

## GENERAL TERMS OF SERVICE

Services referenced in the Agreement are offered to Customer by Granite.

Customer shall contract for, and order, Services on Service Order Documents and using procedures acceptable to Granite in all respects.

The offer, provisioning and delivery of Services are subject at all times to the receipt by Granite of all required approvals and/or authorizations from regulatory agencies having jurisdiction over Services or Granite.

The Agreement is entered into by and between Customer and Granite. Customer has, and is deemed to have, accepted to be bound by these General Terms of Service and any Additional Terms of Service, including all terms and conditions incorporated therein or herein by reference upon: (a) Customer submitting a service order for Services; (b) Customer signing Service Order Documents or other documents stating that Customer has accepted such terms; and/or (c) Customer receiving and using Services without Service Order Documents or other documents as described herein.

### **General Terms and Conditions**

#### **1. Definitions; Interpretations.**

1.1 **Definitions.** Except as otherwise defined herein, capitalized terms shall have the meanings ascribed to them as set forth in Attachment A, attached hereto and incorporated herein or the applicable Additional Terms of Service. Words or expressions not defined are to be construed as having the meaning generally attributed to them in the telecommunications industry. All capitalized terms defined in the Agreement include the plural as well as the singular.

1.2 **Attachments.** The following are attached hereto and incorporated herein:

- (a) Attachment A - Definitions
- (b) Attachment B - Escalation Procedures
- (c) Attachment C - Internet Based Services – Additional Terms and Conditions of Service

1.3 **Interpretation.** In the event of any inconsistencies between the documents comprising the Agreement, and only to the extent of such inconsistencies, the interpretation of the Agreement shall be controlled by the following order of precedence (from the most to the least controlling): (a) any applicable filed and effective tariff and/or service guide, if any; (b) the applicable Additional Terms of Service; (c) these General Terms of Service; and (d) the provisions of quotes, Service Order Documents and/or other written document(s) accepted by Granite. In the event that Granite and Customer execute a separate master services agreement, then that master services agreement shall fall before these General Terms of Service in the order of precedence. This order of precedence notwithstanding, terms and conditions including pricing contained in any other writing will be controlling, if specific agreement language permits.

#### **2. Agreement to Provide Services.**

2.1 **Services.** Subject to the terms and conditions of the Agreement, and in consideration of the payments for such Services ordered by Customer in accordance with Service Order Documents, Customer has agreed to purchase, and Granite shall provide, the Services in accordance with the Agreement. Granite shall be responsible for the performance of all of its obligations under the Agreement, including those that it performs through Providers and other subcontractors. Customer may designate Authorized Users for the Services at the Rates and Charges and on the terms and conditions set forth in the Agreement. Customer shall be financially responsible for any Authorized User's purchase of Services. Unless otherwise consented to by Granite, Services may only be used by Customer, Authorized Users and their respective end users and may not be resold. Customer is solely and entirely responsible for the management and backup of all of Customer's data, and all updates, upgrades, and patches to any software that Customer uses in connection with Services. All Services are for Customer's own commercial use only and are not for resale.

2.2 Minimum Commitment. Except as otherwise provided for in these General Terms of Service, any Additional Terms of Service or Service Order Documents, nothing in the Agreement shall be construed as obligating Customer to order any particular minimum volume of Services.

2.3 Additional Terms of Service. Certain Services including, without limitation, Broadband Services, Access Services, VoIP Services, Granite Grid Services, Granite Guardian and Managed Services and Network Integration Services, may be subject to additional terms and conditions (including, without limitation, initial minimum Service Terms and Early Termination Fees) as referenced in these General Terms of Service or the applicable Additional Terms of Service, specific Service Order Documents for such Services and/or other writings accepted by Granite.

2.4 Customer Authorization. Customer hereby (a) engages Granite and/or its affiliates to provide Services as set forth in Service Order Document(s) or as Customer may order from time to time and (b) authorizes and appoints Granite to act as its agent solely for the purposes of handling all arrangements for establishing, converting and/or maintaining Services, including ordering, changing and/or maintaining such Services, and to do such other things reasonably necessary to provide such Services and as Customer may from time to time request.

2.5 Equipment.

(a) As a general matter, Granite will have no obligation to provide, install, configure, license or otherwise provide software for, maintain, support, or repair CPE unless otherwise specified herein, in an applicable Service Schedule or Service Order Document. To the extent CPE is necessary to Granite's Services, Customer shall procure and make available to Granite, at Customer's locations where Services are provided, at Customer's sole cost and expense, including supplying adequate space, electrical supply, heating and cooling to ensure Granite's Services can be utilized as intended.

(b) In cases where Customer does order CPE from Granite, unless otherwise specified in the applicable Service Schedule or Service Order Document, Customer may either: (i) purchase the CPE at a one-time non-recurring charge ("NRC"); or (ii) utilize the CPE to receive Granite Services subject to a monthly-recurring charge ("MRC"). Granite may invoice Customer for CPE, and Customer's payment obligations and commitments to Granite for CPE shall apply, upon Granite's ordering the CPE from any underlying vendor or Provider. Granite also reserves the right to assess Customer an additional storage charge in cases where Granite stores CPE between ordering and deployment. When CPE is provided on an MRC basis, Customer shall maintain the CPE in good working condition, ordinary wear and tear excepted, and return the CPE to Granite within thirty (30) days' of Granite's replacing/upgrading the CPE or termination of the Services the CPE had supported.

(c) In the event that Customer does not satisfy payment obligations and commitments associated with Granite-provided CPE, Granite reserves the right to: (i) if the CPE has already been provided to the Customer, require Customer to return such CPE to Granite in good condition, ordinary wear and tear excepted, otherwise Customer shall be liable for the replacement cost of such CPE; and/or (ii) require Customer to pay an amount equal to or less than the outstanding payment obligations for such CPE. Granite-provided CPE not used in the design and/or implementation of Services and returned to Granite or returned to Granite for any reason is subject to a restocking fee.

(d) Granite-provided CPE shall solely carry the manufacturer's warranty and shall not be covered under any other Granite warranty or representation. In addition to the manufacturer's warranty, for CPE provided by Granite on an MRC basis, Granite shall provide standard remote troubleshooting and break/fix support. Technician dispatches, including for installation and repair, are not included. Advanced support programs may be made available by Granite to Customer at additional charge as described in the applicable Service Schedule or Service Order Document or otherwise communicated by Granite to Customer. For all CPE purchased or rented from Granite, Customer must inspect the CPE carefully upon receipt and report any and all claims of damage and/or missing items within two (2) business days of receipt of CPE. Customer's failure to timely report such damage and/or missing items will constitute Customer's acceptance of CPE in good working order, and Customer will thereafter be liable for any and all damage pursuant to the terms set forth herein.

(e) Additional CPE Terms. (i) CPE as described herein is not inclusive of licenses or software, but only refers to the equipment / device / hardware. Granite-provided licenses and software will be specified in the applicable Service Schedule or Service Order Document. (ii) Granite-provided CPE risk of loss shall pass to Customer upon shipment from origin. Shipments shall be performed at then standard common carrier rates for two-day standard shipping unless otherwise agreed between the Parties. Customer will be invoiced for all shipping costs. Customer's signature is required on delivery; Granite will use reasonable efforts to provide Customer with updates regarding common carrier delays. (iii) CPE provided by Granite on an MRC basis is and shall remain the property of Granite regardless of where installed within the Customer's service location(s), and shall not be considered a fixture or an addition to the land or the service location(s). At any time Granite may remove or change such CPE in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any such CPE or permit others to do so, and shall not use the CPE for any purpose other than that authorized by the Agreement. Customer shall maintain CPE provided by Granite on an MRC basis in good operating condition during the term of this Agreement; provided, however, that such maintenance shall be at Granite's expense only to the extent that it is related to and/or resulting from the ordinary and proper use of the CPE. Customer is responsible for damage to, or loss of, such CPE caused by its acts or omissions, and its noncompliance with this Agreement, or by fire, theft or other casualty at the service location(s), unless caused by the negligence or willful misconduct of Granite. Customer agrees not to take any action that would directly or indirectly impair Granite's title and/or property rights to the CPE, or expose Granite to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Subject to other terms and conditions herein, following the discontinuance of the Services to the service location(s), Granite retains the right to remove the CPE including, but not limited to, that portion of the CPE located within the service location(s). (iv) Customer agrees that the CPE will be used solely by Customer, only at the designated service location(s), and solely for the purpose(s) for which the CPE was intended unless Granite consents, in writing, to other use. Customer shall not sublease or sublet any CPE without Granite's written consent. (v) Granite does not warrant that the CPE provided by Granite will meet Customer's needs, perform at a particular speed, bandwidth or data throughput rate, or will be uninterrupted, error-free, or secure, or free of viruses, worms, disabling code or conditions, or the like.

## 2.6 Provisioning of Services.

(a) Customer, at its own expense, shall secure throughout the Service Term any easements, leases, licenses or other agreements necessary to allow Granite to use pathways into and in each building at which Customer's or its end user's premises is located, to the Demarcation Point. Such access rights shall grant to Granite the right, without the requirement of notice, to access such premises during business hours of each location and as otherwise reasonably requested by Granite to install, maintain, repair, replace and remove any and all equipment, cables or other devices Granite deems necessary to provide Services. Granite, its employees, contractors and/or agents shall have access to any facilities at Customer premises. Notwithstanding anything to the contrary herein, Granite shall have no liability for any delay or failure in its performance to the extent caused by any delay or failure of Customer (including, but not limited to, the failure to provide Granite prompt access) and/or caused by any notice or access restrictions or requirements. Unless Customer engages Granite to provide specific additional services, Customer is responsible, at its sole cost and expense, for connecting to the Demarcation Point.

(b) Granite may reject any order for Services that is not in accordance with the provisions of this Agreement or if Granite is unable to provision such Services as ordered.

(c) Granite is not responsible for loss of income or time due to an order not being completed within the time frame desired, service outages, missed appointments, and/or trouble ticket dispatches. Granite is not responsible for any delays in provisioning or failures of Services related to inaccurate information provided by Customer and/or changes in Customer's network that are not communicated to Granite.

(d) Should a new order be placed for a Service, a Provider may find it necessary to migrate services from Customer's former service provider in order to complete Customer's installation. This may occur without warning during the course of Customer's order. Customer is ultimately responsible for identifying this prior to initial order placement as well as handling any outstanding contractual obligations with Customer's former service provider.

(e) An individual, who is authorized and has the capacity to act on behalf of Customer, must be present to grant access so that the technician can complete his/her work. In the event that there is no such individual present at the scheduled time of the technician visit, and notification was not provided to Granite at least two (2) business days in advance, there may be a missed appointment fee or other similar charge. Similarly, a no access fee may be charged if a technician is denied access to the Demarcation Point due to a locked facility, or by the actions of third parties. If Granite dispatches a field technician to Customer location and the problem is caused by (i) CPE or (ii) any acts or omissions of Customer or any of its end users, invitees, licensees, customers, agents or contractors, Customer will pay Granite for any and all associated time and materials at Granite's then standard rates.

(f) If Customer pre-authorizes inside wiring during order placement, Customer is financially responsible for any and all applicable fees for such inside wiring services. If Customer chooses not to pre-authorize inside wiring work, and it is determined that additional wiring is needed to complete Customer's installation, it is Customer's responsibility to ensure the necessary wiring is completed by Customer or a third party vendor.

(g) If any services are performed by any other vendor, Granite is not responsible for, and assumes no liability and provides no warranties for, such services.

(h) Any technical support that Granite provides is limited to the connectivity of Services. Support for other applications and uses is not provided or implied unless it is a specifically contracted service.

2.7 Maintenance. Granite and its Provider(s) may interrupt Services for maintenance and other operational reasons, and except as otherwise provided herein, Customer shall not be entitled to receive any remuneration for such interruptions. Granite will use reasonable efforts to notify Customer when possible. Providers may perform emergency maintenance on Services in their respective sole and absolute discretion, with or without prior notice to Granite or Customer, to preserve the overall integrity of such Provider's network. Granite will use commercially reasonable efforts to notify Customer as soon as reasonably practicable of any such emergency maintenance activity that materially and adversely impacts any Services.

## 2.8 Modifications to Services; Service Moves.

(a) Granite may modify from time to time, and in any way, without limitation, any data, software, or hardware used to provide Customer with Services. Certain changes to Services may affect the operation of Customer's personalized applications and content. While Granite will work with Customer to provide proper notice of such changes, Customer is solely responsible, and Granite is not liable, for any and all such personalized applications and content, except as expressly agreed to by Granite.

(b) In the event of a Services move (i.e., if Customer moves and has Services installed at the new location) or modification (i.e., Customer upgrades a Service at the same location), a new initial minimum Service Term will begin again from the Service Start Date at the new location. Additionally, in the event of a switch from another service provider to Granite, the initial minimum Service Term will begin from the date that the service provider switch is completed. Requests to have Customer's Services changed with a specific order to an alternate service provider at any time during an active Service Term may be subject to a fee to cover Granite's provisioning expenses.

2.9 Service Level Agreements. Service Level Agreements ("SLAs") for Services, if any, are determined on an individual case basis and will be set forth in the Additional Terms of Service or a separate SLA document (as set forth at [www.granitenet.com/Legal](http://www.granitenet.com/Legal) or otherwise communicated to Customer at the time it makes its service order).

2.10 Fraud, Abuse and/or Unauthorized Use of Services. The Parties agree that Granite is not responsible for any fraud, abuse and/or unauthorized use of Service(s) by Customer, its employees, end users, or any other third party. Customer shall not be excused from paying for Service(s), or any portion thereof, on the basis of fraud, abuse and/or unauthorized use of Service(s). In the event Granite discovers fraud, abuse and/or unauthorized use of Service(s), nothing contained herein shall prohibit Granite from taking any immediate action (without notice to Customer) that Granite deems to be reasonably necessary to prevent such fraud, abuse and/or unauthorized use of Service(s) from taking place including, without limitation, blocking or terminating Service(s), provided, that Granite {999997-009/00052706-1}

shall not be required under any circumstances to take such action. Customer will defend and indemnify Granite, its employees, directors, officers and agents from and against any suit, proceeding or other claim, damages, costs and expenses brought by an entity (not a party to or an Affiliate of a party to this Agreement) that is caused by, arises from, or relates to fraud, abuse and/or unauthorized use of Service(s).

2.11 IP Addresses. Customer agrees that any IP address assignments and allocations from Granite are based on the address lending policy of American Registry for Internet Numbers and applicable agencies. It is an express condition of this Agreement, that the use of Services and the loan, assignment, and/or allocation of such IP addresses shall terminate, and the IP addresses shall be returned to Granite when this Agreement and/or any applicable Services expire or are terminated. Granite reserves the right to recover any address space due to inadequate utilization or an AUP violation.

### **3. Rates and Charges; Billing and Payment.**

#### **3.1 Rates and Charges.**

(a) Rates and Charges for Services are as set forth in the applicable Service Schedule, any Service Order Documents or as otherwise communicated to Customer at the time of ordering such Services and may vary depending on Service type, features, equipment and other costs to deliver the Service to Customer. Except as otherwise provided for in these General Terms of Service, any Additional Terms of Service or in any Service Order Documents, (i) the Rates and Charges for Services are the Rates and Charges applicable as of the Service Start Date of such specific Services and (ii) the Rates and Charges may be changed by Granite in its discretion, in accordance with Section 3.1(b). All Rates and Charges for the Services set forth in any preliminary quote are subject to final approval and acceptance by Granite. There will be a rebill fee (equal to the then-current charge assessed to similarly situated customers of Granite) applied on all Services ordered that are not ordered on Granite's wholesale platforms including, but not limited to, those Services not subject to any discount from the Provider and any Services that are rebilled by Granite for Customer. All additions to Services are recognized as non-refundable regardless of utilization by Customer.

(b) Products and services provided under a term agreement will be subject to adjustment after the term's expiration to Granite's then-standard monthly rates. Provided that Customer shall be given prior written notice, Granite may modify the Rates and Charges at any time for (i) new orders, (ii) Services subject to month-to-month Service Terms (including Services for which longer initial minimum Service Terms or any renewal Service Terms have expired) and/or (iii) Service features not essential to the underlying Service's operation. In addition, Granite reserves the right to modify the Rates and Charges during Services' initial minimum Service Terms or renewal Service Terms, provided that, before going into effect, Granite provides not less than thirty (30) days' prior written notice to Customer of same, and during the interim (i.e., between the notice and effective dates) Customer will have the opportunity to object to such modification in writing to Granite, and, upon receipt of Customer's written objection Granite and Customer shall work in good faith to resolve the disagreement. Subject to the foregoing, any continued use of Services after the modified Rates and Charges take effect shall be deemed acceptance of the new Rates and Charges.

#### **3.2 Billing; Payment.**

(a) Granite shall use commercially reasonable efforts to accurately and promptly bill Customer for the Rates and Charges applicable to Services and other related charges, including, without limitation, applicable surcharges and taxes. Billing will commence on the Effective Date. Customer will be financially responsible for all service time thereafter unless Granite is notified within a timely manner (meaning within five (5) days of the Service Start Date) of an outstanding issue which Granite deems to justify service credit. Granite shall invoice Customer monthly in advance for all monthly recurring charges for Services to be provided during the following month, and shall invoice all other charges, including but not limited to, non-recurring charges and usage charges, if any, in arrears. All payments received by Granite will be applied to the oldest unpaid invoice in relation to Customer's account. Payments will be due upon receipt of Customer's invoice. Beginning thirty (30) days following the date of Granite's invoice, Granite may charge late fees to Customer on the amount of the outstanding balance owed by Customer to Granite in the amount up to or the highest amount allowed by applicable law. No Customer requirements to process payments, e.g., Granite's completion of Customer or third-party documentation, {999997-009/00052706-1}

shall relieve, postpone or suspend Customer's obligation to adhere to the payment terms set forth herein. If a payment in any form is recovered or otherwise not paid by Customer's financial institution, there may be a returned payment fee. Acceptance of any late or partial payment (even if marked "paid in full" or with other words of similar effect) shall not waive any of Granite's rights to collect the full amount of Customer's charges for the Services. Granite charges for Services continuously regardless of whether or not Customer is utilizing such Services because Granite and/or its Provider(s) continue to maintain Customer's connection, reserve IP space, accept mail and/or keep files Customer has saved in Customer's account on Granite's servers (if applicable) and this also applies to accounts that are suspended (denied access) due to non-payment.

(b) All Rates and Charges assume that Customer pays Granite using a form of payment that will not result in Granite incurring additional fees and/or charges from any third party (i.e., a discount for cash payment). To the extent that does not occur, and Granite incurs any additional fees and/or charges, including but not limited to additional fees and/or charges from third parties that a Customer uses for invoice processing, Granite reserves the right to charge Customer Rates and Charges higher than those quoted in the applicable Service Schedule, any Service Order Documents or as otherwise communicated to Customer at the time of ordering such Services.

(c) If Customer fails to pay any undisputed and overdue amount within ten (10) days from the date of any written notice from Granite requesting such payment, Customer shall also pay all of Granite's reasonable costs of collection, including but not limited to reasonable attorney's fees. In the event Customer's account is in arrears, Granite may, upon written notice to Customer, suspend its provision of Services under this Agreement in whole or in part until Customer's account has been brought current.

3.3 Billing Disputes. Customer may dispute in good faith any charge by contacting a Granite account representative in writing or by e-mail of the specific nature and amount of the dispute ("Billing Dispute Notification"). Customer must pay all amounts, whether or not in dispute, by the due date. All claims must be submitted to Granite within ninety (90) days of the date of Granite's invoice for the Services for which charges are disputed, or the billing shall be deemed correct and Customer waives all rights to file a claim. Upon receipt of a Billing Dispute Notification, Granite shall promptly commence an investigation of the dispute and will use commercially reasonable efforts to resolve such dispute within thirty (30) days. No interest, credits or penalties will apply with respect to the disputed amounts during the pendency of the dispute. If Granite determines that Customer is entitled to a credit, Customer shall receive a credit on Customer's next invoice. Notwithstanding the foregoing, Section 3.2(c) shall also apply to any amounts which Customer disputes in good faith that are ultimately determined to have been due and payable to Granite.

### 3.4 Taxes and Other Charges.

(a) Customer will pay to Granite all federal, state and local taxes (including sales, use and excise taxes) that are measured directly by the payments made by Customer to Granite under this Agreement and are required to be collected by Granite, provided, however, that in no event shall Customer be obligated to pay any of Granite's franchise taxes, taxes based on Granite's net income, business and license taxes, property taxes for which Customer is exempted by law, or any penalties associated with Granite's failure to properly remit taxes.

(b) Certain other rates, charges, surcharges and/or fees may apply, as provided for by tariff, the FCC, other governmental entities, applicable law or other regulation or requirements. Customer shall be responsible for payment of all surcharges, regulatory fees and/or programs, however designated, imposed on or based upon the provision, sale or use of Services, and for certain other variable expenses incurred by Granite as a result of local, state or federal regulation, including, its payments to government entities and agents and Provider(s) and its internal costs of compliance associated with taxes and regulatory fees and programs including, but not limited to, 911 access, universal service programs, franchise fees, FCC and state regulatory fees, and/or utility, telecommunications, excise or other taxes not recovered by Customer through a separate line item. Granite may charge a single, separate surcharge because of the fluctuation of such aforementioned regulatory surcharges. Customer agrees to pay all invoiced regulatory surcharges.

(c) Additional fees may apply, in the event that Customer elects or uses additional Services or for ancillary or Service-related orders (for example, installation fees or move, add or Service change fees).

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### 3.5 Termination and Cancellations Fees.

(a) Customer agrees that damages for termination or cancellation of Services are difficult or impossible to ascertain and the damages set forth in the Agreement including, without limitation, the Early Termination Fees or cancellation fees, are intended to serve as liquidated damages and not a penalty and such fees and charges are reasonable.

(b) In the event that Customer cancels all or any portion of any Services after ordering such Services but prior to the acceptance of such order by Provider(s), Customer may be subject to cancellation fees or charges (which fees or charges may vary by specific Service depending on Provider(s)).

(c) In the event that Customer cancels or terminates all or any portion of any Services (including CPE) after ordering such Services and Provider(s)' acceptance of such order, but prior to the Service Start Date, then Customer shall pay to Granite, immediately upon demand, (i) three (3) times the monthly recurring charges for such Services, plus (ii) any and all actual expenses incurred by Granite to purchase, activate, install and/or terminate Services, including, but not limited to, any additional early termination/cancellation penalties as assessed by Provider(s)(which fees or charges may vary by specific Service depending on Provider(s)). A cancellation fee may be charged if a scheduled cutover/installation is cancelled with less than 24 hours' notice

(d) Granite may charge a cancellation fee to Customer if a scheduled loop drop, cutover and/or installation is cancelled with less than 24 hours' notice.

(e) After Granite provides thirty (30) days' prior notice to Customer of specific site requirements for Services to be provided, if Customer does not (a) meet said requirements by the end of such 30-day period; or (b) provide Granite with a reasonable date (meaning within 15 days after the end of such 30-day period) upon which such site requirements will be met by Customer, then Granite may cancel the order for the Services and charge a cancellation fee to Customer, then Customer shall pay to Granite, immediately upon demand, any and all actual expenses incurred by Granite to order, survey, engineer, activate, install (including construction charges) and/or terminate Services, including, but not limited to, any additional early termination/cancellation penalties as assessed by Provider(s).

3.6 Credit Terms. Granite reserves the right to perform a credit review and/or approval. Granite reserves the right, at its sole discretion, to (a) either decline or cancel a service order without liability to either Party or (b) require appropriate advance deposits, prepayment of certain charges and/or other security for Services.

## 4. Term and Termination.

4.1 Term. The term of this Agreement shall begin on the Effective Date and continue until terminated as set forth herein (the "Term").

### 4.2 Termination.

(a) Either Party may terminate this Agreement or specific Services upon thirty (30) days' written notice to the other Party. Notwithstanding the foregoing, Early Termination Fees (as set forth in these General Terms of Service or any Additional Terms of Service) shall apply to certain Services having an initial minimum Service Term that are terminated for any reason prior to the end of the initial minimum Service Term or any renewal Service Term selected by Customer.

(b) It is Customer's responsibility to notify Granite of any cancellation or termination of Services in writing and to comply with any commercially-reasonable process reasonably required by Granite to complete said cancellation or termination, e.g., completing forms. All disconnection requests will be processed on the date the request is received. This applies to both total account and specific Service terminations. Returning hardware at the completion of the Service Term, or cessation of payment or use of Services does not constitute notification of cancellation. If Customer does not provide notice of Customer's intent not to renew Services after the end of the initial minimum Service Term, Services shall renew and continue in accordance with these General Terms of Service, any Additional Terms of Service and/or Service Schedules, and continue to be subject to this {999997-009/00052706-1}

Agreement, including, without limitation, application of Rates and Charges. The terminated Services may be subject to Early Termination Fees and such Early Termination Fees will be applied and due at that time. Upon termination, Services will be discontinued and all files will be removed from Granite's servers (if applicable) without further notice.

(c) To the extent permitted by law, Granite reserves the right to terminate this Agreement and/or modify payment terms without notice in the event any one or more of the following occur; (i) Customer is adjudged insolvent; (ii) voluntary or involuntary bankruptcy proceedings commence against Customer; (iii) a court of competent jurisdiction appoints, or Customer makes an assignment of substantially all of its assets to a custodian; or (iv) if Granite determines, in its sole discretion, that there is a material change to Customer's financial stability. Furthermore, Granite may, at its sole discretion, terminate Service(s) on Granite's rebill platform in the event of non-payment or occurrence of the events described in Section 4(c)(i)-(iv).

(d) If Customer wishes to reinstate any Services with Granite, Customer may be required, at Granite's sole and absolute discretion, to pay (i) all outstanding charges from the inception of Customer's Service continuously to the current month of reinstatement, which is always paid in advance; (ii) a cash deposit, standby letter of credit and/or other security; and/or (iii) a reinstatement fee. Moreover, if Customer wishes to reinstate Customer's account, Customer will be subject to any and all installation and setup charges in effect at the time of reinstatement order placement, as well as any pertinent outstanding charges from Customer's former account.

4.3 Suspension of Services. Without prejudice to its other rights, Granite shall have the right to suspend Services immediately by written notice to Customer if Customer engages in criminal or willful tortious misconduct with regard to the Services, carries out any fraudulent activity with the intention of misleading or obtaining benefit from Granite and/or violates the AUP. Services which are within an active Service Term that are terminated due to violation of this Agreement including, without limitation, the AUP, will be assessed Early Termination Fees.

4.4 Survival. Notwithstanding anything to the contrary contained herein, any term or provision which by its nature extends beyond expiration or termination of the Agreement shall survive any such expiration or termination and remain in effect until fulfilled and shall apply to respective successors and assigns.

4.5 Service Terms. Unless otherwise provided for in these General Terms of Service, any applicable Additional Terms of Service or any Service Order Documents, all Services shall have a Service Term of month to month and, unless otherwise terminated in accordance with the Agreement, shall automatically renew on a month to month basis.

## 5. Insurance.

5.1 Coverages. Except in cases where Granite provides a certificate of insurance (a.k.a., "COI") showing different kinds and amounts, Granite shall maintain from and after the Effective Date, and until the expiration or termination of this Agreement, insurance of the following kinds and amounts (either under the existing policies or by applying additional coverage available under any umbrella liability policy to the existing policies) or in the amounts required by law, whichever is greater: (a) Worker's Compensation and Employer's Liability Insurance affording (i) protection under the Worker's Compensation Law of the state in which work is to be performed or containing an all-states endorsement and (ii) Employer's Liability protection subject to a limit of not less than \$1,000,000; (b) Commercial General Liability Insurance written on an occurrence basis in an amount not less than \$1,000,000 per each occurrence, which insurance shall include (i) products and completed operations liability coverage and (ii) contractual liability coverage for the liabilities assumed by Granite under this Agreement (upon written request from Customer, the commercial general liability insurance shall name Customer as an additional insured); (c) Automobile Liability Insurance for hired and non-owned vehicles in an amount not less than \$1,000,000 combined single limit; and (d) Professional Errors and Omissions Liability Insurance with a limit of \$1,000,000.

5.2 Additional Terms. All insurance policies required to be maintained under Section 5.1 shall be procured from insurance companies rated at least A-VIII or better by the then current edition of Best's Insurance Reports published by A.M. Best Co. Granite shall provide Customer with certificates of insurance evidencing the [999997-009/00052706-1]



required coverage concurrently with the Effective Date and upon each renewal of such policies thereafter, as reasonably requested by Customer. This Section 5 shall in no way affect the indemnification, limitation of liability, remedy and/or warranty provisions set forth in this Agreement.

## **6. Indemnification.**

6.1 Mutual Indemnification. Granite and Customer shall indemnify and hold each other, their Affiliates and their respective shareholders, members, managers, officers, directors, partners, principals, employees, agents, successors and permitted assigns harmless against Damages arising out of, relating to, or resulting from third party claims resulting from injury to or death of any person (including injury to or death of their respective subcontractors or employees) or loss of or damage to real property or tangible personal property, to the extent that such Damages were proximately caused by the negligent act or omission or the willful or intentional misconduct of the Party from whom indemnity is sought or its agents, employees or subcontractors, in connection with the provision or use of Services. Granite shall not be liable under this Section 6.1 for Damages caused by services or equipment that is not furnished by Granite under this Agreement.

6.2 Limitations. Granite shall not be liable for, and Customer indemnifies and holds Granite harmless from, any and all Damages arising out of, relating to or resulting from (a) the content of communications transmitted by Customer in its use of the Services, including but not limited to libel, slander and/or invasion of privacy and/or (b) allegations that Customer or its end user have infringed the intellectual property rights of any person or entity.

6.3 Procedures. The indemnified Party under this Section 6: (a) must notify the indemnifying Party in writing promptly upon learning of any claim, suit or other action for which indemnification may be sought, provided, that failure to do so shall have no effect except to the extent the indemnifying Party is prejudiced thereby; (b) shall have the right to participate in such defense or settlement with its own counsel and at its sole expense, but the indemnifying Party shall have control of the defense or settlement, provided, that in the event that any settlement materially and adversely affects the price or performance of Services in use by Customer and Granite is unable to provide to Customer, at no additional cost to Customer, alternative Services that meet Customer's reasonable business needs, Customer shall be permitted to terminate the affected Service without liability upon thirty (30) days' prior written notice to Granite; and (c) shall reasonably cooperate with the defense, at the indemnifying Party's expense.

## **7. Limitation of Liability; Warranties.**

### **7.1 EXCLUSIONS.**

(A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXPECTANCY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, DELIVERY OF SERVICES, OR DELAY IN INSTALLATION OF SERVICES. THE LIMITATIONS OF LIABILITY SET FORTH IN THESE GENERAL TERMS OF SERVICE SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE AND WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THESE GENERAL TERMS OF SERVICE.

(B) GRANITE SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (I) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (II) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES; (III) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (IV) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

(C) GRANITE IS NOT RESPONSIBLE FOR ANY INFORMATION OR CONTENT TRANSMITTED OVER SERVICES. GRANITE DENIES ANY RESPONSIBILITY FOR THE ACCURACY OR QUALITY OF INFORMATION OBTAINED BY CUSTOMER OR ANY OF ITS END USERS, INVITEES, LICENSEES, CUSTOMERS, AGENTS OR CONTRACTORS FROM, OR THAT IS TRANSMITTED OVER SERVICES.

7.2 LIMITATION OF LIABILITY. A PARTY'S ENTIRE LIABILITY, AND THE OTHER PARTY'S EXCLUSIVE MONETARY REMEDIES, FOR ANY DAMAGES CAUSED BY ANY SERVICE DEFECT OR FAILURE (SUBJECT TO SLAs FOR SPECIFIC SERVICES, IF ANY) OR FOR OTHER CLAIMS ARISING IN CONNECTION WITH ANY SERVICES OR OBLIGATIONS OF GRANITE UNDER THIS AGREEMENT SHALL BE AS SET FORTH BELOW:

(A) FOR BODILY INJURY OR DEATH TO ANY PERSON, OR DAMAGE TO REAL PROPERTY OR TANGIBLE PROPERTY NEGLIGENTLY CAUSED BY A PARTY OR ARISING OUT OF A PARTY'S WILLFUL ACTS OR OMISSIONS, OR DAMAGES ARISING FROM ANY BREACH OF SECTION 13 (CONFIDENTIAL INFORMATION), THE OTHER PARTY'S RIGHT TO PROVEN DIRECT DAMAGES; AND

(B) FOR LOSSES, DAMAGES, AND CLAIMS ARISING OUT OF THE DELIVERY OF SERVICES AND/OR PRODUCTS INCLUDING, BUT NOT LIMITED TO, DELAY IN THE INSTALLATION OF SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF SERVICES OR THE GRANITE EQUIPMENT SHALL BE LIMITED TO A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT, IF ANY (PROVIDED, IN NO EVENT SHALL SUCH SERVICE CREDIT EXCEED THE AMOUNT OF CREDITS RECEIVED FROM PROVIDER(S)) AND ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED HEREIN OR THE APPLICABLE SERVICE LEVEL AGREEMENT; AND

(C) FOR DAMAGES OTHER THAN THOSE SET FORTH IN SECTIONS 7.2(A) AND 7.2(B) AND NOT OTHERWISE EXCLUDED UNDER THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED THE LESSER OF (I) \$1,000,000 OR (II) THE ACTUAL BILLINGS FOR SERVICES UNDER THIS AGREEMENT FOR THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT FOR THE SPECIFIC SERVICES GIVING RISE TO SUCH CLAIM FOR DAMAGES.

7.3 EXCEPTIONS TO LIMITATION. NOTHING SET FORTH IN THIS SECTION 7 SHALL LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ALL CHARGES PROPERLY DUE GRANITE OR GRANITE'S RESPONSIBILITY FOR ANY CREDITS (INCLUDING SERVICE CREDITS, IF ANY) OR REFUNDS OF OVERCHARGES BY GRANITE UNDER THIS AGREEMENT.

7.4 Warranties.

(a) Granite warrants that the Services will be performed in a professional manner pursuant to generally accepted industry standards and practices for similar Services.

(b)

**\*\*\*EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE GENERAL TERMS OF SERVICE, ANY ADDITIONAL TERMS OF SERVICE OR THE SLAs FOR A SERVICE, IF ANY, GRANITE DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY (I) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (II) ARISING BY USAGE OR TRADE PRACTICES, COURSE OF DEALING OR COURSE OF PERFORMANCE; (III) THAT THE SERVICES ARE ERROR FREE, UNINTERRUPTED OR SECURE FROM THIRD PARTY ATTACK; (IV) THAT SERVICES ARE FREE FROM DEFECTS, FIT TO BE SOLD, WILL PERFORM IN A PARTICULAR MANNER OR SPEED OR TO A PARTICULAR STANDARD OR ANY QUALITY OF SERVICE. GRANITE MAKES NO OTHER, AND SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY OTHER, IMPLIED REPRESENTATIONS, WARRANTIES OR GUARANTEES\*\*\***

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(c) Granite is not ultimately responsible for the quality and/or performance of Customer owned or provided software or hardware, including without limitation, private branch exchange, interface equipment, personal computer and/or any modifications Customer makes to any equipment supplied through Granite. Granite is not responsible for failings in individual operating systems and custom configuration of operating systems, operating system components, software, hardware, and/or inside wiring. Granite agrees to use commercially reasonable efforts to provide an equitable solution to Customer. Any mention of non-Granite products or services by Granite and its employees or agents is for information purposes only and does not constitute an endorsement or recommendation by Granite. Granite disclaims any and all liabilities for any representation or warranty made by the vendors of such non-Granite products or services.

7.5 **Third Parties.** No contract, subcontract, or other agreement entered into by either Party with any third party in connection with the Services (including any such agreement assigned by Customer to Granite) shall provide for any indemnity, guarantee, assumption of liability and/or other obligation of/by the other Party to this Agreement with respect to such arrangements, except as consented to in writing by the other Party. This Agreement does not expressly or implicitly provide any third party (including Authorized Users) with any remedy, claim, liability, reimbursement, cause of action and/or other right or privilege. Customer and Granite intend that this Agreement shall not create any right or cause of action in or on behalf of any person or entity other than Customer or Granite.

7.6 **Other Matters.** For purposes of all remedies and limitations of liability set forth in this Agreement: (a) “Granite” and references to it as a “Party” means Granite, its Affiliates, and its and their employees, directors, officers, agents, representatives, subcontractors, Providers and suppliers and (b) “Customer” and references to it as a “Party” means Customer, its Affiliates, and Authorized Users, and its and their respective employees, directors, officers, agents, and representatives.

**8. Force Majeure.** Neither Party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by, or due to, an Act of God, fire, earthquake, flood, wind, water, the elements, geographic or climatic conditions, third party labor disputes, power failures, explosions, civil disturbances, riots, acts of terrorism, governmental actions or orders, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties or any cause beyond its reasonable control (a “Force Majeure”), provided, however, the foregoing shall not excuse a Party from its obligations to make payments when due under this Agreement. Nonperformance of Granite and/or its Provider(s) will be excused to the extent that performance is rendered impossible by a Force Majeure and shall suspend Granite’s and/or its Provider(s)’ obligations under this Agreement with respect to such Services until such Force Majeure ceases.

## **9. Governing Law; Jurisdiction; Arbitration.**

9.1 **Governing Law.** This Agreement, and all claims and disputes arising hereunder or related hereto, will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to choice of laws, rules, or principles.

9.2 **Jurisdiction; Waiver of Jury Trial.** The federal and state courts located in Boston, Massachusetts, and any courts authorized to hear appeals from such courts, shall be the only courts with jurisdiction and venue to hear disputes under the Agreement. Both Parties and their successors waive a trial by jury of any and all issues arising in any action or proceeding between the Parties hereto or their successors, under or connected with this Agreement, or any of its provisions.

### 9.3 **Arbitration.**

(a) The Parties agree that, subject to an exclusion for any and all actions for collection of amounts due Granite under this Agreement, any dispute, controversy or claim in any way arising out of or relating to this Agreement or the breach hereof, will be resolved by arbitration using one (1) arbitrator and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in effect in Boston, Massachusetts. The Parties further agree that in any arbitration proceeding, they may conduct reasonable discovery pursuant to the arbitration rules, that the laws set forth in Section 9.1 shall be the governing law and any arbitration {999997-009/00052706-1}

award or judgment rendered by the arbitrator will be enforceable in any court set forth in Section 9.2. Any arbitration under this Agreement will be held in Boston, Massachusetts.

(b) Notwithstanding anything to the contrary set forth in Section 9.3(a), the Parties acknowledge and agree that any breach or threatened breach of this Agreement, including, without limitation, Section 13 is likely to cause the non-breaching Party irreparable harm for which money damages may not be an appropriate or sufficient remedy. Each Party therefore agrees that the other Party is entitled to receive injunctive relief or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy is not the exclusive remedy for any such breach or threatened breach, but is in addition to all other rights and remedies available at law or in equity.

**10. Notice.** Notices from a Party concerning this Agreement must be written and delivered to the other Party at the address shown below (i) in person, (ii) by certified mail, return receipt requested, or (iii) by traceable overnight delivery. Notice will be effective upon delivery to the address shown below:

If to Granite: Granite Telecommunications, LLC  
100 Newport Avenue Ext.  
Quincy, MA 02171  
Attention: Legal Department

If to Customer: To the mailing/billing address set forth on  
Service Order Documents or as otherwise specifically  
provided by Customer to Granite

Notwithstanding the foregoing, notices with respect to the day to day use of Services by Customer may be communicated via fax or email, in accordance with Granite's policies and procedures as communicated to Customer from time to time.

**11. Independent Contractor; Work on Customer Premises.**

11.1 Relationship of the Parties. Granite's relationship to Customer in performing this Agreement is that of an independent contractor. The personnel performing services under this Agreement shall at all times be under Granite's exclusive direction and control and shall be employees or subcontractors of Granite and not Customer. Granite shall pay all wages, salaries, benefits and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them relating to social security, income tax withholding, unemployment compensation, workers' compensation, and similar matters. Granite acknowledges and agrees that Granite is solely responsible to, and shall, collect, pay and withhold all federal, state or local employment taxes, including, but not limited to, income tax withholding, unemployment taxes and social security contributions for Granite's personnel, and that Customer shall have no obligation or liability with respect thereto. Any and all such taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Agreement will be paid or withheld by Granite or, if assessed against and paid by Customer, will be reimbursed by Granite upon demand by Customer.

11.2 Granite's Employees.

(a) Granite's employees, agents and subcontractors shall, whenever on Customer's premises, obey all reasonable instructions and security procedures and any other reasonable processes, policies, standards, procedures and directions issued by Customer.

(b) Granite shall require its employees to satisfy a commercially reasonable background investigation, which may consist of any or all of the following: confirmation of identity and personal information, social security verification, verification of all education beyond high school, credit report, employment verification and/or criminal record searches.

**12. Records and Audit Rights.** Granite agrees to maintain accurate business records, books and account information relating to the Services purchased by Customer under this Agreement, including records relating to {999997-009/00052706-1}

shipping, billing and payments, and to retain the same for a period of at least three (3) years from the date of the last invoice for the applicable Service or for such longer periods as required by applicable law.

### **13. Confidentiality and Proprietary Information.**

13.1 Confidentiality. Any and all information concerning the businesses of either Party provided by disclosing Party to the other Party, specifically including but not limited to pricing and other terms of the relationship between the Parties, including the terms contained this Agreement, whether or not labeled as “confidential,” “proprietary” or with words of similar effect, shall be considered confidential and proprietary by the other Party, and each Party hereby agrees that it will not permit the use or disclosure of any such information of the other Party, unless such use or disclosure is required by law or is authorized by such other Party. The restrictions on duplication and use of information in this Section shall not apply to any particular item of information that is (a) independently developed by the Party receiving such information without reference to such information; (b) is generally known to the public not through disclosure by the receiving Party; or (c) was received from a third party without any obligation or restriction on use or disclosure of such information. Notwithstanding anything to the contrary contained herein, the terms and conditions of any confidentiality agreement executed by the Parties prior to the Effective Date shall survive the Effective Date and shall remain in force and effect and are incorporated herein by reference.

13.2 Intellectual Property. Customer agrees that Granite owns and retains all right, title and interest in and to all of Granite’s owned or licensed intellectual property; including but not limited to, any and all derivative or collateral thereof (“Granite IP”), and acknowledges that Granite IP and the registration thereof are good, valid and enforceable in law and equity. Customer will not engage directly or indirectly in any activities which may contest, dispute or otherwise impair the right, title and interest of Granite in and to Granite IP. Granite shall own and retain all right, title and interest in and to all works, methods, processes, software, materials and know-how developed by Granite pursuant to or in connection with the Agreement (“Deliverables”). Granite retains all right, title and interest in and to any and all of its software, software development tools, know how, methodologies, processes, technologies or algorithms used in providing the Services which are based upon trade secrets or confidential or proprietary information of Granite or otherwise owned or licensed by Granite, whether or not incorporated into any Deliverables. Except as otherwise provided for herein, upon expiration or termination of the Agreement for any reason, any licenses shall cease. Customer is expressly prohibited from improving or modifying any Granite IP. Any such improvements or modifications made to Granite IP by or on behalf of Customer shall be a “work made for hire” and Customer shall assign all proprietary rights thereto, including copyrights, patents and trade secrets, to Granite. Customer agrees to execute any documents reasonably requested by Granite to secure and protect the proprietary rights and ownership thereof by Granite. Except with the consent of Granite, Customer shall not use any Granite trademark(s) (whether registered or common law marks), including, but not limited to, in advertising or marketing and shall not register any trademark(s) that is substantially similar to a trademark owned by Granite. Granite shall own and retain all right, title, and interest in and to the web portal website and all Granite documentation associated therewith and with the Services. To the extent, if any, provided by Granite as part of the Services, Customer agrees (a) not to reproduce, modify, translate, transform, decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine the source code of any Granite or other third party software or permit or authorize any third party to do so; and (b) that Granite provides, and Customer accepts, such software “as is” with no express or implied warranties, including merchantability, title, non-infringement or fitness for particular use. For purposes of this Section 13, “Granite” shall include Granite and its Affiliates.

### **14. Miscellaneous.**

14.1 Entire Agreement. This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior agreements, representations and understandings relating to the subject matter hereof.

14.2 Amendment. Except with respect to Granite tariffs, which are covered by notice requirements imposed by regulatory authorities and applicable law, unless notice of changes to these General Terms of Service, Additional Terms of Service or any other website terms and conditions are otherwise communicated to Customer (as set forth below), such changes will become effective and binding on Customer on the date such changes are posted on Granite’s website. No changes made by Granite shall serve to constitute a default or termination by Granite of the Agreement, nor shall such changes serve to be a basis for Customer’s termination of any Services or the {999997-009/00052706-1}

Agreement. Notice of such changes may be furnished by (a) a message included with the invoice; (b) a postcard, letter or other mailing; (c) calling and speaking to Customer's representatives; (d) e-mail; and/or (e) posting the changes on Granite's website.

14.3 Severability. If any provision of this Agreement or part of said provision is determined to be invalid or unenforceable, this Agreement will be construed as if it did not contain such provision or part thereof.

14.4 Waiver. The failure of a Party to insist upon strict performance of any provision of this Agreement in any one (1) or more instances will not be construed as a waiver or relinquishment of such provision and the same will remain in full force and effect.

14.5 Assignment. Neither Party may assign this Agreement, in whole or in part, without the other Party's written consent (which will not be unreasonably withheld, delayed and/or conditioned), provided, however, that no such consent is required in connection with (a) a merger, reorganization or sale of all, or substantially all, of such Party's assets or equity securities or (b) either Party's assignment of this Agreement in its entirety to an affiliate, provided, in the case of Customer, Customer shall remain liable for obligations under this Agreement unless specifically agreed to by Granite. Any attempt to assign this Agreement other than as permitted above is void. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

14.6 Work Product. This Agreement shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

14.7 English as a Language. Customer agrees to have this Agreement and all other contracts, invoices, correspondence and any and all other documents, agreements and writings in the English language. Le Client s'engage à avoir le compromis et tous autres contrats, les factures, toutes correspondances ainsi que tous autres documents ou accords écrits dans la langue anglaise. The Parties have specifically required that this Agreement and all related documents be drafted and executed in English.

14.8 Compliance with Laws. The Parties agree to comply in all material respects with the requirements of all laws, orders, writs, injunctions, regulations and decrees applicable to it or to its business or property. Customer acknowledges and agrees that certain voice services are subject to laws, rules and regulations which may require Customer action and the addition of certain features including but not limited to E911 dialing without a prefix, outbound notifications for E911 and dispatchable location registration. Customer acknowledges that it is fully responsible for compliance with end user laws, rules and regulations applicable to such Services as may be amended from time to time.

14.9 Additional Terms and Conditions. The Parties acknowledge and agree that applicable tariff(s), the Additional Terms of Service, and the AUP are incorporated herein by reference and are binding on the Parties. The Parties also acknowledge and agree that, in addition to the terms and conditions set forth in this Agreement, in any instance where Granite provides Services using a Provider(s) or as an agent or broker of another provider/carrier, additional terms and conditions as set forth by such Provider(s) or other underlying provider(s)/carrier(s) may apply.

Dated and effective as of May 23, 2022.

**Attachment A**  
**Definitions**

“Additional Terms of Service” means additional terms and conditions applicable to a specific service and/or product including as set forth at [www.granitenet.com/Legal](http://www.granitenet.com/Legal).

“Affiliate” means any entity directly or indirectly controlling, controlled by or under common control with a Party. For purposes of this definition, such control means the direct or indirect power to vote fifty percent (50%) or more of the securities or comparable interests for the election of directors or other managing persons of the controlled entity.

“Agreement” means these General Terms of Service, any Additional Terms of Service, Service Order Documents and/or other written document(s) approved by Granite, including any incorporated attachments, appendices, schedules and/or exhibits, provided to or executed by Customer, and any applicable tariffs, if any.

“AUP” means Granite’s Privacy, Moderation of Use and Acceptable Use Policies as set forth at [www.granitenet.com/Legal](http://www.granitenet.com/Legal).

“Authorized User” means (a) Customer or (b) any Affiliate of Customer that uses Services offered under the Agreement and provided that Customer agrees to remain financially responsible for such Affiliate’s payment obligations for such Services.

“Business Day” means Monday through Friday, excluding New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day as celebrated in the United States.

“Core Network” means Granite’s core network and associated equipment utilized to provide and deliver On-Net Services, whether owned, leased or otherwise obtained by Granite, between the points where traffic enters the core network equipment and the point where it leaves Granite’s core network equipment.

“CPE” means customer premises equipment.

“CSR” means customer service record.

“Damages” means, collectively, all injury, claims, damage, liability, loss, penalty, reasonable attorneys’ fees and costs, interest and expense incurred by a Party.

“Demarcation Point” means the network interface point where Granite and/or its Provider(s) hands off a Service to Customer, and which delineates where responsibility for the Parties’ respective networks, equipment and/or maintenance obligations begin and end.

“Early Termination Fee” means an amount charged to Customer by Granite if Customer terminates any specific Service prior to the end of such Services’ initial minimum Service Term or any renewal Service Term selected by Customer. The Parties agree that the Early Termination Fee is not a penalty but is liquidated damages.

“Effective Date” means the date on which Customer (a) submits a service order for Service; (b) executes a Service Order Document or other written document accepted by Granite; and/or (c) is receiving and using Services without Service Order Documents.

“General Terms of Service” means these General Terms and Conditions of Service applicable to all Services as set forth at [www.granitenet.com/Legal](http://www.granitenet.com/Legal).

“Internet Based Services” means all Services which utilize the Internet, including, without limitation, VoIP Services (including Hosted PBX Services, SIP Trunking Services and SIP PRI Services), MPLS Services and/or Data Aggregation Services.

“MRC” means monthly recurring charge.  
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“Off-Net Services” means any services and/or products provided by a third party, including Providers.

“On-Net Services” means the owned or leased facilities controlled by Granite, including the Core Network.

“Party” means Customer or Granite

“Parties” means together, Customer and Granite.

“Provider” means one of Granite’s underlying carriers, providers and/or vendors that provide Services which Granite provides to Customer.

“Provider Equipment” means telecommunications and data devices, apparatus and associated equipment owned, leased, or otherwise obtained by Granite and/or its Provider(s) to provide Services.

“Rates and Charges” means the rates, charges and/or fees for a Service, as modified from time to time as permitted under or required by the Agreement.

“Services” means any and all products and services offered by Granite, including, without limitation, local exchange telecommunications services, long distance service, broadband services, MPLS and/or private networking services, dedicated internet services, installation, network integration services and inside wiring services, equipment, and/or any other services and/or products that are provided by Granite to Customer.

“Service Order Document” means any quotes, service order forms and commercial account form(s) and letter(s) of agency/agreements relating to specific Services.

“Service Start Date” means the date that a specific Service(s) is made available (e.g., the date a circuit is delivered to a location), unless Customer within five (5) days notifies Granite of any service affecting deficiency in the specific Services. If no notification is received or if Customer fails to perform testing, Customer shall be deemed to have accepted the Service(s). In the event Customer notifies Granite of a service-affecting deficiency, Granite shall investigate and correct such deficiency within a reasonable time period. Granite shall begin billing for monthly recurring charges on the later of (i) on the date the Service is made available; or (ii) in the event of a valid, service-affecting deficiency, the day immediately following the date on which such deficiency was resolved.

“Service Term” means specific term of an individual circuit or service included as part of the Service.

“SLA” means service level agreement as set forth at [www.granitenet.com/Legal](http://www.granitenet.com/Legal).



**Attachment B**  
**Escalation Procedures<sup>1</sup>**

Despite Granite’s best efforts to maintain the most reliable level of service possible in the industry, service-affecting issues periodically arise. In those rare instances where Customer’s service may be affected, Customer’s trouble ticket is initiated to identify the issue.<sup>2</sup> Each trouble ticket has an assigned tracking number used to reference the issue and review status.

The Granite account team will determine the source of the issue, and, if the issue involves an interconnecting service provider, will initiate a repair request immediately through Granite’s electronic real-time repair interface with the provider. Granite’s account team will engage in ongoing coordination with interconnecting providers until the issue is resolved, and will provide frequent updates, including via emails and/or telephonic contact with Customer directly or through the Premier Account Manager, at Customer’s direction until the trouble is resolved. When the matter is resolved Granite representatives will also contact Customer to confirm resolution.

Granite responds to service-affecting issues within one (1) hour of discovery. Average service restoration times vary depending on the nature of the issue. Typical service issue resolution times are as set forth in the applicable Service Schedules, Additional Terms and Conditions of Service and/or SLAs.<sup>3</sup>

In the event that a more expedited resolution of service-affecting issues becomes critical, Granite will implement its established escalation procedures. Service-affecting issues may be escalated from the Premier Account Manager through to Granite’s President in extreme cases, based on the following guidelines:

1st level	Premier Account Manager – all tickets except emergency tickets (outages)
2nd level	Premier Account Supervisor – all emergency tickets and all tickets outstanding over 4 hours
3rd level	Asst. VP/Director of Premier Accounts – all emergency tickets outstanding over 1 hour and non-emergency tickets outstanding over 12 hours
4th level	SVP of Premier Accounts – all emergency tickets outstanding over 4 hours
5th level	Chief Operating Officer – all emergency tickets outstanding over 6 hours

In instances where service issues are less critical, the Premier Account Manager will maintain ongoing service issue tracking and provide weekly, bi-weekly or monthly account status conference calls and/or reports, based on Customer’s preferences. Issue reports include:

- Review status and complete documentation of all repair issues.
- Review status and complete documentation of uncompleted change orders.
- Review status and complete documentation of new location installs.

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<sup>1</sup> Repair times may vary for certain Services, see Additional Terms of Service as applicable.

<sup>2</sup> In addition to the account management team, Granite customer service representatives provide live support on the Help Desk, 866.847.5500, at Granite’s Quincy, Massachusetts headquarters, 24 hours a day, 7 days a week.

<sup>3</sup> Updates are given to Customer daily until issue is resolved.

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**Attachment C**  
**Internet Based Services – Additional Terms and Conditions of Service**

These Internet Based Services Additional Terms and Conditions of Service (these “Internet Terms of Service”) state important requirements regarding the use of Internet Based Services, provided by Granite and/or its affiliates through the Core Network and Granite’s contracts with its Provider(s), by Customer and any of its end users, invitees, licensees, customers, agents or contractors. These Internet Terms of Service state certain of Customer’s and Granite’s duties, obligations and rights. Customer should read them carefully as they contain important information. IF CUSTOMER DOES NOT AGREE TO THESE INTERNET TERMS OF SERVICE, CUSTOMER MAY NOT USE INTERNET BASED SERVICES AND CUSTOMER MUST TERMINATE USE OF SUCH INTERNET BASED SERVICES IMMEDIATELY. These Internet Terms of Service are in addition to the General Terms of Service.

The following additional terms and conditions are applicable to all Internet Based Services:

**1. Disclaimers.** Customer acknowledges and agrees that certain voice services are subject to certain laws, rules and regulations which may require Customer action and the addition of certain features including but not limited to E911 dialing without a pre-fix, outbound notifications for E911 and dispatchable location registration. Customer acknowledges that it is fully responsible for compliance with end user laws, rules and regulations applicable to such voice services as may be amended from time to time. Customer acknowledges and agrees that certain Internet Based Services, including, without limitation, VoIP Services, ordered through Granite may not operate in the same manner as traditional wireline phone service and that the following terms and conditions apply with respect to such Internet Based Services, including VoIP Services: (a) such Internet Based Services are designed only for use with a compatible PBX or similar advanced telephone system; (b) such Internet Based Services only support Granite’s local, intralata toll, interstate long distance and International voice services; (c) such Internet Based Services DO NOT support auto dialers, predictive dialers, telemarketing applications, modems, credit card process, heavy faxing or alarm lines and elevator lines (only POTS lines should be used for these purposes); (d) a qualified vendor must install the equipment and service at Customer’s sole expense and Granite will not process any order without a qualified vendor involved in the installation process; and (e) Granite requires that Customer provide a complete list of all phone numbers to be ported, any numbers omitted from the list may result in those numbers not being ported at the time of circuit turn-up. Granite will attempt to retrieve CSRs from the existing provider(s), but cannot guarantee its ability to obtain such CSRs. Customer agrees to provide Granite with complete CSRs, if requested.

**2. 911 Services.**

2.1 CUSTOMER ACKNOWLEDGES AND AGREES THAT SOME OF THE SERVICES PROVIDED BY GRANITE, INCLUDING VoIP SERVICES, ARE INTERNET BASED SERVICES AND THAT 911 SERVICES ON INTERNET BASED SERVICES ARE DIFFERENT THAN THAT OF TRADITIONAL WIRELINE SERVICE. FOR BASIC 911 OR E911 TO BE ACCURATELY ROUTED TO THE APPROPRIATE EMERGENCY RESPONDER, CUSTOMER MUST PROVIDE GRANITE WITH THE TELEPHONE NUMBER(S) ASSOCIATED WITH SUCH INTERNET BASED SERVICES FOR THE REGISTERED ADDRESS.

2.2 CUSTOMER ACKNOWLEDGES THAT INTERNET BASED SERVICES, INCLUDING, WITHOUT LIMITATION, VoIP SERVICES, MAY NOT SUPPORT BASIC 911 OR E911 DIALING IN THE SAME MANNER AS TRADITIONAL WIRELINE PHONE SERVICE. CUSTOMER AGREES TO INFORM THIRD PARTIES OF THE POTENTIAL COMPLICATIONS ARISING FROM BASIC 911 OR E911 DIALING. SPECIFICALLY, CUSTOMER ACKNOWLEDGES AND AGREES TO INFORM ALL EMPLOYEES, GUESTS, AND OTHER THIRD PERSONS WHO MAY USE SUCH INTERNET BASED SERVICES THAT BASIC 911 AND E911 SERVICES WILL NOT FUNCTION IN THE CASE OF A SERVICE FAILURE FOR ANY OF THE FOLLOWING REASONS: (I) POWER FAILURES; (II) SUSPENDED OR TERMINATED SERVICE; (III) SUSPENSION OF SERVICES DUE TO BILLING ISSUES; AND/OR (IV) ANY OTHER SERVICE OUTAGES NOT DESCRIBED HEREIN. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT FAILURE TO PROVIDE A CORRECT PHYSICAL ADDRESS IN THE REQUISITE FORMAT MAY CAUSE ALL BASIC 911 OR E911 CALLS TO BE ROUTED TO THE INCORRECT LOCAL EMERGENCY SERVICE PROVIDER. {999997-009/00052706-1}

FURTHERMORE, CUSTOMER RECOGNIZES THAT USE OF SUCH INTERNET BASED SERVICES FROM A LOCATION OTHER THAN THE LOCATION TO WHICH THE SERVICE WAS ORDERED, I.E., THE "REGISTERED ADDRESS," MAY RESULT IN BASIC 911 OR E911 CALLS BEING ROUTED TO THE INCORRECT LOCAL EMERGENCY SERVICE PROVIDER.

2.3 CUSTOMER IS REQUIRED TO REGISTER THE PHYSICAL LOCATION OF THEIR EQUIPMENT (I.E., IP PHONE, SOFTPHONE, DIGITAL TELEPHONE ADAPTER OR VIDEOPHONE, ETC.) WITH GRANITE AND AGREES TO UPDATE, AND PROVIDE PRIOR WRITTEN NOTICE TO GRANITE OF THE LOCATION OF SUCH EQUIPMENT WHENEVER THE PHYSICAL LOCATION OF SERVICE FOR A PARTICULAR TELEPHONE NUMBER CHANGES.

2.4 CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER GRANITE, ITS PROVIDERS, NOR ANY OTHER THIRD PARTIES INVOLVED IN THE ROUTING, HANDLING, DELIVERY, OR ANSWERING OF EMERGENCY SERVICES OR IN RESPONDING TO EMERGENCY CALLS, NOR THEIR RESPECTIVE MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, LOSS, FINE, PENALTY OR COST (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION ARISING FROM OR RELATING TO THE PROVISION OF ALL TYPES OF EMERGENCY SERVICES TO CUSTOMER. CUSTOMER FURTHER AGREES AND ACKNOWLEDGES THAT CUSTOMER IS INDEMNIFYING AND HOLDING HARMLESS GRANITE FROM ANY CLAIM OR ACTION FOR ANY CALLER PLACING SUCH A CALL WITHOUT REGARD TO WHETHER THE CALLER IS AN EMPLOYEE OF CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES TO HOLD HARMLESS AND INDEMNIFY GRANITE FROM ANY CLAIM OR ACTION, ARISING OUT OF OR RELATING TO, MISROUTES OF ANY 911 CALLS, OR WHETHER LOCAL EMERGENCY RESPONSE CENTERS OR NATIONAL EMERGENCY CALLING CENTERS ANSWER A 911 CALL OR HOW THE 911 CALLS ARE HANDLED BY ANY EMERGENCY OPERATOR INCLUDING OPERATORS OF THE NATIONAL CALL CENTER. THE LIMITATIONS SET FORTH HEREIN APPLY TO ALL CLAIMS REGARDLESS OF WHETHER THEY ARE BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND/OR ANY OTHER THEORIES OF LIABILITY.

**3. Alarm Systems.** TO THE EXTENT THAT GRANITE PROVIDES INTERNET-BASED SERVICES WHICH CUSTOMER UTILIZES FOR TRANSMISSION OF ALARM SYSTEM SIGNALS, CUSTOMER ACKNOWLEDGES THAT GRANITE IS NOT RESPONSIBLE FOR THE FUNCTIONALITY OF SUCH ALARM SYSTEMS AND SIGNALS. CUSTOMER UNDERSTANDS THAT INTERNET-BASED SERVICES ARE NOT INFALLIBLE. CUSTOMER SPECIFICALLY ACKNOWLEDGES THAT GRANITE DOES NOT REPRESENT OR WARRANT THAT THE TRANSMISSION OF ALARM SIGNALS WILL NOT BE INTERRUPTED, CIRCUMVENTED OR COMPROMISED. IF INTERNET BASED SERVICES ARE NOT OPERATIVE, NO ALARM SIGNALS CAN BE RECEIVED BY THE MONITORING STATION. CUSTOMER UNDERSTANDS THAT INTERNET-BASED SERVICES MAY BE IMPAIRED OR INTERRUPTED BY ATMOSPHERIC CONDITIONS, INCLUDING ELECTRICAL STORMS, POWER FAILURES OR OTHER CONDITIONS AND EVENTS BEYOND GRANITE'S CONTROL. THE USE OF INTERNET-BASED SERVICES MAY PREVENT FROM THE TRANSMISSION OF ALARM SIGNALS AT ANY TIME, AND/OR INTERFERE WITH THE TELEPHONE LINE-SEIZURE FEATURES OF CUSTOMER'S ALARM SYSTEM. IN THE EVENT CUSTOMER ELECTS TO USE INTERNET-BASED SERVICES FOR ALARM LINES; CUSTOMER IS RESPONSIBLE FOR HAVING THESE SERVICES TESTED BY AN AUTHORIZED ALARM INSPECTION COMPANY TO ENSURE SIGNAL TRANSMISSION FEATURES ARE OPERATIONAL. THESE FEATURES INCLUDE BUT ARE NOT LIMITED TO PROPER FUNCTIONING OF LINE SEIZURE AND THE SUCCESSFUL TRANSMISSION OF SIGNALS TO THE MONITORING STATION. CUSTOMER ACCEPTS FULL RESPONSIBILITY FOR ALARM SYSTEM COMPLIANCE WITH THE AUTHORITY HAVING JURISDICTION.