

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (the “Agreement”) is entered into this ____ day of _____, 2019 (the “Effective Date”) by and between Metro Fibernet, LLC, a Nevada limited liability company (“MetroNet” or “Supplier”), whose address is 3701 Communications Way, Evansville, IN 47715 and Lexington-Fayette Urban County Government, a political subdivision of the Commonwealth of Kentucky (“Customer”), whose address is 200 East Main Street, Lexington, Kentucky 40507 (hereinafter, Supplier and Customer may be referred to in the aggregate as “Parties”, and each singularly as a “Party”).

Recitals

WHEREAS, Customer is an enterprise desiring to purchase telecommunications services from Supplier; and

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

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

ARTICLE 1 SERVICES

1.01 Services.

- (a) During the term of this Agreement, Customer may order from Supplier the telecommunications services identified on the attached **Exhibit “A”** (the “Services”) at the rates, term and charges identified therein by submitting to Supplier its order for such Services on an order form Supplier may prescribe from time to time (each an “Order for Services”). Each Order for Services submitted by Customer and accepted by Supplier shall be considered a separate contract between the Parties that incorporates the terms of this Agreement.

- (b) Supplier agrees to provide to Customer the requested Services identified and agreed upon in an Order for Services, which shall contain the specific description of the Services ordered, applicable charges and, period of time that Customer agrees to purchase such Services. The pricing for the Services shall be set forth in each Order for Service. If all, or a portion of, the Services are off-net to Supplier, then such Services are offered subject to the initial and continued availability of facilities from Supplier’s preferred underlying supplier at rates and on terms acceptable to Supplier; and Supplier, in its sole discretion, may adjust rates, disconnect Service or otherwise cancel an Order for Services, if it is unable to obtain or maintain facilities for such off-net Service from its preferred underlying supplier at rates and on terms acceptable to Supplier.

- (c) If additional construction of facilities and Supplier provided Customer premises equipment are required to provide any Service requested by Customer, Supplier may quote such additional costs to Customer, including the terms of payments. Furthermore, additional early termination charges may apply. The Order for Services applicable to such Services shall incorporate such additional costs, terms, and conditions as agreed upon by the Parties and shall be signed by the Parties. If Supplier provides equipment for installation at Customer's premises, Customer hereby grants to Supplier, a license to use space, power and services (e.g. HVAC) necessary to operate Supplier's equipment to provide the Service. Such license shall be governed by the terms set forth in **Exhibit "B"**.
- (d) Network Operations and related definitions are set forth in **Exhibit "C"**, which procedures may be amended from time to time by Supplier upon prior written notice to Customer, which notice may be delivered electronically.
- (e) If Customer will be locating any equipment within any Supplier facilities, Customer shall execute an Equipment Colocation Agreement in a form acceptable to Supplier.

1.02 Term; Termination.

- (a) This Agreement is for a term of five (5) years commencing on the Effective Date (the "Initial Term") and shall automatically renew for additional one (1) year periods unless either party gives the other party written notice of its intent not to renew at least sixty (60) days prior to the expiration of the then current term; provided, however, that this Agreement shall remain in effect and be incorporated into every Order for Services for the entire term of every Order for Services. It is expressly understood and agreed that each Order for Services shall continue in full force and effect, including incorporation of the terms of this Agreement, during its term notwithstanding any termination or expiration of this Agreement
- (b) The initial term of each Order for Services shall be the term identified in such Order for Services and shall automatically renew for additional one (1) year periods unless either Party gives the other Party written notice of its intent not to renew at least 60 days prior to the expiration of the then current term.
- (c) If any Services are terminated after execution of the applicable Order for Services and prior to Service Commencement Date for such Order for Services, Customer agrees to pay to Supplier: (i) those costs reasonably incurred by Supplier through the date of receipt of termination and (ii) any recurring and non-recurring fees and costs Supplier incurs (or has contracted to incur) from other suppliers in connection with the Services or termination thereof. For the purposes of this Agreement and Order for Services, the "Service Commencement Date" shall mean the date a Service is first made available to Customer.
- (d) Except as otherwise set forth in an Order for Services, if any Services are terminated after the Service Commencement Date for such Order for Services and prior to the expiration of the then current term of such Services contained in the applicable Order for Services for any reason other than a Default by Supplier as set forth in Section 1.02(g) then Customer

agrees to pay Supplier an early termination charge equal to: (i) any recurring and non-recurring fees and costs Supplier incurs (or has contracted to incur) from other suppliers in connection with the Services or termination thereof; and (ii) any outstanding invoices or other amounts still owed by Customer. Such payment shall be due within thirty (30) days of the effective date of termination.

- (e) Upgrading of on-net circuits to those of higher capacity is considered a service upgrade in which case the original circuit is not considered terminated; provided, however, the Order for Services for the upgraded circuit must be of equal or longer term to the original circuit to avoid the early termination charges.
- (f) If the Federal Communications Commission, a state Public Utilities or Service Commission or a court of competent jurisdiction, issues a rule, regulation, law or order which has the effect of increasing the cost to Supplier of providing the Services or canceling, changing or superseding any material term or provision of this Agreement or an Order for Services (collectively, "Regulatory Requirement"), then the Parties shall attempt to mutually agree on a modification and amendment of this Agreement and the affected Order for Services in such a way as is necessary to comply with such Regulatory Requirement or cover Supplier's increased costs. If the Parties are not able to agree on modifications necessary to comply with a Regulatory Requirement or cover Supplier's increased costs within thirty (30) days after the Regulatory Requirement is effective, then upon written notice either Party may, to the extent practicable, terminate that portion of this Agreement or Order for Services impacted by the Regulatory Requirement, or if the entire Agreement or the affected Order for Services is impacted in such a way as to make continuation impossible, either Party may terminate the Agreement or the affected Order for Services with no further obligation or liability hereunder, and Customer shall not be liable for early termination charges hereunder, except any recurring and non-recurring fees and costs Supplier incurs (or has contracted to incur) from other suppliers in connection with such Services or termination thereof and any outstanding invoices still owed by Customer.
- (g) The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement (each, a "Default"):
 - i. Either Party's insolvency, dissolution or cessation of business operations;
 - ii. Either Party's breach of a material term of this Agreement or any Order for Services;
 - iii. Customer's failure to pay on or before the Due Date, as defined below, any invoice or amount owed;
 - iv. Customer's fraudulent or illegal use of the Services; and
 - v. Any assignment of this agreement that violates Section 4.08.
- (h) In the event of a Default under this Agreement or an Order for Services by a Party, the non-defaulting Party shall give the defaulting Party thirty (30) days written notice and opportunity to cure the breach during such thirty (30) day notice period.

- (i) Upon any Default by Supplier not cured before the expiration of the applicable notice and cure period, Customer may, at its sole option, do any or all of the following:
 - i. Terminate the affected Order for Services without liability; and/or
 - ii. Pursue such other legal or equitable remedy or relief as may be available to Customer.

- (j) Upon any Default by Customer not cured before the expiration of the applicable notice and cure period, Supplier may, at its sole option, do any or all of the following:
 - i. Cease accepting or processing Orders for Services and suspend Services;
 - ii. Cease all electronically and manually generated information and reports;
 - iii. Draw on any letter of credit, security deposit or other assurance of payment and enforce any security interest provided by Customer;
 - iv. Terminate this Agreement and any or all Orders for Services without liability to Supplier;
 - v. Collect from Customer the early termination charges described in Section 1.02(d) above; and/or,
 - vi. Pursue such other legal or equitable remedy or relief as may be available to Supplier.

1.03 Billing; Payment.

- (a) Customer shall pay to Supplier all recurring and non-recurring charges for the Services at the rates and charges set forth on the applicable Order for Services. All charges shall be due and payable by Customer to Supplier within thirty (30) days of the invoice date (the "Due Date"). The recurring charges shall be invoiced monthly in advance. Supplier's billing cycle will follow the calendar month. A pro-rated portion of the first month's Service will be included on the first invoice plus the next month's Service in advance. Non-recurring charges will be included on the invoice for the month in which incurred.

- (b) If any undisputed amounts are not paid on the Due Date, a late charge shall accrue on all amounts not paid when due equal to one and one-half percent (1 ½%) (or the maximum legal rate, if less) of the unpaid balance per month and Supplier may charge Customer for all reasonable charges, costs, expenses and attorney's fees incurred by Supplier to collect such undisputed amounts. In the event a payment is received by Supplier and is returned for insufficient funds or bank charges, to the extent permitted by law, the Customer will reimburse Supplier the greater of all associated processing charges incurred by Supplier or a late charge of twenty-five dollars (\$25.00) per returned item and, in either case, any interest due on past due amounts. Supplier has the right to increase the twenty-five dollar

(\$25.00) late charge from time to time on notice to Customer, which increases would apply to late payments after the date of such notice.

- (c) If Customer disputes any of the charges on its monthly invoice, it shall notify Supplier within ninety (90) days after Customer's receipt of the invoice of the disputed charges and Customer's reason for disputing the same. All disputes must be made in writing, reasonable, relate to the Services, and include a detailed explanation of the dispute. Customer agrees to work with Supplier in good faith to resolve the dispute within thirty (30) days of Supplier's receipt of Customer's notification of dispute. If it is later determined that Customer owes the amount in dispute, or a portion of it, Customer agrees to pay such amount immediately following the date of such determination. If Customer does not deliver a challenge or dispute to any invoice within ninety (90) days after the invoice date, the invoice will be considered final and accepted without recourse or later dispute by Customer.

1.04 Credit Approval; Deposits.

Customer acknowledges that delivery of the Services is subject to credit approval by Supplier.

1.05 Taxes; Assessments.

Customer agrees that, to the extent any provision of services by Supplier to Customer is subject to governmental assessments, taxes, surcharges, and/or fees (other than taxes on Supplier's net income or gross receipts), Supplier shall have the authority to charge and collect such assessments, taxes, surcharges, and/or fees directly from Customer, unless Customer has provided Supplier with proof of a valid, government-issued certificate exempting Customer from the particular assessment, surcharge, or fee that Supplier seeks to collect. If Customer fails to maintain and provide to Supplier the required exemption certificate(s), Supplier may back-bill Customer for all applicable assessments, taxes, surcharges and/or fees.

**ARTICLE II
WARRANTIES**

2.01 Representations and Warranties.

Each Party represents and warrants that as of the signature dates and continuing throughout the term of this Agreement: (1) it is duly organized, validly existing, and in good standing under the laws of the state in which it is organized and in each other jurisdiction where the failure to be in good standing would have a material adverse effect on its business or its ability to perform its obligations hereunder; and (2) it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder, and the execution of this Agreement, and consummation of the transactions contemplated hereby have been duly authorized by all necessary organization actions on its part.

2.02 Disclaimer of Warranties.

OTHER THAN THE WARRANTIES SET FORTH HEREIN, SUPPLIER MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE SERVICES WHICH ARE THE SUBJECT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY WITH RESPECT TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY SERVICE PROVIDED HEREUNDER OR IN ANY ORDER FOR SERVICES, OR DESCRIBED HEREIN OR IN ANY ORDER FOR SERVICES, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY SUPPLIER ARE HEREBY EXCLUDED AND DISCLAIMED. For purposes of this Section, the term "Supplier" shall be deemed to include Supplier and its affiliates and their owners, directors, officers, agents, representatives, and employees.

ARTICLE III INDEMNIFICATION; LIMITATION OF LIABILITIES

3.01 Customer Indemnification.

To the extent permitted by law, and without waiving any defense available to it as to third parties, including that of sovereign immunity, Customer shall indemnify, defend and hold harmless Supplier and its affiliates and their owners, officers, directors, agents, representatives and employees, from and against any and all third party claims, demands, causes of action, losses, damages, costs and expenses directly arising out of or directly relating to: (i) violation of any law, rule or regulation by any governmental authority or other agency by Customer; (ii) any claim for withholding or other assessments, taxes, surcharges and fees that might arise or be imposed due to this Agreement or the performance hereof with the exception of Supplier's income taxes; and (iii) damage to tangible property or personal injury (including death) directly arising out of the negligence or willful acts or omissions of Customer.

3.02 Supplier Indemnification.

Supplier shall indemnify, defend and hold harmless Customer and its affiliates and their owners, officers, directors, agents, representatives and employees, from and against any and all third party claims, demands, causes of action, losses, damages, costs and expenses directly arising out of or directly relating to: (i) violation of any law, rule or regulation by any governmental authority or other agency by Supplier; (ii) any claim for withholding or other taxes that might arise or be imposed due to this Agreement or the performance hereof with the exception of assessments, taxes, surcharges, fees and other similar charges Customer is responsible for paying; and (iii) damage to tangible property or personal injury (including death) arising out of the negligence or willful acts or omissions of Supplier.

3.03 Indemnification Procedures.

Each Party shall promptly, and in writing, notify the other Party of any claim as to which it intends to seek indemnification under this Agreement, and shall take such action as may be

necessary to avoid default or other adverse consequences. The indemnifying Party shall have the right to select counsel and to control the defense; provided, that the indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of the claim. The indemnified Party shall provide cooperation and participation of its personnel as required for the defense at the cost and expense of the indemnified Party.

3.04 Limitation of Liabilities.

EXCEPT FOR SUPPLIER'S OBLIGATION TO ISSUE SERVICE OUTAGE CREDITS UNDER EXHIBIT C OF THIS AGREEMENT, SUPPLIER SHALL NOT HAVE ANY RESPONSIBILITY, LIABILITY OR OBLIGATION TO CUSTOMER, CUSTOMER'S AFFILIATES, OR THEIR OWNERS, OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES OR ENDER USERS FOR (1) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, COST OF REPLACEMENT SERVICES, LOSS OF CUSTOMERS OR AGENTS OR LOSS OF USE, REGARDLESS OF WHETHER SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS BY REASON OF ANY ACT OF OMISSION OR COMMISSION IN CONNECTION WITH OR UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY DEFECT, DELAY IN AVAILABILITY, OR FOR ANY OTHER CAUSE, OR (2) THE CANCELLATION OF SERVICES HEREUNDER UPON TERMINATION OF THIS AGREEMENT. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICES AND APPLICABLE EQUIPMENT. EXCEPT TO THE EXTENT ARISING OUT OF SUPPLIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SUPPLIER HAS NO RESPONSIBILITY FOR THE SECURITY, LOSS, INTRUSION OR UNAUTHORIZED ACCESS OF STORED DATA. SUPPLIER HAS NO RESPONSIBIITY FOR ANY DAMAGE CAUSED BY ANY CUSTOMER ACTION, OMISSION OR FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT OR ANY ORDER FOR SERVICES.

**ARTICLE IV
GENERAL PROVISIONS**

4.01 Independent Contractor.

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

4.02 Force Majeure.

If and to the extent that any failures or delay in Supplier's performance of one or more of its obligations hereunder is caused by an event of Force Majeure as defined in Exhibit "C", then Supplier's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay.

4.03 Waivers.

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

4.04 Confidentiality.

- (a) Each Party agrees that all information furnished to it by the other Party, or to which it has access under this Agreement, shall be deemed confidential and proprietary information to the extent that such information is marked or designated as confidential or proprietary or if the Party receiving the information knows or reasonably should know that such information is confidential or proprietary (collectively referred to as "Proprietary Information"). Proprietary Information of the disclosing Party shall remain the sole and exclusive property of the disclosing Party. Each Party shall treat the Proprietary Information and the contents of this Agreement and any Order for Services in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement or an Order for Services, neither Party may directly or indirectly disclose the same to anyone other than its employees and agent who have a need to know the Proprietary Information and are under obligation to maintain its confidentiality.
- (b) The confidentiality obligations of this Section do not apply to any portion of the Proprietary Information: (i) which is or becomes public knowledge through no fault of the receiving Party; (ii) in the lawful possession of the receiving Party prior to disclosure to it by the disclosing Party (as confirmed by the receiving Party's records); (iii) disclosed to the receiving Party without restriction on disclosure by a person who has the lawful right to disclose the information; (iv) disclosed pursuant to the lawful requirements or formal request of a governmental agency; or (v) disclosed as required by law, including without limitation disclosures made under the Kentucky Open Records Act, KRS § 61.870, *et seq.* If the receiving Party is requested or legally compelled by a governmental agency, open records act, court of competent jurisdiction or validly issued order to disclose any Proprietary Information of the disclosing Party, unless prohibited by law, the receiving Party shall provide the disclosing Party with prompt written notice of such requests so the disclosing Party may seek to obtain a protective order requiring that the Proprietary Information. Failing the entry of a protective order or other appropriate remedy or receipt of a waiver hereunder, the

receiving Party shall furnish only that portion of the Proprietary Information which it is legally required to furnish.

- (c) Each Party acknowledges that its breach or threatened breach of this Section shall cause the disclosing Party irreparable harm that would not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the receiving Party agrees that equitable relief sought pursuant to Section 4.07, including a temporary or permanent injunction, is an available remedy in addition to any legal remedies to which the disclosing Party may be entitled.
- (d) Neither Party may use the logo, trade name, service marks, or printed materials of the other Party, in any promotional or advertising materials, statement, document, press release or broadcast without the prior written consent of the other Party, which consent may be granted or withheld at the other Party's sole discretion.
- (e) Any obligations of the Parties relating to confidentiality shall survive termination of this Agreement and any Order for Services for a two (2) year period.

4.05 Entire Agreement.

This Agreement and all Exhibits, Schedules, Supplier's tariff if applicable, Supplier's Acceptable Use and Privacy Policy, Additional Terms of Service Addendum (Business), and other attachments incorporated herein, and any Order for Services between the Parties, represent the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersede and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities and inducements to the making of this Agreement or any Order for Services relied upon by either Party, whether written or oral. Supplier's tariff, Acceptable Use and Privacy Policy, Additional Terms of Service Addendum (Business), and certain other disclosures (all of which may be revised by Supplier from time to time without amendment of this Agreement) may be found at <https://www.metronetinc.com/terms-conditions/>. To the extent that the above-listed, incorporated documents conflict with this Master Services Agreement, either at the time of execution or as later revised, such documents (other than any Order for Services) shall be null and void, having no applicability to the contractual relationship existing between the Parties hereunder. To the extent the terms of an Order for Services conflict with this Master Services Agreement, the terms of the Order for Services shall control with respect to the Services that are the subject of the Order.

4.06 Construction.

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

4.07 Governing Law; Statutes of Limitation; Dispute Resolution.

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky, excluding its conflict of law provisions. Any claims arising out of or related to this Agreement shall be made within one (1) year from the date the claim arises.

The Parties plan to use due diligence and use their reasonable best efforts and work together to implement the Agreement and any Order for Services and amicably resolve their differences. However, the Parties understand that issues and conflicts may arise where they reach an impasse. The Parties acknowledge their desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of the Agreement or any Order for Services, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either Party may start by delivering to the other Party a written notice describing the Dispute and the amount involved ("Demand"). After receipt of a Demand, authorized representatives of the Parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved thirty (30) days after receipt of the Demand, either Party may start binding arbitration in Lexington, Kentucky. The Parties will use their reasonable best efforts to conclude the arbitration as expeditiously as possible and, if possible, within sixty (60) days following commencement of any arbitration proceeding. The arbitration will be before a three-arbitrator panel. Each Party will each select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the Party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either Party may apply to a court of law to have a judge select an impartial arbitrator. The primary objective of the impartial arbitrator is to endeavor to get all three arbitrators to agree on a final disposition of the Dispute. If this cannot be attained, then the three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication. The Parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators other than to enforce the final determination of the arbitrators. No statements by, or communications between, the Parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each Party shall each bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator; provided, Customer shall reimburse Supplier for all charges, costs, expenses and attorney's fees described in Article I above. No interest shall be applied to any arbitration award, except if Customer fails to pay undisputed amounts due, in which case Supplier shall be entitled to interest and other late charges as set forth in Article I above. It is the intent of the Parties to first allow the arbitrators an opportunity to meet and negotiate a unanimous decision. However, if a unanimous agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the Parties.

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

The powers of the arbitrators are to interpret and apply the terms of the Agreement and Orders for Services as negotiated by the Parties. The arbitrators shall have no power to add to, subtract from or modify the terms of the Agreement as negotiated by the Parties.

4.08 Assignment.

The Customer shall not assign this Agreement without the prior written consent of the Supplier, whose consent will not be unreasonably withheld. With thirty (30) days' prior written notice to Supplier, Customer may assign this Agreement to the surviving entity into which Customer may merge or consolidate or to any entity to which Customer transfers all, or substantially all, of its equity and/or assets.

4.09 Notices.

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

Supplier:

MetroNet
Attn: President
3701 Communications Way
Evansville, IN 47715

Customer:

Lexington-Fayette Urban County Government_
Attn: Chief Information Officer
200 East Main Street
Lexington, KY 40507

With a copy to:

MetroNet
Attn: Legal Department
8837 Bond Street
Overland Park, KS 66214

4.10 Counterparts; Electronic Signatures.

This Agreement and Orders for Services may be executed in two or more counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument. In the event that any signature is delivered by facsimile or by email of a “.pdf” format data file, such signature shall create a valid and binding obligation of such Party with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

4.11 Compliance with Laws.

During the term of this Agreement, the Parties shall comply with all local, state and federal laws and regulations applicable to this Agreement and to their respective businesses.

4.12 Third Party Beneficiaries.

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

4.13 Amendments.

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

4.14 Severability.

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

4.15 Adequate Counsel.

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

Attachments

- Exhibit A: Form of Order for Services
- Exhibit B: License for Space at Customer Premises
- Exhibit C: Service Level Agreement
- Exhibit D: Customer Repair Contact List

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

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

Lexington-Fayette Urban County
Government

MetroNet

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A

SERVICE ORDER FORM AND ANCILLARY FORMS

Exhibit B

LICENSE FOR SPACE AT CUSTOMER PREMISES

1. **Grant of License.** For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Customer hereby grants to Supplier, an irrevocable and indefeasible right to occupy, use and maintain suitable space, power, and back-up power source inside each Customer premise (the “Licensed Space”). As a part of this License, Customer shall provide heat, ventilation and air conditioning (“HVAC”) to the Licensed Space sufficient to maintain an acceptable ambient temperature and acceptable level of relative non-condensing humidity. In addition, unless otherwise set forth in the Order for Services, Customer agrees to allow Supplier use of Customer owned or leased conduit and fiber. Supplier and its affiliates shall have 24 hour / 7 day per week access to such Licensed Space and shall have an easement of ingress and egress for its personnel and facilities to access such Licensed Space, including any necessary easement and building entrance rights to extend Supplier’s network from the public rights of way into the Licensed Space. Customer agrees to notify Supplier of the location of any private underground utility lines on Customer premises. No fees or charges shall be imposed on Supplier in connection with, or related to, the License. Customer agrees that its failure to provide the space and services described in this Exhibit B may adversely impact the Service(s), and Supplier shall not be responsible for any such adverse impact, whether under Exhibit C of this Agreement or otherwise. Furthermore, Customer agrees to indemnify Supplier for any damages arising as a result of Customer’s failure to provide the services as agreed to by Customer in this Exhibit B, specifically including but not limited to any failure to provide the HVAC services. Such damages shall include damages to Supplier’s equipment and facilities as well as labor and other costs incurred to replace or repair such equipment and facilities.
2. **Term.** The term of each License shall commence on the date of this Agreement and shall remain in full force and effect, and shall continue to govern with respect to each License Space for so long as any Service offered by Supplier from the Licensed Space remains in effect.
3. **Title to Equipment.** Title to Supplier’s equipment located in or at the Licensed Space shall remain with Supplier and its successors and assigns, as applicable. From time to time through the term, Supplier may remove, or cause to be removed, from the Licensed Space, any or all of Supplier’s equipment. Upon expiration or termination of the License, Supplier shall remove, or cause to be removed, from the Licensed Space, any and all of Supplier’s equipment. Such equipment shall be in the same condition as it was originally delivered, normal wear and tear excepted. If Customer fails to allow Supplier to enter the premises to recover any Supplier provided equipment, Customer shall be liable to Supplier for the replacement cost thereof, which costs shall be paid by Customer within thirty (30) days of invoice from Supplier. Customer hereby acknowledges and agrees that only Supplier authorized personnel shall be allowed to access the Supplier entrance facilities and Supplier equipment.
4. **Rules and Regulation.** Supplier and its employees, agents, and invitees shall abide by and observe all reasonable rules and regulations as may be promulgated by Customer for the maintenance and use of the Licensed Space.

Exhibit C

SERVICE LEVEL AGREEMENT (BUSINESS FIBER INTERNET AND WIDE AREA NETWORK (WAN))

1) NETWORK OPERATIONS DEFINITIONS:

- (a) Diverse Business Fiber Service. A Diverse Business Fiber Service is a symmetrical Internet Fiber Service that is entirely On Net and is provisioned to have no single point of failure, i.e. has physically diverse fiber routes, with dual entrance facilities, and dual optronics/electronics. A Business Fiber Service will be deemed a “Diverse Business Fiber Service” only if the Agreement specifically provides that the Business Fiber Service is a “Diverse Fiber Service” or a “Service with no single point of failure”.
- (b) Business Fiber Service. A Business Fiber Service is a symmetrical Internet Fiber Service that is entirely On Net but is not provisioned to have no single point of failure.
- (c) Force Majeure. Force Majeure events are causes beyond MetroNet’s reasonable control, including but not limited to acts of God, fire, explosion, vandalism, cable cuts, storms or other similar catastrophes; failures, shortages or unavailability or other delay in delivery by a third party supplying services, equipment, fiber, network or access rights to MetroNet; any law, order, regulation, direction, action or request of the United States government, or of any other government, including state and local governments having jurisdiction over either of the parties, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority; national emergencies; insurrections, riots, wars, or strikes, lockouts, work stoppages or other labor disputes or difficulties.
- (d) Emergency Maintenance or Repair. Emergency Maintenance or Repair is work which, if not accomplished immediately by MetroNet or third party provider, could result in a serious degradation or loss of Fiber Service to the Customer. Emergency Maintenance or Repair includes emergency maintenance or repair of network, equipment and power facilities.
- (e) Excluded Outages. Excluded Outages are outages: (i) arising out of or related to the acts or omissions of Customer or others authorized by Customer; (ii) during any period of Force Majeure; (iii) arising out of or related to a breach by Customer of its obligations under the Agreement or outages during any period of Customer default; (iv) a result of Planned Maintenance or Repair or other scheduled maintenance, alteration or implementation; (v) arising out of or related to Customer’s or third party’s network or equipment failure; (vi) due to failure of power; (vii) during any period in which MetroNet is not given access to the Customer or Customer’s end-user’s premises if necessary to resolve an outage; (viii) when a Fiber Service, in whole or in part, is Off Net to MetroNet; and (ix) with respect to Diverse Business Fiber Service that results from a dual event, i.e. an event on each redundant or diverse portion of the network over which the Fiber Service is delivered.
- (f) Off Net. “Off Net” means a service which is licensed by MetroNet from a third party to provide Fiber Service to a specific Customer or end-user premises or location.
- (g) On Net. “On Net” means a Fiber Service provisioned entirely on MetroNet’s network. Notwithstanding any other provision of this Agreement, no Fiber Service shall be considered “On

Net” if a circuit associated with the Fiber Service is licensed from a third party to serve a specific Customer or end user premises or location.

- (h) Outage. “Outage” shall be defined as a measure of the time that there is (i) a total loss or interruption of transmission or signal (an “Availability Outage”), or (ii) the Service Elements of a Fiber Service do not perform equal to or better than the Performance Objectives stated below (a “Performance Outage”).
- (i) Planned Maintenance or Repair. Planned Maintenance or Repair includes network upgrades and repairs, equipment upgrades and repairs, power upgrades and repairs.

2) SERVICE OUTAGE CREDITS:

- (a) Availability Outage Credits. Customer shall be eligible to receive the following credits when there is an Availability Outage:

Table 1: Outage Credits for Diverse Business Fiber Services (99.999% Availability)	
Cumulative Outage (in hrs:mins:secs)	Outage Credit (% of MRC)
0:00:04 - 4:00:00	10%
4:00:01 - 8:00:00	15%
8:00:01 - 12:00:00	20%
12:00:01 - 16:00:00	25%
16:00:01 - 20:00:00	30%
20:00:01 - 24:00:00	35%
24:00:01 or greater	50%

Table 2: Availability SLA for Business Fiber Services (99.995% Availability)	
Cumulative Outage (in hrs:mins:secs)	Outage Credit (% of MRC)
0:00:00 – 0:02:00	None
0:02:01 - 4:00:00	5%
4:00:01 - 8:00:00	8%
8:00:01 – 12:00:00	10%
12:00:01 - 16:00:00	15%
16:00:01 - 20:00:00	20%
20:00:01 - 24:00:00	30%
24:00:01 or greater	50%

- (b) Performance Outage Credits. Customer shall be eligible to receive the following credits when there is a Performance Outage:

Service Element	Performance Standard Measured from a MetroNet Gateway to the Customer Premises
Latency (ms) (one way)	< 10ms
Jitter (ms)	< 2ms
RTD (ms)	< 20 ms
Packet / Frame Loss (%)	< 1%

Packet Loss/Latency Service Outage Credits		
	Service Outage Credit - % of MRC for Affected Service(s)	
Cumulative Duration of Service Level Failure(s)	Business Fiber	Diverse Business Fiber
>2 hrs to 4 hrs.	5%	10%
>4 hrs. to 8 hrs.	8%	15%
>8 hrs. to 12 hrs.	10%	20%
>12 hrs. to 16 hrs.	15%	25%
>16 hrs. to 20 hrs.	20%	30%
>20 hrs. to 24 hrs.	30%	35%
>24 hrs.	50%	50%

- (c) A Service Outage shall be measured from the time Customer reports to MetroNet that an Outage has occurred (regardless of when the Outage actually commenced) and shall be deemed to terminate upon restoration of the affected Fiber Service as evidenced by appropriate network test by MetroNet. In addition, Performance Outages shall be measured from a MetroNet Gateway to the Customer's premises. Customer shall, within thirty (30) days of such Outage, provide MetroNet with a written demand for the credit set forth in this Section. If Customer fails to provide such notice, the credit shall be deemed waived. An Outage will not be deemed to have occurred in the event that it arises from or relates to an Excluded Outage. The maximum credit that may be earned for a particular Fiber Service in a calendar month shall not exceed one hundred percent (100%) of the monthly rate charged by MetroNet for that particular Fiber Service in that month irrespective of the number or length of periods of Outage of that Fiber Service in that month. Service Outage Credits shall be Customer's sole and exclusive remedy with respect to Fiber Service outages, interruptions, delays, failures, or other defects in Fiber Service. A Service Outage shall not be deemed a default by MetroNet. Under no circumstance shall Customer be entitled to an Availability Service Outage Credit and a Performance Outage Credit for the same Outage or during the same Outage period.

(d) Notwithstanding any other provision of the Agreement, this Service Level Agreement shall not apply to asymmetrical Fiber Services, which are offered on a best efforts basis.

3) RESPONSE AND RESTORATION OBJECTIVES:

(a) Objective measured as an average over one (1) month.

Category	Objective
Mean Time to Respond (verbal response)	30 Minutes
Mean Time to Respond On Site (if needed)	2 Hours
Mean Time to Restore	8 Hours

MetroNet will use commercially reasonable efforts to respond and restore Fiber Service in accordance with the above objectives, subject to events of Force Majeure. Failure to meet any such objective will not result in eligibility for a Service Outage Credit. Objectives shall be measured from the time Customer reports to MetroNet that an Outage has occurred (regardless of when the Outage actually commenced).

Exhibit D

CUSTOMER REPAIR CONTACT LIST

If you experience a network outage or service interruption at any time please call the Supplier Network Operations Center (NOC) at 833.266.5812.