

Visionary Communications Services Agreement

C-2015-27

This agreement for carrier services (hereinafter "Service"), including the attached Service Order(s) (collectively referred to herein as the "Agreement") is made between Visionary Communications Inc., a Wyoming corporation (hereinafter "Visionary"), having offices at 118 N Stevens St, Spokane WA 99201, telephone number 509-688-8000 and Pend Oreille County, a Washington entity hereinafter "Customer"), having offices at 331 S Garden Ave, Newport WA 99156, telephone number 509-447-1925.

In order to be eligible to receive the terms and conditions contained in the Agreement, the Agreement must be signed and returned to Visionary within thirty (30) business days from the date Agreement was sent for Customer signature. Following execution of the Agreement by Visionary, the fully executed Agreement shall be sent to the Customer via preferred method, as defined in the Notice section of this Agreement.

The undersigned Parties have read and agree to the terms and conditions set forth in the Agreement. This Agreement, its exhibits and appendices and any documents expressly referred to in this Agreement constitute the entire agreement between the Parties and supersede all prior understandings and agreements, whether written or oral, that may relate to the subject matter of this Agreement.

Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed modified to the extent necessary (consistent with the intent of the Parties) to eliminate the illegal, invalid or unenforceable effect or to delete such provision if modification is not feasible, and the remaining terms shall continue in full force and effect.

This Agreement may be executed by the Parties in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same Agreement. Facsimile signatures shall be deemed to be, and shall constitute and be treated as an original signed Agreement or counterpart.

In witness thereof, the Parties have caused this Agreement to be signed by their duly authorized representatives.

Pend Oreille County

By: Steve Kiss

Name: Steve Kiss

Title: Commissioner, Chair

Date: 10/20/15

Notice Address:

Pend Oreille County
331 S Garden Ave
Newport WA 99156

Billing Address:
Information Technology Services
PO Box 5095
Newport, WA 99156

Billing Contact: Chad Goodhue
Billing email: cgoodhue@pendoreille.org
Billing phone: 509-447-1925

By: Brian R. Worthen

Name: BRIAN R WORTHEN

Title: PRESIDENT

Date: 10/20/15

Notice Address:

Visionary Communications Inc
1001 S Douglas Hwy, Suite 201
Gillette WY 82717-2799
Attn: Contract Management

Local Office Address:
Visionary Communications Inc
118 N Stevens St
Spokane WA 99201

COPY

Visionary Communications Inc.

Initial

1.0 Definitions

"CPE" means Customer Premises Equipment used at the End User location or Customer location in conjunction with a Service.

"Customer Equipment" means CPE other than CPE for which Visionary has agreed [in a Service Order] to assume maintenance responsibility.

"Due Date" shall mean thirty (30) calendar days from the invoice date.

"Effective Date" means the date this Agreement is fully signed by both Visionary and Customer.

"End User" means Customer's clients or any third party who utilizes or accesses the Services or Visionary's network via the Services provided hereunder.

"Firm Order Commitment Date" means the date where the local exchange carrier or fiber provider will commit to having the circuit provisioned and available for use.

"Force Majeure" means an unforeseeable event beyond the reasonable control of that Party, including without limitation: act of God, fire, flood, labor strike, sabotage, cable cut not caused by Visionary or its underlying carrier, acts of terror, government laws or regulations, war or civil disorder.

"MRC" means the monthly recurring cost of a Service, which will be as set forth on Appendix A or as agreed upon by the Parties and documented on a Service Order, as applicable.

"NRC" means a one-time, non-recurring cost with respect to a Service, which will be as set forth on Appendix A or as agreed upon by the Parties and documented on each Service Order, as applicable.

"Outage Credit" means a credit specified and issued in accordance with the terms of Appendices B, C, D and E to this Agreement that is applied to reduce amounts otherwise due from Customer to Visionary for Services provided under this Agreement.

"Parties" means, collectively, Visionary and Customer.

"Past Due Date" shall mean the first business day that is thirty (30) calendar days from the invoice date.

"Service Order" means the order form representing a specific Service to be provided for a defined period to the Customer.

"Service Start Date" or "Ready for Service Date" means five (5) calendar days after Service activation by Visionary.

"Service" or "Services" means the underlying product used to provide telecommunications and data transport to the Customer.

"SLA" means the Service Level Agreements associated with Services under this Agreement as specified on Appendices B, C, D and E to this Agreement.

"Termination Liability Charges" means (i) all previously-waived NRC for an applicable Service Order, (ii) all

Monthly Recurring Costs (MRC) for any remaining months in the first twelve (12) months of the term of the then applicable Service Order Term, if any, and (iii) fifty percent (50%) of the MRC for the remaining months beyond the first twelve (12) months of the then applicable Service Order Term.

"Undisputed Payment" means the amount of an invoice with respect to which Customer has not properly and timely submitted a billing dispute.

2.0 Terms and Conditions

2.1 This Agreement sets forth the terms and conditions under which Visionary shall provide Services to Customer, as further specified on the Service Order for individual Services ordered by Customer. The terms of any active Service Orders shall supersede any inconsistent terms and conditions contained in this Agreement when specifically denoted in the Service Description.

2.2 This Agreement shall not be modified or amended except via written instrument agreeable to both Parties. In the event a conflict exists between this Agreement and terms of any Amendment hereto, the term in the Amendment shall take precedence.

2.3 Visionary will provide the Services or cause the Services to be provided to Customer in accordance with this Agreement. Visionary may utilize an Affiliate or third party to provide Services to Customer and will present to the Customer consolidated invoices for some or all portions of the Services.

2.4 Omitted

2.5 Taxes All fees owed by Customer to Visionary are exclusive of, and to the extent not otherwise exempt, Customer will be responsible for, all sales, use, excise, Federal Universal Service Fund and other taxes, including NECA tariff increases where applicable, that may be levied upon either Party (except for taxes based on Visionary's net income) in connection with this Agreement or on activities conducted using the Services. Each Party shall be solely responsible for all taxes on its own business and shall be responsible for any related tax filings, payment, protest, audit and litigation related thereto.

2.6 Visionary authorizes Customer to initiate orders for telecommunications circuits to Visionary's network, provided that Customer orders are for Services defined in Appendix A or have been accepted by Visionary as evidenced by a fully executed Service Order. Visionary has the right, in its sole discretion, to refuse any such Service Orders upon review.

2.7 Visionary shall provide Services in accordance with applicable State tariffs governing the provisions of such Services in the State provided. In the event of a conflict between tariff and this Agreement, where applicable, the conflict shall be resolved in the favor of the tariff. This provision is not applicable to unregulated and/or non-tariffed Services.

3.0 Invoicing

3.1 Procedure Customer shall be invoiced by email and/or via U.S. Postal or courier service at Customer

preference each month in advance of Service, for all amounts due and owing to Visionary. Payments are due within thirty (30) days following the invoice date (the "Due Date"). Unless otherwise specified in writing by Visionary, payments shall be made payable to "Visionary Communications" and mailed as directed on the invoice. Credit card, money order, wire transfers and cashier's checks, in each case representing immediately available funds, are also acceptable payment instruments.

3.2 Advance Invoice Visionary will invoice Customer in advance for all Services. All undisputed amounts other than a written disputed amount not received by Visionary in full by the Due Date, will be considered past due, and subject to a late payment fee of the lesser of one and one-half percent (1.5%) per month, or portion thereof, or the maximum amount allowed by law. Customer Services, individually or as a whole, may be terminated, disconnected, and equipment removed upon five (5) business days notice if payment, less any timely and properly submitted billing disputes, is not received by the Due Date. Visionary may charge a \$500 reconnect fee for any individual Service at its sole discretion to restore such Service.

3.3 Dispute of Invoice Customer shall only be obligated to pay the Undisputed Payment amount on or before the Due Date. In order to properly dispute all or any portion of an invoice, Customer must give written notice to Visionary of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed) within sixty (60) calendar days following the date of the applicable invoice. The Parties shall use commercially reasonable efforts to resolve the dispute in good faith within a sixty (60) calendar day timeframe following the Customer's giving the notice of dispute. The Parties shall supply the other Party with additional information or documentation it shall reasonably request in order to determine the resolution of the dispute. If the dispute is resolved against the Customer, the Customer shall pay the disputed amounts plus interest at one and one-half percent (1.5%) per month from the date originally due. If Customer is entitled to credits or adjustments for disputed amounts, Visionary will credit Customer for the disputed amount and any interest on the disputed amount charged on its invoice issued the next billing cycle.

3.4. Attorney's Fees Customer shall also pay all collection costs incurred by Visionary (including, without limitation, reasonable attorneys' fees) for the collection of late payments.

4.0 Term

4.1 This Agreement is for the term provided on the initial Service Order or for a two (2) year period should initial Service ordered by Customer under this Agreement be a Service ordered without a Service Order pursuant to Appendix A (the "Initial Term"). The Initial Term begins on the date of actual installation of the initial, individual Service and activation by the telephone company or Visionary, whichever comes first (hereinafter "Start Date"). To the extent that the term of any Service Order for any Service extends beyond the Initial Term or any Services are provided on a month-to-month basis, this Agreement shall remain in full force and effect for such Service until the expiration or

termination of final active Service Order or the termination of the month-to-month Services under this Section 4.1 (the "Extension Term," and, collectively with the Initial Term, the "Term"), after which this Agreement will terminate. After the Initial Term, all Services shall automatically continue from month to month, at the then current month-to-month rate, communicated to Customer in writing, until terminated by Customer hereunder. To terminate a Service provided on a month-to-month basis, Customer must give Visionary written notice, after which the Service will terminate at the end of thirty (30) calendar days or a later date as requested by Customer. To terminate a Service at the end of the term specified in any Service Order, Customer must provide Visionary with written notice at least thirty (30) days prior to the end of such term. Customer will be liable for payment of, and Visionary will invoice Customer for Services, until they are considered terminated under this Section 4.1 or under Section 4.3 or 4.4.

4.2 Upon termination of this Agreement, Customer shall discontinue any and all use of Visionary's name and materials, including the use in advertising via web and in printed material, return or destroy any and all promotion material supplied by Visionary, cease representing itself as affiliated with Visionary.

4.3 Customer may cancel a submitted Service Order by providing Visionary with written notice of such cancellation. If Customer cancels a Service Order within three (3) business days after the date on which Visionary countersigns the Service Order, Customer will not be charged any cancellation fees for the terminated Service Order. If Customer cancels a Service Order more than three (3) business days after the date on which Visionary countersigns the Service Order, but prior to the Firm Order Commit Date for the individual Service, as communicated by Visionary, Customer shall pay Visionary a cancellation fee equal to the NRC outlined on the Service Order and all third-party construction, cancellation and/or termination charges incurred by Visionary, including any previously-waived NRCs from underlying fiber providers, with the exception of T1 (or DS1) services, which both parties agree to share actual expense incurred by Visionary for any Service Order cancellation prior to Firm Order Commitment Date. If Customer cancels a Service Order on or after the Firm Order Commit Date, Customer shall pay to Visionary all Termination Liability Charges. Upon cancellation of the Service Order under this Section 4.3, the applicable Service covered by the Service Order will be considered terminated. Customer may cancel a Service provided pursuant to Appendix A other than on a month-to-month basis upon no less than 30 days' prior written notice to Visionary.

4.4 Visionary may immediately terminate this Agreement and all Services hereunder for failure by Customer to timely pay amounts due under this Agreement. If Visionary terminates for non-payment, Customer shall pay with a lump sum equal to the aggregate Termination Liability Charges due under this Agreement within ten (10) days' following Visionary's notice to Customer of termination.

4.5 At any time during the Term, if Customer fails to pay undisputed invoice(s) by the Due Date on more than two (2) occasions in any twelve (12) month period, Visionary may, at its election, require Customer to

provide a deposit not to exceed three (3) months of MRC, calculated as an average of the last three (3) months of MRC for Services under this Agreement, within ten (10) calendar days.

4.6 Visionary shall notify Customer of the Start Date for the Service. In the event the Customer is unable or unwilling to accept Service at such time, the subject Service will be held available for a period not to exceed thirty (30) days from the Start Date, during which Service will be considered active, and will be invoiced as an active Service. Following this period, if the Customer has not accepted Service, Visionary has the right to terminate Service and invoice Termination Liability Charges.

4.7 Visionary shall use commercially reasonable efforts to install Service on or before the Start Date; however, the inability of Visionary to deliver the ordered Service by such date shall not constitute a default under this Agreement. Customer may terminate a Service Order accepted by Visionary without liability if Visionary fails to make the Service available for testing by the fortieth (40th) calendar day following the Firm Order Commitment Date unless that availability has been hindered by access to the location(s) at which Service is to be delivered, or Customer fails to complete necessary requirements or place necessary CPE to allow Visionary to meet this deadline. The right to terminate the delayed Service Order under this Section 4.7 is the Customer's sole and exclusive remedy for Visionary's failure to meet the Firm Order Commitment Date.

4.8 SLA terms are defined in Appendix B and Appendix C of this agreement and are incorporated by reference into this Agreement.

4.9 To receive an Outage Credit, Customer must comply with the procedures and requirements set forth in Appendix F, which is incorporated by reference herein. If Customer fails to comply with the conditions set forth in Appendix F, Customer shall have waived its right to Outage Credits with respect to the Outage (as defined in Appendix F) in question.

4.10 Outage Credits shall not apply if (a) Customer Equipment used in the Service has failed to operate properly and contributed to the Outage, (b) the Outage is due in whole or in part to Customer's or Customer's End User's use of the Service in violation of applicable law or in violation of instructions furnished by Visionary, (c) the Outage is related to routine maintenance outside normal business hours as communicated by Visionary in writing to the Customer no less than twenty-four (24) hours prior to such maintenance, and (d) to the extent the Outage is attributable to the fault of the Customer including, but not limited to, inadequate response time by the Customer. For avoidance of doubt, normal business hours shall be 7 am to 5 pm Monday through Friday, Mountain Time Zone, excluding United States federal holidays.

4.11 Customer may move the physical location of all or part of Service to another location within Visionary's serving area, provided the following conditions for the move are met, (a) Visionary is the provider of the Services at the new location, (b) Customer advises Visionary that Service at the new location is to replace the existing Service, (c) Customer's request for the

disconnection of the existing Service and the installation at the new location are received by Visionary on the same date, (d) Customer requests Visionary install Service at the new location on or prior to the disconnection date of the Service at the existing location (e) Customer pays all charges due at the existing location through the disconnection date and applicable non-recurring and recurring charges at the new location and (f) the underlying connection provided by Visionary, if contracted, can be replaced with a contract at the new location. No failure to provide a Service in accordance with the applicable SLA as a result of moving the location of the Service under this Section 4.11 will be considered an Outage or be eligible for Outage Credits.

4.12 Customer understands that Service must be changed or altered by and with Visionary, regardless of type of Service. All changes and terminations must be directed to Visionary, with Customer understanding that contact with a third party does not alter this Agreement. Changes to the type of Services, assignment of new settings, support and/or programming of routers and any other Service alterations may incur a charge to the Customer at Visionary's then current labor rates or Visionary's contract provider's non-recurring rates. Customer must provide ample notice and opportunity to Visionary to quote and schedule the Service changes.

4.13 Customer hereby acknowledges that the Internet is not owned, operated, managed by, or in any way affiliated with Visionary or its Affiliates; it is a community network independent of Visionary. Customer's use of the Internet related to Internet Bandwidth and IP Solutions as defined in Appendix B is at Customer's sole risk and is subject to all applicable local, State, Federal, and International laws and regulations. Access to the Internet is dependent on numerous factors, technologies, and systems beyond Visionary's authority and control.

4.14 Access to networks connected to Visionary's network must be established under rules appropriate to those networks. Visionary exercises no control whatsoever over the content and information passing through its network.

4.15 Routine maintenance and periodic system repair, upgrades and reconfigurations, public emergency or necessity, Force Majeure, restrictions imposed by law, acts of God, labor disputes, and other situations, including mechanical or electronic breakdowns, may result in temporary impairment or interruption of Service. As a result, Visionary does not guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Service without notice. Except as expressly set forth in Section 4.9 with respect to Outage Credits, customer releases Visionary and its directors, officer, employees and agents from any and all obligations, charges, claims, liabilities, opportunity costs and fees incurred, whether foreseeable or unforeseeable, as the result of Service interruption, omission or degradation, including the impact resulting to the Customer.

4.16 Use of a Party's name, trademark, service mark, copyright or other intellectual property owned by a Party or its Affiliates is strictly prohibited without the express written consent of a Party's corporate officer. Nothing herein constitutes a license authorizing the use of

Party's name, trademark, service mark, copyright or other intellectual property owned by a Party or its Affiliates.

4.17 Customer represents that it is not by law or agreement with others, prohibited from entering into this Agreement.

4.18 The following information will be considered proprietary information under the Agreement concerning non-disclosure of information between Visionary and Customer: (a) any of the terms of this Agreement, including pricing and (b) the existence, negotiation or results of any arbitrations or settlements relating hereto.

4.19 The terms, representations and warranties of this Agreement may only be waived by a written instrument executed by the Party waiving compliance. Except as otherwise provided for herein, neither Party's failure at any time, to enforce any right or remedy available to it under this Agreement shall be construed as a continuing waiver of such right or a waiver of any other provision hereunder.

4.20 EXCEPT FOR VISIONARY'S INDEMNITY OBLIGATIONS UNDER SECTION 5.1, CUSTOMER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO OUTAGE CREDITS AS SET FORTH IN THIS AGREEMENT. IN NO CASE WILL VISIONARY BE LIABLE FOR ANY AMOUNTS EXCEEDING IN THE AGGREGATE THE AMOUNTS PAID BY CUSTOMER TO VISIONARY UNDER THIS AGREEMENT IN THE PRIOR TWELVE MONTHS. VISIONARY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER STATUTORY, EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. CUSTOMER ACKNOWLEDGES AND ACCEPTS THE REASONABLENESS OF THE FOREGOING WARRANTY DISCLAIMER AND LIMITATIONS OF LIABILITY.

4.21 Notwithstanding anything else in this Agreement, there are no third party beneficiaries to this Agreement.

4.22 Customer shall be solely responsible for the following: (a) any costs associated with Customer Equipment; (b) access-related charges, including any charges for interconnection, cross-connection, installation, wiring and construction and other access-related charges; and/or (c) ordering, installing and ensuring proper operation of any and all equipment required to enable Customer to receive the Service, as set forth in any accepted Service Order.

4.23 Customer shall be responsible for supporting End Users of the Services solicited by or assigned to Customer, defined as Level 1 Support. Level 1 Support includes, but is not limited to, soliciting orders, completing orders, providing back-office and billing services and providing End User technical support. Customer warrants that communication with Visionary shall originate from Customer and not the End User.

4.24 Customer shall maintain a staff of adequately trained and competent personnel, knowledgeable of the

specifications, features and advantages of the Services, including methods of supporting Services. Customer acknowledges that the Services are technically complex and require high-quality, individualized pre-sale and post-sale support.

5.0 Indemnification

5.1 Indemnification by Visionary Visionary shall indemnify, defend and hold harmless Customer and its affiliates, parents, officers, directors, employees, agents successors and assigns ("Customer Indemnified Parties"), from and against all claims, demands, liabilities, damages and costs including, without limitation, its reasonable attorneys' fees and other costs of defense, due to third party claims for death, bodily injury or property damage, to the extent caused by (i) Visionary's negligence or other tortious conduct or (ii) Visionary's failure to comply with its obligations under the Agreement. In no event shall Visionary be held liable to any Customer Indemnified Party for any damages arising out of (a) any Customer Indemnified Party's negligence or tortious conduct or intentional misconduct, (b) any Customer Indemnified Party's violation of the terms of the Services as set forth in this Agreement, (c) any Customer Indemnified Party's modification of the Services, (d) any Customer Indemnified Party's violation of applicable law. The obligations of Visionary under this Section 5 are for the benefit of Customer Indemnified Parties only and Visionary shall have no liability or responsibility to any other person in connection with any performance or nonperformance of this Agreement.

5.2 Indemnification by Customer Customer shall indemnify, defend and hold harmless Visionary and its affiliates, parents, officers, directors, employees, agents successors and assigns ("Visionary Indemnified Parties"), from and against all claims, demands, liabilities, damages and costs including, without limitation, its reasonable attorneys' fees and other costs of defense, arising from or relating to a third party claim relating to (a) Customer's breach of any terms of this Agreement; and (b) Visionary's provision of Services under this Agreement. In no event shall Customer be held liable to any Visionary Indemnified Party for any damages caused by the gross negligence of any Visionary Indemnified Party.

5.3 Procedure A Party entitled to indemnification under this Section 5 (an "Indemnified Party") shall promptly notify the other Party to this Agreement (the "Indemnifying Party") in writing of any claim, action or proceeding which may be subject to indemnification under this Agreement (an "Indemnity Claim"), but the failure to provide such prompt notice will not relieve the Indemnifying Party from its obligation to provide indemnity with respect to an Indemnity Claim except to the extent the Indemnifying Party is materially prejudiced by the failure to give prompt notice. The Indemnifying Party will have the sole control of the defense and any settlement negotiations with respect to the Indemnity Claim, except that the Indemnified Party may employ counsel to participate in the defense of any such Indemnity Claim, and the employment of such counsel shall be at the Indemnified Party's own expense, unless (i) the employment of such counsel has been authorized in writing by the Indemnifying Party, (ii) the Indemnified Party has reasonably concluded (based upon advice of counsel) that a

conflict or potential conflict exists between the Indemnified Party and the Indemnifying Party that makes it impossible or inadvisable for counsel to the Indemnifying Party to conduct the defense of both the Indemnified Party and the Indemnified Party, or (iii) the Indemnifying Party has not in fact employed counsel reasonably satisfactory to the Indemnified Party to assume the defense of such Indemnity Claim within a reasonable time after receiving notice of an Indemnity Claim, in each of which cases the reasonable fees, disbursements and other reasonable charges of such counsel will be at the expense of the Indemnifying Party. Notwithstanding the foregoing provisions of this Section 5.3, the prior written consent of the Indemnified Party, which will not be unreasonably withheld, conditioned or delayed, will be required with respect to the settlement, compromise or consent of any Indemnity Claim in which such Indemnified Party is an actual or potential party unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such Indemnity Claim. At the request of the Indemnifying Party, the Indemnified Party will provide reasonable cooperation and, at the expense of the Indemnifying Party, assistance in the defense or settlement of any Indemnity Claim.

6.1 Choice of Law This Agreement and all disputes arising out of or relating to this Agreement will be governed by, enforced, and construed in accordance to the laws of the State of Washington. THE PARTIES AGREE THAT ANY ACTION BROUGHT BY EITHER PARTY UNDER OR IN RELATION TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION TO INTERPRET OR ENFORCE ANY PROVISION OF THIS AGREEMENT, SHALL BE BROUGHT EXCLUSIVELY IN, AND EACH PARTY AGREES TO AND DOES HEREBY SUBMIT TO THE JURISDICTION AND VENUE OF, ANY STATE OR FEDERAL COURT LOCATED IN SPOKANE, WASHINGTON AND AGREES THAT SUCH COURTS WILL NOT BE CONSIDERED, AND HEREBY WAIVES ANY CLAIM THAT SUCH COURTS CONSTITUTE, INCONVENIENT FORUM.

6.2 Successor and Assigns Neither Party shall assign any of its rights, obligations or privileges (by operation of law or otherwise) hereunder without the prior written consent, which shall not be unreasonably withheld, of the other Party. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by the reason of this agreement, except as expressly provided in this Agreement.

6.3 Headings Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

6.4 No Ability to Bind Other Party Neither Party shall have the authority to bind the other by contract or otherwise or make any representations or guarantees on behalf of the other. The relationship arising from this Agreement shall be, and shall at all times remain that of an independent contractor, and does not constitute an agency, joint venture, partnership, employee

relationship or franchise.

6.5 Notices All communications required or permitted to be given by this Agreement shall be made in writing and shall be sent by a recognized overnight commercial delivery or certified U.S. mail to the address for the respective Party shown on the signature page of this Agreement or such other address as either Party may specify from time to time in writing.

6.6 Force Majeure Neither Party shall be liable for any failure or delay in the performance of its obligations under this Agreement for any cause beyond its reasonable control including, without limitation, acts of God, fire or other disaster or telecommunications, power or Internet failure. The occurrence of any such event shall toll the time period provided in this Agreement for performance by the affected Party.

6.7 Construction; Interpretation The term "this Agreement" means this Visionary Communications Services Agreement together with the appendixes and exhibits hereto, as the same may from time to time be amended, modified, supplemented or restated in accordance with the terms hereof. No Party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions hereof, and all provisions of this Agreement shall be construed according to their fair meaning and not strictly for or against any Party. Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole, including the appendixes and exhibits, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement; (ii) masculine gender shall also include the feminine and neutral genders, and vice versa; (iii) words importing the singular shall also include the plural, and vice versa; and (iv) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation."

6.8 Survival. Customer's payment obligations to Visionary will survive the expiration and termination of this Agreement. In addition, the provisions of Sections 1, 2.5, 3.3, 4.1, 4.8, 4.9, 4.13 through 4.23 and 5 will survive the expiration and termination of this Agreement.

APPENDIX A – INTENTIONALLY OMITTED

APPENDIX B – INTENTIONALLY OMITTED

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Appendix C – Dedicated Internet Access Service Level Agreement

Dedicated Internet Access is described as Internet connectivity produced by: (a) a dedicated, high-speed network connection between Customer's premises and Visionary or a Visionary affiliate's Internet Protocol network (Visionary Network); and (b) routing services, based on Transmission Control Protocol/Internet Protocol (TCP/IP). Service may also include the procurement of IP address space for Customer.

The monthly Service Availability Percentage for Dedicated Internet Access is calculated as follows:

$$(\text{Minutes of Outage}) \times 30 / 1440 \text{ (actual Minutes in any given day)} \times 30$$

All relevant components of the Visionary IP Network (POPs, routers and circuits) are subject to this SLA, and components of other Internet backbone providers are subject only to the Latency SLA as described herein. Local access and connection facilities used to access the Visionary Network and any Customer equipment are not included as components of the Visionary Network for purposes of this SLA; provided, however, solely for purposes of the Network Port Availability SLA, the components of the Visionary Network shall include any access circuits provided by Visionary, but shall specifically exclude any access furnished or ordered directly by Customer from a third party.

Network Port Availability

Goal Outage Credit
100% 1 hours charges for every 1 [full] hour outage

Latency

Goal	Latency	Outage Credit
80ms	81-90ms	10% of MRC
80ms	91-110ms	25% of MRC
80ms	>110ms	50% of MRC

Packet Delivery

Goal	Packet Delivery	Outage Credit
99.50%	99.01-99.49%	10% of MRC
99.50%	90.00-99.00%	25% of MRC
99.50%	<90.00%	50% of MRC

Jitter

Goal	Packet Delivery	Outage Credit
2ms	2.1-3ms	10% of MRC
2ms	3.1-4ms	25% of MRC
2ms	>4ms	50% of MRC

Network Port Availability measures Network Downtime versus Network Uptime. Network Downtime is based on periods when a particular DIA port of Customer is unable to transmit and receive data, and Network Uptime includes all other periods. Network downtime is recorded in the Visionary Network trouble ticket system, and is measured from the time Customer opens a trouble ticket with Visionary as defined in Appendix E, to the time the affected Service is again able to transmit and receive data according to Visionary's records.

The average network delay ("Latency") will be measured via roundtrip pings on an ongoing basis every five minutes to determine an average monthly performance level for Latency at the relevant Point of

Presence within the Visionary Network. Latency equals the sum of roundtrip delay divided by two to calculate one-way latency results. Packet Delivery will be measured on an ongoing basis every five minutes to determine an average monthly performance level for packets delivered between the relevant POPs.

Jitter measures interpacket delay variance and packet loss in the Visionary Network, and is measured on an ongoing basis every five minutes by generating synthetic User Datagram Protocol traffic. For purposes of this Appendix C, jitter means average monthly jitter as measured by Visionary on an ongoing basis in five minute intervals.

A Distributed Denial of Service attack ("DDoS") is characterized by an explicit attempt by attackers to prevent legitimate users of a Service from using that Service. DDoS attacks are not covered by this SLA.

The length of each Outage shall be calculated in full minutes for the purposes of determining Outage Credits. The existence and end of each Outage and all Latency, jitter and network port availability measurements will be determined by Visionary in good faith based on network tests performed by Visionary. Under no circumstances will network tests performed by Customer be considered valid measurable criterion for Outage, Latency, jitter or network port availability determinations for the purposes of establishing Outage Credits.

Appendix D - Private Line Service Level Agreement

Private Line Service is described as the carriage of interstate or intrastate traffic pursuant to the terms and conditions of Agreement and the Appendices. Private Line Service is a point to point dedicated switched/non-switched electrical and/or data optical transmission, over a physical circuit between two Points of Presence (PoPs) located on Visionary's, its affiliates, or its third party vendor networks.

The monthly Service Availability Percentage for Private Line Service is calculated as follows:

$(\text{Minutes of Outage}) / 43,200$ (30 days x 24 hours/day x 60 minutes in an hour)

Private Line Service Descriptions:

DS1
DS3
OC3
OC12
OC48

SLA and Outage Credit Table, Service Availability

Upper Level	Lower Level	Outage Credit %
100.000%	99.99%	0%
<99.99%	99.95%	10%
<99.95%	99.00%	25%
<99.00%	0.00%	100%

The length of each Outage shall be calculated in full minutes for the purposes of determining Outage Credits. The existence and end of each Outage will be determined by Visionary in good faith based on network tests performed by Visionary. Under no circumstances will network tests performed by Customer be considered valid measurable criterion for Outage determination for the purposes of establishing Outage Credits.

Appendix F – Outage Credit Details

To receive an Outage Credit, Customer must (a) enter a trouble ticket at the time the failure to meet the SLA (the "Outage") occurs by contacting Visionary's Network Operating Center (NOC) via the online Visionary Communications Partner Portal, unless Visionary has itself opened the trouble ticket for such Service unavailability, (b) be current in its payment obligations under this Agreement for all amounts not in dispute by the Customer, and (c) request reimbursement for Outage Credits from Visionary as specified hereunder and submit to Visionary all necessary supporting documentation within thirty (30) calendar days of the date of invoice for the month in which the applicable Outage occurred. If Customer fails to comply with the conditions for Outage Credits as set forth, Customer shall have waived its right to such Outage Credits for Outages in such month.

An Outage shall not be deemed to have occurred in the event that the Service is unavailable or impaired due to any of the following:

- (i) Interruptions on a Service for which the Start Date has not yet commenced;
- (ii) Interruptions caused by the negligence, error or omission of Customer or others authorized by Customer to access, use or modify the Service or equipment used by Customer;
- (iii) Interruptions due to power failure at Customer or End User premises, or the failure or poor performance of Customer Equipment;
- (iv) Interruptions during any period in which Visionary or its agents are not afforded access to the End User premises where the access lines associated with the Service are terminated, provided such access is reasonably necessary to prevent a degradation or to restore Service;
- (v) Interruptions during any period that Visionary has communicated to Customer with twenty-four (24) hours notice that the Service will be unavailable due to Normal Maintenance or grooming purposes, or Customer has released the Service to Visionary;
- (vi) Interruptions during any period that Customer elects not to release the Service for testing and/or repair and continues to use it on an impaired basis;
- (vii) Interruptions resulting from Force Majeure (including a Distributed Denial of Service (DDOS) attack);
- (viii) Interruptions resulting from Customer's use of Service in an unauthorized or unlawful manner;
- (ix) Interruptions resulting from a Visionary disconnect under Section 3.2 of the Agreement;
- (x) Interruptions resulting from incorrect, incomplete or inaccurate Service orders from Customer;
- (xi) Interruptions due to improper or inaccurate network specifications provided by Customer;
- (xii) Interruptions resulting from a failure of an off-net carrier's loop or network that has no SLA;
- (xiii) Special configurations of the standard Service that have been mutually agreed to by both parties, unless a separate Service Level Agreement for the special configuration has been established with the Service Order; and
- (xiv) Visionary's inability to deliver Service by the Firm Order Commit Date.

Visionary will endeavor to perform all non-emergency

Scheduled Maintenance during pre-established maintenance hours, or windows. Scheduled Maintenance refers to (a) upgrades of hardware or software, (b) upgrades to increase capacity, (c) other pre-scheduled network activity that may degrade the quality of the Services or cause Service interruptions.

Visionary will use reasonable efforts to perform all Scheduled Maintenance weeknights between the hours of 11:00 pm and 6:00 am Mountain Time Zone. Notifications for Scheduled Maintenance shall be provided by email at least 24 hours in advance of the work. It shall be the responsibility of the Customer to provide Visionary in writing with correct and effective contact emails for said notifications.

Emergency Maintenance shall refer to efforts to correct Visionary network conditions which require immediate correction. Emergency Maintenance, while being conducted, may degrade the quality of Services and may result in total disruption of Service. Visionary may undertake Emergency Maintenance at any time it deems necessary in its sole discretion.

Visionary shall endeavor to provide Customer notice of Emergency Maintenance as soon as is reasonably practicable under the circumstances.

Appendix G – Visionary NOC Guide

Visionary operates a 24 hour monitoring center that enables access to Visionary's Tier 1 and Tier II Network Operations Center (NOC) personnel 24 hours a day, 7 days a week, 365 days a year. To report any Outage or other service issues to the NOC, Customer must phone 877.288.8389.

Should Services be delivered to Customer using Customer-provided circuits, Customer is responsible for maintaining and troubleshooting its portion of the circuit. Visionary's NOC will assist Customer in determining troubleshooting steps for each portion of the Customer's Services.

Appendix H – Switched Ethernet Service Level Agreement

Switched Ethernet is described as the carriage of packets on an Ethernet network (either Metro or Long-Haul) pursuant to the terms and conditions of Agreement and the Appendices. Switched Ethernet is a point to point or point to multi-point switched electrical and/or optical transmission, over a physical circuit to a central switched point or hub on Visionary's, its affiliates, or its third party vendor networks.

The monthly Service Availability Percentage for Switched Ethernet Service is calculated as follows:

$$\frac{\text{(Minutes of Outage)}}{43,200} \text{ (30 days x 24 hours/day x 60 minutes in an hour)}$$

Private Line Service Descriptions:
Metro Optical Ethernet
Metro Switched Ethernet Service
Ethernet Virtual Private Line

SLA and Outage Credit Table, Service Availability

Upper Level	Lower Level	Outage Credit %
100.000%	99.9%	0%
<99.9%	99.5%	5%
<99.5%	99.0%	10%
<99.0%	95.0%	25%
<95.0%	00.0%	50%

The length of each Outage shall be calculated in full minutes for the purposes of determining Outage Credits. The existence and end of each Outage will be determined by Visionary in good faith based on network tests performed by Visionary. Under no circumstances will network tests performed by Customer be considered valid measurable criterion for Outage determination for the purposes of establishing Outage Credits.

