



Master Service Agreement

ARTICLE 1. ORDERS FOR AND DELIVERY OF SERVICE

1.1 Submission and Acceptance of Customer Order(s). Customer may submit requests for Service in a form designated by Genuity ("Customer Order"). Customer Orders shall contain the duration for which Service is ordered ("Service Term"). Service will continue on a month to month basis at the expiration of the Service Term at Genuity's then current rates. Genuity will notify Customer of acceptance of the Customer Order by delivering (in writing or electronically) the date by which Genuity will install Service (the "Customer Commit Date") or by delivering the Service. Renewal Customer Orders will be accepted by Genuity's continuation of Service. If Customer submits Customer Orders electronically, Customer shall assure that any passwords or access devices are available only to those having authority to submit Customer Orders. Customer will pay Genuity's then current charges for moves, adds or changes agreed to by Genuity respecting any Customer Order or Service.

1.2 Credit Approval and Deposits. Customer will provide Genuity with credit information as requested. Genuity may require Customer to make a deposit as a condition of Genuity's acceptance of any Customer Order or continuation of: a) usage-based Services; or b) non-usage based Service where Customer fails to timely pay Genuity hereunder or Genuity reasonably determines that Customer has had an adverse change in financial condition. Deposits will not exceed 2 months' estimated charges for Service and are due upon Genuity's written request. When Service is discontinued, the deposit will be credited to Customer's account and the balance refunded.

1.3 Customer Premises; Title to Equipment. If access to non-Genuity facilities is required for the installation, maintenance, upgrade and/or removal of Genuity network or equipment, Customer shall, at its expense, secure such right of access and shall arrange for the provision and maintenance of power and HVAC as needed for the proper operation of such equipment and network. Title to equipment (including software) provided by Genuity remains with Genuity. Customer will not create or permit to be created any encumbrances on Genuity's equipment.

1.4 Scheduled Maintenance and Local Access. Scheduled maintenance will not normally result in Service interruption. If scheduled maintenance requires Service interruption, Genuity will: (i) provide Customer 7 days' prior written notice, (ii) work with Customer to minimize such interruptions and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time. If third party local access services are obtained by Customer, Customer will: (i) provide Genuity with circuit facility and firm order commitment information and design layout records to enable cross-connects to Genuity Service(s) (provided by Genuity subject to applicable charges), (ii) cooperate with Genuity (including providing necessary LOA's) respecting circuit grooming, and (iii) where a related Service is disconnected, provide Genuity a written disconnection firm order commitment from the relevant third party provider.

ARTICLE 2. BILLING AND PAYMENT

2.1 Commencement of Billing. Genuity will deliver written or electronic notice (a "Connection Notice") to Customer when Service is installed, at which time billing will commence ("Service Commencement Date"). If Customer notifies Genuity within 3 days after delivery of the Connection Notice that Service is not functioning properly, Genuity will correct any deficiencies and, upon Customer's request, credit Customer's account in the amount of 1/30 of the applicable MRC for each day the Service did not function properly.

2.2 Payment of Invoices and Disputes. Invoices are delivered monthly and due 15 days after the invoice 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). Customer is responsible for all charges respecting the Service, even if incurred as the result of unauthorized use. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice. If the dispute is resolved against Customer, Customer shall pay such amounts plus interest from the date originally due.

2.3 Rebill Services. There will be a rebill fee (equal to the then-current charge assessed to similarly situated customers of Genuity) applied on all Services ordered that are not ordered on Genuity wholesale platforms including, but not limited to, those Services not subject to any discount from the Provider and/or any Services that are rebilled by Genuity for Customer. All additions to Services are recognized as non-refundable regardless of utilization by Customer.

2.4 Taxes and Fees. Customer is responsible for all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service, including but not limited to value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up), excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911



surcharges), whether imposed on Genuity or a Genuity affiliate, along with similar charges stated in a Customer Order (collectively “Taxes and Fees”). Some Taxes and Fees are recovered through imposition of a percentage surcharge on the charges for Service. Charges for Service are exclusive of Taxes and Fees. Customer may present Genuity with an exemption certificate eliminating Genuity’s liability to pay certain Taxes and Fees; Genuity will give effect thereto prospectively.

2.5 Regulatory and Legal Changes. If changes in applicable law, regulation, rule or order materially affect delivery of Service, the parties will negotiate appropriate changes to this Agreement. If the parties cannot reach agreement within 30 days after Genuity’s notice requesting renegotiation: (a) Genuity may, on a prospective basis after such 30 days period, pass any increased delivery costs on to Customer and (b) if Genuity does so, Customer may terminate the affected Service on notice to Genuity delivered within 30 days.

2.6 Cancellation and Termination Charges.

(A) Unless otherwise specified in the Service Schedule, Customer may cancel a Customer Order (or portion thereof) prior to the delivery of a Connection Notice upon written notice to Genuity identifying the affected Customer Order and Service. If Customer does so, Customer shall pay Genuity a cancellation charge equal to the sum of: (i) for “off-net” Service, third party termination charges for the cancelled Service; (ii) for “on-net” Service, 1 month’s monthly recurring charges for the cancelled Service; (iii) the non-recurring charges for the cancelled Service; and (iv) Genuity’s out of pocket costs (if any) incurred in constructing facilities necessary for Service delivery.

(B) Customer may terminate specified Service(s) after the delivery of a Connection Notice upon 30 days’ written notice to Genuity. If Customer does so, or if Service is terminated by Genuity hereunder as the result of Customer’s default, Customer shall pay Genuity a termination charge equal to the sum of: (i) all unpaid amounts for Service actually provided; (ii) 100% of the remaining monthly recurring charges for the remainder of the Service Term; and (iii) if not recovered by the foregoing, any termination liability payable to third parties resulting from the termination. Customer acknowledges that the charges in this Section are a genuine estimate of Genuity’s actual damages and are not a penalty.

ARTICLE 3. DEFAULT

3.1 If (A) Customer fails to make any payment when due and such failure continues for 5 business days after written notice from Genuity, or (B) either party fails to observe or perform any other material term of this Agreement and such failure continues for 30 days after written notice from the other party, then the non-defaulting party may: (i) terminate this Agreement and/or any Customer Order, in whole or in part, and/or (ii) subject to Section 4.1 and 4.3, pursue any remedies it may have at law or in equity.

ARTICLE 4. LIABILITIES AND SERVICE LEVELS

4.1 No Special Damages. Neither party shall be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or 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 or any Customer Order.

4.2 Disclaimer of Warranties. GENUITY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE SCHEDULE.

4.3 Service Levels. The “Service Level” commitments applicable to Services are contained in the Service Schedules for each Service. If Genuity does not meet a Service Level, a credit will be issued to Customer as stated in the applicable Service Schedule on Customer’s request. Genuity’s maintenance log and trouble ticketing systems are used to calculate Service Level events. To request a credit, Customer must contact Genuity Customer Service or deliver a written request, with sufficient detail to identify the affected Service, within 60 days after the end of the month in which the event occurred. Total monthly credits will never exceed the charges for the affected Service for that month. Customer’s sole remedies for any non-performance, outages, failures to deliver or defects in Service are contained in the Service Levels applicable to the affected Service.

ARTICLE 5. GENERAL TERMS

5.1 Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party’s reasonable control (“force majeure event”). In the event Genuity is unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay Genuity for the affected Service for the duration of the event. Force majeure events and scheduled maintenance under section 1.4 are considered “Excused Outages.”

5.2 Assignment and Resale. Customer may not assign its rights or obligations under this Agreement or any Customer Order without the prior written consent of Genuity, which will not be unreasonably withheld. This Agreement shall apply to any permitted transferees or



assignees. Any service provided under this Agreement may not, under any circumstances, be resold or shared with other persons or entities by the Customer unless written approval is received in advance as well as all necessary supporting documentation.

5.3 Affiliates. Service may be provided to Customer by an affiliate of Genuity, but Genuity shall remain responsible to Customer for the delivery and performance of the Service. Customer's affiliates may purchase Service pursuant to this Agreement, and Customer shall be jointly and severally liable for all claims and liabilities related to Service ordered by any Customer affiliate.

5.4 Notices. Notices shall be in writing and deemed received if delivered personally, sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided) or sent by U.S. Postal Service or First Class International Post, addressed as follows:

IF TO GENUITY:

Genuity Technology Group, LLC.
1700 Lincoln
Ste. 1700
Denver, CO 80203

IF TO CUSTOMER:

If no Customer address is provided above, notices may be provided to any electronic or physical address identified on the Customer Order. Either party may change its notice address upon notice to the other party. All notices shall be deemed given on (i) the date delivered if delivered personally, by facsimile or e-mail (or the next business day if delivered on a weekend or legal holiday), (ii) the business day after dispatch if sent by overnight courier, or (iii) the third business day after dispatch if otherwise sent.

5.5 Acceptable Use Policy; Data Protection. Customer's use of Service shall comply with Genuity's Acceptable Use Policy and Privacy Policy, as communicated in writing to Customer from time to time and which are also available through Genuity's web site (www.genuitynetworks.com). Customer consents that Genuity may use Customer data for the performance of Genuity's obligations and the exercise of Genuity's rights under this Agreement, including storing, processing or transferring data to or from the United States.

5.6 Intellectual Property and Publicity. Neither party is granted a license or other right (express, implied or otherwise) to use any trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of the other party or its affiliates without the express prior written authorization of the other party. Neither party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the parties in writing. Any information or documentation disclosed between the parties during the performance of this Agreement (including this Agreement) shall be subject to the terms and conditions of the applicable non-disclosure agreement then in effect between the parties, and if none, the parties agree to keep the terms of this Agreement and all information of a confidential nature obtained in the performance of this Agreement confidential and not disclose such information to third parties, other than to its vendors and affiliates.

5.7 Governing Law; Amendment. This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire, without regard to its choice of law rules. This Agreement, including any Service Schedule(s) and Customer Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

5.8 Relationship and Counterparts. The relationship between the parties is not that of partners, agents, or joint ventures. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. Facsimile signatures shall be sufficient to bind the parties to this Agreement.