

# AEON, INC

## DEDICATED SERVICES MASTER AGREEMENT

This Dedicated Services Agreement is made by and between AEON, INC (AEON, INC), a Connecticut Corporation with principal place of business located at One Barnes Park South, Wallingford, Connecticut 06492 and \_\_\_\_\_ (Customer) a \_\_\_\_\_ corporation with offices at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

### 1. Agreement

1.1 Agreement. The agreement between the parties consists of this Dedicated Services Master Agreement ("Agreement") and any orders for Services submitted by Customer and accepted by AEON ("Service Order(s)"). Customer provides authorization to perform credit checks and investigate customer's bank and other credit references, where permitted by law. In the event of any conflict between these documents and unless otherwise explicitly agreed by AEON in writing, this Agreement will control.

1.2 Services. Services offered by AEON to Customer for purchase are described in the Service Orders executed by both parties (the "Services"). The Services may consist of services provided directly by AEON and also of services procured by AEON from third party suppliers.

#### 1.3 Relationship between the Parties.

The relationship of the parties with respect to this Agreement is that of Customer, Service Provider (AEON), and in some instances Authorized Sales Agent (Agent) selling services on behalf of Company. Nothing in this Agreement shall constitute a joint venture or partnership between Company and Agent nor does it empower the Agent to bind company contractually for services other than those expressly described herein.

### 2. Term

2.1. Term. This Agreement shall become effective on the date it is fully executed by both AEON and Customer and shall remain in effect until all service Orders associated with this agreement have been terminated.

2.2. Service Order Term. Notwithstanding anything else in this Agreement, each Service Order placed under this Agreement shall have its own term and the terms of this Agreement shall continue to govern the parties duties and rights with respect to such Service Order until the expiration of its term or any succeeding term or unless the Service Order is terminated as permitted by this Agreement.

2.3. Upon the expiration of any initial Service Order Term, the Service Order Term will automatically renew for succeeding twelve (12) month terms unless terminated by either party sixty (60) days prior to a

renewal date. Within the Renewal Term AEON reserves the right to modify the rates and charges or change certain components of the Services upon not less than 60 days prior written notice to Customer. If Customer does not consent to such rate adjustment, Customer may, upon thirty (30) days written notice to AEON, terminate the Service without penalty.

After Customer notice, it can take up to sixty days (60) for services to be disconnected during which time Customer shall be responsible for all charges incurred until the service has been disconnected with notification of such disconnect provided to Customer by AEON. In the event of a breach of contract by Customer during either initial Service Order Term or any subsequent Renewal Term; Customer is liable for a termination fee equal to the average of the three (3) previous month's invoice amounts for all locations multiplied by the number of months remaining under the service period. Additional termination charges may apply. Regardless of the type of service, Customer shall notify AEON of its intent to cancel such service. Upon cancellation of service, it is Customer's sole responsibility to arrange for initiation of service with a new service provider. Customer shall be responsible for all charges resulting from their lack of notification or failure to initiate service with a new provider.

### 3. Order and Provisioning Service

3.1. Service Orders. All Services shall be ordered on AEON's standard then current Service Order form which may be modified from time to time. By submitting any Service Order, Customer represents and warrants that the information provided by Customer on the Service Order forms is complete, true and accurate to the best of Customer's knowledge and that the Service Order form contains no misleading statements or omissions. AEON may accept or reject and Service Order submitted by Customer in its sole discretion.

3.2. Customer Changes to Service Orders. Any terms or conditions contained in a Service Order submitted by Customer or elsewhere that conflict with, are different from, or are in addition to, the terms and conditions in this Agreement are hereby objected to by AEON and shall not constitute part of this Agreement unless explicitly accepted by AEON in writing. No action by AEON (including, without limitation,

provision of Services to Customer pursuant to such Service Order) shall be construed as binding or estopping AEON with respect to such terms or conditions.

3.3.1 Provisioning Service. AEON will make commercially reasonable efforts to provision the ordered Services within industry standard provisioning intervals. AEON will notify Customer when the Service is available for activation. Customer will then have to schedule a desired activation date within (5) business days. If the Customer does not have an activation date scheduled within the (5) business days, then Customer will be deemed to have accepted the Service and billing will begin retroactive to the date Customer was notified of Service availability. The term selected on the service order is based on the Installation date not contract sign date or requested due date. In no event will the untimely installation or non-operation of Customer-provided facilities, services or equipment relieve Customer of its obligation to pay charges for the Services as provided in this Agreement.

3.3.2 Notification of Cancellation of Service Order:

Customer may be liable for cancellation charges (see Exhibit A) incurred by AEON from the associated carrier for provisioning costs. Those costs vary by carrier and service as well as to when the order is cancelled. Once the local access provider delivers tests and receives an acceptance of access from the carrier, the service is billable to AEON by the carrier. Should the customer request to cancel the service order after that event, the customer will then be liable for paying early termination charges which consist of the monthly recurring charge for the service to the end of the contract term.

3.3.3 AEON shall not be responsible for the cancellation of NON-AEON provided services.

3.4. Local Access Service. AEON may obtain "Local Access Service" for Customer in which case Customer shall execute AEON's standard form Letter of Agency authorizing AEON to interact directly with the Local Access Service provider(s) to obtain Local Access Service. Customer shall pay all charges for Local Access Service including, without limitation, monthly charges, nonrecurring charges and applicable termination/cancellation charges.

#### **4. Charges for Service**

4.1. Charges for Service. All charges for Services shall be those in effect as of the date that AEON accepts the Service Order. Customer is liable for all charges (recurring and nonrecurring) for Services provided both by AEON and by third parties.

4.2. Charge and Rate Conditions. All charges and rates are based on the following conditions and reservation of rights by AEON:

4.2.1. Unless AEON has been given advance notice the Services will not be resold by Customer to its end users or to other carriers or used as part of telecommunications network;

4.2.2 The rates quoted are based upon customer transmitting area code and exchange within the quoted State. If customer passes an ANI (Automatic Number Identification) from an alternate State that State default rate applies.

4.2.3. At least 80% of Customer's domestic originating traffic will be originated in a tandem owned and operated by a Regional Bell Operating Company ("RBOC") and subject to such RBOC's tariffed access charges; applies to voice long distance T1/PRI only, Not Local.

4.2.4. At least 80% of Customer's domestic terminating traffic will be terminated in tandem owned and operated by a Regional Bell Operating Company ("RBOC") and subject to such RBOC's tariffed access charges, applies to voice long distance T1/PRI only, Not Local.

4.2.5. AEON reserves the right to adjust your per minute rate on all non-RBOC originating minutes and non-RBOC terminating minutes that exceed the respective thresholds above or if the Services are resold by Customer or used in a telecommunications network. Customer agrees to pay any such adjusted rates and/or charges.

4.2.6. If 10% or more of your completed calls are equal to or less than 6 seconds in length (Short Duration Calls) during any Billing Cycle, an additional \$0.01 surcharge per Short Duration Call (Short Call Surcharge) may be assessed.

4.2.7. The Customer understands and agrees that minimum usage is required for Voice T1 circuits. The Service Order reflects the total minutes per circuit required before a minimum monthly fee will apply to each circuit.

4.2.8. AEON reserves the right, at any time upon thirty (30) days notice, to: (i) pass through to Customer, all or a portion of, any charges or surcharges, directly or indirectly, related to the action of any federal, state or governmental agency, or (ii) modify the rates, including any rate guarantees, and/or terms and conditions contained in this Agreement to reflect the impact of such surcharges. AEON may adjust its rates or charges, or impose additional rates and charges, in order to recover amounts it may be required by governmental or quasigovernmental

authorities to collect from, or pay to others, to support statutory or regulatory programs during the course of the Agreement.

4.3. Taxes. All charges for Service are net of Applicable Taxes (as defined below). Except for taxes based on AEON's net income, Customer will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Services (collectively "Applicable Taxes"). If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting AEON with a valid exemption certificate (in a form reasonably acceptable to AEON) and AEON will give effect to any such exemption prospectively. Customer agrees to indemnify, defend and hold harmless AEON from any liability or expense associated with Applicable Taxes.

4.4. Unauthorized Use. Customer expressly acknowledges and agrees that it shall make payment in full to AEON for all Services provided by AEON pursuant to this Agreement and properly billed to Customer. Whether authorized or not, AEON reserves the right, but is not required, to take any and all action it deems appropriate to prevent or terminate any fraud or abuse in connection with the Services.

## **5. Payment**

5.1. Billing Period. AEON will bill Customer for dedicated circuits or Services from the date of activation and (1) month in advance and for usage based Services in arrears on a monthly basis except for charges for installation and other nonrecurring charges that Customer shall pay in advance of any Service being provisioned by AEON.

5.2. Payment. All undisputed amounts stated on each invoice are due and payable no later than 30 days from date of invoice ("Due Date") in U.S. dollars in order for it not to be considered late.

5.3. Late Payment. If Customer fails to remit payment of all undisputed amounts by the Due Date, AEON, under this Agreement or at law, may charge Customer a late fee of the lesser of 1.5% per month or the maximum fee allowed by law of the unpaid balance which shall accrue from the Due Date of the invoice.

5.4. Adjustments. AEON may make billing adjustments for Services for one hundred and eighty (180) days after the date of the invoice for Services provided by AEON or for the greater of one hundred and eighty (180) days or any period allowed by law, government rule or regulation, or contract.

5.5. Billing Disputes. Customer shall submit all disputes to AEON within thirty (30) days of the date of the invoice in question. If Customer does not submit its dispute before the end of the thirty (30) day period, then Customer shall be deemed to have waived the right to dispute the invoice. Both parties will use good faith efforts to resolve the dispute within thirty (30) days from the Due Date of the invoice in question. If, at the end of the thirty (30) day period, AEON resolves the dispute against Customer, AEON will so notify Customer and all amounts that were the subject of the dispute shall be paid by Customer within two (2) business days of such notification. If AEON resolves the dispute in Customer's favor then AEON will so notify Customer and a credit for the disputed amounts shall be posted to the next invoice following such notice.

## **6. Credit and Assurance of Payment**

Maintenance of acceptable credit and adequate assurance of payment are conditions for the commencement and continuation provision of the Services by AEON. If at any time during a consecutive six month period the Customer is fifteen (15) days past due more than twice, AEON in its sole discretion may require a form of security for payment. Security will consist of a cash deposit or comparable Letter of Credit in an amount equal to two months of the Customer's average monthly service charges. Failure of Customer to provide a form of security requested by AEON within five (5) business days of AEON's request shall be a breach of Customer's obligations under this Agreement and shall entitle AEON to all remedies AEON would have for nonpayment of an undisputed amount due.

## **7. Suspension and Termination**

7.1. Of Service or Service Orders After Notice. Except for amounts properly disputed by Customer, if payment in full is not received from Customer on or before the Due Date, AEON shall have the right, after seven (7) business days notice, to (i) suspend or terminate Service to Customer and (ii) to immediately place any pending Service Orders on hold. Suspension or termination of Service or Service Orders shall not excuse Customer from its obligation to pay for the

Services. Notwithstanding any suspension or termination of Service, Customer shall remain liable for all charges incurred by AEON to its suppliers and other third parties for the provision or disconnection of Service to Customer. Notwithstanding the foregoing, AEON reserves the right to suspend or terminate Service immediately, without notice and without liability, if it reasonably believes that Customer is attempting to receive Service from AEON by fraudulent means or breach of Customer's warranty in Section 3.1.

7.2. Of this Agreement. Other than for nonpayment by Customer, either party may terminate this Agreement if the other is in default of any material obligation and such default has not been cured within thirty (30) calendar days following receipt of notice of such default. In the event of such a termination by Customer, termination of this Agreement and refund of any amount paid or billed for Services affected by the default will be Customer's sole remedies.

7.3. Early Termination Liability. If this Agreement or any Service is terminated by Customer before the expiration of the initial or any subsequent term, except as otherwise specifically allowed, or if AEON terminates this Agreement or any Service for Customer's uncured material breach, Customer shall pay to AEON an amount equal to the sum of (i) all billed and unbilled charges which Customer has not paid at the time of termination; (ii) the monthly recurring charge for each active Service Order at the time of termination multiplied by the number of months remaining in the applicable Service Order of the Service term and (iii) all charges incurred by AEON to its suppliers and other third parties for the provision or disconnection of Service to Customer.

## **8. Limitation of Liability; Disclaimer of Warranties**

IN THE EVENT OF ANY BREACH OF THIS AGREEMENT OR ANY FAILURE OF THE SERVICES WHATSOEVER, NEITHER AEON NOR ANY OF AEON'S SUPPLIERS SHALL BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF AEON OR THE SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AEON MAKES NO WARRANTY WITH RESPECT TO

THE SERVICE OR ITS PERFORMANCE UNDER THIS AGREEMENT.

WITH THE EXCEPTION OF THE SERVICE LEVEL AGREEMENT, IF ANY, AEON DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY SERVICE.

8.1. Indemnification. Each party will defend, indemnify and hold harmless the other and their respective officers, directors, employees, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement including without limitation, attorneys' fees and all reasonable costs and expenses of litigation arising out of, resulting from, or based upon, any complaint, claim, action, proceeding or suit to the extent that such claim arises out of the negligence or willful misconduct of the indemnifying party, its employees, agents, or contractors in connection with this Agreement or the provision of Services hereunder.

8.2. Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control. In the event AEON is unable to deliver Service as a result of force majeure, Customer shall not be obligated to pay AEON for the affected Service for so long as AEON is unable to deliver.

8.3. Proprietary Information. Each party agrees to maintain in strict confidence the terms and conditions, including pricing, contained in this Agreement or in any Service Order and all plans, designs, drawings, trade secrets, business and other proprietary information of the other party which is disclosed pursuant to this Agreement. Neither party shall disclose to any third party such confidential information without the express written consent of the other party. No obligation of confidentiality shall apply to disclosed information which the recipient (i) already possessed without obligation of confidentiality, or (ii) develops independently, or (iii) rightfully receives without obligation of confidentiality from a third party, or (iv) must disclose due to reasons prescribed by law or due to court or official orders. The recipient shall immediately notify the other party of any disclosures made pursuant to this Section 8.3.

8.4. Notices.

All notices to be sent to a party pursuant to this

Agreement shall be in writing and sent by (i) email effective when received, (ii) private courier, (iii) express mail priority next day delivery, or (iv) confirmed facsimile if sent during business hours. The address for notice for each party is:

AEON  
One Barnes Park South  
Wallingford, CT. 06492  
Attn: Contract Administration  
(P) 877-312-5564  
(F) 877-312-5544

For Customer if other than above:

Company:  
Address:  
City/State:  
Attn:  
Phone:  
Fax:

8.5. Waiver and Amendment. The failure of either party to enforce any provision hereof on one or more occasions shall not constitute the permanent waiver of such provision. Any addition, deletion or modification to this Agreement shall not be binding on either party except by written amendment executed by both parties.

8.6. Interpretation. No rule of construction requiring interpretation against the draftsman hereof shall apply in the interpretation of this Agreement.

8.7. Choice of Law. This Agreement shall, in all respects, be governed by and construed and enforced in accordance with the laws of the State of Connecticut, without respect to the state's conflict of laws provisions. For valuable consideration, both parties acknowledge and agree that any action to enforce or interpret the terms of this Agreement or relating to the Services to be provided by AEON shall be instituted and maintained only in New Haven County, Connecticut. Customer hereby consents to the jurisdiction and venue of such court and waives any objection to such jurisdiction and venue.

8.8. Integration. This Agreement and Service Orders supersede and merge all prior agreements, promises, understanding, statements, representations, warranties, indemnities and covenants and all inducements to the making of this Agreement whether written or oral or whether made before execution of this Agreement.

8.9. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.

8.10. Survival. No termination of this Agreement shall affect the rights or obligations of either party with respect to payment or with respect to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, including without limitation, indemnification, limitation of liability, confidentiality, governing law and forum selection.

8.11. Severability. If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court of body of competent jurisdiction, the provision shall be deemed modified to the minimum extent necessary to be valid.

8.12. Assignment. Neither party shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other, which shall not be unreasonably withheld. Customer must be current on all payments required by this Agreement before any assignment is approved by AEON. Any such assignment or transfer of Customer's rights or obligations without such consent shall constitute a default of a material obligation.

8.13. Costs and Attorneys' Fees. If a proceeding is brought for the enforcement of this Agreement or because of any alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement or the Services, the prevailing party shall be entitled to recover reasonable attorney's fees and other reasonable costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.

**9.1. Customer Premise Equipment:**

(if applicable) In the event AEON furnishes customer premise equipment of any sort ("CPE") to Customer for use in connection with the services, Customer shall, unless waived as an Incentive, pay the aggregate rental charge for each item of CPE for the full Term of this Agreement. Should Customer return any item of CPE ordered by Customer and that has been used or taken out of its box, Customer will pay AEON a Restocking charge.

AEON, through its employees or other repair personnel will provide maintenance as required to keep CPE in good operating condition as a result of Customer's normal use. Any manufacturer's warranties or maintenance contracts will be for the benefit of AEON. AEON reserves the right to substitute another type of CPE of similar functionality at its discretion. Any substituted CPE or repair and replacement parts may be new or like new. Customer shall provide AEON or other repair personnel reasonable access to the CPE.

Customer agrees to assume and bear the entire risk of any partial or complete loss with respect to the CPE from any and every cause whatsoever including theft, loss, damage, (including damage caused by Acts of God, or Force Majeure), destruction or governmental taking, whether or not such loss is covered by insurance or caused by any fault or neglect of Customer. If Customer is receiving CPE at no rental cost to Customer, then Customer shall be billed a Monthly Equipment Maintenance Coverage charge and payment of such charge shall relieve Customer of liability for Acts of God, including lightning, power surge, fire, wind, flood and earthquake. Damage caused by power surge, fire, and flood, which is not the result of an Act of God, is specifically excluded from coverage. Customer agrees to give AEON prompt notice of any damage to or loss of any CPE, or any abandonment or relocation from Customer's premise. All CPE furnished by AEON remain the property of AEON. For AEON-furnished CPE that cannot be

recovered from Customer's site, Customer will pay AEON the listed purchase price for such CPE. CUSTOMER SHALL DEFEND AND INDEMNIFY AEON FROM ANY AND ALL CLAIMS, ACTIONS, LOSSES, DAMAGES, (INCLUDING REASONABLE ATTORNEYS FEES) ARISING OUT OF THE PURCHASE, POSSESSION, OPERATION, CONDITION, RETURN OR USE OF THE CPE OR BY OPERATION OF LAW, EXCLUDING, HOWEVER, ANY OF THE FOREGOING RESULTING SOLELY AND DIRECTLY FROM THE NEGLIGENT OR WILLFUL ACTS OF AEON.

## **Exhibit A**

### **Circuit Cancellation Fees**

This exhibit A shall set forth the charges which will be billed if a circuit order is canceled prior to installation.

1. If Circuit is cancelled after order is received by AEON/underlining carrier and before engineering the service: \$50.00 service fee
2. If Circuit is cancelled after AEON/underlining carriers has engineered and before FOC (Firm order Commitment) date has not been completed: \$500.00 service fee
3. If Circuit is cancelled after FOC (Firm order Commitment), then full MRC for a complete term is applied.
4. If any third party fees occur, Customer will be billed full amount.
5. The Customer will be notified when the Service is available for activation. Customer will then have to schedule a desired activation date within (5) business days. If the Customer does not have an activation date scheduled within the (5) business days, then Customer will be deemed to have accepted the Service and billing will begin retroactive to the date Customer was notified of Service availability. The term selected on the service order is based on the Installation date not contract sign date or requested due date

Tax ID or SS Number \_\_\_\_\_  
(Required)

TO: All Local Exchange Companies (LECs), Long Distance Companies (IXCs), Resellers, Rebillers, and Regional Bell Operating Companies (RBOCs). In accordance with this executed agreement, I/We ("Customer") do hereby authorize ComTech21 d/b/a AEON to act as our communications agent to place service orders, change network carriers, obtain telephone account information/numbers, PIC codes, and any other customer information needed to assign ComTech21 agency to vendors and authorizing them to implement contracted services for local, data, IP, interstate, intrastate, intralata and/or international long distance services ("Services").

This Agreement and accompanying Service Orders constitute the entire agreement between the parties and supersedes all previous oral or written understandings.

The person (s) signing this agreement are authorized to sign on behalf of the customer.

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**CUSTOMER NAME** \_\_\_\_\_ (Required)

**Authorized Signature:** \_\_\_\_\_ (Required)

Title: \_\_\_\_\_ (Required)

Printed Name: \_\_\_\_\_ (Required)

Date: \_\_\_\_\_

For Office Use Only

Order reviewed and approved by:

AEON, INC Initials: \_\_\_\_\_

Date: \_\_\_\_\_