



SERVICES AGREEMENT

This Services Agreement (“**Agreement**”) governs the relationship between Kansas Fiber Network, LLC, a Kansas limited liability company (“**KsFiberNet**”) and a customer purchasing Services as set forth on a Service Order (“**Customer**”). KsFiberNet and Customer are hereinafter collectively referred to as the “**Parties**” or individually as a “**Party**”.

1. SERVICES. KsFiberNet shall provide services to Customer as set forth on a Service Order submitted by Customer (“**Services**”). The Service Order will specify Services ordered from KsFiberNet, equipment or materials to be sold, licensed or leased to Customer (collectively, “**Customer Premises Equipment or CPE**”), delivery location (the “**Premises**”), prices, and term commitments for the Services.

2. TERM. The Agreement Term shall become effective on the Effective Date and remain in full force and effect for as long as any Service Order remains in effect (the “**Service Term**”). The term of the Service Order commences upon Acceptance (as defined below). At the end of the Service Term for the Service Order, the term shall renew for successive one year renewal terms until terminated pursuant to this Agreement. Either party may prevent renewal of this Agreement by providing at least thirty (30) days written notice to the other party prior to the end of the Service Term or a renewal term.

3. DELIVERY OF SERVICES. KsFiberNet will use commercially reasonable efforts to deliver Services by the Customer Desired Due Date. “**Acceptance**” shall mean the earlier of the actual use of the Services by Customer, or ten (10) days after completion of testing of the Services. Upon reasonable notice by KsFiberNet to Customer, Customer shall provide KsFiberNet access to the Premises to deliver the Services. KsFiberNet retains title to all CPE not specifically sold to Customer.

4. MAINTENANCE. KsFiberNet may interrupt the Service(s) temporarily to perform scheduled maintenance on any day between the hours of 12:00 a.m. and 6:00 a.m. local time. KsFiberNet may perform emergency maintenance as needed and will use best efforts to coordinate with the Customer to minimize any impact. In no event shall interruption for scheduled or emergency maintenance constitute a failure of performance by KsFiberNet. Customer hereby indemnifies and holds harmless KsFiberNet with respect to any damage to Customer's equipment resulting from any maintenance undertaken by KsFiberNet.

5. BILLING AND PAYMENT. Billing for the Services commences upon Acceptance. Customer shall pay KsFiberNet all invoices within thirty (30) days after the invoice date. KsFiberNet shall bill monthly in advance for the Services and each invoice shall include: (a) the fixed monthly recurring charges (“**MRCs**”), all non-recurring charges, including, but not limited to, installation or repair fees, (“**NRCs**”) and any usage based charges from the prior period; (b) all current and future taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services; (c) interest calculated at 1.5% monthly (or the highest rate allowed by law) on amounts not paid within thirty (30) days after invoice date; and (d) all other charges or fees set forth herein. Should Customer elect to dispute an invoice, it must do so by written notice to KsFiberNet within sixty (60) days after the invoice date. Such notice of dispute may be sent to:

(i) Kansas Fiber Network, Attn: Enterprise Billing, 8201 E. 34th Street Cir. N., Ste. 1501, Wichita, KS 67226 or (ii) billing@ksfiber.net.

6. REGULATORY CHARGES. KsFiberNet may assess Customer any regulatory fees, and federal, state, local, sales, use, utility, or other surcharges or tariffs imposed by any regulatory or governmental entities or otherwise permitted by Applicable Law related to the Services provided which may include, but is not limited to, fees imposed by State or Federal Universal Service Fund (“**USF**”) or City Utilities' Large General Power Service Rate, as applicable.

7. TAXES. KsFiberNet may charge, and Customer will pay applicable taxes that KsFiberNet is legally obligated to charge (“**Taxes**”), and such Taxes will be stated separately on KsFiberNet's invoice. Customer may provide KsFiberNet with an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case, KsFiberNet will not charge or collect the Taxes covered by such certificate.

8. CUSTOMER OBLIGATIONS. Customer shall: (a) not use the Services or CPE of KsFiberNet in any unlawful way or for any unlawful purpose; (b) comply with the Acceptable Use Policy posted at www.ksfiber.net/forms-and-policies/; (c) ensure compatibility of its equipment with the Services and CPE provided by KsFiberNet and operate, maintain, and secure its own equipment and facilities; (d) provide and maintain safe and adequate electric power, equipment space, climate control, work conditions, access, and use of rights-of-way and facilities at the

Premises; (e) reimburse KsFiberNet for the replacement cost of any CPE that is damaged or stolen due to the negligence of the Customer; (f) return all CPE within thirty (30) days of termination of this Agreement or pay KsFiberNet for its replacement cost; (g) provide sixty (60) days written notice to KsFiberNet prior to moving any Services from the Premises or changing its business name; (h) arrange to terminate services from other service providers that are being replaced by the Services; and (i) not resale or market the Services in direct competition with KsFiberNet.

9. UNAUTHORIZED USE OF SERVICES. Customer shall bear the entire responsibility for, and risk of loss arising from, unauthorized, abusive, or fraudulent use of the Services. KsFiberNet reserves the right, but is not required, to take any and all action it deems appropriate (including blocking access to the Services) to prevent any fraud or abuse in connection with the Services.

10. DEFAULT. If either Party fails to materially perform or observe any material term or obligation under this Agreement, and any such failure remains uncorrected for thirty (30) days after the non-defaulting party's written notice of such failure (“**Default**”). A Party may terminate Services upon a Default by the other Party or should the other Party become the subject of a bankruptcy. In the event of Customer's Default, Customer shall pay all amounts due and unpaid charges for the entire Service Term and further agrees to pay KsFiberNet's reasonable expenses (including attorneys' fees and collection agency fees) incurred enforcing its rights under this Agreement and the Service Order. Furthermore, KsFiberNet may suspend Services to Customer upon Customer's Default. In the event of KsFiberNet's Default, Customer may terminate Services without penalty. KsFiberNet shall not be responsible for any failure or interruption in Services caused by an act or omission of a third party furnishing a portion of the Services.

11. EARLY TERMINATION LIABILITY. In the event Services are terminated by Customer prior to completion of the Service Term, Customer shall pay KsFiberNet an early termination fee equal to one hundred percent (100%) of the Monthly Recurring Charge (MRC) due for months one through twelve (1- 12), and fifty percent (50%) of the MRC due for months thirteen through thirty-six (13-36) and twenty-five percent (25%) of the MRC due through the end of the affected Service's Service Term and any unpaid installation fees or Non-Recurring Charge (NRC), plus any costs and expenses incurred by KsFiberNet to terminate the Service. Early Termination Liability applies unless Customer signs a new Service Order within thirty (30) days of the Termination with a higher MRC for similar Services and a new initial term of at least thirty-six (36) months.

12. ADDITIONAL CHARGES AND FEES. If Customer cancels a Service Order before installation, then Customer shall pay KsFiberNet any cancellation charges incurred by KsFiberNet from other service providers, KsFiberNet's out of pocket costs (if any) incurred in construction or extending to the Customer Premises necessary for delivery, plus one (1) month's MRC for the cancelled Service Order (“**Cancellation Charge**”). Customer shall not dispute the validity of any Cancellation Charge or Early Termination Liability, including any assertion that such damages are penalties or are not reasonably related to actual damages.

13. INSURANCE. In the event Customer equipment or personnel enters a KsFiberNet facility, then throughout the Term of this Agreement and any extension thereof, each Party shall maintain and, upon written request, shall provide proof of adequate commercial general liability insurance covering all operations and work hereunder. Such insurance shall be written on an occurrence coverage basis and shall provide coverage equivalent to or greater than one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage liability including coverage extension for blanket contractual liability or personal injury liability. Such insurance must cover any liability under the indemnification provisions of this Agreement.

14. INDEMNIFICATION. Customer agrees to defend, indemnify and hold KsFiberNet and its affiliates, directors, officers, employees, and agents harmless from any and all liabilities, costs and expenses, including but not limited to, reasonable attorneys' fees (“**Claims**”), related to or arising from (a) any breach of this Agreement by Customer or its customers; (b) the use of the Services or the Internet or the placement of any message, information, software or other materials on the Internet by Customer or its customers; (c) acts or omissions of Customer or its customers in connection with the construction, installation, maintenance, presence, use or removal of systems, channels, equipment or

software not provided by KsFiberNet which are connected or are to connect to the Services; and (d) claims for infringement of any intellectual property right arising from the use of Services, equipment and software, apparatus and systems not provided by KsFiberNet. Each party shall indemnify, defend, release, and hold harmless the other party, its affiliates, directors, officers, employees, and agents from Claims imposed upon either party by reason of damages to Property as a result of an intentional or grossly negligent act or omission by indemnifying party in connection with the Services. The term "Property" as used in this section shall include real, personal, tangible, and intangible property, including but not limited to data, proprietary information, intellectual property, trademarks, copyrights, patents, and knowledge. In the event any Claim is brought against a Party to be indemnified, the indemnifying Party shall pay all expenses and satisfy all judgments which may be incurred by or rendered against the indemnified Party. Notwithstanding the foregoing, the indemnified Party shall not be liable for any settlement of any Claim without its written consent.

15. LIMITATION OF LIABILITY. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS ABOVE, IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THE AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER. In no event shall KsFiberNet's accumulative liability for all claims arising out of this Agreement exceed the total amount paid by Customer to KsFiberNet within the one (1) month prior. Except as otherwise explicitly set forth in a Service Description or this Agreement, KsFiberNet shall not be liable under this Agreement for any failure or interruption in Services.

16. DISCLAIMERS. KSFIBERNET MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO ANY SERVICES PROVIDED TO CUSTOMER HEREUNDER. KSFIBERNET SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND PERFORMANCE OR INTEROPERABILITY OF THE SERVICES WITH ANY CUSTOMER EQUIPMENT OR SERVICES.

17. CONFIDENTIALITY. Customer and KsFiberNet agree not to disclose to a third party any non-public information regarding either party's business that has been provided to the receiving party and designated confidential or proprietary ("**Confidential Information**"). Each party shall treat all Confidential Information with reasonable care and protect such Confidential Information as if such information was its own Confidential Information. This section does not apply to information already known to the receiving party, already in the public domain, rightfully obtained from a third party, or required by law to be disclosed as part of any court proceedings. The obligations in this section shall survive termination of this Agreement.

18. FORCE MAJEURE. KsFiberNet shall not 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, vandalism, cable cuts not caused by KsFiberNet, flood, storm, or other similar catastrophe; any law, order, regulation, direction, action or request of any governmental entity having jurisdiction over either of the parties, or of any department, agency, commission, court bureau or other instrumentality of any governmental unit, or any civil or military authority; national emergencies; insurrections; riots; wars; or strikes, lock outs, or work stoppages (**each, a "Force Majeure Event"**).

19. DISPUTE RESOLUTION. The provisions of this section shall be the sole and exclusive method and procedure to resolve any disputes: (i) The Parties shall first attempt in good faith to resolve any dispute by negotiations between individual representatives who have authority to settle that dispute upon written notice of any dispute. Within ten (10) days after delivery of the notice, individual representatives of both Parties shall meet at a mutually acceptable time and place and attempt to resolve the dispute. All negotiations pursuant to this clause are confidential and treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state's Rules of Evidence. (ii) If a dispute has not been resolved by (i) in this section, the Parties shall endeavor to settle the dispute by mediation under the then current Center for Public Resources ("CPR") Model Procedure for Mediation of Business Disputes by a neutral third party selected from the CPR panel of neutrals. (iii) If a dispute has not been resolved by non-binding means pursuant to subsections (i) or (ii) within ninety (90) days of the initiation of mediation, either Party may initiate litigation. (iv) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in subsections (i) and (ii) are pending. (v) Each Party is required to continue to perform its obligations under the Agreement pending the final resolution of any dispute covered by this section.

20. NOTICE. Notice to Customer may be directed to a contact listed in KsFiberNet's account information for Customer, whether delivered in person, sent by facsimile, sent by courier, sent by electronic mail, or sent by U.S. Postal Service. Customer shall immediately notify KsFiberNet of any changes to Customer's contact information. Notice to KsFiberNet must be directed to (a) Kansas Fiber Network, Attn: President, 8201 E. 34th St. Cir. N., Ste. 1501, Wichita, KS 67226 and (b) contracts@ksfiber.net. Notice shall be effective when sent.

21. GENERAL PROVISIONS. (a) This Agreement may only be amended in writing signed by duly authorized officers of both parties. (b) Service Orders, this Agreement and any authorized amendments may be executed in counterparts which together shall constitute a single agreement. (c) No specific waiver or failure to enforce any provision of this Agreement shall be deemed to constitute any permanent or general waiver. (d) If any term in this Agreement is held invalid or unenforceable in any respect, then the remainder of the Agreement shall not be affected and each term or condition of the Agreement shall be valid and enforceable to the fullest extent permissible by law. (e) This Agreement creates no partnership, joint venture, or agency relationship between the parties and results in no joint telecommunications service offerings. (f) Customer shall not assign or transfer any of its rights or obligations under this Agreement without KsFiberNet's prior written consent. (g) This Agreement shall inure to the benefit of and be binding against each party's heirs, successors or assigns. (h) If KsFiberNet seeks to enforce any term or condition of or related to this Agreement, then KsFiberNet shall be entitled to payment of (in addition to other remedies) its reasonable attorneys, collection agency, investigative, arbitration and/or court, costs and fees. (i) This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Kansas without regard to its conflict of laws principles. (j) Descriptive headings used herein shall not affect the construction or interpretation of the Agreement. (k) KsFiberNet may verify and use Customer's credit information as needed. (l) Customer certifies that any information provided to KsFiberNet is true and accurate to the best of its knowledge. (m) This Agreement shall remain in full force and effect if Customer moves to an area not served by KsFiberNet or if Customer decreases or ceases any or all of its business operations, regardless of whether notice is provided.