

CUSTOMER: _____

PIONEER TELEPHONE COOPERATIVE D/B/A PIONEER CONNECT

MASTER SERVICES AGREEMENT

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This MASTER SERVICES AGREEMENT (this "Agreement") is entered into effective as of the ___ day of _____, 20___ (the "Effective Date"), by and between Pioneer Telephone Cooperative d/b/a Pioneer Connect, an Oregon cooperative corporation ("Pioneer Connect"), whose principal place of business is located at 1304 Main St., Philomath, Oregon 97370 and _____, a(n) _____ ("Customer"), whose principal place of business is located at _____. As used in this Agreement, "Party" means either Customer or Pioneer Connect, as appropriate, and "Parties" means Customer and Pioneer Connect.

ARTICLE 1 - DEFINITIONS

1.1 Meaning of Terms. Terms 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 Pioneer Connect 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:** This Agreement, 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) **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 Agreement requirements.
- (e) **Early Termination Liability:** The charges due from Customer to Pioneer Connect for the termination of any Service ordered pursuant to this Agreement prior to the end of the applicable Service Term.
- (f) **Emergency Maintenance:** Maintenance which, if not accomplished promptly by Pioneer Connect, could result in damage to Pioneer Connect's Network or a degradation or loss of Service to Customer or other Pioneer Connect customers, as determined by Pioneer Connect in its sole discretion.
- (g) **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.
- (h) **Governmental Charges:** Charges, both retroactive and prospective, that Pioneer Connect is required or permitted to collect from Customers in connection with the furnishing of Service by Pioneer Connect. 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 Pioneer Connect. 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.

- (i) **Network:** The telecommunications network of one of the Parties, as applicable.
- (j) **Off-Net Service or Type 2 Service:** Service where one or more of the locations at which Service is provided is not served directly by Pioneer Connect's Network, thereby requiring that a portion of Service be furnished by a third-party service provider. When Pioneer Connect provides Off-Net Service, 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.
- (k) **On-Net Service:** Service where all locations at which Service is provided are served directly by Pioneer Connect's Network, allowing the entire Service to be furnished by Pioneer Connect.
- (l) **Planned Service Outage:** A Service Outage caused by scheduled maintenance or by upgrades made to Pioneer Connect's Network.
- (m) **Point of Presence (POP):** A specific location where Service originates or terminates.
- (n) **Point of Termination:** A location at which Pioneer Connect's Service responsibilities end and Customer's responsibilities begin. A Point of Termination may be the demarc where Pioneer Connect and Customer interconnect at Customer Premises, which may include a meet-me location, a local exchange carrier's central office, or a long-distance carrier's POP identified on Exhibit A.
- (o) **Premises:** A physical address at which Service is provided and identified as a Point of Termination or Service location in a Service Order.
- (p) **Service:** Pioneer Connect-provided telecommunications or related service described in Exhibit A, a Schedule or a Service Order. Service may include entrance cables or drop wires terminating in a Pioneer Connect distribution panel (DSX) situated on Customer Premises.
- (q) **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.
- (r) **Service Outage:** An interruption or degradation of Service.

- (s) **Service Request Date:** The Service availability date requested by Customer in a Service Order.
- (t) **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 Pioneer Connect notifies Customer of Service availability.
- (u) **Taxes:** Amounts Pioneer Connect 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 Pioneer Connect as a result of its provision of Service. "Taxes" does not include any tax based on Pioneer Connect's net income, net worth, capital structure or payroll.

ARTICLE 2 - SERVICE; OBLIGATIONS/LIMITATIONS

2.1 Service. Pioneer Connect will provide, and Customer will receive, the Service or Services as set forth in Exhibit A and such subsequent Exhibit As as the Parties may mutually agree. Pioneer Connect 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. Pioneer Connect will be deemed to have accepted such Exhibit A at such time as Pioneer Connect signs the Exhibit A. Notwithstanding the foregoing, any Exhibit A not signed by Pioneer Connect will be deemed valid and binding upon the Parties upon commencement and acceptance of the Services ordered pursuant to such Exhibit A.

2.2 Availability of Facilities.

- (a) Service is offered and furnished subject to the availability of all necessary facilities, including those acquired by Pioneer Connect from or through third parties. Pioneer Connect may limit or allocate Service, if necessary, due to facilities availability, taking into account Pioneer Connect's 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, Pioneer Connect, 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 Pioneer Connect's exclusive choosing. In no event will title to those facilities vest in Customer or any other individual or entity.

2.3 Equipment and Access to Premises.

- (a) Pioneer Connect will own and control all Pioneer Connect equipment necessary to provide the Service, which will remain Pioneer Connect's personal property regardless of where located or attached ("Pioneer Connect Equipment"). Pioneer Connect may upgrade, replace or remove Pioneer Connect Equipment, regardless of where located, so long as the Services continue in effect as set forth herein. Customer may not alter, move or disconnect Pioneer Connect Equipment and is responsible for any damage to, or loss of, Pioneer Connect Equipment caused by Customer's breach of this provision or as the result of Customer's negligence or willful misconduct. Pioneer Connect 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. Pioneer Connect 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) Pioneer Connect may require access to Customer's premises to provision, install, inspect, maintain and repair the Services and the Pioneer Connect Equipment. Customer must provide Pioneer Connect 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 Pioneer Connect Equipment at Customer's premises.
- (c) If Customer intends to connect the Services to facilities that it does not own, it must provide Pioneer Connect with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.
- (d) If Customer requests that Pioneer Connect 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 Pioneer Connect agrees to perform such work, Customer shall be responsible for paying Pioneer Connect a time and materials charge associated with performance of the work.

2.4 Delays; Non-performance. Pioneer Connect 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.

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

ARTICLE 3 - BILLING; PAYMENT; FINANCIAL STANDING

3.1 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.

3.2 Customer Payment Obligation. Except as provided in Section 3.55 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 Pioneer Connect, payment must be made by check or wire transfer in accordance with instructions provided by Pioneer Connect. If payment is made by check any restrictive endorsements or statements placed on checks will not be binding on Pioneer Connect.

3.3 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 Pioneer Connect 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 Pioneer Connect 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 Pioneer Connect will incur by reason of late payment of Customer. Acceptance of such late charge by Pioneer Connect shall in no event constitute a waiver of Customer’s default with respect to such overdue amount, nor prevent Pioneer Connect 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).

3.4 Customer Financial Standing. Upon a good faith determination by Pioneer Connect that a change has occurred in Customer’s financial condition, Pioneer Connect may request information from a reporting agency to enable Pioneer Connect to assess Customer’s credit history and current credit standing. Customer hereby consents to all such inquiries. Based on the information acquired, Pioneer Connect 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. If Customer becomes a debtor in a bankruptcy case under any chapter of the Bankruptcy Code, Customer will not object to any motion filed by Pioneer Connect under Section 362 of the Bankruptcy Code seeking authority to apply the deposit to any outstanding claim, and will not seek recovery of the deposit on a turnover theory.

3.5 Bill Disputes. To dispute an invoice, Customer must notify Pioneer Connect 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. Pioneer Connect will investigate Customer's claim with a view toward resolving the dispute within thirty (30) days of Pioneer Connect's receipt of Customer's notice. Following an investigation in which Customer co-operates with Pioneer Connect, Pioneer Connect 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.

3.6 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 Pioneer Connect'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 Pioneer Connect.

ARTICLE 4- TAXES AND GOVERNMENTAL CHARGES

4.1 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 Pioneer Connect's net income, personal and real property, and assets.

4.2 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 Pioneer Connect as a result of Governmental Activity. Pioneer Connect 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 Pioneer Connect decides to impose new or revised terms and conditions neither mandated by nor consistent with a Governmental Activity, Pioneer Connect 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 Pioneer Connect written notice of its intent to discontinue the Service no later than

thirty (30) days after receipt of Pioneer Connect's notice of the new or revised charges, terms or conditions.

- 4.3 Exemption Certificate.** If Customer believes itself to be exempt from any Taxes or Governmental Charges, it may provide Pioneer Connect with a certificate demonstrating its eligibility for exemption. If the certificate is accepted, Pioneer Connect will cease imposing the applicable Taxes or Governmental Charges and, if such charges previously had been imposed and collected, Pioneer Connect 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.
- 4.4 Survival.** Customer's obligation to pay Taxes and Governmental Charges under this Article 4 will survive the expiration or early termination of the Agreement.

ARTICLE 5 - TERM AND TERMINATION

- 5.1 Term of Agreement.** The initial term of the Agreement will commence on its Effective Date and end after the term outlined in the Service Order are met. The Agreement automatically will 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 term or at least thirty (30) days prior to the end of any renewal term. If a term of Service established in a Service Order extends beyond the date of expiration of the Agreement, the affected Service will be provided in accordance with the term established in the Service Order pursuant to the terms of this Agreement as though it had remained in full force and effect.
- 5.2 Termination of Agreement and Discontinuation of Service.**
- (a) **Procedure.** If Customer terminates the Agreement (other than as provided in Section 5.1) or discontinues a Service for any reason, Customer must provide Pioneer Connect with written notice in accordance with Article 15. Termination of the 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 Pioneer Connect. 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 Pioneer Connect.
- (b) **Early Termination or Discontinuation.** Unless otherwise agreed by the Parties in writing, if Customer terminates any Service ordered under this Agreement 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 Pioneer Connect has a right of termination of any Service prior to the expiration of the Service Term, Customer will be liable to Pioneer Connect 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 the On-Net 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.

Customer agrees that Pioneer Connect's damages will be impossible to ascertain if any Service is terminated and that the foregoing early termination charge establishes liquidated damages and is not a penalty.

The Parties agree that for all purposes, including but not limited to U.S. Bankruptcy Code Section 365, that the Agreement and any Exhibit A(s) entered pursuant to the Agreement constitute a single integrated agreement and the Parties' intent is to create a single contract. The nature and purpose of the Agreement and any Exhibit A entered hereunder are the same, and the obligations of the Parties are interrelated between the Agreement and any Exhibit A.

ARTICLE 6 – INSURANCE

Customer represents and warrants that it will maintain during the term of this Agreement: (1) Commercial General Liability (“**CGL**”) insurance, including Blanket Contractual Liability and Broad Form Property Damage, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage for each occurrence; (2) Professional Liability or Errors and Omissions insurance in the amount of at least \$1,000,000 (one million dollars) for each occurrence; and (3) excess or umbrella liability at a limit of no less than \$2,000,000 (two million dollars) per occurrence and aggregate in excess of the underlying coverage required above. The CGL, excess or umbrella liability, and policies of Customer will designate Pioneer Connect and its officers, managers, members, and employees as additional insured. Customer will send evidence of the foregoing insurance to Pioneer Connect within thirty (30) calendar days of the date hereof. Customer will notify Pioneer Connect in writing at least thirty (30) calendar days prior to any cancellation or termination of a Customer's insurance, make arrangements for replacement insurance, and provide proof thereof.

ARTICLE 7- WARRANTIES

7.1 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.

7.2 Pioneer Connect. Pioneer Connect 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.

7.3 Customer. Customer represents and warrants that: (a) all Customer traffic handled by Pioneer Connect is compliant with applicable legal requirements and those established in this

Agreement; and (b) it possesses, and will maintain, all licenses, approvals, registrations and certifications required by regulators or other third parties to furnish its services.

7.4 Pioneer Connect. Pioneer Connect does not warrant products, equipment, hardware or software not manufactured by Pioneer Connect, but will on request, to the extent permitted, assign to Customer any applicable third party warranties.

7.5 WARRANTY DISCLAIMER. CUSTOMER ASSUMES TOTAL RESPONSIBILITY AND RISK FOR CUSTOMER'S AND ITS USER'S USE OF THE SERVICES PROVIDED BY PIONEER CONNECT. PIONEER CONNECT HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE ACTIONS OF THIRD-PARTY TELECOMMUNICATIONS SERVICE PROVIDERS. CUSTOMER AND CUSTOMER'S USERS ACCESS THE SERVICES AT CUSTOMER'S OWN RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND, WITH RESPECT TO SUCH SERVICES, NEITHER PIONEER CONNECT OR ITS AFFILIATES MAKES ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY PIONEER CONNECT, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY. Pioneer Connect does not warrant that the functions contained in the Services or in Pioneer Connect's systems will meet Customer's requirements, or will operate in the manner desired by Customer, or that the Services or Pioneer Connect's systems will be error free, or free from unauthorized instruction.

ARTICLE 8 – DEFAULT AND REMEDIES

8.1 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. Any failure of Service resulting in Service Outage credits 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, Pioneer Connect 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.

8.2 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, Pioneer Connect 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 this Agreement; (c) offset unpaid balances with amounts Pioneer Connect 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 Pioneer Connect 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.
- (c) **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 Pioneer Connect to collect from Customer applicable Early Termination Liability as set forth in Section 5.2.

ARTICLE 9- CONFIDENTIAL INFORMATION

9.1 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 this Agreement, any Service Order, and the Schedules to this Agreement.

9.2 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 this Agreement, any Service Order, or the Schedules to this Agreement and only to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement 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.

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 this Agreement 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 this Agreement; (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 this Agreement.

ARTICLE 10- INDEMNIFICATION

10.1 Pioneer Connect's Indemnification of Customer. Pioneer Connect 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 Pioneer Connect in the provision of Service; or (b) Pioneer Connect's violation of any of its representations and warranties under this Agreement.

10.2 Customer's Indemnification of Pioneer Connect. Customer will defend and indemnify Pioneer Connect, 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.

10.3 Intellectual Property. If Service, by itself as provided by Pioneer Connect, becomes, or if Pioneer Connect 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, Pioneer Connect 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.

- 10.4 Procedure.** If a claim is made against Pioneer Connect 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.
- 10.5 Limitation.** Sections 10.1 and 10.3 set forth the entire liability of Pioneer Connect, and Customer’s sole and exclusive remedies, with respect to any claim subject to indemnification under this Agreement.
- 10.6 Survival.** These indemnification obligations will survive this Agreement.

ARTICLE 11 - LIMITATION OF LIABILITY

- 11.1 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES OR AGENTS BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST OR IMPUTED PROFITS OR ROYALTIES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT WHETHER FOR, AMONG OTHER THINGS, BREACH OF WARRANTY OR ANY OBLIGATION ARISING THEREFROM, AND WHETHER LIABILITY IS ASSERTED IN, AMONG OTHER THINGS, CONTRACT OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT PRODUCT LIABILITY) WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN ADDITION, THE PARTIES’ TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THE SERVICE OR THIS AGREEMENT SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE AVERAGE MONTHLY RECURRING CHARGE PAID TO PIONEER CONNECT BY CUSTOMER PURSUANT TO THIS AGREEMENT. THE PARTIES WAIVE ANY CLAIM THAT THESE EXCLUSIONS OR LIMITATIONS DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE THIS AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE. The provisions of this Paragraph 11 allocate the risks between Pioneer Connect and Customer, and Pioneer Connect’s pricing reflects the allocation of risk and limitation of liability specified herein.
- 11.2 Assumption of Risk.** Customer recognizes that use of the Services shall be at its own risk, and therefore, expressly assumes any risk arising from the exercise of any rights, privileges or obligations identified herein.
- 11.3 Service Credits and Liability Limits.** For the transport based services, Customer’s sole remedy for any failure of Service is the right to receive Service Outage credits due under the

Agreement as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

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 Oregon and that this Agreement was negotiated, accepted and shall be performed in Oregon.

13.1 Applicable Law and Venue. This Agreement will be governed by the laws of the State of Oregon 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 Benton County, Oregon, or in the United States District Court for the District of Oregon, 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 Oregon, this Agreement was formed in Oregon, and performance of this Agreement shall be in Oregon. Each Party agrees to personal jurisdiction in Benton County, Oregon and waives any objection to jurisdiction or venue there.

13.2 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. Pioneer Connect may elect to litigate billing or payment disputes or collections matters.

13.3 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

14.1 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 Pioneer Connect in its reasonable discretion) as of the Effective Date of this Agreement; and (c) deliver to Pioneer Connect executed documents that are acceptable to Pioneer Connect and establish the terms of the Assignment.

14.2 Other Assignment. Any other Assignment by Customer without the prior written permission of Pioneer Connect (which shall not be unreasonably withheld) is void ab initio. If this Agreement is assigned on an approved basis to an entity that, prior to the assignment, had an agreement with Pioneer Connect, the service being provided will continue to be governed by that prior agreement, and the Service provided under this Agreement will be governed by this Agreement, each without reference to the other.

ARTICLE 15 - NOTICES

15.1 Bill Disputes. Customer must submit a dispute of any invoiced charge(s) electronically to 1304 Main St., Philomath, OR 97370 or such other address as Pioneer Connect may specify from time to time.

15.2 Service Discontinuation. Customer must submit a request to discontinue a Service to 1304 Main St., Philomath, OR 97370 or such other address as Pioneer Connect may specify from time to time. A request to discontinue Service will be effective no sooner than thirty (30) days after receipt thereof.

15.3 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 Pioneer Connect: Pioneer Telephone Cooperative
d/b/a Pioneer Connect
1304 Main Street
Philomath, OR 97370
Attn: Jim Rennard
Email: jamesrennard@pioneerconnect.net

If to Customer: _____

Attn: _____
Email: _____

Pioneer Connect may change its address and point(s)-of-contact by notifying Customer by email or in accordance with the requirements established in this Article.

ARTICLE 16 - MISCELLANEOUS

- 16.1 Interpretation.** This Agreement may not be construed or interpreted against either Customer or Pioneer Connect because that Party drafted, or caused its legal representative to draft, any of its provisions.
- 16.2 Order of Precedence.** If there is an express inconsistency between a term in this Master Services Agreement, 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) this Agreement.
- 16.3 Pioneer Connect Facilities, Equipment and Software.** Pioneer Connect facilities, including equipment and software, used to provide any Service will remain the exclusive property of Pioneer Connect or its assignee, and nothing contained in this Agreement 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 Pioneer Connect facilities or equipment, nor may Customer alter, or attempt to alter, software furnished as part of Service. Pioneer Connect 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, Pioneer Connect will retrieve its facilities and equipment from Customer Premises or Customer, at its expense, will return to Pioneer Connect, within thirty (30) days of Service termination, all Pioneer Connect-provided facilities and equipment, along with any software and other information or materials provided by Pioneer Connect 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 Pioneer Connect's property or allow for its retrieval, Customer must reimburse Pioneer Connect, upon demand, for the replacement cost of the facilities, equipment, software, and other information or materials provided, as well as any costs incurred by Pioneer Connect resulting from the Customer's failure to return Pioneer Connect's property.
- 16.4 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.
- 16.5 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 the Agreement will remain in full force and effect.
- 16.6 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 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, Pioneer Connect 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 the Agreement, although those methods of communication may be used otherwise in the performance of the Parties’ obligations under this Agreement.

16.7 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 this Agreement.

16.8 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.

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

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

16.11 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.

16.12 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.

- 16.13 Waiver.** No waiver by either Party of any provision of this Agreement shall be binding unless made in writing. With Party's waiver of any portion of this Agreement, or failure to insist upon strict performance of any provision of this Agreement, shall not be construed as a waiver of any of its rights hereunder.
- 16.14 Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the Agreement of the parties and each of which shall be deemed an original.
- 16.15 No Resale.** Customer may not resell or under any circumstance allow a third party to use the Services.
- 16.16 Litigation.** If either Party commences litigation under this Agreement, the substantially prevailing party is entitled to reimbursement of its costs and attorneys' fees from the other Party.
- 16.17 Us of Name and Trademarks.** Neither Party shall use any name, logo or service mark of the other Party in marketing services to others without the express written consent of the other Party.

AGREED TO AND ACCEPTED BY:

**PIONEER TELEPHONE COOPERATIVE
D/B/A PIONEER CONNECT**

COMPANY

BY: _____
AUTHORIZED SIGNATURE

BY: _____
AUTHORIZED SIGNATURE

PRINT NAME

PRINT NAME

PRINT TITLE

PRINT TITLE

DATE: _____

DATE: _____