

MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (the "**Agreement**") is made January 22, 2018 (the "**Effective Date**") by and between SUMMIT BROADBAND INC., a Florida corporation (the "**Summit Broadband**") with offices at 4558 35th Street, Orlando, Florida, 32811, THE CITY OF LEESBURG, FLORIDA, a Florida municipal agency, with offices at 50 W. Meadow Street, Leesburg, Florida 34748 on behalf of itself and certain of its Affiliates (the "**Customer**"). Summit Broadband and Customer are referred to collectively herein as the "**Parties**," or singularly as a "**Party**."

RECITALS

WHEREAS, Summit Broadband owns, maintains, and operates communications infrastructure, television programming delivery systems and related facilities for the distribution of cable television, Internet access, telephone, and other communications and data transmission services; and

WHEREAS, Summit Broadband and/or its affiliates are: (1) authorized by the Florida Public Service Commission ("**FPSC**") as a telecommunications provider; and (2) authorized by the U.S. Federal Communications Commission ("**FCC**") as a domestic and international Section 214 carrier.; and

WHEREAS, the Parties desire to enter into, and be bound by, this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following covenants, terms, and conditions:

ARTICLE 1. Services. Customer shall have the right to purchase any telecommunications services and cable television services that Summit Broadband is licensed and permitted to provide in Florida and between Florida and international locations, or any other services as may be detailed in an individual **Service Order Form** (the "**Services**") pursuant to this Agreement.

ARTICLE 2. Rates. The rates for each Service provided pursuant to this Agreement shall be specifically detailed in any attached **Service Order Forms** between the Parties (a sample of which is attached hereto as **Exhibit A**).

ARTICLE 3. Entire Agreement. This Agreement is subject to the attached **Master Terms and Conditions** and each **Service Order Form** which are incorporated by reference into this Agreement. This Agreement is the entire agreement between the Parties regarding each Service provided to Customer by Summit Broadband and supersedes all other agreements or understandings expressed or implied between the Parties related to each Service. In the event of any conflict between the documents comprising this Agreement, precedence shall be given to the documents in the following order: (i) this Agreement; (ii) the applicable Service Order Form(s).

[SIGNATURE PAGE FOLLOWS]

[Remainder of page intentionally left blank]

WHEREBY, the Parties have executed this Agreement as of the Effective Date and as though the following signatures were placed at the end of the attached **Master Terms and Conditions**.

SUMMIT BROADBAND:
SUMMIT BROADBAND INC.

CUSTOMER:
THE CITY OF LEESBURG, FLORIDA

DocuSigned by:
Mark Lipford
By: CFED09D2086A47C...
Authorized Signature

By: *[Signature]*
Authorized Signature

Print Name: Mark Lipford

Print Name: H.D. Robuck, III

Title: COO

Title: Mayor

Date: 1/23/2018

Date: January 22, 2018

Attest:
By: *[Signature]*
J. Andi Purvis, City Clerk

Notice Address:
Summit Broadband Inc.
4558 35th Street
Orlando, Florida 32811
Attention: Contract Administration
Email: contracts@summit-broadband.com

Notice Address:
City of Leesburg
501 W. Meadow Street
Leesburg, Florida 34748
Attention: Information Technology
Email: IThelpdesk@leesburgflorida.gov

[remainder of page intentionally left blank]

MASTER TERMS AND CONDITIONS

1. **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by first class mail (or its equivalent), postage prepaid, registered or certified, return receipt requested, transmitted by facsimile (with the original to immediately follow), or by hand delivery (including by means of a professional messenger service or overnight mail) to each Party at its Notice Address. Any such notice or other communication shall be deemed effective when actually received or refused. Either Party may, by similar notice given, change the Notice Address to which future notices or other communications shall be sent.

2. **Definitions.** As used in this Agreement, the capitalized terms listed in this Section 2 and derivatives thereof shall have the meanings respectively ascribed to them in this Section 2. Certain other capitalized terms shall have the meanings ascribed to them elsewhere in this Agreement or in any applicable **Service Order Form**.
 - a. **"Affiliate"** means, with respect to any Person, any other Person, who directly or indirectly controls, is controlled by, or is under common control with that Person. As used in this definition, "control" means the possession, directly or indirectly, of the power to vote fifty percent (50%) or more of the securities (on a fully diluted basis) having ordinary power for the election of directors, managing general partners, or managing members.
 - b. **"Dollars"** or **"\$"** means U.S. Dollars as detailed on the attached **Service Order Forms**.
 - c. **"Indirect Taxes"** means any sales tax, telecommunications tax, use or excise tax, general consumption tax, value added tax, goods and services tax, gross receipts tax or similar tax imposed by any governmental or quasi-government authority, including charges required or permitted by governmental or quasi-governmental authorities or applicable law in support of any statutory or regulatory programs, including without limitation the Universal Service Fund charge, under the Florida Telecommunications Act or similar legislations under the laws of any national, supranational, state, provincial, or other political subdivisions or quasi-governmental authority, but shall not include any taxes by reference to net income.
 - d. **"Interest Rate"** means the lower of: (i) the highest rate permitted by law; or (ii) one and one-half percent (1.5%) per month.
 - e. **"Maintenance Window"** means 11:00 p.m. to 7:00 a.m. (Eastern Standard Time) and certain scheduled weekends, as required.
 - f. **"Person"** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity.

3. **Payment; Indirect Taxes.**
 - a. In consideration of the provision of each Service hereunder by Summit Broadband to Customer, Customer agrees to pay Summit Broadband the monthly fees and non-recurring fees consistent with Summit Broadband's published rates, and specifically detailed on any individual **Service Order Forms** between the Parties pursuant to this Agreement, with respect to each Service (the **"Fees"**). The first invoice with respect to each Service will contain the Fees for the first partial calendar month of Service (or portion thereof) and the next full month of Service and any applicable non-recurring changes. Thereafter, the Fees will be invoiced monthly in advance. The Fees with respect to each Service shall be due and payable on the first business day of each month. Summit Broadband may, in its sole discretion, issue separate invoices for Fees and other charges relating to the various segments of the Service.

- b. Until Summit Broadband requires otherwise, all payments made by Customer hereunder shall be made by company check payable to Summit Broadband or by wire transfer of immediately available funds pursuant to wire instructions provided by Summit Broadband and shall be considered paid when received by Summit Broadband. At Summit Broadband's request, Customer shall make separate payment, as specified by Summit Broadband, for all Fees and other charges relating to particular segments of the Service provided that the total charges for all such segments do not exceed that previously agreed to end-to-end all-inclusive price.
- c. If Customer fails to make any payment under this Agreement when due, then, in addition to such sum and without prejudice to any other rights and remedies that Summit Broadband may have, Customer shall pay interest on such unpaid amount at the Interest Rate until such sum is paid in full and interest shall accrue both before and after judgment. Customer must bring any payment dispute to Summit Broadband's attention within thirty (30) days of invoice, providing sufficient detail and documentation to support the dispute. No interest shall accrue on any payment that is disputed in good faith by Customer while such dispute is pending. Notwithstanding the foregoing, if such dispute is later resolved in favor of Summit Broadband, such amount shall bear interest from the date when due until paid at the Interest Rate. If such dispute is resolved in favor of Customer, any and all disputed amounts paid by Customer shall be credited to Customer's account.
- d. At the execution of a **Service Order Form**, Customer shall pay to Summit Broadband the specified non-recurring installation and provisioning charges, and a security deposit, if required, which will be detailed in any individual **Service Order Form** between the Parties pursuant to this Agreement ("**Security Deposit**"). The Security Deposit will be returned at the end of the Service Term (as defined in Section 5.b. of this Agreement), provided, however, that in the event of any outstanding balances as of the cancellation date, termination date, or end of Service Term, the Security Deposit will be returned net of any outstanding balances owing.
- e. All payments made by Customer under this Agreement shall be made without any deduction or withholding for or on account of any Indirect Tax, with Customer being solely responsible to pay all such Indirect Taxes. Summit Broadband shall be entitled to include on any invoice, and Customer shall pay, any lawfully imposed Indirect Tax. Customer shall hold Summit Broadband and its Affiliates harmless for the payment of such Indirect Taxes. If Customer makes any deduction or withholding for any Indirect Tax from any payment due Summit Broadband or if Summit Broadband is required to pay an Indirect Tax, then, notwithstanding anything to the contrary contained in this Agreement, the gross amount payable by Customer to Summit Broadband shall be increased so that after any such deduction or withholding for such Indirect Taxes or any additional deduction or withholding on account of any Indirect Tax caused by such additional gross amount payable or any payments of an Indirect Tax by Summit Broadband, the net amount received by Summit Broadband will not be less than what Summit Broadband would have received had no deduction or withholding been required.
- f. Customer's obligation to pay any fees or amounts due under this Agreement shall not be subject to any rights of set-off, counterclaim, deduction, defense or other right which Customer may have against Summit Broadband or any other party.
- g. In the event Summit Broadband is charged any pass-through costs from third parties in the provision of the Services provided hereunder, such costs will be charged to Customer in addition to taxes and fees.

4. **Delivery and Acceptance.**

- a. When Summit Broadband has determined that a Service is operating substantially in conformity with the service level contained in the applicable service level agreement (the “**Service Level Agreement**”), a copy of which is available to Customer upon request, Summit Broadband shall promptly provide Customer written notice of the same (a “**Completion Notice**”). Each Completion Notice shall set forth the date upon which Summit Broadband will commence delivery of the Service to Customer (the “**Delivery Date**”). The Delivery Date shall be scheduled at a time mutually convenient to the Parties and in any event no later than seven (7) business days after receipt of the Completion Notice.
- b. Customer shall have three (3) business days from the Delivery Date (or any other time period as the Parties may mutually agree to in writing) to test the Service and provide Summit Broadband a written notice accepting or rejecting the Service (the “**Acceptance Period**”). If Customer determines during the Acceptance Period that the Service is not operating in conformity with the applicable specifications, Customer shall immediately notify Summit Broadband (specifying in reasonable detail the defect or failure in the Service). Any use of the Service for purposes other than testing shall constitute acceptance of the Service. If Customer fails to notify Summit Broadband of its acceptance or rejection of the Completion Notice within the Acceptance Period, Customer shall be deemed to have accepted such Service. The date of such notice of acceptance or deemed acceptance of the Service with respect to each Service shall be the “**Acceptance Date**”. In the event of any good faith rejection by Customer, Summit Broadband shall take such action as reasonably necessary, and as expeditiously as practicable, to correct or cure such defect or failure in accordance with the applicable specifications.
- c. Notwithstanding anything to the contrary contained in this Agreement, Summit Broadband may procure any portion of a Service or infrastructure necessary to provide a Service from third parties (whether under a lease, sublease, or otherwise) and deliver the same or a portion thereof to Customer, provided however, such procurement shall not result in any additional charges to the Fees and shall not result in any material adverse impact on Customer’s operation or use of the Service that would not have resulted but for Summit Broadband’s use of such third parties. Summit Broadband may also substitute, change, convert, or reconfigure the communications equipment and facilities used in providing a Service as long as the quality of such Service is not impaired or diminished, provided however, such substitution, change conversion, or reconfiguration shall not result in any increase in the Fees and shall not cause Customer to incur costs to operate or the Services that it would not have incurred but for the substitution, change or reconfiguration.

5. **Term and Termination.**

- a. This Agreement shall be continuous and co-terminous with any Service Term provided in any outstanding and active **Service Order Forms** between the Parties pursuant to this Agreement (the “**Term**”). Without limiting the foregoing, if after a period of sixty (60) months from the later of: (i) the Effective Date; or (ii) the commencement of any Service Term, the Customer does not have any active Services being provided by Summit Broadband, then Summit Broadband shall have the right to terminate this Agreement upon thirty (30) days’ formal written notice to Customer. Notwithstanding anything to the contrary provided in this Agreement, Customer shall have the continuing right to order any additional Services via execution of a **Service Order Form** for so as long as Customer has any active Services being provided by Summit Broadband.
- b. The Term, with respect to each Service, shall begin on the Acceptance Date and shall extend for a period of months thereafter as set forth in the applicable **Service Order Form** (the “**Service Term**”). At the expiration of each Service Term, this Agreement will automatically renew for additional one (1) year periods unless either Party has provided the other ninety (90) days’ formal written notice of its desire to not allow this Agreement to automatically renew. Upon final written notice of termination of Service, Customer’s right to use such Service shall immediately cease.

- c. Subject to the following, Customer may terminate a Service prior to the end of the applicable Service Term. In the event Customer terminates a Service prior to the end of its Service Term, Customer shall pay all outstanding balances plus a "**Termination Fee**" equal to one-hundred percent (100%) of the total of the remaining Fees through the end of the Service Term (a lump sum amount). In the event Customer terminates a Service prior to the end of the applicable Service Term due to a material breach of this Agreement by Summit Broadband, the Termination Fee shall not apply. Notwithstanding the foregoing, no Termination Fee shall apply in the event Customer and Summit Broadband mutually agree to replace or migrate from one Service to another.
- d. Upon the expiration of this Agreement, Summit Broadband shall owe Customer no further duties, obligations, or consideration. Termination of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration.
6. **Access Interconnection.**
- a. Customer shall grant Summit Broadband access, twenty-four (24) hours per day, seven (7) days per week, to and use of Customer's facilities to the extent reasonably necessary for the installation, connection, removal, and maintenance of equipment, facilities, and systems relating to a Service. Customer represents that it has obtained, or will obtain on a timely basis, all permissions and consents from third parties necessary to allow Summit Broadband such access, including permission to cross real property to access Customer's facilities. In the event that Customer fails to meet its obligations regarding access to, and use of Customer's facilities hereunder and, as a result, Summit Broadband is unable to install or continue the delivery of a Service, and such failure is not cured within ten (10) business days after notice of such failure, then such event shall be treated as a termination of the applicable Service by Customer pursuant to Section 5.c. of this Agreement, as applicable. Summit Broadband shall be responsible for any and all damages caused by it or its agents in connection with its installation, maintenance, and repair of facilities and/or Services under this Agreement.
- b. Summit Broadband, or its designated third-party suppliers and agents, shall, at Customer's request, interconnect Customer's communications system with the Service at all required terminating locations, whether in the Florida or U.S., within Summit Broadband's facilities or structures along the applicable route as designated in the applicable **Service Order Form**, provided that the Parties first agree on interconnection procedures. Summit Broadband shall perform all such work and Customer shall pay Summit Broadband the fees for such work as set forth in Summit Broadband's published rates, and more specifically described in the applicable individual **Service Order Form**, on the first business day of each month. If Customer requests Summit Broadband to perform services not contemplated in the applicable **Service Order Form**, and Summit Broadband agrees to perform such work, Customer shall pay Summit Broadband in full the fees for such work.
7. **Maintenance and Repair.**
- a. In the event Summit Broadband determines it necessary to interrupt a Service to perform scheduled maintenance, Summit Broadband shall (i) use commercially reasonable efforts to notify Customer at least forty-eight (48) hours prior to the interruption and (ii) upon Customer's request, provide the relevant information on its method of procedure, including when the interruption will occur, the anticipated length of the interruption, and a general description of the work to be performed.
- b. In the event Summit Broadband must perform scheduled maintenance during a Maintenance Window on a protected Service and Summit Broadband determines that it is not necessary to interrupt such Service (as described in Section 7.a. above) to perform such scheduled maintenance during a Maintenance Window, then prior to commencing any scheduled maintenance that in Summit Broadband's reasonable judgment will cause a break in transmission on any segment of the protected circuit, Summit Broadband will cause Customer's telecommunications traffic to be

switched to other segments of the circuit. In the event any segment of the protected circuit is cut or damaged with the result that there is a break in transmission of Customer's telecommunications traffic on that segment, then Summit Broadband agrees that it will not commence any scheduled maintenance on the other segments comprising such circuit which would result in a break in transmission on the circuit unless Summit Broadband determines that continued performance of such scheduled maintenance is required to maintain the integrity of its system. Subject to availability and subject to amendment of this Agreement, Summit Broadband may provide an additional Service requested by Customer to provide redundancy, subject to the Fees, terms and conditions, and provisioning lead-time applicable to such additional Service. Summit Broadband shall not be obligated to provide such additional Service or to pay any portion of the Fees for such additional Service as a condition precedent to performing maintenance with respect to any other Service which Customer has purchased under this Agreement. In no event, shall interruption for maintenance constitute a failure of performance by Summit Broadband of a Service in any manner.

8. **Use of a Service.** Customer represents, warrants, and covenants that during the Term and/or each Service Term (a) it shall use each Service in compliance with and subject to all applicable government codes, ordinances, laws, rules, and regulations and will require its customers to do the same, (b) it shall secure, prior to the Acceptance Date with respect to each Service, and maintain in full force and effect during the applicable Service Term, any and all necessary approvals, consents, rights-of-way, permits, franchises, licenses, or similar approvals from all governmental and other authorities which are necessary or required to be obtained by Customer for the use and operation of each Service by Customer, and (c) it shall not use its systems or any Service in a way that interferes in any way with or adversely affects the use of the fiber system or any communications and/or data services thereon.

Summit Broadband has in place a policy regarding Toll Fraud. In addition to the terms and conditions herein, the Customer's use of the Service(s) shall be subject to such Toll Fraud policy, which can be found at www.summit-broadband.com.

9. **Indemnification.**
- a. Each Party hereby agrees to indemnify, defend, protect and hold harmless the other Party, its employees, agents, officers, and directors (the "**Indemnified Persons**"), from and against, and assumes liability for all suits, actions, damages, or claims of any character brought against the Indemnified Persons because of any personal injuries or property damage received or sustained by any persons or property which in whole or in part arise on account of the negligent acts or omissions or willful misconduct of the indemnifying Party in the performance of or related to the Indemnifying Party's duties or obligations under this Agreement.
 - b. Notwithstanding the termination of this Agreement for any reason, the provisions in this Section 9 shall survive such termination or expiration.

10. **Limitation of Liability; Disclaimer of Warranties.**

- a. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES, OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, THE PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATIONS UNDER THIS AGREEMENT, EACH SERVICE ORDER FORM, OR OTHERWISE RELATED TO THIS AGREEMENT.
- b. SUMMIT BROADBAND MAKES NO WARRANTY, REPRESENTATION, OR INDEMNITY, EXPRESS OR IMPLIED, WITH RESPECT TO THE DELIVERY OR PERFORMANCE OF ANY SERVICE, OR ANY WORK PERFORMED UNDER THIS AGREEMENT INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR

PURPOSE OR USE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

- c. The Parties expressly agree that no claim for losses or damages whatsoever in connection with this Agreement, including indemnification under the provisions of Section 9, shall be made more than two (2) years after the date that the event giving rise to such claim is known or reasonably should have been known to the Party making such claim.
 - d. Notwithstanding the foregoing provisions of this Section 10, to the extent Summit Broadband is required under the terms and provisions of any easement, right-of-way, lease, indefeasible right of use agreement or other agreement relating to the provisioning of any Service hereunder ("Use Agreement"), to indemnify the grantor or provider thereof from and against any and all claims, demands, suits, judgments, liabilities, losses, or expenses arising out of or related to such Use Agreements, regardless of the cause, Customer hereby releases, and waives any claims against such grantor or provider from the same.
11. **Insurance.** Upon the arrival of Customer equipment at Summit Broadband's offices (if applicable) which Customer equipment is designated to be placed in a Summit Broadband rack and continuing throughout the Term, each Party shall, unless mutually agreed to the contrary in an amendment to this Agreement, procure and maintain in force the following types and limits of insurance coverage: (a) workers' compensation as required by applicable law, which includes employer's liability with minimum limits of One Million Dollars (\$1,000,000.00); (b) general liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate; and (c) automobile liability with minimum limits of One Million Dollars (\$1,000,000.00). Such required insurance shall be obtained through insurers reasonably acceptable to the other Party and licensed to conduct business in the jurisdiction. Each Party shall obtain from the insurance companies providing the coverage required by this Agreement, the permission of such insurers to allow such Party to waive all rights of subrogation and each Party does hereby waive all such subrogation rights.
12. **Confidentiality.**
- a. This Agreement, any data transmitted by Customer using the Services and all documents, data, information, maps and other materials, which are disclosed by one Party to the other Party in fulfilling the provisions and intent of this Agreement, are and shall be confidential (the "Confidential Information"). Neither Party shall divulge or otherwise disclose the Confidential Information to any third party without the prior written consent of the other Party, except that either Party may make disclosure on a need-to-know basis to (i) those employees required for the implementation or performance of this Agreement, (ii) its contractors on a need-to-know basis as required for the implementation or performance of this Agreement, provided that such contractors have signed a confidentiality agreement similar to this Section 12, and (iii) to its Affiliates, lenders and representatives who have been advised of the provisions of this Section 12 and who have signed a confidentiality agreement similar to this Section 12. In addition, either Party makes disclosure as required by law or in the performance of a Party's obligations (or those of its Affiliates) as a public company. If either Party is required by law or similar process to disclose any Confidential Information, it will provide the other Party with prompt prior written notice of such request or requirement so that such Party may seek an appropriate protective order and/or waive compliance with this Section 12. The Party whose consent to disclose information is requested shall respond to such request, in writing, within five (5) working days of the request by either authorizing the disclosure or advising of its election to seek a protective order, or if such Party fails to respond within the prescribed period the disclosure shall be deemed approved.
 - b. Upon termination of this Agreement for any reason or upon request of a Party, each Party shall return all Confidential Information, together with any copies of the same, to the other Party within thirty (30) days.

- c. Nothing herein shall be construed as granting any right or license under any copyrights, trademarks, service marks, trade names, inventions, or patents now or hereafter owned or controlled by either Party.
- d. Customer shall not, without first obtaining Summit Broadband's written consent, use any trademark, service mark, or trade name of Company or refer to the subject matter of this Agreement or Summit Broadband in any promotional activity or otherwise, nor disclose to others any specific information about the subject matter of this Agreement. Customer shall not issue publication or press releases relating directly or indirectly to this Agreement without Summit Broadband's express written consent.
- e. The provisions of this Section 12 shall survive expiration or other termination or expiration of this Agreement.

13. **Default.**

- a. A default shall occur under this Agreement if: (a) in the case of a failure to pay any amount when due under this Agreement, Customer fails to pay such amount within ten (10) days after notice specifying such breach; or (b) in the case of any other material breach of this Agreement, a Party fails to cure such breach within thirty (30) days after notice specifying such breach, provided that if the breach is of a nature that cannot be cured within thirty (30) days, a default shall not have occurred so long as such Party has commenced to cure within said time period and thereafter diligently pursues such cure to completion (a material breach of an individual **Service Order Form** by Summit Broadband shall not be considered a material breach of this Agreement and shall not affect any other **Service Order Form**); or (c) either of the following occur (i) a Party makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief, or an involuntary petition in bankruptcy or other insolvency protection is filed against either Party and not dismissed within one-hundred eighty (180) days thereafter.
- b. In the event of any default hereunder, the non-defaulting Party may avail itself of one or more the following remedies: (a) take such actions as it determines, in its sole discretion, necessary to correct the default; (b) terminate this Agreement and/or the applicable Service; and/or (c) pursue any legal remedies it may have under applicable law or principles of equity, including specific performance. Without limiting the foregoing, if the default consists of a failure of Customer to pay to Summit Broadband any Fees or expense due under any attached **Service Order Form**, Summit Broadband may, in addition to all other remedies, terminate or suspend any and all of its obligations in respect of such **Service Order Form** under this Agreement, and apply any and all amounts previously paid by Customer hereunder toward the payment of any other amounts then or thereafter payable by Customer hereunder.

14. **Force Majeure.** Notwithstanding any other provision of this Agreement, the Parties will not be deemed in default for the delay in performance of, or failure to perform, in whole or in part, its obligations due, directly or indirectly, to events that constitute "impossibility of performance" under Florida law, including without limitation: acts of God, strike or labor disturbance; war or act of war; insurrection, riot, or other civil disturbance; sabotage or act of public enemy; action or inaction of any governmental authority including condemnation; fire; earthquake, tornado, hurricane, flood, or other severe weather condition; and other unavoidable casualty (collectively, "**Force Majeure**"). Such Party's performance of such obligation or obligations shall be excused and extended for and during the entire duration of any such Force Majeure. Failure to pay any amount due shall not be considered a Force Majeure event. The Party claiming relief under this Section 14 shall notify the other in writing of the existence of the Force Majeure event relied on

and the cessation or termination of said Force Majeure event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay.

THE INTERRUPTION OR FORCED CESSATION OF SERVICE IN TOTAL OR IN PART DUE TO THE ACTIONS OF REGULATOR OR LICENSING AUTHORITY, OR AN ORDER OF A COURT OR OTHER LEGAL AUTHORITY HAVING LEGAL JURISDICTIONAL AUTHORITY OVER SUMMIT BROADBAND, CUSTOMER OR CUSTOMER'S CUSTOMERS, SHALL BE CONSIDERED A FORCE MAJEURE EVENT FOR THE PURPOSE OF TERMINATION AND/OR DEFAULT OF THIS AGREEMENT, WITHOUT RESPECT TO THE INTERPRETATION OR INTENT OF THE DEFINITIONS OF SECTION 8 A., B., OR C. ABOVE. IN THE EVENT OF A FORCE MAJEURE AS DEFINED IN THIS SECTION 14, ALL OUTSTANDING BALANCES ACCRUED AND OWED TO SUMMIT BROADBAND BY THE CUSTOMER THROUGH THE DATE OF THE FORCE MAJEURE EVENT SHALL BE SETTLED UNDER THE NORMAL PAYMENT CONDITIONS AS OUTLINED IN SECTION 3 OF THIS AGREEMENT AND ANY FAILURE TO SETTLE ANY AMOUNTS DUE WITHIN THE SAID TIME FRAME DESCRIBED, SHALL BRING ABOUT THE SAME DEFAULT REMEDIES AVAILABLE TO SUMMIT BROADBAND AS OUTLINED IN SECTION 13B OF THIS AGREEMENT.

15. **Assignment and Transfer Restrictions.**

- a. Except as provided in Section 15.b., neither Party shall transfer or assign all or any part of its interest under this Agreement, or delegate any duties, burdens, or obligations arising hereunder, without the other Party's written consent, which consent shall not be unreasonably withheld or delayed. A transfer or assignment in violation of this Section 15 shall constitute a material breach of this Agreement and shall be null and void from its inception.
- b. Either Party may assign this Agreement in whole or in part to a Permitted Assignee upon prior written notice to the other Party. "**Permitted Assignee**" shall mean (a) any Affiliate, (b) any Person that purchases all or substantially all of the assets of the assignor, or any other Person formed by or surviving the merger or consolidation of the assignor and any other Person or (c) any institutional leader to whom this Agreement is assigned as collateral security for any indebtedness of the assignor or any Affiliate of the assignor, provided that such collateral assignment is subject to the terms of this Agreement.
- c. Nothing contained in this Agreement shall preclude Customer from leasing or providing any capacity or other services derived from a Service to third parties without obtaining Summit Broadband's consent, provided that any use of such Services shall be subject to the terms and conditions of this Agreement. Customer agrees to indemnify, defend and hold harmless Summit Broadband, its Affiliates, and their employees, agents, officers, and directors, from and against and assumes liability for all suits, actions, damages, or claims of any nature arising out of or resulting from a contractual or other relationship between Customer and any such third parties as it relates to this Agreement or the use of a Service.

16. **Representations.** Each Party represents and warrants to the other that: (a) the representing Party has full rights and authority to enter into this Agreement and that by entering into this Agreement, the representing Party is not in violation of its charter or bylaws, or any law, regulation, or agreement by which it is bound or to which it is subject; (b) the execution, delivery, and performance of this Agreement by such Party has been duly authorized by all requisite corporate action, that the signatories for such Party hereto are authorized to sign this Agreement; (c) the representing Party is a business entity duly organized and validly existing and in good standing under the laws of its jurisdiction or organization; and (d) there are no actions, suits or proceedings pending or threatened against the representing Party before any court or administrative agency that would materially impair such Party's performance under this Agreement.

17. **Miscellaneous.**

- a. **Waiver.** The failure of either Party to enforce any of the provisions of this Agreement or any applicable **Service Order Form**, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.
- b. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Florida, irrespective of principles of conflicts of law.
- c. **Rules of Construction.** The captions or headings of this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as simplifying or limiting any of its content. Words in this Agreement, which import the singular connotation, shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require. Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires. Except as set forth to the contrary herein, a Party's right or remedy shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not. This Agreement has been fully negotiated by the Parties. This Agreement does not provide and is not intended to provide any third parties, other than certain Affiliates of the Parties, with any remedy, claim, reimbursement, cause of action, or any other right. All actions, activities, consents, approvals, and other undertakings of the Parties shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein.
- d. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof. This Agreement may only be modified or supplemented by an instrument in writing executed by authorized representatives of each Party and specifically stating that the Parties intend to modify or supplement this Agreement.
- e. **No Personal Liability.** Each action or claim against a Party arising under or relating to this Agreement shall be made only against such Party as a business entity, and any liability relating thereto shall be enforceable only against the business entity assets of such Party.
- f. **Severability.** If any term, covenant, or condition contained in this Agreement is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- g. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- h. **Title to Equipment Infrastructure.** This Agreement shall not in any way convey title or any interest in the infrastructure, systems, equipment, facilities or other property of Summit Broadband (or its Affiliates) utilized in connection with the provision of any Service.
- i. **Expenses.** All costs and expenses, including without limitation fees and disbursements of counsel, financial advisors and accountants, and stamp and capital duties and taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

- j. Performance. Customer expressly agrees and acknowledges that, notwithstanding that Summit Broadband shall be liable for all of the obligations ascribed to it under this Agreement; any Affiliate of Summit Broadband may perform such obligations.
- k. Subject to Laws. This Agreement is subject to, and Customer agrees to comply with, the laws of Florida as well as all applicable federal, state, and local laws, and regulations, rulings, and orders of governmental agencies. The Parties also agree to comply with applicable provisions of Summit Broadband tariffs, if any, and to take all steps necessary to obtain and continue in effect any required certification, permit, license, approval, or authorization of the FPSC and any other governmental body as necessary. In the event that Summit Broadband cannot obtain all necessary federal, state, local, or other governmental authority to provide Services, Summit Broadband shall promptly give written notice thereof to Customer and such notice shall constitute termination of the applicable Service without liability of either Party.
- l. Invalidity. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.
- m. Agents. The relationship between Summit Broadband and Customer shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, federal income tax purposes. The Parties, in performing any of their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

[remainder of page intentionally left blank]

