



1. **SERVICE.** Subject to the terms and conditions set forth herein, upon receipt of a complete and accurate quote / service request (“SR”), countersigned by both parties hereto, ERC agrees to provide to Customer broadband capacity / network services (“Service”) through its network (“Network”).
2. **TERM AND TERMINATION.** The term of any Service shall be as specified in the SR. ERC shall notify Customer when the service has been successfully installed and is available for Customer’s use. Unless notified by Customer in writing within 24 hours that service is not operational, ERC considers that the term shall begin on the date it notifies Customer that service is operational. Such date shall hereinafter be referred to as the Service Date. Service Date will not be delayed or postponed due to problems with customer’s equipment or Customer’s lack of readiness to accept or use service. Upon expiration of the term, the Service shall continue on a month-to-month basis at the same rate until such time as either party provides sixty (60) days’ written notice of termination.
3. **BILLING AND PAYMENT.** As compensation for the Service provided by ERC, Customer shall pay in U.S. dollars the recurring and non-recurring rates and charges set forth in the SR, together with any supplemental charges (such as for changes to the requested start date, design changes and expedites) and any applicable taxes or other fees as defined in Section 4, below (collectively, the “Charges”). Such Charges shall be invoiced monthly in advance, commencing on the first day of the month following the Service Date and on the same day of the month for each month thereafter. Actual usage charges that are over and above contracted services shall be billed in arrears. Charges shall begin accruing on the Service Date. Charges shall be due within thirty (30) days of the invoice date (“Payment Due Date”). If payment is not received by the Payment Due Date, Customer shall be considered delinquent and the delinquent balance due shall be subject to interest charges at the rate of the lesser of one and one-half percent (1 ½ %) per month or the highest amount permitted by law, until paid in full. If Customer in good faith disputes any charges, it shall timely pay all undisputed charges, and also within thirty (30) days of the invoice date give ERC written notice of the disputed amount(s) and written documentation of the reason(s) therefore or any such disputes shall be deemed waived. Any amounts that are determined by ERC to be in error or not in compliance with this Agreement will be adjusted on the next month's invoice following such determination. Any disputed amounts that in good faith and supported by reasonable documentation are deemed by ERC to be correct as billed and in compliance with this Agreement, will be due and payable by Customer, upon notification and demand by ERC, along with late payment interest charges accrued from the Due Date. Customer shall pay to ERC all costs, including, but not limited to, legal fees, court costs and the fees of any collection agency, incurred by ERC in exercising its rights under this Agreement.
4. **TAXES AND FEES.** Any applicable foreign, federal, state or local use, excise, gross receipts, sales, value added or privilege taxes; duties, surcharges to recover universal service contributions, regulatory assessment fees or other taxes, fees, charges, surcharges or similar liabilities imposed on or based upon the provision, sale or use of the Service furnished by ERC (collectively, “Taxes and Additional Charges”) shall be paid by Customer in addition to the recurring and non-recurring rates and charges set forth in each SR, excluding taxes based upon ERC’s net income or real property. Applicable Taxes and Additional Charges shall include those, if any, which may be imposed after the execution of this Agreement and shall also include all interest, penalties, fees and other charges for late payment. In the event Customer believes it is exempt from any Taxes and Additional Charges, Customer shall provide ERC with a valid exemption certificate from the appropriate taxing authority evidencing such claimed exemption. Customer shall be liable to ERC for any and all costs, expenses and liabilities of any kind incurred by ERC (including, without limitation, the time value of money related to tax refunds for payments made by ERC based upon Customer’s Service that are subsequently exempt from taxation) in connection with an otherwise valid exemption certificate not provided by Customer to ERC within one (1) month of the Service Date.
5. **CREDIT APPROVAL AND SECURITY.** Customer authorizes ERC to seek such details concerning its credit background as ERC deems necessary, and consents to ERC’s disclosure of account information to or from credit reporting agencies, credit bureaus, private credit reporting associations and other providers of telecommunications services. ERC may require a deposit, letter of credit or other form of security in an amount acceptable to ERC pursuant to ERC’s credit review procedures.
6. **EQUIPMENT AND INSTALLATION FOR SERVICE.** If applicable, during the term of the Service, Customer grants ERC the right free of charge to occupy portions of the Customer’s facilities and real property (“Space”) for the placement and maintenance of communications equipment and cabling (“ERC Equipment”) and interconnecting such ERC Equipment to the Network for the purpose of providing the Service. ERC shall be given adequate power for the ERC Equipment without charge and the right to pass through third party traffic with add/drop capability. ERC shall be

permitted access to the Space during operating hours, subject to reasonable documented rules of Customer governing such access. Customer shall provide ERC with notice of any proposed modification to such rules thirty (30) days prior to any such modification being implemented. In an emergency or to perform scheduled maintenance, ERC requires twenty-four (24) hours a day, seven (7) days a week access to the Space, which will be provided by Customer.

7. CREDITS. Except as otherwise set forth below in this Section 7 in the event of an interruption in Service, Customer shall be entitled to claim a credit against the following month's invoice in an amount as set forth in Appendix 1. A "Service Interruption" begins when Service is interrupted and ends when Service is restored, but shall *not* be deemed to include interruptions caused, or contributed to, directly or indirectly, by any act or omission of Customer and/or Customer's end users, affiliates, agents or representatives, or other third parties; the failure of interconnecting service or equipment not part of ERC's Equipment or Service or otherwise within its control; any planned or emergency maintenance; or due to a Force Majeure event, as defined herein, or other circumstances beyond ERC's reasonable control. Notwithstanding the foregoing, a Service Interruption will not qualify for credits or any other remedy where the facility or circuit is inoperative, but is not released for testing or repair by Customer, or where Customer does not give ERC access to the Space. The credits set forth in this Section 7 and in Appendix 1 shall be Customer's sole and exclusive remedy for any loss or damage sustained as a result of any interruption, Service-related condition, installation delay or failure of the Service or any ERC Equipment or service used in providing the Service, regardless of the cause, and for however long it shall last, and in no event shall any acts or omissions by ERC resulting in credits hereunder constitute a Default, as defined herein, under the Agreement.
8. FORCE MAJEURE. ERC shall not be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its reasonable control and/or without its fault or negligence, including, without limitation, acts of God, acts of civil or military authority, government laws, rules or regulations, labor disputes, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, cable or fiber cuts, strikes of party or its affiliates, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, or hurricanes (collectively, "Force Majeure").
9. DEFAULT AND TERMINATION.
  - 9.1 The occurrence of any one (1) or more of the following shall constitute a Default:
    - 9.1.1 Any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver, or similar event with respect to either party;
    - 9.1.2 Either party's violation(s) of any applicable laws, statutes, ordinances, codes or other legal requirements with respect to its use of the Service and the failure to remedy such violation(s) within the time frame(s) allowed by law;
    - 9.1.3 Either party's failure to perform its material obligations under this Agreement (excluding Customer's non-payment of undisputed charges as set forth in Section 3, above) where such nonperformance is neither excused by a Force Majeure event nor remedied within thirty (30) days after written notice thereof; provided that if such nonperformance cannot be cured within such thirty (30) day period with the exercise of reasonable due diligence and the defaulting party provides adequate assurance of its ability to perform, the defaulting party shall be given a reasonable additional period of time in which to cure such nonperformance, so long as it is acting promptly and diligently to cure; or
    - 9.1.4 The failure by Customer to pay undisputed charges within ten (10) days' notice of non-payment.
  - 9.2 In the event of a Default by Customer, upon notice to Customer, ERC may terminate the Agreement or any related service, in whole or in part, or suspend Service or any portion thereof with no further performance obligation, and Customer shall be liable for all amounts due and owing as of such termination or suspension date, plus early termination charges as set forth herein shall apply.
  - 9.3 In the event of a Default by ERC, upon notice to ERC, Customer, as its sole and exclusive remedy, may terminate the Service without liability for early termination charges and shall be entitled to a refund of any prepaid amounts for Service not rendered.

10. **EARLY TERMINATION CHARGES.** In the event Customer cancels or terminates this Agreement or any related service, in whole or in part, prior to the end of the term, except as otherwise expressly permitted under this Agreement, Customer agrees to pay ERC, as liquidated damages and not as a penalty, an early termination charge with respect to the cancelled or terminated Service as follows: (a) all non-recurring charges specified in the SR (including previously waived and amortized charges); plus (b) all disconnection, early cancellation or termination charges incurred by ERC on Customer's behalf; plus (c) one hundred percent (100%) of the total monthly recurring charges specified in the SR multiplied by the number of months remaining in the first year of the term, plus seventy-five percent (75%) of the total monthly recurring charges specified in the SR multiplied by the number of months remaining in the second year of the term, plus fifty percent (50%) of the total monthly recurring charges specified in the SR multiplied by the number of months remaining in the term after the first twenty-four (24) months of the term. Notwithstanding the foregoing and anything else to the contrary contained in this Agreement, where ERC must build fiber or facilities (e.g., obtain space and/or deploy equipment) to provide Service to Customer, Customer's SR for Service in connection with the build shall not be subject to cancellation once submitted to and accepted by ERC, Customer shall have no right to terminate the Service for convenience prior to expiration of the service request's and/or quote's term, and Customer shall be liable for 100% of the monthly recurring charges applicable to such SR for its entire term.
11. **DISCLAIMER OF WARRANTIES.** ERC MAKES NO ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR IN LAW, AND ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED AND DISCLAIMED.
12. **LIMITATION OF LIABILITY.**
- 12.1 Except as otherwise specifically set forth in this Agreement, neither party shall be liable to the other party for any direct or indirect, consequential, special, incidental, reliance or punitive damages of any kind or nature whatsoever (including, but not limited to, any lost profits, lost revenue, lost savings, cost of substitute equipment or services, or harm to business), regardless of the foreseeability thereof, whether based upon statute, contract, tort, negligence, strict liability or otherwise. Each party hereby releases the other party, its subsidiaries and affiliates, and their respective officers, directors, managers, employees and agents from any such claim.
- 12.2 Except with respect to Section 13.1, below, the total liability of ERC in connection with this Agreement shall in no event exceed sums actually paid by Customer to ERC for the Service which gives rise to the claim.
- 12.3 The limitations set forth in Section 12.1, above, shall not limit Customer's indemnification obligations hereunder with respect to third party claims against ERC as set forth in Section 13, below.
13. **INDEMNIFICATION.**
- 13.1 Each party shall indemnify, defend and hold harmless the Owner from and against any and all liabilities, claims, damages, losses, costs, expenses and judgments arising out of or in connection with bodily injury (including death) or damage to tangible property caused by the negligence or willful misconduct of the indemnifying party, its employees, directors, officers, agents or invitees.
- 13.2 In addition to its obligations pursuant to Section 13.1, above, Customer shall indemnify, defend and hold harmless ERC from and against any and all (i) proceedings to recover taxes, fines or penalties for failure of the Customer to obtain or to maintain in effect any necessary certificates, permits, licenses, approvals, authorizations or other authority, whether federal, state or international, to use the Service required to be obtained or maintained by Customer under applicable law; (ii) libel, slander, copyright infringement, patent infringement or unauthorized use of a trade secret, trademark, trade name or service mark by Customer; and (iii) any and all claims of Customer's end users that use the Service through Customer, and any and all third party claims resulting from Customer's use of the Service.
14. **INSURANCE.** Throughout the term of this Agreement and any extension thereof, at the request of ERC, Customer shall maintain, and upon written request, shall provide to ERC proof of, adequate comprehensive general liability insurance with a carrier or carriers reasonably satisfactory to ERC with a limit of not less than \$2,000,000 per

occurrence for bodily injury liability and property damage liability, including coverage extensions for blanket contractual liability, personal injury liability and products and completed operations liability.

15. **WAIVER.** No failure or delay on the part of a party in exercising any right, power or privilege hereunder and no course of dealing by a party shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege by such party hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
16. **AMENDMENT.** No subsequent agreement among the parties concerning the Service or this Agreement shall be effective or binding unless it is made in writing by authorized representatives of the parties.
17. **ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings relating to the subject matter hereof. In the event of a conflict between this Agreement and any SR executed hereunder, this Agreement shall control.
18. **NO THIRD PARTY BENEFICIARIES.** This Agreement inures to the benefit of ERC and Customer only, and no third party shall have any rights hereunder.
19. **SEVERABILITY.** If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.
20. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of North Carolina without regard to choice of law principles. Venue for any and all actions brought by either party to enforce the terms hereof shall reside in Buncombe county, North Carolina, and each party hereby irrevocably submits to the personal jurisdiction of the courts located in such county.
21. **ASSIGNMENT.** Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided that any proposed assignment by Customer shall be subject to ERC's credit approval of the proposed assignee. Notwithstanding the foregoing, no consent shall be required for an assignment by ERC to an entity that either controls or is controlled by or is under common control with ERC; or to an entity which succeeds to all or substantially all of ERC's assets whether by merger, sale or otherwise; or to any institutional lender to whom this Agreement is assigned as collateral security for any indebtedness of ERC or any affiliate of ERC, provided that such collateral assignment is subject to the terms of this Agreement.
22. **PUBLICITY.** This Agreement shall not grant to either party a license to use any of the other party's (or its affiliates') trademarks, service marks or trade names ("Trademarks"). Neither party may, without prior written consent, use the other party's Trademarks in marketing, promotional, advertising or similar materials, or in any other manner. Neither party may issue any public or press release regarding the other party, or disclose the existence of this Agreement, without the prior consent of the other party.
23. **NOTICES.** Except as otherwise expressly provided herein, all notices or other communications permitted or required hereunder shall be in writing and mailed by certified mail, return receipt requested, or sent by receipted overnight courier to Customer at the billing address set forth in the SR and to ERC at 151 Patton Avenue, Box 170, Asheville, NC 28801 Attn: Contract Management. Notices shall be deemed given three (3) days after deposit in the U.S. mail postage prepaid, if sent by certified mail, or when received or receipt is refused if sent by receipted overnight courier. The foregoing delivery addresses and recipients may be changed by either party by notice pursuant to this Section 23.
24. **NETWORK/SYSTEM INTEGRITY.** Customer and its end users shall not operate hardware or software that ERC, in its sole discretion, deems harmful, hazardous or capable of causing interference, congestion or interruptions to the Network, ERC Equipment or Service. Upon written or verbal notice from ERC, Customer and/or end user(s) shall immediately remove the offending hardware or software. If Customer and/or end user(s) fail to do so, ERC may suspend Service without notice; provided, however, that ERC shall afford Customer a reasonable opportunity for cure before terminating this Agreement.

25. **EASEMENT.** Providing service to a customer site includes a general easement into perpetuity for purposes of ingress to and egress from the customer site for means of supporting the customer service and ERC network propagation. Customer is liable for securing easement rights on behalf of ERC.
26. **NEW RULES OR ACTIONS.** The parties acknowledge that some rights and obligations of ERC under this Agreement may be affected by future rules, regulations, guidelines, orders, treaties or laws promulgated, enacted or entered into by federal and state legislatures, by federal and state agencies, local or federal governments, and international or other regulatory bodies (together “Rules or Actions”). In the event that any such Rules or Actions adversely revise or modify ERC’s obligations under this Agreement, ERC may, upon written notice to Customer, require this Agreement be renegotiated in good faith to reflect the effect of any such Rules or Actions.
27. All existing and future service requests and/or quotes for Customer and any of its successors will fall under the terms and conditions of this Agreement.
28. **SERVICE, TERM AND RATES.** ERC agrees to provide and Customer agrees to accept the services for the duration described in a signed existing or future SR, beginning on or about the “Due Date”, at the rates contained in the quote, and the Customer further agrees to comply fully with all terms and conditions in any applicable tariff(s) and the Agreement, which are fully incorporated herein.
29. **APPENDICES.** The following Appendices shall be attached to and incorporated into this Agreement. In the event of any inconsistency between the terms contained in the Appendices and this Agreement, the Appendices shall control with respect to the specific inconsistency.

Appendix 1 – PERFORMANCE SPECIFICATIONS AND SYSTEM ACCEPTANCE.



1. Specifications. The Service provided hereunder shall have a network availability objective, measured monthly, as follows:

Description	Target Service Availability
Ethernet (unprotected)	99.9%
Ethernet (protected)	99.99%
Co-location	99.5%
Service related to provision of NWS Data	99.5%

2. Monitoring. ERC will be responsible for performing surveillance of the Service. ERC will maintain a twenty-four (24) hours a day, seven (7) days a week point-of-contact to whom Customer can report system trouble or faults. Customer shall maintain and provide to ERC a list of Customer contacts for maintenance and escalation purposes.
3. Maintenance. Scheduled routine maintenance will be performed during specified customer maintenance windows and will be communicated in advance to Customer. ERC will notify Customer upon completion of the scheduled maintenance work. Maintenance that may place the Network in jeopardy or require Network down time will normally be performed during the "Maintenance Window" of 12:01 am and 6:00 a.m. Eastern time or, upon Customer's request, at a time mutually agreed to by Customer and ERC. Maintenance that may place the Network in jeopardy or require Network down time that will be performed outside of the normal Maintenance Window will be cleared with Customer no less than forty-eight (48) hours prior to commencement. Notwithstanding the foregoing, Customer understands that any time ERC may perform emergency maintenance, in its sole discretion and without notice, to preserve the overall integrity of the Service or Network. Customer further acknowledges and agrees that the suspension of the availability of any Service pursuant to this Section 3 shall not be deemed a qualifying Service Interruption against the above Section 1 Target Service Availability calculation, or a violation by ERC of any of its obligations under this Agreement.
4. Credits for Service Interruption.  
In the event of a qualifying Service Interruption(s) as defined in the Agreement, Customer shall be entitled to a credit on its next monthly invoice for the total Service Interruption time during the prior month as follows:

Total Service Interruption	Credit Amount
Internet: 2 Hours	(Duration of Service Interruption in hours / 730 hours) x Monthly Recurring Charge (MRC) for that Service Component
Transport Circuits: After 4 Hours	(Duration of Service Interruption in hours / 730 hours) x Monthly Recurring Charge (MRC) for impacted Service Component

Credits shall be calculated on a per Service Component basis and discounted for lack of access or customer-related delays. Only directly impacted Service Components shall qualify for service credits.

Service will be deemed restored at which time ERC detects no further errors on the Service Component, at which time cooperative testing with Customer may begin, as requested.

System Acceptance Criteria. The following acceptance tests will be conducted:

- 4.1. Ethernet: Testing shall be clear channel, head-to-head cooperative testing. Testing shall run over a twenty-four (24) hour period mutually agreed upon by the parties. Customer shall accept the Service when it is error-free over any twenty-four (24) hour period.

4.2. Equipment Alarm and Status Indication Functionality: All equipment alarm functions and status indicators provided by the equipment vendor will function properly under all simulated (non-destructive) alarm conditions.