



COLOCATION SERVICES AGREEMENT

This Colocation Services Agreement ("Agreement") is entered into on _____ ("Effective Date") by and between Guilford Communications, Inc., a North Carolina corporation ("Carolinanet") and

_____ ("Customer").

WHEREAS, Customer desires to obtain from Carolinanet certain services, all as described herein; and

WHEREAS, Carolinanet is desirous of providing such services to Customer, all on the terms and conditions as set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Services. Carolinanet shall provide Customer the network connections, equipment colocation (the "Service(s)") and other service(s) described on the Order Form(s) or Change Order Form(s) attached hereto and incorporated herein as Exhibit A, for the price and on the terms as set forth on such Order(s). From time to time Customer may order additional Services at such prices as shall be agreed upon by the parties, which Service(s) shall be governed by the terms and conditions of this Agreement and which shall be evidenced by additional Order Forms and Change Order Forms. The Ethernet port on Carolinanet's access device shall be the demarcation point.
2. Service Level Agreement. Carolinanet shall provide Customer the Service Level Agreement ("SLA") as described on Exhibit B attached hereto and incorporated herein. Credits under the SLA will be paid to Customer in accordance with the SLA only if Customer is not in default of the Agreement or was not in default of the Agreement during the period in which the deficiency occurred.
3. Term. The term of the Agreement shall be from the Effective Date, which term shall renew automatically until the termination or expiration of the last service ("Agreement Term"). Each Service shall have a minimum term of for such Service commencing from the activation of such Service ("Initial Term"). Each Service shall automatically renew for successive periods equal to the Initial Term of such Service unless terminated by either party at least 60 days prior to the then current date for termination, or otherwise states in Exhibit A of this Agreement. Carolinanet reserves the right to change its rates or the SLA during any renewal term by notifying Customer at least 30 days in advance of the effective date of such rate or SLA change. When service(s) are offered, and agreed to on a monthly basis a term begins on the first day of the month and ends on the last day of the month. On the date that Carolinanet activates your Service, you will be charged a pro-rated fee from your activation date until the first day of the following month, when you will be charged for the next month's term. Subsequent terms of this Agreement automatically renew on a monthly basis unless you give us written notice of non-renewal at least ten (10) days before the end of the monthly term in which the notice is given. You are purchasing the Service(s) for full monthly terms, meaning that if you attempt to terminate Service(s) prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term, including, without limitation, unbilled charges, plus any termination fee(s), if applicable, all of which will immediately become due and payable. You will also be responsible for the next full month's charges in the event that you do not provide the requisite ten-day notice of termination prior to the expiration of the then-current term. Expiration of the term or termination of Service(s) will not excuse you from paying all accrued and unpaid charges due under this Agreement.

4. Termination; Discontinuance of Service. Carolinanet reserved the right to suspend or discontinue the Service(s) generally, or to terminate your Service(s), at any time in our sole and absolute discretion. If we discontinue the Service(s) generally, or terminate your Service(s) without a stated reason, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. If your Service(s) are terminated on account of your breach of any provision of this Agreement, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus any termination fee(s), if applicable, all of which will immediately become due and payable.
5. No Equipment. This Agreement does not include equipment provided by Carolinanet. Customer has purchased an unmanaged service, and Carolinanet shall have no obligation to perform any consultative, administrative, maintenance, or other services relating to Customer's or its customer's equipment.
6. Payment. The installation fee shall be due upon activation of the Service(s). Billing for the Service(s) shall commence on the date the Service(s) are activated or, in the event that Carolinanet has provisioned the connection, the date on which Carolinanet is ready to activate the connection. Customer will be invoiced monthly for all amounts due and owing to Carolinanet. All payments are due within 10 days after the date of such invoice without set-off or demand. All payments required by this Agreement are exclusive of any federal, state, municipal or other governmental excise, sales, value-added and occupational taxes, direct or indirect government assessment fees and other levies, all of which Customer shall be responsible for, and will pay in full, other than taxes based on Carolinanet's net income. Customer will be deemed to be in default hereunder if payment is not received within 30 days after the date of such invoice and in addition to its other remedies, Carolinanet may charge Customer an interest rate equal 1-1/2% per month.
7. Acceptable Use. Carolinanet's network may only be used for lawful purposes. Carolinanet reserves the right to, from time to time, monitor Customer's activity. The transmission of any material in violation of any United States, State, or other applicable law or regulation is prohibited. This includes, but is not limited to, copyrighted material, material legally judged to be threatening or obscene, material protected by trade secret or material that is otherwise deemed to be proprietary or judged by Carolinanet to be inappropriate or improper such as unsolicited e-mail messages. Carolinanet has zero tolerance for unsolicited e-mail messages and reserves the right to immediately terminate the connection(s) or Agreement in the event that Carolinanet becomes aware that Customer, or persons making use of Customer's services (i) are using the Carolinanet network for the distribution of unsolicited e-mail messages, or (ii) is otherwise in breach of this Section. Notwithstanding the foregoing, any indirect or attempted violations of this Section or Carolinanet's Acceptable Use Policy located on its website, or actual or attempted violations by a third party on behalf of Customer or its end-user, shall be considered a violation of the Agreement by Customer. Carolinanet provided facilities, Connections or services may not be used to send unsolicited commercial e-mails, nor may Carolinanet facilities, Connections or services be used to host any web site or other network resource which is advertised directly or indirectly through unsolicited commercial e-mail. Carolinanet considers complaints by recipients of emails to be de-facto proof that the recipient did not "opt-in" or otherwise ask to receive the email(s) about which a complaint was generated.
9. DISCLAIMERS OF WARRANTY. SUBJECT TO THE SERVICE LEVEL AGREEMENT SET FORTH ON EXHIBIT B, CAROLINANET MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS INCLUDES LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTION HOWEVER CAUSED. USE OF ANY INFORMATION OBTAINED BY CAROLINANET'S NETWORK IS AT YOUR OWN RISK. CAROLINANET SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR THE ACCURACY OR QUALITY OF INFORMATION OBTAINED THROUGH ITS SERVICES.

9. Default. Upon the occurrence of a breach by Customer of any provision hereunder, Carolinanet reserves the right, in addition to any other remedies which may be available to it, to terminate this Agreement and the services provided to Customer hereunder. In addition, upon the occurrence of any breach hereunder, the cumulative total of the balance of all monthly payments remaining on this Agreement shall become due and payable by Customer as of that date as liquidated damages and not as a penalty. In the event that Carolinanet has paid additional costs, such as a construction cost, for Customer's connection and services, Customer shall be responsible for such costs. Customer acknowledges that the amounts payable pursuant to the preceding sentence are equitable compensation to Carolinanet and are intended to reasonably compensate Carolinanet for the losses which are occasioned by Customer failure to honor Customer' obligations hereunder and that the exact amount of damages is difficult or impractical to establish.

In the event that Customer terminates a connection prior to the activation of the Service, Customer shall owe Carolinanet a pre-activation cancellation fee of \$500. In addition, Customer shall be responsible for any and all third party charges, including local access charges, Carolinanet incur as a result of such termination or cancellation by Customer. After the activation of the service connection, Customer shall be liable in accordance with the first paragraph of this section.

10. Maintenance. Routine maintenance and periodic system repairs, upgrades and reconfigurations may result in temporary impairment or interruption in service. Maintenance is normally scheduled on the weekends between the hours of 1:00 AM and 4:00 AM Eastern Standard Time. As a result, Carolinanet does not guarantee continuous or uninterrupted service and reserves the right from time to time to temporarily reduce or suspend service without notice subject to the terms and conditions of the SLA. The provisions set forth in the SLA shall be Customer's sole and exclusive remedy in the event of any SLA deficiency, including but not limited to the unavailability of Customer's Connection.
11. Indemnification. Customer shall indemnify Carolinanet, its affiliates, officers, directors, licensees, licensors, and vendors from any and all claims and expenses, including, without limitation, reasonable attorney's fees arising from Customer's breach of any provision of this Agreement.
12. Governing Law. This Agreement is deemed to be entered into in the State of North Carolina and shall not become a binding obligation of Carolinanet until it has been executed by an officer of Carolinanet. This Agreement is subject to credit approval by Carolinanet in its sole discretion. The parties agree that any dispute arising under this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.
13. Assignment. Carolinanet may assign this Agreement or any portion hereof without Customer's prior consent and all of Carolinanet' rights, title and interest herein shall inure to the benefit of such assignee, its successors and assigns. This Agreement shall not be assigned by Customer except with the written consent of Carolinanet, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
14. Limitation on Liability. In no event shall Carolinanet, its affiliates or their respective directors, officers, employees or agents have any liability to Customer for special, incidental, indirect or consequential damages (including, without limitation, lost profits or revenues or other economic loss of Customer or any third party, loss of data, loss of use or claims of third parties), arising out of or in any manner in connection with this Agreement, the performance or breach hereof, the subject matter hereof, regardless of the form of action (including negligence or strict liability), whether or not Customer has been advised of, or otherwise might have anticipated the possibility of, such damages.
15. Confidential Information. Unless required to release by a court or government order in which case the disclosing party will give as much notice a possible unless such order explicitly restricts such notification, neither party shall disclose any of the terms and conditions of this Agreement nor any non-public information (collectively "Confidential Information") without the prior written consent of the other, provided, however, in any of its sales and marketing materials, Carolinanet may refer to Customer as its

customer. Further, without limiting the generality of the foregoing, Customer will not use, in advertising or publicity or in any way related to this Agreement or the subject matter hereof, the name of Carolinanet or its affiliates or any of their directors, officers, managers, employees, consultants or agents or any trade name, trademark, service mark, logo or symbol of Carolinanet or its affiliates, except with the express written consent of Carolinanet. In the event the receiving party commits a breach of, or threatens to commit a breach of this Agreement, the disclosing party shall have the right to seek and obtain all judicial relief (including, but not limited to, injunctive or other equitable relief, and monetary damages, interest and attorney's fees and expenses) as may be ordered or awarded by a court of competent jurisdiction.

- 16. Modification. This Agreement may be modified only by a written instrument signed by an amendment to be executed by the parties.
- 17. Force Majeure. Carolinanet shall not be responsible for any failure to perform its obligations under this Agreement if such failure is caused by war, labor strike, terrorist act, fire, flood, earthquake, and act of government or other events beyond the reasonable control of Carolinanet.
- 18. Miscellaneous.
 - a) In the event that Carolinanet or the local access provider needs to access the Customer Connection site to maintain or repair or otherwise affect the Connection, Customer shall cooperate in a timely manner and provide access to the Customer Connection site and assist Carolinanet or the local access provider to affect such maintenance. In the event Customer does not provide, in a timely manner, the required assistance and/or access, Carolinanet may terminate the Agreement or suspend services.
 - b) In the event Customer requires a relocation of the services, such relocation shall be subject to subsection a above, and such relocated Connection shall be subject to additional terms and conditions required by Carolinanet.
 - c) Carolinanet reserves the right to terminate the Agreement upon notice to Customer in the event that (i) Carolinanet cannot maintain despite reasonable efforts to do so its regulatory approval necessary to provide the Connections and/or enter into this Agreement; (ii) maintaining this Agreement is not commercially reasonable to Carolinanet; (iii) Carolinanet underlying vendor is unable or unwilling to provide some or all of the services required for Carolinanet to continue this Agreement; (iv) Agreement in Carolinanet sole opinion is not in accordance with public policy or the Internet industry standard.
- 19. Notices. Any notice required to be given hereunder shall be in writing and shall be deemed to have been delivered when deposited in the United States mail (registered or certified mail), return receipt requested with adequate postage affixed, or delivered to a national overnight courier service and addressed to the persons set forth herein.

To Carolinanet:

Guilford Communications, Inc.
301 South Elm Street, Suite 625
Greensboro, North Carolina 27401
Ph: (336) 346-6000, Fax (336) 665-9595

To Customer:

Ph: _____, Fax: _____

20. Entirety. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original for all purposes hereof. This Agreement contains the entire agreement of the parties hereto with respect to the matters covered hereby and supersedes any other prior or simultaneous agreement related to such matters.

Guilford Communications, Inc.

By: _____

By: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____

Exhibit A
(SAMPLE) Services Order Form

Monthly Service(s):

Space for Customer provided Server/Equipment 1 Open 19" Rack Greensboro, NC.....
100MBp/s burstable to 15Mb/s Ethernet Internet Connection with BGP-4 Routing.....
Single 15AMP AC 120 Volt Electrical Outlet with Battery and generator backup.....
Total Monthly Recurring Charges

Installation Fee(s):

Installation, Router configuration and setup fees.....
Installation waved based on 1-Year Term Agreement for Services

Initial Agreement Term:

Choose One Below

- 1-Year (Installation Fee is Waved)
- Month to Month Service

Agreement Term:

Choose One Below

- 1-Year
- Month to Month Service

Termination Fee(s):

Exhibit B
Carolinanet Internet Access Service Level Agreement

Whereas Guilford Communications, Inc., hereinafter referred to as "Carolinanet", is in the business of providing a variety of telecommunication and data networking services and Customer, desires access to and use of Carolinanet's Internet Access Service with guaranteed levels of network latency, customer support, reliability, service provisioning, and business continuity/disaster recovery, Carolinanet makes the following statements and offers the following service level guarantees:

Carolinanet has engineered an IP (Internet Protocol) packet switching backbone with a massive level of redundancy, availability, and security features. To wit:

- Traffic at each backbone site is separated into 'core' and 'border' traffic. All IP traffic is filtered appropriately.
- All backbone IP equipment is duplicated with redundant connections. Backbone IP equipment failure will result in dynamic rerouting of backbone traffic, under normal conditions, in less than 30 seconds.
- Carolinanet will maintain multiple IP transit connections to provide routing and connectivity to those networks with which it is unable to arrange peering services.
- All backbone sites are interconnected via multiple diversely routed links. All traffic will be routed using standard BGP routing rules.
- All Frame Relay and ATM customer connections will be installed with multiple virtual connections to different routers and appropriately programmed to dynamically reroute. (This is dependant on the customer installing compatible equipment and implementing the routing protocols correctly. Such a connection must be inspected, tested, and approved by Carolinanet's Internet Operations department engineers in order to qualify for consideration under this Service Level Agreement.
- Ethernet customers may, with the same provisos, be programmed to dynamically reroute. Additionally, Ethernet customers may elect to obtain an optional second Ethernet feed (IEEE bridging) fed from a redundant Ethernet switch. Such a connection must be inspected and approved by Carolinanet's Internet Operations department engineers in order to qualify for consideration under this Service Level Agreement.
- No backbone data circuit, either physical or virtual, will operate at more than 75% of rated capacity. Carolinanet will order an increase in circuit capacity whenever traffic exceeds 67% of rated capacity. (Rated capacity is defined as the maximum guaranteed usable bit rate that can flow across a given physical or virtual circuit. For instance a T1 has a rated capacity of 1.544 mbps.)
- No peering connection will operate at more than 85% of rated capacity. Carolinanet shall order an increase in circuit capacity whenever traffic exceeds 75% of rated capacity.
- No transit connection of DS3 or higher speed will operate consistently at more than 85% of rated capacity. Carolinanet will order an increase in transit circuit capacity whenever traffic exceeds 75% of rated capacity.

Network Latency Guarantees:

Scope: IP packet switching round-trip times (obtained utilizing the 'ping' and 'traceroute' probes) from any Carolinanet network element to any other Carolinanet network element shall be less than 120

milliseconds. It must be understood that responding to these network probes is the lowest priority task assigned to network elements and that any network element under attack will, by necessity, give priority to combating the attack. (Forwarding of IP packets will proceed at normal rates even though these tools may report elevated times under attack conditions.)

Process: Latency shall be measured by taking the average round-trip time of a group of ten (10) ICMP echo-request packets and recording this value once every five (5) minutes. The average of the twelve (12) readings that occur within any given hour shall be utilized as the *hourly average round-trip time (harrt)* for purposes of this Service Level Agreement. A graph showing each month's *harrt* values shall be posted at <http://info.guilfordcomm.net/sla/latency.html> and is updated hourly. The *harrt* values used to determine Network Latency Guarantee are those that originate at the Carolinonet Network Access Point hosting the customer's connection. *Harrt* values for time periods during which an active network attack was in progress will be indicated by color coding and will not be utilized to determine applicability of the Network Latency Guarantee. No credits shall be made if failure to meet a Network Latency Guarantee is attributable to reasons of Force Majeure as defined in an addendum to this Service Level Agreement.

Remedy: If Carolinonet fails to meet any Network Latency Guarantee in two calendar months during the term on Customer's service contract, Customer's account shall be automatically credited for the second month and any subsequent month during the term of Customer's original service contract. Time periods during which an active network attack was in progress, as detailed above, will not be used to determine failure of the Network Latency Guarantee.

Customer Support Quality:

Outage Reporting Guarantee Scope: Carolinonet's Outage Reporting Guarantee is to notify Customer within 15 minutes after Carolinonet's determination that Customer's service is unavailable or significantly degraded.

Process: Carolinonet's Outage Reporting Guarantee is applicable only if Customer completes Carolinonet's Customer Information Form in its entirety and supplies Carolinonet with applicable updates as contact information changes. Carolinonet will be relieved of its obligations under this Outage Reporting Guarantee if Carolinonet's contact information for Customer is out of date or inaccurate due to Customer's action or omission or if Carolinonet's failure is due to reasons of Force Majeure as defined in an addendum to this Service Level Agreement.

Remedy: If Carolinonet fails to meet the Outage Reporting Guarantee, at Customer's request Customer's account shall be credited the pro-rated charges for one day of the Carolinonet Monthly Fee for the service with respect to which this Guarantee has not been met; provided, that Customer may obtain no more than one credit per day, irrespective of how often in that day Carolinonet failed to meet the Outage Reporting Guarantee.

Reliability/Service Availability:

Service Availability Guarantee Scope: Carolinonet's Service Availability Guarantee is to have the Carolinonet Network (as defined in an addendum) available 100% of the time.

Scheduled Maintenance Scope: Scheduled Maintenance shall mean any maintenance at the Carolinonet network access point to which Customer's data network is directly connected (a) of which Customer is notified 48 hours in advance, and (b) that is performed during a standard maintenance window on Tuesdays and Thursdays from 03:00 AM to 06:00 AM or on Sundays from 03:00 AM to 08:30 AM. All times shall be based upon local time at the Carolinonet network access point to which Customer's data network is directly connected. Notice of Scheduled Maintenance will be provided to Customer's designated point of contact by email delivery at least 48 hours in advance.

Process: Carolinonet will, at Customer's request, calculate Customer's *Network Unavailability* in a calendar month. *Network Unavailability* consists of the number of minutes that the Carolinonet network was not available to Customer, and includes unavailability associated with any maintenance at the Carolinonet network access point to which Customer's data network is directly connected other than Scheduled Maintenance. Outages will be counted as *Network Unavailability* only if Carolinonet notifies Customer of the outage in accordance with the Outage Reporting Guarantee set forth previously or if Customer opens a trouble ticket with Carolinonet customer support within five (5) days of the outage. *Network Unavailability* will not include Scheduled Maintenance, or any unavailability resulting from (a) Customer's applications, equipment, or facilities, (b) Customer ordered telecommunications circuit failures, both physical and virtual, (c) acts or omissions of Customer, or any use or user of the service authorized by Customer, (d) outages imposed upon the Customer as a result of violations of the standard Terms and Conditions of use, or (e) reasons of Force Majeure as defined in an addendum to this Service Level Agreement.

Remedy: For each cumulative hour of *Network Unavailability* or fraction thereof in any calendar month, at Customer's request Customer's account shall be credited for the pro-rated charges of one day of the Carolinonet Monthly Fee, not to exceed one full month's Monthly Fee in any calendar month.

Caveats and Exclusions:

Carolinonet specifically does not and cannot guarantee the following:

- Circuit outages outside of the Carolinonet network. This includes the circuit connecting the customer to the nearest network element on the Carolinonet network.
- Performance within another Internet Service Provider's network. Carolinonet shall provide all capacity required for optimal performance, but cannot guarantee that other providers will do the same.
- Performance across peering links. As stated earlier, Carolinonet shall provide all capacity required for optimal peering performance, but cannot guarantee that other providers will do the same.
- Performance to a specified end-user, even if on the Carolinonet network. We will, however, guarantee performance to the point on Carolinonet's network that is topologically nearest to the specified end-user.