



## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** (the "Master Agreement"), made and entered into by and between \_\_\_\_\_, a \_\_\_\_\_, organized under the laws of the State of \_\_\_\_\_, hereinafter called "**Customer**," and **Northwest Open Access Network**, a Washington non-profit mutual corporation, hereinafter called "**NoaNet**". This Master Agreement (sometimes "MSA") becomes legally binding and effective upon signature by both parties.

### RECITALS

Customer desires to use NoaNet's fiber optic cable system for transportation of data (the "Communication Transport Services" or "CTS") as well as such other services as are described in Service Orders between NoaNet and Customer that incorporate the terms of this Master Agreement (a "Service Order"); and

Subject to the terms of this Master Agreement and applicable Service Orders, NoaNet is agreeable to provide CTS and other Services to Customer. Customer may use Services only for authorized and lawful purposes.

**NOW, THEREFORE**, Customer and NoaNet, in consideration of mutual conditions and covenants hereinafter described, do agree as follows:

**1. Overview:** This Master Agreement states the general terms and conditions by which NoaNet will deliver and Customer will receive any or all of the services provided by NoaNet. The specific services and/or products to be provided and the procedure for obtaining services shall be detailed in an associated Service Order (the "Service Order"). This Master Agreement is intended to cover any and all services ordered by Customer and provided by NoaNet in connection with any agreement between the parties that incorporates the terms of this Master Agreement (collectively, the "Services"). Customer may use services only for authorized and lawful purposes.

**2. Delivery of Services:** By entering into a Service Order, Customer agrees to take and pay for, and, by accepting the Service Order, NoaNet agrees to provide, the Services(s) during the term described on the Service Order. NoaNet has the right to limit the manner in which any portion of its network and facilities ("Network") is used to protect the technical integrity of the Network. NoaNet is not liable or responsible for content, errors in transmission, or failure to establish connection.

**3. Installation and Interconnection of Services:** Unless otherwise provided elsewhere in this Master Agreement or any Service Order, NoaNet will pay for, provide, install, maintain, operate, control and own (or be the licensee of) any equipment, cable, software or facilities provided by NoaNet or its licensors ("NoaNet Facilities"), which will remain NoaNet's personal property regardless of where located or attached. Customer may not rearrange, move or disconnect the NoaNet Facilities, and is responsible for any damage to or loss of NoaNet Facilities or interruption of the Services caused by Customer's conduct or that of its customers or end users. NoaNet has no obligation to install, maintain or repair any equipment owned or provided by Customer, except as may be specifically provided in a Service Order. If Customer's or its customer's or an end user's equipment is incompatible with NoaNet's Facilities or the Services, Customer is responsible for any special interface equipment or facilities necessary to ensure compatibility. Customer is responsible to ensure that its

equipment does not interfere with the provision of or functionality of the Services to Customer or other parties with whom NoaNet contracts. If, in responding to a Customer initiated service call, NoaNet reasonably determines that the cause of such service call is a failure, malfunction or inadequacy of Customer-provided facilities, equipment or software, Customer will pay NoaNet for such service call at NoaNet's then prevailing rates.

**4. Changes.** NoaNet may reconfigure, reprogram, substitute, rearrange or otherwise change any NoaNet Facilities or its Services, whether such NoaNet Facilities are on the Customer's premises or otherwise, at any time and from time to time, but shall not thereby alter the technical parameters of the Service provided the Customer without the Customer's knowledge or consent. Except as may be provided in a Service Order (or a Service Level Agreement pertaining to the Service Order), no specific advance notification period is applicable but NoaNet will use its best efforts to notify the Customer of the planned timing of such activities and will use reasonable efforts to perform such activities at a time that is agreeable to the Customer (except where emergency conditions exist or where such change is required by a governmental agency or other authority to take place immediately).

**5. Term:** Subject to the termination provisions of Sections 14 and 15 the initial term for each service will commence and end on the dates indicated in the applicable Service Order. Thereafter, the term of the Service Order will automatically renew for successive 1-year terms unless terminated by either party upon no less than 30 days written notice prior to the end of the initial or renewal term, or unless otherwise specified in the Service Order. This Master Agreement shall continue until terminated by written notice as provided herein. Upon termination of this Master Agreement, all rights of Customer to receive services from NoaNet will automatically cease.

**6. Fees and Payment Terms:** Customer shall pay all fees due for services according to the prices and terms listed in the Service Order. Upon completing provisioning, installation and testing of the NoaNet



Facilities needed to provide services ordered by Customer, NoaNet will notify Customer that the Services are available for Customer's use. The Services may be subject to a Monthly Recurring Charge ("MRC") as set forth in the applicable Service Order. NoaNet reserves the right to change the MRC for such services at any time, after the initial term thereof upon 25 days prior written notice to Customer. NoaNet's fees for Services (including MRC) do not include any governmental taxes or tax-related charges, fees, surcharges or other amounts assessed by any government, which may be incurred in connection with services to be provided hereunder, all of which shall be paid by Customer. Any installation charges or other non-refundable Non-Recurring Charge ("NRC") to be billed one time will appear on the first monthly invoice. NoaNet reserves the right to recover any additional installation charges accrued during installation.

Any payment not received within thirty (30) days of the invoice date will accrue interest at a rate of one and one-half percent (1½%) per month, or the highest rate allowed by applicable law, whichever is lower.

**7. Early Termination Charges:** If (a) Customer terminates this Master Agreement or any Service Order for reasons other than for Cause; or (b) NoaNet terminates this Master Agreement or any Service Order pursuant to Sections 14 or 15, then Customer will pay, within thirty (30) days after such termination the following with respect to the terminated Service Order or with respect to all Service Orders if the Master Service Agreement is terminated: (i) all accrued but unpaid charges incurred through the date of such termination, as well as NoaNet's fees for the balance of the month in which the termination is effective, plus (ii) an amount equal to fifty percent (50%) of the remaining "MRC" for the then current term, plus (iii) a pro rata portion of any and all service credits received by Customer. In the event of termination by either Party (except for termination by Customer for Cause), Customer shall not be entitled to reimbursement of fees already paid to NoaNet.

*[If Customer terminates a Service Order and enters into a new Service Order within ninety days of such termination, then payment of the amounts set forth above will be offset against the MRCs to be charged over the term of the new Service Order ]*

If Customer desires to cancel a Service Order prior to the Firm Order Confirmation NoaNet notifying Customer that the Services are available for Customer's use, the following conditions apply, (I) where a Service Order is canceled by the customer prior to the start of any design work or installation of facilities, no charge applies, (II) when a service that requires design work is canceled after the design work has begun, NoaNet may collect charges equal to the cost incurred for the design work time and materials to date of the termination (for NoaNet employees that do such work, the charges will be calculated at NoaNet's standard rates for such work), and (III) if cancellation is requested after installation work has begun, NoaNet may collect charges equal to the cost incurred for the installation work based on a time and materials basis (for NoaNet employees that do such work, the charges will be calculated at NoaNet's standard rates for such work).

**8. Limitation of Liability:** The total liability of NoaNet and its underlying service and equipment providers to Customer in connection with this Master Agreement and any Service Order, for any and all causes of actions and claims, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts, shall be limited to the lesser of: (a) direct damages proven by Customer; or (b) the amount paid by Customer to NoaNet under the applicable Service Order for the one (1) month period prior to accrual of the most recent cause of action. In no event shall NoaNet be liable for special, punitive, consequential or incidental damages, including without limitation, lost revenue, profits or other benefit whether by tort, contract, or otherwise.

**9. Force Majeure:** Neither party is liable for any failure of performance if such failure is due to any cause or causes beyond such party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, cable cut, a Cyber-Security Event adverse weather conditions, governmental action, labor difficulties and failures or delays of supplier-provided equipment or services. Customer's invocation of this clause shall not relieve Customer of its obligation to pay for any services actually received. In the event such failure continues for 60 days, the other party may terminate the affected portion of the Services.

**10. Assumption of Risk:** Customer recognizes that use of NoaNet's property and NoaNet's Facilities shall be at its own risk, and therefore, expressly assumes any risk arising from the use of any of the Services.

**11. DMCA Policy.** NoaNet provides information to help copyright holders manage their intellectual property online, but NoaNet cannot determine whether something is being used legally or not without their input. NoaNet responds to notices of alleged copyright infringement and terminates accounts of repeat infringers according to the process set out in the U.S. Digital Millennium Copyright Act (the "DMCA"). If Customer believes someone is violating Customer's or its End Users' copyrights and wants to notify NoaNet, Customer can find information about submitting notices, and NoaNet's policy about responding to notices at [www.noanet.net](http://www.noanet.net).

**12. Intellectual Property Rights.** This Master Agreement and any Service Order does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property except as expressly provided therein.

**13. Indemnity:** Customer agrees to indemnify, defend and hold harmless NoaNet, its underlying service and equipment providers, and its members, and the commissioners, officers, directors, employees, agents and other representatives of NoaNet and its members from all losses or damages arising from Customer's breach of this Master Agreement, a Service Order, violation of any third party intellectual property right, all claims of any kind by Customer's end users, or



any act or omission of Customer in connection with any service provided hereunder.

Subject to the limitation of liability provisions provided herein, NoaNet agrees to indemnify, defend and hold harmless Customer from all losses or damages arising from or related to personal injury or property damage caused by the negligence or willful misconduct of NoaNet.

**14. Termination by NoaNet:** NoaNet may terminate this Master Agreement or any Service Order hereunder, or suspend services (a) ten (10) days after written Notice of Customer's failure to pay any amounts due to NoaNet within thirty (30) days of invoice date, however, no advance notice or opportunity to cure will be required if a notice to terminate for failure to make payments had been given to Customer during the preceding twelve months; or (b) thirty (30) days (or such shorter time as permitted hereunder) after written Notice of Customer's breach of any other provision of the Master Agreement or Service Order or any law, rule or regulation governing the services, which breach is not cured within the time set forth in the Notice; or (c) thirty (30) days after written Notice that Customer has provided false information to NoaNet regarding the Customer's identity, creditworthiness, or its planned use of the services; or (d) on 30 days written Notice if there is no Service Order then in effect; or (e) upon no Notice if there is an emergency and NoaNet deems such action as necessary in order to protect the property and rights of NoaNet.

**15. Termination for Cause:** Either Party may terminate this Master Agreement and any or all Service Orders for Cause. "Cause" shall mean a breach by the other party of any material provision of this Master Agreement or Service Order, provided that written Notice of the breach has been given to the breaching party, and the breach has not been cured within thirty (30) days after delivery of such notice, unless a shorter time period is provided herein or in the applicable Service Order, in which case that time period will apply.

**16. Effect of Termination.** If this MSA or a Service Order is terminated, then, regardless of the cause of the termination: (i) the rights granted by NoaNet to Customer and its End Users will immediately cease; (ii) Customer will immediately delete any Software on its computers, (iii) NoaNet will delete any customer Application and any Customer Data from its computers; and (iv) upon request, each party will use commercially reasonable efforts to return or destroy all other Confidential Information of the other party, except NoaNet may elect not to delete and may withhold returning Customer Data or Confidential Information until it has been paid in full.

**17. Resale of Services:** Any Service provided under this Master Agreement or Service Order may be resold to or shared with other persons or entities at the option of the Customer, subject to compliance with any applicable laws or Commission regulations governing such resale or sharing. The Customer remains solely responsible for all services ordered by it or billed to its account, for determining who is authorized to use its services and taking appropriate actions to enforce such a determination, and for immediately notifying NoaNet

of any unauthorized use. Customer will require each such user to comply with the terms of this Master Agreement and any applicable Service Order (except for payment of fees) to the same extent as if the contracts were between NoaNet and that user. Customer will obtain such compliance and will indemnify and hold NoaNet harmless for failure to do so. NoaNet has no obligation to provide notice to or otherwise communicate with the users or customers of Customers.

**18. Assignment:** Customer shall not assign, pledge, transfer or otherwise convey all or any part of the rights and privileges granted by this Master Agreement, any Service Order in any manner without prior written consent of NoaNet, which consent it will not unreasonably withhold. Any transfer by merger, consolidation or liquidation of Customer, or any change in the ownership of or power to vote the majority of its voting rights (whether effected in one or more transactions or events occurring over any twelve-month period of time) shall constitute an assignment for purposes of this Section. Customer may enter into agreements with other parties for transport circuits on terms consistent with this Master Agreement.

**19. Taxes:** Each party shall be responsible for its own federal, state and local taxes, assessments, fees, surcharges and other financial impositions. Notwithstanding the foregoing, Customer agrees that if there is any tax payable by it, but which is to be collected by NoaNet which NoaNet does not collect for any reason, upon assessment thereof by the applicable taxing agency, and demand by NoaNet, Customer shall immediately remit the same to NoaNet or the agency, as directed by NoaNet, even if such assessment arises after the termination of this Master Agreement or the applicable Service Order.

**20. Representations and Warranties:**

(i) Each party represents and warrants that it has full power and authority to execute, deliver, and perform its obligations under this Master Agreement and each Service Order. (ii) NoaNet represents and warrants to Customer that any services provided hereunder or under the Service Order will be performed in a manner consistent with that of other reputable providers of the same or similar services in the same locality.

NoaNet does not warrant that its system or the services to be provided by NoaNet will be error-free or uninterrupted. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS MASTER AGREEMENT, NOANET MAKES NO WARRANTY FOR IT OR ITS UNDERLYING SERVICE AND EQUIPMENT PROVIDERS, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY PORTION OF THE NETWORK OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.



**21. Approval of Service Orders and Addenda.**

Upon request of specific services by Customer, NoaNet will prepare and submit to Customer a Service Order (and attachments or addenda) describing the services, terms of services and fees for such services.

a. If NoaNet provides the Service Order and related documents through a “click and accept” procedure, then by clicking “I Agree”, “OK” or a similar term, Customer acknowledges that it has read and accepted the terms and conditions of the Service Order and related documents and that the person responding to the proposal had the authority to do so.

b. If the proposed Service Order is not signed by Customer or not approved through the “Click and accept” process described above, the Service Order (and its attachments and addenda) will still be binding upon Customer from and after the receipt and use of the Services by Customer.

c. Any changes to the proposed Service Order that are submitted by Customer will be binding on NoaNet only if approved in writing by NoaNet.

**22. Use of Name and Trademarks:** Neither party shall use any name, logo or service mark of the other party in marketing services to others without the express written consent of the other party.

**23. Confidentiality:**

a. NoaNet Data. Customer shall treat all information made available or disclosed to, or developed or obtained by NoaNet as the result of or related to this Master Agreement or a Service Order (“NoaNet Confidential Information”) as confidential. Such Confidential Information specifically includes all source codes to any software used to provide the Service. Customer will limit its use of NoaNet Confidential Information to that which is necessary to receive or use the Services from NoaNet.

b. NoaNet will treat all information and data received from Customer or its Registered End Users which is marked as confidential or would normally under the circumstances be considered confidential information (“Customer Confidential Information”) as confidential. Without limiting the foregoing, personally identifiable information of Customer’s end users will be deemed Customer Confidential Information.

c. Except as provided herein, each party will use the other party’s Confidential Information only for the purpose of providing or receiving the Services. Except as provide herein, neither party will disclose the other party’s Confidential Information to any person other than employees, agents, NoaNet’s Third Party Suppliers, and professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will further ensure that its employees, agents and professional advisers who receive such Confidential Information will maintain

the confidentiality of that information to the same extent as the receiving party is required to do hereunder.

d. Either party may disclose Confidential Information that (i) is independently developed by the recipient, (ii) is rightfully given to the recipient by a third party without confidentiality obligations, (iii) becomes public through no fault of the recipient, or to the extent required by applicable law. If disclosure is required by applicable law, the recipient shall use commercially reasonable efforts to promptly notify the other party of such disclosure before such disclosure. Notwithstanding the foregoing, the recipient may disclose the requested information if refusal would: (a) result in a violation of law; (b) obstruct a governmental investigation; and/or (c) lead to death or serious physical harm to an individual

e. Notwithstanding any provision to the contrary in this Service Order, NoaNet may also disclose Confidential Information or non-confidential documents which it deems advisable upon advice of counsel to disclose under the Washington State Public Records Act (42.56 RCW), or any other applicable public disclosure requirement. In connection with any such disclosure NoaNet agrees to provide the Customer seven (7) days written notice of impending release, provided that all liabilities or expenses incurred in connection with the non-disclosure or any applicable litigation shall be borne by the Customer, including any damages, penalties, attorneys’ fees, or costs awarded by reason of having opposed disclosure, and further provided that NoaNet shall not be liable for any release which is either compelled by process of law, or where notice was provided and Customer took no action to oppose the release of information or documents.

f. This provision will survive termination of this Agreement.

**24. Third Party Suppliers.** NoaNet may engage Third Party Supplier to provide parts of the Services. NoaNet will ensure that its Third Party Suppliers will only access and use Customer Data in accordance with the terms of the applicable Service Order. Customer consents to NoaNet subcontracting the processing of Customer Data to Third Party Suppliers. At the written request of the Customer, NoaNet will provide additional information regarding Third Party Suppliers and their locations.

**25. Infringement Remedies.** If NoaNet reasonably believes the Services might infringe a third party’s intellectual property rights, then NoaNet may, at its sole option and expense: (a) procure the right for Customer to continue using the Services; (b) modify the Services to make them non-infringing without materially reducing their functionality; or (c) replace the Services with a non-infringing, functionally equivalent alternative. If NoaNet does not believe these remedies are commercially reasonable, then NoaNet may suspend or terminate Customer’s use of the impacted Services.

**26. Publicity.** NoaNet may include Customer’s name or its trademarks in a list of NoaNet customers, online or in promotional materials. NoaNet may also verbally reference Customer as a customer of the Services. Customer may revoke this right to use its



trademarks under this Section with written notice to NoaNet and a reasonable period to stop the use.

**27. Governing Law:** This Master Agreement, and the Service Orders are governed by and subject to the laws of the State of Washington, excluding its principles of conflicts of law.

**28. Litigation:** If either party commences litigation under this Master Agreement, a Service Order the prevailing party is entitled to reimbursement of its costs and attorneys' fees from the other party.

**29. Remedies not Exclusive:** The remedies provided in this Master Agreement, or a Service Order shall be in addition to all other remedies to which NoaNet may be entitled at law or in equity, including without limitation the right to recover unpaid amounts with interest at the applicable statutory judgment rate, but accruing from the date initially due.

**30. Jurisdiction; Venue:** The parties consent to the personal jurisdiction of the courts of the State of Washington so that any litigation concerning or arising out of this Master Agreement, a Service Order shall be brought in Washington. The parties agree not to claim that Washington is an inconvenient place for trial. The venue of any such legal action shall be King County Superior Court of the State of Washington.

**31. Waivers:** No waiver of any provision or breach of this Master Agreement, a Service Order shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of or any other breach of this Master Agreement or a Service Order.

**32. Notices:** As used herein a "Notice" is a notice, request, demand or other communication given by one party to the other which is required or may be given pursuant to the terms of this Master Agreement, a Service Order. Such Notices shall be in writing and shall be deemed to have been duly given on the earlier of (i) on the date of delivery if personally delivered by hand, (ii) upon the third day after such notice is (a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile or by email upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice:

**If to NoaNet:**

Northwest Open Access Network  
7195 Wagner Way Ste 104  
Gig Harbor, WA 98335  
Ph:  
Fax:  
email:

**If to Customer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Email: \_\_\_\_\_

Such addresses and numbers may be changed, from time to time, by means of a notice given in the manner provided herein.

**33. Survival.** All provisions which by their nature should survive termination, will survive termination or expiration of this Agreement and any applicable Service Order. Without limiting the foregoing, the Sections herein entitled *Limitation of Liability, Indemnity, Use of Name and Trademarks, and Confidentiality* shall survive termination or expiration of this Agreement or the applicable Service Order.

**34. Entire Agreement:** This Master Agreement and any addendums, attachments, Service Orders and other documents incorporated herein constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other representations, understandings or agreements that are not expressed herein, whether oral or written. Except as otherwise set forth herein, no amendment to this Master Agreement shall be valid unless in writing and signed by both parties. In the event of any inconsistency between the terms contained in this Master Agreement and any specific provisions of the Service Order, the terms of the Service Order shall prevail. References herein to exhibits mean exhibits to this Master Agreement and to the Service Orders unless the context indicates otherwise.

**35. Definitions.** As used herein and in applicable Service Orders, the following words will have the following meaning:

a. "Application" means a computer program designed to perform specific functions for users.

b. "CTS" or "Communication Transport System" means NoaNet network assets used to provide telecommunications services.

c. "Confidential Information" means either "NoaNet Confidential Information" or "Customer Confidential Information" as defined in Sections and 23.b.

d. "Customer Data" means information provided by Customer or its End Users for storage of NoaNet Facilities.

e. "Cyber-Security Event" means an act or attempt, successful or not, to gain unauthorized access to, disrupt or misuse NoaNet Facilities or any information stored on NoaNet Facilities.



f. "DMCA" means the U.S. Digital Millennium Copyright Act.

g. "End User" means a person or company that has a contract with Customer to use one or more of the Services.

h. "MRC" means Monthly Recurring Charges.

i. "MSA" means this Master Services Agreement.

j. "Network" has the meaning provided in Section 2.

k. "Network Facilities" has the meaning provided in Section 3.

l. "NRC" means non-recurring charges.

m. "Registered End User" is an End User that has registered with NoaNet to receive and use Services from NoaNet.

n. "Services" means the services NoaNet will provide to Customer as described in the applicable Service Order.

o. "Service Order" means any written agreement between Customer and NoaNet that incorporates the terms of this Master Agreement.

p. "Software" means programs and other operating information used by a computer to perform functions.

q. "Third Party Supplier" means persons or companies engaged by NoaNet to provide software, hardware or services to NoaNet.

IN WITNESS WHEREOF, the Parties hereto have executed this Master Agreement in two (2) counterparts.

**Northwest Open Access Network**

By: \_\_\_\_\_

Name: Dave Spencer  
*Print/Type*

Title: Chief Executive Officer

Date: \_\_\_\_\_

**Customer**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
*Print/Type*

Title: \_\_\_\_\_

Date: \_\_\_\_\_