# INDIANA RURAL HEALTH ASSOCIATION, INC.

# MASTER CONTRACT

THIS MASTER CONTRACT **(**the **“Agreement”)** is entered into this day of

 , 20 by and between **VENDOR NAME,**

**(“Supplier**”), whose address is **\_**

and

 , an

# (“Customer”),

whose address is

(hereinafter,

Supplier and Customer may be referred to in the aggregate as **“Parties,”** and each singularly as a **“Party”**).

# Recitals

WHEREAS, Customer desires to purchase network transport and other telecommunications services from Supplier; and

WHEREAS, Supplier is willing to provide such network transport and other telecommunications services to Customer on the terms and conditions contained herein.

WHEREAS, Supplier and Customer anticipate that this Agreement will be approved by the Universal Service Administrative Company (“USAC”) and that USAC will provide a Funding Commitment Letter as a result of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the Parties agree as follows:

# ARTICLE I SERVICES

* 1. **Services.**
1. During the Initial Term (as hereinafter defined) of this Agreement, Customer may order from Supplier the network transport and other telecommunications services identified on the attached **Exhibit “A”** (the “Services”) at the rates, term and charges identified therein by submitting to Supplier its order for such Services on such form as Supplier may prescribe from time to time (each an “Order for Services”). Each Order for Services submitted by Customer and accepted by Supplier shall be considered a separate contract between the Parties that incorporates the terms of this Agreement.
2. Supplier shall provide to Customer the requested Services identified and agreed upon in an Order for Services, which shall contain the specific description of the Services ordered, applicable charges and, period of time that Customer agrees to purchase such Services. The pricing for the Services shall be set forth in each Order for Service, which prices will remain fixed for the applicable Order for

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Services submitted by Customer and accepted by Supplier during the Initial Term of this Agreement.

1. Orders for Services will be transmitted and processed in accordance with the procedures set forth in **Exhibit “B** ”, which procedures may be amended from time to time by Supplier upon thirty (30) days prior written notice to Customer.
2. If additional construction of facilities and Supplier provided Customer premises equipment are required to provide any Service requested by Customer, Supplier may quote such additional costs to Customer, including the terms of payments and any termination charges. If such additional costs, terms and conditions are accepted by Customer, the Order for Services applicable to such Services shall be revised to incorporate such additional costs, terms, and conditions as agreed upon by the Parties and shall be signed by the Parties. If Supplier provides equipment for installation at Customer’s premises, such equipment shall at all time remain the property of Supplier and Supplier shall be allowed to enter the premises and recover Supplier’s equipment for a period of thirty (30) days upon termination of the applicable Order for Services in the same condition as it was originally delivered, normal wear and tear excepted. If Customer fails to allow Supplier to enter the premises to recover any Supplier provided equipment, Customer shall be liable to Supplier for the replacement cost thereof, which costs shall be paid by Customer within thirty (30) days of invoice from Supplier.
3. Network Operations and SLA definitions are set forth in **Exhibit “C”** , which procedures may be amended from time to time by Supplier upon thirty (30) days prior written notice to Customer.
4. If Customer will be locating any equipment within any Supplier facilities, Customer shall execute an Equipment Colocation Agreement in the form attached as **Exhibit “D”**. To the extent the terms of this Agreement conflict with any Equipment Colocation Agreement, the terms of this Agreement shall control.
5. If any changes to services are requested by the Customer once the contract is initiated, they must meet all requirements found in the FCC’s Healthcare Connect Fund Order 47 CFR sections §54.646: 746 Appendix D, 47 CFR §54.646 and be approved by USAC to be eligible for any potential FCC funding.

# Term; Termination.

1. This Agreement is for a term of three (3) years commencing on the date the Services are installed **(the “Initial Term”)** and shall automatically renew for additional one (1) year periods unless either party gives the other party notice of its intent not to renew at least sixty (60) days prior to the expiration of the then current term, provided, however, that this Agreement shall remain in effect and be incorporated into every Order for Services for the entire term of every Order for Services. It is expressly understood and agreed that each Order for Services shall continue in full force and effect, including incorporation of the terms of this Agreement, during its term notwithstanding any termination or expiration of this Agreement.
2. The initial term of each Order for Services shall be the term identified in such Order for Services. If at the expiration of the initial term specified in each Order for Services, Customer shall not have exercised any option to renew contained therein or entered into a new Order for Services with Supplier for such Services, then the existing Order for Services shall automatically renew for additional one
	1. year periods until the Order for Services is terminated by either Party upon thirty (30) days’ prior written notice.
3. If any Services are terminated after execution of the applicable Order for Services and prior to service commencement date for such Order for Services, Customer agrees to pay to Supplier: (i) those costs reasonably incurred by Supplier through the date of receipt of termination and (ii) any non-recurring fees Supplier incurs from other Suppliers in connection with cancellation of the Services.
4. If any Services are terminated after the service commencement date for such Order for Services and prior to the expiration of the initial term of such Services contained in the applicable Order for Services for any reason other than a Default by Supplier as set forth in Section 1.02(g) then Customer agrees to pay Supplier an early disconnection charge equal to: (i) fifty percent (50%) of the monthly recurring charges for the Services multiplied by the number of months remaining in the initial term; (ii) any fees Supplier incurs from other Suppliers in connection with cancellation of the Services; and (iii) any outstanding invoices or other amounts still owed by Customer. Such payment shall be due within thirty (30) days of the effective date of cancellation.
5. Upgrading of on-net circuits to those of higher capacity is considered a service upgrade in which case the original circuit is not considered terminated; provided, however, the Order for Services for the upgraded circuit must be of equal or longer term to the original circuit to avoid the early disconnection charge.
6. If the Federal Communications Commission, a state Public Utilities or Service Commission or a court of competent jurisdiction, issues a rule, regulation, law or order which has the effect of canceling, changing or superseding any material term of provision of this Agreement or an Order for Services (collectively, **“Regulatory Requirement”**), then the Parties shall attempt to mutually agree on a modification and amendment of this Agreement and the affected Order for Services in such a way as is necessary to comply with such Regulatory Requirement. Should the Parties not be able to agree on modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then upon written notice either Party may, to the extent practicable, terminate that portion of this Agreement or Order for Services impacted by the Regulatory Requirement, or if the entire Agreement or the affected Order for Services is impacted in such a way as to make continuation impossible, either Party may terminate the Agreement or the affected Order for Services with no further obligation or liability hereunder, and Customer shall not be liable for disconnection charges hereunder, except any non-recurring fees

Supplier incurs from other Suppliers in connection with cancellation of such Services and any outstanding invoices still owed by Customer.

1. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement (each, a “Default”):
2. Either Party’s insolvency, dissolution or cessation of business operations;
3. Customer’s failure to pay any delinquent invoice or amount owed;
4. Customer’s fraudulent or illegal use of the Services; and
5. Any assignment of this agreement that violates Section 4.10.
6. In the event of a Default under this Agreement or an Order for Services by a Party, the other Party may terminate this Agreement or the affected Order for Service upon thirty (30) days written notice, unless the breaching Party cures the breach during the thirty (30) day period.
7. Upon any Default by Customer not cured before the expiration of the applicable notice and cure period, Supplier may, at is sole option, do any or all of the following:
8. Cease accepting or processing Orders for Services and suspend Services;
9. Cease all electronically and manually generated information and reports;
10. Draw on any letter of credit, security deposit or other assurance of payment and enforce any security interest provided by Customer;
11. Terminate this Agreement and any and all Orders for Services without liability to Supplier;
12. Collect from Customer the disconnection charges; and/or
13. Pursue such other legal or equitable remedy or relief as may be available to Supplier.

# Billing; Payment.

1. Customer shall pay to Supplier all recurring and non-recurring charges for the Services at the rates and charges set forth on the applicable Order for Services. All charges shall be due and payable by Customer to Supplier within thirty (30) days of the invoice date (the **“Due Date”**). The recurring charges shall be invoiced monthly in advance. Supplier’s billing cycle will follow the calendar

month. A pro-rated portion of the first month’s Service will be included on the first invoice plus the next month’s Service in advance. Non-recurring charges will be included on the invoice for month in which incurred.

1. The Parties acknowledge that certain Services will be eligible for Healthcare Connect Fund funding from USAC (“HCF Funding”). Supplier makes no representations or warranties with respect to the eligibility or ineligibility of the Services or any Service component for the HCF Funding. Payment for the HCF Funding Services will be in accordance with the Healthcare Connect Fund (“HCF”) rules as posted on the USAC website. In the case of HCF Funding Services, Customer will pay thirty-five percent (35%) of the invoice submitted by Supplier. Supplier shall then submit the partially paid invoices to USAC, but Supplier acknowledges that Customer cannot control the timing of payments made by USAC. Supplier shall itemize and completely separate project invoices from any and all existing invoicing Company has with Customer. In addition, separate accounting identifiers shall be used. In the case of non-HCF Funding Services, Customer shall pay to Supplier one hundred percent (100%) of all recurring and non-recurring charges for the Services at the rates and charges set forth on the applicable Order for Services.
2. All charges due and payable by Customer to Supplier shall be due within thirty

(30) days of the invoice date (the “**Due Date**”). The recurring charges shall be invoiced monthly in advance. Supplier’s billing cycle will follow the calendar month. A pro-rated portion of the first month’s Service will be included on the first invoice plus the next month’s Service in advance. Non-recurring charges will be included on the invoice for month in which incurred.

1. If any amounts owed by Customer are not paid on the Due Date: (i) a late charge shall accrue on all amounts non paid when due equal to one and one-half percent (1 ½%) (or the maximum legal rate, if less) of the unpaid balance per month. In the even a payment is received by Supplier and is returned for insufficient funds of bank charges, to the extent permitted by law, the Customer will pay to Supplier a late charge of twenty-five ($25.00) per returned item and any interest due on past amounts.
2. If during the term of this Agreement HCF funds are not made available for any fiscal period of the Agreement succeeding the first fiscal period, Customer shall remain bound by the terms and conditions set forth hereunder and be fully responsible for all non-recurring and monthly recurring charges, as set for on the applicable Order for Services, for the remaining terms of the Agreement.

# Credit Approval; Deposits.

Customer acknowledges that delivery of the Services is subject to credit approval by Supplier. Customer further acknowledges that Customer may be required to pay a deposit before delivery of the Services is authorized by Supplier, provided that such deposit shall not exceed three months of anticipated monthly recurring charges under the

applicable Order for Services. At such time as the provision of Services to Customer under an Order for Service that was subject to a security deposit is terminated, the balance of any cash deposit (not otherwise credited against any amounts owed to Supplier) will be refunded.

# Taxes; Assessments.

Customer is responsible for the collection and remittance of all governmental assessments, surcharges and fees pertaining to its resale of the Services (other than taxes on Supplier’s net income) (collectively **“Taxes”**) unless Customer provides Supplier with, and maintain, valid and properly executed certificate(s) of exemption for the Taxes, as applicable.

* 1. **Insurance.** Supplier shall maintain during the term of this Agreement all insurance required to satisfy its obligations under this Agreement and all insurance required by Applicable Law. At a minimum and without limiting the foregoing undertaking, Supplier shall maintain the following insurance: (a) Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises- operations, broad form property damage, products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least $2,000,000 combined single limit for each occurrence; (b) Commercial Motor Vehicle Liability Insurance covering all owned, hired and non-owned vehicles, with limits of at least

$2,000,000 combined single limit for each occurrence; and (c) Worker’s Compensation Insurance as required by Applicable Law and Employer’s Liability Insurance with limits of not less than $2,000,000 per occurrence.

* 1. **Nondiscrimination.** This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Agreement, but nothing in this covenant shall be construed to imply or establish an employment relationship between Customer and any applicant or employee of the Supplier or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the American with Disabilities Act, the Supplier covenants that it shall not discriminate against any employee or applicant for employment or any matter directly or indirectly related to employment, because of the employee or applicant’s: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“Protected Characteristics’). Furthermore, Supplier certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Supplier understands that Customer is recipient of federal funds, and therefore, where applicable, Supplier and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

# ARTICLE II WARRANTIES

* 1. **Non-Collusion and Acceptance.** The signatory for the Supplier attests, subject to the penalties of perjury, that he/she is the Supplier, or that he/she is the properly authorized representative, agent, member or officer of the Supplier, that he/she has not, nor has any other member, employee, representative, agent or officer of the Supplier, directly or indirectly, to the best of the undersigned’s knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

# Warranties.

1. Supplier represents and warrants to Customer that it has the right to provide to Customer the Services specified herein and in any Order for Services and that it has the right, power and authority to enter into and perform its obligations under this Agreement.
2. Supplier represents and warrants that the Services are in compliance with all applicable federal, state and local laws, rules and regulations and administrative and regulatory requirements, and Supplier shall be responsible for obtaining and maintaining all approvals, registrations and certifications required by such authorities.
3. Supplier represents and warrants that the Services shall not infringe the copyright, patent, trademark or other intellectual property right of a third party.

# Disclaimer of Warranties.

OTHER THAN THE WARRANTIES SET FORTH HEREIN AND IN THE APPLICABLE ORDER FOR SERVICES, SUPPLIER MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY SERVICE PROVIDED HEREUNDER OR THEREUNDER OR DESCRIBED HEREIN OR THEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY SUPPLIER ARE HEREBY EXCLUDED AND DISCLAIMED.

For purposes of this Section, the term “Supplier” shall be deemed to include Supplier, its officers, agents and employees.

# ARTICLE III INDEMNIFICATION; LIMITATION OF LIABILTIES

* 1. **Customer Indemnification.**

Customer shall indemnify and hold harmless Supplier and its officers, directors, agents and employees, from and against any and all claims, demands, causes of action, losses, damages, costs and expenses, including attorneys’ fees (collectively referred to as **“Claims”**) arising out of or in any manner relating to: (i) violation of any law, rule or regulation by any governmental authority or other agency; (ii) any claim for withholding or other taxes that might arise or be imposed due to this Agreement or the performance hereof; (iii) damage to property or personal injury (including death) arising out of the negligence or willful acts or omissions of Customer; (iv) breach of any representation, warranty, or obligation contained in this Agreement or any Order for Services by Customer; or (v) any act or omission of Customer and its officers, directors, agents, employees or customers arising under or in any way related to this Agreement or any Order for Services.

# Supplier Indemnification.

Supplier shall indemnify and hold harmless Customer and its officers, directors, agents and employees, from and against any and all claims, demands, causes of action, losses, damages, costs and expenses, including attorneys’ fees (collectively referred to as **“Claims”**) arising out of or in any manner relating to: (i) violation of any law, rule or regulation by any governmental authority or other agency; (ii) any claim for withholding or other taxes that might arise or be imposed due to this Agreement or the performance hereof; and (iii) damage to property or personal injury (including death) arising out of the gross negligence or willful acts or omissions of Supplier.

# Limitation of Liabilities.

Supplier’s sole liability arising out of delays in restoration of the Services to be provided under this Agreement or an Order for Services or out of mistakes, accidents, omissions, interruptions, or errors or defects in transmission in the provision of Services, or arising in any way out of this Agreement, shall be subject to the limitations set forth in Articles II and III of this Agreement or the applicable Order for Services AND IN NO EVENT SHALL SUPPLIER’S LIABILITY FOR DAMAGES EXCEED THE AMOUNT OF FEES AND CHARGES PAID BY CUSTOMER DURING THE THREE

(3) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY AND EXCEPT AS EXPRESSLY PROVIDED HEREIN, IN NO EVENT SHALL SUPPLIER BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY IN ANY RESPECT FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL,

INCIDENTIAL, ACTUAL, PUNITIVE, OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, ARISNG OUT OF MISTAKES ACCIDENTS, ERRORS, OMISSIONS, INTERRUPTIONS, OR DEFECTS IN TRANSMISSION, OR DELAYS, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OBLIGATIONS OF SUPPLIER PURSUANT TO THIS AGREEMENT.

EXCEPT FOR THE INDEMNITY OBLIGATIONS EXPRESSLY SET FORTH HEREIN OR IN ANY APPLICABLE ORDER FOR SERVICE, SUPPLIER’S LIABILITY FOR ALL CLAIMS OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE), WARRANTY OR ON OTHER LEGAL OR EQUITABLE PRINCIPLES SHALL BE LIMITED TO STRICT MONEY DAMAGES AND SHALL NOT EXCEED TWO (2) TIMES THE AMOUNT PAID BY CUSTOMER TO SUPPLIER PURSUANT TO THE ORDER FOR SERVICES UNDER WHICH THE LIABILITY ARISES.

# ARTICLE IV GENERAL PROVISIONS

* 1. **Independent Contractor.**

The Parties acknowledge and agree that the relationship between them is solely that of independent contractors. Neither Party, nor their respective employees, agents or representatives, has any right, power or authority to act or create any obligation, express or implied, on behalf of the other Party.

# Force Majeure.

Neither Party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, explosion, terrorism, vandalism, storms or other similar catastrophes, national emergencies, insurrections, riots or wars. The Parties agree that Customer shall not be required to pay any fees for Services not provided by Supplier due to and during the continuation of a Force Majeure event.

# 4.03Waivers.

Failure of either Party to enforce or insist upon compliance with the provisions of this Agreement or an Order for Services shall not be construed as a general waiver or relinquishment of any provision or right under this Agreement or the Order for Services.

# 4.04Survival.

The indemnifications, covenants and agreements of Customer contained in this Agreement and any Order for Services, including, but not limited to Customer’s obligations to pay all amounts due, shall survive any termination of this Agreement or termination of an Order for Service. The rights and obligations under this Agreement shall survive any merger or sale of either Party and shall be binding upon the successors and permitted assigns of each Party.

# 4.05Confidentiality.

1. Each Party agrees that all information furnished to it by the other Party, or to which it has access under this Agreement, shall be deemed confidential and proprietary information or trade secrets (collectively referred to as **“Proprietary Information”**) of the disclosing Party and shall remain the sole and exclusive property of the disclosing Party. Each Party shall treat the Proprietary Information and the contents of this Agreement and any Order for Services in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement or an Order for Services, neither Party may directly or indirectly disclose the same to anyone other than its employees and agent who have a need to know the Proprietary Information.
2. The confidentiality obligations of this Section do not apply to any portion of the Proprietary Information: (i) which is or becomes public knowledge through no fault of the receiving Party; (ii) in the lawful possession of the receiving Party prior to disclosure to it by the disclosing Party (as confirmed by the receiving Party’s records); (iii) disclosed to the receiving Party without restriction on disclosure by a person who has the lawful right to disclose the information; or (iv) disclosed pursuant to the lawful requirements or formal request of a governmental agency. If the receiving Party is requested or legally compelled by a governmental agency or court of competent jurisdiction to disclose any Proprietary Information of the disclosing Party with prompt written notice of such requests and the receiving Party shall make a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued and narrowing as much as possible the scope of disclosure.
3. Each Party acknowledges that its breach or threatened breach of this Section shall cause the disclosing Party irreparable harm that would not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the receiving Party agrees that equitable relief, including a temporary or permanent injunction, is an available remedy in addition to any legal remedies to which the disclosing Party may be entitled.
4. Neither Party may use the logo, trade name, service marks, or printed materials of the other Party, in any promotional or advertising materials,

statement, document, press release or broadcast without the prior written consent of the other Party, which consent may be granted or withheld at the other Party’s sole discretion.

1. Any obligations of the Parties relating to confidentiality shall survive termination of this Agreement and any Order for Services for a three (3) year period.

# 4.06Entire Agreement.

This Agreement and all Exhibits, Schedules and other attachments incorporated herein, and any Order for Services between the Parties, represent the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersede and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities and inducements to the making of this Agreement or any Order for Services relied upon by either Party, whether written or oral.

# 4.07Construction.

The language used in this Agreement is deemed the language chosen by the Parties to express their mutual intent. No rule of strict construction shall be applied against either Party.

# Governing Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana, excluding its conflict of law provisions. The parties acknowledge and agree that all disputes between them in connection with this Agreement shall be filed in the state courts of Indiana.

# Attorney Fees.

In the event suit is brought or an attorney is retained by Supplier to enforce the terms of this Agreement or to collect any money as due hereunder or to collect any money damages for breach hereof, Supplier shall be entitled to recover, in addition to any other remedy, the reimbursement for reasonable attorneys’ fees, court costs, cost of investigation and other related expenses incurred in connection therewith.

# 4.10Assignment.

The Customer shall not assign this Agreement without the prior written consent of the Supplier, whose consent will not be unreasonably withheld.

# 4.11Notices.

All notices, including but not limited to, demands, requests and other communications required or permitted hereunder (not including Invoices) shall be in writing and shall be deemed to be delivered when actually received, whether upon personal delivery or if sent by facsimile, or overnight delivery and shall be deemed delivered three days after mailing if mailed by regular mail. All notices shall be addressed as follows, or to such other address as each of the Parties may notify the other.

Supplier: Customer:

Supplier Name Customer Name

Attn: CEO Attn: Contact Name

Supplier Address Customer Address

Supplier Address Customer Address

# 4.12Counterparts.

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.

# Compliance with Laws.

1. During the term of this Agreement, the Parties shall comply with all local, state and federal laws and regulations applicable to this Agreement and to their respective businesses, including state and federal anti-kickback laws, the Medicare/Medicaid Anti-Fraud and Abuse Statutes, and restrictions on Customer by virtue of its tax-exempt status and the federal law relating to physician referrals. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulation there under after execution of this Agreement shall be reviewed by Customer and Supplier to determine whether the provisions of this Agreement require formal modification. Further, each Party shall obtain, file and maintain any tariffs, permits, certifications, authorizations, licenses or similar documentation as may be required by the Federal Communications Commission, a state Public Utilities or Service Commission, or any other governmental body or agency having jurisdiction over its business, provided however, that Supplier shall obtain, file and maintain any tariffs, permits, certifications, authorizations, licenses or similar documentation as may be required by the Federal Communication Commission, a state Public Utilities or Service Commission, or any other governmental body or agency for the Services under this Agreement.
2. Upon request, a Party will supply copies of such permits, certifications, authorizations, licenses and similar documentation. Further, Supplier hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Supplier will give written notice to Customer within

ten (10) days after receiving actual notice that the Supplier or an employee of the Supplier in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of Agreement payments, termination of this Agreement and/or debartment of contracting opportunities with Customer for up to three (3) years.

1. If at any time, as the result of the enactment of a new statute, the issuance of regulations, or otherwise, either party receives a written opinion of counsel that there is a substantial risk, as a result of this Agreement, either party does not comply with applicable law or that Customer would be legally precluded from billing a third party or governmental payor for services provided, then the parties shall use good faith efforts to reform this Agreement in such a manner so that it complies with applicable law or does not preclude Customer from billing a third party or governmental payor, as applicable. If after the exercise of such good faith efforts for a period of at least thirty (30) business days, the parties have not agreed on amendment(s) to this Agreement that resolve the legal issues referred to above, then the party(s) whose receipt of a legal opinion triggered renegotiation may terminate this Agreement upon at least sixty (60) calendar days written notice to the other party.

# Third Party Beneficiaries.

The provisions of this Agreement and the rights and obligations created hereunder are intended for the sole benefit of Supplier and Customer, and do not create any right, claim or benefit on the part of any person not a Party to this Agreement, including end- users.

# 4.15Amendments.

Except as may otherwise be provided herein, any amendments or modifications to this Agreement or to an Order for Services must be in writing and signed by an authorized officer of Supplier and an authorized officer of Customer.

# 4.16Severability.

The illegality of unenforceability of any provision of this Agreement or of an Order for Services shall not affect the legality or enforceability of any other provision or portion hereof or thereof. If any provision or portion of this Agreement or of an Order for Services is deemed illegal or unenforceable for any reason by a court of competent jurisdiction, there shall be deemed to be made such minimum change in such provision or portion as is necessary to make it valid and enforceable as so modified. This Agreement and any Order for Services is voidable by Supplier if modified by Customer without the written or initialed consent of an authorized officer of Supplier.

# Adequate Counsel.

By its signature below, each Party acknowledges and agrees that sufficient allowance has been made for review of this Agreement by respective counsel and that each Party has been advised as to its legal rights, duties and obligations under this Agreement.

* 1. **Access to Books and Records.** To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the “Act”0 and the regulations promulgated thereunder are applicable to this Agreement, Supplier and the organizations related to it, if any, performing any of the duties pursuant to this Agreement valued at Ten Thousand Dollars ($10,000) or more in any twelve (12)-month period shall, until four (4) years after the furnishing of Services pursuant to this Agreement, comply with requests by the Comptroller General, the Secretary of the Department of Health and Human Services, and their duly authorized representatives for access (in accordance with Section 952 of the Act) to any contract or agreement between the Supplier and Customer for Services and to any contract or agreement between Supplier and such related organizations, as well as the books, document and records of Supplier and its related organizations, if any, which are necessary to verify the cost of the Services provided. Supplier shall promptly advise Customer of such request, and shall promptly provide to Customer copies of any documents so provided. Neither party shall be deemed to have waived any attorney-client or work-product privilege nor violated the Confidentiality provisions of Section 4.05 by virtue of this Section.
	2. **Excluded Provider.** Supplier represents and warrants that neither it, nor any of its employees or other contracted staff (collectively referred to in this paragraph as “employees”) has been or is about to be excluded from participation in any Federal Health Care Program (as defined herein). Supplier agrees to notify Customer within five

(5) business days of Supplier’s receipt of notice of intent to exclude or actual notice of exclusion from any such program. The listing of Supplier or any of its employees on the Office of Inspector General’s exclusion list (OIG website), the General Services Administration’s Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA website) for excluded individual or entities, any state Medicaid exclusion list, or the Office of Foreign Assets Control’s (OFAC’s) blocked list shall constitute “exclusion” for purposes of this paragraph. In the event that Supplier or any of its employees is excluded from any Federal Health Care Program or placed on the OFAC’s blocked list, it shall be a material breach and this Agreement shall immediately terminate without penalty to Customer, unless Customer elects in writing to continue this Agreement. For the purpose of this paragraph, the term “Federal Health Care Program”

means the Medicare program, the Medicaid program, TRICARE, any health care program of the Department of Veterans Affairs, the Maternal and Child Health Services Block Grant program, any state social services block grant program, any state children’s health insurance program, or any similar program.

* 1. **Discounts and/or Free Products** Supplier shall assist Customer in complying with the reporting requirements of 42 C.F.R. §1001.952(h), regarding “safe harbor” protection for discounts under the Anti-kickback Statute. Supplier shall disclose to Customer in this Agreement and on each invoice, or as otherwise agreed in writing, the

amount of any discount or rebate. The statement shall inform Customer, as appropriate, in a clear and simple manner of the amount of any discount or rebate so as to enable Customer to satisfy its obligations to report such discount or rebate to Medicare, USAC *and the FCC’s Healthcare Connect Fund Program.*

IN WITNESS WHEREOF, the Parties by their authorized representative have executed this Agreement on the date first above written.

Customer:

Supplier Name

By:

By:

Printed Name: Printed Name:

Title: Title:

Attachments

Exhibit A: Services and Pricing

Exhibit B: Order for Services Processing Procedures Exhibit C: Network Operations Requirements Exhibit D: Emergency/Escalation Contact List Exhibit E: Form of Colocation Agreement

# SERVICES & PRICING

**Exhibit A**

All services and rates for services are on an ICB (Individual Case Basis) and are detailed in separate Orders for Services, which both parties shall agree to prior to service commencement.

# Exhibit B

**Order for Services Processing Procedures**

1. **ORDER FOR SERVICES:**
	1. Upon receipt of an Order for Services (**“OFS”**) from the Customer, Supplier will respond with any corrections or clarifications required to process the request within forty-eight (48) hours from the receipt of the OFS.
	2. If requested by Customer, Supplier will provide a Firm Order Confirmation (**“FOC”**) to the Customer within ten (10) days after receipt of a complete and accurate OFS for services provided over Supplier’s network (**“on-net”**). If the request is for off-net services, then Supplier will provide FOC information within two (2) business days after receipt of the off-net provider’s FOC. The FOC will provide the order interval(s) and projected service starting date.
	3. If requested by Customer, Supplier will provide Design Layout Record (**“DLR”**) information within ten (10) business days after receipt of a complete and accurate OFS for on-net services. If the request is for Off-net services, then Supplier will provide DLR information within two (2) business days after receipt of off-net provider’s DLR.
	4. Customer shall have two (2) business days from Supplier’s written notification that service is available to test and accept service. Billing will not commence until the next business day after the earlier of the following: (i) Customer tests and provides written notification that service is accepted; or (ii) the two (2) business day interval has passed without notification by Customer to Supplier of non-acceptance.
	5. The following are estimated installation intervals in business days:

|  |  |  |
| --- | --- | --- |
| Type of Service: | On-Net | Off-Net |
| DS1 | 15 days | ICB |
| DS3 | 30 days | ICB |
| OC-N | ICB | ICB |
| Ethernet Services | ICB | ICB |

* 1. If a shorter interval is required that is less than the interval identified above, then the Customer can negotiate with Supplier for an expedited installation interval. An order expedite charge will be assessed as follows:

|  |  |
| --- | --- |
| Type of Service: | Expedite Charge: |
| DS1 | $300 |
| DS3 | $1,000 |
| OC-N | ICB |
| Ethernet Services | ICB |

# DELAY IN START DATE:

* 1. Customer may request a delay in the service start date via written notification provided that; (i) the request is made no later than two (2) business days prior to the service activation date identified in the FOC; (ii) the aggregate number of days requested by such delay request does not exceed sixty (60) calendar days; and (iii) the aggregate number of delay requests is three (3) or less per circuit. Each delay is subject to the following charges:

|  |  |
| --- | --- |
| Type of Service: | Due Date ChangeCharge: |
| DS1 | $150 |
| DS3 | $200 |
| OC-N | $500 |
| Ethernet Services | ICB |

* 1. Customer is responsible for any third party charges Supplier incurs as a result of Customer’s delay request for facilities or change charges.

# Exhibit C

**Network Operations Requirements**

1. **NETWORK OPERATIONS DEFINITIONS:**
	1. Outage. “Outage” shall be defined as a measure of the time that Customer loses a signal or receives a signal so poor that it is unavailable.
	2. Class of Service. The “Class of Service” categories shall be defined as follows.

|  |  |
| --- | --- |
| Class A | Supplier Provided Fiber – dual entrance |
| Class B | Supplier Provided Fiber – w/lateral or single entrance |
| Class C | non- Supplier Provided Fiber facilities – w/lateral or singleentrance |

* 1. Chronic Trouble. Chronic Trouble exists when either: (i) three (3) or more separate periods of service interruption occur within the same calendar month; or

(ii) service interruption occurs in excess of two (2) hours in three (3) consecutive months. In the event that Customer experiences Chronic Trouble, the Customer shall be entitled, in addition to any applicable credits, to request re-provisioning of the affected circuit. Such re-provisioning must be requested by Customer in writing.

* 1. Planned Maintenance or Repair. Planned Maintenance or Repair includes network upgrades and repairs, equipment upgrades and repairs, power upgrades and repairs.
	2. Emergency Maintenance or Repair. Emergency Maintenance or Repair refers to work which, if not accomplished immediately by Supplier or Third Party Provider, could result in a serious degradation or loss of Service to the Customer or the End User. Emergency maintenance or repair includes network, equipment and power facilities.

# NETWORK STANDARDS OF PERFORMANCE:

Supplier agrees to use reasonable efforts to provide Customer with uninterrupted Services for the duration of the Agreement. Customer shall immediately notify Supplier of any problems or end-user complaints with the Services. The liability of Supplier for damages for mistakes, omissions, interruptions, delays, errors or defects in transmission ("Failure of Performance") occurring in the furnishing of Services hereunder, or arising in any way out of this Agreement, shall be limited to not

charging Customer for any Services which Supplier has failed to provide, or that were the subject of the Failure of Performance. In the event of a Failure of Performance, Supplier shall use its reasonable efforts to correct such failure as soon as reasonably practicable after Supplier is notified of such failure. Facility and port performance will be measured using three parameters: availability: latency: and packet loss: Availability is a measure of the relative amount of time the service is available to the Customer for use. The objective for all services is to provide performance at 99.999% over a consecutive 30-day period. Latency is measured as time. Latency required for a packet to travel round trip between Supplier POPs will average less than 75ms. Packet loss is measured as the percentage of 64 byte packets lost after 100 trials during a one-month period between Supplier POPs. Packet loss will be less than 0.5% for traffic between Supplier POPs. Customer acknowledges that Supplier may need to perform routine maintenance as well as Emergency Maintenance and Repair as defined above, which will not be considered for overall measurement of standards of performance.

# SERVICE INTERRUPTION:

* 1. In the event of an interruption of service, Customer shall be entitled to a credit determined according to the following table for each effected segment:

|  |  |  |  |
| --- | --- | --- | --- |
| Length of Interruption: | Class ACredit Amount: | Class BCredit Amount: | Class CCredit Amount: |
| 2 - < 4 hours | 10% of MRC | 5% of MRC | 1% of MRC |
| 4 - < 8 hours | 25% of MRC | 15% of MRC | 5% of MRC |
| 8 - < 12 hours | 50% of MRC | 25% of MRC | 10% of MRC |
| > 12 hours | 100% of MRC | 50% of MRC | 25% of MRC |
| > 24 hours | 100% of MRC | 100% of MRC | 50% of MRC |
| > 48 hours | 100% of MRC | 100% of MRC | 100% of MRC |

The length of the interruption shall be measured in hours and fractional portions thereof. Each interruption shall be deemed to terminate upon restoration of the affected Services as evidenced by appropriate network test by Supplier, and Supplier’s notification to Customer. To receive credit, Customer must make a written request within forty-five (45) days of the end of the month for which the interruption occurred.

* 1. Service interruption credits do not apply to outages: (i) caused by the negligence or willful misconduct of the Customer; (ii) due to failure of power (excluding any industry standard back-up power sources that Supplier may have in place); (iii) during any period in which Supplier is not given access to the Customer or Customer’s end-user’s premise if necessary to resolve an outage; (iv) during any

period of scheduled maintenance, alteration or implementation; and (v) during any period of Force Majeure.

# SUPPLIER RESPONSE:

* 1. Supplier shall maintain a twenty-four (24) hours a day, seven (7) days a week point-of-contact for Customer to report to Supplier system troubles. Supplier NOC contact information is or .
	2. Supplier shall provide an explicitly named list, including direct contact information, of operations management contacts for purposes of trouble resolution escalations.

|  |  |  |
| --- | --- | --- |
| i) Primary contact: | number: | email: |
| ii) Escalation level 1: | number: | email: |
| iii) Escalation level 2: | number: | email: |
| iv) Escalation level 3: | number: | email: |

* 1. Supplier shall perform all trouble maintenance and repair functions on its system and facilities from the end-user’s premise to the demarcation point at the Customer facilities twenty-four (24) hours per day, seven (7) days per week.
	2. In the event of a service interruption, Supplier will use commercially reasonable efforts to have repair personnel on-site within four (4) hours from either the point at which Service Provider notices the service impairment or after receiving such notification from Customer, whichever comes first.

# PLANNED MAINTENANCE OR REPAIR:

* 1. Maintenance Window. Planned maintenance is performed during a maintenance window of 10:00 PM to 6:00 AM (Eastern Time).
	2. Notification. Supplier will provide Customer with written notice of the planned activity by means of electronic mail notification to no less than ten (10) days prior to starting work. Customer agrees to acknowledge receipt of the written notification within two (2) business days of receipt confirming that Customer is aware of the planned work and has taken necessary steps to notify key personnel internally of when work will begin. If no response is given by Customer, acknowledgement will be deemed given.

# EMERGENCY MAINTENANCE OR REPAIR:

Where prior notice is not practical in the circumstances, Supplier reserves the right to perform required emergency maintenance or repairs. Whenever prior notice is given, Customer agrees to acknowledge notice of the emergency event in a reasonable period of time and in all events Customer will take necessary steps to notify key personnel internally in order for Supplier to have access to correct or repair the affected area.

# Exhibit D Emergency/Escalation Contact List

**If you experience a network outage or service interruption at any time please call the Supplier Operations Center (NOC) at**

Response Type Objective

# Time Expectation for a return call 30 Minutes or less

**Time Expectation for equipment restoration**

**4 Hours or less**

**Time Expectation for Fiber restoration 12 Hours or less**

**If at any time you feel that you have not received a satisfactory response to your issue, please feel free to proceed to the next level on the escalation list.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Escalation****Level** | **Escalation Contact** | **Email** | **Desk****Number** | **Cell Number** |
| **1** |
| **2** |
| **3** |
| **4** |

**If during normal business hours you have a question or concern that is not service affecting please call the main business number**