

INTER-LOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT (the "Agreement") is made and entered into effective the __ day of April, 2014, between NORTHWEST OPEN ACCESS NETWORK, a nonprofit mutual corporation of the State of Washington, ("NoaNet"), and Fort Worden Public Development Authority, a public corporation operating on behalf of the City of Port Townsend ("FWPDA"). NoaNet and FWPDA are sometimes referred to in this Agreement as the "Parties."

RECITALS

- A. NoaNet is a Washington nonprofit mutual corporation whose members are ten (10) public utility districts and one (1) joint operating agency, all of which are municipal corporations of the State of Washington ("State"). NoaNet was formed pursuant to an Inter-local Cooperation Agreement entered into under the Inter-local Cooperation Act, RCW 39.34 ("Act"), for the purpose of assisting in bringing high-speed communications to underserved areas of the State.
- B. The Act permits public entities to cooperate with one another on the basis of mutual advantage to make the most efficient use of their powers, thereby providing services and facilities in a manner that accords best with geographic, economic, population, and other factors influencing the needs and development of local communities. Under the Act, public agencies, including municipalities, may enter into agreements with one another for joint or cooperative action.
- C. FWPDA wishes to obtain two separate groups of services from NoaNet, as follows:
 - 1. Those provided by NoaNet relating to the FWPDA's functioning as an internet service provider to third parties (see "Exhibit A - ISP-Services Statement of Work" to this Agreement). The services under Exhibit A may be referred to in this Agreement as "ISP Services;" and
 - 2. Those provided by NoaNet for other services, on behalf of the FWPDA, to third parties (see "Exhibit B - Other Services Statement of Work" to this Agreement). The services provided under Exhibit B may be referred to in this Agreement as "Other Services."
- D. NoaNet is willing to provide the two groups of services for the consideration as set forth in the respective exhibits, referenced in C., above.

AGREEMENT

Now, therefore, NoaNet and the FWPDA, in consideration of the mutual benefits hereunder, agree as follows:

1. PURPOSE AND SCOPE

The purpose and scope of this Agreement is to specify the terms and conditions under which NoaNet and the FWPDA will undertake the ISP Services and the Other Services. The details are described in Exhibits A and B to this Agreement.

- 1.1 FWPDA's Obligations:
 - a. The FWPDA hereby agrees to reasonably cooperate with NoaNet to complete the ISP Services specified in the Exhibit A for any lawful purpose and for the compensation set forth in that exhibit.
 - b. The FWPDA agrees to pay NoaNet for the Other Services, as stipulated in Exhibit B to this Agreement, in a timely manner.

- c. Unless otherwise set forth in a service order, any payment not received within thirty (30) days of the invoice date will accrue interest at a rate of one and one-half percent (1½ %) per month, or the highest rate allowed by applicable law, whichever is lower.

1.2 NoaNet's Obligations:

- a. NoaNet agrees to operate and maintain the Facilities and Services as set forth in the Exhibit A for the compensation set forth in that exhibit to this Agreement. NoaNet agrees to maintain necessary permits and authorities as required after initial permits and authorities expire.
- b. NoaNet agrees to provide the Services, in a responsible and business-like manner, in exchange for the compensation stated in Exhibit B to this Agreement.

- 1.3 Property Ownership and Disposition. The Parties shall retain their respective ownership of all of their properties. This Agreement does not contemplate joint ownership of property and, therefore, does not contain provisions regarding disposition of property owned by either Party.

2. TERM

The initial term of the Agreement shall be for a period of five (5) years from and after the Effective Date. At the FWPDA's option and with written notice as specified below, this Agreement can be extended for an additional 3-year term on the terms and conditions set forth in a service order. In the absence of such an extension, this Agreement will terminate, but any service order for which performance by its terms extends beyond the termination date shall survive until fulfillment of the Parties' obligations thereunder. If the FWPDA does not extend this Agreement at the completion of the initial term, the FWPDA will legally transfer all FWPDA-owned customer service agreements related to the Services provided by NoaNet under this Agreement to another entity, subject to written approval from NoaNet, for NoaNet's performance of their complete operations and maintenance functions and responsibilities and such entity's payment to NoaNet therefor. This will end all FWPDA involvement in the provision of Services, and terminates this Agreement as between NoaNet and the FWPDA.

Such notification shall be in writing and delivered to the other Party at least sixty (60) days prior to the expiration of the initial term.

3. TERMINATION DUE TO CHANGE IN FUNDING

If the funds upon which either Party relied to establish this Agreement are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such funding by any State or local government agency initiating a service order under this Agreement, either Party may terminate this Agreement by providing at least thirty (30) days written notice to the other Party. The termination shall be effective on the date specified in the notice of termination.

4. AUTHORIZATION AND LIMITATIONS ON USE

- 4.1 Noninterference/Hazardous Materials. Except as expressly authorized by applicable laws or this Agreement, each Party covenants and agrees:

- 4.1.1 It shall not interfere in any manner with the other Party's operations, communications equipment, or other facilities, including easements and rights-of-way.
- 4.1.2 It shall not do or permit anything to be done in, on or about the FWPDA Facilities, the other's property or premises, if any, nor bring or keep or permit to be brought or kept therein, any hazardous materials.
- 4.1.3 It shall not do or permit anything to be done within the FWPDA Facilities' public right-of-way, if any, or permit that which will in any way obstruct or interfere with the rights of any person or entity located within the public right-of-way, or injure them, or use or allow the public right-of-way to be used for any unlawful purpose.

- 4.1.4 It shall not commit, cause, maintain or permit nor suffer, or allow to be committed, caused, maintained or permitted, any legal waste within the public right-of-way, nor any public or private nuisance, nor any other act or thing which may disturb the quiet enjoyment of any other person or entity lawfully using the public right-of-way or the fiber optic facilities.
- 4.2 Compliance with Laws. Each Party shall comply with all applicable laws and regulations in the exercise and performance of its rights and obligations under this Agreement.
5. FIBER OPTIC EQUIPMENT AND FACILITIES
- 5.1 No Representations or Warranties. EACH PARTY MAKES NO REPRESENTATIONS, WARRANTIES, COVENANTS OR ASSURANCES: (1) WITH RESPECT TO THE DESIGN, CONSTRUCTION, DURABILITY, SUITABILITY OR RELIABILITY OF THE EQUIPMENT OR FACILITIES, OR ANY PART THEREOF, WHETHER EXPRESS OR IMPLIED, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (2) WITH RESPECT TO THE NATURE OR ACCURACY OF THE DESCRIPTION, LOCATION OR MEASUREMENT OF THE EQUIPMENT OR FACILITIES, OR ANY PART THEREOF; (4) WITH RESPECT TO INTERRUPTION OR CONTINUATION OF THE FACILITIES AND/OR OTHER SERVICES.
- 5.2 Unauthorized Access/Breach. Except as provided in this Agreement, each Party is prohibited from accessing, directly or indirectly, the other Party's equipment or facilities, or any part thereof. Any unauthorized access by either Party of the other Party's equipment or facilities, or any part thereof, shall constitute a material breach of this Agreement and a default by the unauthorized Party under this Agreement.
- 5.3 Approval of Design and Interconnection Specifications. Each Party shall provide, as reasonably requested, information relating to the proposed design and/or installation specifications prior to modifying or making any connection to the PDA Facilities or associated equipment or facilities.
- 5.4 Installation. Both Parties shall mutually agree to a work schedule during which the interconnections for the fiber optic equipment or facilities can be made. Each Party shall timely complete all such work within the agreed upon schedule.
- 5.5 Cooperation and Coordination. Each Party shall cooperate with the other concerning the timing, method or placement of its construction, installation and testing activities.
6. ALTERATIONS, MAINTENANCE AND REPAIRS
- 6.1 Scheduling/Notice. Except as set forth in Section 7.2, each Party, at its sole cost and expense, may schedule and perform or cause to be performed scheduled alterations, maintenance and repairs on its own fiber optic equipment or facilities, or any part thereof, at the times and in the manner as may be established by the owner. Subject to the provisions of Section 13, the Party scheduling work shall provide two (2) weeks prior written notice to other Party identifying the time, location, and nature of each scheduled alteration or maintenance and repair job for performance thereof which reasonably presents a substantial risk of damage to the other Party's property or creates a substantial likelihood of an interruption of fiber optic equipment or facilities. If fiber optic equipment or facilities include redundant fiber pathways, work will be scheduled to include no more than one pathway at any given time.

Each Party shall furnish on a continuing basis the current name, title, telephone number, and personal communications device number (including facsimile transmission number, cellular telephone number and paging device number), if any, of any representative who shall be kept informed of maintenance schedules. The initial contacts are as follows

Party: Fort Worden Public Development Authority
Address: 200 Battery Way, Port Townsend, WA 98368
Name: Dave Robison
Title: Executive Director
Telephone: 360.643.1770

Email address: drobison@fwpda.org

Party: NoaNet's contact regarding maintenance and repairs of the fiber optic equipment or facilities is NoaNet's Network Operations Center (NOC)
Phone: 509-456-3611
800 Phone: 866-662-6380
Address: 422 W. Riverside, Suite 400, Spokane, WA 99201

6.2 Maintenance, Repair, and Restoration.

6.2.1 Maintenance of Fiber Optic Equipment or Facilities.

Fiber Optic Equipment and Facilities on Fort Worden Campus beyond the NoaNet installation demarcation point at building 200 will be maintained in working order and uptime managed by FWPDA. Specific facilities and assignments will be detailed upon completion of the wifi installation.

6.2.2 Restoration Priorities and General Requirements.

- a. Each Party's obligation to maintain and repair its own fiber optic cable and equipment, and any activity incidental thereto, shall not unreasonably conflict with, the other Party's rightful use and operation of its facilities and equipment.
- b. Timely restoration, as set forth in a specific service order, is dependent upon the timely coordination and cooperation between both Parties. Each Party will provide the other, in writing, with its emergency contact/call-out list as soon as practicable following the effective date of this Agreement.

6.2.3 Restoration/Repairs of the wifi and other services

NoaNet will operate and maintain the wifi system and other services consistent with the SLA in Exhibit C, for a period of 12 months after acceptance. Prior to the twelfth month NoaNet and FWPDA will meet and determine final equipment ownership and operations and will amend this agreement to reflect final disposition.

During the 12 month period, FWPDA will be responsible for all account management and provisioning on the system. NoaNet will monitor and manage uptime on the system in coordination with FWPDA.

7. FORCE MAJEURE

- 7.1 As used in this Agreement, the term "Force Majeure" means acts of God (including but not limited to, earthquakes, fires, floods, windstorms, landslides, and ice storms); strikes, lockouts, or other labor disputes; acts of public enemy; acts of vandalism, wars, riots, and insurrection; epidemics; civil disturbances; explosions; train derailments; breakdown or failure of machinery or facilities (excluding the cable and cable accessories); accidents to machinery or equipment (excluding the cable and cable accessories), and delay in delivery of equipment, to the extent such occurrences are beyond the reasonable control of the Parties; and any other event, cause, or condition beyond the Party's reasonable control, which, by the exercise of reasonable diligence, prevents the Party claiming Force Majeure from performing its obligations under this Agreement.

- 7.2 If either Party is unable to carry out its obligations under this agreement as a result of an event, cause, or condition of Force Majeure, the Party claiming Force Majeure shall give notice and full particulars of such Force Majeure in writing to the other Party within five (5) calendar days of the beginning of the occurrence of the Force Majeure event, cause, or condition. Any obligations that such Party is unable to perform due to an event, cause, or condition of Force Majeure shall be suspended during the continuance of such event of Force Majeure. The Party claiming Force Majeure shall use reasonable efforts to remedy and minimize the effects of such event of Force Majeure with all reasonable dispatch.
- 7.3 Neither Party shall be liable, or be considered to be in material breach or default, under this Agreement on account of any delay in or failure of performance due to Force Majeure unless specifically stated in this Agreement.
- 7.4 If Force Majeure prevents restoration within three (3) months from the event of such Force Majeure, then either Party shall have the option to terminate this Agreement.
- 7.5 The obligations set forth in this section are expressly subject to the limitation of liability provisions contained in Section 13.

8. INSURANCE

- 8.1 Liability Insurance. Each Party shall, at its own expense, carry and maintain the following liability insurance coverage throughout the term of the Agreement:
- 8.1.1 General Liability Insurance: \$1,000,000 per occurrence/\$2,000,000 aggregate.
- 8.1.2 Each Party shall identify the other as an additional insured under the general liability insurance required under this Agreement. It is the sole responsibility of each Party to provide updated insurance information, in a timely manner, including any notices of cancellation or reduction in limits of insurance.
- 8.2 Property Insurance. Each Party shall carry and maintain property insurance in a form that will provide all risk coverage for the fiber optic equipment or facilities upon or within the other's property.
- 8.3 Insurance Shall Not Limit Liability. Subject to the limitation of liability provisions set forth in Section 13, the insurance coverage and benefits required herein shall not be deemed to limit liability to either Party or any third party. In the event the minimum insurance limits specified in this Agreement are less than the maximum amount of insurance in effect at the time of claim or loss which arises from or is connected to the Agreement, each Party affirmatively agree that all insurance limits available to it will be extended to the other Party as additional insured.

9. INDEMNITY, HOLD HARMLESS AND DUTY TO DEFEND

Subject to the limitation of liability provisions set forth in Section 13, each Party shall, at its sole expense, indemnify, defend, save, and hold harmless the other Party, its officers, directors, agents, members, and employees from all actual or potential claims or losses, including costs and attorneys' fees at trial and on appeal, and damages or claims for damages to property or persons, suffered by anyone whomsoever to the extent caused by any negligent or willful act of or omission of the indemnifying Party or its subcontractors, excluding damages caused by the negligence of the indemnified Party, its officers, directors, agents, or employees.

This indemnification includes, without limitation, any liability for injury to the person or property of either Party, its agents, officers, employees or invitees. Both Parties specifically waive any immunity provided by Title 51 RCW, Washington's Industrial Insurance Act. The provisions of this section shall survive the expiration or termination of this Agreement.

THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

10. ASSIGNMENT

This Agreement cannot be assigned, transferred or any portion subcontracted by either Party hereto without the prior written consent of the other Party, which shall not unreasonably be withheld.

11. WAIVER

The consent by the FWPDA or NoaNet to any act by the other shall not be deemed to imply consent or to constitute the waiver of a breach of any provision hereof or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the Parties in the administration of any part of the provisions hereof be construed to waive or lessen the right of a Party to insist upon the performance by the other Party in strict accordance with the provisions hereof.

12. DEFAULT AND REMEDIES FOR DEFAULT

12.1 Breach. This Agreement may be terminated upon the occurrence of a material breach of this Agreement and a default under this Agreement. If the Party in breach fails to cure the breach within thirty (30) days or such longer period of time as is provided below, after receipt of notice thereof from the non-breaching Party, or, when the cure reasonably requires more than thirty (30) days, the breaching Party fails to commence the cure within such thirty (30) days and thereafter diligently and continuously prosecute such cure to completion, such action or inaction shall constitute a material breach and default under this Agreement.

12.2 It shall be deemed a material breach of this Agreement by the FWPDA if it takes any action or fails to take any action that materially adversely affects NoaNet's ability to exercise any of its rights and receive any of the benefits to it under this Agreement, including without limitation taking action to revoke this Agreement, or any part of it, and/or the FWPDA's authority to enter into it.

12.3 Remedies Not Exclusive. In the event of a material breach and default under this Agreement, termination is not the exclusive remedy. Any and all other remedies available of law or equity are expressly preserved.

13. LIMITATION OF LIABILITY

13.1 THE PARTIES SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT.

13.2 SUBJECT TO SECTION 13.1, EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS OR DEMANDS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY THE OTHER PARTY PURSUANT TO THIS AGREEMENT.

14. NOTICE

Except as may otherwise be provided herein, any notices, except service of process and notice of emergency which may be given personally, telephonically, by e-mail or facsimile, shall be effective if personally served upon the other Party or if mailed by registered or certified mail, return receipt requested, to the following addresses:

For NoaNet, c/o Mike Henson 40616 Skunk Bay Rd. NE, Hansville, WA 98340;

For FWPDA, c/o. Dave Robison, 200 Battery Way, Port Townsend, WA 98368

Notices mailed shall be deemed given on the date of mailing. The Parties shall notify each other in writing of any change of address.

15. BREACH OF AGREEMENT; REMEDIES; DISPUTE RESOLUTION

If either Party fails to comply with the terms and conditions of this Agreement, the other Party may pursue such remedies as are legally available, including, but not limited to, the immediate termination of this Agreement. In the event that a dispute arises under this Agreement, it shall be resolved as follows: Each Party shall appoint a member to a disputes board. These two members shall then select a third member not affiliated with NoaNet or the FWPDA. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process is a prerequisite to filing of any litigation concerning the dispute. The Parties shall share equally in the cost of the third disputes board member.

16. GOVERNING LAW/VENUE

This Agreement shall be governed by the laws of the State of Washington. The Parties consent to the personal jurisdiction of the courts of the State of Washington for any litigation concerning or arising out of this Agreement, and the venue of any such legal action shall be Jefferson County Superior Court of the State of Washington.

17. ATTORNEYS' FEES AND COSTS

In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing Party shall be entitled, in addition to other relief, to such reasonable attorneys' fees and costs as determined by the court.

18. MUTUAL NEGOTIATION AND CONSTRUCTION

18.1 Mutual Negotiation and Construction. This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

18.2 Headings. The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

19. ENTIRE AGREEMENT; AMENDMENTS

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings among the Parties with respect thereto. This Agreement may be amended only by an agreement in writing signed by the Parties.

20. SEVERABILITY

Should any part, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected, and the same shall continue in full force and effect.

21. NO THIRD PARTY RIGHTS

This Agreement shall not be construed to create rights in or grant remedies to any third Party as a beneficiary of this Agreement.

22. TAXES

Each Party shall be responsible for its own federal, state and local taxes, assessments, fees, surcharges and other financial impositions. The FWPDA will provide a signed waiver to NoaNet to allow the FWPDA to manage, collect and remit all taxes, fees and assessments required for the services.

23. COMPLIANCE WITH LAWS

Each Party hereto, in its performance of this Agreement, agrees to comply with all applicable local, State, and Federal laws and ordinances that apply to it.

24. RELATIONSHIP OF THE PARTIES

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligations or liability upon either Party. No agent, employee or representative of the FWPDA shall be deemed to be an agent, employee, or representative of NoaNet for any purpose. No agent, employee or representative for NoaNet shall be deemed to be an agent, employee or representative of the PDA for any purpose.

25. CONFIDENTIALITY

Each Party shall treat all information made available or disclosed to, or developed or obtained by, it as the result of or related to this Agreement ("Confidential Information") as confidential, and shall not disclose or use Confidential Information for the benefit of any person other than the disclosing Party; provided however, that the Party receiving the Confidential Information shall have no obligation with respect to that portion of Confidential Information which is disclosed by the disclosing Party to others without any restriction on use or disclosure, or which must be disclosed to others under law. If the receiving Party receives a request for Confidential Information from a third party, the receiving Party shall promptly notify the disclosing Party in writing of such request, and if the receiving Party in good faith believes it is obligated to disclose the requested Confidential Information, the disclosing Party shall be given the opportunity to seek judicial or other protection of such Confidential Information, at its own expense, with the cooperation of the receiving Party.

26. SURVIVABILITY

All provisions of this Agreement regarding indemnification, representations, warranties, confidentiality, and any other provisions that by their nature are intended to survive termination of this Agreement shall survive after its termination or expiration, including exhibits.

27. FILING

This Agreement shall be filed with the County Auditor or, alternatively, listed by subject in the Parties' respective websites or other electronically retrievable public source.

28. ADMINISTRATORS FOR RESPECTIVE PARTIES

The initial administrators of the respective Parties to this Agreement shall be as follows:

For the FWPDA, its Executive Director, or his designated representative; and

For NoaNet, its Chief Executive Officer, or his designated representative.

29. AUTHORIZATION

Each Party hereby represents and warrants to the other that it is duly authorized to enter into and carry out the terms of this Agreement. Without limiting the foregoing, the FWPDA represents and warrants that its execution, delivery, and performance of this Agreement have been duly and effectively authorized by its governing body, and no other action is necessary. The PDA represents and warrants that: 1) it is purchasing the ISP services from NoaNet under this Agreement for resale in the regular course of its business without intervening use and in doing so is acting as an internet service provider; 2) it is authorized by law to do so; and 3) it will promptly execute and file with the State of Washington Department of Revenue a Resale Certificate in substantially the form required by the Department of Revenue.

30. COUNTERPARTS

This Agreement may be executed in counterparts, which together shall constitute a single agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

For: Fort Worden

Public Development Authority

Northwest Open Access Network

For:

By: _____

Dave Robison, Executive Director

By:

Greg L. Marney, CEO

List of Exhibits Attached:

Exhibit A - ISP Services Statement of Work

Exhibit B - Other Services Statement of Work

EXHIBIT A
ISP Services
Statement of Work

NoaNet will provision a one gigabit Internet access port at building 200. Using existing infrastructure the FWPDA will distribute that Internet service to partners and customers including the wifi service points as constructed below.

This quote presumes that the existing network infrastructure will be available for use, that it is properly configured and accessible. Where assets are not available or require changes that will require a change order.

Hardware warranty of 5 years applies to all hardware.

Scope includes all wiring, raceways, installation and configuration of the access points and control system. All AP's mentioned are either UniFi AP Pro or UniFi AP+ unless noted otherwise

The master control unit will control all wireless points in the park. This unit will be located in Building 200. The base area is designated as Building 200, and will consist of 4 AP units (2 upstairs and 2 downstairs), 1 – 5 port PoE, and the MCU.

Building 210 (Commons): This is the main registration and dining area. The peak usage estimate is 450 users. Fiber connectivity from Building 200 will provide the backbone, and the communication channel for the MCU. There will be a total of 30 AP's functioning in this area, and they will (of necessity) be split into 2 IP ranges. There will be 4 AP's in each of the rooms (A, B, C, and D), 8 in the lobby, 4 in the Café, and 2 in the dining service area. 2 – 16 port PoE.

Building 203: Dormitory. Peak usage 150 users. 12 total AP's, 2 in each multi-bed room (upstairs), 2 in each residence hallway, 1 in each common area, and 1 at the top of each stairway. NanoStation from 204. 1 – 16 port PoE.

Building 204: A primary classroom area with 5 main areas and 2 small rooms, with a peak usage of 250 users. A total of 16 AP's are needed. There will be 2 in each of the main areas, 1 in each small room, and 2 each in the upstairs and downstairs entryways. Use of fiber from 204 to 200. 1 – 16 port PoE.

Building 205: Classroom area with 2 large areas and 4 small areas. Peak usage of 100 users. 8 AP units total, 2 each in large rooms, 1 in each smaller room. Use of fiber from here to 204. 1 – 8 port PoE.

Building 225: Dormitory. 150 user. 12 total AP's 2 in each residence hallway, and 1 in each common area. NanoStation transmission from 200. 1 – 16 port PoE.

O-Row: Multi-unit multi-building premium housing with a peak of 100 users. 35 total AP's, 1 in Building 1 repeating down the entire row with 2 AP's per unit, 1 upstairs and 1 down, and 6 in the Bricks. Uses 1 pair of fiber from 200 to 1. Includes a NanoStation. 1 – 5 port PoE per unit.

NCO Row: Multi-unit, multi-building standard housing with 150 peak users. 19 total AP's, 2 per unit plus 1 each in the USO and 325. Uses 1 pair of fiber from 305 to USO. Includes a NanoStation. 1 – 5 port PoE per unit.

Building 25 (Wheeler Theater): 200 peak users. 15 AP's total. 1 – 16 port PoE. Uses 1 pair of fiber from 305.

Building 300 (Visitor Center): 50 peak users. 4 AP's. 1 – 5 port PoE. Uses 1 pair of fiber from 305.

Building 298 (Schoolhouse): Multi-room building with peak usage of 250 users. 17 AP's with 1 AP in each room, 1 – 16 port PoE and 1 – 8 port PoE. Uses 1 pair of fiber from 204 through 297.

SUDS (includes 262, Alexander's castle, Bliss, Madronna, and the hostel): 7 individual housing units and 3 4-plex housing unit. No wired connection possible. Peak of 100 users. 39 total AP's. Primary connection is a backhaul to 200. Includes 2 AirFiber units and 2 NanoStation. 7 – 5 port PoE and 3 – 16 port PoE routers.

Building 223 (Centrum Office): Multiple offices on 3 floors, peak usage of 35 users. 5 total AP's, 1 – 5 port PoE. Uses 1 pair of fiber from 200.

Building 326 (USO): Single room large building with 100 peak users. 6 total AP's, 1 – 8 port PoE. Uses 1 pair of fiber from 305.

Building 306: Single conference room with no hardwires connectivity. Peak of 50 users. 3 total AP's and a 4 port PoE, 1 NanoStation.

Building 310 (Madronna Mind and Body): Peak of 100 users. 7 total AP's, 1 – 8 port PoE. Uses 1 pair of fiber from 204.

Building 313 (Copper Canyon Press): 40 user peak. 3 total AP's, 1 – 4 port PoE, 1 NanoStation.

Building 315 (Woodworking School): 40 user peak. 3 total AP's 1 NanoStation.

Installation: \$99,898

Wifi

Monthly service cost: \$200

Internet and LGN

Monthly service cost: \$1,880

EXHIBIT B
Other Services
Statement of Work

NoaNet will operate a Voice over Internet Protocol telephone system for the FWPDA. The system will have two major components, partner telecommunications and the hospitality communications. NoaNet or its contractor will install, configure and test the handsets provide base user training and initial call plan configuration, for partner entities. NoaNet will port up to 8 numbers with the installation. Requires a pair of fiber from 200 to the lower Cantina and Pier to complete all installations.

Partner Telecommunications

Up to 85 lines with basic handsets, advanced handsets are available for an additional fee, and a data port with power over ethernet available within 6 feet of the desired handset location. If power over ethernet is not available, the handset will need a power supply available at \$18 each. In addition, new handset installation, prep of the handsets

**FORT WORDEN PARTNER SERVICE
SUMMARY**

Organization	# of phone lines
PT Marine Science Center	18 lines 6 mailboxes
Goddard College	3 lines
PT Wood School	4 lines
Centrum	34 lines 6 mailboxes
Copper Canyon	6 lines
Coast Artillery Museum	5 line
PT Hospitality	1 line
Bon Appetit	1 line
Madrona Mind & Body	1 line
PDA Future Needs	10 lines 5 mailboxes

and details for the new hospitality reception desk and calling plan are included.

Partner Installation cost: \$2,300

PDA New Phone Installation cost: \$3,200

Monthly service cost: \$1,275

Hospitality Communications

There are 74 existing lines for the hospitality side, these lines are in each rental unit, common areas and meeting rooms. These phones are a direct replacement for the existing phones and near the same location. Requirement for a data port with power over ethernet available within 6 feet of the handset location is the same. Wifi deployment extends network coverage to locations where these phones are currently located. Includes power supplies for 18 handsets where power over ethernet is not likely to be available.

Installation: \$5,200

Monthly service cost: \$1,480

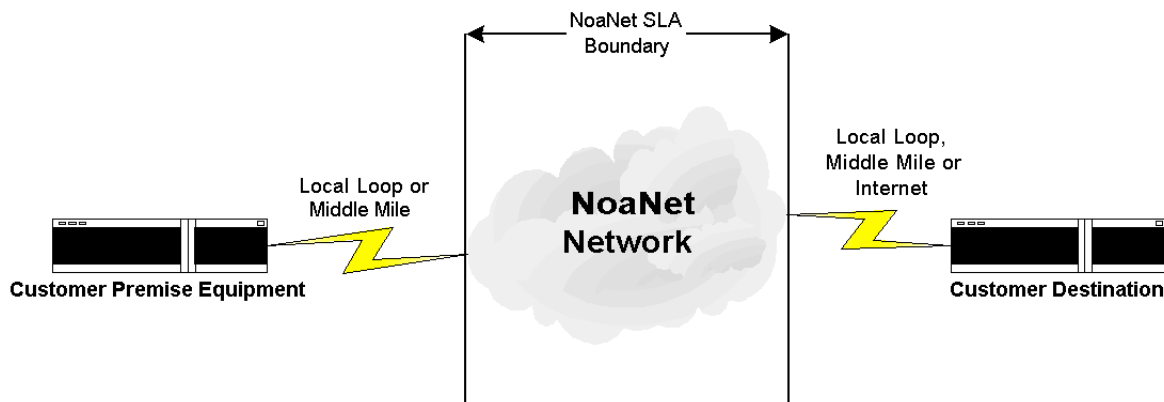
EXHIBIT B
Service Level Agreement, SLA

NORTHWEST OPEN ACCESS NETWORK SERVICE LEVEL AGREEMENT FOR IP
SERVICES

This Service Level Agreement (SLA) applies to customers of Northwest Open Access Network's (NoaNet) Internet Protocol (IP) services.

This SLA provides the Customer with certain rights and remedies regarding the performance of the NoaNet Network. Customer is defined as the entity with a direct connection into the NoaNet infrastructure at a NoaNet Point of Presence (POP). The NoaNet SLA does not extend to any entity beyond the Customer.

The Network is defined as the IP routing infrastructure and/or Optical infrastructure consisting of selected NoaNet points of presence (POPs) and the connections between them in the states of Washington, Oregon, Idaho and Montana. The NoaNet Network does not include Customer Premises Equipment or any telephone company access facilities connecting the Customer's premises or equipment to such infrastructure, or "local loop" or "middle mile" infrastructure provided by others, unless specifically noted within the contract for services entered into between the Customer and NoaNet. The following diagram provides basic points of demarcation for this SLA.



Availability Guarantees

Network Availability

NoaNet's goal is to make the Network available to the Customer free of unplanned Network Outages 100% of the time. Upon the Customer's request (in accordance with the procedure set

forth below), NoaNet will issue a credit to the Customer for NoaNet Network Outages occurring during any calendar month that are reported by the Customer to NoaNet and confirmed by NoaNet's measurements of the NoaNet Network. Such credit will be equal to one day's worth of the monthly base IP access fee paid by the Customer, multiplied by each hour (or portion thereof rounded to the next hour) of the cumulative duration of such Network Outages.

Latency Guarantee

NoaNet's goal is to keep the Average Round-Trip Latency on the NoaNet Network to 50 milliseconds or less. Average Round-Trip Latency, with respect to a given month, is defined as the average time required for round-trip packet transfers between POPs on the NoaNet Network during such month, as measured by NoaNet. Average Latency does not extend to the Customer's connection into NoaNet or to Customer Premise Equipment (CPE). If Average Round-Trip Latency on the NoaNet Network for a calendar month exceeds 85 milliseconds, then upon Customer's request (in accordance with the procedure set forth below), NoaNet will issue a credit to the Customer equal to one day's worth of the base IP access fee paid by the Customer for such month.

Packet Loss Guarantee

NoaNet's goal is to keep Average Packet Loss on the NoaNet Network to 1% or less. Average Packet Loss, with respect to a given month, is defined as the average percentage of IP packets transmitted on the NoaNet Network during such month that are not successfully delivered, as measured by NoaNet. If Average Packet Loss exceeds 1% during a calendar month, then upon Customer's request (in accordance with the procedure set forth below), NoaNet will issue a credit to the Customer equal to one day's worth of the base IP access fee paid by the Customer for such month.

The terms of the SLA relating to Average Round-Trip Latency and Average Packet Loss will take effect the first full calendar month after the Customer's first use of the NoaNet Network.

Exceptions

Customer shall not receive any credits under this SLA in connection with any failure or deficiency of the NoaNet Network caused by or associated with:

- a) circumstances beyond NoaNet's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike, or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the SLA;

- b) Scheduled Maintenance, defined as work performed by NoaNet staff on any of our equipment for which notification is sent to the Maintenance Mailing List no less than 48 hours before the work is to begin;
- c) failure of access circuits to the NoaNet Network, unless such failure is caused solely by NoaNet;
- d) general telco failure;
- e) scheduled maintenance;
- f) DNS issues outside the direct control of NoaNet
- g) Outage or error of any NoaNet measurement system;
- h) Customer's or Customer's Agent's acts or omissions including without limitation, any negligence, willful misconduct, or use of the NoaNet Network or NoaNet services in breach of NoaNet's Communication Transport Services Agreement, by the Customer or others authorized by the Customer.

Measurement of the SLA

NoaNet will periodically (on average every 5 minutes) measure the NoaNet Network at selected POPs using software and hardware components capable of measuring IP traffic and responses at such POPs. The Customer acknowledges that not every POP may be covered by such measurements, that such measurements may not measure the exact path traversed by the Customer's packets, and that such measurements constitute measurements across the NoaNet Network but not other networks to which the Customer may connect. NoaNet reserves the right to periodically change the measurement points and methodologies it uses without notice to the Customer. Measurements will be posted to a Web site designed by NoaNet and made available to the Customer.

Credit Request and Payment Procedures

Requests for credits must be made to the applicable NoaNet Account Manager as identified in the Inter-Local Agreement, or to the NoaNet Network Operations Center (NOC). The NoaNet Account Manager or the NOC must receive each request in connection with a Network Outage within seven (7) days of the Network Outage. Each request in connection with Average Round-Trip Latency or Average Packet Loss in a calendar month must be received by the NoaNet Account Manager within seven (7) days after the end of such month.

The total amount credited to a Customer in connection with Network Outages, Average Round-Trip Latency, and Average Packet Loss in any calendar month will not exceed the base IP access fee paid by Customer for such month.

Each valid request for credit will be applied to a Customer invoice within two (2) billing cycles after the NoaNet receipt of such request and confirmation of the Outage. Credits are exclusive of any applicable taxes charged to Customer or collected by NoaNet.

General

NoaNet reserves the right to change or modify this Service Level Agreement to benefit the Customer, and will post changes to a Web site designated by NoaNet and made available to Customer. Except as set forth in the Service Level Agreement, NoaNet makes no claims regarding the availability or performance of the NoaNet Network.

NOANET VOICE COMMUNICATIONS SERVICES SERVICE LEVEL AGREEMENT

Release Date: 052313

These Terms of Service constitute the agreement ("Agreement") between NORTHWEST OPEN ACCESS NETWORK, INC. (NOANET) ("Provider") and the FWPCA ("Customer") of Provider's wholesale voice communications services ("Service"). This Agreement governs both the Service and any devices, such as an IP phone, IP Softphone, Analog Telephone Adapter or any other IP connection device, sold or otherwise furnished to "Customer" by Provider ("Device" or "Equipment") under the terms of this Agreement, and also applies to all lines on each Provider account.

1. EMERGENCY SERVICES - 911 DIALING

1.1 - 911 Dialing. 911 Dialing under Provider's voice service is different than traditional 911 service offered by traditional telecommunications carriers. Most of our customers have access to either basic 911 or Enhanced 911 (E911) service. With E911 service, when you dial 911, your telephone number and registered address are simultaneously sent to the local emergency center assigned to your location, and emergency operators have access to the information they need to send help and call you back if necessary. Customers in locations where the emergency center is not equipped to receive your telephone number and address have basic 911. With basic 911, the local emergency operator answering the call will not have your call back number or your exact location, so you must be prepared to give them this information. Until you give the operator your phone number, he/she may not be able to call you back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or if you are unable to speak. As additional local emergency centers become capable of receiving our customers' information, customers with basic 911 will be upgraded to E911 service. You will not receive notice of the upgrade.

By executing this Agreement you authorize disclosure of names and addresses associated with your account to third-parties involved with providing 911 dialing features and functionality to you and your organization, including, without limitation, call routers, call centers and local emergency centers.

1.2 - Notify All Users. You should inform all users associated with your account and other third persons who may be present at the physical location where you utilize the Service of the important differences in and limitations of Provider 911 Dialing as compared with basic 911 or E911.

1.3 - Registration of Physical Location Required. For each phone number that is used for the Service, you must register the physical location where you will be using the Service with that phone number. When you move the Device to another location, you must register your new location. If you do not register your new location, any call you make using the 911 Dialing feature may be sent to an emergency center near your old address. You will register your initial location of use when you subscribe to the Service. Thereafter, you may register a new location by following the instructions from the "911" registration link on your web account dashboard features page, or until such feature is available, sending an email to support@noanet.net. For purposes of the 911 Dialing feature, you may only register one location at a time for each phone line/phone number you use with the Service. Regardless of what address you register, emergency calls you make from these devices will be routed to the national emergency response center.

1.4 - Confirmation of Activation Required. Your 911 Dialing feature will not be activated for any phone line that you are using with the Service, unless and until you register the location per Section 1.3, and you receive an email from Providers service portal confirming that the 911 Dialing feature has been activated for that phone line.

1.5 - Service Outages.

- (a) Service Outages Due to Power Failure or Disruption. 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing.
- (b) Service Outages Due to Internet Outage or Suspension or Disconnection of Broadband Service or ISP Service. Service outages or suspensions or disconnections of service by your broadband provider or ISP will prevent all Service, including 911 Dialing, from functioning.
- (c) Service Outage Due to Disconnection of Your Account. Service outages due to disconnection, suspension or termination of your account will prevent all Service, including 911 Dialing, from functioning.
- (d) Other Service Degradation or Outages. If there is a Service outage or degradation for any reason, such outage may prevent all Service, including 911 Dialing, from functioning or network congestion may cause delays and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks, including where emergency calls are first routed through a national emergency center. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.

1.6 - Re-Activation Required if You Change Your Number or Add or Port New Numbers. 911 Dialing does not function if you change your phone number or if you add or port new phone numbers to your account, unless and until you successfully register your location of use for each changed, newly added or newly ported phone number.

1.8 - Disclaimer of Liability and Indemnification. We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any national or local emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Provider nor their respective officers, members, employees or agents may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to the 911 Dialing service unless such claims or causes of action arose from our gross negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless Provider, and their respective officers, directors, employees, affiliates and agents who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

2. SERVICE

2.1 - Monthly Term. Service is offered on a monthly basis for a term that begins on the date that your Service is activated and ends on the last day of the first full calendar month after such activation date. The term of this Agreement shall automatically renew for an unlimited number of successive monthly periods thereafter, unless you deliver written notice of non-renewal at least thirty (30) calendar days before the end of the then-current monthly term. You are purchasing the Service for full monthly terms, meaning that if you attempt to disconnect Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of such monthly term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become due and payable. You will also be responsible for the next full month's charges in the event that you do not provide the requisite thirty (30) day notice of disconnection prior to the expiration of the then-current term. Expiration of the term or disconnection of Service will not excuse you from paying all accrued and unpaid charges due under this Agreement.

2.2 - Prohibited Uses.

(a) **Unlawful.** You shall use the Service and the Device only for lawful purposes. We reserve the right to immediately disconnect your Service without notice, if, in our sole and absolute discretion, we determine that you have used the Service or the Device for an unlawful purpose. In the event of such disconnection, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Device for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, we (or any Carrier) may provide information in response to law enforcement requests, lawful government requests, subpoenas, court orders, etc., and you hereby consent to any such information disclosures. Refer to NoaNet's Agreement for additional information on Confidentiality.

(b) **Inappropriate Conduct.** You shall not use the Service or the Device in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior. We reserve the right to immediately disconnect your Service without notice, if, in our sole and absolute discretion, we determine that you have used the Service or the Device in any of the aforementioned ways. In the event of such disconnection, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Device in any of the aforementioned ways, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, we (or any Carrier) may provide information in response to law enforcement requests, subpoenas, court orders, etc., and you hereby consent to any such information disclosures. Furthermore, Provider reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

2.3 - **Use of Service and Device by Customers Outside the United States.** Although we encourage you to use of the Service to place calls to foreign countries from within the United States and to use the Provider Service as you travel, we do not presently offer or support the Service in any countries other than the United States. Provider Service is designed to work generally with unencumbered high-speed internet connections. However, if the high-speed internet connection you are using is outside the United States and/or your ISP places restrictions on the usage of VoIP services, Services may not be available or may be degraded or otherwise inoperable. No representation or warranty is made as to whether use of the Provider Service is permitted by any other jurisdictions or by any or all the ISPs. You will be solely responsible for any violations of local laws and regulations or violations of ISP terms of service resulting from such use. We reserve the right to disconnect your Service immediately if we determine, in our sole and absolute discretion, that you have used the Service or the Device in violation of laws of jurisdictions outside the U.S.

2.4 - Copyright; Trademark; Unauthorized Usage of Device; Firmware or Software.

(a) **Copyright; Trademark.** The Service and Device and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on our websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names used in connection with the Services (collectively "marks") are and will at all times remain our exclusive property or the exclusive property of our Carriers. Nothing in this Agreement grants you the right or license to use any such marks.

(b) Unauthorized Usage of Device; Firmware or Software. To the extent of any firmware or software embedded or installed on the Device, or otherwise provided to you in connection with the Service, you are granted a nontransferable, non-exclusive, revocable license to use such firmware or software in object code form only (without making any modification thereto) exclusively for use in connection with the Service, only during the term of this Agreement, and otherwise strictly in accordance with the terms and conditions of this Agreement. No further rights or licenses are granted to you or any third party, by implication, estoppel or otherwise, and Provider reserves any and all rights of ownership and use. You expressly agree that the Device is exclusively for use in connection with the Service and that we will not provide any passwords, codes or other information or assistance that would enable you to use the Device for any other purpose. We reserve the right to prohibit the use of any interface device that we have not provided to you. You hereby represent and warrant that you possess all required rights, including software and/or firmware licenses, to use any interface device that we have not provided to you. In addition, you shall indemnify and hold us and any Carrier harmless against any and all liability arising out of your use of such interface device with the Service. You shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

2.5 - Tampering with the Device or Service. You shall not change the electronic serial number or equipment identifier of the Device or perform a reset of the Device without our prior written consent. We reserve the right to disconnect your Service if we believe, in our sole and absolute discretion, that you have tampered with the Device. In the event of such disconnection, you will remain responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become due and payable. You shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

2.6 - Theft of Service. You shall not use the Service in a manner calculated to avoid reasonable policies or procedures of Provider or any Carrier related to the use of the Service. You shall not obtain or use the Services in an improper manner. You shall notify us immediately, in writing or by calling our customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the disconnection of your Service and additional charges to you. Until such time as we receive notice of the theft, fraudulent use or unauthorized use, you will be liable for all use of the Service using a Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service. Provider reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

2.7 - Number Transfer on Service Disconnection. Upon the disconnection of your Service, the telephone number that you ported (transferred or moved over) to us from your previous service provider and used in connection with your Service shall be released to your new service provider if:

- such new service provider is able to accept such number;
- your account has been properly disconnected; and
- your account is completely current, including payment for all charges and applicable disconnection fees.

2.8 - Service Distinctions. The Service is not a telecommunications service and we provide it on a best efforts basis by reselling the communications services and facilities of Carriers. Events and circumstances beyond our control may affect the quality or availability of the Service, such as power outages, fluctuations in demand for Services or fluctuations in demand for internet or communications services or facilities, equipment malfunctions and software errors and problems in your underlying broadband service. Other things may affect Service, such as maintenance and repair, scheduled downtime, etc. Provider will act in good faith to minimize disruptions to your use of and access to Service. Important distinctions exist between telecommunications service and the Service offering that we provide. The Service is subject to different regulatory treatment than telecommunications service. This treatment

may limit or otherwise affect your rights of redress before regulatory agencies or under applicable laws, rules or regulations.

2.9 - Ownership and Risk of Loss. Unless you agree to rent or lease the Device in a separate written instrument with Provider, upon the later of payment in full of the set-up fees or equipment fees specified in Service Order documents or upon delivery of the Device to Customer, Provider shall, and hereby does, sell, convey and transfer the Device to you "AS IS" and without warranty or representation of any kind or nature from Provider. However, Provider shall, and hereby does, to the extent assignable, assign or transfer to you all applicable manufacturer warranties on the Device. From and after the date of shipment of the Device to you, you shall bear all risk of loss of, theft of, casualty to or damage to the Device.

2.10 - No 0+ or Operator Assisted Calling; May Not Support x11 Calling. The Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls, 900 or calling card calls). The Service may not support 311, 511 and/or other x11 (other than certain specified dialing such as 911 and 411, which are provided for elsewhere in this Agreement) services in one or more (or all) service areas.

2.11 - 911 Fees - State and/or local governments may assess fees on Provider to pay for emergency services in your community. Provider bills and collects 911 fees from its customers and remits such fees to the appropriate authority. Provider is committed to supporting public safety services and resources in your State. At the time of this writing, Provider is not required to charge any 911 fees in addition to those which are already covered in the monthly service amount. However, Provider reserves the right to charge additional 911 fees as required by local, state, and federal ordinance, unless the Customer specifically waives the Provider.

3. LIMITATION OF LIABILITY – VOICE SERVICES

3.1 - Limitation of Liability. Neither Provider nor any Carrier will be liable for any delay or failure to provide the Service, including 911 Dialing, at any time or from time to time, or any interruption or degradation of voice quality, including but not limited to any delay, failure, interruption or degradation of Service that arises from or is related to any of the following:

- an act or omission of an underlying carrier, service provider, vendor or other third party;
- equipment, network or facility failure;
- equipment, network or facility upgrade or modification;
- force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and government actions;
- equipment, network or facility shortage;
- equipment or facility relocation;
- service, equipment, network or facility failure caused by the loss of power to you;
- outage of, or blocking of ports by, your ISP or broadband service provider or other impediment to usage of the Service caused by any third party;
- any act or omission by you or any person using the Service or Device provided to you; or
- any other cause that is beyond our control, including, without limitation, a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications (including, without limitation, 911 Dialing) to be connected or completed, or forwarded.

Notwithstanding anything to the contrary in this Agreement, Provider's aggregate liability under this Agreement shall not exceed the actual amount received by Provider on your account during the calendar month in which act, event or occurrence giving rise to such liability occurred. You acknowledge and agree that, but for such limitation of liability, we would not enter into this Agreement and you would not benefit from the pricing contained herein.

