

**THESE TERMS AND CONDITIONS STATE IMPORTANT REQUIREMENTS REGARDING YOUR USE OF GRANITE'S BROADBAND INTERNET SERVICE OR HI-CAP CIRCUITS (LOCAL, LONG DISTANCE AND DATA; DS-1 AND ABOVE) ("HI-CAP CIRCUITS") SERVICE OFFERED BY OTHER VENDORS THAT IS BILLED AND MANAGED BY GRANITE ON YOUR BEHALF. THESE TERMS AND CONDITIONS STATE YOUR RELATIONSHIP WITH GRANITE. YOU SHOULD READ THEM CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OURS.**

**IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICE AND YOU MUST TERMINATE YOUR SERVICE IMMEDIATELY.**

These Terms of Service (the "Agreement") are entered into by and between the subscriber ("you" or "your") and Granite Telecommunications, LLC or its affiliates ("Granite", "us", "we", "our"). This Agreement is made up of the following terms and conditions.

### **1. Acceptance of this Agreement:**

You are deemed to have accepted this Agreement upon: (a) your submission of an order for service; or (b) your signing of a Letter of Agency stating that you have accepted this Agreement.

### **2. Privacy Policy:**

Granite is committed to respecting your privacy. Once you choose to provide personally identifiable information, it will only be used in the context of your customer relationship with Granite.

The types of personal information collected from are name, username, contact and billing information, transaction and credit card information. Data collected online may also be combined with information provided during ownership registration of Granite products and services. In order to tailor subsequent communications and continuously improve products and services, Granite may ask you to voluntarily provide information regarding your personal or professional interests, demographics, product experience, and contact information.

Granite will not sell, rent, or lease your personally identifiable information to others. Unless required by law, Granite will only share the personal data provided with business partners who are acting on our behalf to complete the activities you requested. Such business partners are governed by Granite's privacy policy with respect to the use of this data. Unless required by law, should a company not governed by Granite's privacy policy require your personal information, your permission will be initially obtained. If you choose to share such information, the use of that data will be governed by the company's respective privacy policy.

Granite uses your information to better understand customer needs and continuously improve the level of service provided. Specifically, your information is used to help complete a transaction, to communicate back to you, to update you on service and

benefits, and to personalize Granite's web site. Credit card numbers are used only for payment processing and are not utilized for other purposes.

Granite strives to keep your personally identifiable information accurate. Every effort is made to provide you with online access to your registration data so that you may update or correct your information at any time. Granite is committed to ensuring the security of your information. To prevent unauthorized access, maintain data accuracy, and ensure the appropriate use of information, appropriate procedures are in place to safeguard and secure the information collected online. Granite uses encryption when collecting or transferring sensitive data such as credit card information.

### **3. Moderations of Use:**

Granite believes in the right of the individual to publish information they feel is important to the world via the Internet. Any service that causes a disruption in the network integrity of Granite or its vendors, whether directly or indirectly, is strictly prohibited and could result in termination of service. This may include but is not limited to: IRC servers, adult-content servers, bots, webpages hosted on any Granite servers, servers connected to a Granite provided Internet connection, or shared networks. Granite reserves the right to modify or terminate services at our sole discretion.

### **4. Acceptable Use Policy:**

You are ultimately responsible for any and all activity that originates from your Internet circuit regardless of your knowledge of such activity. This includes but is not limited to activity by employees, friends, guests and any third party. This also applies to security breaches of your own system by others who launch attacks from your machine(s). It is absolutely imperative that everyone with an Internet connection takes proper precautions to ensure the security of their machine. You are liable and accountable for any activity originating from any of your Granite account services that are deemed to be in violation of our Acceptable Use Policy.

Granite vigorously pursues all instances of abuse. If you feel you have been attacked or spammed, please notify Granite and appropriate action can be taken.

In the event of activity which could be considered deliberately or otherwise abusive or in violation of this Acceptable Use Policy, Granite reserves the right to suspend and/or terminate your account and all Granite-provided services immediately, without advanced notice. Granite reserves the right, at its sole discretion, to make a determination of what constitutes abuse and you agree that Granite's determination is final and binding on you.

### **5. Account Billing & Invoicing:**

Granite reserves the right to perform a credit/background check as part of the qualification process prior to order placement and to either cancel the order without

liability to either party or require prepayment of certain charges based on the results of this check.

Billing will commence on your Activation Date (i.e. the day our vendor declares your circuit installed, inbound switch completed, or your other service account created.) You will be financially responsible for all service time thereafter unless Granite is notified within a timely manner of an outstanding issue which Granite deems to justify service credit. All additions to your existing service package are recognized as non-refundable regardless of usage. Service fees may include applicable state and federal taxes and fees in addition to the advertised rate.

Accounts will be mailed a monthly paper invoice free of charge. Granite charges for its service continuously regardless of whether or not you are using it because we continue to maintain your connection, reserve IP space, accept mail and keep files you have saved in your account on our servers. This is also true of accounts that are Frozen (denied access) due to non-payment.

Should you opt to terminate your Granite service(s), you must contact us in writing notifying us to disconnect or terminate service. All disconnection requests will be processed on the date the request is received. This applies to both total account and single service terminations. Broadband and Hi-Cap Circuits are also subject to our Disconnection Policy (as stated herein).

## **6. Accounts Receivable:**

Bill Accounts will be invoiced thirty (30) days prior to the start of each regular monthly service period. Exceptions may include the initial or final invoice for a particular service. Payment is due prior to the beginning of the service period billed, as indicated by the invoice's Due Date. All payments will be applied to the oldest unpaid invoice in relation to your account's bill cycle. For example, if your Bill Account's Invoice Date is the 15th of the month and payment remains past due until the 28th, Accounts Receivable will apply your payment back to the previous month, forwarding your Due Date for current charges to the 15th of the following month. You will need to make another payment before the 15th to keep your account from becoming past due again. If a payment in any form is recovered or otherwise not paid by your financial institution, there may be a returned payment fee.

Granite reserves the right to terminate Bill Accounts that remain past due at its final discretion. Upon termination, services on the account will be discontinued and all files will be removed from our servers without further notice. Any applicable Disconnection Fees will be applied and due at that time.

If you wish to reinstate service with Granite, you may be required to pay all outstanding charges from the inception of your service continuously to the current month, which is always paid in advance. If you wish to reinstate your account, you will be subject to any and all installation and setup charges in effect at the time of order placement, as well as

any pertinent outstanding charges from your former account. Granite reserves the right to request a deposit, not to exceed two months billing, if in our opinion, you have become a credit risk.

#### **7. Liability & Limitations:**

**GRANITE WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, LOSS OF PROFIT OR INCREASED COST OF OPERATIONS, THAT YOU MAY SUFFER OR THAT SOME OTHER MAY SUFFER AND CLAIM AGAINST YOU. GRANITE'S ENTIRE LIABILITY FOR LOSS, DAMAGES, AND CLAIMS ARISING OUT OF THE DELIVERY OF THE SERVICES AND/OR PRODUCTS INCLUDING, BUT NOT LIMITED TO, DELAY IN THE INSTALLATION OF SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR THE GRANITE EQUIPMENT SHALL BE LIMITED TO A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT AND ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED HEREIN.**

**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 THE 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.**

The technical support that Granite provides is limited to the connectivity itself. Support for other applications and uses is not provided or implied unless it is a specifically contracted service.

#### **8. Termination Policy:**

Granite has the right to terminate your service at its sole discretion, as determined by Granite's Moderations of Use and Acceptable Use Policy.

Customers within an active service term that are terminated due to violation of Granite's Moderations of Use or Acceptable Use Policy will be assessed a Disconnection Fee. All customers terminated for this reason are liable for any and all outstanding funds due to Granite at the time of service termination, including but not limited to rendered service, hardware and installation fees.

#### **9. Final Qualification:**

Granite is committed to providing quality services. However, Granite is not ultimately responsible for the quality of your private branch exchange ("PBX"), interface equipment, personal computer or any modifications you make to any equipment supplied through us. We are committed to solving your problems but we are not responsible for

failings in individual Operating Systems and custom configuration of Operating Systems, Operating System components, software, network hardware, or inside wiring.

Granite agrees to use its commercially reasonable efforts to provide an equitable solution to every customer.

#### **10. Service Term Information:**

Granite requires all Hi-Cap Circuits, broadband installations and inbound switches to commit to an initial service term at least twelve months in length. Service terms may be extended for additional monthly increments due to specific offerings or promotional terms. Your initial service term begins once our vendor declares your circuit as up and running on Granite's network, referred to as your Installation or Activation Date.

In the event of a service move (if you move and have the service installed at the new location), a new initial service term will begin again from the date of activation at the new location. Additionally, in the event of a switch from another ISP to Granite, the initial service term will begin from the date that the ISP switch is completed. Requests to have your circuit switched to an alternate service provider at anytime during an active service term with a specific order may be subject to an Outbound Switch Fee to cover Granite's provisioning expenses.

#### **11. Installation Procedure Policy:**

**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.**

Should a new order be placed for service, a vendor may find it necessary to migrate that service in order to complete your installation. This may occur without warning during the course of your order. You are ultimately responsible for identifying this prior to initial order placement as well as handling any outstanding contractual obligations with your former service provider.

For most installation and/or truck roll dates, an individual over the age of 18 must be present to grant access so the technician can complete his or her work. In the event that there is no one present over the age of 18 at the scheduled time of the technician visit, and notification was not provided to Granite at least 2 business days in advance, there may be a Missed Appointment Fee. Similarly, a No Access Fee may be charged if a technician is denied access to the phone closet (NID or Dmarc) due to a locked facility, or by the actions of third parties. For Hi-Cap Circuits, a Cancellation Fee may be charged if a scheduled cutover is cancelled with less than 24 hours notice.

If Inside Wiring is pre-authorized during order placement, you are in turn financially responsible for any and all applicable fees for those services (stated separately). If you choose not to pre-authorize Inside Wiring work, and it is determined that additional

wiring is needed to complete your installation, it is your responsibility to ensure the necessary wiring is completed by yourself or a third party vendor. Service will be considered Activated once the line from the Central Office to your phone box is verified as running.

In the case of DSL service, the maximum number of phone line filters recommended on any line sharing order is three. Additional phone lines/filters may interfere with the quality of your DSL service.

This section applies only when Granite is the installer. This section doesn't apply if the installation is handled by any other vendor. If the installation is handled by any other vendor, you are subject to those terms and conditions that vendor may establish for providing that service. Granite assumes no liability or warranties for installations that it doesn't provide.

## **12. Service Guarantees:**

### **DSL/Hi-Cap Circuits**

Digital Subscriber Lines and Hi-Cap Circuits are complex technologies with known limitations that must be acknowledged, however, Granite will do its best to provide you the maximum speed of the line you are ultimately delivered.

### **All Broadband Services**

Granite does not guarantee "ping times" for any product. Ping times are often misunderstood as indicative of throughput or speed of your line. If you have any questions or concerns regarding ping times or throughput, please contact Granite Customer Support.

Other than as specifically described in this Agreement, Granite makes no representation, guarantee or warranty of any kind, including, to the extent permitted by applicable law, any implied warranty of merchantability or fitness for a particular purpose concerning any service or equipment provided hereunder. Granite specifically disclaims any other implied representations, warranties or guarantees. Granite cannot and does not promise uninterrupted or error-free service and does not authorize anyone to make any warranties on our behalf.

## **13. Disconnection Policy:**

It is the responsibility of the account holder to notify Granite of cancellation in writing. Returning hardware, completion of service term, or cessation of payment does not constitute notification of cancellation.

## **14. Miscellaneous:**

### **Modifications**

Granite may modify from time to time, and in any way, without limitation, any data, software, or hardware used to provide customers with Granite's services. Certain changes to Granite's services may affect the operation of customers' personalized applications and content. While Granite will work with its customers to provide proper notice of such changes, each 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.

### **Backup of Data**

Customers are solely and entirely responsible for the management and backup of all customer data, and all updates, upgrades, and patches to any software that customers use in connection with Granite services.

### **Non-Granite Products**

Any mention of non-Granite products by Granite and its employees 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.

## **15. Charges.**

The charges for your selected service plan as set forth on the Letter of Agency are the charges for your service. Additional charges may apply for other services.

### **Disconnection Fee:**

Broadband. You will be charged a \$199.00 Disconnection Fee for any specific individual order that is disconnected or terminated prior to the end of its then current service term.

Hi-Cap Circuits. You will be charged a Disconnection Fee for any specific individual order that is disconnected or terminated prior to the end of its then current service term. The Disconnection Fee shall equal 100% of the last three months average billings multiplied by the number of months remaining under the term of the applicable order *plus* actual expenses incurred by Granite to activate or terminate the Service.

## **16. Additional Terms of Service.**

You acknowledge that, in addition to the terms and conditions set forth in this Agreement, in any instance where Granite does provides service as an agent or broker of another company, you may be subject to additional terms and conditions as set forth by that vendor.

## **17. Wireless Broadband**

In the event that you subscribe to wireless broadband services provided via a wireless aircard, the additional terms and conditions set forth at <http://www.granitenet.com/Support/Pages/docs/Wireless%20Data%20Service%20Terms%20and%20Conditions%20v2.pdf> shall also apply and are incorporated herein by reference.

## **18. This Agreement.**

Granite may, from time to time, make changes to this Agreement. No change to this Agreement shall be effective unless it has been posted on [www.granitenet.com](http://www.granitenet.com) for thirty (30) thirty calendar days.

Any notice provided pursuant to this Agreement shall be in writing and shall only be deemed given upon personal delivery of the written notice or upon receipt if mailed. No other forms of delivery shall be considered notice provided pursuant to this Agreement. All notices shall be addressed to the person designated from time to time by either party to the other party.

This Agreement, or any right or duties hereunder, shall not be transferred or assigned by you without the prior written consent of Granite, which consent shall not be unreasonably withheld. Granite may freely assign its obligations under this Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and to their respective successors and assigns. This Agreement is not for the benefit of any third parties.

This Agreement and performance hereunder shall be governed by the laws of the Commonwealth of Massachusetts, without giving effect to the principles of conflict of laws of such state or international treaties. The parties hereby agree on behalf of themselves and any person claiming by or through them that the sole and exclusive jurisdiction and venue for any litigation arising from or relating to this Agreement or the subject matter hereof shall be an appropriate federal or state court located in Suffolk County, Massachusetts.

If any provision of this Agreement, or portion thereof, is determined by a court of competent jurisdiction to be invalid or unenforceable under any applicable statute or rule of law, then that provision or portion shall be enforced to the maximum extent permissible and any such determination shall not affect the validity or enforceability of any other part or provision of this Agreement, the balance of which shall continue in full force and effect.

Failure by Granite to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of any such rights.

Nonperformance of Granite will be excused to the extent that performance is rendered impossible for any reason beyond the control of Granite.

Agreement version dated and effective on: March 4, 2011.