shall not be liable for any loss, damage, or claim arising out of or related to: (1) content or data received or distributed by Customer or its users through the Services; (2) any act or omission of Customer, its users, or third parties not under the control of NITEL; (3) interoperability, interaction, or interconnection of the Services with applications, equipment, services, or networks provided by Customer or third parties not under the control of NITEL; or (4) loss or destruction of any Customer hardware, software, files, or data resulting from any virus or other harmful feature or from any attempt to remove it. Customer is solely responsible for backing up its data, files, and software prior to the installation of Service and at regular intervals thereafter.

16. Force Majeure. Neither party nor its Affiliates will be liable to the other Party, nor will any remedy provided by this Agreement be available, for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cuts, acts of regulatory or governmental agencies, unforeseeable third party actions, or other causes beyond the party's reasonable control (each a "Force Majeure Event"), except that Customer's obligation to pay for Services provided under the Agreement shall not be excused. Changes in economic, business, or competitive condition shall not be considered Force Majeure Events.

17. Assignment. Neither the Agreement nor any of Customer's rights and/or obligations under the Agreement shall be assigned, and/or delegated, and/or transferred by Customer to another party without the express written consent of NITEL (which shall not be unreasonably withheld, delayed or conditioned); however, NITEL may assign and/or delegate the Agreement to any of its Affiliates or any third party purchaser. Any assignment in violation of this provision shall be deemed null and void. All obligations and duties of either party hereunder shall be binding on all successors-in-interest and permitted assigns of such party.

18. Warranties. NITEL MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, RESPECTING THE SERVICE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

19. Confidentiality. "Confidential Information" shall mean all information regarding either party's business that has been marked or is otherwise communicated as being "proprietary" or "confidential" or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the foregoing, Confidential Information shall include, even if not marked or otherwise designated as proprietary, the Agreement, all licensed software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance), and invoices, as well as the parties' communications regarding such items. Confidential Information does not include any data transmitted over or through the Services. All Confidential Information disclosed by either party shall, during the term of the Agreement and for two (2) years after the expiration or termination thereof (or such longer period as may be required by law), not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (A) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing under this Agreement, using the Services, and rendering the Services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents designed to protect against unauthorized use or disclosure) or (B) as otherwise authorized by this Agreement. Each party's confidentiality obligations hereunder shall not apply to information that: (A) is already known to the receiving party without a pre-existing restriction as to disclosure; (B) is or becomes publicly available without fault of the receiving party; (C) is rightfully obtained by the receiving party from a third party without restriction as to disclosure or is approved for release by written authorization of the disclosing party; or (D) is developed independently by the receiving party without use of the disclosing party's Confidential Information. Each party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using less than a reasonable degree of care. If either party is required to disclose Confidential Information pursuant to a judicial order or other compulsion of law, such party shall be permitted to make such disclosure provided that it: (a) limits the disclosure to only that information which is required to be disclosed by such order or legal requirement, (b) if permitted, provides the disclosing party with prompt notice of such order or legal requirement, and (c) reasonably assists the disclosing party in obtaining a protective order, if requested and at the disclosing party's expense. Notwithstanding any other section of this Agreement, the non-breaching party shall be entitled to seek equitable relief to protect its interests pursuant to this Section 19, including, but not limited to, injunctive relief.

20. Prohibited Uses. Customer is prohibited from using, or permitting the use of, any Service (i) for any purpose in violation of any law, rule, regulation, or policy of any government authority; (ii) in violation of the AUP; (iii) for any use as to which Customer has not obtained all required government approvals, authorizations, licenses, consents, or permits; or (iv) to interfere unreasonably with the use of NITEL service by others or the operation of the NITEL network. Customer is



responsible for the compliance of its users with the provisions of this Agreement. Customer acknowledges and agrees that use of the Services, including by Customer, its Affiliates, and any users, is subject to the AUP. NITEL reserve the right to act immediately and without notice to (a) terminate or suspend the Agreement and/or any Services if NITEL determines that such use or information is in violation of this Section 19 and such termination will constitute a termination for cause and (b) terminate or suspend the Services in the event of fraudulent use of the Services.

21. Notices. Except as otherwise specifically provided herein, any notices required or permitted to be given under the Agreement shall be given in writing and shall be delivered (a) in person; (b) by certified mail, postage prepaid, return receipt requested; (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt; (d) by electronic mail to Customer at Customer's designated technical and/or billing contact, or to NITEL at notice@nitelusa.com. Customer acknowledges and agrees that NITEL may contact Customer via e-mail at the e-mail address provided to NITEL when Customer ordered the Service for any reason relating to the Service, including for purposes of providing Customer any notices required under the Agreement. Customer is responsible for providing NITEL with any change to its email address. It is solely Customer's responsibility to notify NITEL of any changes to Customer's email address for such notice. Notice provided by personal delivery, certified mail, or commercial overnight courier is to be delivered to the addresses listed for each party in the signature area of the Agreement, or to any such other address as either party may from time to time specify in writing to the other party. Notice shall be effective upon delivery (or refusal to accept delivery).

22. Amendments; Changes to Agreement. The Agreement may not be amended except by a written agreement executed by the parties; provided, that, notwithstanding the foregoing, NITEL may change or modify these Terms and Conditions, the Service Guides, SLAs, and any related policies (including the AUP) from time to time ("Revisions") by posting such Revisions to the Website. The Revisions are effective upon posting to the Website. Customer will receive notice of any Revisions in the next applicable monthly invoice. Customer shall have thirty (30) calendar days from the invoice notice of such Revisions to provide NITEL with written notice that the Revisions adversely affect Customer's use of the Service(s). If, after such notice, NITEL is able to verify such adverse effect but is unable to reasonably mitigate the Revisions' impact on such Services, then Customer may terminate the impacted Service(s) without further obligation (including any early termination charges) to NITEL beyond the termination date. This shall be Customer's sole and exclusive remedy for any Revisions. Customer acknowledges and agrees that terms or conditions contained in any Customer purchase order or similar Customer order form (regardless of whether executed by NITEL), or restrictive endorsements or other statements on any Customer form of payment, shall be void and of no force or effect. Without limitation to the foregoing, if (i) Customer requires NITEL to execute a Customer purchase order or other Customer order form for a Service or as a condition to receiving payment for the same and (ii) NITEL executes such purchase order or Customer order form, Customer acknowledges and agrees that (1) NITEL's execution is solely for the purpose of assisting Customer in satisfying its internal procurement requirements and (2) any terms and conditions contained in such purchase order or Customer order form shall be null and void and of no force or effect. "Website" shall mean the NITEL website where the Terms and Conditions, Service Guides, SLA and AUP are posted. The current URL for the Website is <http://nitelusa.com>.

23. Miscellaneous. The Agreement supersedes all prior agreement between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to the subject matter hereof.. As a material part of the consideration for entering into this Agreement, each party agrees not to contest or assert any defense relating to the authority of any representative or employee of such party to enter into this Agreement or any Service Order issued pursuant to this Agreement. This Agreement does not create any agency, joint venture, or partnership between NITEL and Customer, each of which are independent business entities. The rights and obligations of either party that by their nature would continue beyond the termination or expiration of the Agreement shall survive termination or expiration of the Agreement. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s). Each of the Parties agrees to comply with all local, state and federal laws and regulations and ordinances applicable to such Party in the performance of its respective rights and obligations under this Agreement. If any provision of this Agreement is held to be illegal or unenforceable, this Agreement's unaffected provisions will remain in effect. If either party fails to enforce any right or remedy under this Agreement, such failure will not waive the right or remedy. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws provisions. The federal and state courts located in Dover, Delaware shall be the only courts with jurisdiction to hear disputes under this Agreement, and Customer consents to the jurisdiction of these courts. Both parties hereby waive any right to a trial by jury.

24. Affiliates. With respect to each party, an "Affiliate" is any entity that controls, is controlled by, or is under common control with such party. For the purposes of this definition, "control" shall mean ownership of at least fifty percent (50%) of the voting stock or other voting ownership interest in an entity.