



CARRIER ACCOUNT MASTER SERVICE AGREEMENT

This **MASTER SERVICE AGREEMENT** (“Agreement”) is made this INSERT DAY day of INSERT MONTH, 2007 (“Effective Date”) by and between Electric Lightwave, LLC, a Delaware limited liability company, with primary offices at 1201 NE Lloyd Avenue, Portland, Oregon (“ELI”) and INSERT CUSTOMER'S FULL LEGAL NAME, a INSERT STATE AND TYPE OF ORGANIZATION, with primary offices at INSERT CUSTOMER'S PRIMARY ADDRESS (“Customer”). The parties hereto agree as follows:

1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, where capitalized, the following words and phrases in this Agreement shall be defined as follows:

- 1.1 Acceptance Date: The beginning date of the Service Term and the date billing commences for the Service. The Acceptance Date is the earlier of: (i) when testing following installation of a Service has been successfully completed and Customer agrees that the Service is working properly; (ii) when Customer accesses and utilizes the Service; or (iii) five days past the FOC Date if testing is complete but Customer has failed to accept.
- 1.2 Default: Circumstances which may lead to termination of this Agreement as described in Section 5 include, but shall not be limited to: (a) any material breach of any non-monetary term of this Agreement, a Service Addendum or Service Order, (b) an assignment for the benefit of creditors; (c) a voluntary filing of bankruptcy; or (d) any proceedings filed against the party under any law relating to creditor’s rights in general provided such proceeding is not dismissed within 90 days of its filing.
- 1.3 Emergency Maintenance: Maintenance which, if not performed promptly by ELI, could result in a serious degradation or loss of Service to ELI customers.
- 1.4 End User: A user to whom Customer will provide telecommunications services utilizing, at least in part, the telecommunications Services provided by ELI to Customer under this Agreement.
- 1.5 Firm Order Confirmation (“FOC”): An order confirmation document in which ELI identifies the installation date for a particular Service.
- 1.6 Firm Order Confirmation (“FOC”) Date: The date which ELI has identified as the installation date in the Firm Order Confirmation document.
- 1.7 Force Majeure: Defined in Section 18.
- 1.8 Interconnection Facilities: All local access facilities between Customer's Point of Presence, the local exchange carrier’s central office, the long-distance carrier’s point of presence and the End User sites.

- 1.9 Monthly Recurring Charges or MRC: A charge for Services which is invoiced and paid on a monthly basis.
- 1.10 Non-recurring Charges or NRC: A one-time charge for installation of Services.
- 1.11 Off-Net Services: Communication services provided by a third party. If ELI provides Off-Net Services, the terms, conditions and pricing of such service are on an individual case basis.
- 1.12 On-Net Services: Services that connect two locations served by ELI's network, and are provided entirely by ELI.
- 1.13 Planned Service Interruption: Any Service Outage caused by scheduled maintenance, planned enhancements or upgrades to the ELI Network.
- 1.14 Point of Presence ("POP") A specific location where Customer terminates and/or originates Service.
- 1.15 Point of Termination: The demarcation point and the point at which ELI's responsibility to provide Service ends and where the Customer or End-User responsibilities begin.
- 1.16 Premises: The address to which Service is provided, identified as a Point of Termination on the Service Order.
- 1.17 Requested Service Date. The date Customer has requested for Service activation.
- 1.18 Service: "Service" will mean the service ordered by Customer and provided by ELI pursuant to a Service Order provided by Customer, subject to the terms and conditions of this Agreement and the applicable Service Addendum.
- 1.19 Service Addendum: A document which, upon execution by both parties, will be incorporated into the terms of this Agreement. Each Service Addendum will describe specific terms and conditions of a particular Service, and will be executed prior to Customer's issuance of a Service Order for the particular type of Services outlined therein.
- 1.20 Service Level Objectives: The Service Addendum may set forth performance objectives for a particular Service based upon various measurable factors.
- 1.21 Service Order: A document provided by the Customer to ELI, in the form of either a service order, sales order, an access service request ("ASR") or a telecommunications service request ("TSR"), which identifies the type of Service desired and provides all information necessary for ELI to provide the Service to Customer, including but not limited to the following: quantity and type of Service; location served; Point of Termination; protocols; Service Term; Requested Service Date.
- 1.22 Service Outage: A disruption or degradation in Service, excluding degradation or disruption due to a Planned Service Interruption or Force Majeure.
- 1.23 Service Term: The period of time Customer has requested that the Service be provided, as identified on each Service Order. If the Service Term is not stipulated in the Service Order, a 12-month term will apply. Following each Service Term, the Services will continue on a month-to-month term unless terminated by either party by providing thirty (30) days prior

written notice to the other party.

1.24 Trouble Ticket. Defined in Section 10.2.

2. SERVICE DESCRIPTION

- 2.1 ELI will provide communication Services to Customer pursuant to a Service Order issued by Customer, and in accordance with the terms and conditions of this Agreement and a Service Addendum. Customer and ELI will execute an appropriate Service Addendum to this Agreement for each type of Service prior to submitting a related Service Order. ELI reserves the right, in it's sole reasonable discretion, to reject any Service Order.
- 2.2 ELI will provide Services to Customer using ELI owned and managed facilities in conjunction with facilities of ELI's network partners. ELI reserves the right to substitute, change or rearrange any equipment used in delivering Services that does not affect the quality, cost or type of Services. Upon mutual agreement of the parties, Services may be changed from time to time during the term of this Agreement to reflect additional capabilities and features available from ELI. Whenever such mutually agreed upon changes occur, this Agreement and/or the applicable Service Order shall be amended accordingly.
- 2.3 Unless otherwise provided herein, Customer is responsible to provide equipment compatible with the Service and ELI's network and facilities. Customer will bear the cost of any additional equipment or protective apparatus (eg. surge protectors) reasonably required to be installed because of the use of ELI's network or facilities by Customer, End Users or assignees. Any wiring required to extend a communications termination and/or demarcation at the Customer or End User premises is not the responsibility of ELI, and ELI is not responsible for the costs thereof.
- 2.4 Customer's use of the Services provided herein and any equipment associated therewith will not: (a) interfere with or impair service over ELI's network or facilities; (b) impair privacy of any communications over such network or facilities; (c) cause damage of any nature to ELI's assets; or (d) be used to frighten, abuse, torment or harass another. At the time Customer becomes or is made aware of the interference, Customer shall immediately take all necessary action to discontinue any event of interference. Notwithstanding any other provision herein, in the event Customer is in breach of this Section, ELI may suspend the affected Service until the equipment or wrongful conduct is modified to prevent said interference. In most circumstances ELI will provide 24 hours notice of such interference to Customer and suspend the Service if Customer fails to cure the interference within such 24 hour period. However, if the interference is a threat to the integrity of ELI's network, in ELI's sole discretion, ELI may suspend the affected Service immediately. Customer's failure to diligently pursue and cure such interference within a reasonable time of such suspension will be deemed a material breach of this Agreement.
- 2.5 ELI will manage its network in ELI's sole discretion. Customer will provide all reasonable information and authorizations required by ELI for the purpose of installing Services, performing routine network grooming, maintenance, upgrades, and addressing emergencies. Required information and authorizations include but are not limited to Design Layout Report ("DLR") of any non-ELI end loops connected to the Services and Letters of Agency allowing ELI to act on the Customer's behalf related to the Services and auxiliary third party services. Customer will cooperate in good faith and follow through with any coordination efforts required in a timely manner.

- 2.6 ELI does not guarantee that Customer will be assigned any particular telephone number(s) prior to installation and Acceptance of Service. Customer's reliance upon and/or use of any Service numbering information prior to installation and Acceptance of Service is at the Customer's sole risk. ELI shall not be liable for any inaccurate or dropped listings of any publisher/directory database. ELI shall not be liable for any errors or omissions, whether arising through negligence or otherwise, in the information furnished to a publisher or to a directory database(s). Additional costs may be assessed for publisher/directory database listing charges. Customer acknowledges that Customer has no interest in, or proprietary rights to, any phone numbers ported to or provided by ELI.

3. TERM

- 3.1 This Agreement shall commence on the Effective Date of this Agreement and shall remain in effect through the Service Term of each Service Order issued hereunder ("Term").
- 3.2 Each Service Order is effective upon execution, and the Service Term of each Service Order begins on the Acceptance Date of the applicable Service. Following expiration of the Service Term, the Service Order shall continue in effect on a month to month basis until terminated by either party with at least thirty (30) days advance written notice to the other party.

4. CHANGES, CANCELLATION OR EARLY TERMINATION BY CUSTOMER

- 4.1 Customer may change or cancel a Service Order without incurring termination liability by submitting a completed change order form to ELI prior to ELI's issuance of FOC; provided that Customer will reimburse ELI for any applicable charges from the Off-Net provider and any special build costs.
- 4.2 Following ELI's issuance of FOC and prior to the Acceptance Date, if Customer submits a change order for a change in the type of Service ordered or the location of any part of the Service, or a delay in Customer's requested installation date greater than thirty days ("Substantive Change") or cancels a Service Order, Customer will pay ELI's standard installation fees for such Service, one month of the applicable MRC, and any special build costs and Off-Net provider charges associated with the changed Service. During the same time period, if Customer submits a change order which is not a Substantive Change, Customer will reimburse ELI any special build costs and Off-Net provider charges associated with such change. Requests for expedited installation will be considered on an individual case basis.
- 4.3 Following the Acceptance Date, if Customer terminates a Service prior to the end of the Service Term for any reason other than Default by ELI or Force Majeure, and concurrently submits a new Service Order for Services of the same or greater value over the same or greater term, early termination of such Service will not be considered a Default under this Agreement, however, Customer will pay any unpaid amounts for the terminated Service through the date of termination, and any special build costs and Off-Net provider charges associated with disconnecting the terminated Service.

5. DEFAULT AND TERMINATION

- 5.1 Either party may terminate this Agreement upon Default by the other party ("Defaulting

Party”) without incurring termination liability, provided that:

- 5.1.1 prior written notice is given to the Defaulting Party which specifies the circumstances which may lead to Default and allows thirty (30) days to cure such circumstances, or a longer time period if mutually agreed (“Cure Period”), and
- 5.1.2 the Defaulting Party fails to cure the circumstances within the Cure Period.
- 5.2 Notwithstanding the Cure Period referenced in Section 5.1, Customer’s failure to comply with the terms of Section 6 of this Agreement shall be a Default, and ELI may immediately suspend and/or terminate this Agreement or any individual Service Order.
- 5.3 If a Service is terminated either by Customer for reasons other than Default by ELI and without a replacement Service Order pursuant to Section 4.3, or by ELI for Default by Customer, then Customer will pay ELI: 1) 100% for any unpaid amounts for the terminated Service through the date of termination; 2) any special build costs, and; 3) any Off-Net provider charges associated with disconnecting the Service.
- 5.4 It is agreed that ELI’s damages in the event of early termination will be difficult or impossible to ascertain. These provisions are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

6. PAYMENT FOR SERVICES

- 6.1 Customer will pay all undisputed charges related to the Services, beginning on the Acceptance Date. Invoices are due upon receipt, and will be considered past due and subject to a late fee if not paid on or before the thirtieth (30th) day past the invoice date (“Due Date”). When the Acceptance Date falls on a day other than the first day of the month, or the Service Term ends on a day other than the last day of the month, the charges will be determined by prorating the monthly payment by the number of days during which Service was provided. ELI may charge a late fee of 1.5% per month, or the legal rate if lower, on any amount not paid when due and not in dispute in accordance with the terms of this Section. ELI reserves the right to adjust the rates and charges for any renewal term hereof by providing thirty (30) days written notice to Customer prior to the end of the current Service Term. All payments will be in United States currency.
- 6.2 If Customer does not make payment of undisputed charges by the Due Date, ELI may suspend Service after written notice to Customer and a period of time (in accordance with statutory requirements) to cure all undisputed amounts. Following such a suspension, ELI may condition reinstatement of Service on one or more of the following events: (a) payment of all charges then due, including any late fees and interest charges; (b) satisfactory assurance (such as a deposit) of Customer’s ability to pay for Service; and (c) advance payment for the cost of reinstating Service. If Customer fails to timely cure the nonpayment, Customer will be deemed to have terminated the Service as of the effective date of the suspension and will be in Default of this Agreement pursuant to Section 5.2.
- 6.3 Without waiving any right of termination or any other rights hereunder, ELI may require Customer to tender a deposit, of up to two months of Customer’s aggregate MRC, to guarantee payment hereunder if (a) in ELI’s sole discretion, the initial credit check warrants the request for a deposit, (b) Customer fails to make a payment when due, (c) Customer files for bankruptcy, or (d) any Service Order exceeds established credit limits initially approved by ELI (“Deposit”). Upon request, Customer will provide ELI with information regarding payment history for communications services, number of years in business, financial statement analysis and commercial credit bureau rating. Approval of

any Service Order issued hereunder is subject to final approval by ELI's Credit Department.

- 6.4 In the event Customer disputes any billing by ELI, Customer will (a) pay all charges not disputed, and (b) notify ELI of the dispute in writing, providing the billing identification, circuit number, any Trouble Ticket number and an explanation of the issue in dispute. No charges may be disputed more than ninety (90) days after the date such charges are invoiced. Payment will not prejudice Customer's right to dispute charges, so long as they are disputed in the manner and within the time specified in this Section. The parties will cooperate in good faith to resolve any such disputes within a sixty (60) day period after the dispute is submitted to ELI. If the dispute is not resolved during this period, then either party may seek dispute resolution in accordance with Section 24. If a disputed amount is determined to be a legitimate charge, Customer will pay such amount within ten (10) calendar days of such determination.

7. TAXES, FEES, SURCHARGES AND OTHER CHARGES

- 7.1 Any and all applicable national, federal, state, county and local taxes, fees, surcharges and all other related charges that may be imposed or levied on the Customer or ELI by any appropriate statute or regulation which provides the authority for the imposition of taxes, fees, surcharges and all other charges (collectively, "Taxes") with respect to the provision, sale or use of Services and/or equipment will be paid by the Customer in addition to all other fees and charges as set forth elsewhere in this Agreement. Notwithstanding the foregoing, Customer is not responsible for the payment of any type of tax levied on ELI based upon (a) ELI's net profit or payroll, or (b) franchise taxes measured by ELI's capital, capital stock or net worth. In the event Customer disputes Taxes billed by ELI, Customer will follow the process identified in Section 6.4.
- 7.1.1 Taxes include, but are not limited to, business and occupation, commercial, deaf, district, excise, franchise fee, gross receipts, high cost fund, license, lifeline assistance, low income, occupational, privilege, property, Public Utility Commission, right-of-ways, sales, telecommunications relay service, telephone assistance, universal service funding, use, utility user, value-added, 911, or other similar taxes, fees and surcharges as is or may be levied against ELI and passed through to customer.
- 7.2 When applicable, Customer shall furnish ELI a valid and properly executed tax exemption/resale certificate(s) and/or an ELI-approved statement of indemnification for any request of exemption from Taxes. Any exemption/resale certificate and/or ELI-approved statement of indemnification shall be effective only for Services provided subsequent to the receipt of the exemption/resale certificate or statement of indemnification by ELI. ELI approval of Customer's tax exempt status will not be unreasonably withheld or delayed. ELI shall not bill Customer for any Taxes covered by an ELI-approved exemption/resale certificate or an ELI-approved statement of indemnification.
- 7.3 If any exemption claimed is disallowed, Customer agrees to indemnify ELI for any and all Taxes, interest and penalties, including all legal and collection fees or any other costs that may be assessed against ELI or Customer by any authority or jurisdiction for which this exemption has been claimed by Customer.
- 7.4 When applicable, Customer is responsible for the billing, collection and remittance of all Taxes from its subscribers/customers/end users pertaining to its resale of Services purchased from ELI.

- 7.5 Customer and ELI agree to cooperate with each other and coordinate their mutual efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to the provision, sale or use of purchases, activities or transactions arising from or under this Agreement, which may be required or initiated from or by Customer, ELI or any duly authorized governmental authority relating to Taxes.
- 7.6 Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such U.S. tax treatment and U.S. tax structure. The preceding sentence is intended to prevent the matters contemplated by or otherwise pursuant to this Agreement and any related agreement from being treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) and 301.6111-2(a)(2)(ii) (or any successor provisions) of the Regulations issued under the Internal Revenue Code, as amended, and shall be construed in a manner consistent with such purpose.

8. INSTALLATION, MAINTENANCE AND REPAIR OF ELI EQUIPMENT FOR ON-NET SERVICES

8.1 General Provisions.

8.1.1 The provisions of this Section will only apply to On-Net Services.

8.1.2 ELI will provide, install, maintain, repair, operate and control the telecommunications equipment necessary for Service (“ELI Equipment”). Except as otherwise provided herein, ELI will pay the cost of purchasing and installing all ELI Equipment necessary for Service to the Point of Termination. ELI is responsible for the procurement and maintenance of all rights-of-way and private or public easements or licenses required for the installation of ELI Equipment. Notwithstanding any provision of this Agreement to the contrary, if Customer provides its own telecommunications equipment, ELI will have no obligation to install, maintain or repair such Customer equipment.

8.1.3 Maintenance and repair of the system will be performed so as to meet the manufacturer's specifications and any specifications identified in the Service Addendum.

8.1.4 ELI will provide all maintenance spares, and will repair and return defective parts.

8.1.5 ELI will endeavor to provide 72 hours notice, via telephone or email, prior to any scheduled maintenance, planned enhancements or upgrades, which may result in a Planned Service Interruption, and will coordinate and schedule such maintenance with Customer. Customer will cooperate with ELI to coordinate such maintenance within such notice period. Such maintenance which will typically be performed between 12:00 midnight and 6:00 a.m. or a time mutually agreed to by Customer and ELI. Customer will provide and update a list of Customer contacts for maintenance and escalation purposes.

8.1.6 ELI reserves the right to suspend Service for Emergency Maintenance to ELI's network without notice to Customer.

8.1.7 ELI personnel will notify Customer upon completion of maintenance activities and receive concurrence that all Service is fully operational.

8.1.8 The parties agree that if any party, in its sole discretion, determines that an emergency action is necessary to protect its own network the party may block any transmission path over its network by the other party where transmissions do not meet standard industry requirements. The parties further agree that none of their respective obligations to one another under this Agreement will be affected by any such blockage except that the party affected by such blockage will be relieved of all obligations to make payments for charges relating to such Service which is so blocked and that no party will have any obligation to the other party for any claim, judgment or liability resulting from such blockage.

8.2 Access to Equipment and Facilities.

8.2.1 Employees or agents of ELI will have escorted access to any ELI Equipment or facilities at a Customer or End User Premises

8.2.2 If Customer provides equipment and/or conduit space for ELI Equipment, Customer will grant ELI access to its premises for the installation, operation, removal, repair and maintenance of the facilities and equipment for the Services hereunder. To the extent access is outside the control of Customer, Customer will cooperate with ELI in obtaining access to its premises or its End Users' premises to install, operate, and maintain, repair and remove such ELI Equipment. ELI employees or agents will comply with the State/Federal, End-Users and/or Customer access and security rules and regulations.

8.2.3 ELI will provide notice to Customer prior to entering the Customer POP to install, maintain or repair any ELI Equipment in connection with the Service provided. ELI will only enter the Customer POP if escorted by Customer Operations personnel, unless Customer gives ELI unescorted access.

8.2.4 Upon request, employees or agents of Customer will be given escorted access, for viewing only, to areas at ELI locations containing facilities and/or equipment associated with Customer's bypass Service, subject to ELI's access and security regulations. These will include, but not be limited to: Proper Identification; Customer Authorized Personnel List; Restricted Area Access Provisions; Accompaniment by ELI personnel. Customer employees or agents, while on ELI premises, will comply with ELI's rules and regulations.

9. **EQUIPMENT OWNERSHIP**

9.1 ELI Equipment will remain the sole and exclusive property of ELI or ELI's assignee, and nothing contained herein will give or convey to Customer any right, title or interest whatever in such ELI Equipment, which will at all times be and remain personal property notwithstanding that it may be or become attached to or embedded in realty. Customer will not tamper with, remove or conceal such identifying plates, tags or labels. Customer hereby grants to ELI the right to recover ELI provided equipment from Customer's premises upon termination of this Agreement.

9.2 Neither party will adjust, align, or attempt to repair the other party's telecommunications equipment except as expressly authorized in advance in writing by the other party.

Neither party's telecommunications equipment will be removed or relocated by the other party.

- 9.3 Customer will indemnify, hold harmless and defend ELI against any liens placed on ELI Equipment due to Customer's action or inaction. Any lien will be discharged by Customer within ten (10) days of notice of filing. Failure to discharge any lien is a material breach of this Agreement, and may result in immediate termination.

10. TROUBLE TICKET PROCEDURE FOR AN ON-NET SERVICE OUTAGE

- 10.1 ELI will maintain a point-of-contact for Customer to report a Service Outage to ELI twenty-four (24) hours a day, seven (7) days a week.
- 10.2 When Customer believes that a Service Outage has occurred, Customer must contact ELI's Network Control And Management center ("NCAM") at **1-800-622-4354** to identify the Service degradation and initiate an investigation of the cause of the Service Outage ("Trouble Ticket"). Responsibility for Trouble Ticket initiation rests solely with Customer. Once the Trouble Ticket has been opened, the appropriate ELI departments will initiate diagnostic testing and isolation activities to determine the source and severity of the degradation in Service. If there is a Service Outage, ELI and Customer will cooperate to restore Service. If the cause of a Service Outage is a failure of ELI's Equipment or facilities, ELI will be responsible for the repair. If the degradation is caused by a factor outside the control of ELI, ELI will cooperate with Customer to conduct testing and repair activities at Customer's cost and at ELI's standard technician rates.
- 10.3 A Service Outage ends when the affected line and/or associated station equipment is fully operative. If the Customer reports a problem with a Service but declines to allow ELI access for testing and repair, the Service will be considered to be impaired, but will not be deemed a Service Outage.
- 10.4 ELI will be responsible for performing surveillance on its major systems. However, Customer at its expense may also perform surveillance of ELI's system to the End User Premises to the terminating equipment network side of the DSX-1 cross connect frame.
- 10.5 ELI will sectionalize faults occurring within the system localized to the Customer system elements as follows: ELI Equipment on the End User Premises; and equipment between ELI and Customer facilities.
- 10.6 If ELI dispatches a field technician to a Customer or an End User location to perform diagnostic troubleshooting and the problem resides with the Customer's or End User's equipment or facilities or results in a "No Trouble Found", or the failure is due to Customer or End User acts or omissions or the acts or omissions of any party for which the Customer or End User is responsible, Customer will pay ELI for time and materials at ELI's standard technician rates.
- 10.7 ELI will not contact the End User when a Service Outage is detected, or for any other Service related issues unless directed to do so by Customer. ELI will notify the Customer who will then contact the End User to determine the next course of action. If an End User contacts ELI for service, ELI will promptly forward the caller to Customer or establish a conference call with Customer to allow Customer to proceed with its standard support activities.

11. CREDITS

- 11.1 In the event of a Service Outage, Customer may be entitled to a credit against the applicable Service invoice if (a) the Service is On-Net; (b) Customer initiated a Trouble Ticket; (c) the Service Outage was caused by a failure of ELI's Equipment, facilities or personnel; (d) the Service Outage warrants a credit based on the Service Level Objectives set forth in the applicable Service Addendum; and (e) Customer requests the credit within ninety (90) days of the Service Outage.
- 11.2 Credit allowances do not apply to Service Outages caused by one or more of the following: (a) the acts or omissions of Customer, Customer's customer or representatives; (b) failure of power; (c) the failure or malfunction of non-ELI equipment or systems; (d) circumstances or causes beyond the control of ELI or its representatives; (e) a Planned Service Interruption; or (f) Emergency Maintenance. In addition, Customer will not be issued credits for a Service Outage during any period in which ELI is not given access to the Service Premises.
- 11.3 The amount of credit available for a Service Outage is set forth in the applicable Service Addendum. Notwithstanding anything to the contrary, all credit allowances will be limited to maximum of one MRC per Service, per month. Credit allowances, if any, will be deducted from the charges payable by Customer hereunder and will be expressly indicated on a subsequent bill to Customer.

12. ELI WARRANTIES

- 12.1 ELI represents and warrants to Customer that it has the right to provide Customer the Service specified herein, and that it is an entity, duly organized, validly existing and in good standing under the laws of Delaware, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.
- 12.2 ELI represents and warrants to Customer that all Service rendered by it hereunder will be designed, produced, installed, furnished and in all respects provided and maintained in conformance and compliance with applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement and it will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities.
- 12.3 EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, ELI MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES TO BE PROVIDED HEREUNDER OR ANY OTHER MATTER, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, WORKMANSHIP, FUTURE PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT OF ANY PATENTS, TRADEMARKS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY RIGHTS

13. CUSTOMER WARRANTIES

- 13.1 The Customer represents and warrants that it is an entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.
- 13.2 Customer represents and warrants that neither its equipment nor facilities will pose a hazard to ELI's Equipment or facilities or create a hazard to ELI's personnel or customers or the public in general.

- 13.3 Customer represents and warrants that its use of the Service will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement and it will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities.
- 13.4 Customer represents and warrants that either (a) it has filed an FCC Form 499-A with the Federal Communications Commission (individually or on a consolidated basis) in accordance with the registration requirement of 47 C.F.R. 64.1195, or (b) it will not resell interstate telecommunications service(s) provided by ELI under this Agreement, unless it first registers with the Federal Communications Commission in accordance with the registration requirement of 47 C.F.R. 64.1195. Customer will indemnify and hold ELI harmless from any and all loss, liability, claim, demand, and expense (including reasonable attorneys' fees) related to Customer's violation of this Section.

14. COMPLIANCE WITH LAW

This Agreement is subject to all applicable federal, state and local laws, and regulations, rulings, orders, and other actions of governmental agencies ("Rules"), including, but not limited to: the Communications Act of 1934 as amended by the Telecommunications Act of 1996, the rules and regulations of the Federal Communications Commission ("FCC"), and the obtaining and continuance of any required approvals, authorizations, or tariffs filed with the FCC or any other governmental agency. ELI will use its good faith reasonable efforts to obtain, retain, and maintain such approvals and authorizations. If any such Rule adversely affects the Services or requires ELI to provide Services other than in accordance with the terms of this Agreement, either party may, without liability to the other party, terminate the affected Services upon 30 days prior written notice to the other party. In performing their obligations under this Agreement, the parties will comply with all applicable federal, state and local laws, regulations, rules and orders. When Customer uses the Services to carry a mixture of intrastate and interstate communications, Customer represents that the interstate communications will constitute at least 10% of the total communications carried over the Services. Upon request, Customer will make its records available to ELI for inspection and verification.

15. TARIFF APPLICATION

Customer acknowledges that the Services may be subject, in whole or in part, to one or more provisions of state or federal tariffs filed by ELI. In the event of any conflict between any provision of this Agreement and any provision of such tariff, the provision of such tariff will control. The Services and this Agreement are subject to such modifications as may be required or authorized by any regulatory agency in the exercise of its lawful jurisdiction. This Agreement and any Service Order issued hereunder may not be effective until approved by the FCC or State Commission.

16. INDEMNIFICATION

CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS ELI FROM ANY CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, JUDGMENTS, EXPENSES AND COSTS (INCLUDING ATTORNEYS' FEES) ARISING FROM CUSTOMER'S USE OF SERVICE(S), OR BY REASON OF ANY BREACH OR NONPERFORMANCE OF ANY COVENANT OR OBLIGATION OF CUSTOMER HEREIN, OR THE VIOLATION OF ANY LAW OR REGULATION BY CUSTOMER. CUSTOMER'S OBLIGATION TO ASSUME, PROTECT, DEFEND, INDEMNIFY AND SAVE ELI HARMLESS SHALL EXTEND TO ELI'S PARENT COMPANY, AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS,

STATE, CITY, ZIP
Attn: TITLE OF CONTACT PERSON FOR LEGAL NOTICE
Fax #: FAX FOR CONTACT PERSON

19.3 If to ELI: Electric Lightwave, LLC
1201 NE Lloyd Blvd., Ste. 500
Portland, Oregon 97232
Attn: Vice President of Carrier Sales
with a copy to the Legal Department at the same address.
Fax #: (503) 453-8221

19.4 Either party may change it's address by providing written notice to the other party.

20. CONFIDENTIAL INFORMATION

20.1 The parties agree that proprietary and/or confidential information ("Confidential Information") is defined as: (a) information in written, electronic or other tangible form that is clearly marked or labeled "Proprietary" or "Confidential" or words of similar import; or (b) information orally disclosed that the disclosing party specifically identifies as confidential at the time of disclosure, or thereafter confirms through written documentation provided within thirty (30) days of disclosure to be proprietary and/or confidential.

20.2 In the course of performance hereunder, the parties may have access to certain information, the ownership and confidential status of which is highly important to the other party. Neither party will disclose the other party's Confidential Information, directly or indirectly under any circumstances or by any means, to any third person without the express written consent of the other party, and neither party will copy, transmit, reproduce, summarize, quote, or make commercial or other use whatsoever of the other party's Confidential Information, except as may be necessary to perform its duties hereunder. Each party will exercise the highest degree of care in safeguarding the other party's Confidential Information against loss, theft, or other inadvertent disclosure and take all commercially reasonable steps necessary to maintain such confidentiality to the same extent it protects its own Confidential Information.

20.3 Notwithstanding, information is not Confidential Information if it:

20.3.1 is or becomes publicly available through no fault or breach of this Agreement by either of the parties;

20.3.2 is intentionally released in writing to the general public by the party disclosing the information;

20.3.3 is lawfully obtained from third parties without breaching any provision of any non-disclosure agreement;

20.3.4 is previously known or developed by the receiving party independently of the disclosing party; or

20.3.5 must be disclosed pursuant to or as required by law, provided that sufficient notice is given to the disclosing party of any such requirement or request to permit the disclosing party to seek an appropriate protective order or exemption from such requirement or request, unless such notice is prohibited by said order. The above exceptions shall be narrowly construed and shall not be interpreted by the receiving party as justification for disregarding the obligations of confidence

set forth in this Agreement merely because individual portions of the Confidential Information may be found to be within one or more exception, or otherwise, or because the Confidential Information is implied by but not specifically disclosed in information falling within the exception.

20.4 The provisions of this Section will survive the termination of the Services and any Service Order(s) issued hereunder.

21. WAIVER

The failure of either party to insist upon the performance of any provision herein or to exercise any right or privilege granted to it hereunder, will not be construed as a waiver of such provision or any provisions herein, and the same will continue in full force. The various rights and remedies given to or reserved by either party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any Default or acquiescence, nor will any waiver of any breach or any provision be considered a waiver of any continuing or subsequent breach of the same provision.

22. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, excluding any choice of law provisions.

23. ASSIGNMENT

Customer may not assign its obligations hereunder without the prior written consent of ELI, such consent will not be unreasonably withheld. Customer may, however, assign its rights hereunder to a company which purchases all or substantially all of its assets; provided that Customer provides to ELI written agreement of the purchaser to be bound by all terms and conditions of this Agreement, including purchaser's agreement to cure all prior Defaults of the Customer under this Agreement. Any assignment or transfer of this Agreement by either party shall be subject to the other party's rights and obligations herein, and any assignee or transferee shall continue to perform such obligations to the other party and shall, correspondingly, be entitled to the benefits of this Agreement pursuant to the terms and conditions hereof.

24. DISPUTE RESOLUTION

Except as otherwise specifically provided in or permitted by this Agreement, all disputes, differences of opinion or controversies arising in connection with this Agreement shall first be resolved through good faith negotiation to arrive at an agreeable resolution. If, after negotiating in good faith for a period of ninety (90) calendar days, or any agreed further period, the parties are unable to resolve the dispute, then the parties may seek resolution by exercising any rights or remedies available to either party at law or in equity.

25. SEVERABILITY OF PROVISIONS

In the event any provision in this Agreement is held invalid, illegal or unenforceable, the unaffected provisions shall remain in full force and effect. The parties shall negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intentions of the parties.

26. RULES OF CONSTRUCTION

- 26.1 Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require.
- 26.2 Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
- 26.3 Except as set forth to the contrary herein, any right or remedy of either party will be cumulative and without prejudice to any other right or remedy, whether or not contained herein.
- 26.4 Except as set forth in this Agreement, nothing in this Agreement is intended to provide any legal rights to anyone not an executing party of this Agreement. Except as otherwise stated, this Agreement does not provide and is not intended to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.
- 26.5 This Agreement has been fully negotiated between and jointly drafted by the Parties.
- 26.6 In the event of a conflict between the provisions of this Agreement and those of any Addendum or Exhibit, unless specifically otherwise agreed, the provisions of this Agreement shall prevail and such Addendum or Exhibit will be corrected accordingly.

27. ENTIRE AGREEMENT

This Agreement, the Addendum/Addenda and/or Service Order(s) constitute the entire agreement between the two parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, representations, statements, negotiations, and undertakings written or oral. This Agreement and any of the provisions hereof may not be amended, altered or added to in any manner except by a document in writing and signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Electric Lightwave, LLC

CUSTOMER'S FULL LEGAL NAME

By: _____
Printed
Name: _____

Title: _____

Date: _____

By: _____
Printed
Name: _____

Title: _____

Date: _____