

Ms. Ally Orwig  
Project Coordinator  
Indiana Rural Health Association  
2901 Ohio Blvd., Suite 240  
Terre Haute, IN 47803

**Reference: The Indiana Telehealth Network RFP HCF-08 Due March 29, 2019 by 3PM ET.**

## **2.1. COVER LETTER (2.1.1-2.1.5)**

Dear Ms. Orwig,

Metro Fibernet, LLC is pleased to submit this response to the Request for Proposal for Internet Connectivity and Transport services for the Indiana Telehealth Network ("RFP"). This letter shall act as Metronet's acknowledgement, understanding and agreement regarding the general information set forth in Section 1 of the RFP. Metro Fibernet, LLC and its affiliate CMN-RUS, Inc. (collectively "Metronet") have a state-of-the-art 100% fiber network, significant experience deploying Internet and Transport services to USAC customers. Metronet is poised and positioned to provide the products and/or services that meet the requirements in Sections 2.4 and 2.5 of the RFP as more specifically described below. Metronet is willing to provide these products and/or services pursuant to the terms of the RFP in full compliance with FCC rules and regulations for the Healthcare Connect Fund.

In formulating our response to the RFP, we considered the requirements and objectives of each Health Care Participant ("HCP"). While there are numerous competing technologies that can deliver bandwidth, Metronet offers a future proof 100% fiber solution all the way to the customer premises. Metronet utilizes an all fiber network to deliver our services which gives us the ability to seamlessly increase the bandwidth capacity of an end user with minimal provisioning. Most importantly, Metronet can deliver these high quality reliable transport services often at price points at or below those offered for inferior competing services.

Metronet's advantage over other providers not only lies in its almost limitless bandwidth capabilities, but also in our excellent reliability and unwavering commitment to customer service. Although Metronet's corporate headquarters is located in Evansville, Indiana, we have strived to establish a local presence in the communities we serve. Metronet currently operates retail storefronts staffed with local technicians within its service territory in Indiana, Kentucky, Illinois and Michigan. These locations allow us to address customer issues quickly and effectively with prompt responsive times. We always strive to provide each customer with a superior level of account management and proactive personal service.

Our local presence and demonstrated track record of customer service has allowed Metronet to successfully earn the business of many anchor institutions in the communities we serve including, multiple school districts, colleges/universities, hospitals, libraries and city governments.

Our locally based Metronet team, comprised of sales and technical professionals, has the experience and qualifications to ensure a well planned and executed service installation. We fully anticipate implementing our solution within the 180 days' requirement listed in the RFP subject to events outside of our control. Following installation, the healthcare participants will always have that ability to reach a live member of our team to assist with and resolve any service issues in a timely manner.

Metronet's solution will not only meet the healthcare participants' current and future needs, but will also immediately enhance its current Internet and transport service offerings. Metronet has been relentless in its pursuit to provide the communities we serve with the best technology and products available. In addition to Internet and transport services, Metronet provides a full suite of telecommunication services including hosted VoIP (HPBX), PRIs, SIP Trunking, Managed Wi-Fi services, traditional POTS, and IPTV.

Our proven track record of providing excellent customer service will also ensure that the healthcare participants receive the best possible customer experience. When coupled with our competitive pricing structure, we believe our advanced fiber services will provide not only the best possible value but will also be flexible, scalable, future proof and supported by a company known for its unparalleled customer service.

It is Metronet's pleasure to submit this document for consideration and agrees to perform the required tasks in accordance with the terms and conditions specified in the master agreement. We appreciate the opportunity to earn your business.

Should you have any questions as you review our response to this RFP, please reach out to me at 812-759-7958 as well as the principal contact for the proposal:

Monica Piguet, Manager of Sales Engineering 317-599-1194 / [monica.piguet@metronetinc.com](mailto:monica.piguet@metronetinc.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Stelmach', with a stylized, sweeping flourish at the end.

Kevin Stelmach, General Manager

[Kevin.Stelmach@metronetinc.com](mailto:Kevin.Stelmach@metronetinc.com)

Phone (812) 759-7958

Fax (812) 759-1856

## **2.2 BUSINESS PROPOSAL**

### **2.2.1 General (OPTIONAL)**

Metronet was formed to build 100% fiber networks for purposes of delivering broadband voice, video and data services to residential and business consumers. In 2005, Metro Fibernet, LLC's affiliate, CMN-RUS, Inc., received a \$106-million-dollar loan from the Broadband Program through the US Department of Agriculture to build out 10 rural communities in the State of Indiana. After successfully deploying services in those markets, Metro Fibernet, LLC along with CMN-RUS, Inc. (together "Metronet") have expanded to an additional 36 communities including, most recently, Davenport, Iowa. Currently, Metronet fiber facilities pass nearly 260,000 homes and businesses. Metronet is backed by high net worth investors and a major private equity firm. As a result of our performance and the capital provided by these investors, Metronet has a strong balance sheet and significant resources to operate and expand the business. In 2014, Metronet set out to bring 1 Gigabit Internet service to all communities served by Metronet. This was another step in our continued commitment to create a foundation that will make the cities and rural communities we serve stronger and allow them to foster innovation, drive job creation and stimulate economic growth and development for years to come.

### **2.2.2. Respondent's Company Structure**

Metro Fibernet, LLC is a Nevada limited liability company, with authority to conduct business in the State of Indiana. It has a Certificate of Territorial Authority from the Indiana Utility Regulatory Commission to provide telecommunications services in Indiana. CMN-RUS, Inc., Metro Fibernet's affiliate, has a statewide video franchise. Metronet provides voice, video and data services to residential and commercial customers. Metronet utilizes an employee holding company, Q Services, LLC for its employees.

*(Refer to Appendix A for the Certificate of Authority)*

*(Refer to Appendix B for the Organization Chart)*

### **2.2.3. Company Financial Information**

Throughout our organization, Metronet has the personnel in place to provide the best long term service solution to each Health Care Participant (HCP). Our senior management team has a history of successfully operating and growing communications companies. Key members of this team previously oversaw the development of a long haul fiber transport network from a company that started with 43 route miles operating in 1 State to one with over 33,000 route miles operating in 18 states over a 12-year period. This same team has also successfully managed the growth of Metronet from its inception. Additionally, Metronet is backed by high net worth investors and a major private equity firm. As a result of our performance and the capital provided by these investors, Metronet has a strong balance sheet and significant resources to operate and expand the business.

*(Refer to Appendix C for the Income Statement and Balance Sheet)*

#### **2.2.4. Integrity of Company Structure and Financial Reporting**

Metronet's Chief Financial Officer (CFO) has reviewed any/all financial information supplied with this proposal and accepts responsibility for the thoroughness and correctness of the financial documents included in this RFP.

#### **2.2.5. Contract Terms/Clauses**

Metronet agrees to perform the required tasks in accordance with the terms and conditions specified in the master agreement:

- Authority to Bind Contractor
- Duties of Contractor, Rate of Pay, and Term of Contract
- Compliance with Laws
- Drug-free Workplace Provision and Certification
- Indemnification
- Governing Laws
- Non-discrimination clause
- Payments
- Service Level Agreement, including availability requirements
- Penalties/Interest/Attorney's Fees
- Non-collusion and Acceptance
- Service Level Credits

*(Refer to Appendix D for Master Services Agreement)*

#### **2.2.6. References**

**Kings Daughter's Hospital**

**1373 E SR 62**

**Madison, IN 47250**

**Greg Deaton, Network Operations Director**

(812) 801-0390

[deatong@kdhmadison.org](mailto:deatong@kdhmadison.org)

Metronet Services: Wide Area Network/Transport services, Internet, phone service, and TV for all rooms and hospital locations.

Customer since 2011

**Good Samaritan Hospital**

**520 S. Seventh St.**

**Vincennes, IN 47591**

**Marsha Danielson, Director of Information Systems, (812)885-3855/[mdanielsen@gshvin.org](mailto:mdanielsen@gshvin.org)**

**Perry Snyder, Manager of Cardiac Cath Lab, (812) 885-3920**

Metronet services: Internet Services and phone services. Customer since 2010



**Fayette Regional Health Systems**

**1941 Virginia Avenue**

**Connersville, IN 47331**

**Trish Jarboe, Network Administrator**

(765) 827-8846

[trishj@fayetteregional.org](mailto:trishj@fayetteregional.org)

Metronet Services: Cable TV Service for all hospital rooms and satellite hospital office, Internet services for all locations, phone service for all locations. Customer since 2010

**Parkview Wabash Hospital**

**701 N. East Street**

**Wabash, IN 46992**

**David Brinson, IT Director**

(260) 569-2180

[dbrinson@wchospital.com](mailto:dbrinson@wchospital.com)

Services – Wide Area Network, internet, bulk TV

Customer since 2010

**Schneck Medical Center**

**411 W. Tipton Street**

**Seymour, IN 47274**

**Les Chase, Manager Environmental Services/Bio-Med**

(812) 522-0492

[lchase@schneckmed.org](mailto:lchase@schneckmed.org)

Services – Cable TV Service for all hospital rooms and satellite hospital offices, internet service, phone service

Customer since 2007

**Madison State Hospital**

**711 Green Road**

**Madison, IN 47250**

**Johnnetta Day, Program Director**

(812) 265-7311

[johnnettaday@fssa.in.gov](mailto:johnnettaday@fssa.in.gov)

Services – Cable TV service for all rooms on Hospital Campus

Customer since 2013

**Putnam County Hospital**

**1542 S. Bloomington Street**

**Greencastle, IN 46135**

**Jon Hall**

(765) 655-2681

[jhall@pchosp.org](mailto:jhall@pchosp.org)

Services – 2 PRI's and POTS lines

Customer since 2007

#### **2.2.7. Authorizing Document**

Respondent personnel signing the Cover Letter of the proposal must be legally authorized by the organization to commit the organization contractually. This section shall contain proof of such authority.

*(Refer to Appendix E for the Metro Fibernet, LLC Operating Agreement)*

#### **2.2.8. Subcontractors**

Metronet subcontracts the physical construction of the network including the placement of fiber optic cables, conduits, splicing and fiber terminations. Prior to being eligible to participate in the work each potential subcontract must complete a qualification process that we use to evaluate the subcontractors' ability to perform the requested work. The qualification process evaluates such items as management, resources, equipment, bonding capacity, prior work history, safety, etc. After successfully completing the qualification process we then request competitive bids from qualified contractors for specific portions of the work.

As of the date of this proposal Metronet has not entered into any subcontract agreements for the physical construction of the proposed network. Further, we understand that Metronet is responsible for the performance of the work, including that work which may be performed by subcontractors. Metronet will provide the management, inspection and other resources as required to ensure that the work is completed to the specified design, construction and quality standards for the project.

#### **2.2.9. Redundancy**

Metronet's fiber ring topology provides full redundancy from our Point of Presence (POP) / local hut to our core routing infrastructure. Our core routers then have the ability to automatically failover in the event of an internet outage or fiber cut. The failover would be a transparent, non-event, transition for the customer.

#### **2.2.10. FCC and USAC Requirements**

Metronet fully complies with all FCC and USAC Requirements. The Service Provider Identification Number (SPIN) for Metronet is [143049173](#).

## **2.3. TECHNICAL PROPOSAL**

Metronet is only bidding at locations where facilities currently exist.

## **2.4. PHASE 1: Provide/Improve/Upgrade Connectivity to Indiana Healthcare Participants**

***2.4.1. Respondents may utilize qualified subcontractors to perform the work, but the selected respondent will be responsible for all work.***

Metronet will be utilizing subcontractors to perform any outside plant construction (if required) and may utilize subcontractors to complete the inside cabling work at some locations. Metronet's experienced field operations team will oversee and inspect all subcontractors work to approve and ensure the quality and safety of all work performed.

***2.4.2. This RFP identifies the requirements that are to be provided to each of the healthcare participants. Notwithstanding any of the specific details described within this RFP, it will be the obligation of the selected respondent to adhere to accepted industry standard methods and practices.***

Metronet has thoroughly reviewed the requirements for each HCP and can comply.

***2.4.3. The requirements of this proposal are to obtain pricing, responsiveness, availability and a commitment to perform work in a timely manner on an individual healthcare participant basis.***

Metronet has thoroughly reviewed the requirements for each HCP and can comply.

***2.4.4. Basic Internet (or equivalent) service capabilities need to be available from the respondent if required by the healthcare participant. This includes DNS services, basic email services, Internet content filtering, security/intrusion protection and firewall protection.***

Metronet currently does not offer content filtering, security/intrusion protection or firewall products. However, we do have partnerships in the majority of our markets with local entities who would perform these services.

***2.4.5. Management reporting capabilities online to report on Internet availability and bandwidth utilization. Reports should be updated, at a minimum, on a weekly basis.***

Metronet can offer a customized portal for the end user to review the Internet traffic at their convenience. Metronet utilizes industry leading software to monitor network usage and provide a detailed view of network traffic and subscriber applications throughout their network along with proactive monitoring capabilities which set alerts for exceeding bandwidth. This allows Metronet to remain proactive in monitoring network activity and ensure a customer's bandwidth requirements are always met.

**2.4.6. Service level requirements that include proactive monitoring by a 24/7/365 operations center to determine outages and provide corrective actions and estimated time to repair. Respondents are required to have capability to provide 4 hour or less, mean time to restore service. Due to the critical nature of maintaining uptime at each of these facilities, please include a proposal for enhanced service levels that will provide a mean time to restore of 2 hours. Include in your proposal how you will achieve that goal, as well as your ability to measure it and provide compensation when you don't.**

Metronet provides a highly-reliable, highly-redundant, state-of-the-art fiber optic infrastructure throughout the state of Indiana, and monitors that network using advanced monitoring systems that alert our 24/7/365 Engineering and Repair functions of any outage or impairment conditions on our network. That same level of proactive monitoring would be extended to the IRHA network that Metronet would provide if granted this opportunity.

Metronet's monitoring systems will proactively ping the equipment at the end of each circuit provided by Metronet once per minute, and will alert our Repair Center of any situation that results in 3 consecutive failed pings. The Repair Center will perform an initial assessment of the situation, and will proactively contact IFN to alert them of the outage condition and initial cause within 15 minutes of the event start.

- In the event the issue is determined, in our initial assessment, to be isolated to the fiber built to the ITN or a complete outage of the Metronet equipment at the customer's premise, the Repair Center will dispatch a Field Technician to assess the situation within 30 minutes of the event start. Metronet does have a local Field Operations presence in the cities we are bidding for in the RFP (Crawfordsville, Greencastle and Lebanon) . In addition, if the initial cause is expected to be fiber-related, Metronet will dispatch an Outside Plant Maintenance team in anticipation of a fiber cut repair. There is an Outside Plant Maintenance team stationed either locally within the HCP city or nearby.
- In the event the issue is determined, in our initial assessment, to be related to an issue with equipment at one of our hut sites, the Repair Center will dispatch a Field Technician to the hut site to assess the situation. Metronet has a local Field Technician presence within 15 miles of each of our hut sites, and can respond quickly to identify and restore any issues at that location.
- In the event the issue is determined, in our initial assessment, to be related to an issue on our core network, the Repair Center will escalate to our Engineering Team, which can remotely manage all of our core sites and has personnel within 30 miles of every core site in the event manual intervention is required.

During any event impacting an IFN location, the Metronet Repair Center will provide updates to IFN every 15 minutes, including current status of the outage and estimated time of repair.

**2.4.7. Completion of fiber optic cable (or equivalent) installation within 180 days of vendor's receipt of a Funding Commitment Letter from USAC.**

Metronet understands and will comply subject to causes beyond our reasonable control

***2.4.8. All fiber optic cable (or equivalent) must be buried when deployed on any property owned or leased by the listed healthcare participant.***

The cost estimates Metronet provided for the building entrance work are based on installing underground service drops. However, some of the locations surveyed have aerial utilities thus we will need to follow up with the individual sites to mitigate around this particular challenge, if awarded the contract.

***2.4.9. All fiber (or equivalent) must be tested and certified after installation by the vendor.***

Metronet understands and will comply. Upon completing installation Metronet will conduct tests to ensure the performance of the fiber optic cables. These tests include bi-directional Optical Time Domain Reflectometer (OTDR) tests verifying splice loss performance and end-to-end continuity tests across each segment of the network.

***2.4.10. Each proposal must include cost from the respondent or sub-contracted quote for any construction cost related to any necessary conduit requirements, providing entrance facilities from the property line (Telco pedestal) to the demarcation or minimum point of entry to each healthcare participant. Total cost of laying conduit, core drilling or restoration of any asphalt or concrete to original landscape.***

Metronet understands and will comply. These costs have been estimated and will be a portion of the overall price provided. Upon award of the contract, Metronet will deploy our technicians to complete a thorough site survey of each location awarded and will present any additional costs (if any).

Metronet will expect the HCP to provide us such collocation space, including the necessary easements, licenses, permits and building entrance rights required to connect our equipment from the public right of way to the HCP facility and the necessary HVAC services and power for our equipment without charge. See Exhibit D to the Master Services Agreement. If provisions set forth in Exhibit D to the Master Services Agreement are not acceptable to the HCP, Metronet will work with the HCP to negotiate in good faith mutually agreed upon collocation terms.

***2.4.11. While respondents are allowed flexibility in the methods and equipment used to create these fiber (or equivalent) connections, IRHA requires that these are disclosed in their responses to this RFP.***

Metronet will deliver a standard Ethernet handoff; however, Metronet can accommodate a fiber handoff if the individual HCP requires it. All circuits will be riding over Metronet fiber.

***2.4.12. Individual site invoicing based on the Master Contract for each healthcare participant for services.***

Metronet understands the invoicing requirements and will be happy to comply with the USAC process specified.

## **2.5. PHASE 2: Transport to the Indiana Telehealth Network Common Platform**

***2.5.1. Respondents are asked to bid transport from the various healthcare participants to IFN's cross-connect, located at 733 West Henry Street, Indianapolis, IN. IFN will carry the traffic from their cross-connect to the Indiana Telehealth Network's common meet point where any participating healthcare participant can gain secured access to any other healthcare participant on the Indiana Telehealth Network.***

While the RFP mentions delivering the broadband at the IFN aggregation point located at 733 W. Henry St. Metronet currently has a Network to Network Interface (NNI) with IFN at 701 W. Henry St. Indianapolis, IN. IFN and Metronet have established that the existing NNI will suffice for all circuits requiring delivery to the IRHA-ITN Common Platform at IFN's Collocation at 701 W. Henry St. Additionally, if the existing 1Gig IFN/Metronet NNI should be at capacity, a second 1Gig NNI would quickly be established. Therefore, because this arrangement between Metronet and IFN is already in place, Metronet will simply deliver the transport circuits to the "IFN NNI".

***2.5.2. The critical nature of this network encourages a level of redundancy, so as to mitigate risk of failure or extended outages. A solution that allows for a redundant path within the local loop should be presented.***

Metronet can provide alternate fiber costs and distances between each HCP location and Metronet's fiber hut. This would represent a completely different route/fiber path than the Primary hence helping to protect the end user from extended outages.

***2.5.3. Secured/Encryption for each healthcare participant to transmit patient information and meet HIPAA requirements will take place on the participant's side of the demarcation point and be the responsibility of the individual healthcare participant.***

While each participant is responsible to secure/encrypt patient data at their demarcation point, Metronet will further enhance this level of protection by providing a dedicated, private circuit that will only pass traffic between 701 W. Henry Street and the customer's premises.

***2.5.4. IFN will provide an entry point to the Public Internet at the meet point, allowing for bandwidth sharing and burstable access.***

The circuit provided by Metronet is an Ethernet point to point between the customer's locations to IFN which will support internet traffic provided by IFN. Additionally, the Transport circuits provided by Metronet can be used for data transfers as well as to gain access to the Internet.

**2.5.5. IFN will provide a 24/7/365 support that will oversee and maintain the Indiana Telehealth Network. Day 2 support from the Ethernet hand off at the cross connect, the entire meet point(s) operation and Internet drainage/capacity is provided. Management will be limited to health care services only and the connectivity between each healthcare participant.**

Metronet understands IFN's responsibility and would only add that in the event a malfunction on Metronet's side of the circuit is detected, IFN will need to call Metronet Repair Center for immediate resolution. Metronet's Network Operations Center (NOC) is comprised of highly trained maintenance and monitoring technicians and engineers overseeing all aspects of the network 24/7/365. In addition to the NOC, Metronet has a local retail store, staffed with local technicians, in nearly every community in which we operate providing end users another option to take care of trouble tickets in a prompt manner.

**2.5.6. Respondents will commit to Service Level Agreements that represent their ability to maintain uptime and respond to issues in a timely manner. Service level credits should be included for non-compliance. Include an enhanced service level that will provide for a 2-hour mean time to restore, as well as your ability to measure it and compensate for non-compliance.**

Metronet will calculate MTTR (Meantime to Repair) in the following manner:

$$\frac{\text{Cumulative length of response time to an outage per connection}}{\text{Total number of outage trouble tickets per connection}}$$

If MTTR exceeds 4 hours for any connection, a 1-day credit will be given for that connection as calculated as 1/30<sup>th</sup> of the circuit's monthly charges for every 4 hours of outage. Response and repair times are subject to events of force majeure, and in any one month, all credits with respect to a circuit may not exceed 100% of the monthly recurring charge for such circuit.

## **2.6. COST PROPOSAL**

### **2.6.2. Format for submitting cost proposals**

*(Refer to Appendix F for the Pricing Spreadsheet)*

## SUMMARY

The backbone of a healthcare provider is a reliable and secure network. Metronet fully understands that and will prove it by providing the foundation for Internet and Transport services to each Health Care Participant (HCP) with the best technology available: 100% fiber optics. Metronet will meet the specific requirements in *Phase 1* of this RFP by providing the Healthcare Participants with much improved broadband connectivity of 5/10/50/100 megabits to the Internet on a network backed by a 100% fiber optic infrastructure. The HCPs will immediately be able to take advantage of much improved, high- quality Internet connectivity that will result in a significant upgrade from its existing services. Metronet's services will guarantee that the HCPs and guests can access reliable and consistent Internet service throughout the entire premises.

Likewise, with *Phase 2* of this project, Metronet's private and dedicated services will be flexible, scalable and capable of meeting business-critical requirements. Our transport services will provide the HCPs with network survivability, large file and image transfers and business continuity.

These fiber transport services will ensure that connectivity from a rural participant to any other healthcare participant on the Indiana Telehealth Network Common Platform occurs seamlessly and will meet the needs for uptime and the highest level of reliability crucial to the successful operations of the HCPs.

Metronet provides a highly-reliable, highly-redundant, state-of-the-art fiber optic infrastructure throughout the state of Indiana and monitors that network using advanced monitoring systems that alert our 24/7/365 Engineering and Repair functions of any outage or impairment conditions on our network. By having existing escalation and prioritization processes for handling network incidents, Metronet ensures prompt response times.

Broadband connectivity is a critical issue facing many small towns and rural communities. Metronet's resolve to make every Metronet community a Gigabit city puts us among a select group in the country that can offer this service. This service offered to residential and business customers places them at the forefront of the broadband revolution and creates a foundation that will make the cities and rural communities we serve stronger. This in turn allows them to foster innovation, drive job creation and stimulate economic growth and development for years to come.

In Summary, Metronet can offer the Healthcare Participants the solutions it requires by delivering quality Internet and Transport services over Metronet's 100% fiber optic infrastructure plus a dedicated customer service and technical support team located in or near the community of the HCP.

By implementing Metronet's solutions, we look forward to helping the IRHA achieve its communications objectives and increasing productivity and efficiency to each HCP now and well into the future.

We thank you for the opportunity to review our proposal and look forward to the next step in this process.



# **APPENDIX A**

**Certificate of Authority**

**State of Indiana**  
**Office of the Secretary of State**

CERTIFICATE OF EXISTENCE

To Whom These Presents Come, Greeting:

I, CONNIE LAWSON, Secretary of State of Indiana, do hereby certify that I am, by virtue of the laws of the State of Indiana, the custodian of the corporate records and the proper official to execute this certificate.

I further certify that records of this office disclose that

**METRO FIBERNET, LLC**

duly filed the requisite documents to commence business activities under the laws of the State of Indiana on April 16, 2012, and was in existence or authorized to transact business in the State of Indiana on March 19, 2018.

I further certify this Foreign Limited Liability Company has filed its most recent report required by Indiana law with the Secretary of State, or is not yet required to file such report, and that no notice of withdrawal, dissolution, or expiration has been filed or taken place. All fees, taxes, interest, and penalties owed to Indiana by the domestic or foreign entity and collected by the Secretary of State have been paid.



In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, March 19, 2018

*Connie Lawson*

CONNIE LAWSON  
SECRETARY OF STATE

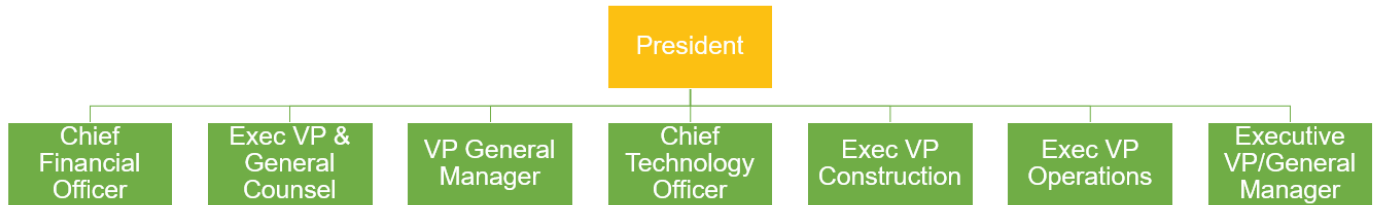
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Verify this certificate: <https://bsd.sos.in.gov/ValidateCertificate>

# **APPENDIX B**

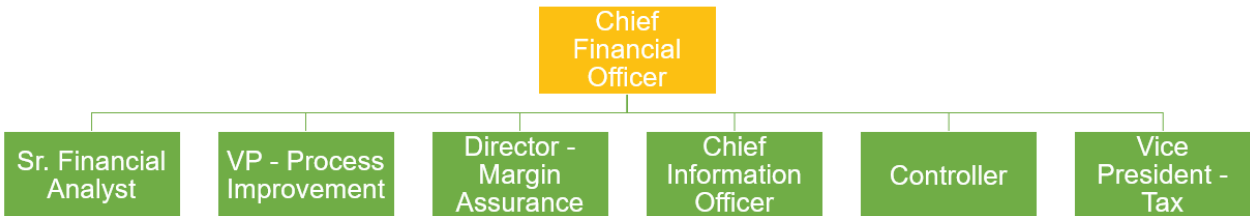
## **Organization Chart**

# Executive Team



METRONET

# Accounting and MIS Team



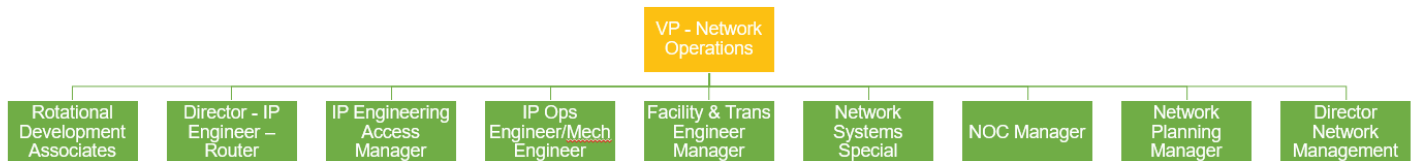
METRONET

# Sales Management Team



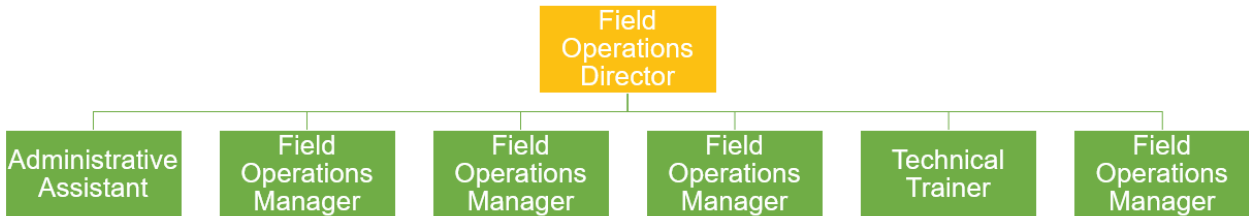
METRONET

# Network Operations Team



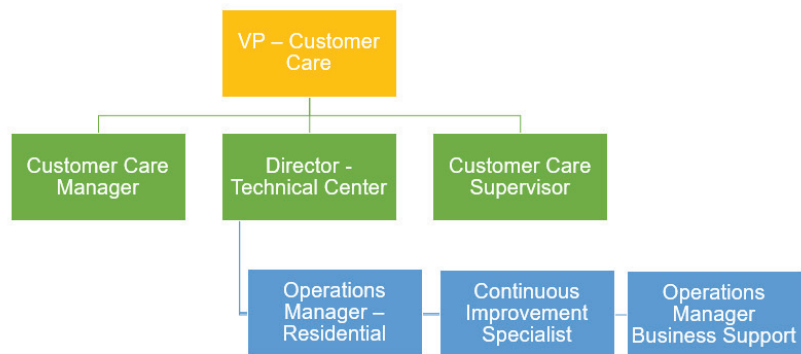
METRONET

# Field Operations Team



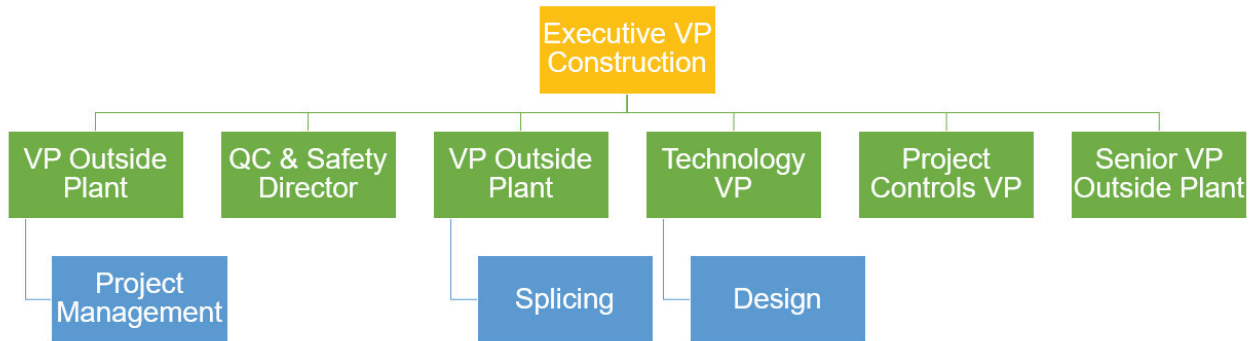
METRONET

# Customer Care Operations



METRONET

# OSP Engineering & Construction Team



METRONET

# **APPENDIX C**

## **Income Statement and Balance Sheet**





**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**CONSOLIDATED FINANCIAL STATEMENTS**  
Years ended September 30, 2018 and 2017





**Mayer Hoffman McCann P.C.**  
700 W 47th St Ste 1100 • Kansas City, MO 64112  
Main: 816.945.5600 • Fax: 816.897.1280 • [www.mhmcpc.com](http://www.mhmcpc.com)

## Independent Auditors' Report

To the Members

### **METRONET HOLDINGS, LLC AND SUBSIDIARIES**

#### *Report on the Financial Statements*

We have audited the accompanying consolidated financial statements of Metronet Holdings, LLC and Subsidiaries, which comprise the consolidated balance sheets as of September 30, 2018 and 2017, and the related consolidated statements of operations, members' capital and cash flows for the years then ended and the related notes to the consolidated financial statements.

#### *Management's Responsibilities for the Financial Statements*

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

#### *Auditors' Responsibility*

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### *Opinion*

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Metronet Holdings, LLC and Subsidiaries as of September 30, 2018 and 2017, and the results of its operations and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

*Mayer Hoffman McCann P.C.*

Kansas City, Missouri  
January 11, 2019



Member of Kreston International – a global network of independent accounting firms

**METRONET HOLDINGS, LLC AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

September 30, 2018 and 2017

	<u>2018</u>	<u>2017</u>
<b><u>ASSETS</u></b>		
CURRENT ASSETS		
Cash and cash equivalents	\$ 6,979,675	\$ 5,396,764
Accounts receivable, net of allowance (2018 - \$1,072,869; 2017 - \$1,002,689)	6,583,981	5,768,880
Prepaid expenses and other assets	1,315,438	1,231,068
Financing receivables, current portion	<u>365,215</u>	<u>221,343</u>
TOTAL CURRENT ASSETS	15,244,309	12,618,055
FINANCING RECEIVABLES, less current portion above	1,090,208	390,473
PROPERTY AND EQUIPMENT, at cost, less accumulated depreciation	255,424,007	201,315,919
DEFERRED INCOME TAXES	183,114	234,000
ECONOMIC DEVELOPMENT REVENUE BONDS	18,491,883	18,884,223
INTANGIBLES, at cost, less accumulated amortization	861,667	971,667
OTHER ASSETS	<u>697,663</u>	<u>25,650</u>
TOTAL ASSETS	<u>\$ 291,992,851</u>	<u>\$ 234,439,987</u>
<b><u>LIABILITIES</u></b>		
CURRENT LIABILITIES		
Accounts payable	\$ 4,470,660	\$ 3,747,815
Accounts payable - affiliate	2,737	-
Deferred revenue, current portion	5,555,033	4,732,403
Other accrued liabilities	17,389,039	14,639,953
Line of credit	126,211,203	15,000,000
Current portion of long-term debt	<u>-</u>	<u>10,196,866</u>
TOTAL CURRENT LIABILITIES	153,628,672	48,317,037
DEFERRED INCOME TAXES	183,114	234,000
LONG-TERM DEBT, less current portion above	-	35,991,252
RELATED PARTY CONVERTIBLE DEBT	<u>2,000,000</u>	<u>2,000,000</u>
TOTAL LIABILITIES	155,811,786	86,542,289
<b><u>MEMBERS' CAPITAL</u></b>		
MEMBERS' CAPITAL	137,211,518	149,206,412
Subscriptions receivable	<u>(1,030,453)</u>	<u>(1,308,714)</u>
TOTAL MEMBERS' CAPITAL	<u>136,181,065</u>	<u>147,897,698</u>
TOTAL LIABILITIES AND MEMBERS' CAPITAL	<u>\$ 291,992,851</u>	<u>\$ 234,439,987</u>

See Notes to Consolidated Financial Statements

**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

Years ended September 30, 2018 and 2017

	<u>2018</u>	<u>2017</u>
SALES, net	\$ 103,440,752	\$ 88,760,880
COST OF SALES		
Depreciation	25,044,970	20,991,797
Other	36,474,802	30,642,874
Subtotal	<u>61,519,772</u>	<u>51,634,671</u>
GROSS PROFIT	<u>41,920,980</u>	<u>37,126,209</u>
OPERATING EXPENSES		
Salaries	32,952,111	24,098,550
Depreciation and amortization	2,505,667	2,768,422
Administration and other	13,321,919	11,900,996
Subtotal	<u>48,779,697</u>	<u>38,767,968</u>
OPERATING LOSS	<u>(6,858,717)</u>	<u>(1,641,759)</u>
OTHER INCOME (EXPENSE)		
Interest income	1,013,104	862,727
Interest expense	(5,890,978)	(2,183,333)
Gain (loss) on disposal of property and equipment	(119,948)	16,328
Unit option expense	(562,847)	(331,754)
Subtotal	<u>(5,560,669)</u>	<u>(1,636,032)</u>
LOSS BEFORE INCOME TAXES	(12,419,386)	(3,277,791)
PROVISION FOR INCOME TAXES	<u>175,851</u>	<u>249,670</u>
NET LOSS	<u>\$ (12,595,237)</u>	<u>\$ (3,527,461)</u>

See Notes to Consolidated Financial Statements

**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF MEMBERS' CAPITAL**  
Years ended September 30, 2018 and 2017

Members' capital, September 30, 2016	\$ 118,729,980
Membership contributions	33,761,161
Unit compensation expense	367,732
Net loss	(3,527,461)
Dividends paid	(125,000)
Subscriptions receivable	<u>(1,308,714)</u>
Members' capital, September 30, 2017	147,897,698
Unit options exercised	2,000
Unit compensation expense	598,310
Net loss	(12,595,237)
Subscriptions receivable collected	<u>278,294</u>
Members' capital, September 30, 2018	<u>\$ 136,181,065</u>

See Notes to Consolidated Financial Statements



**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	<b>2018</b>	<b>2017</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net loss	\$ (12,595,237)	\$ (3,527,461)
Adjustments to reconcile net loss to net cash flows from operating activities:		
Depreciation and amortization	27,550,637	23,760,218
Gain (loss) on disposal of property and equipment	119,948	(16,328)
Provision for bad debts	733,427	335,720
Stock compensation expense	598,310	367,732
Derivative asset	(646,006)	-
Change in operating assets and liabilities:		
Accounts receivable	(1,548,527)	(990,219)
Prepaid expenses	(84,372)	161,755
Lease receivable	23,697	31,231
Other assets	(26,007)	33,839
Accounts payable	(425,321)	(952,484)
Accrued liabilities	2,749,086	1,613,143
Deferred revenues	822,631	616,683
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	<b>17,272,266</b>	<b>21,433,829</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Proceeds from sale of property and equipment	490,316	111,287
Purchase of property and equipment	(82,380,724)	(82,729,465)
Acquisition of intangibles - Warsaw fiber	-	(29,056)
Redemption of economic development revenue bonds	392,340	475,000
Purchase of economic development revenue bonds	-	(73,222)
Proceeds from lease receivables	505,334	524,137
Proceeds from sale of available-for-sale securities	-	106,015,202
Purchase of available-for-sale securities	-	(86,019,925)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>	<b>(80,992,734)</b>	<b>(61,726,042)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Proceeds from line of credit	111,211,203	15,000,000
Payments on long-term debt	(46,188,118)	(9,771,429)
Dividends paid	-	(125,000)
Unit options exercised	2,000	33,761,161
Membership subscriptions receivable	278,294	(1,308,714)
<b>NET CASH FLOWS FROM FINANCING ACTIVITIES</b>	<b>65,303,379</b>	<b>37,556,018</b>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>1,582,911</b>	<b>(2,736,195)</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR</b>	<b>5,396,764</b>	<b>8,132,959</b>
<b>CASH AND CASH EQUIVALENTS, END OF YEAR</b>	<b>\$ 6,979,675</b>	<b>\$ 5,396,764</b>
<b>NONCASH INVESTING AND FINANCING ACTIVITIES</b>		
Property and equipment acquisitions financed with accounts payable	\$ 1,150,903	\$ 1,711,362
Property and equipment acquisitions from cancelled financing receivables	\$ -	\$ 1,392,818
Financing receivables equipment transferred from property and equipment	\$ 1,372,638	\$ -
<b>OTHER CASH DISCLOSURES</b>		
Interest paid	\$ 5,890,978	\$ 2,184,139
Bond purchases	\$ -	\$ 73,222

See Notes to Consolidated Financial Statements

**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(1) Nature of operations**

The consolidated financial statements include the amounts of Metronet Holdings, LLC (the Company) and its wholly-owned subsidiaries, Metro FiberNet, LLC, Metronet Technologies, LLC, Metronet Systems Holdings, LLC, and Q-Comm, Inc. The Company was formed on December 20, 2013, but had no operating activity until January 2, 2014.

Metro FiberNet, LLC (MFN) is a "fiber to the premises" overbuilder that offers cable, internet and telephone (local and long-distance) services to commercial and residential customers in several communities in Indiana, Illinois, and Kentucky. MFN is a wholly owned subsidiary of the Company.

Metronet Technologies, LLC was created to establish the various construction contracts and has no financial activity during the years ended September 30, 2018 and 2017.

Metronet Systems Holdings, LLC (MSH) is a "fiber to the premises" overbuilder that offers cable, internet and telephone (local and long-distance) services to commercial and residential customers in several communities in Indiana and Illinois. MSH is a wholly owned subsidiary of the Company.

Q-Comm, Inc. (Q-Comm) serves as a holding company and owns 100% of CMN-RUS, Inc. (CMN). CMN, formerly known as Cinergy MetroNet, Inc., is a "fiber to the premises" overbuilder that offers cable, internet and telephone (local and long-distance) services to commercial and residential customers in several Indiana communities. Q-Comm is a wholly owned subsidiary of the Company.

**(2) Summary of significant accounting policies**

**Principles of consolidation** - All significant intercompany accounts and transactions between the Company and its Subsidiaries have been eliminated in the consolidated financial statements.

**Use of estimates** - The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the period. Actual results could differ from those estimates.

**Cash and cash equivalents** - The Company considers all liquid investments with original maturities of three months or less to be cash and cash equivalents. At September 30, 2018 and 2017, cash and cash equivalents consisted primarily of checking accounts. At times, balances in these accounts are in excess of federally insured limits. Management monitors the soundness of the institutions involved and feels the Company's risk is negligible. The Company has not experienced any losses in such accounts.

**Accounts receivable** - Accounts receivable are stated at the amounts billed to the customers, plus any accrued and unpaid interest. The Company provides an allowance for doubtful accounts, which is based upon a review of the outstanding receivables, historical collection information and existing economic conditions. Accounts receivable are ordinarily due 30 days after the issuance of the invoice. Accounts past due by more than 90 days are considered delinquent. Delinquent receivables are written off based on individual credit evaluation and specific circumstances of the customer.



METRONET HOLDINGS, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(2) Summary of significant accounting policies (continued)

**Property and equipment** - Property and equipment acquisitions are recorded at cost and depreciated over the estimated useful life of each asset. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful lives of the improvements. The Company capitalizes equipment acquisitions greater than \$1,000. Depreciation is computed using the straight-line method over the estimated useful lives of the assets as follows:

<u>Assets</u>	<u>Estimated Useful Lives</u>
Switch facilities	5 years
Fiber line	15 years
Real estate and buildings	39 years
Computer equipment	3 years
Software	3 years
Transportation equipment	5 years
Leasehold improvements	3 - 5 years

Property and equipment under construction includes inventory and expenditures for projects primarily related to new fiber optic cable route installation and collocation projects.

**Long-lived asset impairment** - The Company evaluates the recoverability of the carrying value of long-lived assets whenever events or circumstances indicate the carrying amount may not be recoverable. If a long-lived asset is tested for recoverability and the undiscounted estimated future cash flows expected to result from the use and eventual disposition of the asset is less than the carrying amount of the asset, the asset cost is adjusted to fair value and an impairment loss is recognized as the amount by which the carrying amount of a long-lived asset exceeds its fair value. No asset impairment was recognized during the years ended September 30, 2018 and 2017.

**Economic development revenue bonds** - Economic Development Revenue Bonds are classified as held to maturity and carried at amortized cost when management has the positive intent and ability to hold them to maturity. Interest income is realized over the life of the bonds based on bond coupon redemptions. Management evaluates securities for other-than-temporary impairment (OTTI) when economic or market conditions warrant such an evaluation. The Economic Development Revenue Bonds are payable solely and only from TIF Revenues generated by property tax payments over the life of the bonds. As a result, the Company must periodically evaluate whether it is likely to experience credit loss, which must be recognized in the consolidated statements of operations in the period the impairment occurs. The credit loss is defined as the difference between the present value of the cash flows expected to be collected and the amortized cost basis. The Company has not identified or recorded any credit losses as of September 30, 2018 or 2017.

**Intangible assets** - Intangible assets consist primarily of assets from the acquisition of Warsaw Fiber on July 27, 2016. Amortization is computed using the straight-line method over the following estimated useful lives:

<u>Assets</u>	<u>Method</u>	<u>Useful Life</u>
Goodwill	Straight-line	10 years

Goodwill - Beginning in 2016, the Company adopted the accounting alternative offered to nonpublic entities for the subsequent measurement of goodwill. In accordance with this alternative, the Company amortizes goodwill over ten years on the straight-line basis and only evaluates goodwill for impairment at the entity level when a triggering event occurs.

**Unit option plan** - The Company has a unit-based employee compensation plan, which is described more fully in Note 11.



## METRONET HOLDINGS, LLC AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### (2) Summary of significant accounting policies (continued)

**Unit option plan** - The Company has a unit-based employee compensation plan, which is described more fully in Note 11.

**Income taxes** - The Company's members have elected to have the Company's income taxed as a partnership under provisions of the Internal Revenue Code and a similar section of the state income tax law. Therefore, taxable income or loss is reported to the individual stockholders for inclusion in their respective tax returns and except as noted below, no provision for federal and state income taxes is included in these statements. With a few exceptions, the Company is no longer subject to U.S. federal, state and local or non-U.S. income tax examinations by tax authorities for years before 2013.

The Company files consolidated federal and state income tax returns with its subsidiaries, except for CMN, which files separate federal and state income tax returns. CMN has elected to have its income taxed as a "C" corporation and accounts for income taxes in accordance with income tax accounting guidance (ASC 740, Income Taxes). The income tax accounting guidance results in two components of income tax expense: current and deferred. Current income tax expense reflects taxes to be paid or refunded for the current period by applying the provisions of the enacted tax law to the taxable income or excess of deductions over revenues. The Company determines deferred income taxes using the liability (or balance sheet) method.

Under this method, the net deferred tax asset or liability is based on the tax effects of the differences between the book and tax bases of assets and liabilities, and enacted changes in tax rates and laws are recognized in the period in which they occur. Deferred income tax expense results from changes in deferred tax assets and liabilities between periods. Deferred tax assets are reduced by a valuation allowance if, based on the weight of evidence available, it is more likely than not that some portion or all of a deferred tax asset will not be realized. Tax positions are recognized if it is more likely than not, based on the technical merits, that the tax position will be realized or sustained upon examination.

The term more likely than not means a likelihood of more than 50 percent; the terms examined and upon examination also include resolution of the related appeals or litigation processes, if any. A tax position that meets the more-likely-than-not recognition threshold is initially and subsequently measured as the largest amount of tax benefit that has a greater than 50 percent likelihood of being realized upon settlement with a taxing authority that has full knowledge of all relevant information. The determination of whether or not a tax position has met the more-likely-than-not recognition threshold considers the facts, circumstances and information available at the reporting date and is subject to management's judgment. With a few exceptions, CMN is no longer subject to U.S. federal, state and local or non-U.S. income tax examinations by tax authorities for years before 2013.

CMN recognizes interest and penalties on income taxes as a component of income tax expense.

**Revenue recognition** - Revenues based on a flat fee, derived principally from cable television, local telephone, data communications, internet access service and residential/business broadband service, are billed in advance and recognized in subsequent periods when the services are provided. Revenues based on usage, derived primarily from long-distance services, are recognized monthly as services are provided. Revenue billed to other carriers for use of the Company's fiber lines is recognized on the cash basis, which approximates the accrual basis.

**Taxes collected from customers and remitted to governmental authorities** - Taxes collected from customers and remitted to governmental authorities are presented in the accompanying consolidated statement of operations on a net basis.

**Advertising** - The Company expenses advertising costs as they are incurred. Advertising expenses for the years ended September 30, 2018 and 2017 amounted to \$1,469,128 and \$1,034,521, respectively.

# METRONET HOLDINGS, LLC AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### (2) Summary of significant accounting policies (continued)

**Self-insurance** - The Company has elected to self-insure certain costs of employee health and accident benefit programs. At September 30, 2018 and 2017, accrued expenses include an accrual of \$3,475,546 and \$2,380,192, respectively, for claims incurred but not yet paid. The Company has various stop loss policies in place that limit exposure to \$175,000 annually, per participant and an aggregate annual loss of \$1,000,000.

**Contingent liabilities** - The Company from time to time may be parties to or targets of lawsuits, claims, investigations, and proceedings, including personal injury, commercial, contract, health and safety, and employment matters, which are handled and defended in the ordinary course of business. The Company accrues a liability for such matters when it is probable that a liability has been incurred and the amount can be reasonably estimated. When a single amount cannot be reasonably estimated but the cost can be estimated within a range, the Company accrues the minimum amount. The Company expenses these costs, including those expected to be incurred in connection with a loss contingency, as incurred. The Company has an accrued liability of \$1,200,000 and \$0 for these items at September 30, 2018 and 2017, respectively.

### (3) Financing receivable

The Company has direct financing lease agreements for various construction equipment used by sub-contractors working on the Company's installation projects. Interest income is recognized based on the implicit interest rates on the leases. The Company expects to collect the financing receivables in full; therefore there is no allowance for bad debts recorded. The Company has recorded liens on the equipment to perfect its security interest in the collateral.

The following is a schedule of expected receipts during the years ending:

<u>Years ending September 30,</u>	
2019	\$ 365,215
2020	376,299
2021	282,595
2022	262,018
2023	169,296
Thereafter	-
Total	<u>\$ 1,455,423</u>

### (4) Property and equipment

Property and equipment are stated at cost. Listed below are the major classes of the telecommunications plant at September 30, 2018 and 2017:

	2018	2017
Cost - in service		
Switch facilities	\$ 110,314,444	\$ 90,044,988
Fiber line	143,959,879	110,132,604
Real estate and buildings	6,366,099	5,885,708
Software and Computer equipment	6,018,231	5,152,837
Transportation equipment	10,788,574	6,394,980
Leasehold improvements	2,131,947	1,687,522
Total cost	<u>279,579,174</u>	<u>219,298,639</u>
Cost - under construction	83,945,159	66,069,921
Property held for sale	85,181	1,557,718
Less: accumulated depreciation	<u>(108,185,507)</u>	<u>(85,610,359)</u>
Net property and equipment	<u>\$ 255,424,007</u>	<u>\$ 201,315,919</u>



METRONET HOLDINGS, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(5) Economic development revenue bonds

In August 2010, CMN purchased a \$1,750,000 revenue bond issued by the City of Wabash, Indiana. The City of Wabash, Indiana, North Manchester, Indiana and the County of Wabash, Indiana, issued the Economic Development Revenue Bonds to generate funds to be utilized by the Economic Development Group of Wabash County to induce the construction of economic development facilities. The bond is payable over 20 years with an interest rate of 4%. CMN received \$1,621,005 from the Economic Development Group of Wabash County for CMN's investment in economic development facilities, fiber optic network infrastructure, in the City of Wabash, North Manchester and the County of Wabash, Indiana.

In November 2010, CMN purchased a \$1,500,000 revenue bond issued by the City of Huntington, Indiana. The City of Huntington, Indiana issued the Economic Development Group of Huntington County to induce the construction of economic development facilities. The bond is payable over 25 years with an interest rate of 4%. CMN received \$1,408,230 from the Economic Development Group of Huntington County for CMN's investment in economic development facilities, fiber optic network infrastructure, in the City of Huntington, Indiana.

In December 2010, CMN purchased a \$377,000 revenue bond issued by the City of New Castle, Indiana. The City of New Castle, Indiana issued the Economic Development Revenue Bonds to generate funds to be utilized by the Economic Development Group of Henry County to induce the construction of economic development facilities. The bond is payable over 15 years with an interest rate of 4.5%. CMN received \$287,088 from the Economic Development Group of Henry County for CMN's investment in economic development facilities, fiber optic network infrastructure, in the City of New Castle, Indiana.

In September 2011, MFN purchased a \$1,000,000 revenue bond issued by the City of Lebanon, Indiana. The City of Lebanon, Indiana issued the Economic Development Revenue Bonds to generate funds to be utilized by the Economic Development Group of Boone County to induce the construction of economic development facilities. The bond is payable over 25 years with an interest rate of 4%. MFN received \$880,750 from the Economic Development Group of Boone County for MFN's investment in economic development facilities, fiber optic network infrastructure, in the City of Lebanon, Indiana.

In June 2012, MFN purchased a \$2,750,000 revenue bond issued by the City of Franklin, Indiana. The City of Franklin, Indiana issued the Economic Development Revenue Bonds to generate funds to be utilized by the Economic Development Group of Johnson County to induce the construction of economic development facilities. The bond is payable over 25 years with an interest rate of 4%. MFN received \$2,639,215 from the Economic Development Group of Johnson County for MFN's investment in economic development facilities, fiber optic network infrastructure, in the City of Franklin, Indiana.

In November 2012, MFN purchased a \$6,500,000 revenue bond issued by the City of Lafayette, Indiana. The City of Lafayette, Indiana issued the Economic Development Revenue Bonds to generate funds to be utilized by the Economic Development Group of Tippecanoe County to induce the construction of economic development facilities. The bond is payable over 25 years with an interest rate of 4%. MFN received \$6,396,297 from the Economic Development Group of Tippecanoe County for MFN's investment in economic development facilities, fiber optic network infrastructure, in the City of Lafayette, Indiana.

## METRONET HOLDINGS, LLC AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### (5) Economic development revenue bonds (continued)

In November 2012, MFN purchased a \$2,500,000 revenue bond issued by the City of West Lafayette, Indiana. The City of West Lafayette, Indiana issued the Economic Development Revenue Bonds to generate funds to be utilized by the Economic Development Group of Tippecanoe County to induce the construction of economic development facilities. The bond is payable over 25 years with an interest rate of 4%. MFN received \$2,416,027 from Economic Development Group of Tippecanoe County for MFN's investment in economic development facilities, fiber optic network infrastructure, in the City of West Lafayette, Indiana.

In July 2015, MFN purchased a \$1,200,000 revenue bond issued by the City of Crawfordsville, Indiana. The City of Crawfordsville, Indiana issued the Economic Development Revenue Bonds to generate funds to be utilized by the Economic Development Group of Montgomery County to induce the construction of economic development facilities. The bond is payable over 25 years with an interest rate of 5%. MFN received \$1,200,000 from Economic Development Group of Montgomery County for MFN's investment in economic development facilities, fiber optic network infrastructure, in the City of Crawfordsville, Indiana.

In July 2015, MFN purchased a \$2,500,000 revenue bond issued by the City of Westfield, Indiana. The City of Westfield, Indiana issued the Economic Development Revenue Bonds to generate funds to be utilized by the Economic Development Group of Hamilton County to induce the construction of economic development facilities. The bond is payable over 25 years with an interest rate of 4.5%. MFN received \$2,447,028 from Economic Development Group of Hamilton County for MFN's investment in economic development facilities, fiber optic network infrastructure, in the City of Westfield, Indiana.

In March 2017, MFN agreed to purchase a \$1,500,000 revenue bond issued by the Town of Zionsville, Indiana. The Town of Zionsville, Indiana issued the Economic Development Revenue Bonds to generate funds to be utilized by the Redevelopment Commission to induce the construction of economic development facilities. The bond is payable over 25 years with an interest rate of 4.0%. MFN expects to receive \$1,426,7780 from the Redevelopment commission for MFN's investment in economic development facilities, fiber optic network infrastructure in the Town of Zionsville, Indiana during 2018. As of September 30, 2017 MFN has paid \$73,223 related to this bond.

These investments are recorded at cost which approximates fair value, and classified as held to maturity on the accompanying consolidated balance sheet. The repayment of the bonds is contingent on the incremental taxes received by the respective municipalities as a result of the additional investments made in certain districts. During the years ended September 30, 2018 and 2017, there were \$392,340 and \$475,000, respectively, in redemptions made on the bonds discussed above.

The outstanding balance of the bonds was \$18,491,883 and \$18,884,223, respectively as of September 30, 2018 and 2017, and is shown as economic development revenue bonds on the accompanying consolidated balance sheet. As there is no obligation to the Company, the issuance of the above bonds reduces the initial cost of the assets purchased with the proceeds generated from the issuance.



**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(6) Intangibles**

Intangibles consist of the following balances at September 30, 2018 and 2017:

	<u>2018</u>	<u>2017</u>
Goodwill	\$ 1,100,000	\$ 1,100,000
Less: accumulated amortization	(238,333)	(128,333)
Net Goodwill	<u>\$ 861,667</u>	<u>\$ 971,667</u>

Future amortization of intangibles is as follows:

<u>Years ending September 30,</u>		
2019	\$	110,000
2020		110,000
2021		110,000
2022		110,000
2023		110,000
Thereafter		<u>311,667</u>
Total	<u>\$</u>	<u>861,667</u>

**(7) Long-term debt**

In 2005, CMN entered into a promissory note payable to the United States of America, acting through the Administrator of the Rural Utilities Service (RUS), to provide borrowings up to \$106,785,000. In March 2010, CMN signed a new promissory note for \$69,036,329 (the balance remaining under the original promissory note). Advances under the new note were made through March 14, 2012, at which time further advances were suspended in accordance with the terms of the promissory note. Amounts will be due no later than March 14, 2022. The agreement requires monthly interest payments beginning the date of each advance accruing at the Direct Cost of Money Interest Rate, published by the Secretary of the Treasury. Rates for outstanding advances currently ranged from 1.95% to 4.79% during the years ended as of September 30, 2018 and 2017. Outstanding borrowings are secured by substantially all assets of CMN. The agreement contains certain restrictions as to the use of the proceeds as well as payments of dividends or redemption of capital stock.

During December 2017, the Company paid this debt in full with funding available from its Line of credit.

**(8) Line of credit**

In December 2017 the Company entered into a revolving line of credit facility with a financial institution with a maximum amount of \$165,000,000. The revolving line of credit facility will mature on September 30, 2022, at which time all borrowings and accrued interest are due. The line of credit is collateralized by substantially all assets of the Company. Interest is payable monthly and varies daily at the bank's prime rate with a range of 5.29% to 7.25% at September 30, 2018.

The Company is required to comply with certain financial covenants, as defined by the credit facility agreement. As of September 30, 2018, the Company was in compliance with these financial covenants.

**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(8) Line of credit (continued)**

During the year ended September 30, 2018, and as part of the refinancing with CoBank, the Company entered into two interest rate swap agreements (the "agreements") with notional amounts of \$40,000,000 and \$42,500,000 and fixed interest rates of 2.5% and 4%, respectively. The fair value of the interest rate swaps have been valued on a mark to market basis and has been recorded as a derivative asset in the consolidated statements of financial position. The change in the fair value of the interest rate swap has been reflected as a non-operating activity in the consolidated statements of activities.

The following table sets forth, by level within the fair value hierarchy, the Company's financial assets that were measured at fair value on a recurring basis as of September 30, 2018.

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Interest rate swap	\$ -	\$ 646,006	\$ -

**(9) Members' equity**

Prior to January 2, 2014, members' equity consisted of the consolidated members' equity of the Company's wholly-owned subsidiaries discussed further in Note 1. At January 2, 2014, previously held interests in the wholly-owned subsidiaries were converted to Class A Interests of the Company at rates ranging between \$0.35 and \$0.45 per interest.

During the year ended September 30, 2015 certain nonexecutive employees purchased 435,926.63 Class A Interests for \$461,565.62. During the year ended September 30, 2016 certain nonexecutive employees purchased 214,759.74 Class A Interests for \$187,944.43. During the year ended September 30, 2017 nonexecutive employees purchased 775,967 Class A Interests for \$1,047,554, which are included in subscriptions receivable at September 30, 2018 and 2017.

***Amended and restated limited liability company agreement***

In connection with the formation of the Company on January 2, 2014, the Company simultaneously entered into the Amended and Restated Limited Liability Company Agreement of Metronet Holdings, LLC (the LLC Agreement). The LLC Agreement authorizes the issuance of Class A-1 Interests and Class A Interests, and the Company is authorized to issue additional interests, as determined by the Company Board, as defined in the LLC Agreement. Class A-1 Interest holders and Class A Interest holders (collectively, the Members) share in profits and losses equally in proportion to each Members' capital account compared to the whole. The LLC Agreement authorizes the creation of a Company Board constituting five Managers, as defined in the LLC Agreement. Effective October 1, 2017, as part of the Amended and Restated Limited Liability Company Agreement, all Class A-1 interests were exchanged for Class A interests.



**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

(9) **Members' equity (continued)**

Members' equity consists of the following at September 30, 2018 and 2017:

	<u>2018</u>	<u>2017</u>
<i>Class A Interests:</i>		
As of September 30, 2018 and 2017 interests issued and outstanding were 229,001,142 and 220,694,412, respectively.	\$ 232,023,474	\$ 233,012,331
Less: Subscriptions receivable outstanding, as of September 30, 2018 and 2017, interests issued and outstanding of 792,656 and 969,419, respectively.	(1,030,453)	(1,308,714)
Retained members' deficit	<u>(94,811,989)</u>	<u>(83,805,919)</u>
Total members' equity	<u>\$ 136,181,032</u>	<u>\$ 147,897,698</u>

On January 2, 2014, the Company entered into an Interest Purchase Agreement with various investors including the Oak Hill Investors (collectively, "Oak Hill"), as defined in the LLC Agreement, to sell 60,000,000 Class A membership interests (Purchased Interests) for an aggregate purchase price of \$60,000,000 (Purchase Price). The Purchased Interests will be acquired in two tranches. In the first tranche, Oak Hill will acquire 40,000,000 of the Purchased Interests and will pay the Company \$40,000,000 of the Purchase Price. Oak Hill acquired the first installment of the first tranche, which included 30,000,000 Purchased Interests, on January 2, 2014 for \$30,000,000. Oak Hill acquired the second installment of the first tranche, which included 10,000,000 Purchased Interests, on January 17, 2014 for \$10,000,000. No change in control occurred with the sale of the first tranche of Purchased Interests. For the second tranche of Purchased Interests, Oak Hill acquired the installments of 5,000,000 Purchased Interests for \$5,000,000 each on December 14, 2014, February 27, 2015, September 3, 2015, and November 17, 2015.

***Sale of Class A Interests***

On November 17, 2015, Oak Hill purchased a total of 5,000,000 Purchased Interests for \$5,000,000 as the final part of the acquisition of the second tranche of Purchased Interests. No change in control occurred with the sale of the second tranche of Purchased Interests.

On December 4, 2015, pursuant to Schedule II of the Agreement, 5 Talents Fund contributed \$1,500,000 in exchange for 1,304,347.83 Class A Interests.

On December 11, 2015, pursuant to Schedule II of the Agreement, 5 Talents Fund contributed \$3,500,000 in exchange for 3,043,478.26 Class A Interests.

On December 28, 2015, pursuant to Schedule II of the Agreement, on behalf of Albert E. Cinelli, the Albert E. Cinelli and Sharon A. Cinelli 2014 Revocable Trust contributed \$1,000,000 in exchange for 869,565.22 Class A Interests.

On December 29, 2015, pursuant to Schedule II of the Agreement the following members made contributions to the Company on behalf of Albert E. Cinelli the Albert E. Cinelli and Sharon A. Cinelli 2014 Revocable Trust contributed \$5,750,000 in exchange for 5,000,000 Class A Interests; and the Oak Hill Investors contributed \$45,000,000 in exchange for 39,130,434.78 Class A Interests bringing the overall capital contribution of the Oak Hill Investors to \$110,000,000.

**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(9) Members' equity (continued)**

On December 31, 2015, pursuant to Schedule II of the Agreement the following members made contributions to the Company: Lohn Weber contributed \$150,000 in exchange for 130,438.78 Class A Interest; Steve Biggerstaff contributed \$135,000 in exchange for 117,391.30 Class A Interests; and Wave Division Capital IV, LLC contributed \$4,500,000 in exchange for 3,913,043.48 Class A Interests.

On December 31, 2015, consistent with the verbal agreement disclosed in Schedule 3.4(b) of the Purchase Agreement, the Company issued 84,320.96 Class A Interests to Lohn Weber.

On January 1, 2016, the Company issued 87,000 Class A Interests to the Albert E Cinelli and Sharon A Cinelli 2012 Revocable Trust, dated January 20, 2014 on behalf of Albert E. Cinelli; and 87,000 Class A Interests to 5 Talents Fund, LLC on behalf of John Cinelli as an employment bonus; and 65,000 Class A Interests to Lohn Weber as an employment bonus.

On December 15, 2016, the Company issued 355,497 Class A Interests John Cinelli in exchange for certain loans made to employees of the Company valued at \$355,497.33.

On December 23, 2016, pursuant to Schedule II of the Agreement 5 Talents Fund, LLC contributed \$519,502.67 in exchange for 384,816.79 Class A Interests.

On December 31, 2016, pursuant to Schedule II of the Agreement the Oak Hill Investors contributed \$15,000,000 in exchange for 11,111,111.11 Class A Interests bringing the overall capital contribution of the Oak Hill Investors to \$125,000,000; and John Greenbank contributed \$1,000,000 in exchange for 740,740.75 Class A Interests.

On June 30, 2017, pursuant to Schedule II of the Agreement The Oak Hill Investors contributed \$15,000,000 in exchange for 11,111,111.11 Class A Interests bringing the overall capital contribution of the Oak Hill Investors to \$140,000,000; and the 5 Talents Fund, LLC contributed \$450,000 in exchange for 333,333.33 Class A Interests.

On July 13, 2017, pursuant to Schedule II of the Agreement John Greenbank contributed \$240,000 in exchange for 177,777.78 Class A Interests.

On August 7, 2017 pursuant to Schedule II of the Agreement John Iber contributed \$185,000 in exchange for 137,037.04 Class A Interests.

**(10) Unit subscriptions plan**

During the year ended September 30, 2011, the Company adopted a subscriptions plan to allow certain employees to participate in an offering of units at a stated price. A second tranche of subscriptions was issued during December 2016 to qualifying individuals. Subscriptions receivables outstanding amounted to \$1,030,486 and \$1,308,714 at September 30, 2018 and 2017, respectively, and which are due December 2021 and bear interest at 6%. These amounts are shown as subscriptions receivables in the accompanying consolidated financial statements.

**(11) Unit option plan**

On March 20, 2014, the Company adopted the Metronet Holdings, LLC Equity Incentive Plan (the Plan), which is member approved, and was amended as of May 20, 2015, May 10, 2017, and February 5, 2018 and permits the grant of unit interests to its employees for up to 13,500,000 Class A units. The Company believes that such awards better align the interests of its employees with those of its members. Option awards are generally granted with an exercise price equal to the market price of the Company's units at the date of grant; these option awards generally vest based on ten years of continuous services and have ten-year contractual terms.



METRONET HOLDINGS, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(11) Unit option plan (continued)

The fair value of each option award is estimated on the date of the grant using a Black-Scholes option valuation model that uses the assumptions noted in the following table. Expected volatility is based on historical volatility of a telecommunications industry index. The expected term of the options granted represents the period of time that options are expected to be outstanding. The risk-free rate for periods within the contractual life of the options is based on the U.S. Treasury yield curve in effect at the time of the grant.

	<u>Shares</u>	<u>Weighted-Average Exercise Price</u>	<u>Weighted-Average Remaining Life</u>
Outstanding, September 30, 2017	4,163,000	\$ 1.97	
Granted	4,034,750	1.35	
Forfeited	(662,000)	1.35	
Outstanding, September 30, 2017	<u>7,535,750</u>	<u>\$ 1.97</u>	<u>10.17</u>
Granted	4,978,000	1.60	
Exercised	(2,000)	1.35	
Forfeited	(15,750)	1.35	
Outstanding, September 30, 2018	<u>12,496,000</u>	<u>\$ 2.22</u>	<u>9.74</u>
Expected volatility	24%		
Expected dividends	0%		
Expected term (in years)	10		
Risk-free rate	3.06%		

A summary of option activity under the plan during the years ended September 30, 2018 and 2017, is presented below:

The weighted average grant date fair value of options granted during the years ended September 30, 2018 and 2017 was \$0.46 and \$0.54, respectively, per option. There were no options exercised or exercisable as of or during the years ended September 30, 2018 and 2017.

As of September 30, 2018 and 2017, there was \$5,384,8265 and \$3,309,585, respectively, of total unrecognized compensation cost related to the non-vested ownership interest-based compensation arrangements granted under the Plan. That cost is expected to be recognized over a weighted-average period of nine years. No shares vested during the years ended September 30, 2018 and 2017.

**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(12) Operating leases**

The Company leases office facilities and equipment under operating leases. Rent expense charged to operations for the years ended September 30, 2018 and 2017 was \$714,337 and \$512,423, respectively.

The future minimum rental payments required under operating leases that have initial or remaining non-cancellable lease terms in excess of one year are as follows:

<u>Years ending September 30,</u>	
2019	\$ 623,000
2020	419,100
2021	340,900
2022	301,700
2023	214,100
Thereafter	<u>507,600</u>
Total	<u>\$ 2,406,400</u>

**(13) Retirement plan**

The Company is a participant in a defined contribution plan sponsored by an affiliate company that covers substantially all employees. The Company's contributions to the plan are determined annually by the Board of Directors. For the years ended September 30, 2018 and 2017, the Company matched 100% of employee deferrals up to 3% of eligible compensation and 50% of employee deferrals from 3% to 6% of eligible compensation. Contributions to the plan were \$925,931 and \$782,320, respectively, for the years ended September 30, 2018 and 2017.

**(14) Income taxes**

A reconciliation of income tax expense at the statutory rate to actual income tax expense is shown below:

	<u>September 30,</u>	
	<u>2018</u>	<u>2017</u>
Computed at the statutory rate (24%)	\$ 1,885,457	\$ 3,062,889
Increase (decrease) resulting from:		
State income taxes, net operating loss benefit	11,005	357,738
Graduated rates and other items	(489,339)	188,359
Nondeductible expenses and other	6,527	25,084
Changes in deferred asset valuation allowance	<u>(1,228,471)</u>	<u>(3,384,400)</u>
Actual tax expense	<u>\$ 185,179</u>	<u>\$ 249,670</u>

**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(14) Income taxes (continued)**

The tax effects of temporary differences related to deferred taxes shown on the consolidated balance sheet are as follows:

	September 30,	
	2018	2017
Deferred tax assets		
Allowance for doubtful accounts	\$ 188,969	\$ 262,600
AMT credit carryforward	421,991	150,800
Net operating loss carryforwards	3,053,452	5,600,500
	<u>3,664,412</u>	<u>6,013,900</u>
Deferred tax liabilities		
Accumulated depreciation	(2,092,528)	(3,190,800)
Prepaid expenses	(5,855)	(28,600)
	<u>(2,098,383)</u>	<u>(3,219,400)</u>
Net deferred tax asset before valuation allowance	<u>1,566,029</u>	<u>2,794,500</u>
Valuation allowance		
Beginning balance	(2,794,500)	(6,178,900)
Increase during the period	1,228,471	3,384,400
Ending balance	<u>(1,566,029)</u>	<u>(2,794,500)</u>
Net deferred tax liability	<u>\$ -</u>	<u>\$ -</u>
Deferred tax asset - current	\$ 183,114	\$ 234,000
Deferred tax liability - long-term	<u>(183,114)</u>	<u>(234,000)</u>
Net deferred tax liability	<u>\$ -</u>	<u>\$ -</u>

As of September 30, 2018, CMN had approximately \$0 of net operating loss carryforwards available to offset future state income taxes, and approximately \$0 of net operating loss carryforwards available to offset future federal income taxes. The carryforwards will expire between 2025 and 2033.

**(15) Related party transactions**

At September 30, 2018 and 2017, the Company had accrued for amounts payable to an affiliate totaling approximately \$3,148,107 and \$3,611,731 related to purchases of equipment, operating supplies and employee salary and benefit expenses. The Company recorded approximately \$34,217,232 and \$25,323,438, respectively, during 2018 and 2017 for employee salaries and benefits costs which are paid by Q-Services, LLC, a company related by common ownership.

In addition, at September 30, 2018 and 2017, the Company had outstanding convertible notes payable totaling \$2,000,000 due to a member. Unpaid principal and interest is due on May 30, 2033, unless it is accelerated earlier by the Company, with interest paid quarterly at an annual rate of 10%. On the date of maturity (May 30, 2033 or earlier if accelerated by the Company), the member may convert the principal balance to one share of Q-Comm common stock and one unit of MFN for every \$0.45 of principal balance outstanding.



METRONET HOLDINGS, LLC AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(15) Related party transactions (continued)

The Company owns fiber networks which are utilized by CMN, MSH and MFN. The operating expenses associated with these networks are charged to these affiliates based on the number of potential subscribers. All intercompany charges and corresponding receivables and payables have been eliminated in the accompanying consolidated statement of operations and comprehensive loss.

(16) Significant estimates and concentrations

Accounting principles generally accepted in the United States of America require disclosure of certain significant estimates and current vulnerabilities due to certain concentrations. Those matters include the following:

*General litigation*

The Company is subject to claims and lawsuits that arise primarily in the ordinary course of business. It is the opinion of management that the disposition or ultimate resolution of such claims and lawsuits will not have a material adverse effect on the financial position, results of operations and cash flows of the Company.

*Segment information*

The Company operates in a single industry segment. This industry segment is characterized by rapid technological change, significant capital expenditures, and significant competition.

(17) Commitments

The Company has entered into numerous collocation agreements that allow it to locate equipment in facilities owned by telecommunication providers. Additionally, the Company is involved in numerous pole attachment agreements, which allows it to extend its fiber optic network.

Typically, these agreements involve locating multiplexing/muxing equipment (a rack) in local exchange carrier (LEC) central offices. These agreements have specified beginning and ending dates; however, absent notification from either party of the intent to end the agreement, they then automatically convert to a month-to-month agreement with no specified ending date. These agreements typically require minimal rental payments for the use of the space and are assumed to exist in near perpetuity. Should the Company elect to exit such an agreement, the terms provide that it is responsible for both the removal of the equipment and fiber as well as the cost of returning the space to its original condition.

ASC 410, Asset Retirement and Environment Obligations requires a liability to be recognized in the period in which (1) a legal obligation to retire a long-lived asset exists, and (2) the fair value of the obligation based on retirement cost and settlement date is reasonably estimable. The Company believes it has a legal obligation to remove the aforementioned equipment and to restore the facilities upon termination of agreements. However, it believes it does not have a reasonable basis by which to assign probabilities to the timing of the potential agreement terminations and, accordingly, cannot reasonably estimate the fair value of the asset retirement obligation.

(18) Subsequent events

The Company has evaluated subsequent events through January 11, 2019, which is the date the consolidated financial statements were available to be issued. No significant matters were identified for disclosure during this evaluation.

## **SUPPLEMENTAL INFORMATION**



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## INDEPENDENT AUDITORS' REPORT ON SUPPLEMENTAL INFORMATION

To the Members

### METRONET HOLDINGS, LLC AND SUBSIDIARIES

We have audited the consolidated financial statements of Metronet Holdings, LLC and Subsidiaries, (the "Company") as of and for the year ended September 30, 2018 and have issued our report thereon dated January 11, 2019 which contained an unmodified opinion on those consolidated financial statements. Our audit was performed for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The accompanying supplemental information on pages 21 through 26 is presented for purposes of additional analysis and is not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements taken as a whole.

*Mayer Hoffman McCann P.C.*

Kansas City, Missouri  
January 11, 2019



*Member of Kreston International – a global network of independent accounting firms*

METRONET HOLDINGS, LLC AND SUBSIDIARIES

CONSOLIDATING BALANCE SHEETS

September 30, 2018 and 2017

	Metronet Holdings, LLC	Metronet Systems Holdings, LLC	Metro FiberNet, LLC	QComm, Inc.	Eliminations	Consolidated 2018	Consolidated 2017
<b>ASSETS</b>							
CURRENT ASSETS							
Cash and cash equivalents	\$ 4,037,309	\$ 191,458	\$ 1,203,001	\$ 1,547,907	\$ -	\$ 6,979,675	\$ 5,396,764
Accounts receivable (net of allowance)	-	2,681,348	1,129,224	2,773,409	-	6,583,981	5,768,880
Accounts receivable - affiliate	-	2,950,968	-	5,131,597	(8,082,565)	-	-
Prepaid expenses and other assets	-	-	1,292,917	22,521	-	1,315,438	1,231,068
Financing receivables, current portion	-	-	365,215	-	-	365,215	221,343
TOTAL CURRENT ASSETS	4,037,309	5,823,774	3,990,357	9,475,434	(8,082,565)	15,244,309	12,618,055
FINANCING RECEIVABLES, less current portion above	-	-	1,090,208	-	-	1,090,208	390,473
PROPERTY AND EQUIPMENT, at cost, less accumulated depreciation	-	53,109,396	163,600,695	38,713,916	-	255,424,007	201,315,919
DEFERRED INCOME TAXES	-	-	-	183,114	-	183,114	234,000
ECONOMIC DEVELOPMENT REVENUE BONDS	-	-	16,317,883	2,174,000	-	18,491,883	18,884,223
INVESTMENT IN SUBSIDIARY	111,639,931	-	-	-	(111,639,931)	-	-
INTANGIBLES, at cost, less accumulated amortization	-	-	-	861,667	-	861,667	971,667
OTHER ASSETS	658,905	-	35,114	3,644	-	697,663	25,650
TOTAL ASSETS	\$ 116,336,145	\$ 58,933,170	\$ 185,034,257	\$ 51,411,775	\$ (119,722,496)	\$ 291,992,851	\$ 234,439,987
<b>LIABILITIES</b>							
CURRENT LIABILITIES							
Accounts payable	\$ -	\$ 11,470	\$ 4,040,881	\$ 418,309	\$ -	\$ 4,470,660	\$ 3,747,815
Accounts payable - affiliate	1,030,453	-	7,054,849	-	(8,082,565)	2,737	-
Deferred revenue, current portion	-	2,277,108	1,035,690	2,242,235	-	5,555,033	4,732,403
Other accrued liabilities	131,154	3,036,626	11,260,552	2,960,507	-	17,389,039	14,639,953
Line of credit	126,211,203	-	-	-	-	126,211,203	15,000,000
Current portion of long-term debt	-	-	-	-	-	-	10,196,866
TOTAL CURRENT LIABILITIES	127,372,810	5,325,404	23,391,972	5,621,051	(8,082,565)	153,628,672	48,317,037
DEFERRED INCOME TAXES	-	-	-	183,114	-	183,114	234,000
LONG-TERM DEBT, less current portion above	-	-	-	-	-	-	35,991,252
RELATED PARTY CONVERTIBLE DEBT	-	-	2,000,000	-	-	2,000,000	2,000,000
TOTAL LIABILITIES	127,372,810	5,325,404	25,391,972	5,804,165	(8,082,565)	155,811,786	86,542,289
<b>MEMBERS' CAPITAL</b>							
MEMBERS' CAPITAL	(10,006,212)	53,607,766	159,642,285	45,607,610	(111,639,931)	137,211,518	149,206,412
Subscriptions receivable	(1,030,453)	-	-	-	-	(1,030,453)	(1,308,714)
TOTAL MEMBERS' CAPITAL	(11,036,665)	53,607,766	159,642,285	45,607,610	(111,639,931)	136,181,065	147,897,698
TOTAL LIABILITIES AND MEMBERS' CAPITAL	\$ 116,336,145	\$ 58,933,170	\$ 185,034,257	\$ 51,411,775	\$ (119,722,496)	\$ 291,992,851	\$ 234,439,987

METRONET HOLDINGS, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENT OF OPERATIONS

Years ended September 30, 2018 and 2017

	Metronet Holdings, LLC	Metronet Systems Holdings, LLC	Metro FiberNet, LLC	QComm, Inc.	Eliminations	Consolidated 2018	Consolidated 2017
SALES, net	\$ -	\$ 43,395,898	\$ 13,833,683	\$ 46,211,171	\$ -	\$ 103,440,752	\$ 88,760,880
COST OF SALES							
Depreciation	-	11,423,200	5,551,985	8,069,785	-	25,044,970	20,991,797
Other	-	14,866,224	6,358,101	15,250,477	-	36,474,802	30,642,874
Subtotal	-	26,289,424	11,910,086	23,320,262	-	61,519,772	51,634,671
GROSS PROFIT	-	17,106,474	1,923,597	22,890,909	-	41,920,980	37,126,209
OPERATING EXPENSES							
Salaries	-	7,610,042	18,051,396	7,290,673	-	32,952,111	24,098,550
Depreciation and amortization	-	1,908,712	241,800	355,155	-	2,505,667	2,768,422
Administration and other	2,964	4,889,661	4,375,589	4,053,705	-	13,321,919	11,900,996
Subtotal	2,964	14,408,415	22,668,785	11,699,533	-	48,779,697	38,767,968
OPERATING INCOME (LOSS)	(2,964)	2,698,059	(20,745,188)	11,191,376	-	(6,858,717)	(1,641,759)
OTHER INCOME (EXPENSE)							
Interest income	92,503	618,681	90,297	211,623	-	1,013,104	862,727
Interest expense	(1,851,050)	(209,161)	(200,000)	(3,630,767)	-	(5,890,978)	(2,183,333)
Gain (loss) on disposal of property and equipment	-	-	(100,321)	(19,627)	-	(119,948)	16,328
Unit option expense	(598,313)	2,200	20,564	12,702	-	(562,847)	(331,754)
Subtotal	(2,356,860)	411,720	(189,460)	(3,426,069)	-	(5,560,609)	(1,636,032)
INCOME (LOSS) BEFORE INCOME TAXES	(2,359,824)	3,109,779	(20,934,648)	7,765,307	-	(12,419,386)	(3,277,791)
PROVISION FOR INCOME TAXES	-	-	-	175,851	-	175,851	249,670
NET INCOME (LOSS)	\$ (2,359,824)	\$ 3,109,779	\$ (20,934,648)	\$ 7,589,456	\$ -	\$ (12,595,237)	\$ (3,527,461)



**METRONET HOLDINGS, LLC AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENT OF MEMBERS' CAPITAL**  
Years ended September 30, 2018 and 2017

	Metronet Holdings, LLC	Metronet Systems Holdings, LLC	Metro FiberNet, LLC	QComm, Inc.	Elimination	Total
Members' equity (deficit), October 1, 2016	\$ 166,135,752	-	4,907,356	(15,356,502)	(36,956,626)	\$ 118,729,980
Membership contributions	33,500,000	46,286,103	134,528,316	-	(180,553,258)	33,761,161
Unit compensation expense	367,732	-	-	-	-	367,732
Net income (loss)	(296,960)	1,186,472	(13,175,865)	8,758,892	-	(3,527,461)
Dividends paid	(125,000)	(19,500,000)	-	-	19,500,000	(125,000)
Dividends received	4,000,000	-	-	-	(4,000,000)	-
Subscriptions receivable	(1,308,714)	-	-	-	-	(1,308,714)
Members' equity (deficit), September 30, 2017	202,272,810	27,972,575	126,259,807	(6,597,610)	(202,009,884)	147,897,698
Membership contributions	(233,328,255)	44,025,412	66,000,000	44,615,764	78,687,079	-
Unit options exercised	2,000	-	-	-	-	2,000
Unit compensation expense	598,310	-	-	-	-	598,310
Net income (loss)	(2,359,824)	3,109,779	(20,934,648)	7,589,456	-	(12,595,237)
Dividends	21,500,000	(21,500,000)	(11,682,874)	-	11,682,874	-
Subscriptions receivable collected	278,294	-	-	-	-	278,294
Members' equity (deficit), September 30, 2018	\$ (11,036,665)	\$ 53,607,766	\$ 159,642,285	\$ 45,607,610	\$ (111,639,931)	\$ 136,181,065

## METRONET HOLDINGS, LLC AND SUBSIDIARIES

## CONSOLIDATING STATEMENT OF CASH FLOWS

Years ended September 30, 2018 and 2017

	Metronet Holdings, LLC	Metronet Systems Holdings, LLC	Metro FiberNet, LLC	QComm, Inc.	Eliminations	2018 Consolidated Total	2017 Consolidated Total
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>							
Comprehensive loss	\$ (2,359,824)	\$ 3,108,779	\$ (20,934,648)	\$ 7,589,456	\$ -	\$ (12,595,237)	\$ (3,527,461)
Adjustments to reconcile net loss to net cash flows from operating activities:							
Depreciation and amortization	-	13,331,912	5,793,785	8,424,940	-	27,550,637	23,760,219
Gain on disposal of property and equipment	-	-	100,321	16,827	-	116,948	(16,328)
Provision for bad debts	-	327,349	77,059	329,019	-	733,427	335,720
Stock compensation expense	598,310	-	-	-	-	598,310	367,732
Derivative asset	(646,006)	-	-	-	-	(646,006)	-
Change in operating assets and liabilities:							
Accounts receivable	-	(2,948,455)	16,399	(5,122,583)	4,756,142	(3,206,527)	(990,219)
Prepaid expenses	-	-	(145,268)	60,896	-	(84,372)	161,755
Lease receivable	-	-	23,697	-	-	23,697	31,231
Other assets	(12,899)	-	(13,108)	-	-	(26,007)	33,839
Accounts payable	280,453	(6,257)	6,067,002	(260,377)	(4,756,142)	1,324,679	(952,494)
Accrued liabilities	131,154	1,140,560	45,668	1,431,704	-	2,749,086	1,613,143
Deferred revenues	-	468,829	263,626	90,176	-	822,631	616,683
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	<b>(2,008,812)</b>	<b>15,423,717</b>	<b>(8,705,497)</b>	<b>12,562,856</b>	<b>-</b>	<b>17,272,286</b>	<b>21,433,829</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>							
Proceeds from sale of property and equipment	-	-	447,761	42,555	-	490,316	111,287
Purchase of property and equipment	-	(23,816,168)	(55,441,504)	(3,123,052)	-	(82,380,724)	(82,729,495)
Acquisition of intangibles - Warsaw fiber	-	-	-	-	-	-	(29,056)
Redemption of economic development revenue bonds	-	-	85,340	307,000	-	392,340	475,000
Purchase of economic development revenue bonds	-	-	-	-	-	-	(73,222)
Proceeds from lease receivables	-	-	505,334	-	-	505,334	524,137
Proceeds from sale of available-for-sale securities	-	-	-	-	-	-	106,015,202
Purchase of available-for-sale securities	-	-	-	-	-	-	(86,019,625)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>	<b>-</b>	<b>(23,816,168)</b>	<b>(54,403,069)</b>	<b>(2,773,497)</b>	<b>-</b>	<b>(80,992,734)</b>	<b>(61,726,042)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>							
Proceeds from line of credit	126,211,203	(15,000,000)	8,100,000	(8,100,000)	-	111,211,203	15,000,000
Payments on long-term debt	-	-	-	(46,188,118)	-	(46,188,118)	(9,771,429)
Dividends paid	-	-	-	-	-	-	(125,000)
Unit options exercised	2,000	-	-	-	-	2,000	33,761,161
Membership subscriptions receivable	278,294	-	-	-	-	278,294	(1,308,714)
<b>NET CASH FLOWS FROM FINANCING ACTIVITIES</b>	<b>4,474,481</b>	<b>7,525,412</b>	<b>62,975,840</b>	<b>(9,672,354)</b>	<b>-</b>	<b>65,303,379</b>	<b>37,556,018</b>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>2,465,669</b>	<b>(867,039)</b>	<b>(132,726)</b>	<b>117,007</b>	<b>-</b>	<b>1,582,911</b>	<b>(2,736,195)</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR</b>	<b>1,571,640</b>	<b>1,058,497</b>	<b>1,335,727</b>	<b>1,430,600</b>	<b>-</b>	<b>5,396,764</b>	<b>8,132,959</b>
<b>CASH AND CASH EQUIVALENTS, END OF YEAR</b>	<b>\$ 4,037,309</b>	<b>\$ 191,458</b>	<b>\$ 1,203,001</b>	<b>\$ 1,547,607</b>	<b>\$ -</b>	<b>\$ 6,979,675</b>	<b>\$ 5,396,764</b>
<b>NONCASH INVESTING AND FINANCING ACTIVITIES</b>							
Property and equipment acquisitions financed with accounts payable	\$ -	\$ -	\$ 1,150,903	\$ -	\$ -	\$ 1,150,903	\$ 1,711,362
Property and equipment acquisitions from cancelled financing receivables	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,392,818
Financing receivables equipment transferred from property and equipment	\$ -	\$ -	\$ 1,372,638	\$ -	\$ -	\$ 1,372,638	\$ -
<b>OTHER CASH DISCLOSURES</b>							
Interest paid	\$ 1,851,050	\$ 209,161	\$ 200,000	\$ 3,630,767	\$ -	\$ 5,890,978	\$ 2,184,139
Bond purchases	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 73,222

METRONET HOLDINGS, LLC AND SUBSIDIARIES  
BALANCE SHEETS – ESTABLISHED AND DEVELOPMENT MARKETS

September 30, 2018

	Metronet Holdings, LLC	Metronet Systems Holdings, LLC	QComm, Inc.	Eliminations	Subtotal	Metro FiberNet, LLC	Eliminations	Total
	<b><u>ASSETS</u></b>							
CURRENT ASSETS								
Cash and cash equivalents	\$ 4,037,309	\$ 191,458	\$ 1,547,907	\$ -	\$ 5,776,674	\$ 1,203,001	\$ -	\$ 6,979,675
Accounts receivable (net of allowance)	-	2,681,348	2,773,409	-	5,454,757	1,129,224	-	6,583,981
Accounts receivable - affiliate	-	2,950,968	5,131,597	(8,082,565)	-	-	-	1,315,438
Prepaid expenses and other assets	-	-	22,521	-	22,521	1,292,917	-	365,215
Financing receivables, current portion	-	-	-	-	-	365,215	-	-
TOTAL CURRENT ASSETS	4,037,309	5,823,774	9,475,434	(8,082,565)	11,253,952	3,990,357	-	15,244,309
FINANCING RECEIVABLES, less current portion above	-	-	-	-	-	1,090,208	-	1,090,208
PROPERTY AND EQUIPMENT, at cost, less accumulated depreciation	-	53,109,396	38,713,916	-	91,823,312	163,600,695	-	255,424,007
DEFERRED INCOME TAXES	-	-	183,114	-	183,114	-	-	183,114
ECONOMIC DEVELOPMENT REVENUE BONDS	-	-	2,174,000	-	2,174,000	16,317,883	-	18,491,883
INVESTMENT IN SUBSIDIARY	111,639,931	-	-	-	111,639,931	-	(111,639,931)	-
INTANGIBLES, at cost, less accumulated depreciation	-	-	861,667	-	861,667	-	-	861,667
OTHER ASSETS	658,905	-	3,644	-	662,549	35,114	-	697,663
TOTAL ASSETS	\$ 116,336,145	\$ 58,933,170	\$ 51,411,775	\$ (8,082,565)	\$ 218,598,525	\$ 185,034,257	\$ (111,639,931)	\$ 291,992,851
	<b><u>LIABILITIES</u></b>							
CURRENT LIABILITIES								
Accounts payable	\$ -	\$ 11,470	\$ 418,309	\$ -	\$ 429,779	\$ 4,040,881	\$ -	\$ 4,470,660
Accounts payable - affiliate	1,030,453	-	-	(1,030,453)	-	7,054,849	(7,054,849)	-
Deferred revenue, current portion	-	2,277,108	2,242,235	-	4,519,343	1,035,690	-	5,555,033
Other accrued liabilities	131,154	3,036,826	2,960,507	-	6,128,487	11,260,552	-	17,389,039
Line of credit	126,211,203	-	-	-	126,211,203	-	-	126,211,203
TOTAL CURRENT LIABILITIES	127,372,810	5,325,404	5,621,051	(1,030,453)	137,288,812	23,391,972	(7,054,849)	153,625,935
DEFERRED INCOME TAXES	-	-	183,114	-	183,114	-	-	183,114
RELATED PARTY CONVERTIBLE DEBT	-	-	-	-	-	2,000,000	-	2,000,000
TOTAL LIABILITIES	127,372,810	5,325,404	5,804,165	(1,030,453)	137,471,926	25,391,972	(7,054,849)	155,809,049
	<b><u>MEMBERS' CAPITAL</u></b>							
MEMBERS' CAPITAL	(10,006,212)	53,607,766	45,607,610	(7,052,112)	82,157,052	159,642,285	(104,585,082)	137,214,255
Subscriptions receivable	(1,030,453)	-	-	-	(1,030,453)	-	-	(1,030,453)
TOTAL MEMBERS' CAPITAL	(11,036,665)	53,607,766	45,607,610	(7,052,112)	81,126,599	159,642,285	(104,585,082)	136,183,802
TOTAL LIABILITIES AND MEMBERS' CAPITAL	\$ 116,336,145	\$ 58,933,170	\$ 51,411,775	\$ (8,082,565)	\$ 218,598,525	\$ 185,034,257	\$ (111,639,931)	\$ 291,992,851

METRONET HOLDINGS, LLC AND SUBSIDIARIES  
STATEMENT OF OPERATIONS – ESTABLISHED AND DEVELOPMENT MARKETS

Year ended September 30, 2018

	Metronet Holdings, LLC	Metronet Systems Holdings, LLC	QComm, Inc.	Subtotal	Metro FiberNet, LLC	Eliminations	Total
SALES, net	\$ -	\$ 43,395,898	\$ 46,211,171	\$ 89,607,069	\$ 13,833,683	\$ -	\$ 103,440,752
COST OF SALES							
Depreciation	-	11,423,200	8,069,785	19,492,985	5,551,985	-	25,044,970
Other	-	14,866,224	15,250,477	30,116,701	6,358,101	-	36,474,802
Subtotal	-	26,289,424	23,320,262	49,609,686	11,910,086	-	61,519,772
GROSS PROFIT	-	17,106,474	22,890,909	39,997,383	1,923,597	-	41,920,980
OPERATING EXPENSES							
Salaries	-	7,610,042	7,290,673	14,900,715	18,051,396	-	32,952,111
Depreciation and amortization	-	1,908,712	355,155	2,263,867	241,800	-	2,505,667
Administration and other	2,964	4,889,661	4,053,705	8,946,330	4,375,589	-	13,321,919
Subtotal	2,964	14,408,415	11,699,533	26,110,912	22,668,785	-	48,779,697
OPERATING INCOME (LOSS)	(2,964)	2,698,059	11,191,376	13,886,471	(20,745,188)	-	(6,858,717)
OTHER INCOME (EXPENSE)							
Interest income	92,503	618,681	211,623	922,807	90,297	-	1,013,104
Interest expense	(1,851,050)	(209,161)	(3,630,767)	(5,690,978)	(200,000)	-	(5,890,978)
Gain on disposal of property and equipment	-	-	(19,627)	(19,627)	(100,321)	-	(119,948)
Unit option expense	(598,313)	2,200	12,702	(583,411)	20,564	-	(562,847)
Subtotal	(2,356,860)	411,720	(3,426,069)	(5,371,209)	(189,460)	-	(5,560,669)
INCOME (LOSS) BEFORE INCOME TAXES	(2,359,824)	3,109,779	7,765,307	8,515,262	(20,934,648)	-	(12,419,386)
PROVISION FOR INCOME TAXES	-	-	175,851	175,851	-	-	175,851
NET INCOME (LOSS)	\$ (2,359,824)	\$ 3,109,779	\$ 7,589,456	\$ 8,339,411	\$ (20,934,648)	\$ -	\$ (12,595,237)



METRONET HOLDINGS, LLC AND SUBSIDIARIES  
STATEMENT OF CASH FLOWS – ESTABLISHED AND DEVELOPMENT MARKETS

Year ended September 30, 2018

	Metronet Holdings, LLC	Metronet Systems Holdings, LLC	QComm, Inc.	Subtotal	Metro FiberNet, LLC	Eliminations	Total
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>							
Comprehensive loss	\$ (2,359,824)	\$ 3,109,779	\$ 7,589,456	\$ 8,339,411	\$ (20,934,648)	\$ -	\$ (12,595,237)
Adjustments to reconcile net loss to net cash flows from operating activities:							
Depreciation and amortization	-	13,331,912	8,424,940	21,756,852	5,793,785	-	27,550,637
Gain on disposal of property and equipment	-	-	19,627	19,627	100,321	-	119,948
Provision for bad debts	-	327,349	329,019	656,368	77,059	-	733,427
Stock compensation expense	598,310	-	-	598,310	-	-	598,310
Derivative asset	(646,006)	-	-	(646,006)	-	-	(646,006)
Change in operating assets and liabilities:							
Accounts receivable	-	(2,948,455)	(5,122,583)	(8,071,038)	16,369	4,756,142	(3,298,527)
Prepaid expenses	-	-	60,896	60,896	(145,268)	-	(84,372)
Lease receivable	-	-	-	-	23,697	-	23,697
Other assets	(12,899)	-	-	(12,899)	(13,108)	-	(26,007)
Accounts payable	280,453	(6,257)	(260,377)	13,819	6,067,002	(4,756,142)	1,324,679
Accrued liabilities	131,154	1,140,560	1,431,704	2,703,418	45,668	-	2,749,086
Deferred revenues	-	468,829	90,176	559,005	263,626	-	822,631
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	<b>(2,008,812)</b>	<b>15,423,717</b>	<b>12,562,858</b>	<b>25,977,763</b>	<b>(8,705,497)</b>	<b>-</b>	<b>17,272,266</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>							
Proceeds from sale of property and equipment	-	-	42,555	42,555	447,761	-	490,316
Purchase of property and equipment	-	(23,816,168)	(3,123,052)	(26,939,220)	(55,441,504)	-	(82,380,724)
Redemption of economic development revenue bonds	-	-	307,000	307,000	85,340	-	392,340
Proceeds from lease receivables	-	-	-	-	505,334	-	505,334
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>	<b>-</b>	<b>(23,816,168)</b>	<b>(2,773,497)</b>	<b>(26,589,665)</b>	<b>(54,403,069)</b>	<b>-</b>	<b>(80,992,734)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>							
Proceeds from line of credit	126,211,203	(15,000,000)	(8,100,000)	103,111,203	8,100,000	-	111,211,203
Payments on long-term debt	-	-	(46,188,118)	(46,188,118)	-	-	(46,188,118)
Contributions to subsidiaries	(122,017,016)	22,525,412	44,615,764	(54,875,840)	54,875,840	-	-
Unit options exercised	2,000	-	-	2,000	-	-	2,000
Membership subscriptions receivable	278,294	-	-	278,294	-	-	278,294
<b>NET CASH FLOWS FROM FINANCING ACTIVITIES</b>	<b>4,474,481</b>	<b>7,525,412</b>	<b>(9,672,354)</b>	<b>2,327,539</b>	<b>62,975,840</b>	<b>-</b>	<b>65,303,379</b>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>2,465,669</b>	<b>(867,039)</b>	<b>117,007</b>	<b>1,715,637</b>	<b>(132,726)</b>	<b>-</b>	<b>1,582,911</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR</b>	<b>1,571,640</b>	<b>1,058,497</b>	<b>1,430,900</b>	<b>4,061,037</b>	<b>1,335,727</b>	<b>-</b>	<b>5,396,764</b>
<b>CASH AND CASH EQUIVALENTS, END OF YEAR</b>	<b>\$ 4,037,309</b>	<b>\$ 191,458</b>	<b>\$ 1,547,907</b>	<b>\$ 5,776,674</b>	<b>\$ 1,203,001</b>	<b>\$ -</b>	<b>\$ 6,979,675</b>

# **APPENDIX D**

## **Master Services Agreement**

**INDIANA RURAL HEALTH ASSOCIATION, INC.**  
**MASTER CONTRACT**

THIS MASTER CONTRACT (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between Metro Fibernet, LLC ("Supplier"), whose address is 3701 Communications Way, Evansville, IN 47715 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**

**1.1 Services.**

- (a) 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.
- (b) 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

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

- (c) 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.
- (d) 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.
- (e) 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.
- (f) If Customer will be locating any equipment within any Supplier facilities, Customer shall execute an Equipment Colocation Agreement in the form attached as **Exhibit "E"**. To the extent the terms of this Agreement conflict with any Equipment Colocation Agreement, the terms of this Agreement shall control.
- (g) 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.

## **1.2 Term; Termination.**

- (a) 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.



- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.

- (g) The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement (each, a "Default"):
- i. Either Party's insolvency, dissolution or cessation of business operations;
  - ii. Customer's failure to pay any delinquent invoice or amount owed;
  - iii. Customer's fraudulent or illegal use of the Services; and
  - iv. Any assignment of this agreement that violates Section 4.10.
- (h) 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.
- (i) Upon any Default by Customer not cured before the expiration of the applicable notice and cure period, Supplier may, at its sole option, do any or all of the following:
- i. Cease accepting or processing Orders for Services and suspend Services;
  - ii. Cease all electronically and manually generated information and reports;
  - iii. Draw on any letter of credit, security deposit or other assurance of payment and enforce any security interest provided by Customer;
  - iv. Terminate this Agreement and any and all Orders for Services without liability to Supplier;
  - v. Collect from Customer the disconnection charges; and/or
  - vi. Pursue such other legal or equitable remedy or relief as may be available to Supplier.

### **1.3 Billing; Payment.**

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.

#### **1.4 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.

#### **1.5 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.

**1.6 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.

**1.7 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**

**2.1 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.

**2.2 Warranties.**

- (a) 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.
- (b) 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.
- (c) Supplier represents and warrants that the Services shall not infringe the copyright, patent, trademark or other intellectual property right of a third party.

**2.3 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 LIABILITIES**

#### **3.1 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.

#### **3.2 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.

#### **3.3 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, ARISING 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**

##### **4.1 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.

##### **4.2 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.

#### **4.05 Confidentiality.**

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

- (e) 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.

#### **4.06 Entire 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.

#### **4.07 Construction.**

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.

#### **4.8 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.

#### **4.9 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.

#### **4.10 Assignment.**

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

#### **4.11 Notices.**

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:

Metro Fibernet, LLC  
Attn: President  
3701 Communications Way  
Evansville, IN 47715

Customer Name  
Attn: Contact Name  
Customer Address  
Customer Address

#### **4.12 Counterparts.**

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.

#### **4.13 Compliance with Laws.**

- (a) 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.
- (b) 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 debarment of contracting opportunities with Customer for up to three (3) years.

- (c) 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.

#### **4.14 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.

#### **4.15 Amendments.**

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.

#### **4.16 Severability.**

The illegality or 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.

#### **4.17 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.

**4.18 Access to Books and Records.** To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the "Act") 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.

**4.19 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.

**4.20 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: \_\_\_\_\_ Metro Fibernet, LLC

By: \_\_\_\_\_ By: Kevin Stelmach  
Kevin Stelmach (Mar 22, 2019)

Printed Name: \_\_\_\_\_ Kevin Stelmach  
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Executive Vice President and  
General Manager

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:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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

- (f) 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

**2) DELAY IN START DATE:**

- (a) 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 Change Charge:
DS1	\$150
DS3	\$200
OC-N	\$500
Ethernet Services	ICB

- (b) 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:**

- (a) 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.
- (b) 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 single entrance

- (c) 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.
- (d) Planned Maintenance or Repair. Planned Maintenance or Repair includes network upgrades and repairs, equipment upgrades and repairs, power upgrades and repairs.
- (e) 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.

**2) 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.

3) **SERVICE INTERRUPTION:**

- (a) 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 A Credit Amount:	Class B Credit Amount:	Class C Credit 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.

- (b) 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.

**4) SUPPLIER RESPONSE:**

- (a) 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 833.266.5812.
- (b) Supplier shall provide an explicitly named list, including direct contact information, of operations management contacts for purposes of trouble resolution escalations.

Primary contact: Repair Center, Number: 833.393.6857

Escalation level 1: Sean Melvin, Number: 812.213.1385, Sean.Melvin@metronetinc.com

Escalation level2: Brian Rickey, Number: 812.213.1332, brian.rickey@metronetinc.com

Escalation level3: Tom Luther, Number: 812.213.1731, Tom.Luther@metronetinc.com

- (c) 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.
- (d) 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.

**5) PLANNED MAINTENANCE OR REPAIR:**

- (a) Maintenance Window. Planned maintenance is performed during a maintenance window of 10:00 PM to 6:00 AM (Eastern Time).
- (b) 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.



6) **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 833.266.5812

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	See Section 4 of Exhibit C			
3				

If during normal business hours you have a question or concern that is not service affecting please call the main business number 877-407-3224.

**Exhibit E**  
**Form of Colocation Agreement**

Customer will allow (or will cause to be allowed) Supplier the right to access, occupy, use and maintain suitable space, power, and back-up power source inside each Customer premise, as applicable, to the extent reasonably determined by Supplier to be needed to provide the Service(s) (the "Space"). Customer shall provide (or cause to be provided) heat, ventilation and air conditioning ("HVAC") to the Space sufficient to maintain an acceptable ambient temperature and acceptable level of relative non-condensing humidity. Customer shall provide (or cause to be provided) Supplier and its affiliates access to such Space upon reasonable notice from Supplier; such access will include the rights of ingress and egress for Supplier's personnel and facilities to access such Space, and any necessary easement and building entrances rights to extend Supplier's network from the public rights of way into the Space. If requirements or rights with respect to a specific Service differ from the above-described requirements, such requirements and rights shall be specified in the applicable Order for Services or other written document. No fees or charges shall be imposed on Supplier in connection with, or related to, the rights granted to Supplier in this Exhibit E. Customer agrees that its failure to provide (or cause to be provided) the space, access and services described in this Exhibit E may adversely impact the Service(s), and Supplier shall not be responsible for any such adverse impact. Customer agrees not to open, alter, misuse, tamper with or remove the software and equipment required to operate the Service. Customer will not remove any markings or labels or serial numbers from the equipment. If the equipment is damaged, destroyed, lost or stolen while in Customer's possession, Customer shall be liable for the cost of repair or replacement of such equipment including costs of labor. Customer will safeguard the equipment from loss or damage of any kind, and will not permit anyone other than an authorized representative of Supplier to perform any work on the equipment.

Title to Supplier's equipment located in or at the Space shall remain with Supplier and its successors and assigns, as applicable. From time to time and upon notice at a mutually agreed upon time, Supplier may remove, or cause to be removed, from the Space, any or all of Supplier's equipment. After expiration or termination of the Service(s) offered by Supplier from or using the Space, Supplier shall remove, or cause to be removed, from the Space, any and all of Supplier's equipment. Such equipment shall be in the same condition as it was originally delivered, normal wear and tear excepted. If Customer fails to allow (or cause to be allowed) Supplier to enter the premises to recover any Supplier provided equipment within thirty (30) days of the termination of applicable Services, 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. Customer hereby acknowledges and agrees that only Supplier authorized personnel shall be allowed to access the Supplier entrance facilities and Supplier equipment.

Supplier and its employees, agents, and invitees shall abide by and observe all reasonable rules and regulations as may be promulgated by Customer or end user for the maintenance and use of the Space.






# Indiana Rural Health Master Contract for 2019

Final Audit Report

2019-03-22

Created:	2019-03-22
By:	Anita Larson (anita.larson@metronetinc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPNC5lxMGGZ1Puo2r6Jr2LIKq0NJfBCAn

## "Indiana Rural Health Master Contract for 2019" History

-  Document created by Anita Larson (anita.larson@metronetinc.com)  
2019-03-22 - 6:11:00 PM GMT- IP address: 208.38.247.133
-  Document emailed to Kevin Stelmach (kevin.stelmach@metronetinc.com) for signature  
2019-03-22 - 6:11:31 PM GMT
-  Document viewed by Kevin Stelmach (kevin.stelmach@metronetinc.com)  
2019-03-22 - 9:04:16 PM GMT- IP address: 208.38.247.133
-  Document e-signed by Kevin Stelmach (kevin.stelmach@metronetinc.com)  
Signature Date: 2019-03-22 - 9:04:36 PM GMT - Time Source: server- IP address: 208.38.247.133
-  Signed document emailed to Kevin Stelmach (kevin.stelmach@metronetinc.com),  
monica.piguet@metronetinc.com and Anita Larson (anita.larson@metronetinc.com)  
2019-03-22 - 9:04:36 PM GMT



Adobe Sign

# **APPENDIX E**

**Metro Fibernet, LLC Operating Agreement**



## OPERATING AGREEMENT

for

### METRO FIBERNET, LLC

THIS OPERATING AGREEMENT of METRO FIBERNET, LLC (the "Agreement") is made and entered into effective February 7, 2011, (the "Effective Date") by and among Albert E. Cinelli and John P. Cinelli and any other Members who are subsequently listed on Schedule 1 to this Agreement and as reflected in the Company's Records.

## SECTION 1

### DEFINITIONS

- 1.1 "*Act*" shall mean the Nevada Limited Liability Company Act, as Amended.
- 1.2 "*Agreement*" shall have the meaning set forth in the introductory paragraph.
- 1.3 "*Board of Mangers*" shall mean collectively those individuals named as Mangers of the Company pursuant to Section 6 of the Agreement.
- 1.4 "*Code*" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws.
- 1.5 "*Company*" shall mean Metro FiberNet, LLC
- 1.6 "*Demand*" shall have the meaning set forth in Section 13.4.
- 1.7 "*Dispute*" shall have the meaning set forth in Section 13.4.
- 1.8 "*Effective Date*" shall mean February 7, 2011.
- 1.9 "*Fiscal Year*" shall mean the Company's fiscal year. The Company's fiscal year shall be January 1 through December 31 unless a different taxable year is required by Section 706 of the Code, in which event the Company's fiscal year shall be the taxable year required by Section 706 of the Code
- 1.10 "*Initial Contribution Amount*" shall mean the sum of \$9,720,000
- 1.11 "*Manger*" shall refer to any individual named to the Board of Mangers
- 1.12 "*Majority in Interest*" shall mean the vote of the Members holding at least a majority of the Membership Interests issued and outstanding as of the date of such action.
- 1.13 "*Member*" shall mean each Person who is listed in Schedule 1 to this Agreement, as such schedule may amended from time to time.

1.14 "*Membership Interest*" shall mean a Member's entire interest in the Company including such Member's Economic Rights in the Company and in the voting rights in the Company. Each Member's Membership Interests shall be set forth on Schedule 1 to this Agreement.

1.15 "*Membership Unit*" means a quantitative measurement of a Membership Interest.

1.16 "Original Agreement" shall have the meaning set forth in the recitals.

1.17 "*Person*" shall mean a natural person, general partnership, domestic or foreign limited partnership, domestic or foreign limited liability company, domestic or foreign corporation, trust, estate, association or other business entity.

1.18 "*Tax Matters Member*" shall mean, to the extent required, the tax matters partner as described in Internal Revenue Code Section 6231(a)(7) shall be a Member.

1.19 "*Tax Percentage*" shall have the meaning set forth in Section 4.3.

## SECTION 2

### THE LIMITED LIABILITY COMPANY

2.1 *Formation.* Effective February 7, 2011, a limited liability company under the name of MetroNet-General, LLC (n/k/a Metro FiberNet, LLC) was formed on the terms and conditions set forth in this Agreement and pursuant to the Act. The appropriate documentation required for the formation of the Company was filed with the agency within the State of Nevada charged with processing and maintaining such records. The rights and obligations of the parties are as provided in the Act except as otherwise expressly provided in this Agreement.

2.2 *Name.* The business of the Company will be conducted under the name Metro FiberNet, LLC, or such other name upon which the Members may agree.

2.3 *Purpose.* The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be formed within the State of Nevada.

2.4 *Office.* The Company will maintain its principal business office at the following address: 3701 Communications Way, Evansville, IN 47715.

2.5 *Registered Agent.* National Registered Agents of NV is the Company's initial registered agent in the State of Nevada, and the registered office is 1000 East William Street, Suite 204 Carson City, Nevada 89701.

2.6 *Term.* The term of the Company commences on February 7, 2011 and shall continue perpetually unless sooner terminated as provided in this Agreement.

2.7 *Names and Addresses of Members.* The Members' names and addresses are attached as Schedule 1 to this Agreement.

2.9 *No Liability of Members.* No Member shall have personal liability for the obligations or liabilities of the Company.

2.10 *Title to Property.* All real and personal property owned by the Company shall be owned by the Company as an entity and no Member shall have any ownership interest in such property in his individual name or right, and each Member's interest in the Company shall be personal property for all purposes.

### SECTION 3

#### CAPITAL CONTRIBUTIONS; ISSUANCE OF MEMBERSHIP UNITS

3.1 *Initial Contribution.* On the Effective Date, the Members shall contribute the Initial Contribution Amount to the Company. Each Member shall contribute to the Initial Contribution Amount on a pro rata basis in accordance with their Membership Interest.

3.2 *Additional Contributions.* No Member shall be obligated to make any additional contribution to the Company's capital without the prior unanimous written consent of the Members. Each Member, however, shall have the right to participate in any additional capital contribution on a pro rata basis in accordance with their Membership Interest.

3.3 *No Interest on Capital Contributions.* Members are not entitled to interest or other compensation on their capital contributions to the Company.

3.4 *Issuance of Membership Units.* There are hereby authorized thirty million (30,000,000) Membership Units. Those Membership Units that are issued at any point in time shall be set forth in Schedule I which schedule will be updated every time new Membership Units are issued.

3.5 *Issuance of Additional Membership Units.* The Board of Managers shall have the ability to authorize and issue additional Membership Units on such terms and conditions as the Board of Managers shall determine.

### SECTION 4

#### PROFITS AND LOSSES; DISTRIBUTIONS

4.1 *Profits and Losses.* If the Company is taxed as a partnership for federal income tax purposes, the taxable income and tax losses shall be allocated among Members pro rata in accordance with their Membership Interest.

4.2 *Distributions.* Unless otherwise determined by the Board of Managers, the Company shall retain all net cash flow, except as set forth in Section 4.3, below. Distributions of net cash flow or other property, if any, shall be made among the Members pro rata in accordance with their Membership Interest.

4.3 Subject to applicable law and any limitations contained elsewhere in this Agreement and

provided that the Company is being taxed as a partnership, the Manager shall distribute cash to the Members in an amount equal to the product of (i) the Tax Percentage and (ii) the Company's taxable income for such Fiscal Year determined in accordance with Section 703(a) of the Code as reflected on the Schedule K-1 in respect of each Membership Interest. For purposes hereof, "Tax Percentage" shall mean initially forty percent (40%) and shall be adjusted from time to time by the Manager in response to changes in the tax rates applicable to corporations under the Code and under the state income tax laws of the State of Nevada and in response to any other factors which cause the distributions under this Section 4.3 to be less than a Member's tax liability in respect of each Membership Interest.

4.4 *No Right to Demand Return of Capital.* No Member has any right to any return of capital or other distribution except as expressly provided in this Agreement. No Member has any drawing account in the Company.

## SECTION 5

### INDEMNIFICATION

5.1 *Indemnification.* Except to the extent that any act or omission involves: (i) intentional misconduct, fraud or a knowing violation of the law or (ii) the payment of distributions in violation of applicable state law, the Company shall indemnify, to the fullest extent permitted by applicable law, any Person who is serving or who has served at any time as an officer, manager, director or employed lawyer of the Company and/or of any of the Company's direct or indirect subsidiaries or affiliates against all liability and expense (including, but not limited to, attorneys' fees and settlement costs) incurred by reason of the fact that he or she is or was an officer, manager, director or employed lawyer of the Company and/or of any of the Company's direct or indirect subsidiaries or affiliates or by reason of any action alleged to have been taken or omitted in such capacity or by any action that was in fact taken or omitted in such capacity. Expenses (including attorneys' fees) incurred by such Person in defending such an action, suit or proceeding shall be paid by the Company as incurred and when due.

The right to indemnification conferred upon any Person by this Section 5 shall be a contract right and shall be deemed to be effective to the same extent and as if provided for in a contract between the Company and such Person.

The Company shall purchase and maintain insurance on behalf of any Person who is or was an officer, director, manager or employed attorney of the Company and/or of any of the Company's direct or indirect subsidiaries or affiliates against any liability asserted against and incurred by such Person in any such capacity or arising out of such Person's position, whether or not the Company would have the power to indemnify against such liability under the provisions of this Section 5.

The indemnification provided by this Section 5 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under this Operating Agreement, the Company's Articles of Organization or any agreement, statute or otherwise and shall inure to the benefit of their heirs, executors and administrators.

The provisions of this Section 5 shall not be deemed to preclude the Company from indemnifying other Persons from similar or other expenses and liabilities as the Members may



determine in a specific instance or by resolution of general application

In making a determination with respect to entitlement to indemnification, the Person or Persons or entity making such determination shall presume that such Person is entitled to indemnification under this Section 5 and the Company shall have the burden of proof to overcome that presumption in connection with the making by any Person of any determination contrary to that presumption.

The termination of any proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement or in the Company's Articles of Organization) of itself adversely affect the right of any Person to indemnification or create a presumption that such Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal proceeding, that such Person had reasonable cause to believe that his or her conduct was unlawful.

Neither the amendment nor the repeal of this Section 5, nor the adoption of any provision of this Agreement or in the Company's Articles of Organization or of any statute inconsistent with this Section 5, shall eliminate or reduce the effect of this Section 5, in respect of any acts or omissions occurring prior to such amendment, repeal or adoption of an inconsistent provision.

The rights conferred on any Person in this Section 5 shall continue as to a Person who has ceased to be an officer, manager, director or employed lawyer and shall inure to the benefit of the heirs, executors and administrators of such Person.

If this Section 5 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify each Person intended to be covered by this Section 5 to the full extent not prohibited by any applicable portion of this Section 5 that shall not have been invalidated, or by any other applicable law.

## **SECTION 6**

### **MEMBERS; VOTING RIGHTS**

6.1 *Voting Rights of Members.* Except as expressly provided in this Agreement or in the Articles of Organization or otherwise required by law, Members shall have no voting, approval, or consent rights. Whenever in this Agreement reference is made to the decision, consent, approval, judgment, or action of the Members, unless otherwise expressly provided in this Agreement, such decision, consent, approval, judgment, or action shall be by a vote of Majority in Interest.

6.2 *Majority Vote Required.* The following matters shall require the affirmative vote of the Members at a properly called meeting of the Members:

(a) The reorganization or merger of the Company or the sale, exchange, pledge or other transfer of all or a substantial part of the assets of the Company other than in the ordinary course of business;

- (b) A fundamental change in the nature of the Company's business;
- (c) Any amendment of this Agreement or the Articles of Organization;
- (d) Dissolution of the Company;
- (e) The transfer of a Member's Interest and admission of the transferee as a Substitute Member of the Company;
- (f) Election and removal of a Manger;
- (g) Admission of a new Member other than pursuant to a transfer of an existing Member's Interest;
- (h) Any changes in the limitations on the authority of the Board of Mangers;

6.3 *Date, Time, and Place of Meetings; Secretary.* Meetings of the Members may be held at any place, selected by the Board of Mangers or a Member or Members calling the meeting. No annual or regular meetings of Members are required. At any Members' meeting, the Chairman of the Board of Mangers shall preside over the meeting and shall appoint a person to act as secretary. The secretary shall prepare minutes of the meeting and shall place them in the minute book of the Company.

6.4 *Power to Call Meetings.* Unless otherwise prescribed by the Act, any Member may call a meeting of the Members. Meetings may be called for the purpose of addressing any matters upon which the Members may vote.

6.5 *Notice.* Whenever Members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than five (5) days, nor more than sixty (60) days, before the day of the meeting to each Member entitled to vote at the meeting. The notice shall state the place, date and hour of the meeting and the general nature of the business to be transacted. No other business may be transacted at this meeting.

6.6 *Quorum.* Members holding a majority of the Membership Interests in person or by proxy, shall constitute a quorum at a meeting of Members.

6.7 *Adjournment.* When a meeting of the Members is adjourned to another place or time, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business that may have been transacted at the original meeting. If the adjournment is for more than forty-five (45) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

6.8 *Waiver of Notice.* Actions taken at any meeting of Members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular

call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting. All waivers, consents, and approval shall be filed with the Company records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of the meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right or objection to the consideration of the matters required by this Article to be included in the notice, but not so included, if the objection is expressly made at the meeting.

6.9 *Telephonic Conference.* Members may participate in a meeting of the Members through the use of conference telephones or similar communications equipment, as long as all Members participating in the meeting can hear one another. Participating in a meeting pursuant to this provision constitutes presence in person at that meeting.

6.10 *Action by Written Consent Without Meeting.* Any action that may be taken at any meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the action so taken, is signed and delivered to the Company within sixty (60) days of the record date for that action by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to vote thereon were present and voted. All such consents shall be filed with the Company and kept in the minute book of the Company. Unless the consents of all Members entitled to vote have been solicited in writing, notice of any Member approval of an amendment to the Articles of Organization or this Agreement, a dissolution of the Company, or a merger of the Company, without a meeting, by less than unanimous written consent, shall be given at least ten days before the consummation of the action authorized by such approval; and prompt notice shall be given of the taking of any other action approved by the Members without a meeting by less than unanimous written consent, to those Members entitled to vote who have not consented in writing. Any Member giving a written consent, or the Member's proxy holder, may revoke the consent by a writing received by a Manager prior to the time the written consents of the Members having the minimum number of votes that would be required to authorize the proposed action have been filed with the Company, but may not do so thereafter. This revocation is effective upon its receipt by the Manager at the principal executive office of the Company.

6.11 *Proxies.* Every Member entitled to vote on any matter shall have the right to do so either in person or by one or more agent authorized by a written proxy signed by the person and filed with the Secretary of the Company. A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined the proxy was authorized by the Member or the Member's attorney-in-fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) it is revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the Secretary of the Company stating that the proxy is revoked, or by a subsequent proxy executed by or attendance at the meeting and voting in person by the person executing the proxy; or (ii) written notice of the death or incapacity of the maker of that proxy is received by the Company



before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven months from the date of the proxy, unless provided in the proxy. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the Act.

6.12 *Record Date.* In order that the Company may determine the Members of record entitled to notices of any meeting or to vote, or entitled to receive any distribution or to exercise any rights in respect of any other lawful action, the Secretary of the Company may fix, in advance, a record date that is not more than sixty (60) days or less than ten (10) days prior to the day of the meeting and not more than sixty (60) days prior to any other action. If no record date is fixed, the record date shall be established in the manner set forth in the Act.

## SECTION 7

### MANAGEMENT OF THE COMPANY

7.1 *Generally.* Except as specifically set forth in this Agreement, the Members hereby delegate all power and authority to manage the business and affairs of the Company to a Board of Managers, who shall manage the Company subject to and in accordance with the terms of this Agreement (including, without limitation, Section 7.9). All actions adopted by the Board of Managers shall be by a Majority in Interest. The Board of Managers shall have the powers substantially similar to that of a board of directors of a corporation.

7.2 *Number of Managers.* The number of Managers of the Company shall be three (3). The exact number of Managers may be fixed, increased or decreased by a vote of the Members holding a Majority in Interest.

7.3 *Tenure, Election and Qualifications.*

(a) The Managers shall be Albert E. Cinelli, John P. Cinelli, and Lohn Weber. Each Manager shall serve until the earlier of (i) the election of such Manager's successor by Members holding a Majority in Interest, (ii) the removal of such Manager in accordance with the terms of this Agreement, (iii) such Manager's resignation and (iv) such Manager's death.

(b) At the time of his appointment and at all times during his service as a Manager, a Manager need not be a Member.

7.4 *Resignation.* A Manager may resign at any time by giving written notice to the Members. The resignation of a Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

7.5 *Removal.* Upon the affirmative vote of the Members holding a Majority in Interest, a Manager may be removed with or without cause.



7.6 *Vacancies.* Any vacancy occurring in the Board of Managers shall be filled by the affirmative vote of a Majority in Interest of the Members.

7.7 *Meetings.*

(a) Board of Managers meetings shall be held at the Company's principal place of business, or in such other places as the Managers who desire to attend such meeting may collectively determine. The location of any Manager meetings shall be designated in the notice of the meeting.

(b) Any Board of Managers meeting, whether or not a quorum is present, may be adjourned to another time and place by the affirmative vote of a majority of the Managers present. If the meeting is adjourned for more than twenty-four (24) hours, notice of such adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Managers who were not present at the time of the adjournment.

(c) Any action required or permitted to be taken by the Managers may be taken without a meeting of the Managers, if all of the Managers consent in writing to such action. Such written consent or consents shall be filed with the Secretary of the Company. Such action by written consent shall have the same force and effect as a unanimous vote of the Managers.

7.8 *Salaries.* The Managers shall receive no salary or other compensation from the Company for their services as Managers; provided, however, the foregoing shall not prevent any employee of or consultant to the Company from receiving salary or other compensation from the Company with respect to his services as an employee or consultant.

7.9 *Powers of the Board of Managers.* Without limiting the generality of Section 7.1, and subject to any limitation set forth in this Agreement, the Board of Managers shall have power and authority via written resolution or meeting, to authorize an officer of the Company to undertake the following:

(a) To acquire property from any Person as the Board of Managers may determine in accordance with the terms of this Agreement;

(b) To purchase liability and other insurance to protect the Company's property and business of a type and in an amount customarily maintained by companies in a similar business to that of the Company.

(c) To hold and own any Company real and/or personal properties in the name of the Company;

(d) To invest any Company funds temporarily in time deposits, short-term governmental obligations, commercial paper or other similar low-risk investments;

(e) Subject to the approval of Members holding a Majority in Interest, the sale of the Company;

(f) To execute on behalf of the Company all instruments and documents necessary, in the opinion of the Board of Managers, to the business of the Company in accordance with the terms of this Agreement;

(g) To open bank accounts from time to time in the name of the Company;

(h) To employ accountants, legal counsel, or other experts to perform services for the Company and to compensate them from Company funds;

(i) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Board of Managers may approve in accordance with the terms of this Operating Agreement;

(j) To establish and enforce limits of controls with respect to all personnel and functions and to appoint all officers of the Company;

(k) To develop or cause to be developed accounting procedures for the authority and internal maintenance of the Company's books of account; and

(l) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

(i) To authorize any increase in the capital of the Company.

7.10 *Management.* The Board of Managers shall appoint officers to manage the day-to-day operations of the Company. The initial officers shall be as designated in Section 8 below and shall have the respective duties set forth in Section 8 below. Additionally, the Board of Managers shall also appoint an executive committee to review the operations of the Company. The Board of Managers may adopt such rules and regulations for the management of the Company not inconsistent with this Agreement or the Act.

## **ARTICLE 8**

### **OFFICERS; EXECUTIVE COMMITTEE**

8.1 *Appointment of Officers.* The Board of Managers shall appoint officers of the Company which may include, but shall not be limited to: (a) Chairman; (b) President; (c) Vice President; (d) Secretary; and (e) Treasurer or Chief Financial Officer. The Board of Managers may delegate their day-to-day management responsibilities to any such officers, and such officers shall have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as authorized by the Board of Managers pursuant to this Agreement in

any job description created by the Board of Managers. At the time of their appointment and at all times during their service as an officer of the Company, each officer must be either a Member, Manager, or employee of the Company. In the event an officer shall cease to be a Member, Manager or employee of the Company, such officer shall be deemed to have resigned as an officer effective upon such cessation date.

8.2 *Tenure and Duties of Officers.* All officers shall hold office at the pleasure of the Board of Managers and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer may be removed at any time by the Board of Managers, with or without cause. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Managers.

8.2.1 *Chairman.* The Chairman shall preside at all meetings of the Members, unless the Board of Managers shall have appointed another person and shall also perform such other duties commonly incident to a Chairman of a Nevada corporation and shall also perform such other duties and have such other powers as the Board of Managers shall designate from time to time.

8.2.2 *President.* The President shall have general supervision, direction and control of the business and officers of the Company. The President shall perform other duties commonly incident to a president of a Nevada corporation and shall also perform such other duties and have such other powers as the Board of Managers shall designate from time to time.

8.2.3 *Duties of Vice Presidents.* The officers holding positions designated by the Board of Managers as vice presidents, in the order of their seniority, may assume and perform the duties of the President in the absence or disability of the President or whenever the position of President is not filled. The Vice Presidents shall perform other duties commonly incident to a vice president of a Nevada corporation and shall also perform such other duties and have such other powers as the Board of Managers shall designate from time to time,

8.2.4 *Duties of Secretary.* The Secretary shall attend all meetings of the Board of Managers and meetings of Members, and shall record all acts and proceedings thereof in the minute book of the Company. The Secretary shall give notice in conformity with this Agreement of all meetings of the Members and/or meeting of the Board of Managers requiring notice. The Secretary shall perform all other duties given him or her in this Agreement and other duties commonly incident to a secretary of a Nevada corporation and shall also perform such other duties and have such other powers as the Board of Managers shall designate from, time to time. The Chairman may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office of assistant secretary in a Nevada corporation and shall also perform such other duties and have such other powers as the Board of Managers or the Chairman shall designate from time to time.

8.2.5 *Duties of Chief Financial Officer or Treasurer.* The Chief Financial Officer or Treasurer shall keep or cause to be kept the books of account of the Company in a thorough and proper manner, and shall render statements of the financial affairs of the Company in such form



and as often as required by this Agreement, the Board of Managers or the President. The Chief Financial Officer or Treasurer, subject to the order of the Board of Managers, shall have the custody of all funds and securities of the Company. The Chief Financial Officer or Treasurer shall perform other duties commonly incident to the office of Chief Financial Officer or Treasurer in a Nevada corporation and shall also perform such other duties and have such other powers as the Board of Managers or the President shall designate from time to time. In addition to those duties, the Chief Financial Officer shall have the same signature authority provided to the President by the Board of Managers. The President may direct any Assistant Treasurer to assume and perform the duties of the Chief Financial Officer or Treasurer in the absence or disability of the Chief Financial Officer or Treasurer, and each Assistant Treasurer shall perform other duties commonly incident to the office the Chief Financial Officer or Treasurer of a Nevada corporation and shall also perform such other duties and have such other powers as a Board of Managers or the President shall designate from time to time.

8.2.6 *Authority to Bind the Company.* Notwithstanding anything to the contrary in this Agreement, unless expressly authorized by the Board of Managers, the only officers that have general authority to execute agreements on behalf of the Company or otherwise bind the Company are the Chairman, President and Chief Financial Officer. The Chief Financial Officer may expressly delegate their signature authority for purposes of executing Company checks or other financial documents to the Controller. The Vice President of Tax shall have limited authority to sign returns and other tax documents on behalf of the Company. The Secretary shall have limited authority to sign any documents related to the records and organization of the Company including, but not limited to, meeting minutes, and Secretary of State filings.

8.2.7 *Initial Officers of the Company.* The initial officers of the Company shall be:

Chairman – Albert E. Cinelli

President – John P. Cinelli

Chief Financial Officer and Treasurer – Lohn H. Weber

Vice President and General Manager– Kevin Stelmach

Vice President, General Counsel, and Secretary – John Campbell

Vice President and Controller – Sherri VanFossen

Vice President of Tax – Ed Corr

8.3 *Executive Committee.* The Board of Managers may appoint an executive committee comprised of officers and/or Members to authorize the day-to-day operations of the Company. This executive committee shall have the same ability as the Board of Managers to approve transactions and authorize the officers of the Company to execute documents codifying those transactions. Notwithstanding the foregoing, those transactions or approvals, which by their very nature would change the nature of the operations of the Company would require approval of the Board of Managers.

8.3.1 *Management Committee.* The executive committee appointed by the Board of Managers shall be known as the “Management Committee”.



8.3.2 *Duties.* The purpose of the Management Committee shall be to meet periodically to review the financial and operational performance of the Company and otherwise direct the day-to-day operations of the officers of the Company. The Office of the President shall have the authority to make any decision or to take any action delegated to the officers of the Company by the Board of Managers and to perform other duties and have such powers as the Board of Managers shall designate from time-to-time. The Secretary of the Company shall record the acts and proceedings of the Management Committee.

8.3.3 *Tenure and Duration.* The Board of Managers may appoint any officer or Member of the Company to serve on the Management Committee. All appointees shall serve at the pleasure of the Board of Managers until their successors shall have been duly elected and qualified, unless sooner removed. Any appointee to the Management Committee may be removed at any time by the Board of Managers, with or without cause. The Board of Managers may dissolve the Management Committee at any time with or without cause.

8.3.4 *Initial Appointees.* The initial appointees to the Management Committee shall be: Albert E. Cinelli, John P. Cinelli, Lohn Weber, Kevin Stelmach, John Campbell, Steve Biggerstaff and Sherri VanFossen.

8.3.5 *Actions by Management Committee.* Actions approved by a majority of then current voting members of the Management Committee shall be deemed resolutions of the Management Committee. Notwithstanding the foregoing, any resolution may be rescinded by vote of the Members holding a Majority in Interest.

## **SECTION 9**

### **SALARIES, REIMBURSEMENT, AND PAYMENT OF EXPENSES**

9.1 *Organization Expenses.* All expenses incurred in connection with organization of the Company will be paid by the Company.

9.2 *Salary.* No salary will be paid to a Member for the performance of his or her duties under this Agreement unless the salary has been approved in writing by a Majority of the Members.

9.3 *Legal and Accounting Services.* The Company may obtain legal and accounting services to the extent reasonably necessary for the conduct of the Company's business.

## **SECTION 10**

### **BOOKS OF ACCOUNT, ACCOUNTING REPORTS, TAX RETURNS, FISCAL YEAR, BANKING**

10.1 *Method of Accounting.* The Company will use the method of accounting previously determined by the Members for financial reporting and tax purposes.

10.2 *Fiscal Year; Taxable Year.* The fiscal year and the taxable year of the Company shall end on December 31st of each calendar year.

10.3 *Capital Accounts.* If the Company is taxed as a partnership for federal income tax purposes, the Company will maintain a Capital Account for each Member on a cumulative basis in accordance with federal income tax accounting principles.

10.4 *Banking.* All funds of the Company will be deposited in a separate bank account or in an account or accounts of a savings and loan association in the name of the Company as determined by a Majority in Interest of the Members. Company funds will be invested or deposited with an institution, the accounts or deposits of which are insured or guaranteed by an agency of the United States government.

10.5 *Tax Matters Member.* The initial Tax Matters Member shall be John P. Cinelli who shall serve in such capacity until its replacement is appointed.

## **SECTION 11**

### **DISSOLUTION AND WINDING UP OF THE COMPANY**

11.1 *Dissolution.* The Company will be dissolved on the happening of any of the following events:

- (a) Sale, transfer, or other disposition of all or substantially all of the property of the Company;
- (b) The agreement of all of the Members;
- (c) By operation of law; or
- (d) The death, incompetence, expulsion, or bankruptcy of a Member, or the occurrence of any event that terminates the continued membership of a Member in the Company, unless there are then remaining at least the minimum number of Members required by law and all of the remaining Members, within one hundred twenty (120) days after the date of the event, elect to continue the business of the Company.

11.2 *Winding Up.* On the dissolution of the Company (if the Company is not continued), the Members must take full account of the Company's assets and liabilities, and the assets will be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds, to the extent sufficient to pay the Company's obligations with respect to the liquidation, will be applied and distributed, after any gain or loss realized in connection with the liquidation has been allocated in accordance with Section 4 of this Agreement, and the Members' Capital Accounts (if applicable) have been adjusted to reflect the allocation and all other transactions through the date of the distribution, in the following order:

- (a) To payment and discharge of the expenses of liquidation and of all the Company's debts and liabilities to persons or organizations other than Members;

- (b) To the payment and discharge of any Company debts and liabilities owed to Members;
- (c) To Members in the amount of their respective adjusted Capital Account balances on the date of distribution (if the Company is taxed as a partnership for federal income tax purposes); and
- (d) To Members pro rata in accordance with their Membership Interests.

## SECTION 12

### GENERAL PROVISIONS

12.1 *Amendments.* Amendments to this Agreement may be proposed by any Member. A proposed amendment will be adopted and become effective as an amendment only on the written approval of all of the Members.

12.2 *Governing Law.* This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the State of Kansas (without regard to principles of conflicts of law).

12.3 *Entire Agreement; Modification.* This Agreement constitutes the entire understanding and agreement between the Members with respect to the subject matter of this Agreement and replaces in its entirety the Original Agreement. No agreements, understandings, restrictions, representations, or warranties exist between or among the members other than those in this Agreement or referred to or provided for in this Agreement. No modification or amendment of any provision of this Agreement will be binding on any Member unless in writing and signed by all the Members.

12.4 *Arbitration.* The Members to this Agreement plan to use due diligence and their best efforts to work together to implement the Agreement and amicably resolve their differences. However, the Members understand that issues and conflicts may arise where they reach an impasse. The Members acknowledge their desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of the Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which any Member may start by delivering to the other Members a written notice describing the Dispute and the amount involved ("Demand"). For purposes of this Section 12.4, if multiple Members bring a Dispute or receive notice of a Demand, such Members shall be considered as a single "party" for purposes of arbitrating the Dispute. Any such group of Members shall make any decisions required of a party under this Section 12.4 by a vote of a Majority in Interest of the Members comprising such group. The Members of a group shall share the costs of the arbitration on a pro rata basis in accordance with their Membership Interests.

After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved thirty (30) days after receipt of the Demand, either party may start binding



arbitration in Overland Park, Kansas. The parties will use their reasonable best efforts to conclude the arbitration as expeditiously as possible and, if possible, within sixty (60) days following commencement of any arbitration proceeding. The arbitration will be before a three-arbitrator panel. Each party will each select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law to have a judge select an impartial arbitrator. The primary objective of the impartial arbitrator is to endeavor to get all three arbitrators to agree on a final disposition of the Dispute. The powers of the arbitrators are to interpret and apply the terms of the Agreement as negotiated by the parties. The arbitrators shall have no power to add to, subtract from or modify the terms of the Agreement as negotiated by the parties. If this cannot be attained, then the three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication. The parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators other than to enforce the final determination of the arbitrators. No statements by, or communications between, the parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each party shall each bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator; provided, no interest shall be applied to any arbitration award. It is the intent of the parties to first allow the arbitrators an opportunity to meet and negotiate a unanimous decision. However, if a unanimous agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the parties.

Notwithstanding the foregoing, either party hereto may resort to a court by applying for interim relief, without the requirement to post a bond or security, if such party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party. The venue for any such proceeding shall be in Overland Park, Kansas.

12.5 *Further Effect.* The parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.

12.6 *Severability.* If any term or provision of this Agreement is held to be void or unenforceable, that term or provision will be severed from this Agreement, the balance of the Agreement will survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

12.7 *Captions.* The captions used in this Agreement are for the convenience of the parties only and will not be interpreted to enlarge, contract, or alter the terms and provisions of this Agreement.

12.8 *Notices.* All notices required to be given by this Agreement will be in writing and will be effective when actually delivered or, if mailed, when deposited as certified mail, postage prepaid,



directed to the addresses first shown above for each Member or to such other address as a Member may specify by notice given in conformance with these provisions to the other Members.

IN WITNESS WHEREOF, the parties to this Agreement execute this Operating Agreement as of the date and year first above written.

MEMBERS:

L.S.  L.S.   
Albert E. Cinelli John P. Cinelli