

# LOGIN, LLC

## Master Service Agreement

This Master Service Agreement (this "Agreement") between Login, LLC ("Company") and the Customer which is the signatory to the Service Contract defined below ("Customer") and is entered into and effective as of the later of the dates set forth on the signature page to the Service Contract.

### 1. Overview.

1.1 General. This Agreement states the terms and conditions by which Company delivers and Customer accepts the IP Transit Services provided by Company. The specific services and/or products to be provided hereunder are identified in the Service Contract, which is a separate document signed both by the Company and the Customer and identifies the services, term of the agreement, Service Activation Date, and pricing. The Service Contract specifically refers to and incorporates this Agreement. Upon execution of the Service Contract by both Customer and Company, this Agreement shall be automatically incorporated into the Service Contract. If Customer purchases any equipment from Company (as indicated in any Service Contract), then the terms and conditions set forth in Schedule B shall govern all such purchases. Any capitalized terms not defined herein shall have the meanings as set forth in Appendix A. In case of any conflicts between the Service Contract and this Agreement, the Service Contract will control.

### 2. Delivery of Services; Terms; Fees.

2.1 General. By executing a Service Contract for any Services, Customer shall accept and pay for, and by executing a Service Contract, Company shall provide and support, such Services during the Initial Term listed in the Service Contract and for any Renewal Term. Accordingly, except as expressly provided in this Agreement, Company shall provide, and Customer shall pay for, each Service through its Initial Term and any subsequent Renewal Term.

#### 2.2 Term.

(A) TERM COMMENCEMENT. THIS AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT UNTIL THE TERMINATION OF THE SERVICE CONTRACT. THE INITIAL TERM FOR SERVICE CONTRACTS WITH A SINGLE LOCATION WILL COMMENCE ON THE SERVICE ACTIVATION DATE AND SHALL CONTINUE FOR THE ENTIRE INITIAL TERM AS SET FORTH IN THE SERVICE CONTRACT, AND EACH RENEWAL TERM. IF INITIALLY CONTRACTED SERVICES OR PRODUCTS ARE TO BE INSTALLED AT MORE THAN ONE LOCATION, THEN THE CUSTOMER'S OBLIGATION TO PAY FOR EACH INDIVIDUAL LOCATION SHALL BEGIN WHEN THAT LOCATION IS ACTIVATED, AND THE INITIAL TERM OF THE SERVICE CONTRACT SHALL COMMENCE WHEN THE FINAL LOCATION OF THE INITIAL SERVICE CONTRACT IS ACTIVATED. ANY SERVICES REQUESTED BY CUSTOMER AND PROVIDED BY COMPANY SUBSEQUENT TO THE EXECUTION OF THE ORIGINAL SERVICE CONTRACT WILL BE KNOWN AS SUPPLEMENTAL SERVICES, AND SHALL BE GOVERNED BY ALL TERMS AND CONDITIONS OF THE SERVICE CONTRACT AND THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE APPLICABLE INITIAL TERM AND/OR RENEWAL TERM, HOWEVER THE COMPANY IN ITS SOLE DISCRETION MAY, UPON 90 DAYS WRITTEN NOTICE, RELEASE CUSTOMER FROM INDIVIDUAL

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SERVICE UPGRADES SUCH AS POWER AND BANDWIDTH WHICH WERE UPGRADED THROUGH USAGE AND NOT THROUGH FORMAL WRITTEN ADDITION TO THE SERVICE CONTRACT.

(b) Renewal Term. Each term of each Service will renew automatically for additional terms equal in length to the Initial Term (each a "Renewal Term") unless Customer notifies Company in writing not less than thirty (30) calendar days prior to the end of the Initial Term (or any subsequent Renewal Term, as applicable), that it wishes to terminate such Service. The termination of any individual Service will not affect Customer's obligations to accept and pay for all other contracted Services.

(C) EARLY TERMINATION. CUSTOMER ACKNOWLEDGES THAT ACTUAL DAMAGES RESULTING FROM AN EARLY TERMINATION OF THIS AGREEMENT OR ANY SERVICE FOR DEFAULT BY CUSTOMER ARE VERY DIFFICULT TO ESTIMATE. ACCORDINGLY, AND UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, IN THE EVENT OF ANY TERMINATION BY CUSTOMER FOR DEFAULT OR ANY OTHER REASON, CUSTOMER SHALL PAY COMPANY AS LIQUIDATED DAMAGES SEVENTY-FIVE PERCENT (75%) OF THE UNDISCOUNTED MONTHLY FEE SET FORTH IN THE SERVICE CONTRACT (THE NET60 RATE) OWED BY CUSTOMER FOR EACH SERVICE AT THE TIME OF SUCH TERMINATION MULTIPLIED BY THE TOTAL NUMBER OF MONTHS REMAINING IN THE THEN CURRENT TERM FOR EACH SUCH SERVICE, UNLESS THE CUSTOMER WAS QUALIFIED FOR AND WAS ENROLLED IN THE LPP, IN WHICH THE LIQUIDATED DAMAGES SET FORTH ABOVE SHALL BE COMPUTED USING THE LPP RATE. FURTHER, TO THE EXTENT NOT INCLUDED IN THE FOREGOING, CUSTOMER REMAINS LIABLE FOR ANY TERMINATION OR OTHER FEES (INCLUDING TELCO FEES) OF ALL THIRD PARTIES CONTRACTED BY THE COMPANY ON BEHALF OF CUSTOMER, AS SET FORTH IN SECTION 3.1 AND ANY ACCRUED BUT UNPAID MONIES, ALONG WITH COSTS AND ATTORNEYS' FEES REGARDLESS OF WHETHER SUIT IS FILED.

(D) LATE TERMINATION. CUSTOMER ACKNOWLEDGES THAT ITS FACILITIES THAT ARE SCHEDULED TO BE USED ELSEWHERE MAY NOT BE AVAILABLE TO ALLOW CUSTOMER TO REMAIN MONTH-TO-MONTH BEYOND ITS SCHEDULED TERMINATION OF SERVICE. ACCORDINGLY CUSTOMER REALIZES THAT THE ACTUAL COSTS TO COMPANY TO PROVIDE SUCH SERVICE BEYOND THE TERMINATION OF SERVICE MAY BE SIGNIFICANTLY HIGHER, AND CUSTOMER THEREFORE AGREES THAT SHOULD IT USE THE SERVICE AFTER TERMINATION WITHOUT A NEW SERVICE CONTRACT, CUSTOMER SHALL PAY THE THEN MONTHLY RATE MULTIPLIED BY THREE (3).

### 3. Fees and Payment Terms.

3.1 Fees and Expenses. Customer will pay all fees due in full according to the prices and terms listed in all Service Contracts. Further, Customer shall pay Company for all fees or costs for services that Company procures on behalf of Customer and are listed on each Service Contracts. The prices listed in the Service Contracts will remain in effect during the Initial Term indicated in the Service Contracts and will continue thereafter as Renewal Terms as provided for herein.

3.2 Payment Terms. On the Service Activation Date for each Service, Company shall bill Customer for all non-recurring fees indicated in the Service Contract, prorated monthly recurring fees for the actual turn up month and the monthly recurring fees for the first full month of the term. Company shall invoice Customer for the monthly recurring fees for all subsequent months on or about the first day of the month in which such Services were provided. All other fees for Services received and expenses incurred for Services during a month (e.g., professional services) will be invoiced at the beginning of the month following the month in which the Services were provided. All payments will be made in U.S. dollars without offset or deduction.

3.3 Timing of Payments and Discounts. There are three tiers of pricing categories: 1) Net60, which applies to Net Monthly Payments received by the Company more than 30 days after the invoice date and no discounts are earned or applied, 2) Net30, which applies to Net Monthly Payments received by the Company within 30 days after the invoice date and by virtue of the timing of the payment a discount from the Net60 rate is earned by the Customer, and 3) the Login Payment Plan (“LPP”) which includes an additional discount for Customers who formally enroll in and utilize an ACH collection method whereby the Company receives the Net Monthly Payment by the tenth day of the month (or the next business day if the tenth day is not a business day) through an automated collection system where the Customer automatically and electronically transmits its entire Net Monthly Payment through to the Company or a method whereby the Company automatically receives the Net Monthly Payment by the tenth day of the month (or the next business day of the tenth day is not a business day) through an automated collection system where the Company automatically and electronically charges a Customer account. Customers who enroll in the LPP but whose Net Monthly Payment fails for any reason to be processed into the Company’s account by the tenth day of the month (or the next business day if the tenth day is not a business day) shall not be entitled to the LPP discounted rate, but such customers may re-enroll in the LPP for the following month however not more than two such enrollments may occur in any calendar year; all LPP Customers are responsible for ensuring sufficient funds are available and all aspects of the electronic programs are properly established in order to qualify for the LPP rate. Any payment not received within thirty (30) calendar days of the date of the invoice will not have earned any discounts and will automatically be rated at the Net60, will not be entitled to the Net30 rate or the LPP rate, and additionally will accrue interest at a rate of one and one-half percent (1½%) per month compounded annually, or the highest rate allowed by applicable law, whichever is lower. If Customer does not makes its Net Monthly Payment within 60 days after the invoice date, Company may, upon written notice to Customer, modify the payment terms to require full payment before the provision or continued use of all Services (both currently contracted and scheduled future provisioned) and Company Supplied Equipment, or require other assurances to secure Customer’s payment obligations hereunder. Customers more than 60 days past due are also subject to immediate disconnection and such disconnection shall constitute Early Termination on the part of the Customer as per 2.2(c). If any Net Monthly Payment remains unpaid more than 60 days after the invoice date, the Company may retain, and the Customer hereby consents to said

retention, any Customer property including servers, phone numbers ported into Company’s system, or any other physical, electronic or virtual property until the accounts are paid in full as set forth herein. If any Net Monthly Payment remains unpaid more than 120 days after the invoice date, the Company may also assume ownership of said Customer property or sell it and apply the liquidation value to the unpaid invoice.

3.4 Taxes. All fees charged for Services are exclusive of all taxes and similar fees now in force, enacted or imposed in the future on the transaction and/or the delivery of Services, all of which Customer will be responsible for (including new/future taxes imposed upon the Company) and will pay in full, except for taxes solely based on Company's net income.

#### **4. Confidential Information.**

##### 4.1 Confidential Information.

(a) Nondisclosure of Confidential Information. Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, vendors, employees, customers, technology, products, and other information held in confidence by the other party (collectively, “Confidential Information”). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, the terms and conditions of this Agreement. During the pendency of this Agreement and for a period of two years after any termination of this Agreement, each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or to the limited extent required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to such party’s attorneys, accountants and other advisors as reasonably necessary), any Confidential Information of the other party. Each party will take reasonable precautions to protect the confidentiality of the Confidential Information of the other party that are at least as stringent as it takes to protect its own Confidential Information.

(b) Exceptions. Information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

#### **5. Company Representations and Warranties.**

5.1 Authorities and Performance of Company. Company warrants that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder, (ii) the performance of its obligations and delivery of the Services will not violate any applicable U.S. laws or regulations or cause a breach of any agreements with any third parties, and (iii) it will perform the Services in a manner consistent with industry standards. (iv) Company warrants that it is not a telecommunications carrier as Company purchases Internet Bandwidth and other services from licensed carriers, and connects these to Customer's network. In the event of a breach of the warranties set forth in this Section 5.1, Customer's sole remedy is termination of this Agreement pursuant to Section 10 provided that Section 2.2(c) shall not apply to such termination.

5.2 Service Level Warranty. The Service Level Warranty is defined in the Schedule A for each Service. Except for the express warranties set forth in the Schedule A, the Services are provided exclusive on an "as is" basis, and Customer's use of the Services is at its sole risk.

5.3 Disclaimer of Third Party Actions. Company does not and cannot control the flow of data to or from the Company Network or within any portion of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). Although Company will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, Company cannot guarantee that such events will not occur. Accordingly, except to the extent of the express warranties set forth in any attached Schedule A, Company disclaims any and all liability resulting from, or related to, such events.

5.4 Disclaimer of Warranties. Except for the express warranties set forth in Sections 5.1, 5.2 and 5.3, Login DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, Login DOES NOT WARRANT THAT THE VOICE OR CONNECTIVITY OR DATA CENTER SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE.

## **6. Customer Obligations.**

### **6.1 Warranties of Customer.**

(a) General. Customer represents and warrants that (i) it has the legal right and authority, and will continue to own or maintain the legal right and authority, during the term of this Agreement, to use any Customer Equipment as contemplated under this Agreement; (ii) the performance of its obligations and use of the Services by Customer will not violate any applicable laws, regulations or the AUP or cause a breach of

any agreements with any third parties or unreasonably interfere with use of the services offered by the Company to third parties.

(b) Breach of Warranties. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Company will have the right, in its sole discretion, to suspend immediately any of the Services if deemed reasonably necessary by Company to prevent harm to Company or its business. If practicable and depending on the nature of the breach, Company may in its sole discretion choose to provide notice of the breach and an opportunity to cure. If the Company gives this opportunity to cure, and the Customer so cures, the Company shall promptly restore the Services.

6.2 Compliance with Law and AUP. Customer shall use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws and regulations and the AUP, as updated by Company from time to time. The AUP is incorporated herein and made a part hereof by this reference. Company may change the AUP by posting such changes to the Company web site located at <http://www.login.com/aup.html>. Customer agrees that it has received, read and understands the current version of the AUP. The AUP contains restrictions on Customer and Customer's users' online conduct (including, but not limited to, prohibitions against unsolicited commercial email). Customer shall comply with such restrictions and, in the event of a failure to comply, Customer will be subject to immediate suspension or termination of Services. Notwithstanding any suspension or termination of the Service due to violation of this Section 6.2, Customer shall continue to pay its committed monthly Service Charge and all other charges as set forth on all Order Forms. Customer will provide Company with twenty-four (24) hour contact information for notification of AUP violations, which notification shall be sent by sending an email to [support@login.com](mailto:support@login.com) (or other methods that may be provided by the Company) for the original and any subsequent changes to that contact. Customer acknowledges that Company exercises no control over the content of the information passing through Customer's Services and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations and the AUP.

6.3 Restrictions on Use of Services. Customer shall not, without the prior written consent of Company (which may be withheld in its sole discretion), resell the Services, in whole or in part, to any third parties.

### **6.4 Company Supplied Equipment or Service**

a) Delivery and Term. On or prior to the Service Activation Date, if required, Company shall deliver to Customer, at the designated Customer Location, any contractually obligated Company Supplied Equipment. Customer shall have the right to use the Company Supplied Equipment for the Initial Term set forth in the Order Form and any additional period agreed to by Company as defined in this Agreement. Customer shall not remove or alter in any manner any Company Supplied Equipment without the prior written consent of Company. Customer will not remove, alter or destroy any labels on the Company Supplied Equipment stating that it is the property of Company

and shall allow reasonable access to Company Supplied Equipment for Company employees and/or designated authorized agents. The Customer must provide prior written notice and the written approval from Company before moving any Company Supplied Equipment from the address listed on the applicable Order Form and Hand Receipt that accompanies the Company Supplied Equipment.

- b) Title. The Company Supplied Equipment shall always remain the sole property of Company. Customer shall have no right or interest in or to the Company Supplied Equipment except as expressly provided in this Agreement and the applicable Order Form and shall possess the Company Supplied Equipment subject and subordinate to the rights of Company. Customer will, at its own expense, keep the Company Supplied Equipment free and clear from any liens or encumbrances of any kind (except any caused by Company) and will indemnify and hold Company harmless from and against any loss or expense caused by Customer's failure to do so. Customer shall give Company immediate written notice of any attachment or judicial process affecting the Company Supplied Equipment or Company's ownership.
- c) Use, Maintenance and Repair. Customer will, at its own expense, keep the Company Supplied Equipment in good repair, appearance and condition, other than normal wear and tear. Customer shall use the Company Supplied Equipment in a commercially reasonable manner. Any repair of the Company Supplied Equipment caused by normal use and not due to negligence of the Customer will be the sole responsibility of Company. The Customer will be responsible for any reasonable assistance in this process (i.e. boxing equipment up and shipping it to Company or providing access to the equipment for Company or third party personnel).
- d) Upgrades and Additions. Customer may not affix or install any accessory, addition, upgrade, equipment or device on to the Company Supplied Equipment (other than electronic data) unless expressly approved in writing by Company
- e) Customer will provide always-current address information for billing and E911 services. Customer must keep this information current with Company, and accepts all liabilities and risks in the event of Customer's failure to do so. Customer acknowledges that Internet delivery of telecommunications service may, like cellular telephone service, not be available 100% of the time and shall keep a "hardline" or "landline" for telefacsimilie, alarm monitoring and/or failsafe E911 usage.
- f) Loss or Damage. Customer shall reimburse Company, on a time and materials basis as documented in an invoice, for the entire cost to repair and/or replace Company Supplied Equipment in the event of (a) misuse, (b) failure to exercise reasonable care, (c) damage, (d) theft or (e) disaster.

6.5 Customer Equipment. Customer agrees that if, in the course of installing, maintaining, operating or repairing the Services, it is necessary for Company to access the Customer Equipment or Customer Location, then the

Customer will allow and assist the Company in obtaining access and or permission to do so.

- 6.6 Customer Events of Default. The following are Customer Events of Default: (a) Customer's failure to pay fees or any other amount due under this Agreement as required; or (b) Customer's failure to perform any other obligation under this Agreement within five (5) business days after notice of nonperformance.

## **7. Limitations of Liability.**

7.1 Damage to Customer Equipment. Company is not liable for any damage to, or loss of, any Customer Equipment resulting from any cause other than from the willful misconduct of Company. Further, to the extent Company is liable for any damage to, or loss of, Customer Equipment, such liability will be limited solely to the then-current replacement value of the Customer Equipment, excluding lost data, software and firmware.

7.2 Consequential Damages Waiver. In no event will the Company be liable or responsible to the Customer for any special, incidental, punitive, indirect, exemplary, or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, corruption of data, loss of good will, or interruption or loss of use of service, materials or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise. The Company's liability to the Customer is strictly limited to a pro-rata refund for system down time proven by Customer to be caused by act or omission of the Company.

7.3 Basis of the Bargain; Failure of Essential Purpose. The parties acknowledge that Company has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

7.4 Company is not liable for any damages whatsoever caused by third parties.

7.5 Personal Injury. Customer's representatives, and any other persons visiting the Data Center do so at their own risk and Login shall not be liable for any harm to such persons, other than caused by Login's gross negligence or willful misconduct.

7.6 Maximum Liability. IN NO EVENT WILL Login's AGGREGATE LIABILITY TO CUSTOMER OR CUSTOMER PARTIES ARISING FROM OR RELATED TO THIS AGREEMENT WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, EXCEED THE AMOUNT PAID BY CUSTOMER TO Login UNDER THIS AGREEMENT FOR THE THREE (3) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE. All claims must be made no later than thirty (30) days of the date of the claim event, and a one year statute of limitations

shall apply to all causes of action in any lawsuits brought by Customer against the Company or any of its employees, agents, affiliates, directors or shareholders.

## **8. Indemnification.**

8.1 Indemnification. Customer releases and will indemnify and hold Login, its affiliates, members, shareholders, officers, directors, employees, agents, representatives and customers (collectively, the "Login Indemnified Parties") harmless from and against any and all costs, liabilities, judgments, actions, losses and expenses (including, but not limited to, reasonable attorneys' fees) arising out of any threatened or actual claim, suit, action, arbitration or proceeding made or brought against any Login Indemnified Party arising out of or relating to: (a) the actual or alleged breach of this Agreement or applicable Laws by any of the Customer Parties; (b) the actual or alleged negligence or willful misconduct by any of the Customer Parties; (c) Customer's responsibilities under this Agreement, Customer Equipment, Customer materials, Customer's business, and/or the actions (or failure to act) of a Colo User or (d) the transportation, use, storage, generation, manufacture, handling, disposal, release, discharge, spill or leak of any Hazardous Material upon or about the Customer Area or the Data Center by any Customer Party (collectively, a "Covered Claim"). The foregoing indemnity includes, without limitation, claims of infringement of any trademark, copyright, patent, trade secrets or nonproprietary rights (including, without limitation, defamation, libel, violation of privacy or publicity), or any injury to or death of any person or damage to any property occurring upon the Customer Area, the Data Center or the land of which the Data Center is a part. Customer is responsible and liable for all acts or omissions of the Customer Parties, and all such acts or omissions will be attributed to Customer for all purposes under this Agreement (to the same extent as if Customer had committed the act or omission). In the event of a Covered Claim, a Login Indemnified Party may select its own counsel at Customer's expense to participate in the defense of such claim, shall post a reasonable retainer to said counsel, and Customer shall not settle a Covered Claim in a manner that imposes any penalty, liability, equitable or declaratory relief, or limitation on any Login Indemnified Party without Login's express written consent.

8.2 Notice. Customer's indemnification obligations hereunder shall be subject to: (i) receiving prompt written notice of the existence of any Action; (ii) being able to, at its option, control the defense of such Action; (iii) permitting the indemnified party to participate in the defense of any Action; and (iv) receiving full cooperation of the indemnified party in the defense thereof.

## **9. Termination.**

9.1 Termination for Cause. In addition to the other provisions of this Agreement, A party may elect in writing, and allowing 30 days notice, to terminate this Agreement if: (i) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within

sixty (60) calendar days of filing.; or (ii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) calendar days of filing. If Customer terminates this Agreement for cause for any of the reasons set forth in this Section 9.1, then Section 2.2(c) shall not apply to such termination.

9.2 Effect of Termination. Upon the effective date of termination of this Agreement:

(a) Company will cease providing the Services 30 days after the notice of termination; and

(b) any and all payment obligations of Customer under this Agreement for Services provided through the date of termination will immediately become due. If Customer fails to pay such amounts on the date due, then Company shall impose the late fees set forth in Section 3.3; and

(c) within thirty (30) calendar days of such termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information, except as required to comply with any applicable legal or accounting record keeping requirement; and

(d) Customer will remove, package and ship (shipping charges will be paid by Company) (such removal and packaging to be undertaken in a commercially reasonable manner) all Company Supplied Equipment back to Company within fifteen (15) calendar days of effective date of termination. If Customer fails to do so, Company will have the right to (a) charge the Customer and the Customer will pay the fair market value of the Company Supplied Equipment and (b) recover and take possession of such Equipment, and for this purpose may enter any premises of Customer where such equipment is located during normal working hours to remove Company Supplied Equipment. Customer will promptly surrender the Company Supplied Equipment to Company in as good order and condition as originally delivered, reasonable wear and tear excepted.

9.3. Survival. The rights and obligations of the parties in this Agreement that would by their nature or context be intended to survive the expiration or termination of this Agreement shall so survive.

## **10. Miscellaneous Provisions.**

10.1 Written Notice and Opportunity to Cure. Except for the Customer's obligations to make payments to the Company, and except for the Customer's obligations related to the AUP, The Company shall give five (5) days written notice of breach and opportunity to cure prior to disconnecting the Customer's service. No notice of breach need be given by the Company in connection with Customer's failures to make any payments hereunder. No notice of breach need be given by the Company in connection with Customers breach of any obligation under the AUP.

10.2 Force Majeure. Except for Customer's obligation to

make payments to Company, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or omissions of Company), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If Company is unable to provide Service(s) for a period of thirty (30) consecutive calendar days as a result of a continuing force majeure event, Customer may cancel the Services.

10.3 Marketing. Customer agrees that, during the term of this Agreement, Company may publicly refer to Customer, orally and in writing, as a customer of Company. Any other reference to Customer by Company requires the written consent of Customer. Customer must receive expressed written permission from Company prior to publicly referring to Company as an entity supplying services to Customer.

10.4 Government Regulations. Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

10.5 VoIP. If company provides a telephone system, the Company will configure it according to the call-routing flow provided by Customer. Once the initial call-routing flow has been provided by Customer to Company, no changes may be requested until the initial configuration is complete. The initial configuration will be provided by the Company at no charge. Subsequent reconfigurations will be provided by the Company at a reasonable charge. The Company may limit or prohibit international calling without a separate agreement and/or deposit. Customer is responsible for all charges incurred as a result of the use of the telephones, without any exceptions, even if the Customer did not authorize said use.

10.6 Colocation. If Customer contracts for a locked cabinet or partition, Customer must designate no more than two customer representatives authorized to access the cabinet or partition. Each said customer representative shall submit a background check form authorizing a complete investigation by Company including criminal background check. Further, each customer representative shall physically come to the Company and register for biometric fingerprint access, receive training on Company procedures for access, and sign for documentation of facility access procedures. Customer will then have access to the cabinet or partition seven days a week, 365 days per year, 24 hours per day. Installation of new equipment must be accomplished during normal business hours with reasonable notice to the Company.

10.7 Law Enforcement. The Company maintains a policy by which it will cooperate with validly issued subpoenas and warrants. Customer may review a copy of the policy upon request. Customer agrees to reimburse Company for reasonable

legal expenses incurred by Company for responding to subpoenas and warrants related to the Customer.

10.8 DMCA. Company cooperates with DMCA takedown notices that Company determines in its sole discretion are sworn to by live human beings (not automated), the items are clear violations of copyright law, and are not covered by fair use. Customer agrees to reimburse Company for reasonable legal expenses in analyzing or responding to DMCA notices related to Customer.

10.9 No Third Party Beneficiaries. Company and Customer agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Customer.

10.10 Governing Law; Dispute Resolution. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Arizona and the County of Pima (except that body of law controlling conflicts of law) and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods. The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims related to this Agreement. Failing such amicable settlement, any controversy, claim, or dispute arising under or relating to this Agreement, under any legal theory including tort, contract, equity or other including but not limited to the existence, validity, interpretation, performance, termination or breach thereof, shall be settled in either the state or federal courts in Pima County, Arizona, and the case shall be tried to a court sitting without a jury. Each party recognizes that it is waiving its rights to have a jury hear any matters connected to the case, that this is a waiver of substantial rights, and that serious consideration has been given to this point including consultation with legal counsel if deemed appropriate. The court shall not have the authority to award punitive damages to either party. The parties to this Agreement hereby consent to the exclusive jurisdiction and venue in the state and federal courts located in Pima County, Arizona, USA.

10.11 Severability; Waiver. If any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, then the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

10.12 Assignment. Upon the prior written notice to Company, Customer may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets provided the assignee's financial condition and credit rating is comparable to or better than that of Customer and (as would be reasonably determined) the proposed assignee is not one of the Companies major competitors. Customer remains responsible for all obligations hereunder even after assignment. Customer may not otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of

Company, and any attempted assignment or delegation without such consent will be void. Customer agrees to reimburse Company for reasonable expenses including attorneys' fees related to the evaluation of any request by customer for assignment. Company may assign this Agreement in whole or part. Company also may delegate the performance of certain Services to third parties, including Company's wholly owned subsidiaries, provided Company controls the delivery of such Services to Customer and remains responsible to Customer for the delivery of such Services. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

10.13 Notice. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the Order Form or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, emailed, faxed or sent, whichever is earlier.

10.14 Relationship of Parties. Company and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Company and Customer. Except as specifically set forth in Section 3.1, neither Company nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

10.15 Entire Agreement; Originals. This Agreement, including all Appendices, Attachments, Exhibits, Service

Contracts, and/or Schedules are incorporated herewith by reference only if the incorporation is expressed in writing. This group of documents constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Any additional or different terms in any purchase order or other response by Customer shall be deemed objected to by Company without need of further notice of objection, and shall be of no effect or in any way binding upon Company. Except as expressly provided herein, this Agreement may be changed only by a written document referring specifically to this Section 10.14 that is signed by an executive officer of Company and Customer in accordance with this Section 10.14. An electronic version of this Agreement shall constitute an original. The then current version of this Agreement will be presented to Customer shortly after execution of the Service Contract, and said version shall control, except where the Company has reserved the right to revise or amend certain portions hereof, and if the Company does so, the revised or amended version shall control. This Agreement is deemed executed upon execution of any Service Contract which incorporates this Agreement.

This Agreement is integrated with the following documents:

- Any Service Contracts which incorporate this Agreement.
- Schedule A attached hereto - IP Transit Service
- Schedule B attached hereto - Equipment Purchase Terms and Conditions (if applicable)
- Appendix A attached hereto - Definitions

**SCHEDULE A**  
**IP TRANSIT SERVICE**  
**(INCORPORATED INTO MASTER SERVICE AGREEMENT)**



1. "IP Transit Service" means the Internet connectivity service provided to the Customer for access to the Internet enabled by a Local Access Circuit, and/or a Cross Connect, which may or may not include Company Supplied Equipment. The connecting of the Customer Location with a Company POP is accomplished through either of the following methods.

1.1. "Local Access Circuit." Unless otherwise agreed in writing, the Company will select a Local Access Circuit Providers, order the Local Access Circuit(s), and coordinate the installation to the Customer Location's Point of Termination for any Services. The Customer will be responsible for any wiring required to extend a communication termination and/or demarcation at the Customer Location past the Point of Termination. If Customer chooses Onsite Installation, Company will use commercially reasonable efforts to extend the demarc within the Customer Location past the Point of Termination, but Customer understands that additional charges may apply for nonstandard activations. If the Company determines that a Local Access Circuit cannot reasonably be obtained for any reason, then either party may terminate this Agreement without liability to other party.

1.2. "Cross Connect." If the Customer chooses to not have the Company order the Local Access Circuit then the Company will provide the associated Internet access port(s) at a Company specified location and provide the Customer with a Connecting Facility Assignment (CFA). Customer shall be responsible for ordering the Local Access Circuit and connecting it to Company provided CFA including the central office cross connect to the CFA. The Company will use commercially reasonable efforts to assist in the coordination of the Local Access Circuit installation. Customer shall be solely responsible for all charges, maintenance and other issues associated with the Local Access Circuit. Customer will use best efforts to activate such Local Access Circuit(s) as soon as possible after the Effective Date, and in no event later than forty five (45) calendar days after the receipt of a signed Order Form. If the Company determines that a Local Access Circuit cannot reasonably be obtained for any reason, then either party may terminate this Agreement without liability to other party. Company does not guarantee the availability of a Cross Connect or make any installation commitments.

2. Service Level Warranty. If Customer experiences any of the service performance issues described in this Paragraph 2 as a result of Company's failure to provide IP Transit Service(s), then Company will, upon Customer's request in accordance with Paragraph 2.4,

credit Customer's account as described below (the "Service Level Warranty"). Notwithstanding anything to the contrary in this Schedule A, the Service Level Warranty set forth herein shall only be available to Eligible Customers.

2.1. IP Transit Service Availability. Service Availability for IP Transit is defined as the ability of Customer to exchange IP packets with the Company Network via the Customer's router port. Service Availability is measured by sending ICMP "ping" bursts to the Customer router at regular intervals. The response of the Customer router to the ping burst confirms that the connection is still in place and the service is still available. The Company guarantees 99.9% Service Availability to its Customers. If a Customer site is unavailable as a result of a failure of any component of the Company Network (Service Interruption), Company will issue a credit based on the length of the outage. Service Interruptions caused by Company planned network maintenance activities, maintenance at the Customer premises, failure of Customer premises hardware, failure of Customer controlled actions and environment (for example power failure, temperature increases, firewall blocking, unplugging the Company Provided Equipment etc.), or failure of Local Access Circuits or Cross Connects are ineligible for availability guarantee compensation.

2.1.1. Service Availability Credits. Service Availability credits are determined in accordance with the following guidelines (a) any outage greater than thirty (30) minutes = one (1) day credit of Service Charges and (b) any outage continuing for greater than sixty (60) minutes = one (1) days credit of Service Charges per sixty (60) minutes period.

2.2. Network Latency. Network Latency is defined as the average time taken for an IP packet to traverse a pair of backbone Company POPs on the Company Network. The Company Network Latency Guarantee means that the average monthly network latency between North American Company POPs shall not to exceed eighty five (85) ms. In the event that guaranteed network latency metrics are not met during any one calendar-month period, Company will provide a credit equivalent to one (1) day of Service Charge.

2.3. Packet Loss. Packet loss is defined as the percentage of packets that are dropped between routers that are part of the Company Network. Company guarantees that the average packet loss will not exceed one percent (1%) during any calendar month. In the event that packet loss metrics are not met during any one-calendar month period, Company will provide a

credit equivalent to one (1) day of Service Charge.

2.4. Calculation and Maximum Credit. One (1) day of Service Charges shall be equal to 1/30th of the committed monthly Port Charges of Customer. A maximum of seven (7) days of credit may be provided during any single month. At no time will the actual outage time be greater than the equivalent Service Availability Credit.

2.5. Service Credit Process.

2.5.1. Filing Period. Service Availability and/or Service Interruption claims must be submitted to Company within seven (7) calendar days of the occurrence of the event. Network Latency and Packet Loss claims must be submitted not later than thirty (30) calendar days after the last day of the month in which the failed metric occurred. Each claim must be filed by Customer's Administrative Contact and the claim must include the following information, (a) Customer name and site name, (b) contact's name and contact information, (c) date and beginning/end time of outage or failed metric, and (d) the specific Company support ticket number opened about the performance issue and brief

description of the characteristics of the outage or failed metric.

2.5.2. Claim Process. Customer must submit the required information by electronic mail to support@login.com. Company will acknowledge all claims within five (5) business days and will review all claims within ten (10) business days of receipt. Customer will be informed by electronic mail whether the appropriate service credit claim will be granted or rejected. If rejected, the notification will specify the basis for rejection. Approved Service Level Guarantee credits will be applied to the Customer's billing during the billing cycle following the month in which the claim was approved.

2.5.3. Policy Change. Company reserves the right to change, amend, or revise this policy at any time with or without notice to Customer.

2.6. The Service Level Warranty set forth in this Schedule A shall only apply to the IP Transit Services and does not apply to any other Services. This Schedule A states Customer's sole and exclusive remedy for any failure by Company to provide IP Transit Services.

**SCHEDULE B**  
**EQUIPMENT PURCHASE TERMS AND CONDITIONS**  
**(INCORPORATED INTO MASTER SERVICE AGREEMENT)**

1. **SHIPPING AND HANDLING.** All equipment purchased by Customer ("Equipment") is provided FOB vendor facility. Shipment will be made as specified by Customer and Customer is solely responsible for all expenses in connection with the delivery of the Equipment. The Equipment will be deemed accepted by Customer upon shipment to Customer. Promptly following receipt of the Equipment, Customer shall deliver the Hand Receipt to Company.

2. **PURCHASE PRICE AND TAXES.** Customer shall pay to Company the purchase price set forth in the applicable Order Form ("Purchase Price") for each item of Equipment. Customer hereby grants and Company reserves a purchase money security interest in the Equipment and the proceeds thereof as security for its obligations hereunder until payment of the full Purchase Price to Company. The Purchase Price is due and payable within thirty- (30) calendar days of shipment of the Equipment. Customer shall pay all taxes and other governmental charges assessed in connection with the sale, use or possession of the Equipment including, without limitation, any and all sales and/or use taxes and personal property taxes (other than taxes based solely on Company's net income).

3. **TITLE.** Customer shall acquire title to the Equipment upon full payment of the purchase prices set forth herein. Notwithstanding the foregoing, Company and any licensor of rights to Company shall retain title to and rights in the intellectual property (whether or not subject to patent or copyright) and content contained in the materials supplied under the terms of this Agreement.

4. **SELECTION OF EQUIPMENT; MANUFACTURER WARRANTY.** Customer acknowledges that it has selected the Equipment and disclaims any statements made by Company. Customer acknowledges and agrees that use and possession of the Equipment by Customer shall be subject to and controlled by the terms of any manufacturer's or, if appropriate, supplier's warranty, and Customer agrees to look solely to the manufacturer or, if appropriate, supplier with respect to all mechanical, service and other claims, and the right to enforce all warranties made by said manufacturer are hereby, to the extent Company has the right, assigned to Customer. **THE FOREGOING WARRANTY IS THE EXCLUSIVE WARRANTY AND IS IN LIEU OF ANY REPRESENTATION AND ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY. COMPANY HAS NOT MADE NOR DOES MAKE ANY OTHER WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, QUALITY, PERFORMANCE OR NONINFRINGEMENT. CUSTOMER PURCHASES THE EQUIPMENT SOLELY ON AN "AS IS" BASIS.**

5. **LIMITATION OF LIABILITY.** Company's entire liability for any damages which may arise hereunder, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including Company's negligence, or otherwise, shall be limited to the Purchase Price paid by Customer for the Equipment. **IN NO EVENT WILL COMPANY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF BUSINESS OR PROSPECTIVE BUSINESS OPPORTUNITIES, PROFITS, SAVINGS, INFORMATION, USE OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

6. **GOVERNING LAW; DISPUTE RESOLUTION.** This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Arizona and the County of Pima (except that body of law controlling conflicts of law) and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods. The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims related to this Agreement. Failing such amicable settlement, any controversy, claim, or dispute arising under or relating to this Agreement, including the existence, validity, interpretation, performance, termination or breach thereof, shall be settled in either the state or federal courts in Pima County, Arizona, and the case shall be tried to a court without a jury. Each party recognizes that it is waiving its rights to have a jury hear any matters connected to the case. The court shall not have the authority to award punitive damages to either party. The parties to this Agreement hereby consent to the exclusive jurisdiction and venue in the state and federal courts located in Pima County, Arizona, USA.

7. **MISCELLANEOUS.** THE ABOVE TERMS AND CONDITIONS ARE THE ONLY TERMS AND CONDITIONS UPON WHICH COMPANY IS WILLING TO SELL THE EQUIPMENT AND SUPERSEDE ALL PREVIOUS AGREEMENTS, PROMISES OR REPRESENTATIONS, ORAL OR WRITTEN.

## DEFINITIONS

### (INCORPORATED INTO MASTER SERVICE AGREEMENT)

1. "AUP" MEANS COMPANY'S ACCEPTABLE USE POLICY AS FOUND AT [HTTP://WWW.LOGIN.COM/AUP.HTML](http://www.login.com/aup.html) GOVERNING CUSTOMER'S USE OF SERVICES, INCLUDING, BUT NOT LIMITED TO, ONLINE CONDUCT, AND THE OBLIGATIONS OF CUSTOMER AND ANY SUBORDINATED USERS.
2. "COMPANY NETWORK" MEANS THE TELECOMMUNICATIONS NETWORK AND THE LINKAGES BETWEEN ONE OF THE FOLLOWING, AS APPLICABLE, (I) THE CUSTOMER PORT ON THE COMPANY EQUIPMENT, THE COMPANY EQUIPMENT, ANY DIRECTLY CONNECTED NETWORK MAINTAINED BY ANY THIRD PARTY TELECOMMUNICATIONS SERVICE PROVIDER UTILIZED BY COMPANY; (II) THE CUSTOMER PORT ON THE EQUIPMENT MAINTAINED BY ANY THIRD PARTY TELECOMMUNICATIONS SERVICE PROVIDER UTILIZED BY THE COMPANY AND THEIR NETWORK; OR (III) THE COMPANY POP AND ANY DIRECTLY CONNECTED NETWORK MAINTAINED BY ANY THIRD PARTY TELECOMMUNICATIONS SERVICE PROVIDER UTILIZED BY THE COMPANY AND THEIR NETWORK. THE COMPANY NETWORK DOES NOT INCLUDE EQUIPMENT LOCATED AT CUSTOMER'S PREMISES (INCLUDING COMPANY SUPPLIED NETWORK) WHETHER OR NOT PROVIDED BY COMPANY, TELEPHONE CIRCUITS OR NETWORKS BETWEEN A COMPANY POP AND CUSTOMER'S LOCATION, INACTIVE POPS, OR ANY NETWORKS, NETWORK EQUIPMENT, OR TELEPHONE CIRCUITS OTHER THAN DESCRIBED ABOVE THAT IS NOT OWNED OR CONTROLLED BY COMPANY.
3. "Company Point of Presence," "Company POP," or "POP" means a single defined location within the Company Network used in the provision of the Services.
4. "Company Supplied Equipment" means the hardware, software and other tangible equipment and intangible computer code contained therein provided by Company for use by Customer as per the terms of this Agreement.
5. "Cross Connect" means a physical cable, wire, fiber optics or other such material that is used to connect a Customer Location with a Company POP when both are located in the same physical building or the extension of a Local Access Circuit within the Company POP from the Minimum Point of Entry to the Company equipment in the same physical building.
6. "Customer Equipment" means the Customer's computer hardware, not including stored data, and other tangible equipment.
7. "Customer Location" means the physical location designated by the Customer.
8. "Eligible Customer" means any Customer which has purchased IP Transit Service, but excludes any Customer (i) whose connection terminates at a Company POP which is inactive, (ii) whose connection terminates at a non-Company POP, (iii) who is blocking or who during the period in question has blocked Company from sending ICMP traffic or other traffic monitoring request to the Customer Equipment or Company Supplied Equipment, (iv) which has does not provide, or during the period in question, has not provided the necessary access to personnel and facilities of Customer to enable Company to perform comprehensive service troubleshooting, (v) whose account is or, during the period in question, was not in good financial standing with Company, (vi) whose account is or, during the period in question, was in violation of the AUP and/or (vii) who does not open a support ticket to report any specific service performance issue.
9. "Initial Term" means the minimum term for which Company will provide the Service to Customer, as indicated on the Order Form(s).
10. "Local Access Circuit" means a leased circuit from a third party for the purpose of connecting a Customer Location with a Company POP.
11. "Login Payment Plan" or "LPP" means the earned discount program which INCLUDES THE HIGHEST FOR CUSTOMERS WHO FORMALLY ENROLL IN AND UTILIZE AN ACH COLLECTION METHOD WHEREBY THE COMPANY RECEIVES THE NET MONTHLY PAYMENT BY THE TENTH DAY OF THE MONTH (OR THE NEXT BUSINESS DAY IF THE TENTH DAY IS NOT A BUSINESS DAY) THROUGH AN AUTOMATED COLLECTION SYSTEM WHERE THE CUSTOMER AUTOMATICALLY AND ELECTRONICALLY TRANSMITS ITS ENTIRE NET MONTHLY PAYMENT THROUGH TO THE COMPANY OR A METHOD WHEREBY THE COMPANY AUTOMATICALLY RECEIVES THE NET MONTHLY PAYMENT BY THE TENTH DAY OF THE MONTH (OR THE NEXT BUSINESS DAY IF THE TENTH DAY IS NOT A BUSINESS DAY) THROUGH AN AUTOMATED COLLECTION SYSTEM WHERE THE COMPANY AUTOMATICALLY AND ELECTRONICALLY CHARGES A CUSTOMER ACCOUNT. CUSTOMERS WHO ENROLL IN THE LPP BUT WHOSE NET MONTHLY PAYMENT FAILS FOR ANY REASON TO BE PROCESSED INTO THE COMPANY'S ACCOUNT BY THE TENTH DAY OF THE MONTH (OR THE NEXT BUSINESS DAY IF THE TENTH DAY IS NOT A BUSINESS DAY) SHALL NOT BE ENTITLED TO THE LPP DISCOUNTED RATE, BUT SUCH CUSTOMERS MAY RE-ENROLL IN THE LPP FOR THE FOLLOWING MONTH HOWEVER NOT MORE THAN TWO SUCH ENROLLMENTS MAY OCCUR IN ANY CALENDAR YEAR; ALL LPP CUSTOMERS ARE RESPONSIBLE FOR ENSURING SUFFICIENT FUNDS ARE AVAILABLE AND ALL ASPECTS OF THE ELECTRONIC PROGRAMS ARE PROPERLY ESTABLISHED IN ORDER TO QUALIFY FOR THE LPP RATE.
12. "MONTHLY PAYMENT" MEANS THE TOTAL AMOUNT DUE EVERY MONTH AS SET FORTH ON THE SERVICE CONTRACT IF THE CUSTOMER EARNS NO DISCOUNTS, AS ADJUSTED BY THE DISCOUNT EARNED BY THE CUSTOMER.

13. "NET MONTHLY PAYMENT" MEANS THE MONTHLY PAYMENT PLUS ANY INCIDENTAL CHARGES INCLUDED ON ANY INVOICE, INCLUDING BUT NOT LIMITED TO DOMAIN NAMES, MOVE/ADD/CHANGE CHARGES, SERVICE FEES, INTEREST CALCULATIONS, ETC.
14. "Services" means the specific services provided by Company as described on the applicable Order Forms.
15. "Service Activation Date" means the later of: (i) the date on which the Company delivers the Services ready for use; or (ii) the date upon which the Customer has requested activation of the Services as specified on the applicable Order Forms.
16. "Service Charge" means the monthly Service fees charged by the Company for any Services excluding any one-time fees, Company Provided Equipment charges, Telco Fees, or other similar charges.
17. "Telco Fees" means the monthly fees for any Local Access Circuit, Cross Connect or other similar charges.