



MASTER SERVICES AGREEMENT FOR ENTERPRISE SERVICES – GOVERNMENTAL CUSTOMER

9 This Master Services Agreement for Enterprise Services (this “MSA”) is entered into as of this 9th day of January, 2018 (the “Effective Date”), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company (“Provider”), and SNOHOMISH COUNTY, a political subdivision of the State of Washington (“Customer”). Each of Provider and Customer may be referred to in this MSA as a “Party” and together as the “Parties.”

ARTICLE 1 – STRUCTURE OF AGREEMENT

1.1 Purpose of MSA. Provider provides various facilities-based telecommunications services, including Ethernet transport, dedicated internet access, phone over fiber, dark fiber, and related services (as applicable, the “Services”). This MSA is neither an agreement to purchase nor a commitment to provide Services. The purpose of this MSA is to provide the general terms, conditions and framework within which Customer may from time to time purchase Services from Provider, pursuant to one or more “Service Orders,” as described in Section 1.2 below.

1.2 Service Orders. With the exception of the first Service Order being entered into by the Parties pursuant to this MSA, which is titled “Dark Fiber Order for Existing Dark Fiber Services” and is attached to this MSA as Exhibit A, the purchase of Services shall be accomplished only through the negotiation and mutual execution and delivery of a Service Order memorializing the terms and conditions pursuant to which Provider shall provide the desired Services to Customer. Service Orders shall clearly specify the following: (i) the type of Service at issue (e.g., Internet access, data transport, VoIP, dark fiber, etc.); (ii) the location(s) at which the Service is to be provided (each, a “Service Site”); (iii) the initial term of the Service Order (the “Initial Service Term”); (iv) the pricing for the Service, including (a) the monthly recurring charges (“MRC”) for the Service, and (b) any non-recurring charges (“NRC”) associated with installation of the Service; and (v) any other terms or conditions specific to the particular Service Order. Each fully-executed Service Order shall be governed by and become part of this MSA, and this MSA together with all fully-executed Service Orders shall be collectively referred to as the “Agreement.” As stated above, attached to this MSA as Exhibit A is the first Service Order the Parties are entering into under this MSA. Any additional Service Orders the Parties may decide to execute during the Term of this MSA shall follow the procedure outlined above.

1.3 Additional Documents Comprising Agreement; Order of Precedence. The Service Level Agreement for High Availability Dark Fiber Services attached to this MSA as Exhibit B (the “Dark Fiber SLA”) constitutes a part of this MSA. Customer’s use of any Services purchased pursuant to the Agreement will also be governed by Provider’s Acceptable Use Policy for Commercial Services (the “AUP”), a copy of which is attached to this MSA as Exhibit C. Additional provisions that are applicable only to specific types of Services are contained in Provider’s Service-Specific Terms and Conditions (the “Service-Specific T&Cs”), a copy of which is attached to this MSA as Exhibit D. In the event of a conflict between the provisions of any of the foregoing documents, the documents shall have the following order of precedence unless expressly stated otherwise in a particular Service Order: (i) the main body of the MSA together with the SLA; (ii) Exhibit A, the Dark Fiber Order for Existing Dark Fiber Services, and any additional applicable Service Orders that may be executed by the Parties in the future; (iii) Exhibit C, the AUP; and (iv) Exhibit D, the Service-Specific T&Cs.

ARTICLE 2 – TERM AND RENEWAL

2.1 Term of MSA. The term of this MSA (the “MSA Term”) shall be for five (5) years, commencing on the Effective Date and expiring on the date that is one day prior to the fifth (5th) anniversary of the Effective Date. Provided, however that the County’s obligations after December 31, 2018, are contingent upon County Council legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law. Notwithstanding the foregoing, so long as any one or more Service Orders entered into pursuant to this MSA remain in effect, this MSA shall not terminate with respect to said Service Orders but shall continue to govern same until the expiration or termination of said Service Orders.

2.2 Term of Service Orders. The Initial Service Term of each Service Order shall be as specified in the Service Order. Upon expiration of the Initial Service Term of a Service Order, unless either Party terminates the Service Order by giving written notice of termination to the other Party not less than thirty (30) days prior to the end of the Initial Service Term, the Service Order will automatically renew for successive periods of one (1) year (each, a “Renewal Term”) through the five (5) year term of the MSA, unless extended by a formal amendment to the MSA. During any Renewal Term for a Service Order, either Party may terminate

the Service Order at the end of the then-current Renewal Term by giving written notice of termination to the other Party not less than thirty (30) days prior to the end of the then-current Renewal Term. The total period of time a Service Order is in effect is referred to as the “**Service Term**” for the Service Order at issue.

ARTICLE 3 – INSTALLATION, TESTING, ACCEPTANCE AND USE

3.1 Service Site; Demarcation Points; Equipment. Unless a Service Site is within Provider’s control, Customer shall provide Provider with access to the Service Site as and to the extent reasonably necessary for Provider to install, test, inspect and maintain the Service(s) ordered during the Service Term. Unless otherwise stated in a Service Order: (i) Provider shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the “**Provider Equipment**”) necessary to connect Provider’s network facilities to the Customer demarcation point(s) at the Service Site (the “**Demarcation Point(s)**”); and (ii) Customer shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the “**Customer Equipment**”) from the Demarcation Point(s) to Customer’s internal network. Unless a Service Site is within Provider’s control, Customer shall be responsible for maintaining appropriate HVAC, electrical power, and security at the Service Site. Title to the Provider Equipment shall at all times remain vested in Provider. Customer shall not re-arrange, disconnect, tamper with, attempt to repair, or otherwise interfere with the Provider Equipment, nor shall Customer permit any third party to do so.

3.2 Testing, Acceptance and Service Commencement Date. Provider shall use commercially reasonable efforts to install the Services consistent with Provider’s usual and customary installation timeline, and shall endeavor to keep Customer regularly informed regarding installation progress. Provider shall notify Customer when a Service has been installed and is ready for testing and use. Customer may, at Customer’s option, participate in Provider’s final testing of the Service. The Initial Service Term for the Service at issue shall commence on the date on which the Service has been installed, tested and is active and available for use by Customer (the “**Service Commencement Date**”). Customer shall have a period of five (5) business days after the Service Commencement Date in which Customer may notify Provider that the Service at issue is not functioning properly. If Customer notifies Provider of problems with a Service pursuant to this Section 3.2, Provider shall investigate and correct same and the Service Commencement Date shall be revised to be the first calendar day after the date on which Provider has corrected the problems. Unless Customer delivers notification of problems to Provider within the time period set forth above, Customer shall be deemed to have accepted the Service at issue and to have confirmed that the Service has been installed and is functioning properly as of the Service Commencement Date.

3.3 Use Restriction. Any Services provided to Customer pursuant to the Agreement may be used only for governmental purposes. Provider understands that Customer works cooperatively with numerous other governmental and non-governmental entities to accomplish its governmental purposes. Provider expressly agrees that Customer may grant such third-parties the right to use any of the Services, so long as the third-party use of the Services is for governmental purposes. Customer may not use, and may not allow any third party to use, any of the Services for commercial purposes, nor may Customer re-sell the Services.

ARTICLE 4 – PAYMENT AND BILLING

4.1 Invoicing. All amounts owed by Customer to Provider under the Agreement shall be collectively referred to as “**Fees.**” Provider shall begin billing Customer for the MRC applicable to a Service as of the Service Commencement Date. Invoices shall be paid by Customer within thirty (30) days of receipt. Fixed Fees shall be billed in advance annually at the beginning of each calendar year and usage-based Fees shall be billed in arrears. Fixed fees for any partial month shall be pro-rated. For Services having an NRC, unless otherwise stated in the Service Order, Provider shall invoice Customer for the NRC upon full-execution of the Service Order. Except for amounts disputed in good faith by Customer pursuant to Section 4.2 below, past due amounts shall bear interest in the amount of 1.5% per month, or the highest amount allowed by law, whichever is lower.

4.2 Disputed Invoices. If Customer in good faith disputes any portion of a Provider invoice, Customer shall pay the undisputed portion of the invoice and submit written notice to Provider regarding the disputed amount, which notice shall include documentation supporting the alleged billing error (each such notice, a “**Fee Dispute Notice**”). A Fee Dispute Notice must be submitted to Provider within ninety (90) days from the date the invoice at issue is received by Customer. Customer waives the right to dispute any Fees not disputed within such one hundred twenty (120) day period. The Parties shall negotiate in good faith to attempt to resolve any such disputes within sixty (60) days after Customer’s delivery of the applicable Fee Dispute Notice. Fee disputes unresolved within that time period shall be resolved by the mediation and arbitration procedures set forth in Sections 11.2 and 11.3 below.

4.3 Applicable Taxes. All charges for Services set forth in Service Orders are exclusive of Applicable Taxes (as defined below). Except for taxes based on Provider’s net income or taxes for which Customer possesses a valid exemption certificate,

Customer shall be responsible for payment of all applicable taxes and regulatory fees, however designated, that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, or other taxes, fees, duties, charges or surcharges, that are imposed on, incident to, or based upon the provision, sale, or use of the Service(s) (collectively "**Applicable Taxes**"). The Applicable Taxes will be individually identified on invoices. If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Provider with a valid exemption certificate (in a form reasonably acceptable to Provider). Provider will give prospective effect to any valid exemption certificate provided in accordance with the preceding sentence.

ARTICLE 5 – DEFAULT AND REMEDIES

5.1 **Customer Default.** Each of the following shall constitute a default by Customer under the Agreement (each a separate event of "**Default**"): (i) if Customer fails to pay any undisputed Fees when due, the failure of Customer to cure same within thirty (30) days after receiving written notice from Provider regarding such failure to pay; (ii) if Customer fails to comply with any other material provision of the Agreement, the failure of Customer to cure same within thirty (30) days of receiving written notice from Provider regarding such non-compliance.

5.2 **Remedies for Customer Default.** In the event of a Default by Customer under the Agreement, Provider may, at its option: (i) suspend any applicable Services until such time as the Customer Default has been corrected (ii) terminate the applicable Service(s) and/or the applicable Service Order(s); (iii) after the occurrence of any two Customer Defaults in any twelve (12) month period, terminate this MSA and all Service Orders entered into pursuant to this MSA; and/or (iv) pursue any other remedy available to Provider under the Agreement or applicable law. In the event of early termination for Customer Default pursuant to this Section 5.2, Customer shall pay to Provider the Termination Charge described in Section 6.3 below.

5.3 **Provider Default.** Each of the following shall constitute a Default by Provider under the Agreement: (i) if Provider fails to comply with any material provision of the Agreement other than provisions of the SLA, the failure by Provider to cure same within thirty (30) days of receiving written notice from Customer regarding such non-compliance; or (ii) Provider files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.4 **Remedies for Provider Default.** In the event of a Default by Provider under the Agreement Customer may, at its option: (i) terminate the applicable Service(s) and/or the applicable Service Order(s); (ii) terminate this MSA and all Service Orders entered into pursuant to this MSA; and/or (iii) pursue any other remedy available to Customer under the Agreement or applicable law. Early termination by customer shall be accomplished by providing termination notice to disconnects@wavebroadband.com and to the notice address specified in Article 13 below. In the event of early termination for Provider Default pursuant to this Section 5.4, Provider shall reimburse Customer for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Service Order(s), and Customer shall have no further liability to Provider for the terminated Service(s) and/or Service Order(s). Early termination by Customer pursuant to this Section 5.4 shall not relieve Customer of its obligations to pay all Fees incurred prior to the early termination date.

ARTICLE 6 – EARLY TERMINATION & PORTABILITY

6.1 **Early Termination for Non-Appropriation.** Customer is a public entity subject to legislative appropriation requirements. As a general matter, Customer cannot legally be obligated to make payments for Services that are provided after the end of the fiscal period in which Customer executes a particular Service Order. In the event that, for any future fiscal period, sufficient funds are not appropriated or allocated for payment of any one or more Service Orders, Customer may terminate the Service Order at issue as a matter of public convenience as provided herein without incurring a Termination Charge or any other early termination fee. If and when Customer becomes aware that non-allocation of funds for the coming fiscal period appears likely, Customer shall use reasonable efforts to notify Provider of that possibility prior to the end of the then-current fiscal period. Once the non-appropriation decision has been made, Customer shall, as soon as reasonably practicable, deliver written notice of termination for non-appropriation to Provider specifying which Service or Services and/or which Service Order or Service Orders are being terminated for non-appropriation and the date on which such early termination shall occur. Customer shall remain obligated to pay for all Services delivered through the date of termination.

6.2 **Early Termination for Customer Convenience.** Customer may, at any time during the Service Term for a Service, discontinue the Services and/or terminate the corresponding Service Order upon not less than thirty (30) days' advance written notice to disconnects@wavebroadband.com and to the notice address specified in Article 13 below. Any early

termination of a Service pursuant to this Section 6.2 shall be referred to as “**Termination for Customer Convenience.**” In the event of Termination for Customer Convenience, Customer shall pay to Provider the Termination Charge described in Section 6.4 below.

6.3 Early Termination for Default. In accordance with Article 5 above, either Party may elect to terminate this MSA and/or one or more Service Orders prior to the scheduled Expiration Date in the event of an uncured Default by the other Party.

6.4 Termination Charge. In the event of early termination by Customer pursuant to Section 6.1 above, Termination for Customer Convenience pursuant to Section 6.2 above, or termination for Customer Default pursuant to Section 5.2 above, Customer shall pay a Termination Charge to Provider. The “**Termination Charge**” shall equal the sum of the following: (i) all unpaid amounts for Services actually provided prior to the termination date; and (ii) any portion of the actual, documented costs Provider incurred in installing the Service(s) at issue (calculated on a time and materials basis with no mark-up) that Customer has not yet paid to Provider as part of the MRC for the Service(s) being terminated. If incurred, the Termination Charge will be due and payable by Customer within ninety (90) days after the termination date of the Service at issue. Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider’s actual damages and is not a penalty.

6.5 Portability; Substitution of Services. At any time during the Service Term of a Service Order, Customer may elect to substitute new Services for then-existing Services. In such event, Provider will waive the Termination Charge associated with the termination of the then-existing Services as long as: (i) the Fees payable to Provider in connection with the substitute Services are equal to or greater than the Fees of the discontinued Services; (ii) Customer commits to retain the substitute Services for a period equal to or greater than the remainder of the Service Term for the discontinued Services; (iii) Customer pays all applicable installation and other NRCs, if any, for provision of the substitute Services; and (iv) Customer reimburses Provider for all reasonable and documented engineering, installation and construction costs associated with the discontinued Services, , that have not already been recovered by Provider by the time of the substitution.

ARTICLE 7 – CONFIDENTIAL INFORMATION

7.1 Definition of Confidential Information. Subject to Article 7.3 of this Agreement, “**Confidential Information**” shall mean all information regarding the telecommunications needs of Customer and the Services that Provider offers under the Agreement which is disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”), to the extent that such information is marked or identified as confidential or proprietary or would be reasonably deemed confidential or proprietary given the circumstances surrounding its disclosure. The fact that Customer is a customer of Provider shall not be deemed Confidential Information and may be freely disclosed by either Party. Information shall not be deemed Confidential Information if (i) it is independently developed by or for the Receiving Party, (ii) it is lawfully received by the Receiving Party free of any obligation to keep it confidential, (iii) it becomes generally available to the public other than by breach of the Agreement, or (iv) it was known to the Receiving Party prior to the Disclosing Party’s disclosure of same.

7.2 Obligations Regarding Confidential Information. Subject to Article 7.3 of this Agreement, Confidential Information is information marked by a Disclosing Party as confidential. The Receiving Party: (a) shall use such Confidential Information only for the purposes of performing its obligations and/or enforcing its rights under the Agreement; (b) shall reproduce such Confidential Information only to the extent necessary for such purposes; (c) shall restrict disclosure of such Confidential Information to employees or contractors that have a need to know for such purposes (with disclosure to contractors being limited to contractors that have signed a non-disclosure agreement to protect the Confidential Information of third parties); (d) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in the Agreement or as required by law, by court order, by administrative order of an agency having jurisdiction, or in the enforcement of its rights under the Agreement; and (e) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information.

7.3 Public Records Act. Notwithstanding anything to the contrary contained elsewhere in this Article 7, the Parties understand and acknowledge that Customer is a governmental entity, and that Washington law limits the ability of Customer to shield from public disclosure any information given to Customer. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the “Act”). To the extent that public records then in the custody of the Provider are needed for the County to respond to a request under the Act, as determined by the County, the Provider agrees to make them promptly available to the County. In the event that Customer receives a request pursuant to the Public Records Act (or other similar law) to disclose information identified by Provider in writing as confidential, Customer’s sole obligations to Provider shall be: (i) to notify Provider of i) the request and ii) of the date that such information will be released to the requester unless the Provider obtains a court order

to enjoin that disclosure pursuant to RCW 42.56.540. If the Provider fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Provider to claim any exemption from disclosure under the Act. The County shall not be liable to the Provider for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Provider for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

ARTICLE 8 – LIMITATION OF LIABILITY

8.1 General Limitations. Provider shall not be liable for any loss or damage occasioned by a Force Majeure Event. Except as expressly provided to the contrary elsewhere in the Agreement, Provider's aggregate liability for any and all causes and claims arising under the Agreement, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by Customer; or (ii) \$1,000,000.

8.2 Service Level Agreement. Should Provider fail, on any one or more occasions, to deliver any one or more Services to Customer in accordance with all of the terms and conditions contained in the applicable SLA, Customer's sole and exclusive remedy for such failure shall be as set forth in the SLA. No such failure shall be considered a Default by Provider under the Agreement.

8.3 No Indirect Damages. EXCEPT FOR (i) EACH PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 7 ABOVE, (ii) EACH PARTY'S THIRD-PARTY INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 9 BELOW, AND (iii) CLAIMS ARISING FROM A PARTY'S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, ARISING OUT OF OR INCURRED IN CONNECTION WITH A PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, INCLUDING, BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, EVEN IF THE OTHER PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES.

8.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY SERVICE PROVIDED PURSUANT TO THIS AGREEMENT.

8.5 Assumption of Risk. PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED BY CUSTOMER THROUGH THE SERVICES, SERVICE INTERRUPTIONS ATTRIBUTABLE TO CUSTOMER'S NETWORK, ANY CUSTOMER EQUIPMENT FAILURES, OR ANY OTHER SUCH CAUSES, AND CUSTOMER USES THE SERVICES AT CUSTOMER'S OWN RISK. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SECURITY. CONFIDENTIALITY AND INTEGRITY OF INFORMATION CUSTOMER TRANSMITS OR RECEIVES USING ANY SERVICES.

ARTICLE 9 –INDEMNIFICATION FOR THIRD PARTY CLAIMS

9.1 Indemnification by Customer. Customer shall indemnify, defend and hold Provider and its members, managers, officers, agents and employees (collectively, the "**Provider Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Provider Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Customer's negligence or willful misconduct in exercising its rights or performing its obligations under the Agreement; (ii) Customer's noncompliance with or Default under the Agreement; and/or (iii) Customer's failure to comply with applicable law in connection with its performance under the Agreement.

9.2 Indemnification by Provider. Provider shall indemnify, defend and hold Customer and its members, managers, officers, agents and employees (collectively, the "**Customer Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Customer Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Provider's negligence or willful misconduct in exercising its rights and performing its obligations under the Agreement; (ii) Provider's noncompliance with or Default under the Agreement; and/or (iii) Provider's failure to comply with applicable law in connection with its performance under the Agreement.

9.3 Indemnification Procedures for Third-Party Claims. Should any third-party claim arise under this Article 9, the indemnified

party shall promptly notify the indemnifying party of same in writing, and shall take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The indemnifying party shall have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the indemnified party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that the indemnifying party shall not take any action in defense or settlement of the claim that would negatively impact the indemnified party without the consent of the indemnified party. The indemnified party shall reasonably cooperate with the indemnifying party in the defense of the third-party claim, including making its files and personnel reasonably available to the indemnifying party, all at the cost and expense of the indemnifying party.

ARTICLE 10 – FORCE MAJEURE EVENTS

Neither Party shall be liable for any delay in or failure of performance hereunder (other than Customer's payment obligations under Article 4) due to causes beyond such Party's reasonable control including, but not limited to, acts of God, fire, flood, earthquake, ice storms, wind storms, or other severe weather events, explosion, vandalism, cable cut, terrorist acts, insurrection, riots or other civil unrest, national or regional emergency, a governmental authority's failure to timely act, inability to obtain equipment, material or other supplies due to strike, lockout or work stoppage, or any law, order, regulation, direction, action or request of any civil or military governmental authority (each, a "**Force Majeure Event**"). The Party claiming relief under this Article shall notify the other Party of the occurrence or existence of the Force Majeure Event and of the cessation of such event. If any Force Majeure Event causes an increase in the time required for performance of any of its duties or obligations, the affected Party shall be entitled to an equitable extension of time for completion. If the delay in performance caused by the Force Majeure Event exceeds thirty (30) days, either Party may terminate the Agreement or the applicable Service Order(s) immediately on written notice to the other Party, without incurring any liability in connection with such termination.

ARTICLE 11 – DISPUTE RESOLUTION

11.1 **Good Faith Negotiations.** Except for actions seeking a temporary restraining order or injunction, in the event any controversy, disagreement or dispute (each, a "**Dispute**") arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve the Dispute through negotiation. In the event of a Dispute, either Party may give the other Party written notice of the Dispute (each, a "**Dispute Notice**"). The parties will meet and attempt to resolve the Dispute within sixty (60) days of the date on which the Dispute Notice is delivered. All discussions occurring and documents exchanged during negotiations under this Section are confidential and inadmissible for any purpose in any legal proceeding involving the Parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation process. If the Parties do not resolve the Dispute within the sixty (60) day period, either of the Parties may pursue any remedy available to it under this Agreement, at law or in equity.

11.2 **Governing Law.** This Agreement and all matters arising out of this Agreement shall be governed by the laws of the State of Washington. Any judicial action arising in connection with this Agreement shall be in the Superior Court of the State of Washington in and for Snohomish County, or in the Federal District Court for the Western District of Washington, as applicable.

ARTICLE 12 – ASSIGNMENT AND ASSUMPTION

Except as otherwise provided in this Article 12, neither Party shall assign, delegate or otherwise transfer the Agreement or its obligations under the Agreement, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the necessity of obtaining the other Party's consent, assign its interest in and to the Agreement to: (i) any entity acquiring such Party, whether by merger or through purchase of substantially all the assets of such Party; (ii) a lender as an asset securing indebtedness; or (iii) an entity controlled by, controlling or under common control with such Party; provided, that in the event of a transfer to an affiliate under (iii), the transferring Party shall continue to remain liable for the obligations under the Agreement.

ARTICLE 13 – NOTICES

Unless otherwise provided elsewhere in the Agreement, any notice to be given to either Party under the Agreement will be in writing and directed to the addresses set forth below. Notices will be deemed received (i) the next business day, when sent by reliable, commercial overnight courier; (ii) three (3) business days after being sent by certified mail, postage prepaid and return receipt requested; (iii) when actually received, if sent by email during the business hours of 9:00 a.m. to 5:00 p.m. (recipient's time). Notices received after 5:00 p.m. (recipient's time) will be effective the next business day.

If to Provider:

Wave Business Solutions, LLC
401 Parkplace Center, Suite 500
Kirkland, WA 98033
ATTN: Paul Koss
Email: pkoss@wavebusiness.com

If to Customer:

Snohomish County
Information Technology Department
3000 Rockefeller Avenue, M/S 709
Everett, WA 98201
ATTN: Pam Kane
Email: Pamela.Kane@co.snohomish.wa.us

With a Copy to:

WaveDivision Holdings, LLC
401 Parkplace Center, Suite 500
Kirkland, WA 98033
ATTN: Jim Penney
Email: jpenney@wavebroadband.com

With a Copy to:

Either party may change its notice address by giving notice to the other party in accordance with this Article.

ARTICLE 14 – REPRESENTATIONS AND COVENANTS

Each Party represents and covenants to the other as follows: (i) the execution and delivery of the Agreement and the performance of its obligations hereunder have been duly authorized; (ii) the Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms; (iii) to the best of its knowledge and belief, it is in material compliance with all laws, rules and regulations and court and governmental orders related to the operation of its business; and (iv) it shall comply with all applicable laws and regulations when exercising its rights and performing its obligations under the Agreement.

ARTICLE 15 – MISCELLANEOUS

15.1 Entire Agreement; Interpretation. The Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. The Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party. The Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of the Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties. If any provision of the Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of the Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect.

15.2 No Waiver. No failure by either Party to enforce any rights hereunder will constitute a waiver of such rights. Nor shall a waiver by either Party of any particular breach or default constitute a waiver of any other breach or default or any similar future breach or default. Provider's acceptance of any payment under the Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Provider for additional amounts due from Customer.

15.3 Relationship; No Third Party Beneficiaries. The Agreement is a commercial contract between Provider and Customer and the relationship between the Parties is that of independent contractors. Nothing in the Agreement creates any partnership, principal-agent, employer-employee or joint venture relationship between the Parties or any of their Affiliates, agents or employees for any purpose. The Agreement is for the sole benefit of Provider and Customer and is not intended to confer any rights on any other person; there are no third party beneficiaries of the Agreement.

15.4 Exhibits. The following Exhibits, which are attached to this MSA, are incorporated herein and by this reference made a part of this MSA:

EXHIBIT A - Dark Fiber Order for Existing Dark Fiber Services

- EXHIBIT B - Service Level Agreement for High Availability Dark Fiber Services
- EXHIBIT C - Acceptable Use Policy for Commercial Services
- EXHIBIT D - Service-Specific Terms and Conditions

15.5 Computation of Time. Except where expressly provided to the contrary, as used in the Agreement, the word “day” shall mean “calendar day,” and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified in the Agreement. If the final date of any period of time set out in any provision of the Agreement falls upon a Saturday or a Sunday or a legal holiday, then in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in the Agreement, the term “business day” shall mean a day that is not a Saturday, Sunday or a legal holiday.

15.6 Counterparts. This MSA and any Service Order entered into by the Parties pursuant to this MSA may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument. Any executed documents sent to the other Party in portable document format (pdf) images via email will be considered the same as an original document.

15.7 Non-Discrimination. It is the policy of the Customer to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington’s Law Against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Provider shall comply with Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this contract constitutes a certification by the Provider of the Provider’s compliance with the requirements of Chapter .2460 SCC. If the Provider is found to have violated this provision, or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this contract may be subject to a declaration of default and termination at the Customer’s discretion. This provision shall not affect the Provider’s obligations under other federal, state, or local laws against discrimination.

[Signatures on following page.]

The Parties are signing this MSA as of the Effective Date set forth in the preamble above.

CUSTOMER:

Snohomish County, a political subdivision
of the State of Washington

By [Signature] 1/9/19 JK
Snohomish County Executive Date

KEN KLEIN
Executive Director

COUNCIL USE ONLY	
Approved: <u>1.9.19</u>	
Docfile: <u>D-8</u>	

Approved as to Form:

Rebecca Wendling 11/1/2018
Deputy Prosecuting Attorney Date

Approved as to Insurance Provisions:

Draino Baer 11/6/18
Risk Management Date

Recommended for Approval:

[Signature] 11-6-18
Director of Information Technology Date

PROVIDER:

Wave Business Solutions, LLC, a Washington
limited liability company

By [Signature] 10/30/2018
Date

Name: Paul John Koss

Title: SVP Business Solutions

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EXHIBIT A
to
Master Services Agreement for Enterprise Services

DARK FIBER ORDER FOR EXISTING DARK FIBER SERVICES

This Dark Fiber Order for Existing Dark Fiber Services (this "Service Order") is a part of the Master Services Agreement for Enterprise Services – Governmental Customer to which it is attached.

Section 1: Description of Fiber Routes and Charges. Provider shall deliver to Customer the dark fiber service(s) set forth in the following table (each, a "Service," and collectively, the "Services"). The Provider shall connect the "End Points" set forth below (each such connection, a "Fiber Route"), using the number of dark fiber strands described below, at a loss budget not to exceed the "Maximum Loss Budget" set forth below, in exchange for the monthly recurring charges ("MRC") set forth below:

<i>From</i>	<i>To</i>	<i>Strand Count</i>	<i>Current Circuit ID</i>	<i>Fiber Distance (km)</i>	<i>Max Loss budget</i>	<i>Monthly Recurring Charge</i>
Records Dept. 1000 California St Everett, WA 98201	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	672	>10	16 dB at 1310 nm	\$570
South Precinct 15928 Mill Creek Blvd Mill Creek, WA 98012	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	1021	58	30 dB at 1310 nm	\$570
SWRTS 21311 61st Pl W Mountlake Terrace, WA 98043	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	1033	36	30 dB at 1310 nm	\$570
South District Court 20520 68th Ave W Lynnwood, WA 98036	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	1039	42	30 dB at 1310 nm	\$570
Natural Resources 4822 Grove St Marysville, WA 98270	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	4587	>10	16 dB at 1310 nm	\$570
Arlington ER&R 19700 67th Ave NE Arlington, WA 98223	Stanwood City Hall 10200 270 St NW Stanwood, WA 98292	1	4951	23	16 dB at 1310 nm	\$570
Arlington ER&R 19700 67th Ave NE Arlington, WA 98223	Stanwood Police Dept. 8727 271 st St NW Stanwood, WA 98292	1	5679	13	15 dB at 1310 nm	\$570
Arlington ER&R 19700 67th Ave NE Arlington, WA 98223	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	4588	28	16 dB at 1310 nm	\$570
North Precinct 15100 40th Ave NE Marysville, WA 98271	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	4589	18	16 dB at 1310 nm	\$570

Cascade District Court 415 E Burke St Arlington, WA 98223	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	4590	29	16 dB at 1310 nm	\$570
Denney Juvenile Justice Center 2801 10th St Everett, WA 98201	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	1104	>10	16 dB at 1310 nm	\$570
Mariner Fire Station 12310 Meridian Ave S Everett, WA 98208	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	1174	19	16 dB at 1310 nm	\$570
Dawson Place 1509 California St Everett, WA 98201	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	1570	>10	16 dB at 1310 nm	\$570
Paine Field / Airport 3220 100th St SW Everett, WA 98204	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	3818	25	16 dB at 1310 nm	\$570
Evergreen State Fairgrounds 14405 179th Ave SE, Monroe, WA 98272	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	3743	76	30 dB at 1550 nm	\$570
Cathcart Public Works 8915 Cathcart Way Snohomish, WA 98296	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	1384	24	16 dB at 1310 nm	\$0
Emergency Management 720 80 th St SW Everett, WA 98203	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	1927	10	16 dB at 1310 nm	\$570
McDougal Fleet ER&R 3402 McDougall Ave Everett, WA 98201	SnoCo DataCenter 3000 Rockefeller Everett, WA 98201	1	6371	>10	16 dB at 1310 nm	\$570
Cathcart Public Works 8915 Cathcart Way Snohomish, WA 98296	Emergency Management 720 80 th St SW Everett, WA 98203	1	TBD	20	16 dB at 1310 nm	\$0

There shall be no one-time, non-recurring installation charge (“NRC”) associated with the Services.

Section 2: Initial Service Term. The Initial Service Term for the Services is sixty (60) months, commencing on January 1, 2019, and expiring on December 31, 2023; provided, however that the County’s obligations after December 31, 2018, are contingent upon County Council legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.

Section 3: Customer Information.

Account Name: Snohomish County

Account Executive to Customer: Bernadette Webb

Invoicing Address: Information Services

Robert J. Drewel Building, 7th Floor
3000 Rockefeller Avenue, M/S 709

To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

Customer Site/Technical Contact:

J. D. Braathen
jd.braathen@snoco.org
425-388-7171 (Ph)

Customer Billing Contact:

J. D. Braathen
jd.braathen@snoco.org
425-388-7171 (Ph)

Other Customer Contact:

Pam Kane
Pam.Kane@snoco.org
425-388-3309 (Ph)

Section 4: Option to Add Additional Fiber Routes. At any time and from time to time during the Extended Term, Customer may add up to twenty five (25) additional dark fiber routes to the Agreement, at a MRC of \$570 per route. Provider reserves the right to charge a mutually acceptable NRC with prior written notice and prior acceptance by Customer. To exercise this option, Customer shall deliver written notice to Provider proposing the desired new dark fiber route. Provider shall inform Customer of the amount of NRC Provider would charge in connection with installing the proposed new dark fiber route, as well as the anticipated installation timeline for the proposed new dark fiber route. If Customer agrees to the proposed NRC and installation timeline, the parties shall memorialize the addition of the new dark fiber route to this Agreement by mutual execution of an addendum to this Agreement.

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EXHIBIT B
Service Level Agreement
for
Ultra High Availability Dark Fiber Services

This Service Level Agreement for Ultra High Availability Dark Fiber Services (this "SLA") is a part of the Master Services Agreement for Enterprise Services ("MSA") between Wave Business Solutions, LLC ("WAVE") and Customer.

1. AVAILABILITY SLA

WAVE's dark fiber paths are designed to provide a target Availability of at least 99.9% per calendar month. If the Availability target is not met with respect to a given dark fiber path in a given calendar month, Customer will be entitled to a credit in the amount set forth below, which must be claimed as described in this SLA. Customer credits for Outages of Dark Fiber Services are calculated on an individual path basis, and the amount of any credit is based on the portion of MRC allocable to the affected dark fiber path.

Duration of Unavailability	Customer Credit as % of MRC for the applicable Dark Fiber Path*
Less than 45 minutes	Target Met
45 Min. up to 8 hours	5%
> 8 hours up to 16 hours	10%
> 16 hours up to 24 hours	20%
> 24 hours	35%

2. MEAN TIME TO RESTORE ("MTTR") SLA

In the event of Outages in the Services, WAVE's NOC is designed to provide a MTTR of no greater than 4 hours. If the target MTTR is not met for a particular dark fiber path in a given calendar month, and Customer receives a Service from WAVE on the path at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Path
4 hr MTTR	≤ 4 Hrs.	Target Met
	> 4 Hrs. to 6 Hrs.	5%
	> 6 Hrs. to 8 Hrs.	10%
	> 8 Hrs.	25%

3. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different path for the Service that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the path that experienced the Chronic Outage without incurring any Termination Charge.

4. DEFINITIONS

For purposes of this SLA the following terms shall have the meanings set forth below.

"Availability" means the dark fibers at issue are available to and accessible by Customer at the specified locations, are capable of transmitting signals and can otherwise be used by Customer. Availability does not involve the quality of data transmission. Periods of Excused Outage are not included in the Availability metric. WAVE does not monitor the use or availability of dark fiber Services, thus any Outage must be reported to the WAVE NOC by Customer.

“Chronic Outage” means a series of three (3) or more Service Outages affecting the same Service on the path during a given calendar month, each of which has an actual time to restore “TTR” in excess of WAVE’s targeted MTTR.

“Emergency Maintenance” means WAVE’s efforts to correct conditions on the WAVE Network that are likely to cause a material disruption to or outage in Services provided by WAVE and which require immediate action. Emergency Maintenance may degrade the quality of the Services provided to Customer, including possible outages. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. WAVE may undertake Emergency Maintenance at any time WAVE deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances.

“Excused Outage” means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond WAVE’s reasonable control, such as, by way of example only, Force Majeure, acts or omissions of Customer or Customer’s agents, licensees or end users, electrical outages not caused by WAVE, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for WAVE’s delivery of the Services to Customer.

“Mean Time to Restore” or **“MTTR”** means the average time required to restore the Service(s) to a normally operating state in the event of an Outage. MTTR is calculated on a path/route basis, as a monthly average of the time it takes WAVE to repair all Service Outages on the specific path/route. MTTR is measured from the time Customer opens an Outage related Trouble Ticket is with the WAVE NOC until the time the Service is again Available. The cumulative length of Service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\text{MTTR in Hrs (per calendar month)} = \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}}$$

Periods of Excused Outage are not included in MTTR metrics.

“Outage” means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by WAVE. Unavailability does not include periods of Service degradation, such as slow data transmission.

“Scheduled Maintenance” means any maintenance of the portion of the WAVE Network to which Customer’s router is connected that is performed during a standard maintenance window (1:00AM – 5:00AM Pacific Time). Customer will be notified via email at least seven (7) days in advance of any scheduled maintenance that is likely to affect Customer’s Service.

“Trouble Ticket” means a trouble ticket generated through the WAVE NOC upon notification of a Service-related problem. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the WAVE NOC and open a Trouble Ticket regarding the problem.

“WAVE Network” means all equipment, facilities and infrastructure that WAVE uses to provide Services to Customer, and includes Customer’s access port. The “WAVE Network” does not include Customer owned or leased equipment (unless leased from WAVE), or any portion of Customer’s local area network after the demarcation point for the Services provided by WAVE.

“WAVE’s Network Operations Center” or **“WAVE’s NOC”** means WAVE’s network operations center which is staffed 24x7x365 and can be reached at: 888-317-0488.

5. CLAIMING CREDITS AND REMEDIES

5.1 Requesting SLA Related Credits and Chronic Outage Remedies. To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be in good standing with WAVE and current in its financial obligations to WAVE. Credits are exclusive of any applicable taxes charged to Customer or collected by WAVE.

- (i) To claim SLA-related Service credits, Customer must do the following:

- (a) Open a Trouble Ticket with the WAVE NOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);
 - (b) Submit a written request for the credit(s) to WAVE's customer service department within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and
 - (c) Provide the following documentation when requesting the credit(s):
 - Customer name and contact information;
 - Trouble Ticket number(s);
 - Date and beginning/end time of the claimed Outage or failed SLA metric;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Outage or failed SLA metric.
- (ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:
- (a) Open a Trouble Ticket regarding the Chronic Outage with the WAVE NOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;
 - (b) Submit a written request for a remedy regarding the Chronic Outage to WAVE's customer service department within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and
 - (c) Provide the following documentation when requesting the remedy:
 - Customer name and contact information;
 - Type of remedy requested (e.g., substitution or termination);
 - Trouble Ticket numbers for each individual Outage event;
 - Date and beginning/end time of each of the claimed Outages;
 - Trouble Ticket number for the Chronic Outage at issue;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies provided by this SLA are Customer's sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of any of the Services to which this SLA applies.

5.2 WAVE's Evaluation of Claims. All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by WAVE. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, WAVE will evaluate the claim and respond to Customer within thirty (30) days. If WAVE requires additional information in order to evaluate Customer's claim, WAVE will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives WAVE's request for additional information in which to provide the requested information to WAVE. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. WAVE will promptly notify Customer of WAVE's resolution of each Customer claim. If Customer's claim for an SLA-related credit or Chronic Outage remedy is rejected, the notification will specify the basis for the rejection. If Customer's claim for a credit is approved, WAVE will issue the credit to Customer's account, to appear on the next monthly invoice. If Customer's claim for a Chronic Outage remedy is approved, WAVE will notify Customer of the date on which the requested substitution or termination will occur. WAVE's determination regarding whether or not an SLA has been violated shall be final.

5.3 Limitations and Exclusions. Total credits for any given calendar month shall not exceed 100% of the MRC for the affected dark fiber path and Service. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable credit amount. This SLA will not apply and Customer will not be entitled to any credit under this SLA for any impairment of Services that is caused by or due to any of the following: (i) The acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the Services or the equipment

used to provide the Services, including Customer's use of the Service in an unauthorized or unlawful manner; (ii) The failure of or refusal by Customer to reasonably cooperate with WAVE in diagnosing and troubleshooting problems with the Services, including the unavailability of required Customer personnel due to Customer's failure to keep WAVE provided with current and accurate contact information for such personnel; (iii) Scheduled Service alteration, maintenance or implementation; (iv) The failure or malfunction of network equipment or facilities not owned or controlled by WAVE or WAVE's Affiliates; (v) Force majeure events; (vi) WAVE's inability (due to no fault of WAVE) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the Service; (vii) Customer's failure to release the Service for testing or repair and continuing to use the Service on an impaired basis; (viii) WAVE's termination of the Service for cause, or as otherwise authorized by the MSA; (ix) Improper or inaccurate network specifications provided by Customer; (x) Interruptions resulting from incorrect, incomplete or inaccurate Service orders from Customer; (xi) Special configurations of the standard Service that have been mutually agreed to by Customer and WAVE, unless a separate Service Level Agreement for the special configuration has been established with the Service Order; or (xii) WAVE's inability to deliver Service by the Customer's desired due date.

EXHIBIT C



Acceptable Use Policy for Commercial Services

Introduction.

Please read this Acceptable Use Policy for Commercial Services (“AUP”) carefully. Wave offers a variety of communications services (“Services”) to its commercial and governmental customers. Your use of Wave’s Services constitutes your acceptance of and agreement to comply with the provisions of this AUP to the extent its provisions are applicable to the Services you use. You are responsible for ensuring that all users of Services comply with this AUP. This AUP applies to your use of Services in addition to and in conjunction with the provisions of any Master Services Agreement, Service Order, ~~IRU Agreement~~ or other Service-specific contract you have entered into with Wave (collectively, your “Contract”). To the extent the provisions of this AUP conflict with any provisions of your Contract, the provisions of your Contract control. ~~Wave may modify this AUP at any time without notice. Your continued use of the Services after such modification constitutes acceptance of the modified AUP.~~

PTL

Potential Consequences of Violating this AUP.

Although Wave does not normally monitor, screen or otherwise access the content of data transmitted using any Service, Wave reserves the right to do so at any time for reasonable network management purposes, to identify violations of this AUP, and to cooperate with law enforcement activities. Wave reserves the right, in its sole discretion, to (i) remove or block any traffic which Wave determines is illegal, deceptive, harmful, offensive or otherwise in violation of this AUP, and/or (ii) suspend or terminate your Services without notice and without liability to Wave if a violation of this AUP occurs through your Services. Any violation by you of this AUP grants Wave permission to take action to restrict or terminate your access to and use of Services. ~~You agree to indemnify, defend and hold Wave and its affiliates, suppliers, and agents harmless from and against all claims and expenses (including reasonable attorneys’ fees and costs) resulting from your violation of this AUP. Your indemnification obligations will survive any termination of Service.~~ Wave’s failure to enforce this AUP in any one or more instances does not constitute a waiver of Wave’s right to enforce this AUP at any time in the future.

PTL

Prohibited Activities.

Prohibited uses of Services include, but are not limited to, the following:

- (1) Illegal or Unlawful Use. Using Services to engage in, undertake, accomplish, instigate, encourage or further any illegal or unlawful purpose or activity. This includes any and all illegal or unlawful purposes and activities that are not expressly described elsewhere in this AUP.
- (2) Unauthorized Hacking. Using Services to perform, attempt to perform, encourage or enable unauthorized hacking of any kind. This includes, but is not limited to: (i) breaching or circumventing the network security system of any host, network, server, database or user account, whether on Wave’s

network or on another carrier's network, without permission; (ii) initiating, performing, participating in or assisting in the performance of denial of service or DDoS attacks; (iii) using or distributing tools designed to circumvent or compromise network security, such as ransomware, spyware, malware, password cracking or network probing algorithms or analyzers, encryption circumvention devices, or Trojan Horse programs.

(3) Fraudulent Activity. Using Services to engage in, commit, encourage or further fraudulent activities or other deceptive practices. This includes, but is not limited to, identity theft, credit card fraud, forgery, or impersonation of any person or entity.

(4) Violating Intellectual Property Rights. Using Services in a manner that violates the intellectual property rights of any third party. This includes, but is not limited to, transmitting, reproducing, or distributing information, data, software or other material that is protected by copyright, trademark, patent, trade secret or other proprietary rights laws, rules or regulations without obtaining permission of the owner.

(5) Privacy Violations. Using Services in a manner that violates the privacy of others. This includes, but is not limited to, collecting (or attempting to collect) or disseminating personal information about third parties without their consent.

(6) Offensive or Objectionable Use. Using Services in a manner that a reasonable person could deem to be offensive or objectionable, regardless of whether or not the use is lawful. This includes, but is not limited to, using Services to: (i) harass, annoy, or threaten others; (ii) transmit or disseminate material which a reasonable person could deem to be objectionable, defamatory, offensive, indecent, vulgar, hateful or otherwise inappropriate; or (iii) send or collect responses from unsolicited bulk communications (e.g., "spam").

(7) Causing Network Performance Degradation. Using Services in a manner that causes (or is likely to cause) performance degradation of Wave's network and/or inhibits, interferes with or impedes other authorized users of Wave's network from making normal and reasonable use of their Services. This includes, but is not limited to, the generation of excessive levels of network traffic, regardless of intent, purpose or knowledge.

(8) ~~Unauthorized Resale. Unauthorized resale of Services. Unless you are an authorized wholesale partner of Wave, Wave's commercial Services are exclusively for your internal business use and may not be re-sold or otherwise distributed outside your organization. If you desire to re-sell Wave's Services, please contact Wave's Wholesale team about becoming an authorized wholesale partner.~~

(9) Violating Other Provider's Policies. Using Services in a manner that violates the rules, regulations, or policies established by or applicable to any non-Wave network, server, database, or website that you access using Wave's Services.

Security.

As a user of Services, it is your responsibility to secure your network from external threats such as DDoS attacks, ransomware, viruses, worms and other methods of unauthorized intrusion. In all cases, you are solely responsible for the security of any device you choose to connect to Service, including any data stored or shared on that device. You are responsible for any misuse of Services, even if the

misuse was committed without your authorization. Therefore, you must take steps to ensure that others do not gain unauthorized access to Services or use Services in an unauthorized manner.

Digital Millennium Copyright Act.

Wave is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Service to comply with these laws. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. It is Wave's policy in accordance with the DMCA and other applicable laws to reserve the right to restrict the use of or terminate Services provided to any customer who is either found to infringe third party copyright or other intellectual property rights, including alleged repeat infringers, or who Wave believes in its sole discretion is or may likely be infringing these rights. Wave may terminate the Service of any such customer at any time with or without notice. Copyright owners may report alleged infringements of their works that are committed using the Services by sending Wave's authorized agent a notification of claimed infringement that satisfies the requirements of the DMCA. Upon Wave's receipt of a satisfactory notice of claimed infringement for these works, Wave will take appropriate action. If the affected customer believes in good faith that the allegedly infringing works have been removed or blocked by mistake or misidentification, then that person may send a counter notification to Wave. Upon Wave's receipt of a counter notification that satisfies the requirements of DMCA, Wave will provide a copy of the counter notification to the person who sent the original notification of claimed infringement and will follow the DMCA's procedures with respect to a received counter notification. In all events, you expressly agree that Wave will not be a party to any disputes or lawsuits regarding alleged copyright infringement.

Copyright owners may send Wave a notification of claimed infringement to report alleged infringements of their works to:

Wave Business Solutions, LLC
401 Kirkland Parkplace
Suite 500
Kirkland, Washington 98033
Phone: (425) 576-8200
Fax: (425) 576-2836
E-mail: customerservice@wavebroadband.com

Copyright owners may use any form of notification of claimed infringement form that satisfies the requirements of [Section 512\(c\)\(3\)](#) of the U.S. Copyright Act. Under the DMCA anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to Wave, the alleged infringer, and the affected copyright owner for any damages incurred in connection with the removal, blocking, or replacement of allegedly infringing material.

If a notification of claimed infringement has been filed against you, you can file a counter notification with Wave's designated agent using the contact information shown above. All counter notifications must satisfy the requirements of [Section 512\(g\)\(3\)](#) of the U.S. Copyright Act.

EXHIBIT D



Service-Specific Terms and Conditions

Introduction.

Please read this Service-Specific Terms and Conditions (“Service-Specific T&Cs”) carefully. Wave offers a variety of communications services (“Services”) to its commercial and governmental customers. This Service-Specific T&Cs contains provisions that apply only to specific types of Services provided by Wave. If you receive from Wave any of the types of Services described in this Service-Specific T&Cs, then the applicable provisions of this Service-Specific T&Cs apply to your Service. If provisions of this Service-Specific T&Cs apply to one or more of your Services, the provisions of this Service-Specific T&Cs apply to those Services in addition to and in conjunction with the provisions of any Master Services Agreement, Service Order, ~~IRU Agreement~~ or other contract you have entered into with Wave (collectively, your “Contract”). To the extent the provisions of this Service-Specific T&Cs conflict with any provisions of your Contract, the provisions of your Contract control. ~~Wave may modify this Service-Specific T&Cs at any time without notice. Your continued use of your Services after such modification constitutes acceptance of the modified Service-Specific T&Cs.~~ PDK

Internet Access Service Provisions.

If you receive Internet access Services from Wave, then, in addition to the other provisions of your Contract, your use of Wave’s Internet access Services is subject to the following terms and conditions:

- (1) End User Access. You must ensure that any persons who have access to the Services through your equipment and/or your internal network comply with the terms of this AUP and your Contract.
- (2) Acceptance of Risk. You expressly acknowledge and agree that the Internet is a shared network that is not secure and that is not controlled by Wave. Any content that you access through the Services is provided by independent third-party content providers, over which Wave does not exercise control. Wave does not preview, exercise editorial control over, or endorse any opinions or information accessed through the Services. You expressly understand and agree that it is possible data or files you send or receive over the Internet will be monitored by third-parties and/or subject to unauthorized access by third-parties. Third-parties may gain access to your data, including confidential information. Data or files transmitted over the Internet may contain computer viruses or other harmful components. Wave has no responsibility and assumes no liability for any such acts or occurrences. You expressly assume the risks inherent in connecting your internal network and your equipment to the Internet and in accessing and using the Internet through the Services.
- (3) IP Addresses. Any IP addresses provided to you by Wave in connection with the Services are and will remain the property of Wave. You will not alter, modify, sell, lease, assign, encumber or otherwise tamper with the IP addresses. Wave reserves the right to change addressing schemes at any time.
- (4) DDoS Protection Service. If you receive DDoS protection Service from Wave in connection with your Internet access Service, you expressly agree and understand that the DDoS protection Service

does not guaranty that the Internet access Service for which the DDoS protection Service is activated will never be susceptible to or negatively impacted by any distributed denial of service attack or any other type of hostile hacking activity. Instead, the DDoS protection Service constitutes only one measure of protection against such activities. Wave shall not be liable for any damages of any type that may be suffered by you or any of your end users due to any DDoS attacks or other hostile hacking activity experienced by the Internet access Service that the DDoS protection Service does not successfully prevent, alleviate or ameliorate.

Burstable Service Provisions.

If you receive burstable Internet access Services or burstable data transport Services from Wave, then, in addition to the other provisions of your Contract, your use of Wave's burstable Services is subject to the following terms and conditions. Burstable Internet access or data transport Service allows you to increase from the selected base bandwidth up to the specified maximum burstable bandwidth on an as-needed basis when usage spikes. Charges for burstable Service will be calculated by using the industry standard 95th percentile. The 95th percentile measurement evaluates the regular and sustained use of a network connection and is measured by sampling usage at 5 minute intervals and ignoring the top 5% of usage samples taken over a month. The 95th percentile measure of peak bandwidth will then be compared to the base bandwidth and the incremental usage will be billed at the burst rate in arrears on a monthly basis. Charges for burstable Service will be measured, calculated and accrued on a monthly basis, and billed in arrears on a monthly basis.

Phone Service Provisions.

If you receive phone Services (including hosted voice Services) from Wave, then, in addition to the other provisions of your Contract, your use of Wave's phone Services is subject to the following terms and conditions:

- (1) VoIP Services. Wave's voice Services are provided via Internet Protocol voice network (aka "VoIP"). VoIP services operate using the standard commercial electrical power provided to your service site. Wave does not provide a back-up generator, UPS or other alternate power source for the Services; accordingly, in the event of a power outage at your service site, unless you have arranged for back-up power, the VoIP Services will be unavailable until electrical service is restored. You acknowledge and accept that the Service is not represented as fail-safe and is not designed for use in situations where error-free or uninterrupted service is essential. Wave will not be responsible for, and you expressly assumes all risk of, any losses or damages arising as a result of the unavailability of the Service, including the inability to reach 911 or other emergency services, or the inability to contact your security system, your fire alarm system or any remote medical monitoring service provider.
- (2) Important Notice Regarding E911 Service. Federal Communications Commission rules require providers of VoIP phone services to remind customers of these important E911 facts: (a) Wave needs a complete and correct service site address in order to deliver accurate location information to E911; (b) If you move your VoIP phone equipment to a different physical address, you must call Wave immediately to update the location information, otherwise E911 will not have your correct location information on file; (c) VoIP services operate using the standard electrical power provided to the service site, so unless you have arranged for a back-up power supply, the Services will be unavailable during a

power outage; (d) You may not be able to make E911 calls if there is a power outage, network outage or other technical problems, or if your phone service is terminated or suspended.

(3) Other Providers. Unless otherwise expressly agreed to in writing, Wave has no obligation or responsibility to arrange for termination or removal of telecommunications services provided by long distance providers. You remain responsible for terminating and removing any such unwanted services and circuits provided by other long distance providers. You understand that you may designate only one primary interexchange carrier for any one telephone number for state-to-state (interLATA), intrastate and international usage.

(4) Long Distance Charges. Any long distance rates listed in your Contract are the rates as of the effective date of that Contract and may not reflect the actual rates applicable at any given time during the term of the Contract. All long distance charges are exclusive of applicable taxes, and Wave may add or adjust rates and charges in order to recover amounts it is required or permitted by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs (“Governmental Charges”), plus amounts to recover reasonable administrative costs associated with such Governmental Charges.

(5) CPNI. Wave will have access to certain proprietary network information of yours (“CPNI”). Under federal law, you have a right to, and Wave has a duty to protect, the confidentiality of CPNI. CPNI may be useful to tailor services to you and to enhance Wave’s ability to meet your needs. You expressly authorize Wave, its affiliates, or its sales representatives to use CPNI to determine if you could benefit from other services offered by Wave and its affiliates, and market them to you. You may withdraw your authorization at any time by informing Wave in writing. Any such withdrawal will not affect the quality of Services provided to you.

Hosted Voice Service Provisions.

If you receive hosted voice Services from Wave, then, in addition to the other provisions of your Contract and the Phone Service Provisions set forth above, your use of Wave’s hosted voice Services is subject to the following terms and conditions:

(1) Leased Hosted Voice Equipment. If you are leasing hosted voice equipment (the “Leased Equipment”) from Wave, then the Leased Equipment shall at all times be and remain the personal property of Wave. Wave shall be responsible for the regular maintenance and repair of all Leased Equipment. Should you experience problems with any of the Leased Equipment, you must contact Wave and Wave will use commercially reasonable efforts to repair or replace the malfunctioning Leased Equipment as soon as reasonably possible after receiving your notification. For Leased Equipment, Wave shall have the right at any time, and from time to time, during the service term to substitute different hosted voice equipment for some or all of the Leased Equipment initially installed at your service site; provided that the substituted Leased Equipment has equivalent or better functionality than the previously installed Leased Equipment. Should any Leased Equipment require repair or replacement due to your negligent or willful conduct, including the misuse or abuse of same, you shall reimburse Wave for the costs of such repair or replacement.

(2) Purchased Hosted Voice Equipment. If you have purchased hosted voice equipment (the “Purchased Equipment”) through Wave, then upon your acceptance of the Purchased Equipment, the Purchased Equipment shall be and remain your personal property. As between Wave and you, you

shall be solely responsible for the repair and maintenance of all Purchased Equipment and any and all obligations and liabilities associated therewith. **YOU ACKNOWLEDGE THAT THE PURCHASED EQUIPMENT IS NOT MANUFACTURED BY WAVE AND THAT WAVE DOES NOT SUPPORT AND SHALL HAVE NO MAINTENANCE OBLIGATIONS OR OTHER LIABILITY REGARDING SAME.** WAVE WILL EITHER DELIVER THE MANUFACTURER'S WARRANTY FOR THE PURCHASED EQUIPMENT DIRECTLY TO YOU OR PASS THROUGH THE MANUFACTURER'S WARRANTY TO YOU DEPENDING ON THE APPLICABLE MANUFACTURER'S POLICY. WAVE HEREBY ASSIGNS TO YOU ALL OF THE MANUFACTURERS' WARRANTIES AND INDEMNITIES RELATING TO THE PURCHASED EQUIPMENT TO THE EXTENT WAVE IS PERMITTED BY THE MANUFACTURER TO MAKE SUCH ASSIGNMENT TO YOU. SUCH ASSIGNMENT IS SUBJECT TO ALL OF THE TERMS AND CONDITIONS IMPOSED BY THE MANUFACTURER WITH RESPECT THERETO. YOUR REMEDY FOR DEFECTIVE PURCHASED EQUIPMENT SHALL BE AS SET FORTH IN THE APPLICABLE MANUFACTURER'S WARRANTY WHICH IS YOUR SOLE AND EXCLUSIVE REMEDY FOR BREACH OF AN EQUIPMENT WARRANTY. WAVE DOES NOT EXTEND ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, EITHER TO YOU OR TO THIRD PARTIES, FOR ANY PURCHASED EQUIPMENT PURCHASED BY YOU PURSUANT TO A CONTRACT, NOR SHALL WAVE HAVE ANY LIABILITY FOR ANY LOSS, DAMAGE, OR EXPENSE DIRECTLY OR INDIRECTLY ARISING FROM YOUR USE OF (OR INABILITY TO USE) THE PURCHASED EQUIPMENT OR A THIRD PARTY'S UNAUTHORIZED USE OF THE PURCHASED EQUIPMENT. Any questions concerning or requests for maintenance or repair of the Purchased Equipment should be directed to the manufacturer of the Purchased Equipment at issue. If Purchased Equipment impairs the Services, you will remain liable for payment of the applicable monthly service fees. If, at your request, Wave attempts to resolve difficulties caused by Purchased Equipment, you will be responsible for Wave's then-current commercial rates and terms for such consulting services on a time and materials basis.

(3) Installation of Hosted Voice Equipment. As a part of the hosted voice Service, Wave will install the hosted voice equipment for you (whether such equipment is Leased Equipment or Purchased Equipment) at the specified service site. If your service site contains existing inside wiring, Wave will use your existing wiring for the installation; provided, that Wave's use of any existing wiring shall not constitute any type of representation, warranty or guarantee to you that the existing wiring is in good condition and/or free from defects. If your service site does not contain the necessary inside wiring (as determined by Wave in Wave's commercially reasonable judgment), Wave will so notify you and you may elect to install wiring itself or to request that Wave install wiring for you. If Wave installs wiring for you, such work shall be performed on a time and materials basis, with the wiring to become your personal property upon your acceptance of the Service. If, during the installation process, Wave discovers or uncovers any hazardous materials or substances at your service site: (A) Wave shall have the option to cease work at the service site and terminate your hosted voice Service Contract, without any liability for or obligation to remove or remediate the hazardous materials so discovered; and (B) you shall indemnify, defend and hold Wave harmless from and against any and all claims, costs, damages and expenses incurred by Wave in connection with or as a result of the pre-existing hazardous materials, including attorneys' and experts' fees and costs as well as the costs of any environmental assessment or remediation work that may be performed at the service site.

(4) Bring-Your-Own-Phone Provisions. For certain models of phones, Wave has the ability to attempt to connect phones that you already own (the "Customer Phones") to Wave's hosted voice Service, which eliminates the need for you to lease or purchase phones from Wave. If you elect to use

your existing Customer Phones with Wave's hosted voice Service, you expressly agree to the following provisions: (a) you must supply the passwords for the Customer Phones, otherwise the phones may not be usable with Wave's network; (b) the process of connecting the Customer Phones to Wave's network involves re-setting the Customer Phones to their factory defaults, which will delete all information stored on the phones, including contact lists, speed dial numbers, as well as the configurations established for connectivity to your previous hosted voice solution; (c) it is possible that attempting to connect the Customer Phones to Wave's network could render one or more of the Customer Phones unusable, requiring a firmware re-flash. In such event, Wave will have no responsibility or liability for repairing or replacing the Customer Phone(s) at issue. Instead, you expressly assume the risk inherent in attempting to attach the Customer Phones to Wave's hosted voice network; and (d) Wave will be unable to provide support and troubleshooting for Customer Phones after implementation. Wave will be able to troubleshoot problems with Wave's network, but if the network is functioning properly and there are technical problems with any of the Customer Phones, you must seek equipment support from the manufacturer or original vendor of the equipment.

Dark Fiber Service Provisions.

If you receive dark fiber Services from Wave, then, in addition to the other provisions of your Contract, your use of Wave's dark fiber Services is subject to the following terms and conditions:

- (1) Grant of License. Beginning on the service commencement date for each segment of dark fiber, and continuing through the term of your Contract, Wave grants to you, and you accept from Wave, a license (the "License") to use the specified number of dark fiber strands on the segment (the "Licensed Fibers") by accessing same solely at the A Location and Z Location end points (the "End Points") specified in your Contract. You are not permitted to access the Licensed Fibers at any location other than the End Points. The License does not include any right on your part to: (i) own, control, possess, encumber, repair or maintain, or cause or permit any lien to attach to the Licensed Fibers, any Wave-owned equipment, or any other property of Wave; or (ii) use or access any of the other fiber optic strands that may be in the same cable bundle as the Licensed Fibers.
- (2) Route of Licensed Fibers and Maximum Loss Budget. Wave shall at all times have full and complete discretion to choose the route along which the Licensed Fibers are installed between the End Points. That route will not necessarily be the most direct route between the End Points. Wave may, from time to time, elect to change the route along which the Licensed Fibers are installed. So long as the actual optical loss for each Fiber Route is always less than or equal to the Maximum Loss Budget specified for such Fiber Route in your Contract, you shall have no authority to approve or disapprove of any particular installation route. In the event of any route relocation, Wave shall use commercially reasonable efforts to minimize the disruption to your use of the Licensed Fibers.
- (3) Wave's Retained Rights. Wave retains the exclusive right to provide services using, or to sell or lease to other customers or end users fibers (other than the Licensed Fibers) contained in the same cable bundle as the Licensed Fibers. Wave shall not use the Licensed Fibers during the service term of your Contract.