



THIS CONTINUOUS WAIVER AND CONSENT (this "Waiver and Consent") is made on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and between **Advanced Network Solutions Inc.**, an Ohio Corporation, on behalf of itself and its affiliates, with offices located at 2780 S. Arlington Road, Akron, OH 44312 ("ANS") and \_\_\_\_\_ a \_\_\_\_\_ corporation, located at \_\_\_\_\_ ("Customer"). All capitalized terms contained herein shall have the meaning set forth in the MSA and Co-Location Schedule/Sales/Service Order(s) (as defined below) unless otherwise defined herein.

**WHEREAS**, Customer and ANS have entered into a Master Services Agreement dated \_\_\_\_\_ (the "MSA"), and prospective associated Service Order(s) ("Service Order"), for removal of Customer's equipment at certain ANS facilities ("ANS Premises") and packing and shipment of same; and

**WHEREAS**, as part of the Service Order, Customer shall supply ANS with its specifications for the removal of its equipment (the "Equipment") in Customer's Space in the ANS Premises and shipment of same to Customer's designated location; and

**WHEREAS**, although it is standard ANS procedure for Customer to arrange shipment of and remove its Equipment in Customer's Space, Customer desires ANS to arrange shipment of its Equipment and remove such Equipment in Customer's Space on Customer's behalf, and ANS agrees to arrange shipment of Customer's Equipment and remove such Equipment in Customer's Space subject to the terms and conditions of this waiver and consent.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter contained and for other good and valuable consideration, ANS and Customer hereby agree as follows:

1. ANS shall inspect the Equipment as installed (if there is physical damage) and notify Customer of same.
2. ANS shall remove Customer's Equipment pursuant to the Service Order specifications.
3. ANS will pack and arrange for pick-up/shipment of the Equipment pursuant to the Service Order specifications.
4. Upon completion of the Equipment removal, packing and pick-up/shipment by a third party shipper, ANS shall invoice Customer either a flat fee or an hourly time and materials rate for the Equipment removal and packing, as agreed by the parties in advance of performance. Customer will ship on its own account. Customer shall pay such invoice within thirty (30) days of its receipt thereof.
5. Customer agrees to promptly assist and cooperate with ANS in any and all respects reasonably necessary for the Equipment removal or shipment. Customer agrees that if it fails to adequately specify the manner and method of removal or packing or shipping, ANS shall not be held liable for decisions it makes in accommodating Customer's request.
6. Customer acknowledges that ANS may utilize, at ANS's sole reasonable discretion, outside contractors to perform any Equipment removal work or packing required hereunder.
7. Customer shall, at its expense, indemnify, defend and hold ANS, its affiliates, employees, agents, and assigns, harmless from and against all Claims (defined below) from any cause arising out of or relating to the removal, packing or shipment of Customer's



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Equipment, except those arising out of the willful or intentional misconduct of ANS. "Claims" means any and all claims, causes of action (whether based on tort, contract or equity principles) charges, fines and penalties of any kind, including reasonable attorneys' fees and costs, including, but not limited to, those arising out of or resulting from: (a) ANS's performance hereunder, (b) damage to Equipment; (c) loss of equipment; or (d) acts or omissions of Customer or any customer, whether in breach of the provisions of this Waiver and Consent, or by reason of the negligence of Customer or any customer.

- 8. ANS MAKES NO WARRANTIES WITH RESPECT TO ITS PERFORMANCE OF THE REMOVAL, PACKING OR SHIPPING SERVICES OR THE SUITABILITY OR FITNESS OF THE EQUIPMENT OR MATERIALS OR SUPPLIERS SUPPLIED HEREUNDER FOR THE PURPOSES INTENDED BY CUSTOMER, EXPRESS OR IMPLIED, IT BEING EXPRESSLY ACKNOWLEDGED BY CUSTOMER THAT IT IS SOLELY RESPONSIBLE FOR PROVIDING ANS WITH INSTRUCTIONS FOR THE REMOVAL, PACKING AND SHIPPING OF THE EQUIPMENT.
- 9. CUSTOMER ACKNOWLEDGES THAT ANS SHALL NOT BE LIABLE, WITH RESPECT TO ITS PERFORMANCE HEREUNDER, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, REGARDLESS OF WHETHER ANS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY DIRECT OR INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST DATA, LOSS OF USE, LOSS OF REVENUE OR LOSS OF PROFIT) OR SIMILAR COMMERCIAL INDEMNITY.
- 10. Customer shall maintain insurance on its Equipment both while it is on ANS Premises or in transit and shall look solely to recover under such insurance policy for any loss arising from ANS' acts performed pursuant to this Agreement.
- 11. This Continuous Waiver and Consent shall apply to any and all future removal, packing or shipment of equipment that Customer requests and which are agreed to by ANS.
- 12. Notwithstanding the foregoing, the responsibilities and obligations of Customer and ANS set forth in the MSA and Service Order shall remain in full force and effect.
- 13. IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

**ANS:**  
By: Advanced Network Solutions Inc., an Ohio corporation, for itself and its affiliates

**CUSTOMER:** \_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_