

## **Master Service Agreement**

(SFMSA Version 7.0 – June 20, 2017)

This Master Service Agreement ("Agreement") is made as of the last date of full execution by the parties as indicated below (the "Effective Date"), between **LEVEL 3 COMMUNICATIONS, LLC** ("Level 3") and **LAKE HAVASU CITY** ("Customer"). This Agreement provides the general terms and conditions applicable to Customer's purchase of communications services ("Service") from Level 3.

### **ARTICLE 1. ORDERS FOR AND DELIVERY OF SERVICE**

**1.1 Submission and Acceptance of Customer Order(s).** Customer may submit requests for Service in a form designated by Level 3 ("Order"). Orders shall contain the duration for which Service is ordered ("Service Term"). Service will continue on a month to month basis at the expiration of the Service Term at Level 3's then current rates. Level 3 will notify Customer of acceptance of the Services in the Order by delivering (in writing or electronically) the date by which Level 3 will install Service (the "Customer Commit Date") or by delivering the Service. Renewal Orders will be accepted by Level 3's continuation of Service. If Customer submits Orders electronically, Customer shall assure that any passwords or access devices are available only to those having authority to submit Orders. Customer will pay Level 3's then current charges for moves, adds or changes agreed to by Level 3 respecting any Order or Service.

**1.2 Credit Approval and Deposits.** Customer will provide Level 3 with credit information as requested. Level 3 may require Customer to make a deposit as a condition of Level 3's acceptance of any Customer Order or continuation of: a) usage-based Services; or b) non-usage based Service where Customer fails to timely pay Level 3 hereunder or Level 3 reasonably determines that Customer has had an adverse change in financial condition. Deposits will not exceed 2 months' estimated charges for Service and are due upon Level 3's written request. When Service is discontinued, the deposit will be credited to Customer's account and the balance refunded.

**1.3 Customer Premises; Title to Equipment.** If access to non-Level 3 facilities is required for the installation, maintenance, grooming, movement, upgrade and/or removal of Level 3 network or equipment, Customer shall, at its expense, secure such right of access and shall arrange for the provision and maintenance of power and HVAC as needed for the proper operation of such equipment and network. Title to equipment (including software) provided by Level 3 remains with Level 3. Customer will not create or permit to be created any encumbrances on Level 3's equipment.

**1.4 Scheduled Maintenance and Local Access.** Scheduled maintenance will not normally result in Service interruption. If scheduled maintenance requires Service interruption, Level 3 will: (i) provide Customer 7 days' prior written notice, (ii) work with Customer to minimize such interruptions and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time. If third party local access services are involved in or connected to the Services, Customer will: (i) provide Level 3 with circuit facility and firm order commitment information and design layout records to enable cross-connects to Level 3 Service(s) (provided by Level 3 subject to applicable charges), (ii) cooperate with Level 3 (including but not limited to changing demarcation points and/or equipment and providing necessary LOA's) respecting circuit grooming or re-provisioning, and (iii) where a related Service is disconnected, provide Level 3 a written disconnection firm order commitment from the relevant third party provider. Level 3 may re-provision any local access circuits from one off-net provider to another or to the Level 3 owned and operated network (on-net), and such changes shall be treated as scheduled maintenance, provided that Level 3 shall provide Customer 30 days' notice of such activity.

### **ARTICLE 2. BILLING AND PAYMENT**

**2.1 Commencement of Billing.** Level 3 will deliver written or electronic notice (a "Connection Notice") to Customer when Service is installed, at which time billing will commence ("Service Commencement Date"). If Customer notifies Level 3 within 3 days after delivery of the Connection Notice that Service is not functioning properly, Level 3 will correct any deficiencies and, upon Customer's request, credit Customer's account in the amount of 1/30 of the applicable MRC for each day the Service did not function properly. If Level 3 cannot complete installation due to Customer delay or inaction, Level 3 may begin charging Customer for the Service and Customer shall pay such charges.

**2.2 Payment of Invoices and Disputes.** Invoices are delivered monthly and due 30 days after the invoice date. Fixed charges are billed in advance and usage-based charges are billed in arrears. Billing for partial months is prorated. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Customer is responsible for all charges respecting the Service, even if incurred as the result of unauthorized use. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice. If the dispute is resolved against Customer, Customer shall pay such amounts plus interest from the date originally due.

**2.3 Taxes and Fees.** Excluding taxes based on Level 3's net income, Customer is responsible for all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service, including but not limited to value added, consumption, sales, use, gross receipts, withholding, excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges), whether imposed on Level 3 or a Level 3 affiliate, along with similar charges stated in a Customer Order (collectively "Taxes and Fees"). Some Taxes and Fees, and costs of administering the same, are recovered through imposition

of a percentage surcharge(s) on the charges for Service. If Customer is required by law to make any deduction or withholding of withholding Taxes from any payment due hereunder to Level 3, then, notwithstanding anything to the contrary contained in this Agreement, the gross amount payable by Customer shall be increased so that, after any such deduction or withholding for such withholding Taxes, the net amount received by Level 3 will not be less than Level 3 would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Customer may present Level 3 with an exemption certificate eliminating Level 3's liability to pay certain Taxes and Fees; Level 3 will give effect thereto prospectively.

**2.4 Regulatory and Legal Changes.** If changes in applicable law, regulation, rule or order materially affect delivery of Service, the parties will negotiate appropriate changes to this Agreement. If the parties cannot reach agreement within 30 days after Level 3's notice requesting renegotiation: (a) Level 3 may, on a prospective basis after such 30 day period, pass any increased delivery costs on to Customer and (b) if Level 3 does so, Customer may terminate the affected Service on notice to Level 3 delivered within 30 days.

**2.5 Cancellation and Termination Charges.**

(A) Customer may cancel a Customer Order (or portion thereof) prior to the delivery of a Connection Notice upon written notice to Level 3 identifying the affected Customer Order and Service. If Customer does so, Customer shall pay Level 3 a cancellation charge equal to the sum of: (i) for "off-net" Service, third party termination charges for the cancelled Service; (ii) for "on-net" Service, 1 month's monthly recurring charges for the cancelled Service; (iii) the non-recurring charges for the cancelled Service; and (iv) Level 3's out of pocket costs (if any) incurred in constructing facilities necessary for Service delivery.

(B) Customer may terminate specified Service(s) after the delivery of a Connection Notice upon 30 days' written notice to Level 3. If Customer does so, or if Service is terminated by Level 3 hereunder as the result of Customer's default, Customer shall pay Level 3 a termination charge equal to the sum of: (i) all unpaid amounts for Service actually provided; (ii) 100% of the remaining monthly recurring charges for months 1-12 of the Service Term; (iii) 50% of the remaining monthly recurring charges for month 13 through the end of the Service Term; and (iv) if not recovered by the foregoing, any termination liability payable to third parties resulting from the termination and any out of pocket costs of construction to the extent such construction was undertaken to provide Services hereunder. Customer acknowledges that the charges in this Section are a genuine estimate of Level 3's actual damages and are not a penalty.

(C) This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

**ARTICLE 3. DEFAULT**

If (A) Customer fails to make any payment when due and such failure continues for 5 business days after written notice from Level 3 or (B) either party fails to observe or perform any other material term of this Agreement and such failure continues for 30 days after written notice from the other party, then the non-defaulting party may: (i) terminate this Agreement and/or any Order, in whole or in part, and/or (ii) subject to Sections 4.1 (Damages Limitations) and 4.3 (Service Levels), pursue any remedies it may have at law or in equity.

**ARTICLE 4. LIABILITIES AND SERVICE LEVELS**

**4.1 Damages Limitations.** Neither party shall be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or any Customer Order.

**4.2 Disclaimer of Warranties.** LEVEL 3 MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE SCHEDULE.

**4.3 Service Levels.** The "Service Level" commitments applicable to Services are contained in the Service Schedules for each Service. If Level 3 does not meet a Service Level, a credit will be issued to Customer as stated in the applicable Service Schedule on Customer's request. Level 3's maintenance log and trouble ticketing systems are used to calculate Service Level events. To request a credit, Customer must contact Level 3 Customer Service (contact information is located at [www.level3.com](http://www.level3.com)) or deliver a written request (with sufficient detail to identify the affected Service) within 60 days after the end of the month in which the event occurred. Total monthly credits will never exceed the charges for the affected Service for that month. Customer's sole remedies for any non-performance, outages, failures to deliver or defects in Service are contained in the Service Levels applicable to the affected Service.

**4.4 Right of Termination for Installation Delay.** In lieu of installation Service Level credits, if Level 3's installation of Service is delayed by more than 30 business days beyond the Customer Commit Date, Customer may terminate the affected Service without liability upon written notice to Level 3, provided such written notice is delivered prior to Level 3 delivering a Connection Notice for the affected Service. This Section shall not apply where Level 3 is constructing facilities to a new location not previously served by Level 3.

**ARTICLE 5. GENERAL TERMS**

**5.1 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 ("force majeure event"). In the event Level 3 is

unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay Level 3 for the affected Service for the duration of the event. Force majeure events and scheduled maintenance under Section 1.4 are considered "Excused Outages."

**5.2 Assignment and Resale.** Customer may not assign its rights or obligations under this Agreement or any Order without the prior written consent of Level 3, which will not be unreasonably withheld. This Agreement shall apply to any permitted transferees or assignees. Unless otherwise provided in a Service Schedule, Customer may provide Service to third parties or use the Services in connection with goods or services provided by Customer to third parties ("Customer Provided Services") provided that Customer shall indemnify, defend and hold Level 3 and its affiliates harmless from any claims arising from or related to any Customer Provided Services. If Customer sells telecommunications services, Customer certifies that it has filed all required documentation and will at all times have the requisite authority with appropriate regulatory agencies respecting the same. Nothing in this Agreement, express or implied, confers upon any third party any right, benefit or remedy under or by reason of this Agreement.

**5.3 Affiliates.** Service may be provided to Customer by an affiliate of Level 3 and Level 3 may use third parties to provide certain aspects of the Service, but Level 3 shall remain responsible to Customer for the delivery and performance of the Service. Customer's affiliates may purchase Service pursuant to this Agreement, and Customer shall be jointly and severally liable for all claims and liabilities related to Service ordered by any Customer affiliate.

**5.4 Notices.** Notices shall be in writing and deemed received if delivered personally, sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided) or sent by U.S. Postal Service or First Class International Post, addressed as follows:

**IF TO LEVEL 3:**

Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, Colorado 80021  
Attn: General Counsel  
Facsimile: (720) 888-5128

**IF TO CUSTOMER:**

LAKE HAVASU CITY.  
2330 MCCULLOCH BOULEVARD N.  
LAKE HAVASU CITY, AZ 86403 USA  
Attn: Jonathan Baskette  
Facsimile: 928-855-0551  
Email: BasketteJ@lhcaz.gov

For billing inquiries/disputes or requests for Service  
Level credits:

Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, Colorado 80021  
Attn: Director, Billing  
Facsimile: (877) 460-9867  
E-mail: [billing@level3.com](mailto:billing@level3.com)

Requests for disconnection of Service (other than for default) must be submitted via the customer portal at <http://customerportal.level3.com> or via the following link: <http://www1.level3.com/disco/disco.html> and will be effective 30 days after receipt (or such longer period set forth in a Service Schedule). Continued charges due to Customer failure to follow this process and/or provide complete information may result in continued charges which will not be credited.

If no Customer address is provided above, notices may be provided to any electronic or physical address identified on the Order. Either party may change its notice address upon notice to the other party. All notices shall be deemed given on (i) the date delivered if delivered personally, by facsimile or e-mail (or the next business day if delivered on a weekend or legal holiday), (ii) the business day after dispatch if sent by overnight courier, or (iii) the third business day after dispatch if otherwise sent.

**5.5 Acceptable Use Policy and Data Protection.** Customer's use of Service shall comply with and Customer acknowledges Level 3's Acceptable Use Policy and Privacy Policy which is available through Level 3's web site ([www.level3.com](http://www.level3.com)) and may be updated by Level 3.

**5.6 Intellectual Property and Publicity.** Neither party is granted a license or other right (express, implied or otherwise) to use any trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of the other party or its affiliates without the express prior written authorization of the other party. Neither party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the parties in writing. Unless otherwise required by law or for approval by Customer's governing body, the parties agree to keep the terms of this Agreement and all information of a confidential nature obtained in the performance of this Agreement confidential and not disclose such information to third parties, other than to its vendors and affiliates, as well as to treat any information or documentation disclosed between the parties during the performance of this Agreement (including this Agreement) in accordance with the terms and conditions of a non-disclosure agreement to the extent applicable then in effect between the parties.

**5.7 Governing Law; Amendment.** This Agreement shall be governed and construed in accordance with the laws of the State of Arizona, without regard to its choice of law rules. Each party shall comply with all applicable laws, rules and regulations associated respectively with Level 3's delivery or Customer's use of the Service under the Agreement. This Agreement, including any Service

Schedule(s) and Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

**5.7.1** In accordance with A.R.S. § 35-393.01, Level 3 certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.

**5.8 Latin American Services.** With respect to Services provided in Latin America, Customer agrees that it (or its local Affiliate) will enter into a separate local country addendum/agreement (as approved by local authorities) ("LCA") with the respective Level 3 Affiliate which provides the local Service(s), and such Level 3 Affiliate will invoice the Customer (or its local Affiliate) party to the LCA for the respective local Service(s).

**5.9 Relationship and Counterparts.** The relationship between the parties is not that of partners, agents, or joint ventures. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. Digital signatures and electronically exchanged copies of signed documents shall be sufficient to bind the parties to this Agreement.

**LEVEL 3 COMMUNICATIONS, LLC** ("Level 3")

**LAKE HAVASU CITY** ("Customer")

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

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

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