

# MASTER SERVICES AGREEMENT



**NOW, THEREFORE,** in consideration of mutual conditions and covenants hereinafter described Customer and LightSpeed Networks, Inc. dba LS Networks do agree as follows:

**1. Overview:** This Agreement states the general terms and conditions by which LightSpeed Networks will deliver and Customer will receive any or all of the Services provided by LS Networks. The specific Services and/or products to be provided and the procedure for obtaining Services shall be detailed in an associated Service Order. This Agreement is intended to cover any and all Services ordered by Customer and provided by LS Networks. Customer may use services only for authorized and lawful purposes.

**2. Delivery of Services:** By submitting a Service Order, Customer agrees to take and pay for, and, by accepting the Service Order, LS Networks agrees to provide, the Services during the term described on the Service Order. LS Networks has the right in its sole discretion to limit the manner in which any portion of its network, equipment and facilities ("Network") is used to protect the technical integrity of the Network. LS Networks is not liable or responsible for content, errors in transmission, or failure to establish connection.

**3. Installation and Interconnection of Services:** Other than the facilities, termination equipment or other devices provided by Customer, and unless otherwise provided elsewhere in this Agreement or any attachments hereto, LS Networks will pay for, provide, install, maintain, operate, control and own any equipment, cable or facilities connected to the Network ("System Equipment"), which equipment at all times remains LS Networks's exclusive personal property, regardless of where located or attached, including common space. Said System Equipment is not a fixture. LS Networks may change, replace or remove the System Equipment, regardless of where located, so long as the basic technical parameters of the service are not altered, and this Agreement constitutes Customer's consent to such change, replacement or removal. Customer may not rearrange or move or disconnect the System Equipment, or allow anyone access to the System Equipment, and is responsible for any damage to or loss of System Equipment caused by Customer's negligence or willful misconduct or that of its end users. LS Networks has no obligation to install, maintain or repair any equipment owned or provided by Customer, except as may be specifically provided herein. If Customer's or an end user's equipment is incompatible with the Services, Customer is responsible for any special interface equipment or facilities necessary to ensure compatibility. Customer is responsible to ensure that its equipment does not interfere with the provision of or functionality of

services to Customer or other parties with whom LS Networks contracts. If, in responding to a Customer initiated service call, LS Networks reasonably determines that the cause of such service call is a failure, malfunction or inadequacy of Customer-provided equipment or software, Customer will pay LS Networks for such service call at LS Networks's then prevailing rates.

Customer will provide LS Networks entrance facilities from the Premise property line to the Point of Demarcation. Entrance facilities can be dedicated conduit, shared conduit or aerial entry. The entrance facility must meet industry standards for type of entry as well as relevant safety standards. It is the Customer's responsibility to ensure adequate and timely access to the entrance facility. Customer grants LS Networks permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with LS Networks's assistance, appropriate right of access. If such right of access for LS Networks is not obtained by either party, then LS Networks's obligations with respect to such Service Location shall be considered null and void.

LS Networks may reconfigure, reprogram, substitute, rearrange or otherwise change any part of the Network or the System Equipment, whether any such part of the Network or the System Equipment is on Customer's premises or otherwise, at any time and from time to time, but shall not thereby alter the technical parameters of the service provided Customer without Customer's knowledge or consent. Although no specific advance notification period is applicable, LS Networks will use its best efforts to notify Customer of the planned timing of such activities and will use reasonable efforts to perform such activities at a time that is agreeable to Customer (except where emergency conditions exist or where such change is required by a governmental agency or other authority to take place immediately).

**4. Term:** Subject to the provisions of Sections 10 and 11, the initial term for each subscribed Service will commence and end on the dates indicated in the applicable Service Order. Thereafter, the term of such Service shall automatically renew and be extended for successive one-month terms until terminated by either party upon not less than 30 days written notice in accordance with Section 26 prior to the end of the expiring term, or unless otherwise specified in the Service Order. In the event of any inconsistency between the terms contained in this Agreement and any specific provisions of the Service Order, the terms of the Service Order shall prevail. References herein to attachments mean attachments to this Agreement unless the context indicates otherwise.

**5. Fees and Payment Terms:** Customer shall pay all fees due for Services according to the prices and terms set forth in the Service Order. Upon completion of provisioning, installation and testing of the System Equipment needed to provide the Services ordered by Customer, LS Networks will notify Customer that the Services are available for Customer's use. The Services shall be subject to, but are not limited to, a Monthly Recurring Charge ("MRC") as set forth in Service Order. Billing shall commence on the date LS Networks notifies Customer that Services are available for Customer's use ("Service Order Completion notice"). If Customer delivers to LS Networks, within five (5) business days after Customer's receipt of the Service Order Completion notice, notice specifying non-conformance of the Service, LS Networks shall promptly undertake appropriate corrective action and the notification and Acceptance process shall be repeated.

LS Networks reserves the right to change the MRC for the Services at any time after the initial term hereof upon 25 days prior written notice to Customer. The MRC does not include any governmental taxes or tax-related charges, fees, surcharges or other amounts assessed by any government, which may be incurred in connection with the Services to be provided hereunder, all of which shall be paid by Customer. Any installation charges or other non-refundable non-recurring charges shall be billed to Customer on a monthly invoice.

For Services billed in arrears, any payment not received within 30 days of the invoice date will accrue interest at a rate of 1½% per month, or the highest rate allowed by applicable law, whichever is less. For Service billed in advance, any payment not received within 30 days of the invoice date will accrue interest in the same manner.

If Customer has a dispute over the amount of any charges for Services, Customer will nevertheless pay all undisputed amounts. Customer will supply LS Networks with a written explanation detailing the reasons for disputing the unpaid amount within 30 days from the invoice date. The parties will cooperate in good faith to resolve any such disputes within a 60 day period after the due date of the original charges. If the dispute is not resolved during this period, then either party may seek dispute resolution in accordance with Section 18.

If, through the process of dispute resolution or a judgment from a court of competent jurisdiction, a disputed amount is determined to be a legitimate, such amount may be subject to a finance charge of 1½% per month, or the maximum allowable by law, whichever is less, calculated from the original due date until the full amount is paid.

When Services commence on a day other than the first day of the month, the charge for that month shall be

determined by prorating the monthly payment by the number of days during which Services are provided.

Customer initiated terminations of Services will always occur on the 30th day following the receipt of Customer's 30 day written notice. Customer may request a Service termination date later than 30 days from written notice, but not sooner.

**6. Limitation of Liability:** The total liability of LS Networks to

Customer in connection with this Agreement, for any and all causes of actions and claims, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts, shall be limited to the amount paid for the Service by Customer to LS Networks under this Agreement for the one month period prior to accrual of the most recent cause of action. **IN NO EVENT SHALL LS Networks BE LIABLE FOR SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUE, PROFITS OR OTHER BENEFIT WHETHER BY TORT, CONTRACT, OR OTHERWISE.**

**7. Force Majeure:** Neither party is liable for any failure of performance if such failure is due to any cause or causes beyond such party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, cable cut, adverse weather conditions, governmental action, labor difficulties and supplier failures. Customer's invocation of this clause shall not relieve Customer of its obligation to pay for any services actually received. In the event such failure continues for 60 days, either party may terminate the affected portion of the Services.

**8. Assumption of Risk:** Customer recognizes that the use of the Network and the System Equipment shall be at its own risk, and therefore, expressly assumes any risk arising from the exercise of any rights, privileges or obligations identified herein.

**9. Indemnity:** Customer agrees to indemnify, defend and hold harmless LS Networks and its partners, officers, directors, employees, agents and other representatives of LS Networks from all losses or damages arising from Customer's breach of this Agreement, violation of any third party intellectual property right, all claims of any kind by Customer's end users, or any act or omission of Customer in connection with any Services provided hereunder. LS Networks agrees to indemnify, defend and hold harmless Customer from all losses or damages arising from or related to personal injury or property damages caused by the negligence or willful misconduct of LS Networks.

**10. Termination of Service by LS Networks:** LS Networks may terminate Service under this Agreement or any Service Order hereunder, or suspend Services, with prior written notice, upon (a) failure of Customer to pay any amounts as provided herein within 30 days

of invoice date; or (b) Customer's breach of any provision of this Agreement or any law, rule or regulation governing the Services; or (c) if Customer provides false information to LS Networks regarding Customer's identity, creditworthiness, or its planned use of the Services; or (d) if LS Networks deems it necessary to take any reasonable and lawful action to protect the property and rights of LS Networks, and existing and potential customers of LS Networks's communication transport services. With respect to a termination pursuant to clause (a) of this Section 10, such termination of Services may not occur until after LS Networks has given Customer written notice of failure to pay and Customer has failed to cure such failure to pay within 10 days of the date of such written notice.

**11. Termination for Cause:** Either party may terminate this Agreement for Cause. "Cause" shall mean a breach by a party of any material provision of this Agreement, provided that written notice of the breach has been given to the breaching party by the non-breaching party, and the breach has not been cured within 30 days after delivery of such notice.

**12. Early Termination Charges:** If: (a) Customer terminates any Service Order hereunder for reasons other than Cause; or (b) LS Networks terminates any Service Order hereunder pursuant to Sections 10 and 11, then Customer will pay, within 30 days after such termination, the following amounts: (i) all accrued but unpaid charges incurred through the date of such termination; plus (ii) an amount equal to 50% of the MRC for the remainder of the initial term of each subscribed Service. If Customer desires to cancel a Service Order, the following shall apply: (i) when a Service requiring design work is canceled after the design work has begun, LS Networks may collect charges equal to the cost incurred for the associated design work time and materials to date; and (ii) if cancellation is requested at any time during installation, it will be treated as an early termination of Service to which the terms and conditions of this Section 12 shall apply.

**13. Resale of Services:** Any Services provided under this Agreement may be resold to or shared with other persons or entities at the option of Customer, subject to compliance with any applicable laws, rules and regulations governing such resale or sharing. Customer remains solely responsible for all Services ordered by it or billed to its account, for determining who is authorized to use the Services and taking appropriate actions to enforce such a determination, and for immediately notifying LS Networks of any unauthorized use. LS Networks has no obligation to provide notice to or otherwise communicate with the users or customers of Customer.

**14. Assignment:** Customer shall not assign, pledge, transfer or otherwise convey all or any part of the rights and privileges granted by this Agreement in any

manner without prior written consent of LS Networks, which consent it will not unreasonably withhold. Any transfer of this Agreement by merger, consolidation or liquidation of Customer, or any change in the ownership of or power to vote the majority of its outstanding voting stock, membership interests or equity interests of Customer (whether effected in one or more transactions or events occurring over any period of time) shall constitute an assignment for purposes of this Section 14. Customer may enter into agreements with other parties for transport circuits on terms consistent with this Agreement.

**15. Taxes:** Each party shall be responsible for its own federal, state and local taxes, assessments, fees, surcharges and other financial impositions. Notwithstanding the foregoing, Customer agrees that if there is any tax payable by it, but which is to be collected by LS Networks which LS Networks does not collect for any reason, upon assessment thereof by the applicable taxing agency, and demand by LS Networks, Customer shall immediately remit the same to LS Networks or the agency, as directed by LS Networks, even if such assessment arises after the termination of this Agreement.

**16. Representations and Warranties:** Each party represents and warrants that it has full power and authority to execute, deliver, and perform its obligations under this Agreement. LS Networks represents and warrants to Customer that any Services provided hereunder will be performed in a manner consistent with that of other reputable providers of the same or similar services in the same locality. **EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND ANY SERVICE ORDER ASSOCIATED WITH THIS AGREEMENT, LS Networks MAKES NO WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY PORTION OF THE NETWORK OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.**

**17. Governing Law:** This Agreement is governed by and subject to the laws of the State of Oregon.

**18. Arbitration/Small Claims:** Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, shall be resolved by arbitration in accordance with the then effective arbitration rules of, and by filing a claim with, the Arbitration Service of Portland, Inc., and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. **Small Claims:** If the amount in dispute is less than the \$10,000 jurisdictional maximum of a small claims court, and if neither party has initiated

arbitration, then the claimant shall have the option (in lieu of arbitration) of bringing a small claims court action.

**19. Attorney Fees:** In the event of any dispute at arbitration or in litigation under this Agreement, the prevailing party is entitled to reimbursement of its costs and attorneys' fees (whether incurred at arbitration, at trial or on appeal) from the other party.

**20. Jurisdiction; Venue:** The parties consent to the personal jurisdiction of the courts of the State of Oregon and federal courts located in Oregon so that any litigation concerning or arising out of this Agreement shall be brought in Oregon. The parties agree not to claim that Oregon is an inconvenient place for trial. The venue of any such legal action shall be in Multnomah County, Oregon.

**21. Entire Agreement:** This Agreement, and any addendums, attachments, Service Orders and other documents incorporated herein, constitute the entire agreement between the parties with respect to its subject matter and supersede all other representations, understandings or agreements that are not expressed herein, whether oral or written. Except as otherwise set forth herein, no amendment to this Agreement shall be valid unless in writing and signed by both parties.

**22. Waivers:** No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

**23. Use of Name and Trademarks:** Neither party shall use any name, logo or service mark of the other party in marketing services to others without the express written consent of the other party.

**24. Confidentiality:** Each party hereto shall treat all information made available or disclosed to, or developed or obtained by, the other party as the result of or related to this Agreement ("Confidential Information") as confidential, and shall not disclose or use Confidential Information for the benefit of any person other than Customer and LS Networks, as the case may be; provided the following information shall not be treated as Confidential Information, (a) information that a party can demonstrate was rightfully in that party's possession prior to the date of disclosure by the other party, (b) information that a party received from a third party that had a right to make such information available, and (c) information that a party can demonstrate was independently developed by or on behalf of said party, provided further, that Customer and LS Networks shall have no obligation with respect to that portion of Confidential Information which is in or enters the public domain through no wrongful act of either party, or which must be disclosed to others by order of a governmental agency or legislative body or

a court of competent jurisdiction. If either party receives a request for Confidential Information from a third party, the party receiving such notice shall promptly notify the other party in writing of such request, and if the party receiving such notice in good faith believes it is obligated to disclose the requested Confidential Information, the other party shall be given the opportunity to seek judicial or other protection of such Confidential Information, with the cooperation of the party receiving such notice.

**25. Notices:** All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if personally delivered by hand, (ii) upon the third day after such notice is (a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice. It is the obligation of Customer to provide a current mailing address (and facsimile number should Customer desire to receive notice under (iii) of this Section 25) to LS Networks throughout the term of service. If to LS Networks, notices should be sent to:

LS Networks  
921 SW Washington Street  
Suite 370  
Portland, OR 97205  
Attn: Contracts Management

Telephone No.: 503.294.5300  
Facsimile No.: 503.227.8585

Such addresses and numbers may be changed, from time to time, by means of a notice given in the manner provided in this Section 25.

**26. Changes to this Agreement:** LS Networks may change the terms and conditions of this Agreement from time to time. Changes to this Agreement supersede all previously agreed to electronic and written Terms and Conditions. If Customer continues to be enrolled in, use, or pay for the Services after any changes in prices, charges, and/or terms and conditions have been made, Customer agrees to the changes. Notices are given and effective on the date posted on the LS Networks web site at [www.LSNetworks.net](http://www.LSNetworks.net) and/or the date LS Networks notifies Customer of changes by the following: email at the address provided by Customer, postcard, letter, recorded announcement, message on Customer's bill, an insert in Customer's bill, newspaper ad, or a call to Customer's telephone number, whichever occurs first.

**27. Relationship of Parties:** In the performance of its responsibilities hereunder, Customer and LS Networks are and at all times shall be independent

contractors. Customer and LS Networks further agree to notify the other party if any governmental agency asserts that Customer or LS Networks is not an independent contractor with respect to the other party; and to permit the other party to participate in any negotiations or proceedings involved in such matters. Neither Customer or LS Networks shall have any power or authority to bind the other party or to assume or create any obligation or responsibility, express or implied, on behalf or in the name of the other party, except as expressly authorized by the other party.

Appendix 1 applies directly to this Master Services Agreement and is incorporated herein by reference.

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## GENERAL TERMS FOR SERVICE INSTALLATION AND OPERATION

### 1. Definitions

The terms used in this Master Services Agreement and associated Service Order(s) shall have their normal or common meaning, except that the following terms shall have the following meanings:

**Acceptance or Accepted.** Customer will be deemed to have given its "Acceptance" or to have "Accepted" a Service on the earliest date of: (i) when Customer first utilizes any of the Service or; (ii) five days from LS Networks's issuance of a Circuit Certification document or Service Order Completion document.

**Bursting:** Bursting is a Service that provides the capability for customer traffic to exceed the customer's committed information rate. The Bursting Service allows a customer to exceed their committed information rate to a predefined excess information rate at all times. If monthly customer traffic measurements exceed the committed information rate as measured in the 95th percentile of 5 minute averages in either the transmit or receive direction, overage charges will apply.

**Circuit.** The individual telecommunications facility(s) that makes up the Service provided.

**End-User.** A user to whom Customer will provide telecommunications services utilizing, in part, the Services provided by LS Networks to Customer under an associated Service Order.

**Interconnection Facilities.** All facilities between Customer's Point of Presence, the local exchange carrier's central office, the back-haul carrier's Point of Presence and the End-User sites. Off-Net Services. Services where one or more locations to be connected are not served entirely by LS Networks's On-Net Services.

**On-Net Services.** Services which are provided entirely using the equipment and facilities owned by LS Networks.

**Point-to-Point.** Services are available between Customer designated locations. Service may be ordered between the Customer's POP and an End-User location, between two Customer POPs, or between two End-User locations. There are two basic configurations for Point-to-Point Service, Hubbed Service and Two Point Service:

**Hubbed Service.** Allows Customer to aggregate multiple lower capacity transport Services terminating at multiple locations onto one higher capacity Service terminating at one other Customer location.

**Two Point Service.** Allows for two Customer designated locations to be connected by one transport Service. The Service terminated at both locations must be the same speed/capacity.

**Point of Presence (POP).** A specific location where LS Networks or Customer terminates and/or originates its Service.

**Point of Demarcation.** Point at which LS Networks's responsibility to provide equipment and Service ends and where Customer's or Customer's End-User responsibilities begin, identified as the interface between LS Networks and Customer at Customer's Point of Presence, the local exchange carrier's central office, a back-haul carrier's point of presence or End-User sites identified on an associated Service Order provided by LS Networks.

**Premises.** The address, to which Service is provided, identified as a Point of Presence on an associated Service Order.

**Service Order (SO).** Written form used by Customer to place an order, which is acceptable to LS Networks, for the purchase of Service. The SO delineates the type of Service, term of Service, Service start and end dates, Point of Presence, Point of Demarcation, and other information specific to the order. The SO includes all referenced documents, diagrams, appendices, schedules, exhibits and attachments.

**Service Outage.** An interruption of the Service or degradation of the Service, where the Service will no longer pass the criterion of the original Circuit Certification or Service Order Completion. If Customer reports a Service Outage but declines to release it for testing and repair, the Service is considered to be impaired but will not be deemed a Service Outage.