

Contract # MA4576

STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Division of Purchasing and the following Contractor:

<u>Syringa Networks, LLC</u>		
Name		
<u>12301 W. Explorer Dr.</u>		
Address		
<u>Boise</u>	<u>ID</u>	<u>83713</u>
City	State	Zip

LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

Contact Person Randy Kip Phone #385-441-4205 Email rkip@syringanetworks.net
 Vendor #VC0000153051 Commodity Code #83110

2. CONTRACT PORTFOLIO NAME: Telecommunications services for Network, Voice and Data Center Services
3. PROCUREMENT: This contract is entered into as a result of Solicitation #BB23-18.
4. CONTRACT PERIOD: Effective Date: 5/15/2024 Termination Date: 5/14/2029 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): None.
5. Prompt Payment Discount (if any): None. Price Guarantee Period (if any): One Year.
6. Administrative Fee, as described in the Solicitation and Attachment A: 0.50%.
7. ATTACHMENT A: State of Utah Standard Terms and Conditions for ☐ Goods ☐ Services, or ☒ IT
 ATTACHMENT B: Scope of Work
 ATTACHMENT C: Price Sheet
 ATTACHMENT D: Map
 ATTACHMENT E: SLA's
Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.
9. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - Utah State Procurement Code, Procurement Rules, the Solicitation, and Contractor's response to the Solicitation.
10. Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Agreement and bind the parties hereto. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of each party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the parties and enforceable in accordance with its terms.
 IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 4 above.

CONTRACTOR

5/16/2024

DocuSigned by:

6D4D52B2B311428...

Contractor's Signature

Chip Hull

CEO Syringa Networks LLC

Print Name

Title

Date

STATE

DocuSigned by:

C38BE9DAC528424...

Director, Division of Purchasing

5/16/2024

Date

ATTACHMENT A: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS STATE OF UTAH COOPERATIVE INFORMATION TECHNOLOGY CONTRACT

This is a State Cooperative Contract for information technology products and services. DTS policies referenced by number in this Attachment are only applicable to the Executive Branch and are available at <https://dts.utah.gov/policies>. All other policies and codes of conduct are available upon request.

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, or Technology" means Contractor will (a) enter upon secure premises controlled, held, leased, or occupied by State of Utah or Eligible User; (b) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by State of Utah or Eligible User; or (c) have access to or receive any State Data or Confidential Information.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors, or agents of Contractor who need Access to Secure State Facilities, Data, or Technology to enable the Contractor to perform its responsibilities under this Contract.
- c. "Background IP" means intellectual property (IP) owned or controlled prior to the effective date of this Contract or that IP developed or acquired from activities independent of the services performed under this Contract, including but not limited to (a) methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services, and (b) processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible User.
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference.
- e. "Contract Period" means the term of this Contract, as set forth in the Contract Signature Page(s).
- f. "Contract Signature Page(s)" means the cover page that the Division and Contractor sign.
- g. "Contractor" means the individual or entity identified on the Contract Signature Page(s). "Contractor" includes Contractor's agents, officers, employees, partners, contractors, and Subcontractors at any level.
- h. "Custom Deliverables" means the product that Contractor is required to design, develop, or customize and deliver to the Eligible User as specifically described under this Contract or an associated statement of work for which all interest and title shall be transferred to and owned by the Eligible User. This includes every invention, design, development, customization, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor pursuant to this Contract.
- i. "Data Breach" means the unauthorized access or acquisition of State Data that compromises the security, confidentiality, or integrity of State Data.
- j. "Division" means the State of Utah Division of Purchasing.
- k. "DTS" means the Utah Department of Technology Services.
- l. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
- m. "Federal Criminal Background Check" means a fingerprint-based, nationwide background check conducted and processed by the FBI.
- n. "Good" means any deliverable not classified as a Custom Deliverable or Service.
- o. "Intellectual Property Rights" means all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and other protection afforded by law to inventions, models, designs, technical information, and applications.
- p. "Non-Public Data" means records or data that are not subject to distribution to the public. Access is restricted because it includes information that is protected by state or federal law. Non-Public Data includes, but is not limited to, a person's name; government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; or Protected Health Information.
- q. "Protected Health Information" (PHI) is as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its implementing regulations.
- r. "Response" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
- s. "Security Incident" means the attempted unauthorized access to State Data that may result in the use, disclosure, or theft of State Data.
- t. "Services" means the furnishing of labor, time, or effort by Contractor, and may include installation, configuration, implementation, technical support, warranty maintenance, and other support services.

- u. "Solicitation" means an invitation for bids, request for proposals, notice of sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
- v. "State Data" means all Confidential Information and Non-Public Data that is created, controlled, maintained, owned, or in any way originating with the State of Utah or Eligible User regardless of where such data or output is stored or maintained.
- w. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
- x. "Subcontractors" includes contractors, manufacturers, distributors, suppliers, or consultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, including a person or entity that is, or will be, providing goods or performing services pursuant to this Contract.

2. ESSENTIAL PROVISIONS:

- a. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed solely by the laws of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Exclusive venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
- b. **LAWS:** Contractor and all Goods and Services delivered under this Contract will comply with all applicable federal and state of Utah laws, including applicable licensure and certification requirements.
- c. **SOVEREIGN IMMUNITY:** The Division and the State of Utah do not waive any protection, right, defense or immunity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 to 904, as amended, the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.
- d. **PUBLIC INFORMATION:** This Contract and any purchase orders, invoices, pricing lists, and the Response are public records available for disclosure in accordance with the State of Utah's Government Records Access and Management Act (GRAMA, Utah Code 63G-2-101 et seq.), except to the extent classified as protected in accordance with UCA 63G-2-309. GRAMA takes precedence over any statements of confidentiality or similar notations. Neither the Division, the Eligible User nor the State of Utah will inform Contractor of any request for a copy of this Contract, including any purchase orders, invoices, pricing lists, or the Response.
- e. **CREDITING THE DIVISION IN PUBLICITY:** Any publicity given to this Contract shall identify the Division as the managing agency and shall not be released without prior written approval from the Division.
- f. **SALES TAX EXEMPTION:** Goods, Custom Deliverables, and Services purchased by some Eligible Users are being paid from that Eligible User's funds and used in the exercise of that Eligible User's essential functions as a State of Utah governmental entity. Any such Eligible Users will provide Contractor with a copy of its sales tax exemption number upon request.
- g. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
- h. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract, is within the scope/purpose of the Solicitation, and is attached and made part of this Contract. Automatic renewals are prohibited and are deemed void even if listed elsewhere in this Contract.
- i. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any government department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity.
- j. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** This Contract may be terminated in whole or in part at the sole discretion of the Division or Eligible User upon thirty days written notice, if the Division or Eligible User determines that (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects the Division or Eligible User's ability to pay under this Contract. A change of available funds includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or an order of the President, the Governor, or Executive Director.

The Division or Eligible User, as applicable, will reimburse Contractor for the Goods or Services properly ordered and delivered until the effective date of said notice. The Division and Eligible User are not liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of the notice.

- k. **ENTIRE AGREEMENT:** This Contract is the entire agreement between the parties, and supersedes any prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- l. **WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract. The Eligible User's approval, acceptance, or payment for any Goods or Services required under this Contract shall not be construed to operate as a waiver by the Eligible User of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract.
- m. **CHANGES IN SCOPE:** Any changes in the scope of work to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of work.
- n. **TRAVEL COSTS:** Unless otherwise agreed to in the contract, all travel costs associated with the delivery of Services will be paid in accordance with the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be

returned to the Contractor for correction.

3. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by an Eligible User to Contractor. These records shall be retained by Contractor for at least six (6) years after final payment (per Utah Administrative Code R33-12-605 and Utah Code 78B-2-309), or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor shall allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
4. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 - 1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - 2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) Contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
 - 3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
 - 4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless written disclosure has been made to the Division.
6. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor, and not an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor has no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings, and shall not perform any acts as an agent for the Division, the Eligible users, or the State of Utah. Contractor is responsible for all applicable federal, state, and local taxes and FICA contributions.
7. **CRIMINAL BACKGROUND SCREENING:** Depending on the Eligible User's policy, each employee of Contractor and Subcontractor may be required to successfully complete a Federal Criminal Background Check, prior to being granted Access to Secure State Facilities, State Data, or Technology. Contractor or the applicable employee shall provide Eligible Users with sufficient personal information (at Contractor's expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at Eligible User's expense. The Eligible User will provide Contractor with forms which must be filled out by Contractor and returned to the Eligible User. Each employee of Contractor or a Subcontractor who will have Access to Secure State Facilities, State Data, or Technology must be fingerprinted by the Eligible User or local law enforcement a minimum of one week prior to needing access. At the time of fingerprinting, said employee shall disclose all felony or misdemeanor convictions. Eligible Users may conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided and use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) at least every two years. Eligible Users may revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor and the employee or subcontractor shall immediately notify Eligible Users if an arrest or conviction for a felony or misdemeanor of any person that has Access to Secure State Facilities, State Data or Technology occurs during the Contract Period. Eligible Users will determine in its discretion if such person's Access to Secure State Facilities, State Data, or Technology shall remain in effect. Felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred. (DTS Policy 2000-0014 Background Investigations)
8. **DRUG-FREE WORKPLACE:** Contractor shall abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
9. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor shall follow and enforce the agency applicable code of conduct. Contractor will ensure that each employee receives a copy of the policies and applicable codes of conduct. (DTS Policy 2000-0001 Code of Conduct, DTS Policy 1000-0003 Acceptable Use of Information Technology Resources)
10. **INDEMNITY AND LIABILITY**
 - a. **Indemnity Clause:** Contractor shall fully indemnify, defend, and save harmless the Division, Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act, omission or negligence of Contractor, its agents, employees, officers, partners, and Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage due to the fault of the Division, the Eligible User, or the State of Utah. Any limitations of the Contractor's liability will not apply to injuries to persons, including death, or to damages to property.

- b. **Governmental Immunity Act:** In accordance with the Constitution of the State of Utah and the Governmental Immunity Act of Utah ("the Act", Utah Code §§63G-7-101 to 904, as amended), the Division and the State of Utah have no liability for the operations, acts, or omissions of the Contractor or any third party. Any indemnity obligations of the Division, Eligible Users, or the State of Utah are subject to the Constitution of the State of Utah and the Act and limited to claims that arise from and to the extent caused by the negligent acts or omissions of the Division or the Eligible Users in the performance of the Division's or the Eligible User's obligations under this Contract.
- c. **Intellectual Property Indemnification:** Contractor warrants and represents it has full ownership and clear title free of all liens and encumbrances to any Good delivered under this contract. Contractor also warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not infringe any copyrights, patents, trade secrets, or other proprietary rights.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right, Contractor shall indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action at its own expense without relieving Contractor of any obligation hereunder. If there are any limitations of liability in this Contract, such limitations will not apply to this section.

11. **HARDWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS".** CONTRACTOR WARRANTS ALL HARDWARE PORTIONS OF ANY GOOD OR CUSTOM DELIVERABLE THAT IT DIRECTLY OR INDIRECTLY PROVIDES FOR A PERIOD OF **ONE YEAR**. ALL WARRANTIES GRANTED TO THE DIVISION AND ELIGIBLE USERS BY THE UNIFORM COMMERCIAL CODE OF THE STATE OF UTAH APPLY TO THIS CONTRACT. PRODUCT LIABILITY DISCLAIMERS AND/OR WARRANTY DISCLAIMERS FROM CONTRACTOR OR ITS SUPPLIERS ARE REJECTED. CONTRACTOR WARRANTS THAT THE HARDWARE: (A) WILL PERFORM AS SPECIFIED IN THE RESPONSE; (B) WILL LIVE UP TO ALL SPECIFIC CLAIMS LISTED IN THE RESPONSE; (C) WILL BE SUITABLE FOR THE ORDINARY PURPOSES FOR WHICH THE HARDWARE IS USED; (D) WILL BE SUITABLE FOR ANY SPECIAL PURPOSES THAT THE DIVISION HAS RELIED ON CONTRACTOR'S SKILL OR JUDGMENT TO CONSIDER WHEN IT ADVISED THE DIVISION ABOUT THE HARDWARE IN THE RESPONSE; (E) THE HARDWARE HAS BEEN PROPERLY DESIGNED AND MANUFACTURED; AND (F) IS FREE OF SIGNIFICANT DEFECTS.
12. **SOFTWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS".** CONTRACTOR WARRANTS FOR A PERIOD OF **NINETY DAYS** FROM THE DATE OF ACCEPTANCE THAT THE SOFTWARE PORTIONS OF THE GOODS AND CUSTOM DELIVERABLES THAT CONTRACTOR DIRECTLY OR INDIRECTLY PROVIDES WILL: (A) PERFORM IN ACCORDANCE WITH THE SPECIFIC CLAIMS PROVIDED IN THE RESPONSE; (B) BE SUITABLE FOR THE ORDINARY PURPOSES FOR WHICH SUCH GOODS AND CUSTOM DELIVERABLES ARE USED; (C) BE SUITABLE FOR ANY SPECIAL PURPOSES THAT THE ELIGIBLE USER HAS RELIED ON CONTRACTOR'S SKILL OR JUDGMENT TO CONSIDER WHEN IT ADVISED THE STATE ABOUT THE GOODS OR CUSTOM DELIVERABLES; (D) HAVE BEEN PROPERLY DESIGNED AND MANUFACTURED; AND (E) BE FREE OF SIGNIFICANT DEFECTS. CONTRACTOR SHALL PROVIDE THE ELIGIBLE USER WITH BUG FIXES, INCLUDING INFORMING THE ELIGIBLE USERS OF ANY KNOWN SOFTWARE BUGS OR SOFTWARE DEFECTS THAT MAY AFFECT THE STATE'S USE OF THE SOFTWARE.
13. **WARRANTY REMEDIES:** Upon breach of warranty, Contractor will repair or replace (at no charge to the Eligible User) the nonconforming Goods or Custom Deliverables. If the repaired and/or replaced products are inadequate, Contractor will refund the full amount of any payments that have been made for the failed products. These remedies are in addition to any other remedies provided by law or equity.
14. **UPDATES AND UPGRADES:** Contractor grants to the Eligible User a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the Contract Period. Upgrades and updates are subject to the terms of this Contract. The Eligible User reserves the right to accept updates and upgrades at its discretion and to determine if such updates comply with the requirements in the Contract scope of work.
15. **BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With the Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems. If the Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of the Contract.
16. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is required by the Contract, Contractor will use commercially reasonable efforts to respond to the Eligible User in a reasonable time, and in all events, in accordance with the specific timeframes detailed in the Contract, when the Eligible User makes technical support or maintenance requests.
17. **PHYSICAL DELIVERY:** All non-electronic deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User. Invoices listing freight charges that were not identified in the quote will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance, when responsibility will pass to the Eligible User except as to latent defects, fraud, and Contractor's warranty obligations.
18. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to the Eligible User or provide any Good and Custom Deliverable for download from the Internet, if pre-approved in writing by the Eligible User. Contractor shall ensure the confidentiality of electronic deliveries in transit. Contractor warrants that all electronic deliveries will be free of known malware, bugs, Trojan horses, etc.

19. ACCEPTANCE PERIOD: A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation ("Defects"), the Eligible User shall within thirty (30) calendar days of the delivery date ("Acceptance Period") notify Contractor in writing of the Defects. Upon receiving notice, Contractor shall use reasonable efforts to correct the Defects within fourteen (14) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period, whichever is later.

If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the replacement products. No products shall be deemed accepted and no invoices shall be paid until acceptance. The warranty period will begin upon the end of the Acceptance Period.

20. SECURE PROTECTION AND HANDLING OF STATE DATA: If Contractor is given access to State Data, the protection of State Data shall be an integral part of the business activities of Contractor, and Contractor shall ensure that there is no inappropriate or unauthorized use of State Data. Contractor shall safeguard the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. The Eligible User reserves the right to verify Contractor's adherence to the following conditions to ensure they are met:

- a. **Network Security:** Contractor shall maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third-party penetration testing. Contractor shall maintain network security and ensure that Contractor network security policies conform to one of the following:
 - 1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy*;
 - 2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - 3) Any generally recognized comparable standard that Contractor then applies to its own network and pre-approved by the Eligible User in writing.
- b. **State Data Security:** Contractor shall protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah which will be provided by an Eligible User upon Contractor's request (*DTS Policy 5000-0002*). These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). The Eligible User reserves the right to determine if Contractor's level of protection meets the Eligible User's security requirements.
- c. **State Data Transmission:** Contractor shall ensure all transmission or exchange of system application data with the Eligible User and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).
- d. **State Data Storage:** All State Data will be stored and maintained in data centers in the United States. No State Data will be processed on or transferred to any portable or laptop computing device or portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process.
- e. **Access:** Contractor shall permit its employees and Subcontractors to remotely access non-State Data only as required to provide technical support.
- f. **State Data Encryption:** Contractor shall store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all data as part of a designated backup and recovery process.
- g. **Password Protection:** Any portable or laptop computer that has access to the Eligible User's or State of Utah networks, or stores any Eligible User data shall be equipped with strong and secure password protection.
- h. **Confidential Information Certification:** Contractor shall sign a Confidential Information Certification form prior to being given access to confidential computerized records.
- i. **State Data Re-Use:** All data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. No State Data of any kind may be transmitted, exchanged, or provided to other contractors or third parties except on a case-by-case basis as specifically agreed to in writing by the Eligible User.
- j. **State Data Destruction:** Upon expiration or termination of this Contract, Contractor shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. The Eligible User's written directive may require that certain data be preserved in accordance with applicable law.
- k. **Services Shall Be Performed Within United States:** ALL OF THE SERVICES RELATED TO STATE DATA SHALL BE PERFORMED WITHIN THE BORDERS AND JURISDICTION OF THE UNITED STATES.
- l. **User Support:** Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

21. SECURITY INCIDENT OR DATA BREACH NOTIFICATION: Contractor shall immediately inform the Eligible User of any Security Incident or Data Breach. It is within the Eligible User's discretion to determine whether any attempted unauthorized access is a Security Incident or a Data Breach.

- a. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
- b. **Security Incident Reporting Requirements:** Contractor shall promptly report a Security Incident to the Eligible User.
- c. **Breach Reporting Requirements:** As required by Utah Code 13-44-202 or any other law, Contractor shall immediately notify the Eligible User of a Data Breach that affects the security of State Data.

22. DATA BREACH RESPONSIBILITIES: Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification (*DTS Policy 5000-0002 Enterprise Information Security Policy*). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; and (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor is responsible for all notification and remedial costs and damages.

23. STATE INFORMATION TECHNOLOGY POLICIES: If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables, Contractor shall comply with policies and procedures that meet or exceed those DTS follows for internally developed goods and deliverables to minimize security risk, ensure applicable Utah and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor shall comply with the following DTS Policies:

- a. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** A Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable Utah and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
- b. **DTS policy 4000-0002, Enterprise Password Standards Policy:** A Contractor developing software for the State must ensure it complies with the password requirements of the Enterprise Password Standards Policy.
- c. **DTS Policy 4000-0003, Software Development Life Cycle Policy:** A Contractor developing software for the State shall work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
- d. **DTS Policy 4000-0004, Change Management Policy:** Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Any outages or Data Breaches which are a result of Contractor's failure to comply with DTS instructions and policies will result in Contractor's liability for all damages resulting from or associated with the outage or Data Breach.

24. CONFIDENTIALITY: This section does not apply to records where disclosure is regulated under Federal or State laws.

GRAMA applies only to records, therefore if information (other than Non-Public Data, Public Health Information, or State Data) is disclosed orally by either party which either party wishes to remain confidential, then each party shall adhere to the following:

Each party will: (a) limit disclosure of any such information to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the information and of the obligations set forth in this Contract and require such Authorized Persons to keep the information confidential; (c) shall keep all information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any such information received by it to any third parties, except as otherwise agreed to in writing by the disclosing party. Each party will notify the other of any misuse or misappropriation of such information that comes to said party's attention.

This duty of confidentiality shall be ongoing and survive the Contract Period.

25. Reserved

26. OWNERSHIP IN INTELLECTUAL PROPERTY: The Parties recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name, logo, or intellectual property owned or licensed by the other. The Parties shall not, without the prior written consent of the other or as authorized in this Contract, use the name, logo, or intellectual property owned or licensed by the other.

27. OWNERSHIP IN CUSTOM DELIVERABLES: Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Custom Deliverable. Contractor conveys the ownership in Custom Deliverables as defined in this Attachment A to the Eligible User. All intellectual property rights, title and interest in the Custom Deliverables shall transfer to the Eligible User, subject to the following:

- a. Contractor has received payment for the Custom Deliverables,
- b. Each party will retain all rights to Background IP, even if embedded in the Custom Deliverables.
- c. Custom Deliverables, excluding Contractor's Background IP may not be marketed or distributed without written approval by the Eligible User.

Contractor shall grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP as defined above, solely for the Eligible User to use the Custom Deliverables.

- 28. LICENSE FOR GOODS:** For the Goods delivered that include Contractor's scripts and code and are not considered Custom Deliverables, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and, without the right to sublicense, for the Eligible User's internal business operation under this Contract
- 29. OWNERSHIP, PROTECTION, AND USE OF RECORDS:** The Eligible User shall own exclusive title to all information and data gathered, reports developed, and conclusions reached by the Eligible User in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached by the Eligible User in performance of this Contract without the express written consent of the Eligible User.
- 30. OWNERSHIP, PROTECTION, AND USE OF DATA:** The Eligible User shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use Non-Public Data without prior written permission from the Eligible User.
- 31. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, UTAH, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor shall hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Eligible User.
- 32. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by this Contract will be the property of the Eligible User, and must be delivered to the Eligible User within thirty (30) working days after termination or expiration of this Contract, and without restriction or limitation to their future use. Any State Data returned under this section must either be in the format as originally provided, in a format that is readily usable by the Eligible User, or formatted in a way that it can be used. The costs for returning documents and data to the Eligible User are included in this Contract.
- 33. ORDERING AND INVOICING:** For State of Utah Executive Branch Agencies, a purchase order must be sent to the Contractor by DTS prior to any work being initiated, product shipped, or invoices cut under this contract. All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days after shipment or delivery of goods or services, with the exclusion of end of fiscal year invoicing for Executive Branch Agencies) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User shall not exceed prices listed in this Contract. The Eligible User shall adjust or return any invoice reflecting incorrect pricing. For Executive Branch Agencies, Contractor must send all invoices no later than July 10, or the last working day prior, to the State for all work completed or items received during the State's fiscal year of July 1-June 30.
- 34. PAYMENT AND NOTICE:**
 - a. Payments will be made within thirty (30) days from the date a correct invoice is received. For Executive Branch Agencies, a correct invoice will contain the contract and purchase order numbers as indicated in Section 33. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to the interest rate paid by the IRS on refund claims, plus two percent, computed in accordance with Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended.
 - b. The contract costs may be changed only by written amendment. All payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not pay electronic payment fees of any kind.
 - c. Any written protest of the final contract payment must be filed with the Eligible User within ten (10) working days of receipt of final payment. If no protest is received, the Eligible User, the Division, and the State of Utah are released from all claims and all liability to Contractor for fees and costs pursuant to this Contract.
 - d. Overpayment: If during or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible User to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible User any such overpayments.
- 35. CONTRACTOR'S INSURANCE RESPONSIBILITY:** The Contractor shall maintain the following insurance coverage:
 - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
 - c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.

- d. Other insurance policies specified in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence. Failure to provide proof of insurance as required will be deemed a material breach of this Contract.

Contractor's failure to maintain this insurance requirement for the Contract Period will be grounds for immediate termination.

36. ADDITIONAL INSURANCE REQUIREMENTS:

- a. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
- b. Any other insurance policies described or referenced in the Solicitation for this Contract.
- c. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, Utah, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
- d. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.

37. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.

38. TERMINATION: This Contract may be terminated for cause by either party upon written notice being given by the other party. The party in violation will be given ten (10) calendar days, or as otherwise agreed upon in writing, after notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience) by the Division, upon thirty (30) calendar days written termination notice being given to the Contractor. The Division and the Contractor may agree to terminate this Contract, in whole or in part, at any time by mutual written agreement.

Contractor shall be compensated for the Services properly performed and goods properly provided pursuant to this Contract up to the effective date of termination as stated in the notice. Contractor agrees that in the event of termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible User, or the State of Utah is limited to payment for all work properly performed as authorized under this Contract up to the date of termination, and any reasonable pro-rated monies that may be owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract, after receipt and verification of documented evidence of those terminated contracts.

39. TERMINATION UPON DEFAULT: In the event this Contract is terminated for default by Contractor, the Division may procure Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages.

40. SUSPENSION OF WORK: The Division may suspend Contractor's responsibilities under this Contract without terminating this Contract by issuing a written notice. Contractor's responsibilities may then be reinstated upon written notice from the Division.

41. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract for nonperformance of contractual requirements or a material breach of any term or condition of this Contract. The Division will issue a written notice of default and may provide a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may exercise any remedy provided by law; terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend or debar Contractor from receiving future solicitations; or (e) demand a full refund of the Goods, Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed.

42. FORCE MAJEURE: Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond that party's reasonable control. The Division may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.

43. CONFLICT OF TERMS: Contractor terms and conditions must be attached to this Contract. No other terms and conditions will apply to this Contract, including terms listed or referenced on a Contractor's website, quotation/sales order, purchase orders, or invoice. In the event of any conflict in the contract terms and conditions, the order of precedence is: (a) This Attachment A; (b) the Division's Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.

44. SURVIVORSHIP: The contractual provisions that will remain in effect after expiration or termination of this Contract are: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of State Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, Utah, or Local Government Internal Business Processes, including residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration, completion, or termination of this contract.

45. RELEVANT STATE AND FEDERAL LAWS

- a. **Conflict of Interest with State Employees:** Contractor shall comply and cooperate in good faith with all conflict of interest and ethic laws, including Section 63G-6a-2404, Utah Procurement Code, as amended.

- b. **Procurement Ethics:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2304.5, Utah Procurement Code, as amended).
- c. **Contact Information:** Per Utah Code §§63G-6a-110 and 35A-2-203, the State shall make Contractor's contact information available to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may post information regarding Contractor's job vacancies on its website.
- d. **Employment Practices:** Contractor shall abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the work place. Contractor shall abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
- e. **Compliance with Accessibility Standards:** Contractor shall comply with the Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractor shall comply with Utah Administrative Code R895-14-3(3), which states that contractors developing new websites or applications for State agencies are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency. Contractor shall comply with Utah Administrative Code R895-14-4(2), which states that contractors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents.

46. RIGHT TO MONITOR PERFORMANCE AND AUDIT

- a. **Audit:** Contractor shall, upon written notification permit the Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. Upon request, Contractor shall provide the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards.
- b. **Monitor Performance:** The Division and Eligible Users reserve the right to monitor Contractor's performance, perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. This includes Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.

47. **TIME IS OF THE ESSENCE:** The Services shall be completed and Goods and Custom Deliverables delivered by any applicable deadline stated in this Contract. Time is of the essence.

48. **STANDARD OF CARE:** For Services of Contractor which require licenses and certifications, such Services shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.

49. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.

50. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.

51. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.

52. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.

53. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

54. REPORTS AND FEES:

- a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
- b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the

associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>.

- c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

- d. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.

55. Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

56. ANTI-BOYCOTT ACTIONS: In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.

57. END USER AGREEMENTS: If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.

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1. Introduction

Syringa Networks was awarded the following Categories

	Syringa Networks
Category 1: Network	X
Category 2: Voice	X
Category 3: Data Center	
Category 4: Legacy ISDN	X
Category 5: Legacy Flat Rate Line	X
Category 6: Emerging Technology	

This scope encompasses Telecommunications services for Network, Voice and Data Center Services. A wide range of telecommunication service types are also included. Awarded categories include Network Services, Voice Services, Data Center Services, Legacy Services, Emerging Technologies and Value Added Services. Other items may be added under each category through the life of the contract should they be reasonably construed to fall under this umbrella. The Service Types included, but are not limited to, Ethernet services, Internet services, Wavelength services, SIP Trunking, Long Distance, Toll Free, Data Center services, Cloud Connectivity and other network and voice related products and services. Please note that Service Types is a term used to describe different products and services listed under the mentioned Categories.

It is expected that contracts within this portfolio may not have service coverage available in all areas of the state. The goal is to have multiple contract options in every city and county across the State of Utah.

A contract does not guarantee a service order, but gives the eligible user the ability to inquire with multiple providers for ongoing projects. Competitive pricing is expected for each of the Service Types listed, but the ability for additional discounts will be made available during the procurement of services for projects throughout the term of the agreement. For example, an eligible user may seek competitive proposal requests if it is in the best interest to do so for a given project. Contractors will be given the opportunity to provide additional discounts based on the scope of the project at the time of ordering services.

Scope of Work

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The contract will be a 5 year contract with no automatic renewals and no option to extend without formal written approval. Service providers must maintain all contract and/or service order rates for a transition period, not to exceed one year, following the contract expiration or approved extended expiration. This one year period will allow sufficient time to transition and convert to subsequent (new) contractor(s) upon establishment of new agreements. Service “minimums” will not be permitted during the transition period since the very purpose for this “rate protection bridge” is to permit the eligible user to convert to “new” contractor(s) as aggressively as possible following subsequent contract award(s).

New purchases and service orders may not be executed during the extended transition period under agreements. If incumbent contractor(s) are successful in receiving a new subsequent contract award during the subsequent solicitation period, the new contract rates would apply as agreements are executed with orders being placed under the “new” agreements. All contract terms and conditions will apply during the one year transition period.

1.1 Definitions

Data Center Services - A data center in enterprise houses and maintains the back-end or centralized IT systems, data storages and traffic existing in one or across multiple locations. Services offered in a data center environment include power, space, network services and other value added managed or cloud services.

E911 - Enhanced 911 is part of the National 911 system that automatically ties a location address or coordinates. Additionally, the FCC seeks to improve the effectiveness and reliability of wireless 911 services by providing 911 dispatchers with additional information on wireless 911 calls.

Ethernet Services - A portfolio of Wide Area Network (WAN) service types which enable organizations to connect non-adjacent locations together over a private and secure network over short and long haul circuits for various service types including point to point and point to multipoint using termination on fiber and copper infrastructures in local exchange areas.

Internet Services - A group of network service types that are provided to organizations that deliver access to the global public internet via various communication protocols transporting to and from global computer networks for various sets of information.

Session Initiation Protocol (SIP) - A communication protocol specified by the Internet Engineering Task Force (IETF) as a real-time communication protocol to enable multi user sessions, regardless of media content. SIP enables communication services across the Internet, as well as over fixed and mobile IP networks. SIP enables communications to be initiated and managed, and its key channels include voice, video and instant messaging (IM).

Telecommunications - The exchange of information over significant distances by electronic means providing connectivity for all types of data transmission to support voice, data, and video transmission. It includes dedicated/private line, packet and circuit-switched access services using Ethernet, DSL, broadband, cellular, satellite and other multichannel multipoint distribution services (MMDS).

Scope of Work

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Unified Communications - Equipment, software and services that provide and combine multiple enterprise communication channels, such as voice, video, personal and team messaging, voicemail, and content sharing. UC products and services can also be integrated with networks and other IT systems.

Wide Area Network (WAN) - Multi-protocol network connecting state and some non-state agencies to the Salt Lake City and Richfield Data Centers, to each other, and to the Internet.

1.2 Current Infrastructure

Legacy systems must be maintained while new systems are planned and deployed.

2. Scope of Work

The future of WAN architecture is evolving. This will continue to require a mixture of legacy services and emerging technologies. The Network WAN environment must remain reliable and stable. With this, moving to new technologies takes planning and consideration of many factors. In consideration of existing and emerging telecommunications services, contractors should provide technology options that can be considered as migration paths.

Categories and Service Types

Category 1: Network Services

Service Types

- **Ethernet and Private Network Services**
 - Bandwidth availability options
 - Features or options
 - Diversity
 - Other
- **Internet Services**
 - Bandwidth availability options
 - Features or options
 - Diversity
 - Other
 - Product Architecture and Service Level Agreements
 - Enterprise DIA with local loop and port
 - Symmetrical fiber based - best effort
 - Asymmetrical Broadband
 - Asymmetrical DSL
 - Other Asymmetrical Internet services
 - Satellite based network services
- **Wavelength**
 - Bandwidth options
 - Feature options
 - Diversity

Scope of Work

Attachment: B

- Optical Wavelength Service
- Dense Wavelength Division Multiplexing
- **Dark Fiber**
 - Strand counts
 - Lease structure
 - Feature options
 - Diversity
 - Metro
 - Long haul
 - Other
- **MPLS**
- **VPLS**
- **Other**

Category 2: Voice Services

Service Types

- SIP Trunking
 - Session Trunks
 - Seat, DID or telephone number
 - Network requirements and connectivity options
 - Private
 - Public IP
 - 3rd party
 - Outbound Long Distance related to SIP Trunking product
 - Inbound Toll Free related to SIP Trunking product
 - E911 related to SIP Trunking product
 - Additional Features
- Switched and Dedicated Long Distance
 - Outbound Long Distance
 - Intra state
 - Inter state
 - Dedicated or switched
 - PICC charges
 - Other
 -
- Switched and Dedicated Toll Free
- UCaaS
 - Long Distance
 - Toll Free
 - E911
 - Additional Features
- E911 3rd party services

Scope of Work

Attachment: B

Category 3: Data Center Services

Service Types

- Colocation Services
 - Power
 - Rack space, cooling, etc.
 - Onsite hardware and component support
 - Data Connectivity
 - Other
- Data Center Network Connectivity and Cloud On Ramp Services
 - Cloud On Ramp Services
 - Data Center Internet
 - Dedicated Cloud or multi Cloud Connectivity
 - Other
- Data Center Value Added Services
 - Security and Compliance
 - Managed Services
 - Monitoring and Management
 - Hardware and component cleaning
 - Cable testing, tracing, and mapping
 - Disaster recovery
 - Other

Category 4: Legacy Services

Service Types

- Private Line services (T1, etc.)
- ISDN PRI
 - Full or partial
 - Related 911 services
- Flat Rate business lines (POTS)
 - Switched Long Distance
 - Toll Free Switched

Category 5: Emerging Technology or Value Added Service offerings

Service Types

- Managed SD WAN
- SASE
- Managed Services
- Edge Computing

Scope of Work

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- Network Function Virtualization (NFV)
- 5G Technology
- Cybersecurity Enhancements
- Satellite Internet including Low Earth Orbit (LEO) Satellite Constellations
- Fixed Wireless Access (FWA)
- Li-Fi (Light Fidelity)
- Broadcast TV
- Other

3. Prerequisites and Objectives

3.1 General Objectives

The following general objectives must be considered from contractors.

Service Areas

Services are used in all counties within the State of Utah. Additionally, there will be a need for multiple types in all counties within the State of Utah.

Dedicated or Assigned Account Teams

It is recommended that contractors assign a single point of contact that can act as an Account Manager that will assist to navigate within your organization for pricing and proposal information, technical support resources, billing reviews, inquiries, disputes, service repairs and escalations and other account related duties.

Order process

Pricing Validation

For all project related orders the eligible user, will submit requests to contractors to validate contracted pricing and proposal information for services requested in that project. At that time, the requested contractors will validate the contracted rate that applies. The contractors will determine if additional discounts can be applied based on the scope of the project and quantity of services being ordered. Additionally, the contractors will provide any added one time costs for construction to ensure the contracted monthly rate will still be applied.

Order submission and confirmation

Once an order has been submitted to the selected contractor, it will be a requirement for the contractor to acknowledge the order has been received. The contractor will communicate the estimated time of providing services or an order confirmation that can be used to track for the duration of the order. The contractor must also provide estimated timelines for delivery of services. If any additional documentation is required to process the order, the contractor must gather the required information to ensure the order can begin its provisioning time.

Project Management

If a Service Type being ordered qualifies for special project management, the contractor must provide the process for engaging and the guidelines of this service.

Scope of Work

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Professional Services

Professional services in relation to services provided under the Service Categories in this contract are allowed to be considered in a contractors Product Service Catalog. If professional services are recommended for a project, please provide detailed information on how to engage and request pricing.

Service Delivery lead times

We know that installation for services can vary from every service provider and Service Type. As projects are initiated, a reasonable estimated time for delivery is required by the selected contractor in order to coordinate with project deadlines. If installation timelines are going to be delayed or some other impact to service installation times are identified, notification of delays are expected to be communicated to the Eligible User within 2 business days of learning of the impacted delay. The Eligible User reserves the right to cancel or change the order to another contractor on contract without penalty, if this timeline is not met. Language supporting this ability will be introduced in final contract/SLA agreements.

Customer Responsibilities:

Contractor should clarify the customer responsibilities and prerequisites that are required for service installation with appropriate lead times.

Building Entrance Requirements should be described in contractor price quotes. The eligible user must be provided the typical design strategy when planning building entrance facilities. Provide any associated contractor charges and describe the necessary equipment footprint required in facilities to terminate fiber and other electronics, as well as power and cooling.

Service delivery and Acceptance:

Specify the procedures for testing and verifying service functionality after a service is installed. Determine who is responsible for conducting these tests and how results are communicated.

Online Order Tracking Systems:

Online order tracking systems are preferred.

Customer Service and Support

Service Level Agreements (SLA)

Minimum expected levels of availability should be expressed and minimum thresholds for performance metrics like latency and jitter are expected to be included in Service Level Agreements. Additionally, defined resolution time expectations with associated credits or adjustments should be provided if timelines are not met for specific products and services. It is understood that different SLAs will exist for different types of service.

Repair Criteria

Established response times for repair by product or Service Type are expected to be described in the price quotes.

Scope of Work

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Escalation Criteria

Escalations may be required for service repairs, communication with the account team or the overall performance of a contract. Escalation procedures should be included and what provisions will be considered if repairs are not completed within expected time frames. For providers that have multiple variations of services and disparate contact methods for those variations, it is expected that contractor will include a process to navigate that.

Incident Handling

In the event of a cybersecurity incident, availability to contractor incident response guidelines and how they follow a well-established process should be made available. Include the steps that are considered in relation to preparation, identification, containment, eradication, restoration and learning.

Billing

Billing and Administration

Contractor should verify billing process during quote submission. Billing details are critical to be available for the eligible user accounts payable finance team.

THE FOLLOWING INFORMATION IS ONLY APPLICABLE WHEN DTS IS THE END USER:

All services that are billed to DTS should be addressed to:

Division of Technology Services
4315 S 2700 W, 4th floor
Taylorsville, Utah 84129-2128

email: dtsaccountspayable@utah.gov

DTS Billing team is responsible for billing back services to various agencies and must have specific details available on billing invoices and billing reports that may be available on customer portals.

Billing media type and format recommendations

It is preferred to obtain billing information electronically by downloading a file or files from the contractor on a monthly basis. Billing record information format type is recommended to be in either Microsoft Excel or other CSV file types. Also provide access to a PDF invoice for auditing purposes. Other format requests may be made during quote request.

Billing Element Description

On each invoice, the type of service must be identified on the bill with a breakdown for services being delivered on the invoice including relevant details like the service address, circuit IDs, telephone numbers, other working telephone numbers, optional features, change orders and prorated descriptions of services being added or removed.

Scope of Work

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Billing Inventory Report

Having a quarterly report of an updated service inventory allows Eligible Users to manage and track service orders for new services or services that are removed. For service inventory records the following items should be included: 1) account number, 2) address or location of service, 2) service description, 3) service ID number, i.e. telephone number, circuit ID, or other identifiable number for related service, 4) monthly recurring cost, 5) changes or new order activity. It is preferred for this report to be in Excel format and that the report be capable of being sorted by account/location number, telephone number, circuit ID, address and/or city.

Billing Review and Reconciliation

Accurate representation of orders and changes to services is essential to meeting project budgets and timelines. Ensuring how you validate that the contracted rate was applied to the order and is represented correctly on the first bill and how disconnect orders are tracked and validation of removal from billing is important for customers to have accurate billing.

Web Portal Services

Service providers with customer portals make it easy to manage billing, repairs, orders, and product features. Web portal services are recommended.

Payment Procedures

Eligible users will make its best effort to process all invoices promptly. However, delays are inevitable. It is recommended that late fees are not to be assessed until 60 days after receipt of a valid and accurate PDF or paper invoice.

Early Termination Considerations

There may be a scenario where an eligible user needs to leave a building and service may no longer be needed. Contractors are encouraged to allow for Early Termination fees to be waived if the purchaser can place an order for replacement service at a new location to offset the disconnected service location. Additionally, time of service in a given location should be considered when assessing Early Termination fees if a service has been in place from an agreement in previous years related to this Scope of Work, the Early Termination fee should be waived or reduced. It is acceptable to require a minimum service term of up to 24 months within the contract period if the eligible user did not pay any upfront construction charges.

Emerging Technologies

Migration to new technologies allows an eligible user to be flexible and to provide the best technologies available as they emerge. Allowing eligible users to migrate to new technologies without penalty is encouraged by contractors when drafting agreements and providing ongoing pricing for projects.

3.2 Compliance and Industry Standards

The contract refers to industry regulatory and compliance frameworks to ensure the security, reliability, and integrity of network and data center infrastructure.

Scope of Work

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Additionally, similar requirements and recommendations are requested for voice services. The contract refers to industry regulatory and compliance frameworks that support voice services in a similar manner to network and data center environments.

Regulatory and compliance frameworks that must be considered are as follows:

ISO 27001

A globally recognized standard for information security management systems (ISMS). It provides a comprehensive framework for establishing, implementing, maintaining, and continually improving information security within an organization. Compliance with ISO 27001 involves conducting risk assessments, implementing security controls, and regularly reviewing and auditing security practices.

NIST Cybersecurity Framework:

The National Institute of Standards and Technology (NIST) Cybersecurity Framework offers guidelines and best practices for managing and reducing cybersecurity risk. It includes five key functions: Identify, Protect, Detect, Respond, and Recover, which help organizations develop a cybersecurity strategy.

HIPAA (Health Insurance Portability and Accountability Act):

A U.S. federal law that regulates the security and privacy of patient health information. Healthcare organizations and their data centers must comply with HIPAA to protect sensitive patient data.

PCI DSS (Payment Card Industry Data Security Standard):

A set of security standards designed to ensure the protection of payment card data. Agencies that handle credit card transactions must adhere to PCI DSS requirements to safeguard cardholder data.

SOC 2 (Service Organization Control 2):

A compliance framework developed by the American Institute of CPAs (AICPA) for service organizations. It focuses on controls related to security, availability, processing integrity, confidentiality, and privacy of customer data.

FISMA (Federal Information Security Management Act):

A U.S. federal law that outlines cybersecurity requirements for federal agencies and their contractors. It mandates the development and implementation of information security programs and continuous monitoring.

CIS Controls (Center for Internet Security Controls):

Offer a prioritized set of actions for organizations to improve their cybersecurity posture. They include 20 specific security controls grouped into three categories: Basic, Foundational, and Organizational.

Data Center Tier Standards (TIA-942, Uptime Institute):

Best practices:

Authentication:

Implement multi-factor or strong authentication mechanisms to verify the identity of network endpoints, preventing unauthorized access.

Scope of Work

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Access Controls:

Employ access control measures to restrict access to devices connecting to the network and prevent unauthorized use.

Firewall Rules:

Define and enforce firewall rules to allow only trusted network traffic to enter or leave the network.

Intrusion Detection/Prevention:

Deploy intrusion detection and prevention systems (IDS/IPS) to monitor and block suspicious or malicious network traffic.

Physical Security Standards:

Implement robust physical security measures to protect data center facilities, including access controls, surveillance, and intrusion detection systems.

Regular Auditing and Penetration Testing:

Various eligible users are required to conduct regular security audits, vulnerability assessments, and penetration testing to identify and address vulnerabilities.

Disaster Recovery and Business Continuity Planning:

In consideration of the network environment, eligible users continue to develop comprehensive disaster recovery and business continuity plans to ensure data center operations can be restored in the event of disruptions or disasters.

Documentation and Logging:

Maintain detailed documentation of configurations, policies, and procedures, and implement comprehensive logging and monitoring. It's essential for organizations to identify the specific compliance requirements that apply to their industry and location and tailor their network and data center security practices accordingly. Additionally, staying up-to-date with evolving regulations and best practices is crucial to maintaining network compliance and data center security.

Security Requirements and Data Regulation:

- All traffic should be encrypted.
- Regulated data must be secured during transit.
- Data must also be protected at rest.
- Compliance with NIST standards is mandatory.

For Federally governed data using the mentioned systems:

- FIPS 140-2 encryption is required.
- FedRamp Moderate certification is mandatory when operating in the cloud.

Regarding FTI involvement:

- Systems must adhere to the requirements outlined in Publication 1075 - Tax Information Security Guidelines.

Scope of Work

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- Contracts must include Exhibit 7 language as found in Pub 1075.
- Configuration settings should align with IRS Safeguard Computer Security Evaluation Matrix (SCSEM) standards.
- Many eligible users are required to submit a 45-day prior notification prior to executing any agreement to disclose FTI.
- All data must be stored within the United States.

For contractors accessing State data:

- Contractors must be located in the United States.
- A fingerprinted background check is mandatory.

When processing regulatory data:

The system must align with specific regulatory requirements such as CJIS, SSA, OCSE, etc. Generally, compliance with IRS FTI requirements will also cover the regulatory requirements for data owned by other federal agencies.

4. Budget and Cost Recovery

Pricing Criteria

All pricing provided on contract should be best pricing available and honored for the services offered. If there are additional charges for construction or availability of a service offering construction charges should be offered in both a one time offer or as a monthly add on to the contracted rate.

Additional discounts are allowed that are greater than the listed contract rates that will result in a lower overall cost. This may be considered for larger projects or orders that will constitute additional discounts.

A reasonable response time for individual case basis pricing requests is expected. Reasonable response time is within 5 business days. If more time is needed, it is the expectation that a timeline is provided in order for the eligible user to meet project deadlines and set expectations with stakeholders.

If a minimum service order value is required to offset additional costs for fiber construction or otherwise, please provide a table that can be used for easy pricing expectations or requirements for service options that will be required to cover the costs related to the relevant Service Types.

ATTACHMENT C - PRICE SHEET
NETWORK SERVICES

Ethernet and Private Network

Service Type: Ethernet and Private Network Services - 100 Mb up/down										
Cost Category #	1a	Service Type Product Name								
		Line item description	Service Delivery Method described in Technical Criteria		Bandwidth in Mbps		Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	Cost Per Mbps Down
		Ethernet Services	Fiber		100	100	\$325.00	\$0.00	\$ 19,500.00	\$3.25
		estimated tax, surcharge, recovery fee	no recovery fees or surcharges				\$0.00	\$0.00	\$ -	
		Intrastate FUSF	exempt with certification of less than 10% interstate traffic						\$ -	
		Interstate FUSF	As of quarter 1 2024 34.6% subject to change each calendar quarter						\$ -	
		Municipal Telecommunications License Tax	subject to jurisdiction 3.5% of charge on intrastate circuit							
		The FCC and USAC abide by what's commonly known as the 10% Rule, which stipulates that if 10% or more of the traffic traversing a private line is interstate or international in nature, the entire revenue associated with the private line is interstate. The telecommunications service provider isn't responsible for monitoring the jurisdiction of traffic on the circuit; rather, they can rely upon <u>a self-certification from the customer</u> .							\$ -	
Optional Features										
		Line item description	Extended description							
		Managed Firewall	Managed Firewall (Meraki)				\$90.00	\$0.00	\$ 5,400.00	
		/29 IP Address	additional IP addresses				\$30.00	\$0.00	\$ 1,800.00	
		/28 IP address	additional IP addresses				\$80.00	\$0.00	\$ 4,800.00	

Service Type: Ethernet and Private Network Services - 500 Mb up/down										
Cost Category #	1b	Service Type Product Name								
Service Item #		Line item description	Service Delivery Method described in Technical Criteria		Bandwidth in Mbps		Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	Cost Per Mbps Down
		Ethernet Services	Fiber		500	500	\$500.00	\$0.00	\$ 30,000.00	\$1.00
		estimated tax, surcharge, recovery fee	no surcharges or recovery fees				\$0.00	\$0.00	\$ -	
		Intrastate FUSF	exempt with certification of less than 10% interstate traffic						\$ -	
		Interstate FUSF	As of quarter 1 2024 34.6% subject to change each calendar quarter						\$ -	
		Municipal Telecommunications License Tax	subject to jurisdiction 3.5% of charge on intrastate circuit							
		The FCC and USAC abide by what's commonly known as the 10% Rule, which stipulates that if 10% or more of the traffic traversing a private line is interstate or international in nature, the entire revenue associated with the private line is interstate. The telecommunications service provider isn't responsible for monitoring the jurisdiction of traffic on the circuit; rather, they can rely upon <u>a self-certification from the customer</u> .							\$ -	
Optional Features										
Service Item #		Line item description	Extended description							
		Managed Firewall	Managed Firewall (Meraki)				\$90.00	\$0.00	\$ 5,400.00	
		/29 IP Address	additional IP addresses				\$30.00	\$0.00	\$ 1,800.00	
		/28 IP address	additional IP addresses				\$80.00	\$0.00	\$ 4,800.00	

Service Type: Ethernet and Private Network Services - 1,000 Mb up/down										
Cost Category #	1c	Service Type Product Name								
Service Item #		Line item description	Service Delivery Method described in Technical Criteria		Bandwidth in Mbps		Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	Cost Per Mbps Down
		Ethernet Services	Fiber		1000	1000	\$550.00	\$0.00	\$ 33,000.00	\$0.55
		estimated tax, surcharge, recovery fee	no surcharges or recovery fees				\$0.00	\$0.00	\$ -	
		Intrastate FUSF	exempt with certification of less than 10% interstate traffic						\$ -	
		Interstate FUSF	As of quarter 1 2024 34.6% subject to change each calendar quarter						\$ -	
		Municipal Telecommunications License Tax	subject to jurisdiction 3.5% of charge on intrastate circuit							
		The FCC and USAC abide by what's commonly known as the 10% Rule, which stipulates that if 10% or more of the traffic traversing a private line is interstate or international in nature, the entire revenue associated with the private line is interstate. The telecommunications service provider isn't responsible for monitoring the jurisdiction of traffic on the circuit; rather, they can rely upon a <u>self-certification from the customer</u> .							\$ -	
Optional Features										
Service Item #		Line item description	Extended description							
		Managed Firewall	Managed Firewall (Meraki)				\$90.00	\$0.00	\$ 5,400.00	
		/29 IP Address	additional IP addresses				\$30.00	\$0.00	\$ 1,800.00	
		/28 IP address	additional IP addresses				\$80.00	\$0.00	\$ 4,800.00	

Data Center Network Connectivity and Cloud On Ramp Services

Service Type: Cloud On Ramp Services									
Cost Category #	5	Service Type Product Name							
Service Item #		Line item description	Extended description	Bandwidth by Mb	Port in Mb	Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	Cost Per unit
								\$ -	
Optional Features									
Service Item #		Line item description	Extended description	Extended description	Extended description	Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	Cost Per unit
						\$500.00	\$500.00	\$ 30,500.00	
								\$ -	
								\$ -	
								\$ -	

Legacy Services

Voice

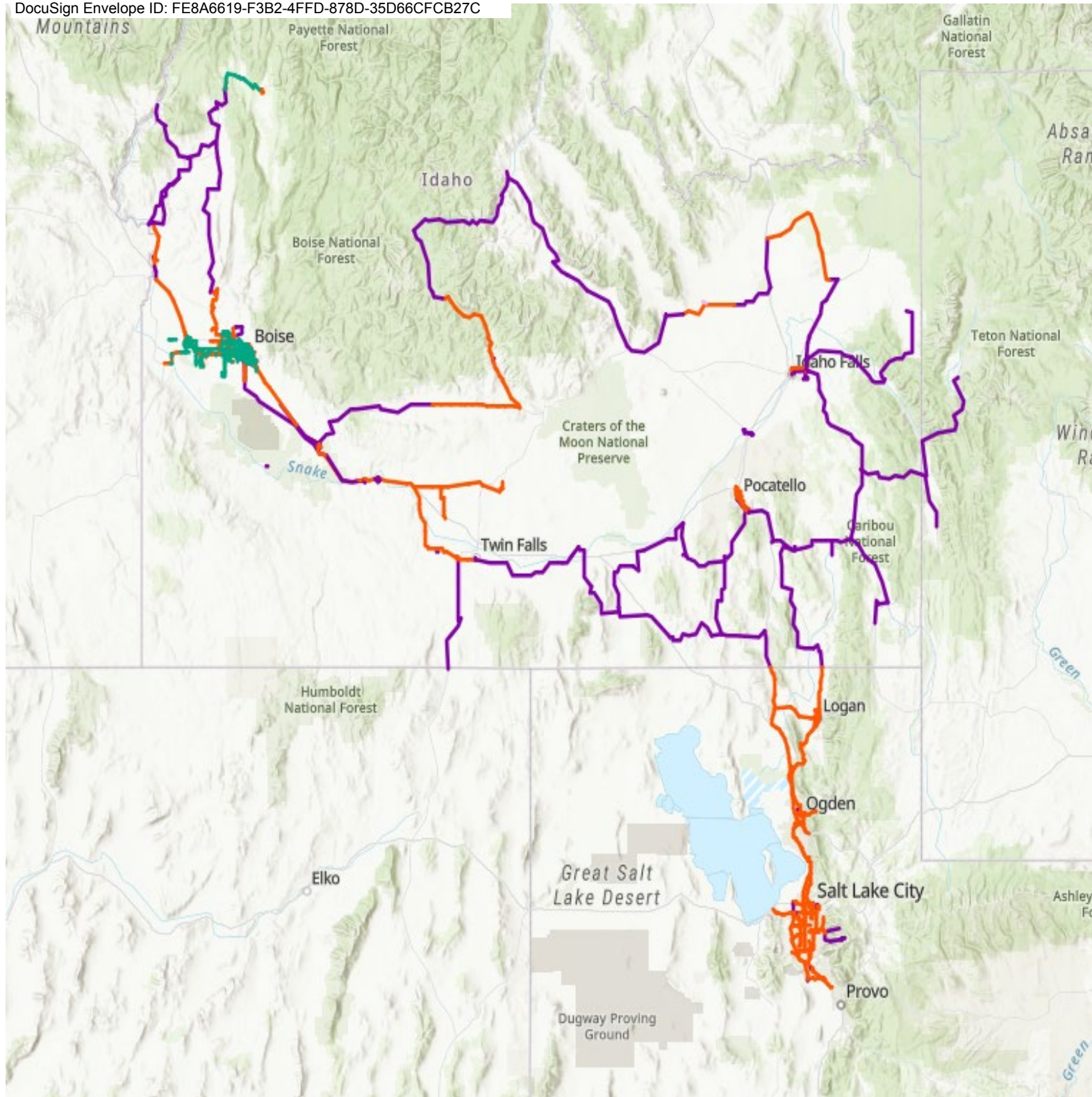
Service Type: ISDN Primary Rate Service (PRI)									
Cost Category #	6	Service Type Product Name							
Service Item #		Line item description	Extended description		Requirement (per connection)	Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	Cost Per Channel
		IDN PRI	Full 23 channel 23B+D		1	\$250.00	\$0.00	\$ 15,000.00	\$10.87
		Direct Inward Dial numbers (DID)	Per DID Number		1	\$0.20	\$0.00	\$ 12.00	\$0.20
		Additional required fees	none		1	\$0.00	\$0.00	\$ -	
			subject to standard safe harbor which provides a 35.1% exception for FUSF unless except						
		estimated tax, surcharge, recovery fee						\$ -	
		sales tax exempt with certification						\$ -	
Optional Features or Fractional PRI Cost									
Service Item #		Line item description	Line item description			Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	
		Partial PRI	Partial PRI \$11 per channel with minimum 15 channels			\$165.00	\$0.00	\$ 9,900.00	
								\$ -	
								\$ -	

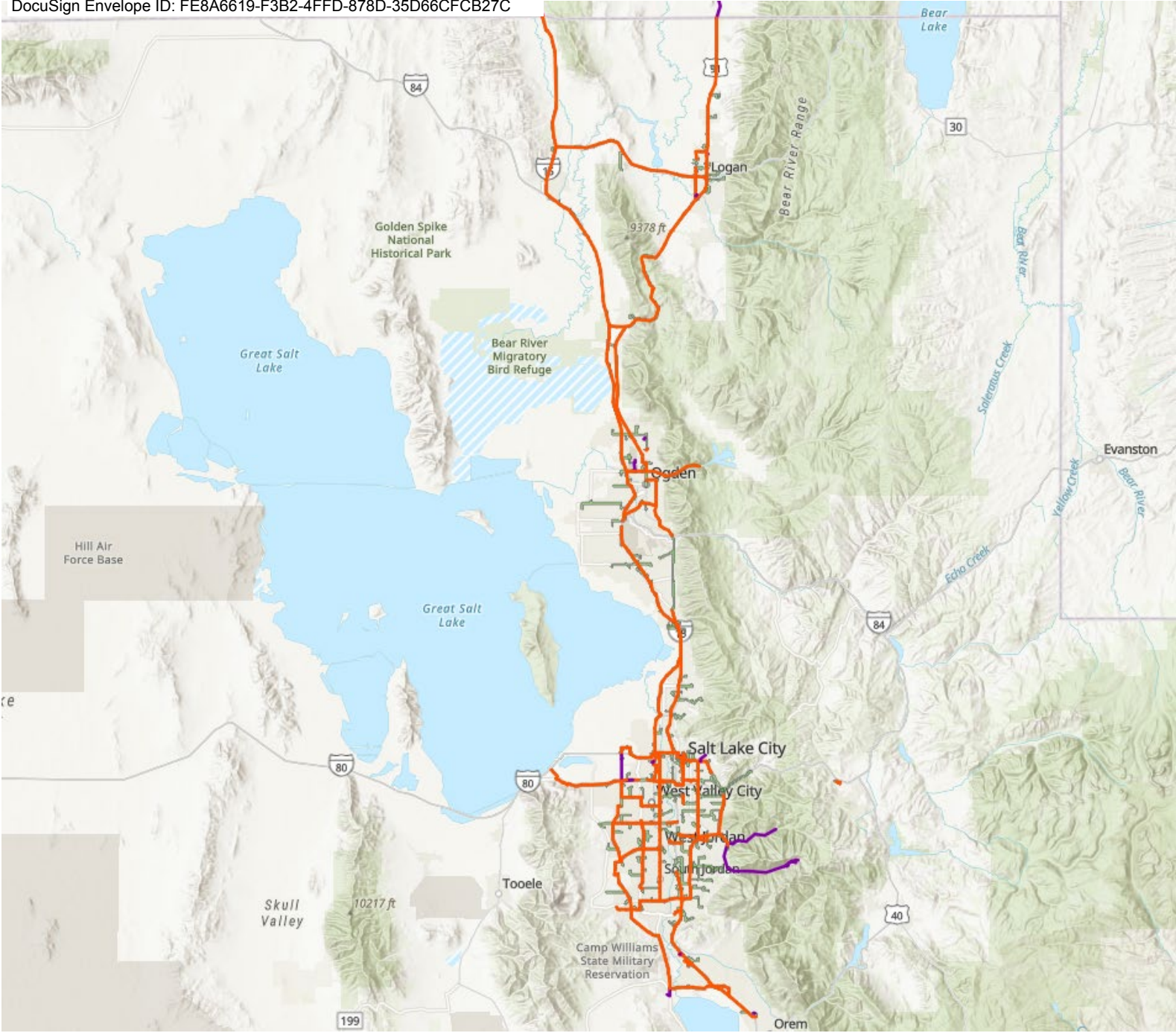
Service Type: Flite Rate Business Line (POTS) or Alternative									
Cost Category #	7	Service Type Product Name							
Service Item #		Line item description	Service Delivery Method described in Technical Criteria		Requirement (per connection)	Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	Cost Per
		Flat Rate Business Line	delivered via fiber optics with Adtran on prem		1	\$22.00	\$0.00	\$ 1,320.00	\$22.00
		Additional Required fees	none		1	\$0.00	\$0.00	\$ -	\$0.00
					1			\$ -	\$0.00
			subject to standard safe harbor which provides a 35.1% exception for FUSF unless exempt						
		estimated tax, surcharge, recovery fee						\$ -	
		sales tax exempt with certification						\$ -	
Optional Features and Packages									
Service Item #		Line item description	Line item description						
		Business Line Package	call fwd, caller ID,			\$0.00	\$0.00	\$ -	
								\$ -	
								\$ -	

Emerging Technology

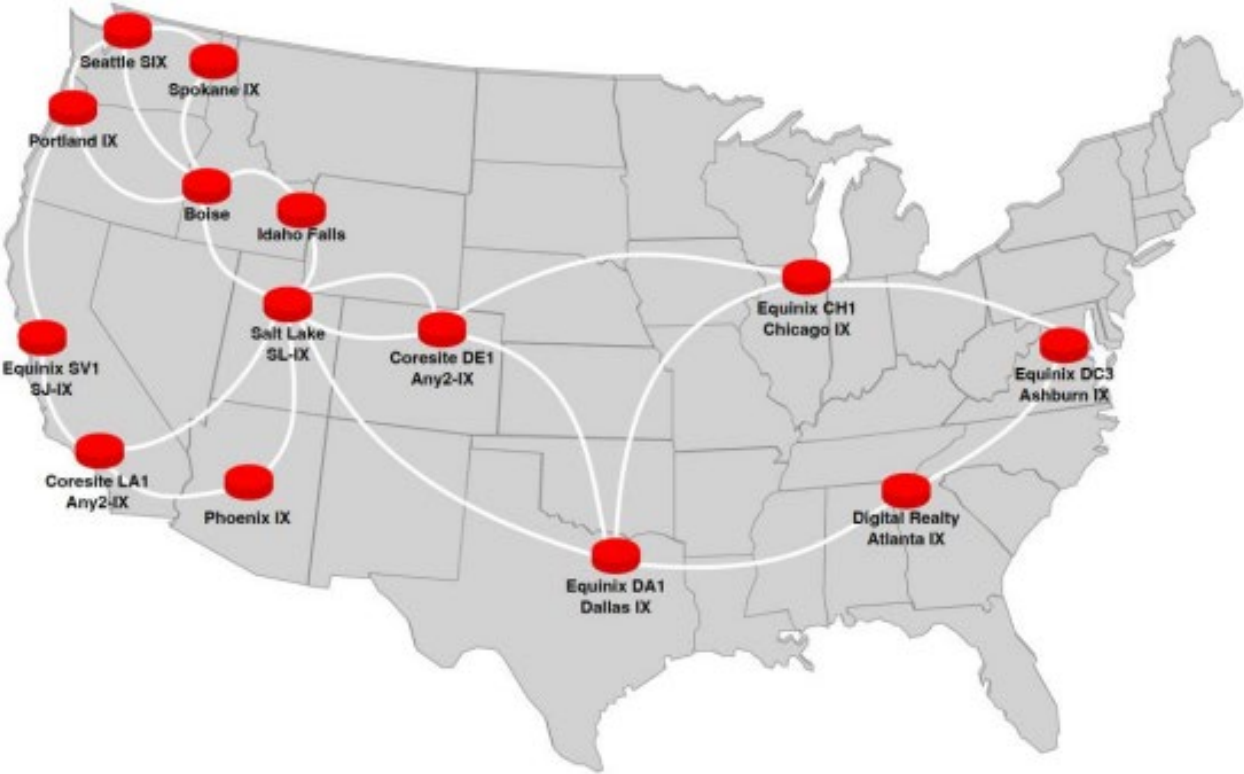
Emerging Technology

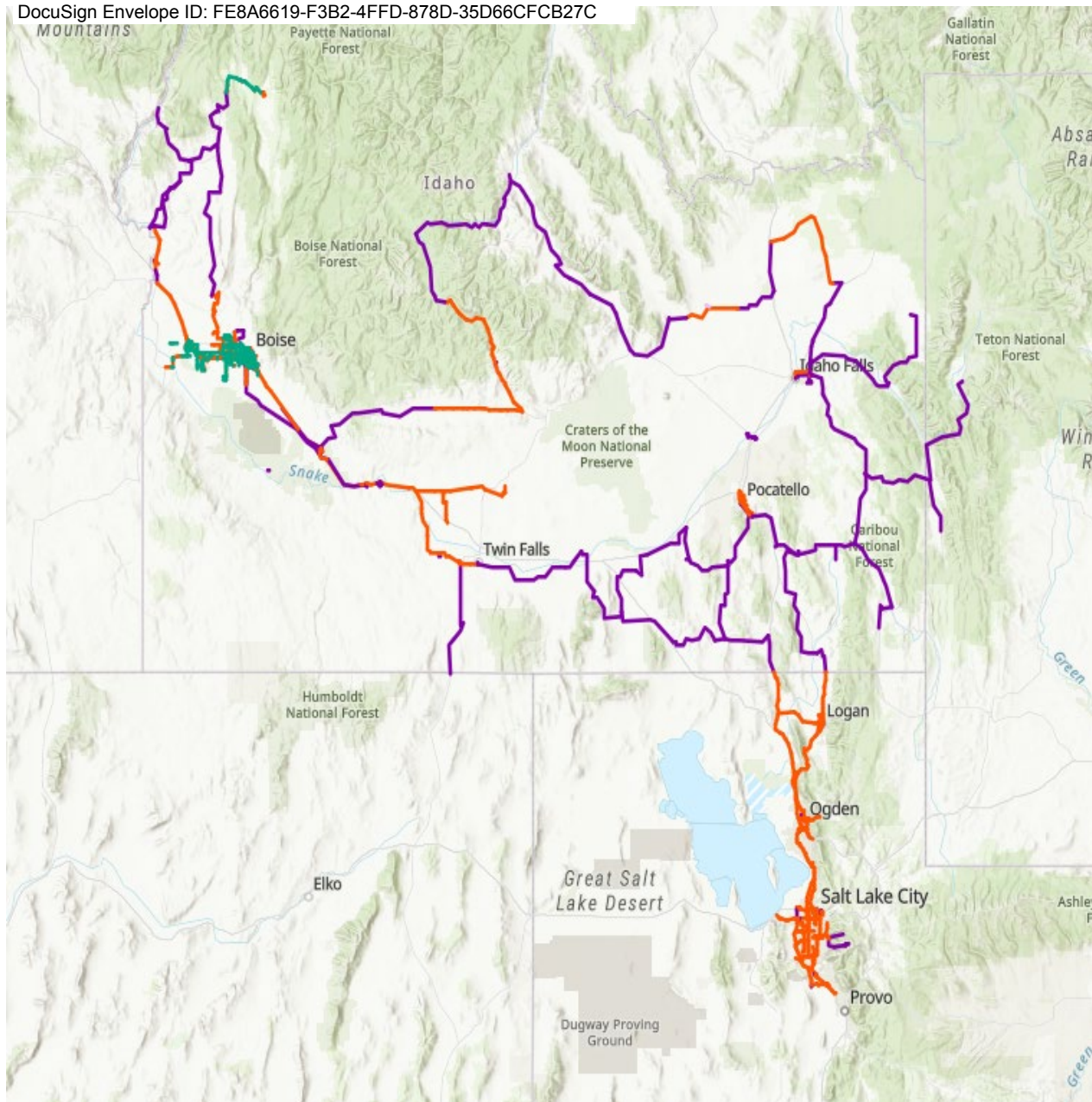
Service Type: Emerging Technology									
Cost Category #	8	Service Type Product Name							
Service Item #		Line item description	Extended description		QTY Requirement	Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	Cost Per Channel
								\$ -	
								\$ -	
Options									
Service Item #		Line item description	Line item description			Monthly Cost	One Time Cost	Final Dollar Cost on a 60 month term	
								\$ -	
								\$ -	
								\$ -	



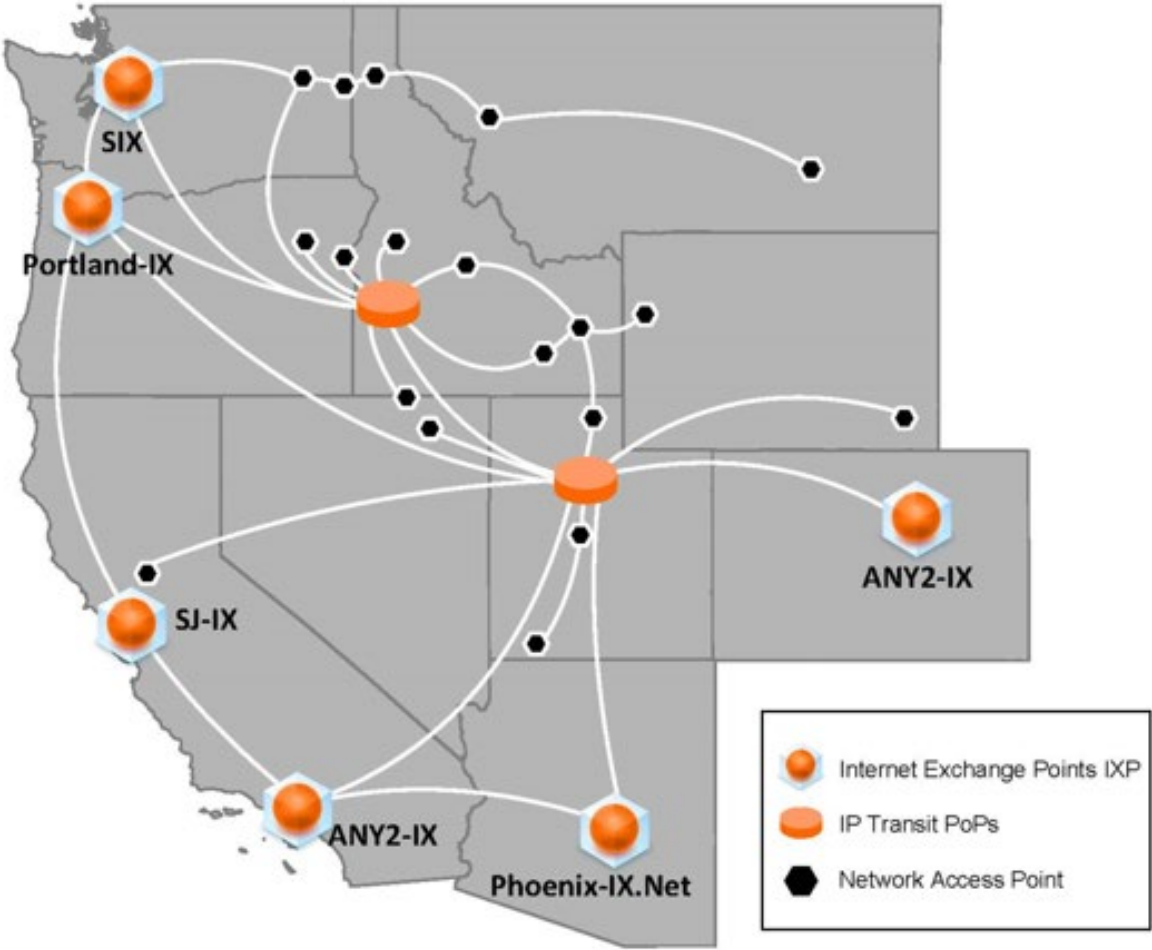


Syringa Networks IP Backbone





Syringa Networks IP Backbone



ATTACHMENT E - SLA

Service Level Agreement

This Service Level Agreement applies to all Services furnished to Customer and is incorporated into and made part of the Syringa Networks Standard Terms and Conditions to which this is attached (the "Terms").

1. SERVICE PERFORMANCE CRITERIA

1.1 Definitions. For purposes of this Exhibit B, the following terms have the meanings set forth below:

- (a) **Protected Service.** Service providing an ability to support failure recovery via redundant electronics in the network, diverse routing between two Syringa Networks' POPs, or both.
- (b) **Unprotected Service.** Service providing a single transport path between two locations, without redundant electronics or diverse routing capabilities.

1.2 Availability and Response.

- (a) **Service Availability per Monthly Billing Period.** Availability is defined as the relative amount of time a Circuit is usable during a monthly billing period. A Circuit is considered unavailable when there is a complete loss of use. Syringa Networks' Service availability objectives are 99.999% for Protected Service and 99.99% for Unprotected Service.
- (b) **Response and Repair Times.** Syringa Networks' Mean Time to Repair ("MTTR") objective is a yearly average of four (4) hours per occurrence with no single occurrence lasting more than six (6) hours from the time a Trouble Ticket is opened.

1.3 Credit Allowances for Service Outages. If Service is unavailable (other than as a result of a planned Service Outage) Customer is entitled to receive a credit for the prorated monthly recurring charge of the affected Service. A credit allowance will reduce Customer's payment obligation on a subsequent invoice. A Service Outage begins when Syringa is notified or becomes aware of Service unavailability, whichever first occurs, and ends when Service is restored. The total outage time of the Service Outage is the difference between its start and end times, less any delay time resulting from Syringa Networks' inability to access Customer or End User Premises. If Customer reports a Service Outage but declines to release the Service for testing and repair, the Service will be deemed to be impaired, but not a Service Outage eligible for a credit allowance.

1.4 No Credit Allowances. Credit allowances do not apply to Service Outages:

- (a) involving Off-Net service;

- (b) caused by Customer or its End User or their agents or contractors;
- (c) resulting from a power failure at Customer or End User Premises;
- (d) resulting from the failure or malfunction of non-Syringa-provided equipment or systems;
- (e) due to causes beyond the reasonable control of Syringa Networks, its contractors or its agents;
- (f) occurring during any period in which Syringa Networks is not given access to Customer or End-User Premises; or
- (g) occurring during any planned Service Outage, unscheduled emergency maintenance, scheduled maintenance, or changes in Service requested by Customer.

1.5 Credit Eligibility Requirements. To be eligible to receive a credit allowance for a Service Outage, Customer must:

- (a) report the Service Outage by causing Syringa Networks to open a Trouble Ticket;
- (b) submit a written request for a credit allowance to Syringa Networks within one-hundred (100) days of the date of the Service Outage;
- (c) be current on all payments due and owing to Syringa Networks; and
- (d) provide such other information as reasonably required by Syringa Networks to investigate the claim. Unless otherwise expressly allowed, Service Outages are not aggregated for purposes of determining a credit allowance.

1.6 Credits.

- (a) **Protected Service.** The following credit allowances apply to Service Outages involving On-Net Protected Service:

<u>Service Outage Length</u>	<u>Credit Per Circuit</u>
15 minutes or less	None
15 to 60 minutes	10% of the MRC
61 to 119 minutes	25% of MRC
120 to 179 minutes	50% of MRC
180 to 239 minutes	75% of MRC
240 minutes or greater	100%

- (b) **Unprotected Service.** The following credit allowances apply to Service Outages involving On-Net Unprotected Service:

<u>Service Outage Length</u>	<u>Credit Per Circuit</u>
Up to 240 minutes	None
240 to 480 minutes	25% of MRC
481 to 600 minutes	35% of MRC
601 to 720 minutes	50% of MRC
More than 720 minutes	100% of MRC

- (c) **Limitation on Credits.** The total credit allowances for any Circuit may not exceed 100% of the MRC for such Circuit during a monthly billing period.

1.7 Chronic Trouble.

- (a) **Reporting.** Whenever a Customer reports to Syringa Networks that a Service has Chronic Trouble, Syringa Networks will immediately investigate and report its findings to Customer.
- (b) **Protected Service.** A Protected Service is considered to have Chronic Trouble if it experiences four (4) or more related Service Outages of more than two (2) hours each OR for twenty-four (24) or more aggregate hours in any calendar month, and such Outages do not result from any one or more of the occurrences set forth in Section 1.4(b) through (g), above. If a Service experiences Chronic Trouble, Customer may obtain credit allowances for the Service Outages as set forth in Section 1.6 above or discontinue the affected Service(s) without any further liability to Syringa Networks (except to pay for Service up to the date of termination) upon furnishing written notice to Syringa Networks as set forth in the Terms. In addition, if a Service continues to experience Chronic Trouble during a thirty (30) day period after clearing the most recent Chronic Trouble for the same Service, Customer may discontinue the affected Service without any further liability to Syringa (except to pay for Service up to the date of termination) upon furnishing written notice to Syringa.
- (c) **Unprotected Service.** An Unprotected Service is considered to have Chronic Trouble if it experiences three (3) or more Service Outages of more than twelve (12) hours each or for more than forty-two (42) or more aggregate cumulative hours during any calendar month, and the Service Outages did not result from any one or more of the occurrences set forth in Section 1.4 above.

2. MAINTENANCE AND REPAIR

- 2.1 Performance.** Service maintenance and repair will be performed by Syringa Networks, or its designated contractor, at no additional charge to Customer whenever a Service failure is caused by Syringa or its contractor. Additionally, Syringa Networks or its contractor will provide all maintenance spares at Syringa Networks' sole cost and expense.

**DARK FIBER
IRU AGREEMENT**

Between

And

SYRINGA NETWORKS, LLC

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DARK FIBER IRU AGREEMENT

THIS DARK FIBER IRU AGREEMENT (this “Agreement” or “IRU Agreement”) is made as of the ____ day of _____, 20__ (the “Effective Date”) by and between _____ a(n) _____, with its principal place of business at _____ (“Grantor”) and Syringa Networks, LLC, an Idaho limited liability company, with its principal place of business at 12301 W. Explorer Drive, Boise, Idaho 83713 (“Grantee”) on behalf of itself and for the benefit of its Grantee Affiliates (hereinafter defined).

BACKGROUND:

WHEREAS, Grantor, through ownership or other arrangements, has or will have obtained rights to use a fiber optic communication system (the “Grantor Network”); and

WHEREAS, Grantee desires to acquire from Grantor, and Grantor desires to provide to Grantee, exclusive, indefeasible rights to use certain optical fibers in various portions of the Grantor Network upon the terms and conditions set forth below; and

WHEREAS, Grantor and Grantee, may add optical fibers to this Agreement from time to time by executing orders substantially in the form of Exhibit A hereto, subject to the terms and conditions set forth below; and

WHEREAS, the parties intend that Grantee, shall have substantially all benefits and risks associated with ownership of such optical fibers, subject to the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I **DEFINITIONS**

Capitalized terms and phrases used in this Agreement shall have the following meanings:

“Acceptance Date” means, with respect to an IRU Route Order, the date of Grantee’s acceptance or deemed acceptance of the Grantee Fibers under said IRU Route Order in accordance with Exhibit B (“Fiber Splicing, Testing, and Acceptance Standards and Procedures”).

“Acceptance Standards” means the standards set forth in Exhibit B (“Fiber Splicing, Testing, and Acceptance Standards and Procedures”) with respect to the testing and condition of the Grantee Fibers.

“Affiliates” means, as the context requires, with respect to Grantor or Grantee, an entity controlling, controlled by, or under common control with Grantor or Grantee by means of direct or indirect majority equity ownership.

“Agreement” shall have the definition set forth in the first paragraph, above.

“Cable” means the fiber optic cable included in the System and Fibers contained therein that includes the Grantee Fibers and associated splicing connections, splice boxes and vaults, and Conduit.

“Claims” shall have the definition set forth in Section 13.1 (“Indemnification”).

“Conduit” means a pipe, tube or compartmentalized structure which can contain one or more Innerducts through which Cable may be placed.

“Connecting Point” means a point where the network or facilities of Grantee will connect to the System.

“Contract Price” shall have the definition set forth in Section 3.1 (“Contract Price”).

“Demarcation Point” or “Demarc” means a point at which operational control or ownership of facilities changes from Grantor to Grantee. The demarcation point is the interface point between Grantee and Grantor’s Network.

“Effective Date” shall mean the date as set forth in the first paragraph of this Agreement.

“Facility Owners” means any entity (other than Grantor) (a) owning any portion of the System or any property or security interest therein, and/or (b) leasing to Grantor (or providing an IRU to Grantor in), any portion of the System.

“Fiber Acceptance Testing” means the fiber acceptance testing described in Exhibit B (“Fiber Splicing, Testing, and Acceptance Standards and Procedures”).

“Fiber Mileage” means the product of the Route Mileage along the Route under an IRU Route Order multiplied by the number of Grantee Fibers on such Route.

“Fibers” means any optical fibers contained in the System, including the Grantee Fibers, the fibers of Grantor and the fibers of any third party in the System excluding, however, any fibers granted (whether through ownership, IRU, lease, or otherwise) to Government Authorities in exchange for use of streets, rights of way, or other property under the jurisdiction of such entity.

“Force Majeure Event” shall have the definition set forth in Article XX (“Force Majeure”).

“Government Authority” means any domestic federal, state, regional, county, town, municipal, territorial, or tribal government, or any department, agency, bureau, or other

administrative, regulatory or judicial body of any such government, including, without limitation, obtaining authority from any of the foregoing.

“Grantee Equipment” means optronic (opto-electrical), electronic, or optical equipment or materials, facilities or other equipment owned, possessed or utilized (other than the Grantor Network) by Grantee.

“Grantee Fibers” means those certain Fibers in which Grantee shall be granted an IRU hereunder as set forth in Section 2.1 (“Conveyance”).

“Grantee IRU” shall have the definition set forth in Section 2.1 (“Conveyance”).

“Grantor Network” shall have the meaning set forth in the Background section of this Agreement.

“Handhole” means a buried box whose lid is even with the surface of the ground. It provides a space for splicing and terminating fiber cables.

“Indefeasible Right of Use” or “IRU” is an exclusive, indefeasible right to use the specified property, but does not convey title, ownership, or rights of possession or salvage in any real or personal property.

“Indemnified Party” shall have the definition set forth in Section 13.1 (“Indemnification”).

“Indemnifying Party” shall have the definition set forth in Section 13.1 (“Indemnification”).

“Innerduct” means a single enclosed raceway within a Conduit used to subdivide the Conduit, or any other type of duct including inner, quad, divided or other duct, within which a Cable may be placed.

“IRU Initial Term” shall have the definition set forth in Section 8.1 (“Term”).

“IRU Route Order” shall mean an IRU Route Order executed pursuant to this Agreement by and between Grantor and Grantee on the form set forth in Exhibit A (“IRU Route Order Form”).

“Lenders” means one or more financial institutions, vendors, suppliers or other financing sources utilized by Grantor or Grantee, as the case may be.

“Manhole” means an underground vault with an access hole and cover which supports traffic. This is considered to be a confined space.

“Master Maintenance Agreement” shall mean that certain Master Maintenance Agreement between the parties of even date herewith and attached hereto at Exhibit G, whereby Grantor provides maintenance services to Grantee in connection with the Grantee Fibers.

“Pro-Rata Share” shall have the definition pursuant to the formula set forth in Section 9.4 (“Payment of Relocation Costs”).

“Required Rights” shall have the definition set forth in Section 4.2 (“Acceptance Date Obligations”).

“Route” shall mean, with respect to an IRU Route Order, the route, including spurs, described in such IRU Route Order and upon which the Grantee Fibers for such IRU Route Order are or will be installed.

“Route Delivery Date” means the estimated delivery date set forth in an IRU Route Order for completion of Grantor’s Fiber Acceptance Testing and hand-over of Grantor’s test results for the Grantee Fibers subject to said IRU Route Order.

“Route Mileage” means, with respect to an IRU Route Order, the actual miles traversed by the Cable (including spurs) along the Route under such IRU Route Order based on the as-built drawings, or, if no as-built drawings yet exist, a bona fide estimate thereof.

“Segment” means a discrete portion of the System and may refer to a span, a portion between two points of presence or a point of presence and a System end point, or a portion of the System affected by a relocation or other circumstance.

“System” means, collectively, those certain portions of the Grantor Network, consisting of the Routes, along which Grantor grants Grantee an IRU in Grantee Fibers pursuant to IRU Route Orders hereunder.

“Taking” shall have the definition set forth in Section 9.3 (“Eminent Domain”).

ARTICLE II

CONVEYANCE OF IRU

2.1 Conveyance. Subject to the terms and conditions of this Agreement and commencing upon the Acceptance Date for the IRU Route Order, Grantor hereby grants and conveys to Grantee an exclusive IRU (the “Grantee IRU”) to use the specific strands of Fibers (“Grantee Fibers”) designated by Grantor in the Cable over the Route pursuant to said IRU Route Order. From time to time, IRUs in additional optical fibers on the Grantor Network may be granted from Grantor to Grantee by executing an IRU Route Order in the manner set forth in Section 2.3 or Section 2.4 below.

2.2 Rights Not Conveyed. Grantee agrees to accept said Grantee IRU and the rights and obligations pursuant thereto as set forth in this Agreement. Such IRU grant does not convey any legal title to any real or personal property, including the Fibers, the Cable, or the System. The Grantee IRU does not include any equipment used to transmit capacity over or “light” the Fibers.

2.3 IRU Route Orders. From time to time additional Grantee Fibers may be incorporated herein by execution of an IRU Route Order by Grantor and Grantee. Each IRU

Route Order shall identify the Route and specify the number of Fibers in which Grantee is granted an IRU. Each IRU Route Order shall incorporate the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained herein, Grantor shall not be obligated to accept or execute any order forms submitted by Grantee.

ARTICLE III **INVOICING AND PAYMENT**

3.1 **Contract Price.** The price for the Grantee Fibers shall be set forth in the IRU Route Order for said Fibers (the “Contract Price”). Unless otherwise agreed by the parties and set forth in the IRU Route Order, Grantor will invoice Grantee and Grantee shall pay Grantor the Contract Price as follows:

- (a) After execution of the IRU Route Order, Grantor shall invoice Grantee for fifty percent (50%) of the Contract Price set forth in said IRU Route Order, and payment of such invoice shall be due thirty (30) calendar days following receipt of the invoice.
- (b) Following the Acceptance Date of the Route for the IRU Route Order, Grantor shall invoice Grantee for the remaining fifty percent (50%) of the Contract Price, and payment of such invoice shall be due thirty (30) calendar days following receipt of the invoice.

3.2 **Method of Payment.** Subject to the provisions of Section 12.2 (“Disputed Amounts”), Grantee shall make payment of undisputed charges pursuant to Section 3.1 (“Contract Price”) above by check or by wire transfer of immediately available funds to the United States account or accounts designated by Grantor in United States currency. Grantee shall make payment of all other undisputed charges that may become due under this Agreement by check or by wire transfer of immediately available funds to the United States account or accounts designated by Grantor in United States currency in accordance with Section 3.3 below, unless otherwise agreed to by the parties.

3.3 **Time of Payment.** Grantor will invoice Grantee for all charges due under this Agreement. Except as provided in Section 3.1 (“Contract Price”) and subject to Section 12.2 (“Disputed Amounts”), all undisputed amounts shall be paid within thirty (30) calendar days following receipt of the invoice, as determined by Section 17.2 (“Notice and Delivery”).

ARTICLE IV **ACCEPTANCE**

4.1 **Fiber Acceptance Testing.** Prior to delivery, Grantor shall test the Grantee Fibers in accordance with procedures specified in Exhibit B (“Fiber Splicing, Testing, and Acceptance Standards and Procedures”) to verify the Grantee Fibers are installed and operating in accordance with specifications described in Exhibit C (“Fiber Specifications”) and Exhibit D (“Cable Installation Specifications”). Grantor shall provide Grantee at least fifteen (15) days advance notice of the date and time of final end-to-end testing for an IRU Route Order. Grantee shall have the opportunity to have a person or persons present to participate in and observe

Grantor's final end-to-end testing. Within fifteen (15) days following the conclusion of final end-to-end testing, Grantor shall provide Grantee with certified test results as set forth in Exhibit B ("Fiber Splicing, Testing, and Acceptance Standards and Procedures") and shall deliver the Grantee Fibers to Grantee for Acceptance Testing in accordance with the Route Delivery Date specified in the applicable IRU Route Order. Unless otherwise stated in the IRU Route Order, Exhibit B ("Fiber Splicing, Testing, and Acceptance Standards and Procedures") hereto sets forth Fiber Acceptance Testing procedures and test deliverables that Grantor shall provide to Grantee, including procedures for determining the Acceptance Date for the Grantee Fibers.

4.2 Acceptance Date Obligations. As of the Acceptance Date for the IRU Route Order, Grantor shall have obtained all rights, licenses, authorizations, easements, leases, fee interests, or agreements that provide for the occupancy of the associated Route of real property or fixtures (such as conduit, bridges, river crossings, or transmission towers) on which the Route is located. In the event Grantor does not own a portion of the System, Grantor shall have obtained (by IRU agreement, lease, or otherwise) the right to occupy the real property or fixtures along any portion of the Route it does not own. The rights Grantor is required to obtain pursuant to this Section 4.2 are referred to as "Required Rights." Subject to the terms of Section 8.2 ("Condition on Renewal; Termination after Initial Term"), Grantor shall maintain the Required Rights throughout the IRU Initial Term and any extension thereof.

4.3 Provision of As-Built Drawings. Unless otherwise stated in the IRU Route Order, within forty-five (45) days after the Acceptance Date for the IRU Route Order, Grantor will provide Grantee with as-built drawings for the associated Route complying with the specifications for as-built drawings set forth in Exhibit E ("As-Built Drawing Specifications"). If there is a material change in the as-built drawings as a result of maintenance or relocation, Grantor shall deliver updated as-built drawings to Grantee with respect to the relevant Segment within forty-five (45) calendar days following the completion of such change.

ARTICLE V

CONNECTION AND ACCESS TO THE SYSTEM

5.1 Connections. Subject to the provisions herein and in the applicable IRU Route Order, Grantee shall pay for and arrange all connections of its facilities with the Grantee Fibers. Grantee shall pay Grantor for any charges incurred as a result of making such connections as set forth in the applicable IRU Route Order. Thereafter, Grantee may request connection in accordance with Attachment D ("Interconnection Service Order") of the Master Maintenance Agreement. The charges shall be agreed to by the parties and shall be invoiced and paid as set forth in such Service Order Request.

5.2 No Unauthorized Access to System. Grantee shall not access any part of the System (other than pursuant to the Master Maintenance Agreement) without the prior written consent of Grantor, and then only upon the terms and conditions specified by Grantor.

ARTICLE VI

COLOCATION AND MAINTENANCE

Grantor will provide, and Grantee will purchase, colocation and maintenance services in accordance with the provisions of a separate agreement attached hereto as Exhibit G (“Master Maintenance Agreement”) and as may be set forth in an IRU Route Order.

ARTICLE VII

USE OF THE SYSTEM

7.1 **Grantee’s Rights Exclusive.** Grantee may use the Grantee Fibers for any lawful purpose. Grantor shall have no right to use the Grantee Fibers during the term of the applicable IRU Route Order, except in the event of an uncured Grantee default with respect to such IRU Route Order as set forth in Article XII (“Default and Cure”).

7.2 **Notice of Damage.** Grantee shall promptly notify Grantor of any matters pertaining to any damage or impending damage to or loss of the use of the System that are known to it and that could reasonably be expected to affect the System adversely. Grantor shall promptly notify Grantee of any matters pertaining to any damage or impending damage to or loss of the Grantee Fibers that are known to it and that could reasonably be expected to adversely affect the Grantee Fibers.

7.3 **Preventing Interference with Other Fibers.** Neither Grantee nor Grantor shall use equipment, technologies, or methods of operation that interfere in any way with or adversely affect the System or the use of the System by the other party or third parties or their respective Fibers, equipment, or facilities associated therewith. Each party shall take all reasonable precautions to prevent damage to the System or to Fibers used or owned by the other party or third parties. Notwithstanding the above, the provisions of this Section shall not prevent a party from using commercially reasonable equipment, technologies, or methods of operation if the interference or adverse effect on the other party or a third party results primarily from such other party or third party’s use of equipment, technologies, or methods of operation that are not commercially reasonable or that are not standard in the telecommunications industry.

7.4 **Liens.** Grantor shall not cause or permit any of Grantee’s rights under this Agreement to become subject to any mechanic’s, materialmen’s, vendor’s or any similar lien, or to any tax lien (other than a lien for taxes which are not yet due and payable). Grantee acknowledges that it has no title to and cannot and shall not in any way encumber the Cable or any other property that is the subject of this Agreement that is not owned by Grantee (including, without limitation, rights-of-way and Grantor Fibers), without prior notice to and consent of Grantor, which consent shall not be unreasonably withheld. If a party breaches its obligations under this Section, it shall promptly notify the other party in writing, shall use commercially reasonable efforts to cause such lien to be discharged and released of record without cost to the other party, and shall indemnify the other party against all costs and expenses (including reasonable attorneys’ fees and court costs at trial and on appeal) incurred in discharging and releasing such lien.

ARTICLE VIII

TERM AND TERMINATION

8.1 **Term.** The term of this Agreement shall commence on the Effective Date and, except as otherwise provided in this Agreement, shall continue in effect for a period of ten (10) years (the “Initial Term”). Thereafter, this Agreement shall be automatically renewed for successive two (2) year periods (each such period, an “Additional Term” and, together with the Initial Term, the “Term”) unless and until terminated pursuant to Article XII hereof or by either party upon ninety (90) days written notice to the other party. Notwithstanding the foregoing, the term of the IRU of an IRU Route Order shall begin on the Acceptance Date for such IRU Route Order and shall, subject to earlier termination pursuant to Article XII (“Default and Cure”), expire at the end of the time period set forth in the applicable IRU Route Order as the term (the “IRU Term”). The terms of this Agreement shall continue to apply to each IRU ordered pursuant to this Agreement that extend beyond the Term.

8.2 **Effect of Termination.** No termination of this Agreement shall affect the rights or obligations of any party hereto:

- (a) with respect to any payment hereunder for services rendered prior to the date of termination; or
- (b) pursuant to the respective obligations of the parties under this Agreement that by their nature would continue beyond the termination, including but not limited to obligations under Article X (“Audit Rights”), Article XIII (“Indemnification”), Article XIV (“Limitation of Liability”), Article XV (“Insurance”), Article XVI (“Taxes and Governmental Fees”), Article XVIII (“Non-Disclosure; Publicity and Advertising”) and Article XXII (“Rules of Construction”).

ARTICLE IX

RELOCATION; CONDEMNATION AND EMINENT DOMAIN

9.1 **Relocation Procedures.** If Grantor determines in its reasonable business judgment, or is required by a third party with legal authority to do so, to relocate all or any portion of the System or any of the facilities used in the provision of the Grantee IRU, Grantor shall provide Grantee sixty (60) calendar days prior written notice of any such relocation, if possible, and shall proceed with such relocation. Grantor shall have the right to direct such relocation, including the right to determine the extent of, the timing of, and methods to be used for such relocation, provided that any such relocation:

- (a) shall be constructed and tested in accordance with then-current industry standards;
- (b) shall not result in an adverse change to the operations, performance, Connecting Points with the network of Grantee, db/km loss or end points of a Segment; and
- (c) shall not unreasonably interrupt service on the System.

Grantor shall utilize commercially reasonable efforts, in coordination and cooperation with Grantee, to accomplish the relocation.

9.2 Condemnation. In the event that any portion of the Grantee Fibers of an IRU Route Order becomes the subject of a proceeding which is not dismissed within one hundred eighty (180) days after the date of commencement of said proceeding and which could reasonably be expected to result in a Taking (as defined in this Article IX) by any governmental agency or other party having the power of eminent domain for public purpose or use, both parties to such IRU Route Order shall be entitled, to the extent permitted by law, to participate in such condemnation proceeding for compensation by either joint or separate awards for the economic value of their respective interests in the Grantee Fibers of such IRU Route Order that are subject to the condemnation proceeding.

9.3 Eminent Domain. Should any portion of the System or any other interest belonging to Grantor be acquired by eminent domain, nationalization, or expropriation (each of which, a “Taking”) by any authority or entity possessing such power, then each party shall be excused from performance of its obligations to the extent provided in Article XX (“Force Majeure”). In the proceeding for any such Taking or an involuntary discontinuance of the use of a portion of the System in anticipation of a Taking, the interests of Grantee and Grantor in the affected portion shall be severed. Any awards resulting from the proceeding or otherwise provided shall be allocated between Grantee and Grantor in accordance with such interests. In addition, Grantee and Grantor shall each be entitled to claim and receive the portion of the total award attributable to its interest in the System and may claim damages payable on account of relocation or re-routing expenses relating to the System. Except to the extent set forth in this Section 9.3, the provisions of Sections 9.1 (“Relocation Procedures”) and 9.4 (“Payment of Relocation Costs”) shall apply to any relocation resulting from a Taking.

9.4 Payment of Relocation Costs. In the event that Grantor is required by any third party, pursuant to any utility agreement or otherwise, to relocate all or any portion of the Cable, including the Grantee Fibers, Grantor will relocate the Cable as required and will use its commercially reasonable efforts to secure an agreement for reimbursement for the costs of such relocation from any third party requiring such relocation. In the event that Grantor is not reimbursed by such third party for the costs of relocation, Grantee shall pay its “Pro-Rata Share” (i.e., a proportion equal to a fraction, the numerator of which is the number of Grantee Fibers in the affected portion of the System and the denominator of which is the total number of Fibers in the Cable on the affected portion of the System) of the costs associated with the relocation of the Cable.

$$\frac{\text{The \# of Grantee Fibers in the Cable}}{\text{Total \# of Fibers in Cable.}}$$

Such costs shall be invoiced to Grantee and shall be payable by Grantee as set forth in Section 3.3 (“Time of Payment”). Notwithstanding the foregoing, Grantee’s obligation to pay its Pro-Rata Share of Grantor’s costs shall apply only to the extent Grantor relocates the System (i) for bona fide operational, safety or security reasons, (ii) under legal compulsion, or (iii) under bona fide threat of legal compulsion.

ARTICLE X

AUDIT RIGHTS

Each party shall keep such books and records (which shall be maintained on a consistent basis and substantially in accordance with generally accepted accounting principles) as shall readily disclose the basis for any charges (except charges fixed in advance by this Agreement or by separate agreement of the parties) or credits, ordinary or extraordinary, billed or due to the other party under this Agreement and shall make them available for examination, audit, and reproduction by the other party and its duly authorized agents or representatives for a period of three (3) years after such charge or credit is billed or due.

ARTICLE XI

WARRANTIES AND DISCLAIMERS

11.1 Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in this Agreement, Grantor and Grantee each represents and warrants to the other party that:

- (a) it has the full right and authority, and has taken all necessary corporate or similar action, to enter into, execute, deliver, and perform its obligations under this Agreement and its IRU Route Order(s);
- (b) its execution of and performance under this Agreement and its IRU Route Order(s) shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal government agency, court, or body; and
- (c) that the performances contemplated under this Agreement are not inconsistent with any underlying third-party IRU agreements.

11.2 Warranties Relating to Cables. Grantor represents and warrants that as of the Acceptance Date for a given IRU Route Order:

- (a) unless otherwise set forth in the IRU Route Order, the Grantee Fibers for such IRU Route Order shall meet or exceed the applicable specifications set forth in Exhibit C("Fiber Specifications"), as identified in the IRU Route Order;
- (b) except as otherwise stated herein or in the IRU Route Order, the Cable is installed and constructed in accordance with the specifications set forth in Exhibit D ("Cable Installation Specifications"); provided, however, with respect to the portion(s) of the System that Grantor did not construct or supervise, that while the installation and construction of the Cable may not meet the specifications listed in Exhibit D, any deviation therefrom will not materially diminish the performance, reliability, or expected useful life of the Grantee Fibers, and such Cable was installed and constructed substantially in accordance with industry standards.

11.3 Pass Through of Applicable Third-Party Warranties. To the extent Grantor is permitted to do so pursuant to the terms of any applicable third party warranty relating to any

portion of the Grantee Fibers, Grantor agrees to “pass through” to Grantee the benefit of Grantor’s rights with respect to any such warranties and to reasonably cooperate in connection with Grantee’ enforcement thereof.

ARTICLE XII

DEFAULT AND CURE

12.1 Default and Cure. Except as set forth in Section 12.2 (“Disputed Amounts”), a party shall be in default under this Agreement if (i) that party fails to make a payment of any undisputed amount required under this Agreement and such failure continues for more than fifteen (15) days after such party receives written notice of such failure from the non-defaulting party; or (ii) such party fails to perform or comply with any other obligation, agreement, term, or provision of this Agreement applicable to it and such failure continues for more than thirty (30) days after such party receives written notice of such failure from the non-defaulting party; provided, however, that if such default cannot reasonably be cured within such thirty-day (30) period and if the first party is proceeding promptly and with due diligence in curing the same, the time for curing such default shall be extended for a period of time, not to exceed ninety (90) days, as may be necessary to complete such curing. Any event of default may be waived at the non-defaulting party’s option. Upon the failure of a party to cure any such default after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of this Agreement, terminate the Agreement and/or pursue any legal remedies it may have under applicable law or principles of equity relating to such breach. Notwithstanding the foregoing, default by one party with respect to an IRU Route Order shall not be deemed to be a default as to any other IRU Route Order.

12.2 Disputed Amounts. Notwithstanding any provision to the contrary in Section 12.1 or 12.3, either party shall have the right to dispute any amount due under this Agreement, provided that (i) the disputing party provides written notice of such dispute to the other party by the date that any such amount is due; (ii) the disputing party presents a written statement of any billing discrepancies to the other party in reasonable detail together with supporting documentation and evidence within fifteen (15) days after the date that any such amount is due; (iii) the disputing party pays into an escrow account of a nationally chartered domestic bank pending resolution of the dispute any such disputed amount exceeding Five thousand and no/100 dollars (\$5,000); and (iv) the disputing party negotiates in good faith with the other party to resolve any such dispute within sixty (60) calendar days of the date any such amount is due. The party paying any amounts into escrow shall provide notice of such payment to the other party. The accrued interest on the funds held in escrow shall be paid as determined by the parties in their resolution of the dispute in lieu of any other interest charge. Grantee shall pay disputed amounts mutually agreed upon and in favor of Grantor within thirty (30) days of the resolution of such dispute. Grantor shall credit disputed amounts mutually agreed upon and in favor of Grantee on Grantee’s next invoice.

12.3 Failure to Pay. If Grantee fails to pay any undisputed amounts owed under Section 3.1 (“Contract Price”) of this Agreement with respect to an IRU Route Order, and fails to pay all of such amounts within thirty (30) days of Grantor’s written notice thereof, Grantor may, with respect to such IRU Route Order, in addition to the remedies set forth in Section 12.1,

disconnect the Grantee Fibers from all Connecting Points and from all Grantee Equipment on Grantor's premises and cease providing power and other services pursuant to such IRU Route Order. Grantor shall restore such Connecting Points and Grantee Equipment connections and resume providing services pursuant to the Master Colocation and Maintenance Agreement only if Grantee (a) pays Grantor's bona fide estimate of the costs incurred or to be incurred pursuant to the preceding sentence and this sentence, and (b) pays all past-due amounts with applicable interest. In the event that Grantee does not take the actions described in clauses (a) and (b) above within thirty (30) days after Grantor's disconnection of the Grantee Fibers or cessation of services as described above in this Section, then, in addition to all other remedies described in this Section 12.3, this Article XII or otherwise in this Agreement, Grantor shall have the right to terminate such IRU Route Order with respect to this Agreement and its Exhibit G ("Master Colocation and Maintenance Agreement") if Grantee fails to pay all amounts in arrears, together with applicable interest, within thirty (30) days of receipt of further notice from Grantor.

ARTICLE XIII **INDEMNIFICATION**

13.1 Subject to the provisions of Article XIV, each party shall defend, indemnify and hold harmless the other party, its parents, subsidiaries and affiliates, and its and their respective directors, officers, partners, employees, agents, successors and assigns ("Indemnified Parties") from any third party claims, demands, lawsuits, damages, liabilities, expenses (including, but not limited to, reasonable fees and disbursements of counsel and court costs), judgments, settlements and penalties of every kind ("Claims"), that may be made: (a) for injuries (including death) to persons or damage to property, including theft, resulting in whole or in part from the acts or omissions of the indemnifying party or those persons furnished by the indemnifying party, including its subcontractors (if any); (b) by persons furnished by the indemnifying party and its subcontractors (if any) under Worker's Compensation or similar acts; (c) under any federal securities laws or under any other statute, at common law or otherwise arising out of or in connection with the performance by the indemnifying party contemplated by this Agreement or any information obtained in connection with such performance.

13.2 The Indemnified Party will provide the other with prompt, written notice of any written Claim covered by this indemnification and will cooperate appropriately with in connection with the indemnifying party's evaluation of such Claim. The indemnifying party shall defend any Indemnified Parties, at the Indemnified Party's request, against any Claim. Promptly after receipt of such request, the indemnifying party shall assume the defense of such Claim with counsel reasonably satisfactory to the Indemnified Party. No settlement or compromise of any such Claim or consent to the entry of any judgment shall be made without the prior written consent of each Indemnified Party and without an unconditional release of all claims by each claimant or plaintiff in favor of each Indemnified Party.

ARTICLE XIV **LIMITATION OF LIABILITY**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, ITS EMPLOYEES, SUBCONTRACTORS, AND/OR AGENTS, OR ANY THIRD PARTY, FOR

ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE DAMAGES, OR LOST PROFITS FOR ANY CLAIM OR DEMAND OF ANY NATURE OR KIND, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF.

ARTICLE XV

INSURANCE

15.1 Obligation to Obtain. During the term of an IRU Route Order, the parties to such IRU Route Order shall each obtain and maintain not less than the following insurance:

- (a) Commercial General Liability insurance on an occurrence form with a combined single limit of \$2,000,000 per occurrence and annual aggregate of \$2,000,000, for bodily injury and property damage including coverage for premises-operations, blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations and explosion, collapse and underground.
- (b) Worker's Compensation insurance complying with the laws of the State or States having jurisdiction over each employee of the respective parties and Employer's Liability Insurance with limits not less than \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit. Each party will comply with Worker's Compensation laws in monopolistic states.
- (c) Automobile Liability Insurance with a combined single limit of \$2,000,000 each occurrence for bodily injury and property damage, to include coverage for all owned, non-owned, and hired vehicles.
- (d) The limit requirements stated above in Section 15.1(a), (b) and (c) may be met through a combination of primary and/or excess umbrella policies. The limits set forth above are minimum limits and shall not be construed to limit the liability of either party.

15.2 Policy Requirements. Each party shall obtain and maintain the insurance policies required above with companies rated A- or better by Best's Key Rating Guide. The other party, its Affiliates, officers, directors, and employees, and any other party entitled to indemnification hereunder shall be named as additional insureds on the policies in Section 15.1(a) and Section 15.1(c) above. Each party shall provide the other party with an insurance certificate evidencing the insurance requirements of this Article with the execution of the applicable IRU Route Order and with each policy renewal. The insurance certificate shall indicate that the other party shall be notified not less than thirty (30) calendar days prior to any cancellation. If either party provides any of the foregoing coverages through a claims-made policy basis, that party shall cause such policy or policies to be maintained for at least three (3) years beyond the expiration of the applicable IRU Route Order. The policies provided shall be primary as respects the negligence of the named insured.

15.3 Waiver of Subrogation. The parties shall each obtain from the insurance companies providing the coverages required by this Agreement a waiver of all rights of

subrogation or recovery in favor of the other party and, as applicable, its members, managers, shareholders, Affiliates, assignees, officers, directors, and employees.

15.4 Blanket Policies. Nothing in this Agreement shall be construed to prevent either party from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies of insurance that meet or exceed the requirements of this Article.

ARTICLE XVI

TAXES AND GOVERNMENTAL FEES

16.1 Grantee Obligations. Subject to Section 16.2, if Grantor is required by law to collect any federal, state or local sales, excise or other similar transfer tax from Grantee with respect to an amount to be paid by Grantee to Grantor under this Agreement, then (i) Grantor shall bill such tax to Grantee in the manner and for the amount required by law, (ii) Grantee shall pay such billed amount of tax to Grantor, and (iii) Grantor shall remit such billed amount of tax to the appropriate tax authorities as required by law. Except as provided in this Section 16.1 and in Section 16.3, Grantor shall bear the costs of all taxes and other governmental charges and fees of whatever nature that are assessed against or are otherwise the legal responsibility of Grantor with respect to itself, with respect to the System, or with respect to any service furnished by or on behalf of Grantor to Grantee under this Agreement.

16.2 Exception. Grantor shall not bill to or otherwise attempt to collect from Grantee any tax with respect to which Grantee has provided Grantor with an exemption certificate, a direct pay number, or other reasonable basis for relieving Grantor of its responsibility to collect such tax from Grantee; provided, however, that, as between Grantor and Grantee, Grantee shall be liable for tax, and for interest and penalty imposed directly with respect thereto, that Grantor fails to collect from Grantee by reason of the immediately preceding provision, if a tax authority determines, in a proceeding in which Grantee has been afforded the opportunity to meaningfully participate, that such tax should have been collected by Grantor from Grantee.

16.3 Reimbursement of Taxes Paid on Grantee' Behalf. Grantor shall timely report and pay any and all ad valorem taxes attributable to the System, including the Grantee Fibers if permitted under applicable law, to the local ad valorem taxing authority regardless of whom such taxing authority may assess and Grantee shall promptly reimburse Grantor for its Pro-Rata Share of such taxes after receipt by Grantee of an invoice for such amount.

ARTICLE XVII

NOTICE

17.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other party as follows:

If to Grantee:

with a copy to:

If to Grantor:

Syringa Networks, LLC
Attn: CEO
12301 W. Explorer Drive
Boise, Idaho 83713
Facsimile No.: (208) 229-6100

17.2 **Notice and Delivery.** Unless otherwise provided herein, notices shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile, or on the day after being sent when sent by overnight delivery service. A notice that is sent by facsimile shall also be sent by one of the other means set out by this Section 17.2.

ARTICLE XVIII
NON-DISCLOSURE; PUBLICITY AND ADVERTISING

18.1 **Non-Disclosure.** The non-disclosure provisions set forth as Exhibit F (“Non-Disclosure”) shall apply to this Agreement and all IRU Route Orders hereunder.

18.2 **Publicity and Advertising.** Grantor agrees to submit to Grantee’s corporate communications department for written approval all advertising, sales promotion, press releases and other publicity matters relating to a product furnished and/or the services performed pursuant to this Agreement, when Grantee’s name or mark (or the name or mark of any of its Affiliates) is mentioned or language from which the connection of said name or mark may be inferred or implied. Such requests shall be sent to:

ARTICLE XIX
RELATIONSHIP OF THE PARTIES

Each party, in performing any of its obligations hereunder, is acting solely as an independent contractor and not as an agent of any other party. Persons furnished by a party shall be solely the employees or agents of such party and shall be under the sole and exclusive direction and control of such party. They shall not be considered employees of the other party for any purpose. Each party shall comply with all applicable federal, state and local laws, government regulations and orders, including, without limitation, laws, government regulations and orders with respect to employment. In addition, neither party shall not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, national origin, age, physical or mental disability, veteran status, or any other unlawful criterion, and each such party shall comply with all applicable laws against discrimination and all applicable rules, regulations and orders issued thereunder or in implementation thereof. If applicable, the Equal Opportunity Clauses set forth in 41 C.F.R. §§ 60-1.4(a), 60-250.5(a) and 60-741.5(a) are incorporated by reference herein. Each party shall also be responsible, respectively, for payment of taxes, including federal, state, and municipal taxes, chargeable or assessed with respect to its employees or agents, such as social security, unemployment, worker's compensation, disability insurance and federal and state income tax withholding. Neither party undertakes by this Agreement or otherwise to perform or discharge any liability or obligation of the other party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other party. Nothing contained in this Agreement is intended to give rise to a partnership or joint venture between the parties or to impose upon the parties any of the duties or responsibilities of partners or joint venturers.

ARTICLE XX
FORCE MAJEURE

Neither party shall be in default under this Agreement or an IRU Route Order with respect to any failure or delay in performing its obligations hereunder to the extent that such failure or delay is caused by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the Delayed Party (each a "Force Majeure Event"). If any such Force Majeure Event occurs, the party delayed or unable to perform ("Delayed Party"), upon giving prompt notice to the other party, shall be excused from such performance or non-performance, as the case may be, under the Agreement or the impacted IRU Route Order on a day-to-day basis during the continuance of such Force Majeure Event (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period); provided, however, that the party so affected shall use its best reasonable efforts to avoid or remove such Force Majeure Event, and both parties shall proceed immediately with the performance of their obligations under this Agreement or the impacted IRU Route Order whenever such causes are removed or cease.

ARTICLE XXI

[Intentionally omitted]

ARTICLE XXII

RULES OF CONSTRUCTION

22.1 Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The word “including” means “including, but not limited to.” “Days” refers to calendar days, except that references to “business days” exclude Saturdays, Sundays and holidays. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

22.2 Cumulative Remedies; Insurance. Except as set forth to the contrary herein, any right or remedy of Grantor or Grantee shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not. The provisions of Article XV (“Insurance”) shall not be construed as limiting the Indemnifying Party’s obligations pursuant to Article XIII (“Indemnification”) or other provisions of this Agreement.

22.3 No Third-Party Rights. Nothing in this Agreement is intended to provide any legal rights to anyone not an executing party of this Agreement except under the indemnification and insurance provisions and Section 2.4 (“Affiliate Orders”) and except that the Facility Owners or Lenders shall be entitled to rely on and have the benefit of Section 25.2 (“Amendment”).

22.4 Agreement Fully Negotiated. This Agreement has been fully negotiated between and jointly drafted by Grantor and Grantee.

22.5 Document Precedence. In the event of a conflict between the provisions of this Agreement and those of any Exhibit, the provisions of this Agreement shall prevail and such Exhibits shall be corrected accordingly. In the event of a conflict between the provisions of this Agreement and those of an IRU Route Order, the provisions of this Agreement shall prevail and the IRU Route Order shall be corrected accordingly. In the event of a conflict between the provisions of an IRU Route Order and those of any Exhibit to this Agreement, the provisions of the Exhibit shall prevail and the IRU Route Order shall be corrected accordingly. For the avoidance of doubt, to the extent an IRU Route Order includes provisions differing from this Agreement and/or its Exhibits pursuant to the terms of this Agreement expressly permitting an IRU Route Order to provide “otherwise,” such difference shall not be deemed a “conflict” for purposes of this Section. In the event of a conflict between the provisions of an Exhibit and those of any other Exhibit, the provisions of the first Exhibit listed in the following list shall prevail: Exhibit F (“Non-Disclosure”), Exhibit B (“Fiber Splicing, Testing, and Acceptance Standards and Procedures”), Exhibit D (“Cable Installation Specifications”), Exhibit E (“As-Built Drawing Specifications”), Exhibits C (“Fiber Specifications”) and Exhibit G (“Master Colocation and Maintenance Agreement”).

22.6 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, construction, testing, acceptance, and maintenance practices shall be agreed to by both parties before any and all work begins.

22.7 Cross References. Except as the context otherwise indicates, all references to Exhibits, Articles, Sections, Subsections, Clauses, and Paragraphs refer to provisions of this Agreement.

22.8 Limited Effect of Waiver. The failure of either Grantor or Grantee to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

22.9 Applicable Law. The domestic laws of the State of Idaho, without reference to its choice of law principles, shall govern this Agreement and all IRU Route Orders and they shall be construed accordingly subject to the exclusive jurisdiction of the federal or state courts in Idaho. Any legal action or proceeding brought by either party against the other party for claims arising out of or relating to this Agreement shall be brought in the State of Idaho, and/or, if applicable, the United States District Court for the District of Idaho. The application of the UN Convention on Contracts for the International Sale of Goods is specifically excluded from this Agreement.

22.10 Severability. If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then (i) both parties shall be relieved of all obligations arising under such provision and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent, and (ii) the remainder of this Agreement shall be valid and enforceable.

ARTICLE XXIII

ASSIGNMENT

23.1 Right to Assign. Neither party shall assign any right or interest under this Agreement without the prior written consent of the other party, except as provided hereinafter. Such consent may not be unreasonably withheld. Any attempted assignment in contravention of this provision shall be void and ineffective. Any assignment of monies owed or owing shall be void and ineffective to the extent that such assignment attempts to impose upon either party obligations to the other party additional to the payment of such monies, or to preclude either party from dealing solely and directly with the other party in all matters pertaining to this Agreement including the negotiation of amendments or settlements of charges due. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. The foregoing notwithstanding, Grantor shall have the right at any time, without the prior consent of Grantee, to mortgage, pledge, grant a security interest in its interest in this Agreement and/or any of Grantor's System in connection with any borrowing or financing activity of Grantor, and the rights of Grantee granted under this Agreement and/or the IRU Route Orders shall be subject and subordinate to the lien of any mortgage, pledge, security interest or assignment now in place or hereafter granted by Grantor; provided, however, that in such event Grantor will make commercially reasonable efforts to ensure that Grantee's rights under this Agreement and the IRU Route Orders to use the Grantee Fibers and obtain the services described in Exhibit G ("Master Colocation and Maintenance Agreement") hereto will not be materially impeded; and further provided, however, that in such event and at the request

of Grantee, Grantor will use commercially reasonable efforts to obtain from any such interest holder a written non-disturbance agreement substantially to the effect that such interest holder acknowledges Grantee's rights and interests under this Agreement and the IRU Route Orders and agrees not to disturb such rights and interests. In the event any of Grantee's rights under this Agreement and its IRU Route Orders are so compromised by the activities of a lienholder as described above and Grantor ceases performing its obligations under this Agreement and Exhibit G hereto ("Master Colocation and Maintenance Agreement"), then Grantee may terminate the affected IRU Route Order(s) with respect to this Agreement and the Master Colocation and Maintenance Agreement, and, in the event of such termination, Grantor shall refund to Grantee the cost of any prepaid but unused services with respect to such IRU Route Order(s) (including but not limited to the unused portion of the associated Contract Price; for example, if this remedy is invoked during the 11th year of a 20-year Term, the portion of the Contract Price to be refunded hereunder is 9/20^{ths}).

23.2 Right to Subcontract. Grantor may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder or may have the underlying facility owner or its contractor perform such obligations, but Grantor in any event shall remain fully and directly liable to Grantee for the performance of such services and obligations. Notwithstanding the foregoing, Grantor shall remove, at Grantee's request, any subcontractor furnished by Grantor who, in Grantee's opinion, is incapable, uncooperative or otherwise unacceptable in the execution of the services to be provided under this Agreement. Furthermore, Grantor shall bind its subcontractors, if any, to ensure that such subcontractors agree to comply with all applicable federal, state and local laws, government regulations and orders, including, without limitation, laws, government regulations and orders with respect to employment. In addition, such subcontractors shall agree not to discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, national origin, age, physical or mental disability, veteran status, or any other unlawful criterion, and such subcontractors shall agree to comply with all applicable laws against discrimination and all applicable rules, regulations and orders issued thereunder or in implementation thereof. If applicable, the Equal Opportunity Clauses set forth in 41 C.F.R. §§ 60-1.4(a), 60-250.5(a) and 60-741.5(a) shall be incorporated by reference in the relevant subcontract.

23.3 Grantee Affiliate Assignment. Notwithstanding the prohibitions set forth in Section 23.1 above, Grantee may assign this Agreement or Grantor may assign any of its IRU Route Orders to another Grantee Affiliate.

ARTICLE XXIV **[intentionally omitted]**

ARTICLE XXV **ENTIRE AGREEMENT; AMENDMENT; EXECUTION**

25.1 Integration; Exhibits. This Agreement constitutes the entire and final agreement and understanding between Grantor and Grantee with respect to the subject matter

hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are made a part of this Agreement by reference.

25.2 Amendment. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Grantor and Grantee, and any such amendment shall be effective with respect to all IRU Route Orders, unless otherwise provided by such amendment. No such amendment, modification, or supplement shall result in any modification of any indemnity benefiting any Facility Owners, Lenders or their respective affiliates.

25.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

25.4 Facsimile Delivery. This Agreement may be duly executed and delivered by a party by execution and facsimile delivery of the signature page of a counterpart to the other party, provided that, if delivery is made by facsimile, the executing party shall promptly deliver a complete counterpart that it has executed to the other party.

ARTICLE XXVI **FOREIGN-BASED SERVICES**

Grantor represents, warrants, and covenants that no service performed by Grantor pursuant to this Agreement shall be provided, directed, controlled, supervised, or managed, and no data relating to any such service shall be stored, at, in, or through a site located outside of the United States.

ARTICLE XXVII **SIGNATURES**

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Grantor and Grantee have executed this Agreement as of the dates set forth below.

GRANTEE PARTNERSHIP
D/B/A GRANTEE

SYRINGA NETWORKS, LLC

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



STANDARD TERMS AND CONDITIONS

STANDARD TERMS AND CONDITIONS

The following STANDARD TERMS AND CONDITIONS ("Terms") are the terms and conditions under which Syringa Networks, LLC ("Syringa Networks") agrees to sell its services ("Services") to a customer ("Customer") of such Services where such Customer has not entered into a Master Services Agreement with Syringa Networks.

THE FOLLOWING IS A LEGALLY BINDING AGREEMENT BETWEEN CUSTOMER AND SYRINGA NETWORKS WITH RESPECT TO SERVICES. EACH CUSTOMER EXPRESSLY REPRESENTS AND WARRANTS THAT (i) THE CUSTOMER HAS READ, UNDERSTOOD, ACCEPTED AND AGREED TO EACH AND EVERY ONE OF THE TERMS SET FORTH BELOW; (ii) IS AT LEAST 18 YEARS OF AGE; (iii) HAS THE POWER AND AUTHORITY TO ENTER INTO THE TERMS.

The Terms will become binding upon Syringa Networks for any Service Order only when the Services are delivered to Customer. The Terms shall be immediately binding upon Customer upon its placement of any Service Order, regardless of how such Service Order is placed. Any deviations from these Terms are not valid unless expressly confirmed in a signed writing by Syringa Networks. The parties reject any and all terms and conditions that are supplemental to these Terms unless expressly approved in a signed writing by Syringa Networks. No course of prior dealing, business practices (whether existing, past or future) of Syringa Networks with respect to sales of Services through online, offline or other channels or means, or industry practices, will modify, supplement or explain the Terms used herein.

The Terms also incorporate the terms and conditions of Syringa Network's Acceptable Use Policy (available at: http://www.syringanetworks.net/resources/acceptable_use_policy/) as if fully set forth herein. The terms and conditions of Syringa Network's Acceptable Use Policy are subject to change with notice to Customer by publication to Syringa Network's website as identified above; Customer is responsible for monitoring the identified website for changes.

ARTICLE 1- DEFINITIONS

1. Meaning. Words shall have their normal or common meanings, except as otherwise defined in this Agreement:

(a) **Affiliate:** An entity that controls, is controlled by, or is under common control with, either Syringa Networks or Customer. "Control" is the ability to affect, directly or indirectly, the policies, management and operations of an entity through ownership of voting securities, by contract, or otherwise.

(b) **Agreement:** These Terms, including incorporated Addenda, Exhibits, Schedules, Appendices and other documents, as well as any amendments made by the Parties.

(c) **Circuit.** A telecommunications facility connecting two or more Customer locations.

(d) **Effective Date:** The date on which these Standard Terms and Conditions become legally binding on the Parties, identified as the date on which Customer signs the Exhibit A Service Order.

(e) **Exhibit:** A document (including appended Schedules or other attachments) that is appended to and made part of this Agreement and pertains to a particular product, including without limitation any and all Exhibit A Service Orders.

(f) **Governmental Charges:** Charges, both retroactive and prospective, that Syringa Networks is required or permitted to collect from Customer in connection with the furnishing of Service by Syringa Networks. The charges result from the application, enforcement or interpretation of existing, new or revised laws or regulations, actions taken by federal, state, local or foreign regulatory authorities, or judicial acts or decisions (collectively, "Governmental Activity") that directly or indirectly impose costs on Syringa Networks. Governmental Charges include, but are not limited to, those arising out of local, state, federal, foreign and third-party actions, programs or requirements relating to Universal Service, number portability, TRS, E911, access, reciprocal compensation and franchising.

(g) **Network:** The telecommunications network of one of the Parties, as applicable.

(h) **On-Net Service:** Service where all locations at which Service is provided are served directly by Syringa Networks' Network, allowing the entire Service to be furnished by Syringa Networks.

(i) **Point of Presence (POP):** A specific location within a Local Access Transport Area (LATA) where Service originates or terminates.

(j) **Point of Termination:** A location at which Syringa Networks' Service responsibilities end and Customer's responsibilities begin. A Point of Termination may be the demarc where Syringa Networks and Customer interconnect at Customer Premises, a local exchange carrier's central office, or a long-distance carrier's POP identified on Exhibit A.

(k) **Premises:** A physical address at which Service is provided and identified as a Point of Termination or Service location in a Service Order.

(l) **Customer:** The person, firm, corporation or other entity that orders Service and is responsible for the payment of all charges for Service, as well as compliance with applicable requirements set forth in this Agreement.

(m) **Service:** Syringa Networks-provided telecommunications or related service described in an Exhibit, a Schedule or a Service Order. Service may include entrance cables or drop wires terminating in a Syringa Networks distribution panel (DSX) situated on Customer Premises.

(n) **Service Order or Exhibit A:** A Service request set forth on an "Exhibit A" form that specifies the type and quantity of Service desired, Premises addresses, Points of Termination, protocols, requested Start of Service Date, and other information needed to provision Service.

(o) **Service Request Date:** The Service availability date requested by Customer in a Service Order.

(p) **Start of Service Date:** The date Service is first available for use by Customer, which date may be an accepted Service Request Date or the date Syringa Networks notifies Customer of Service availability. Syringa will commence billing Customer for the Service(s) ordered as of the Start of Service Date for the Term indicated in the Service Order ("Exhibit A").

(q) **Taxes:** Amounts Syringa Networks is required or permitted by federal, state, local or foreign taxing authorities to collect from Customer in connection with the furnishing of Service. Taxes include, but are not limited to, personal property taxes on property used to provide Service and sales, use, receipts, telecommunications, excise, utility, or other similar transaction-based taxes, however designated, imposed directly on the Service or upon Syringa Networks as a result of its provision of Service. "Taxes" does not include any tax based on Syringa Networks' net income, net worth, capital structure or payroll.

ARTICLE 2 - SERVICE; OBLIGATIONS/LIMITATIONS

1. Service. Syringa Networks will provide, and Customer will receive, the Service or Services as set forth in an Exhibit A and such subsequent Exhibit A as the Parties may mutually agree. Syringa Networks shall not be required to provide any Service for which it has not received a signed Exhibit A and signed billing information schedule from Customer. Syringa Networks will be deemed to have accepted such Exhibit A at such time as Syringa Networks signs the Exhibit A. Notwithstanding the foregoing, any Exhibit A not signed by Syringa Networks will be deemed valid and binding upon the Parties upon commencement and acceptance of the Services ordered pursuant to such Exhibit A.

2. Availability of Facilities.

(a) Service is offered and furnished subject to the availability of all necessary facilities, including those acquired by Syringa Networks from or through third parties. Service where one or more of the locations at which Service is provided is not served directly by Syringa Networks' Network, may require that a portion of Service be furnished by a third-party service provider. When Syringa Networks provides a portion of Service furnished by a third-party, the terms, conditions and pricing is done on an individual case basis ("ICB") and will be subject to the requirements of the underlying service provider for that part of the Service it provides. Syringa Networks may limit or allocate Service, if necessary, due to facilities availability, taking into account Syringa Networks' then-current and projected capacity and the reasonable expectations of its existing and future customers.

(b) Except as expressly provided otherwise in an Exhibit or Service Order, Syringa Networks, following the provision of reasonable notice to Customer, may: (1) alter the methods, processes or suppliers by or through which it provides Service; (2) discontinue furnishing a feature or supporting an application associated with Service; (3) change the facilities used to provide Service; or (4) substitute comparable Service for that being furnished to Customer.

(c) Except as expressly provided otherwise in an Exhibit or Service Order, the facilities used to provide Service will be of Syringa Networks' exclusive choosing. In no event will title to those facilities vest in Customer or any other individual or entity.

3. Equipment and Access to Premises.

(a) Syringa Networks will own and control all Syringa Networks equipment necessary to provide the Service, which will remain Syringa Networks' personal property regardless of where located or attached ("Syringa Networks Equipment"). Syringa Networks may upgrade, replace or remove Syringa Networks Equipment, regardless of where located, so long as the Services continue in effect as set forth herein. Customer may not alter, move or disconnect Syringa Networks Equipment and is responsible for any damage to, or loss of, Syringa Networks Equipment caused by Customer's breach of this provision

or as the result of Customer's negligence or willful misconduct. Syringa Networks has no obligation to install, maintain or repair any equipment owned or provided by Customer, unless otherwise agreed to in a writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility. Syringa Networks shall not be liable for any failure to provide or maintain any Service if such failure is the result of a lack of access rights as required hereunder.

(b) Syringa Networks may require access to Customer's premises to provision, install, inspect, maintain and repair the Services and the Syringa Networks Equipment. Customer must provide Syringa Networks with a contact and/or help desk number that can be reached at all times. Customer must also provide reasonable access rights and/or rights of way from third parties, space, power and environmental conditioning as may be required for installation and maintenance of the Syringa Networks Equipment at Customer's premises.

(c) If Customer intends to connect the Services to facilities that it does not own, it must provide Syringa Networks with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

(d) If Customer requests that Syringa Networks perform work associated with Customer's side of the Point of Demarcation, such as demarcation extensions, preparation of Customer's premises, testing of Customer's equipment or facilities, inside wiring and/or maintenance work on Customer's equipment, facilities or wiring, and Syringa Networks agrees to perform such work, Customer shall be responsible for paying Syringa Networks a time and materials charge associated with performance of the work.

4. Delays; Non-performance. Syringa Networks will not be liable to Customer or others with respect to any: (a) delay in meeting a Service Request Date; or (b) inability to provide Service after the Start of Service Date, except to the extent set forth in this Agreement.

5. Customer Information. Customer must provide all information necessary to provision Service, and/or such other information reasonably requested by Syringa Networks relating, among other things, to Customer's application or use of Service.

ARTICLE 3 - BILLING; PAYMENT; FINANCIAL STANDING

1. Billing. Monthly recurring charges are billed in advance; usage charges are billed in arrears; and non-recurring charges may be billed in advance or in arrears, as agreed in any Service Order. If Service is made available on a day other than the first day of a monthly billing period, or if Service is discontinued on a day other than the last day of a monthly billing period, monthly recurring charges will be prorated for the monthly billing period.

2. Customer Payment Obligation. Except as provided in Section 3.5 with respect to disputed amounts or as set forth on any Exhibit, Customer must pay all invoiced charges for Service without deduction or setoff within thirty (30) days of the date of an invoice ("Payment Period"). Unless otherwise permitted by Syringa Networks, payment must be made by check or wire transfer in accordance with instructions provided by Syringa Networks. If payment is made by check any restrictive endorsements or statements placed on checks will not be binding on Syringa Networks.

3. Late Payments.

(a) **Interest.** Except with respect to amounts disputed in good-faith by Customer, compounded interest shall accrue on invoiced charges not paid within the Payment Period as follows: (i) all sums remaining unpaid between one (1) and fifty nine (59) days after the expiration of the Payment Period shall accrue interest at the rate of one and one-half percent (1.5%) per month (or the maximum allowed by law, if less) from the expiration of the Payment Period until the date payment is made; and (ii) if such sums remain unpaid for sixty (60) or more days after the expiration of the Payment Period, such sums shall accrue interest at the rate of three percent (3%) per month (or the maximum allowed by law, if less) from the expiration of the Payment Period until the date payment is

made. Interest due hereunder shall be referred to herein as the "Default Rate of Interest."

In addition, Customer may be required to reimburse Syringa Networks for all reasonable costs incurred in connection with collection activities, including attorneys' fees and court costs.

(b) **Default Payments.** In addition to the default interest set forth above, if Customer defaults in the payment of any sum due hereunder, Customer shall pay to Syringa Networks a late charge equal to five percent (5%) of the overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Syringa Networks will incur by reason of late payment of Customer. Acceptance of such late charge by Syringa Networks shall in no event constitute a waiver of Customer's default with respect to such overdue amount, nor prevent Syringa Networks from exercising any of the other rights and remedies granted hereunder.

(c) **Order of Application of Payments.** All payments hereunder shall be applied first to fees, charges, including late charges, attorney's fees and costs, if any, then to interest and then to principal (with the oldest outstanding principal amounts being the first to be paid).

4. Customer Financial Standing. Upon a good faith determination by Syringa Networks that a change has occurred in Customer's financial condition, Syringa Networks may request information from a reporting agency to enable Syringa Networks to assess Customer's credit history and current credit standing. Customer hereby consents to all such inquiries. Based on the information acquired, Syringa Networks may change its billing arrangement with Customer including, without limitation, requiring weekly payments or a deposit of up to two (2) times Customer's aggregate monthly invoicing for the most recently invoiced monthly billing period.

5. Bill Disputes. To dispute an invoice, Customer must notify Syringa Networks by submitting its dispute as provided in Section 15.1, which dispute must include billing information, Circuit number(s), and any opened trouble ticket number(s), along with a full explanation of the basis of the disputed charges. Except as provided in an Exhibit, Customer, in good faith, may withhold the disputed amount but, nevertheless, must pay the undisputed remainder of the invoice within the Payment Period. No charge may be disputed more than sixty (60) days after the date of the invoice on which a charge appears. Any Customer payment of a charge timely disputed and in the manner required will not deprive Customer of its right to dispute the charge. Syringa Networks will investigate Customer's claim with a view toward resolving the dispute within thirty (30) days of Syringa Networks' receipt of Customer's notice. Following an investigation in which Customer co-operates with Syringa Networks, Syringa Networks may in good faith reject Customer's claim, in whole or in part, and will advise Customer of the reason for its action. If the dispute is not resolved to Customer's satisfaction, the Parties may further address the dispute pursuant to Article 13.

6. Bill Dispute Consequences. If a disputed amount withheld by Customer is determined to have been a legitimate charge, interest at the Default Rate of Interest may be charged, at Syringa's discretion, on the amount not paid within the original Payment Period, and Customer must pay the total amount due and owing within five (5) business days of its receipt of notice of the determination from Syringa Networks.

ARTICLE 4- TAXES AND GOVERNMENTAL CHARGES

1. Applicability. Unless otherwise expressly set forth on Exhibit A, the monthly recurring fees do not include any Government Charges and/or Taxes that may be imposed by any Governmental Activity in relation to the Service. Customer is responsible for payment of any Government Charges and/or Taxes except those based on Syringa Networks' net income, personal and real property, and assets.

2. Payment and Other Obligations. Customer must pay existing and future Taxes and Governmental Charges and comply with new or revised terms and conditions imposed by Syringa Networks as a result of Governmental Activity. Syringa Networks will provide thirty (30) days' notice to Customer of any new or revised terms and conditions resulting from Governmental Activity and such new or revised terms shall be effective

immediately. If Syringa Networks decides to impose new or revised terms and conditions neither mandated by nor consistent with a Governmental Activity, Syringa Networks will furnish Customer with at least thirty (30) days notice of the new or revised charge or terms and conditions, and Customer may discontinue the affected Service, without any termination or other payment obligation (except for any charges owed for Service up to the time of termination), by furnishing Syringa Networks written notice of its intent to discontinue the Service no later than thirty (30) days after receipt of Syringa Networks' notice of the new or revised charges, terms or conditions.

3. Exemption Certificate. If Customer believes itself to be exempt from any Taxes or Governmental Charges, it may provide Syringa Networks with a certificate demonstrating its eligibility for exemption. If the certificate is accepted, Syringa Networks will cease imposing the applicable Taxes or Governmental Charges and, if such charges previously had been imposed and collected, Syringa Networks will credit Customer in an amount equal to the charges paid by Customer during the ninety (90) day period immediately preceding the delivery of the accepted certificate, unless otherwise required by law or regulation.

4. Survival. Customer's obligation to pay Taxes and Governmental Charges under this Article 4 will survive the expiration or early termination of this Agreement.

ARTICLE 5 - TERM AND TERMINATION

1. Term. The term of this Agreement will commence on its Effective Date and remain in effect until the expiration of the latest Service Term for any Service(s) appearing on any Addendum to Exhibit A (Service Order) and incorporated under these Terms (as appearing at http://www.syringanetworks.net/support/terms_and_conditions/). Thereafter, the Service Term will automatically renew on a month-to-month basis unless one Party provides the other with written notice of its intent not to renew it at least sixty (60) days prior to the end of the initial service term or at least thirty (30) days prior to the end of any renewal term.

2. Termination and Discontinuation of Service.

(a) **Procedure.** If Customer terminates this Agreement (other than as provided in Section 5.1) or discontinues a Service for any reason, Customer must provide Syringa Networks with written notice in accordance with Article 15. Termination of this Agreement or any Service requires thirty (30) days prior written notice. For discontinuation of Service, the notice must identify the affected Service(s) (e.g., the Circuit ID and its Primary and Secondary locations) and provide the requested termination date for discontinuation, which may not be less than thirty (30) days from the date Customer's notice is received by Syringa Networks. A purported termination or discontinuation employing any other form of communication, or which fails to include essential information, will be ineffective, and Customer will remain fully obligated to Syringa Networks.

(b) **Early Termination or Discontinuation.** Unless otherwise agreed by the Parties in writing, if Customer terminates any Service ordered under this Agreement after the Start of Service Date but prior to the expiration of the Service Term set forth in any Service Order or Exhibit A, or for any early termination of Service due to an event of default by Customer for which Syringa has a right of termination of any Service prior to the expiration of the Service Term, Customer will be liable to Syringa for the Early Termination Liability as follows:

(i) All unpaid amounts for Service provided through the date of termination, including all monthly recurring charges and non-recurring charges, interest, late fees and charges, and attorney's fees and costs of collection; and

(ii) One hundred percent (100%) of the remaining monthly recurring charges that would have been incurred for Service for all remaining months of the Service Term, plus interest, late fees and charges, and attorney's fees and costs of collection, if applicable.

(c) **Termination Before Start of Service.** If Customer terminates any Service ordered under this Agreement after the Effective Date indicated on any Service Order or Exhibit A, but before the Start of Service Date, Customer is responsible for any and all of Syringa Network's past, present, and future expenses associated with establishing Service to Customer.

ARTICLE 6 – RESERVED

ARTICLE 7- WARRANTIES

1. The Parties. Each Party represents and warrants it is, and will remain, duly organized, validly existing, and in good standing under the laws of the place of its origin and possesses all the authority necessary to enter into and perform its obligations under this Agreement.

2. Syringa Networks. Syringa Networks represents and warrants that: (a) its On-Net Service is designed, installed, provided, and maintained in compliance with applicable legal requirements; and (b) it possesses, and will maintain, all licenses, approvals, registrations and certifications required by regulators or other third parties to furnish its Services to Customer.

3. Customer. Customer represents and warrants that: (a) all Customer traffic handled by Syringa Networks is compliant with applicable legal requirements and those established in the Terms; and (b) it possesses, and will maintain, all licenses, approvals, registrations and certifications required by regulators or other third parties to furnish its services.

4. Exclusion of Other Warranties. THE WARRANTIES SET FORTH IN SECTIONS 7.1 THROUGH 7.3 ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, NON- INTERFERENCE, AND NON-INFRINGEMENT.

ARTICLE 8 – DEFAULT AND REMEDIES

1. Default Events. A Party is in default under this Agreement if any of the following occurs (each an "Event of Default"):

(a) a Party becomes insolvent, liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for the relief of debtors or initiates any proceeding seeking protection from its creditors; or

(b) a Party violates any legal requirement relating to the provision or receipt of Service, and the violation is not remedied within thirty (30) days of receipt of written notice of the violation;

(c) except as may otherwise be provided in an Exhibit, a Party fails to perform a material obligation under this Agreement (other than the payment of money), and the failure is not remedied within thirty (30) days of receipt of written notice of the failure. A failure of Service is not a default entitling Customer to terminate the affected Service or this Agreement; or

(d) Customer fails to pay any amounts due hereunder, and the failure is not remedied within ten (10) days of written notice of the failure; provided, however, Syringa Networks shall not be required to provide such notice more than two times in any twelve-month period and such failure to pay when due thereafter shall be deemed an Event of Default without notice.

2. Default Remedies. Upon any Event of Default hereunder, the non-defaulting Party shall have the following remedies, to be exercised at its option, in addition to other remedies at law or in equity:

(a) **Termination for Non-Monetary Breach.** In addition to remedies available at law or in equity, the non-defaulting Party may terminate this Agreement (including its Exhibits and Service Orders, both implemented and pending), in whole or in part, for any Event of Default other than the failure to pay any sums due hereunder.

(b) **Remedies for Failure to Pay.** Upon any Event of Default arising from the failure to pay any sums due hereunder, Syringa Networks may, at its option, do one or more of the following: (a) refuse to accept additional Service Orders; (b) without further notice, suspend and/or disconnect Service furnished under this Agreement or any Service Order until Customer has paid all past due amounts owed, with interest and late charges as set forth in these Terms;

(c) offset unpaid balances with amounts Syringa Networks may owe Customer under any other agreement between the Parties; or (d) terminate any and all Services furnished under this Agreement or any Service Order. Following any suspension or disconnection of Service for non-payment, Service will not be restored until Customer pays in full all charges then due, including any late fees, interest, collection costs, and the costs incurred by Syringa Networks in restoring Service. If Customer fails to make full payment of the charges due within thirty (30) days of such suspension or disconnection, Service will be terminated effective as of the date of suspension.

(d) **Early Termination Liability.** A payment default or other default by Customer resulting in termination of this Agreement or any Service ordered pursuant to this Agreement will entitle Syringa Networks to collect from Customer applicable Early Termination Liability as set forth in Section 5.2.

ARTICLE 9 – CONFIDENTIAL INFORMATION

1. Confidential Information. Each Party must protect the other's confidential information with the same degree of care used to protect its own confidential information, but in no event may less than a reasonable standard of care be used by either Party in connection with the preservation of the other Party's confidential information. Confidential information shall be used by the recipient only for the purposes of performance under these Terms, any Service Order, and the Schedules comprising this Agreement.

2. Non-Disclosure. Neither Party shall disclose, publish, release, transfer or otherwise make available confidential information of, or obtained from, the other in any form to, or for the use or benefit of, any person or entity without the disclosing Party's consent. The Parties shall, however, be permitted to disclose relevant aspects of the other's confidential information to their officers, directors, employees, auditors, attorneys and representatives, to the extent that such disclosure is not restricted under these Terms, any Service Order, or the Schedules comprising this Agreement and only to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under these Terms and the Schedules; provided, however, that the recipient shall be responsible for ensuring that such officers, directors, employees, auditors, attorneys and representatives abide by the provisions of this Article 9.

3. Permitted Disclosures. Notwithstanding the foregoing:

(a) To the extent it is required to disclose such information in the context of any administrative or judicial proceeding, recipient may do so to the minimal extent required to comply with such required disclosure, provided that, to the extent permitted by applicable law, prior written notice of such disclosure and an opportunity to oppose or limit disclosure is given to disclosing Party, and such disclosed information shall continue to be safeguarded as confidential unless and until it falls under an exception set forth in Section 9.3(b) below; and

(b) Recipient shall have no obligation under these Terms with respect to any confidential information disclosed to it that (i) recipient can demonstrate was already known to it at the time of its receipt hereunder; (ii) is or becomes generally available to the public other than by means of recipient's breach of its obligations under these Terms; (iii) is

independently obtained from a third party whose disclosure violates no duty of confidentiality; or (iv) is independently developed by or on behalf of recipient without use of or reliance on any confidential information furnished to it under these Terms.

ARTICLE 10- INDEMNIFICATION

1. Syringa Networks' Indemnification of Customer. Syringa Networks will defend and indemnify Customer, its employees, directors, officers, and agents, from and against any suit, proceeding, or other claim brought by any person or entity (not a party to or an Affiliate of a party to this Agreement) that is caused by, arises from, or relates to: (a) damage to real or tangible personal property or personal injuries (including death) arising out of the gross negligence or willful act or omission of Syringa Networks in the provision of Service; or (b) Syringa Networks' violation of any of its representations and warranties under this Agreement.

2. Customer's Indemnification of Syringa Networks. Customer will defend and indemnify Syringa Networks, its employees, directors, officers and agents, from and against any suit, proceeding, or other claim brought by any person or entity (not a party to or an Affiliate of a party to this Agreement) that is caused by, arises from, or relates to: (a) damage to real or tangible personal property, personal injuries (including death) arising out of the gross negligence or willful act or omission of Customer in the use of the Service; (b) representations regarding the nature of Customer's traffic; (c) any use or resale of Service by Customer or others; or (d) Customer's violation of any of its representations and warranties under this Agreement.

3. Intellectual Property. If Service, by itself as provided by Syringa Networks, becomes, or if Syringa Networks reasonably believes it may become, the subject of a suit, proceeding or other claim by any person or entity (not a party to or an Affiliate of a party to this Agreement) that the Service directly infringes U.S. patent, trademark or copyright rights of such person or entity, Syringa Networks at its own expense and option will: (a) procure the right to continue to provide Service; (b) modify or replace Service with a different one having substantially similar functionality; or (c) discontinue the Service and, as appropriate, refund to Customer a pro- rata portion of charges paid by Customer through the date of Service discontinuance.

4. Procedure. If a claim is made against Syringa Networks or Customer, the Party in receipt of the claim ("Indemnified Party") will notify the other Party ("Indemnifying Party") in writing no later than sixty (60) days after learning of a potential claim. The Indemnifying Party will be entitled to assume sole control of the defense of the claim and all related settlement negotiations. The Indemnified Party will provide assistance, information and authority reasonably necessary to assist the Indemnifying Party. A Party may not settle a claim without the other's consent if the settlement would impose an obligation on, or require any admission by, the other Party. Failure of the Indemnified Party to provide notification of a claim will not relieve the Indemnifying Party of its obligations under this Agreement except to the extent the delay prejudices the Indemnifying Party.

5. Limitation. Sections 10.1 and 10.3 set forth the entire liability of Syringa Networks, and Customer's sole and exclusive remedies, with respect to any claim subject to indemnification under this Agreement.

6. Survival. These indemnification obligations will survive termination of this Agreement.

ARTICLE 11 - LIMITATION OF LIABILITY

1. Consequential Damages. Neither Party is liable to the other for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever including, without limitation, any lost profits, lost revenues, lost savings or any other business loss including goodwill, loss of use of property, loss of data, cost of substitute performance equipment or services, downtime costs, and claims for damages or harm to business regardless of foreseeability or whether damages are caused by the negligence,

willful misconduct, or wrongful act arising from or related to these Terms. A Party's out-of-pocket costs for damages of the kinds specified in the preceding sentence that are recovered by a third party are indirect damages to such Party, and each Party releases the other Party and its Affiliates, as well as their respective officers, directors,

managers, employees, and agents, from damages from such claim(s), except to the extent they constitute claims for which indemnification is due under Sections 10.1 and 10.2.

2. Liability Limits. SYRINGA NETWORKS' ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT IS LIMITED TO THE LESSER OF THE DIRECT DAMAGES ALLEGED AND PROVED BY CUSTOMER OR THE TOTAL AMOUNT PAID BY CUSTOMER FOR SERVICE DURING THE THREE (3) MONTHLY BILLING PERIODS IMMEDIATELY PRECEDING A CLAIM. The foregoing limitations apply to all causes of action and claims irrespective of their nature, including breach of contract, breach of warranty, strict liability, negligence, misrepresentation, or any other tort.

ARTICLE 12- FORCE MAJEURE

With the exception of payment of fees and charges due under this Agreement and except as otherwise expressly provided in this Agreement, neither Party shall be liable to the other Party under this Agreement for any delay or failure of performance resulting from any cause beyond such Party's reasonable control and without its fault or negligence, including without limitation, unusually severe weather conditions; earthquakes; floods; nuclear accidents; acts of God; epidemics; war, terrorist acts, riots, insurrections and civil disturbances; government regulations; acts of civil or military authorities or the public enemy; and fuel or energy shortages (collectively "Force Majeure"). The Parties agree that no labor dispute concerning the personnel and subcontractors of either Party will be considered a Force Majeure event.

ARTICLE 13 - DISPUTE RESOLUTION

The undersigned Parties acknowledge and understand that they are transacting business in the state of Idaho and that this Agreement was negotiated, accepted and shall be performed in Idaho.

1. Applicable Law and Venue. This Agreement will be governed by the laws of the State of Idaho without regard to choice of law principles. The Parties agree any action arising out of or relating to this Agreement not otherwise resolved through subsection 13.3 of this Article, may be brought in state courts located in Ada County, Idaho, or in the United States District Court for the District of Idaho, and each Party hereby irrevocably and unconditionally submits to such jurisdiction and venue. The Parties agree and acknowledge that the transaction contemplated herein is initiated in Idaho, this Agreement was formed in Idaho, and performance of this Agreement shall be in Idaho. Each Party agrees to personal jurisdiction in Ada County and waives any objection to jurisdiction or venue there.

2. Litigation Election. Either Party may elect to litigate the following type of case or controversy: (a) an action seeking equitable relief; (b) a suit to compel compliance with this dispute resolution process; or (c) non-compliance with a Party's publicity obligations. Syringa Networks may elect to litigate billing or payment disputes or collections matters.

3. Mediation. The Parties may elect to engage in non-binding mediation as a first alternative to litigation. Such an election must be mutual and reflected in a writing signed by both Parties. Each Party will bear its own costs in mediation and all third party mediation costs will be shared equally between the Parties, unless otherwise agreed.

ARTICLE 14- ASSIGNMENT

1. Assignability. Upon at least thirty (30) days written notice, either Party may assign this Agreement to an Affiliate without the prior written consent of the other Party. In connection with any assignment by Customer to an Affiliate, or a merger, reorganization or sale of all or substantially all Customer assets to a third party, the assignee must: (a)

assume, in writing, all responsibilities and obligations under this Agreement; (b) be at least as creditworthy as Customer (as determined by Syringa Networks in its reasonable discretion) as of the Effective Date of this Agreement; and (c) deliver to Syringa Networks executed documents that are acceptable to Syringa Networks and establish the terms of the Assignment.

2. Prior Agreement. If this Agreement is assigned to an entity that, prior to the assignment, had an agreement with Syringa Networks, the service being provided will continue to be governed by that prior agreement, and the Service provided under this Agreement will be governed by these Terms, each without reference to the other.

ARTICLE 15 - NOTICES

1. Bill Disputes. Customer must submit a dispute of any invoiced charge(s) electronically to accounting@syringanetworks.net or such other address as Syringa Networks may specify from time to time.

2. Service Discontinuation. Customer must submit a request to discontinue a Service to disconnects@syringanetworks.net or such other address as Syringa Networks may specify from time to time. A request to discontinue Service will be effective no sooner than thirty (30) days after receipt thereof.

3. Other Matters. All other notices under this Agreement, including any notice pertaining to termination of this Agreement, must be in writing and delivered by overnight courier (e.g., Federal Express, DHL) or certified mail, return receipt requested, or via electronic mail to the persons whose names and business addresses appear below. A notice will take effect on the date of its receipt by the receiving Party:

If to Syringa Networks:	Syringa Networks, LLC. 12301 W. Explorer Drive Boise, Idaho 83713 Attn: Greg Lowe, CEO Email: glowe@syringanetworks.net
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If to Customer:	To the address on file at the time Customer submits a Service Order
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Syringa Networks may change its address and point(s)-of-contact by notifying Customer by bill message insert, email or in accordance with the requirements established in this Article.

ARTICLE 16 - MISCELLANEOUS

1. Interpretation. This Agreement may not be construed or interpreted against either Customer or Syringa Networks because that Party drafted, or caused its legal representative to draft, any of its provisions.

2. Order of Precedence. If there is an express inconsistency between a Term set forth herein, by itself, and a term in any Exhibit, or other contract document (including any Non-disclosure Agreement), the order of precedence, from the most to the least controlling, is the term contained in:

(a) the Exhibit or other contract document (including any Non-disclosure Agreement); then

(b) these Terms.

3. Syringa Networks Facilities, Equipment and Software. Syringa Networks facilities, including equipment and software, used to provide any Service will remain the exclusive property of Syringa Networks or its assignee, and nothing contained in these

Terms can be interpreted to convey to Customer any right, title or interest in the facilities, equipment or software, which will remain personal property even if attached to or embedded in realty. Customer may not remove or conceal any identifying plates, tags, or labels affixed to Syringa Networks facilities or equipment, nor may Customer alter, or attempt to alter, software furnished as part of Service. Syringa Networks may substitute or rearrange the facilities or equipment, or modify the software, so long as the quality of Service is not impaired by the changes. Upon termination of Service for any reason, Syringa Networks will retrieve its facilities and equipment from Customer Premises or Customer, at its expense, will return to Syringa Networks, within thirty (30) days of Service termination, all Syringa Networks-provided facilities and equipment, along with any software and other information or materials provided by Syringa Networks in connection with the furnishing of Service. The facilities, equipment, software or other materials retrieved or returned will be in the same condition as when initially delivered to Customer, normal wear and tear excepted. If Customer fails to return Syringa Networks' property or allow for its retrieval, Customer must reimburse Syringa Networks, upon demand, for the replacement cost of the facilities, equipment, software, and other information or materials provided, as well as any costs incurred by Syringa Networks resulting from the Customer's failure to return Syringa Networks' property.

4. Agency; Partnership; and Third Parties. Neither Party becomes the agent or legal representative of the other Party as a result of this Agreement, nor does it create a partnership or joint venture between the Parties. In addition, this Agreement confers no rights, benefits, or remedies of any kind on third parties.

5. Waiver. No waiver of any provision in this Agreement will be binding unless in writing and signed by both Parties. The failure of a Party to insist on the strict enforcement of any provision of this Agreement will not constitute a waiver of the provision and all terms of this Agreement will remain in full force and effect.

6. Subsequent Agreement; Signatures; and Communication Methods.

(a) **Subsequent Agreement.** No subsequent agreement between the Parties concerning Service will take effect or be binding unless made in writing and signed by both Parties.

(b) **Signatures.** Any requirement for a signature in any document relating to this Agreement (other than these Terms) may be satisfied by a facsimile transmission of an original signature or by delivery of electronic mail in PDF or similar scanned format, or by an electronic symbol or process ("e-signature") attached to or logically associated with this Agreement, including any component hereof, and executed or adopted by a person having the intent to sign the document. Any person completing, submitting or executing any such document on behalf of Customer by way of the Internet or other electronic or online means represents that he/she possesses the authority to act on Customer's behalf and any such documents so delivered to, and accepted by, Syringa Networks will be binding on Customer.

(c) **Communication Methods.** Neither electronic mail nor instant messaging (IM) will be a "writing" sufficient to modify the terms of these Terms, although those methods of communication may be used otherwise in the performance of the Parties' obligations under this Agreement.

7. Entire Agreement. This Agreement sets forth the entire understanding of the Parties and supersedes prior or contemporaneous agreements, arrangements, or understandings, both written and oral, with regard to Service. The Addenda, Exhibits and other documents to which reference has been made are integrated parts of these Terms.

8. Severability. If any provision of this Agreement is found to be invalid or unenforceable under applicable law, it will be ineffective only to the extent of its invalidity and will not affect the remaining provisions in this Agreement.

9. Non-Exclusivity. This Agreement is non-exclusive. Either Party may enter into similar arrangements with others.

10. Publicity. Neither Party may issue a news release, public announcement, advertisement or other form of publicity relating to these Terms or Service without the prior written approval of the other Party.

11. Survival. The terms of this Agreement which, by their usage and context, are intended to survive this Agreement including, without limitation, the obligation to make payments for Service, will survive its expiration or termination.

12. Headings and Internal References.

(a) **Headings.** The Article and Section headings in this Agreement, including all its incorporated documents, are for convenience only and may not be considered in interpreting the provisions in which they appear.

(b) **Internal References.** Any plainly erroneous references or citations to Articles and Sections in this Agreement, including all its incorporated documents, will allow either Party to demonstrate to the reasonable satisfaction of the other Party the intended reference or citation based on logic, context and previous versions of contractual documents.

13. Electronic Documents. This document and any related agreements may be converted to, and retained solely in, electronic format. A party may provide this Agreement in electronic form and may provide a reproduction of this Agreement from its electronic copy in the event of any dispute regarding the rights and obligations of the parties under this Agreement and such document shall not be denied legal effect, validity, or enforceability and shall meet any requirement to provide an original or hard copy.

14. Attorneys' Fees. If any action or proceeding relating to this Agreement or its enforcement is brought against any party to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements in addition to any other relief to which the prevailing party may be entitled.

EXHIBIT A

Service Order

[attached]

EXHIBIT A

EXHIBIT B

10.6.20

SYRINGA NETWORKS VOICE SERVICES

1. **Applicability.** This Service Exhibit ("Exhibit C") applies only to Syringa Networks Voice Service (the "Voice Service") and is incorporated into and made part of the Syringa Networks Standard Terms and Conditions (the "Terms").
2. **Service Description.** The Voice Service provides Public Switched Telephone Network ("PSTN") connectivity and optional advanced features to Customer Key Systems, PBXs and IP-PBXs through Syringa Networks dedicated network connections. Call control and features are provided by the Syringa Networks VoIP feature server.
3. **Voice Service Applications.** The Voice Service may be used as local and long-distance voice access service to serve enterprise premises telephony equipment, such as Key Systems, PBXs and IP-PBXs. The Voice Service is available only to single, distinct enterprises who will utilize the service for customary and normal business use.
4. **Required Services.** Syringa Networks requires that the Voice Service be provisioned over our own network transport. Syringa Networks must be the carrier of record for the underlying transport service. One of the following Syringa Networks Services must be purchased in conjunction with the Voice Service:
 - Syringa Networks dedicated WAN Service (Layer 2 Ethernet, or Layer 3 IPVPN service),
or
 - Syringa Networks Business Internet Access Service
5. **Supported Customer Interfaces.** The Voice Service can be delivered to a Customer in the following manner: (a) SIP Trunking over an IP network connected to an IP-PBX via Ethernet; or (b) standard PRI/Analog trunk interfaces provided by a Syringa Networks IAD (Integrated Access Device) that is installed on the Customer premise; or (C) Hosted PBX ("Cloud Voice") that delivers voice service on per user basis to IP phone sets on the Customer premise that are owned by the customer or leased from Syringa Networks. Due to the nature and complexity of satisfying ongoing interoperability specifications between our VoIP serving platform and Customer owned IP-PBXs, Syringa Networks SIP Trunking and PRI/ Analog trunk Voice Service is limited to support specific IP-PBX manufacturers/models for which an ongoing interoperability maintenance arrangement exists between Syringa Networks' VoIP feature server vendor and the IP-PBX manufacturer. Other manufacturer's IP-PBXs may also be compatible, but have not been tested with the Syringa Networks VoIP platform. Syringa Networks may not be able to provide configuration guidelines, but will use reasonable efforts to test and activate non-certified or compatible devices.
6. **Voice Equipment.** Customer is solely responsible for installation and maintenance of its equipment (phone system) and for any modifications, upgrades, or physical movement of such equipment, including installation of additional equipment. Customer is solely responsible for implementing such configurations on its equipment. Customer shall provide Syringa Networks advance written notice of any modification, upgrade, or replacement of Customer's equipment not less than ninety (90) days prior to any such modification, upgrade or replacement. Any equipment, including IP phone sets, that is owned and installed by Syringa Networks for provision of the Voice Services, will be maintained by Syringa Networks.

10.6.20

7. **Other Database Updates.** Customer will utilize Syringa Networks-provided order forms to provide accurate data required by Syringa Networks to complete all updates to the LIDB, CARE, LNP, Directory Assistance and any other necessary databases. In regards to LNP, Customer agrees that it is responsible for completing and verifying LNP information before updating the 911 database.
8. **Pricing.** In addition to the applicable non-recurring charges, rates for the Voice Service consist of the following:
 - a. Monthly recurring charges for the number of concurrent call paths (SIP trunk sessions).
 - b. Monthly recurring charges for TNs (telephone numbers (DIDs), new or ported)
 - c. Monthly recurring charges at a flat-rate tier for Local and Long Distance (IntraState, Interstate & International) usage as detailed on the Exhibit A (service order).
 - d. Monthly recurring charges for Toll Free services as detailed on the service order.
9. **Additional Charges.** Customer is subject to the applicable charges for moves, adds, changes, and upgrades for those items covered by this Exhibit. All Services other than those stated herein will be provided at the prevailing standard Syringa Networks rates. Service records will constitute full proof of the content and nature of Customer's Service(s).
10. **Flat-Rated Pricing Tiers and Call Detail Records.** Customer MRC for Local and Long Distance usage will be billed according to the flat-rate pricing Tier listed on the service order. Syringa Networks will periodically audit a customers' call usage based on call duration of each Call Detail Record ("CDR"). If a customers' average three (3) month call usage is determined to be higher than the contracted flat-rate tier, Syringa Networks reserves the right to adjust the Customer up to a higher flat-rate pricing tier that will cover the usage overages.
11. **Use of Service.** Customer may use the Voice Service for any lawful purpose provided that: (a) such use does not interfere with or impair service over any of the facilities and associated equipment constituting Syringa Networks' network; (b) such use does not impair the privacy of any communications over the facilities and equipment of Syringa Networks; (c) Customer will use the Voice Service in accordance with all laws and regulations, and the terms and conditions contained in this Schedule, and (d) Customer may use the Voice Service for inbound call center voice traffic; (e) Customer may **not** use the Voice Service for outbound call center (or similar enterprise), 900/976 based or other information or entertainment services, telemarketing, autodialing, continuous or extensive call forwarding, fax broadcast, or fax "blasting." Syringa Networks reserves the right to immediately terminate the Voice Service if Syringa Networks determines, in its sole discretion, that the Customer has violated any term of this Exhibit or Standard Terms and Conditions. Customer agrees to use the Voice Service solely for Customer's own internal purposes. Customer shall not use the Voice Service, either on a stand-alone basis or in combination with any other services or products, to provide any telecommunications or other service to a third-party. Any such use by Customer shall be deemed a default under this Agreement.
12. **Fraudulent Calls.** Customer shall be responsible for paying Syringa Networks for all charges for the Voice Service, even if incurred as a result of fraudulent or unauthorized use. In the event Syringa Networks discovers or reasonably believes fraudulent calls are being made, Syringa Networks may take immediate action that is reasonably necessary to prevent such fraudulent calls from taking place, including without limitation, denying Voice Service to particular Automatic Number Identifiers (ANIs) or terminating Voice Service to or from

EXHIBIT B

10.6.20

specific locations. Syringa Networks shall use reasonable efforts to notify Customer in the event Syringa Networks takes action upon discovery of fraudulent calls. In the event Customer discovers or reasonably believes fraudulent calls are being made, Customer shall notify Syringa Networks as soon as possible at 1-800-454-7214 and open a trouble ticket.

13. **Emergency Services (911, E-911)**. PLEASE READ THE INFORMATION BELOW ABOUT 911 DIALING CAREFULLY. BY USING AND PAYING FOR THIS SERVICE, CUSTOMER ACKNOWLEDGES AND AGREES TO ALL OF THE INFORMATION BELOW REGARDING THE LIMITATIONS OF THE VOICE SERVICE WITH REGARD TO 911 EMERGENCY DIALING SERVICE, AND THE DISTINCTIONS BETWEEN SUCH SERVICE AND TRADITIONAL WIRELINE 911 OR E-911 CALLS.

(A) In particular, please note that Customer will not be able to place traditional wireline 911 or E-911 calls with the Voice Service:

- In the event of a power outage, or backup power failure;
- In the event of a loss of connectivity to the network or failure of network equipment;
- In the event of network congestion or overutilization of the network;
- In the event Customer uses a phone at a location other than the established fixed, primary location as determined by Syringa Networks' service records (commonly known as "nomadic" use).

Customer acknowledges that Syringa Networks has advised that the Voice Service does not support traditional wireline 911 or E-911 in these instances. Customer agrees to advise all individuals of this limitation who may have occasion to place calls using the Voice Service.

(B) Syringa Networks offers 911 Services subject to the limitations herein. The 911 Services are the static implementation of Syringa Networks E-911 Direct portfolio of services. Customer shall ensure that DID/DOD's are not used in a location different than the primary address as submitted on the Customer Service Order. Customer shall notify Syringa Networks of changes in end user location by submitting a new Customer Service Order to Syringa Networks to update service records.

***911/E-911 calling is not supported when the Voice Service is utilized at any location other than the user's fixed, primary service location.**

14. **Warranties**. EXCEPT AS OTHERWISE PROVIDED HEREIN, THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORILY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE VOICE SERVICE(S). SYRINGA NETWORKS ALSO MAKES NO WARRANTY THAT THE VOICE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED. SYRINGA NETWORKS DOES NOT WARRANT THAT THE VOICE SERVICE WILL OPERATE WITHOUT INTERRUPTION OR AT ANY MINIMUM SPEEDS.

15. **CPNI**. Customer Proprietary Network Information ("CPNI") is Customer information acquired by Syringa from provisioning regulated telecommunications services to Customer. CPNI includes, among other things, Service identities, quantities and locations; information on how Service is being used; and Service billing information. Unless or until otherwise instructed by Customer, Syringa may use Customer CPNI or share it with its agents and independent contractors for the purpose of furnishing Customer with information about Syringa's telecommunications-related products that may be of interest to Customer. Customer's approval of this use of its CPNI will remain in effect until Customer contacts Syringa and indicates it no longer wishes to have its CPNI used for such purpose. To revoke its approval, Customer may contact Syringa at any time and at no cost by dialing 1-800-454- 7214.