

This Master Service Agreement (this "Agreement") is entered into this _____ day of _____, 2022 by and between FASTTRACK COMMUNICATIONS INC. ("FTC") and _____ ("Customer").

1. Definitions

- 1.1 **"Affiliate"** shall mean an entity that now or in the future, directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement. For purposes of the foregoing, "control" shall mean the ownership of (i) greater than fifty percent (50%) of the voting power to elect the directors of the party, or (ii) greater than fifty percent (50%) of the ownership interest in the party.
- 1.2 **"Connection Notice"** shall mean a written notice from FTC that the Service ordered has been installed by FTC pursuant to the Customer Order, and has been tested and is functioning properly, defining the Service Commencement Date.
- 1.3 **"Customer Commit Date"** shall mean the date that Service will be available to Customer, as set forth in the Customer Welcome Letter or such other written notice from FTC to Customer. Notwithstanding anything in this Agreement or any Customer Order to the contrary, no Customer requested date for delivery of Service will be effective unless and until confirmed in writing by FTC through the delivery to Customer of the Customer Commit Date.
- 1.4 **"Customer Order"** shall mean a request for Service submitted by Customer in the form designated by FTC.
- 1.5 **"Customer Premises"** shall mean the location or locations occupied by Customer or its end users to which Service is delivered.
- 1.6 **"Customer Welcome Letter"** shall mean a written communication from FTC to Customer informing Customer of FTC's acceptance of the Customer Order.
- 1.7 **"Scheduled Outage"** shall mean any outage, unavailability, delay or other degradation of Service related to, associated with or caused by scheduled maintenance (as described in Section 2.7 hereof), actions or inactions of Customer or its end users, Customer-provided power or equipment or an event of force majeure as defined in Section 7.1.
- 1.8 **"Facilities"** shall mean any property owned, licensed or leased by FTC or any of its Affiliates and used to deliver Service, including terminal and other equipment, conduit, fiber optic cable, optronics, wires, lines, ports, routers, switches, channel service units, data service units, cabinets, racks, private rooms and the like.
- 1.9 **"Gateway"** shall mean data center space owned or leased by FTC or any of its Affiliates for the purpose of, among other things, locating and collocating communications equipment.
- 1.10 **"Local Loop"** shall mean the connection between Customer Premises and a FTC Gateway or other Facility.
- 1.11 **"Megabit per second" or "Mbps"** shall mean a unit of data rate equal to 1 million bits per second.
- 1.12 **"Off-Net"** shall mean Service that originates from or terminates to any location that is not on the FTC network.
- 1.13 **"On-Net"** shall mean Service that originates from and terminates to a location that is on the FTC network.
- 1.14 **"Service"** shall mean any FTC service described in a Service Schedule and identified on a particular line item of a Customer Order.
- 1.15 **"Service Commencement Date"** shall mean the first to occur of (i) the date set forth in any Connection Notice, unless Customer notifies FTC that the Service is not functioning properly as provided in Section 3.1 (or, if two or more Services are designated as "bundled" or as having a "sibling relationship" in any Customer Order, the date set forth in the Connection Notice for all such Services), or (ii) the date Customer begins using the Service.
- 1.16 **"Service Levels"** shall mean the specific remedies FTC provides regarding installation and performance of Service as set forth in the particular Service Schedule respecting the applicable Service.

- 1.17 "**Service Schedule**" shall mean a schedule attached hereto, or signed between the parties from time to time and expressly incorporated into this Agreement, setting forth terms and conditions specific to a particular Service, Facilities or other tools made available by FTC.
- 1.18 "**Service Term**" shall mean the duration of time (measured starting on the Service Commencement Date) for which Service is ordered, as specified in the Customer Order. The Service Term shall continue on a month-to-month basis after expiration of the stated Service Term, until terminated by either party upon thirty (30) days' written notice to the other.

2. Delivery of Service

- 2.1 Submission of Customer Order(s). To order any Service, Customer will submit to FTC a request for telecom services. FTC will provide Customer with a Telecom Service Order restating Customer's requested service for the Customer's acknowledgement by signature affixed to the Telecom Service Order. The Telecom Service Order and its backup detail must include a description of the Service, the non-recurring charges and monthly recurring charges for Service and the applicable Service Term.
- 2.2 Acceptance by FTC. Upon receipt of a Telecom Service Order, if FTC determines to accept the Customer Order, FTC will deliver a Customer Welcome Letter for the requested Service. FTC will become obligated to deliver any ordered Service only if FTC has delivered a Customer Welcome Letter for the particular Service and binding payment terms have been accepted by both Customer and FTC.
- 2.3 Credit Approval and Deposits. Customer will provide FTC with credit information as requested, and delivery of Service is subject to credit approval. FTC may require Customer to make a deposit or deliver another form of security as a condition to (a) FTC's acceptance of any Customer Order; (b) FTC's continuation of any usage-based Service; and/or (c) FTC's continuation of any non usage-based Service only in the event that (i) Customer fails to make payment to FTC of any undisputed amount when due or (ii) Customer has a material, negative change in financial condition (as determined by FTC in its reasonable discretion). Any deposit will be limited to two (2) months' estimate charges for Service and will be due upon FTC's written request. Any deposit will be held by FTC as security for payment of Customer's charges. When Service to Customer is terminated, the amount of the deposit will be credited to Customer's account and any remaining credit balance will be refunded. Any deposit paid by Customer pursuant to this Section 2.3 will be held by FTC in accordance with the applicable law governing such deposit.
- 2.4 Customer Premises. Customer shall allow FTC access to the Customer Premises to the extent reasonably determined by FTC for the installation, inspection and scheduled or emergency maintenance of Facilities relating to the Service. FTC shall notify Customer at least seven (7) business days in advance of any regularly scheduled maintenance that will require access to the Customer Premises. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities on the Customer Premises. In the event Customer fails to do so, Customer shall reimburse FTC for the actual and reasonable cost of repairing or replacing any Facilities damaged or destroyed as a result of Customer's failure. Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises.
- 2.5 FTC Facilities. Except as otherwise agreed, title to all Facilities shall remain with FTC or the appropriate FTC Affiliate. FTC will provide and maintain the Facilities in good working order. Customer shall not, and shall not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Facilities, without the prior written consent of FTC. The Facilities shall not be used for any purpose other than that for which FTC provides them. Customer shall not take any action that causes the imposition of any lien or encumbrance on the Facilities. In no event will FTC be liable to Customer or any other person for interruption of Service or for any other loss, cost or damage caused by or related to improper use or maintenance of the Facilities by Customer or any third party gaining access to the Facilities through Customer in violation of this Agreement, and Customer shall reimburse FTC for any damages incurred as a result thereof. Customer agrees (which agreement shall survive the expiration, termination or cancellation of any Customer Order) to allow FTC to remove the Facilities from the Customer Premises:
- 2.5.1 after termination, expiration or cancellation of the Service Term of any Service in connection with which the Facilities were used; or

2.5.2 for repair, replacement or otherwise as FTC may determine is necessary or desirable, subject to FTC's exercise of reasonable efforts to minimize disruptions to the Service caused thereby.

- 2.6** Customer-Provided Equipment. FTC may install certain Customer-provided communications equipment upon installation of Service, but FTC shall not be responsible for the operation or maintenance of any Customer-provided communications equipment. FTC undertakes no obligations and accepts no liability for the configuration, management, performance or any problems arising from any Customer-provided equipment used for access to or the exchange of traffic in connection with the Service.
- 2.7** Scheduled Maintenance. Scheduled maintenance of the FTC network will not normally result in Service interruption or outage. However, in the event scheduled maintenance should require a Service interruption or outage, FTC will exercise commercially reasonable efforts to (i) provide Customer with seven business (7) days' prior written notice of such scheduled maintenance, (ii) work with Customer in good faith to attempt to minimize any disruption in Customer's services that may be caused by such scheduled maintenance, and (iii) to perform such scheduled maintenance during the non-peak hours of 12:00 a.m. (midnight) until 6:00 a.m. Mountain time.

3. Billing and Payment

- 3.1** Commencement of Billing. Upon installation and testing of the Service ordered in any Customer Order, FTC will deliver to Customer a Connection Notice. Upon receipt of the Connection Notice, Customer shall have a period of seventy two (72) hours to confirm that the Service has been installed and is properly functioning. Unless Customer delivers written notice to FTC within such seventy-two (72) hour period that the Service is not installed in accordance with the Customer Order and functioning properly, billing shall commence on the applicable Service Commencement Date, regardless of whether Customer has procured services from other carriers needed to operate the Service, and regardless of whether Customer is otherwise prepared to accept delivery of ordered Service. In the event that Customer notifies FTC within the time period stated above that the Service is not installed and functioning properly, then FTC shall correct any deficiencies in the Service and deliver a new Connection Notice to Customer, after which the process described herein shall be repeated.
- 3.2** Charges. The Telecom Service Order will set forth the applicable non-recurring charges and recurring charges for the Service. Unless otherwise expressly specified in the Customer's Order, any non-recurring charges shall be invoiced by FTC to Customer upon the Service Commencement Date. However, in the event such Service requires FTC to install or construct additional Facilities in the provision of the Service, such Telecom Service Order may specify non-recurring charges that are payable by Customer in advance of the Service Commencement Date, as mutually agreed between the parties and specified in the Customer Order. If Customer requests and FTC approves (in its sole discretion) any changes to the Customer's Order or Service after acceptance by FTC, including, without limitation, the Customer requested date for delivery of Service or Service Commencement Date, additional non-recurring charges and/or monthly recurring charges not otherwise set forth in the Customer's Order may apply.
- 3.3** Payment of Invoices. Payment terms are Net Twenty Five (25) Days from invoice date. Accounts in default are subject to a Late Fee of 1.5% per month (not to exceed 18% APR) on the outstanding balance. If state law of Customer does not allow a Late Fee of 1.5% per month, the maximum allowable rate for that state will be applied. A payment is considered received when it arrives at FTC's staffed business office. Any payment not received within the required time will be considered overdue.
- 3.4** Service Interruption for Non-Payment. Customer's service(s) is subject to interruption if a payment is not received sixty (60) days from invoice date. If the service is interrupted for non-payment, there will be a restoration fee, payable in advance along with the outstanding account balance in the amount of one month's service rate. No service(s) will be available to Customer until all charges are paid in full. The date of restoration of service(s) is not guaranteed. FTC will make its best effort to restore service(s) within 3 business days or less, depending on connectivity to other vendors.
- 3.5** Non-sufficient Funds Return. Any payment return to FTC for insufficient funds will be subject to a \$20.00 penalty fee. Customer must re-deliver guaranteed funds by certified bank check or money order, including the \$20.00 penalty fee and any applicable interest applied from the invoice due date to FTC within five (5) calendar days of FTC's receipt of notice of returned payment for insufficient funds. If payment is not received within five (5) calendar days, Customer will be subject to interruption of service, and will be required to abide by restoration requirements as stated in 3.4.



3.6 Collection Fees. Customer agrees to pay all reasonable expenses, including but not limited to, attorney fees, and collection agency fees (Twenty-Eight - 28%) incurred in the enforcement of this Agreement.

3.7 Taxes and Fees. All charges for Service are exclusive of Applicable Taxes (as defined below). Except for taxes based on FTC's net income, Customer will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Service (collectively "Applicable Taxes"). If Customer is entitled to an exemption from any Applicable Taxes for a particular Service, Customer is responsible for presenting FTC with a valid exemption certificate (in a form reasonably acceptable to FTC). FTC will give effect to any such exemption certificate on a prospective basis from and after FTC's receipt of such exemption certificate.

3.8 Regulatory, Availability and Legal Changes. In the event of any change in applicable law, regulation, decision, rule or order, that materially increases the costs, or other terms of delivery of Service, FTC and Customer will negotiate regarding the rates to be charged to Customer and, in the event that the parties are unable to reach agreement respecting new rates within thirty (30) days after FTC's delivery of written notice requesting renegotiation, then (a) FTC may pass increased costs through to Customer, and (b) if FTC elects to pass increased costs through to Customer, Customer may terminate the affected Service without termination liability by delivering written notice of termination no later than thirty (30) days after the effective date of the rate increase. In the event of any change in availability of routes, at current costs from third party suppliers, which substantially alters service provided to customer, the parties shall negotiate the resulting changes in service and resulting changes in costs. If unable to reach agreement, customer shall have the option of terminating the affected service without termination liability by delivering written notice of termination no later than thirty (30) days after the effective date of the rate increase.

3.9 Disputed Invoices. If Customer reasonably disputes any portion of a FTC invoice, Customer must pay the undisputed portion of the invoice and submit written notice of the claim (with sufficient detail concerning the nature of the claim, the amount and invoices in dispute and information necessary to identify the affected Service(s)) for the disputed amount. All claims must be submitted to FTC in writing within thirty (30) days from the date of the invoice for those Services. Customer waives the right to dispute any charges not disputed within such thirty (30) day period. In the event that the dispute is resolved against Customer, Customer shall pay such amounts plus interest at the rate referenced in Section 3.3.

3.10 Termination Charges.

3.10.1 Customer may cancel a Service following FTC's acceptance of the applicable Telecom Service Order and prior to the Customer's Commit Date upon prior written notice to FTC (with sufficient detail necessary to identify the affected Service). In the event that Customer does so, or in the event that the delivery of such Service is terminated by FTC as the result of an uncured default by Customer pursuant to Section 4.2 of this Agreement, Customer shall pay FTC a cancellation charge equal to the sum of:

- (i) any third-party cancellation/termination charges related to the installation and/or cancellation of any Off-Net Service;
- (ii) FTC's out-of-pocket costs (if any) incurred in constructing Facilities in or extending to the Customer Premises necessary for Service delivery;
- (iii) the non-recurring charges for any cancelled Service; and
- (iv) one (1) month's monthly recurring charges for any cancelled On-Net Service.

Customer's right to cancel any particular Service under this Section 3.10.1 shall automatically expire and shall no longer apply upon FTC's delivery to Customer of a Connection Notice for such Service.

3.10.2 In addition to Customer's right of cancellation under Section 3.10.1 above, Customer may terminate Service prior to the end of the Service Term upon thirty (30) days' prior written notice to FTC (with sufficient detail necessary to identify the affected Service). In the event that, after either the original Customer Commit Date (if Customer requests and FTC agrees to a delay in delivery of a particular Service) or Customer's receipt of the Connection Notice for a particular Service (whichever occurs first) and prior to the end of the Service Term, Customer terminates Service or in the event that the delivery of Service is terminated by FTC as the result of an uncured default by

Customer pursuant to Section 4.2 of this Agreement, Customer shall pay FTC a termination charge equal to the sum of:

- (i) all unpaid amounts for Service provided through the date of termination;
- (ii) any third-party cancellation/termination charges related to the installation and/or termination of any Off-Net Service;
- (iii) FTC's out-of-pocket costs (if any) incurred in constructing Facilities in or extending to the Customer Premises necessary for Service delivery;
- (iv) the non-recurring charges for any cancelled Service, if not already paid;
- (v) for any On-Net Service, the percentage of the monthly recurring charges for the terminated On-Net Service calculated from the effective date of termination as (a) 100% of the remaining monthly recurring charges that would have been incurred for the On-Net Service for months 1-12 of the Service Term, plus (b) 50% of the remaining monthly recurring charges that would have been incurred for the On-Net Service for months 13 through the end of the Service Term (if applicable).

a. Customer will not be liable for early termination monthly recurring charges should Customer's business operations under substantially the same or similar ownership be completely moved to a location at which FTC is not offering local service, or are permanently closed unless Customer has a circuit-based service that would subject FTC to an early termination charge from the underlying circuit provider. Customer will be responsible for FTC's out-of-pocket costs (if any) incurred in constructing Facilities in or extending to the Customer Premises necessary for Service delivery or the non-recurring charges for any cancelled Service, if not already paid. Upon request, Customer will provide proof if its move or close to FTC and its failure to do so will result in assessment of early termination charges.

3.10.3 The parties acknowledge that the cancellation or termination charges set forth in this Section 3.10 are a genuine estimate of the actual damages that FTC will suffer and are not a penalty.

3.11 Fraudulent Use of Services. Customer is responsible for all charges attributable to Customer incurred respecting the Service. In the case of usage-based Services, Customer is responsible for all usage charges even if incurred as the result of fraudulent or unauthorized use of Service; except that Customer shall not be responsible for fraudulent or unauthorized use by FTC or its employees.

4. Term and Termination

4.1 Term

4.1.1. This Agreement shall become effective on the Delivery of Service and shall continue as defined on the Service Order Summary (Exhibit A) thereafter ("Agreement Term"), unless earlier terminated as provided herein. At the end of the initial Agreement Term, the Agreement Term shall automatically renew on a month-to-month basis until terminated by either party upon thirty (30) days' prior written notice to the other party.

4.1.2. Except as otherwise set forth herein, FTC shall deliver the Service for the entire duration of the Service Term, and Customer shall pay all charges for delivery thereof through the end of the Service Term. To the extent that the Service Term for any Service extends beyond the Agreement Term, then this Agreement shall remain in full force and effect for such Service until the expiration or termination of such Service Term.

4.2 Default By Customer. If (i) Customer makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy or other insolvency action against Customer is filed and not dismissed within sixty (60) days; (iii) Customer fails to make any payment required hereunder when due, and such failure continues for a period of five (5) business days after written notice from FTC, or (iv) Customer fails to observe and perform any material term of this Agreement (other than payment terms) and such failure continues for a period of thirty (30) days after written notice from FTC, then FTC may: (A) terminate this Agreement and any Customer Order, in whole or in part, in which event FTC shall have no further duties or obligations there under, and/or (B) subject to Section 5.1, pursue any remedies FTC may have under this Agreement, at law or in equity.

4.3 Default By FTC. If (i) FTC makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy or other insolvency action against FTC is filed and not dismissed within sixty (60) days; or (iii) FTC fails to observe and perform

any material term of this Agreement (other than as provided in Section 4.4 and Article 6) and such failure continues for a period of thirty (30) days after written notice from Customer, then Customer may: (A) terminate this Agreement and/or any Customer Order, in whole or in part, in which event Customer shall have no further duties or obligations there under, and/or (B) subject to Section 5.1, pursue any remedies Customer may have under this Agreement, at law or in equity.

- 4.4 Right of Termination for Installation Delay.** In lieu of any Service Level credits for installation delays, if FTC's installation of Service is delayed for more than sixty (60) business days beyond the Customer Commit Date for reasons other than an Excused Outage, Customer may terminate and discontinue the affected Service upon written notice to FTC and without payment of any applicable termination charge; provided that such written notice is delivered prior to FTC's delivery to Customer of the Connection Notice for the affected Service. This Section 4.4 shall not apply to any Service where FTC (or a third-party contractor engaged by FTC) is constructing Facilities in or to the Customer Premises necessary for delivery of such Service.

5. Liabilities and Indemnification

- 5.1 No Special Damages.** Notwithstanding any other provision hereof, neither party shall be liable for any damages for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of its performance or failure to perform under this Agreement or any Customer Order.
- 5.2 Responsibility for Own Acts.** Each party shall be responsible for its own acts and omissions and shall be liable for payment of that portion of any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds that may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by said party, its employees, agents, or subcontractors, in the performance or omission of any act or responsibility of said party under this Agreement. In the event that a claim is made against both Parties, it is the intent of both Parties to cooperate in the defense of said claim and to cause their insurers to do likewise. Both Parties shall, however, retain the right to take any and all actions they believe necessary to protect their own interests.
- 5.3 Disclaimer of Warranties.** FTC MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE SCHEDULE.

6. Service Levels

- 6.1 Service Interruptions and Delivery.** To report problems related to Service performance, Customer may contact FTC Customer Care Center by calling to 877.237.0491. In order to assist FTC in investigating any reported problems, Customer agrees to provide FTC with supporting information as reasonably requested by FTC, which may include (as applicable), without limitation, circuit ID, circuit end-point(s), IP address(es), originating phone number and terminating phone number. In the event of any damages arising out of FTC's furnishing or failure to furnish Services under this Agreement, Customer's sole remedies are contained in (a) the Service Levels applicable (if any) to the affected Service, (b) the chronic outage provision (if any) set forth in the Service Schedule applicable to the affected Service and (c) Section 4.4 above.
- 6.2 Service Level Credits.** In the event that FTC does not achieve a particular Service Level in a particular month, FTC will issue a credit to Customer as set forth in the applicable Service Schedule upon Customer's request. FTC's maintenance log and trouble ticketing systems will be used for calculating any Service Level adjustments. To request a credit, Customer must contact FTC Customer Service or deliver a written request (with sufficient detail necessary to identify the affected Service) pursuant to Section 7.4 within thirty (30) days of the end of the month for which a credit is requested. FTC Customer Service may be contacted by calling **970-247-3366**. In no event shall the total amount of credits issued to Customer per month exceed the nonrecurring charges and monthly recurring charges invoiced to Customer for the affected Service for that month.

7. General Terms

- 7.1 Force Majeure.** Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control ("force majeure event"). In the event that FTC is unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay FTC for the affected Service for so long as FTC is unable to deliver the affected Service. Force



majeure events excusing performance by FTC hereunder shall include change in availability of routes at current costs from third party suppliers.

7.2 Assignment and Resale. Customer may not assign its rights and obligations under this Agreement or any Customer Order without the express prior written consent of FTC, which will not be unreasonably withheld. This Agreement shall apply to any permitted transferees or assignees. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all charges due under each Customer Order. Customer may resell the Service to third-party end users, provided that Customer agrees to indemnify, defend and hold FTC harmless from claims made against FTC by such end users.

7.3 Affiliates

7.3.1 Service may be provided to Customer pursuant to this Agreement by an Affiliate of FTC, including, without limitation, an Affiliate authorized to provide Service in a country other than the country within which this Agreement has been executed. If a Customer Order requires the delivery of Service in a jurisdiction where, in order for such Customer Order to be enforceable against the parties, additional terms must be added, then the parties shall incorporate such terms into the Customer Order (preserving, to the fullest extent possible, the terms of this Agreement). Notwithstanding any provision of Service to Customer pursuant to this Agreement by an Affiliate of FTC, FTC shall remain responsible to Customer for the delivery and performance of the Service in accordance with the terms and conditions of this Agreement.

7.3.2 The parties acknowledge and agree that Customer's Affiliates may purchase Service under this Agreement; provided, however, that any such Customer Affiliate purchasing Service hereunder agrees that such Service is provided pursuant to and governed by the terms and conditions of this Agreement. Customer shall be jointly and severally liable for all claims and liabilities arising under this Agreement related to Service ordered by any Customer Affiliate, and any event of default under this Agreement by any Customer Affiliate shall also be deemed an event of default by Customer. Any reference to Customer in this Agreement with respect to Service ordered by a Customer Affiliate shall also be deemed a reference to the applicable Customer Affiliate.

7.3.3 Notwithstanding anything in this Agreement to the contrary, either party may provide a copy of this Agreement to its Affiliate or such other party's Affiliate for purposes of this Section 7.3 without notice to, or the consent of, the other party.

7.4 Notices. Notices hereunder shall be in writing and sufficient when received if delivered in person, or sent via facsimile transmission, pre-paid overnight courier, electronic mail (if an email address is provided below) or ordinary mail, defaulted to the following addresses:

Service Provider

Customer

FastTrack Communications, Inc.
Attn: Business Operations
Facsimile: 970-247-2426
E-mail: khebbard@fasttrackcomm.net

For all other notices:

FastTrack Communications, Inc.
779 Tech Center Drive
Suite 200
Durango, CO 81301
Attn: General Manager

If other than a default address then at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. All such notices shall be deemed to have been received on (i) the date delivered if delivered personally or sent by international mail, (ii) the business day after dispatch if sent by overnight courier, (iii) the third business day after posting if sent by first-class U.S. mail or (iv) the date of transmission if delivered by facsimile or electronic mail (or the business day after transmission if transmitted on a weekend or legal holiday). Notwithstanding the foregoing, any notices delivered by FTC to Customer in the normal course of provisioning of Service hereunder shall be deemed properly given if delivered by any of the methods described above or by electronic mail to the address listed on any Customer Order.

- 7.5** Acceptable Use Policy. Customer's use of Service shall comply with all Federal, State, and Local laws and ordinances that govern the use of the Services. FTC will notify Customer of complaints received by FTC regarding each incident of alleged violations of these laws and ordinances by Customer or by third parties that have gained access to the Services through Customer. Customer agrees that it will promptly investigate all such complaints and take all necessary actions to remedy any actual violations of laws and ordinances. FTC may identify to the complainant that Customer, or a third party that gained access to the Service through Customer, is investigating the complaint and may provide the complainant with the necessary information to contact Customer directly to resolve the complaint. Customer shall identify a representative for the purposes of receiving such communications.
- 7.6** Data Protection. During the performance of this Agreement, it may be necessary for FTC to transfer, process and store billing and utilization data and other data necessary for FTC's operation of its network and for the performance of its obligations under this Agreement. The transfer, processing and storing of such data may be to, from or in the United States. Customer hereby agrees that FTC may (i) transfer, store and process such data to, from or in the United States and (ii) use such data for its own internal purposes and as allowed by law. Such data will not be disclosed to third parties.
- 7.7** Contents of Communications. FTC shall have no liability or responsibility for the content of any communications transmitted via the Service (except for content solely created by FTC), and Customer shall defend, indemnify and hold FTC harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for claims by third parties relating to Customer's use of Service. FTC provides only access to the appropriate network. FTC does not operate or control any information, services, opinions or other content. Customer agrees that it shall make no claim whatsoever against FTC relating to content or respecting any information, product, service or software ordered through or provided by virtue of any network to which FTC provides access.
- 7.8** Marks and Publicity.
- 7.8.1** Neither party shall have the right to use the other party's or its Affiliates' trademarks, service marks or trade names without the prior written consent of the other party. Certain terms used in this Agreement are service marks of FTC, its Affiliates or related third parties in the United States and/or other countries.
- 7.8.2** Neither party shall issue any press release relating to any contractual relationship between FTC and Customer, except as may be required by law or agreed between the parties in writing.
- 7.9** Non-Disclosure. Any information or documentation disclosed between the parties during the performance of this Agreement shall be subject to the terms and conditions of the applicable non-disclosure agreement then in effect between the parties.
- 7.10** Disclosure of Customer Information. FTC reserves the right to provide any customer or potential customer bound by a nondisclosure agreement access to a list of FTC's customers and a description of Service purchased by such customers. Customer consents to such disclosure, including the listing of Customer's name and Service purchased by Customer. Financial terms relating to the purchase shall not be disclosed.
- 7.11** Venue, Jurisdiction and Applicable Law. The proper venue and jurisdiction for any action arising under this Agreement shall be exclusively in the District Court of La Plata County in the State of Colorado. The validity, construction, and performance of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.
- 7.12** Entire Agreement. This Agreement, including any Service and Pricing Schedule(s) and Telecom Service Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service, which are of no further force or effect. The Service and Pricing Schedules attached hereto are listed as: Exhibit A - Service Order Summary.

All Service and Pricing Schedules, whether attached hereto or executed between the parties after the Effective Date, are integral parts hereof and are hereby made a part of this Agreement.



**Master Service Agreement
Telecom Services**

- 7.13 Amendment. This Agreement, and any Service and Pricing Schedule or Telecom Service Order, may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party. Without limiting the generality of the foregoing, any handwritten changes to a Customer's Order or any terms and conditions included in any Customer-provided purchase order shall be void unless acknowledged and approved in writing by a duly authorized representative of each party.
- 7.14 Order of Precedence. In the event of any conflict between this MSA and the terms and conditions of any Service Order and/or Service Schedule, the order of precedence is as follows: (1) the Service Order but solely with respect to the Service covered by that Service Order, (2) this MSA; and (3) the Service Schedule but solely with respect to the Service covered by that Service Schedule.
- 7.15 Survival. The provisions of this Section 7 and Sections 3, 5 and 6, and any other provisions of this Agreement that by their nature are meant to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.
- 7.16 Relationship of the Parties. The relationship between Customer and FTC shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, without limitation, for federal income tax purposes.
- 7.17 No Waiver. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).
- 7.18 Severability. If any provision of this Agreement shall be declared invalid or unenforceable under applicable law, said provision shall be ineffective only to the extent of such declaration and such declaration shall not affect the remaining provisions of this Agreement. In the event that a material and fundamental provision of this Agreement is declared invalid or unenforceable under applicable law, the parties shall negotiate in good faith respecting an amendment hereto that would preserve, to the fullest extent possible, the respective rights and obligations imposed on each party under this Agreement as originally executed.
- 7.19 Joint Product. The parties acknowledge that this Agreement is the joint work product of the parties. Accordingly, in the event of ambiguities in this Agreement, no inferences shall be drawn against either party on the basis of authorship of this Agreement.
- 7.20 Third-Party Beneficiaries. This Agreement shall be binding upon, inure solely to the benefit of and be enforceable by each party hereto and their respective successors and assigns hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 7.21 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile signatures shall be sufficient to bind the parties to this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

FASTRACK COMMUNICATIONS INC.

By: _____

Name: Kelly Hebbard

Title: General Manager

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

BY SIGNING THE FASTRACK MASTER SERVICE AGREEMENT YOU ACCEPT YOUR SERVICE ORDER SUMMARY AS EXHIBIT A AND AGREE TO ALL TERMS AND CONDITIONS ABOVE.