

PUBLIC UTILITY DISTRICT OF JEFFERSON COUNTY

WHOLESALE TELECOMMUNICATIONS SERVICES AGREEMENT

In accordance with Washington State RCW 54.16.330, the Parties named herein hereby enter into this Agreement for Wholesale Residential Telecommunications Services (the “Agreement”) made this ____ day of _____, _____, between Public Utility District No. 1 of Jefferson County, a municipal corporation under the laws of the State of Washington and having its principal place of business in Port Townsend, Washington and _____, a telecommunications and/or Internet access company that wants to provide services in Jefferson County, Washington.

A. DEFINITIONS

“Network” means the District’s telecommunication facilities used to provide open access broadband services to the District and its customers. The Network provides wholesale telecommunication services as authorized by the laws of Washington State.

“District” means Public Utility District No. 1 of Jefferson County, Washington.

“Open Access” is defined in Section G of this Agreement.

“Party or Parties” means the District, Retail Service Provider, or both.

“Retail Customer” means the person or business purchasing telecommunication services from the RSP.

“Retail Service Provider (RSP)” means the signatory to this Agreement with the District, which entity represents it is authorized to provide retail telecommunication services and to which the District is authorized to provide wholesale telecommunication services.

B. ELIGIBILITY

The District will provide available wholesale telecommunication services to qualified Retail Service Providers (RSPs) under an open access arrangement. To qualify as eligible to provide services on the District’s Network, the RSP represents to the District the following:

1. The RSP represents that it has the ability to install and provision consumer services including, but not limited to, compliance with all applicable laws and regulations, such as certified telecommunications administrator or low voltage licenses, or as otherwise required by local, state or federal laws and regulations.
2. The RSP will make available to the District current and up to date contact information for the purpose of providing technical customer support.
3. The RSP represents that it can currently provide or will provide prior to its use of

the Network, a statement of intent to operate as a telecommunications provider or Internet Service Provider (ISP) and will meet the requirements of the District to resell District telecommunication services.

4. The RSP agrees to comply with the terms and conditions specified in the *Telecommunications Customer Service Policies of the Public Utility District of Jefferson County, Washington*, as they currently exist or as amended in the future.
5. The RSP further warrants to the District that it has the authority to enter into this Agreement. RSP further warrants that it is duly licensed, has secured all necessary permits and licenses, and is fully qualified to provide telecommunications services in compliance with all terms and conditions of this Agreement and all laws of the state of Washington.
6. The RSP warrants that it is purchasing wholesale products from the District and that the RSP will satisfy any State or Federal Universal Service Fund obligations and pay any applicable sales or other taxes that might be applied to its retail service.
7. RSP represents that in providing services it acts as an independent contractor.
8. In all activities contemplated by the Agreement, the RSP shall perform in a good and competent manner, consistent with sound and generally accepted business practice.

C. TERM

The Agreement will continue in full force until such time either Party provides thirty (30) days written notice of termination, or default occurs by either Party.

Upon termination of this Agreement, all rights of RSP and their Retail Customers for services or broadband capacity cease and the District has no further obligations to furnish such service or capacity to the RSP. Subject to Section G constraints, the District has the absolute right to cease to provide wholesale telecommunications services to the RSP and/or disconnect any existing services and/or refuse to provide any future services or reconnection.

The Parties agree that continued service to the Retail Customer is highly desirable. In the event of termination of this Agreement, for any reason, the RSP shall immediately notify all affected Retail Customers of the final service date and any options available to the Retail Customer for continued service. The District shall also have a right, but not obligation, to notify any affected Retail Customers similarly.

D. LEASING OF FIBER LOOPS

The District hereby agrees to provide RSP access to the District's fiber network, through the lease of local fiber loops to provide any broadband circuits requested by RSP, whether intended for internal use of the RSP or with the intent to resell to retail customers, provided such capacity is then reasonably available on the District's network, in the District's discretion. The District has no obligation to provide dark fiber to the RSP, or any other party.

The RSP's right to access and use District network does not authorize and shall not be construed to authorize the RSP to have exclusive use of the District's network capacity.

Terms related the installation of customers are set forth in Exhibit A to the Agreement.

E. FINANCES

Current charges and fees are as set forth in the District's Broadband Rate Schedule. Such pricing shall change at the District's discretion.

Should the RSP be required to quote a set fee for a certain contractual term to a Retail Customer, the RSP may request, and District shall provide, in written form, a fixed fee which the District shall honor for the projected duration of that circuit or product offering, subject to default termination provisions.

Each Party shall be responsible for its own federal, state, and local taxes, assessments, fees, surcharges, and other financial impositions. Notwithstanding the foregoing, RSP agrees that if there is any tax payable by it, but which is to be collected by the District which the District does not collect for any reason, upon assessment thereof by the applicable taxing agency, and demand by the District, the RSP shall immediately remit the same to the District, even if such assessment arises after the termination of the Agreement.

F. FACILITIES AND OWNERSHIP

The District will provide access to network infrastructure at various locations within Jefferson Counties.

Ownership of preexisting lines and telecommunications infrastructure shall not change as a result of this Agreement.

G. OPEN ACCESS SYSTEM

The District agrees to maintain an open access system. Rates, terms, and conditions for wholesale broadband services shall not be unduly or unreasonably discriminatory or preferential. The District shall establish rates and policies for access to the District's wholesale broadband infrastructure and shall apply those fees, terms, and conditions to all authorized RSPs as well as itself. Nothing in this section shall limit the District's ability to terminate this Agreement for any other reason, including but not limited to, termination rights as provided in Sections C and L.

H. SERVICE

The District and the RSP shall act professionally in all aspects of this business relationship. Neither shall make statements damaging to the credibility of the other party. Both shall strive to deliver high quality and professional service to the retail customer.

The District shall be responsible for all circuit operation over the District network. The RSP shall be responsible for all circuit operation outside the District network. The RSP agrees it shall not directly or indirectly interfere in any manner with District operations or facilities and that it shall not alter, maintain, or repair the District's broadband infrastructure without the written consent of the District.

The RSP shall be responsible for all Retail Customer service activities, including communications with Retail Customer on outages, service quality issues, and all technical needs or concerns of the retail customer.

Because the RSP is responsible for its retail customers, the District wishes to avoid direct correspondence, verbal or written, from the retail customer regarding the services provided by the RSP through this Agreement. Any such contact will be immediately passed on to the RSP. On request of the District, the RSP will notify the retail customer of the parties' desired flow of communication.

The RSP shall accept credit risk of the retail customer and shall not pass that risk onto the District. The District shall accept RSP credit risk and shall not look to the retail customer for satisfaction of any amounts owed by the RSP.

The District does not guarantee uninterrupted availability. The District shall not be liable to the RSP or any other person, for any failure, whether temporary or permanent, to provide uninterrupted telecommunications services.

In the event it is necessary (in the sole discretion of the District) to temporarily suspend the availability of bandwidth capacity for the purpose of preventive maintenance, repairs, or improvements to the District communication system, the District shall have the right to do so, but shall use best efforts to give appropriate advance notice.

Following unscheduled failures in the District's **communications infrastructure**, the District will make needed repairs to restore capacity with diligence and complete such repairs as soon as is reasonable and practical.

In the event of an emergency, the District may immediately discontinue service to avoid harm to or interference with its wholesale telecommunications operations or facilities, or the operations or facilities of third parties, and the District shall notify RSP of such disconnection as soon as reasonably practical.

I. COORDINATION OF ACTIVITIES

Both Parties to this Agreement shall keep each other apprised of activities that may affect the other's communication system. Prior to commencement of any work hereunder, the Parties will confer to schedule and coordinate the work to be performed.

J. LIMITATION OF LIABILITY, INDEMNITY, AND INSURANCE

As noted in Section G herein, the District does not guarantee uninterrupted availability. The District is not liable or responsible for content, errors in transmission, security and integrity of data or information, virus transmission, broadcast hacker attacks, or failure to establish connection. No liability shall attach to the District for failure of communication facilities, failure to have bandwidth capacity available or fiber cuts. No liability shall attach to the District for complying with federal and state law enforcement investigative efforts or discontinuing services as a result of unlawful or fraudulent activity.

Notwithstanding any other provision within this Agreement, or elsewhere, neither Party shall be liable to the other, nor shall the District be liable to the RSP's retail customers or affiliates, for any consequential, incidental, special, punitive, or indirect damages, including without limitation lost revenue, profits or other benefit, whether by tort, contract, or otherwise arising out of or in any way related to this Agreement or the District's performance, faulty performance or non-performance, of any provision of this Agreement. Both Parties specifically and expressly agree, on behalf of itself and all its customers and affiliates, that the sole liability for any claim or demand arising out of this Agreement or the District's provision, faulty provision, or non-provision of services under this Agreement shall not exceed the monthly rate paid for such service under this Agreement, to the District by the RSP, within the 30-day period immediately preceding the event that gives rise to the claim or demand. Neither Party shall be responsible for force majeure events such as (but not limited to) acts of god; acts of nature; strikes; fire; war; riot; pandemics, acts of terrorism; and government actions.

The RSP shall indemnify, defend, and hold harmless the District from any physical injuries to people by the RSP, any damage to property by the RSP or any third-party claims, demands, actions, damages, liability, judgments, expenses, and costs (including attorneys' fees) arising from the RSP's use of service(s), or by reason of any breach or nonperformance of any covenant or obligation of the RSP herein, or the violation of any law or regulation by the RSP. The RSP's obligation to assume, protect, defend, indemnify, and save the district harmless shall extend to the District's, affiliates, subsidiaries, officers, directors, agents, and employees and shall continue for so long as any of the named indemnitees may be subjected to claims or suits calling for such obligations provided. The RSP may not enter into a settlement that imposes any obligation on the District or requires any admission by the district without the written approval of the district.

The district shall indemnify, defend, and hold harmless the RSP from any physical injuries to people by the District, damage to property by the district or any third-party claims, demands, actions, damages, liability, judgments, expenses, and costs (including attorneys' fees) arising from the district's provision of service(s), or by reason of any breach or nonperformance of any covenant or obligation of the district herein, or the violation of any law or regulation by the district. The District's obligation to assume, protect, defend, indemnify, and save the RSP harmless shall extend to the RSP's affiliates, subsidiaries, officers, directors, agents, and employees and shall continue for so long as any of the named indemnitees may be subjected to claims or suits calling for such obligations provided. The District may not enter into a settlement that imposes any obligation on the RSP or requires any admission by the RSP without the written approval of the RSP.

The District requires the RSP assert similar rights, protections, and limitations of liability for both the District and RSP in its internal policies and agreements with Retail Customers.

K. COMPLIANCE WITH LAW

Both the District and the RSP shall comply with all applicable federal, state, and local

laws, codes, rules, regulations, and all other obligations under law.

The District will cooperate with appropriate law enforcement and government agencies, or other parties involved in investigating claims of illegal or inappropriate activity. The District's broadband services may only be used for lawful purposes. RSP service may be disconnected to prevent fraudulent use by RSP or its retail customer, including lack of compliance with intellectual property rights and laws, or inappropriate content such as child pornography.

The RSP shall terminate retail customer's circuit service in the event RSP becomes aware of failure on the part of the retail customer to follow all applicable laws and regulations including, but not limited to, copyrights, trademarks, and material that is obscene, defamatory, or constitutes an illegal threat.

L. DEFAULT

The following shall constitute an event of default: (a) the RSP fails to pay any fee per the terms specified in the *Telecommunications Customer Service Policies of the Public Utility District of Jefferson County, Washington*. (b) a proceeding under bankruptcy, reorganization, arrangement of debts, insolvency or receivership law or assignment of benefit of creditors made by or against the RSP; (c) the RSP becomes insolvent or fails to generally pay its debts as they become due; (d) the RSP voluntarily or involuntarily dissolves or is dissolved or terminates or is terminated; or (e) the District fails to observe or perform any of its representations, warranties, and/or obligations with the RSP and fails to cure such breach within ten (10) days after written notice.

In the event of default by either Party, the non-defaulting Party shall have the right to exercise any or all of the following remedies: (a) terminate this Agreement by written notice; (b) proceed by court action to enforce performance of this Agreement; (c) exercise any other right or remedy available at law or in equity; and/or (d) disconnect broadband services and render any related communication equipment or infrastructure unusable and inoperable.

M. RIGHT OF ASSIGNMENT

The District rights and responsibilities under this Agreement may be assigned to another District owned system or any successor organization to the District at the sole discretion of the District. The District may assign rights under this Agreement to any other entity with approval of the RSP, which shall not be unreasonably withheld.

No assignment by RSP of this Agreement or any rights under this Agreement may be done without the written approval of the District, whose approval will not unreasonably be withheld.

N. MODIFICATION OF AGREEMENT

This Agreement may only be modified or amended by the Parties in writing; provided however, this section shall not be construed as limiting the ability of the District to change policies, fees, or charges in any manner.

O. DISPUTE RESOLUTION AND ATTORNEYS' FEES

The Parties shall execute their rights and discharge their duties as set forth in this Agreement in good faith. In the event of a dispute, the Parties shall consult and exercise reasonable efforts to arrive at an amicable resolution. Failing that, if any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the substantially prevailing Party shall be entitled to reasonable attorneys' fees, costs, necessary disbursements, and reasonable expert witness fees, in addition to any other relief granted. If there is no substantially prevailing party, the Parties shall each bear their own attorneys' fees and costs.

P. JURISDICTION; VENUE

This Agreement shall be governed and interpreted under the laws of the State of Washington. Venue of any legal action shall be in Jefferson County, Washington.

Q. ENTIRE AGREEMENT AND SEVERABILITY

This instrument embodies the entire Agreement of the District and the RSP. There are no promises, terms, conditions, or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between District and the RSP regarding the services described herein.

If a provision of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

IN WITNESS WHEREOF, EXECUTED THIS _____ day of _____, _____.

By: _____
General Manager
Public Utility District of Jefferson County

IN WITNESS WHEREOF, EXECUTED THIS _____ day of _____, _____.

By: _____
Retail Service Provider

Exhibit A

CIRCUIT OPERATION AND SERVICE CONDITIONS

1. General Provisions for Installation

All work performed by the RSP, its contractors, or assignees, shall be done in accordance with applicable federal, state, and local codes. The RSP shall comply with all laws, rules, and regulations relating to fire prevention, control, and suppression, and all safety rules and regulations.

Any modification by the RSP to the District's Network shall be performed only with the prior knowledge and written consent of the District.

All work by the District or the RSP shall be done in a workmanlike manner and shall be maintained so as not to be hazardous to life or property. Damage to District facilities shall be repaired promptly without cost to the damaged party. The District shall be immediately notified of any such damage, and repairs shall be performed by the District or under strict District supervision.

2. Equipment to be Installed

All equipment to be installed by the RSP shall be FCC-type approved, where applicable. However, any such FCC approval shall not relieve the RSP of responsibility to correct incompatibility or interference problems.

3. System Integrity

The RSP agrees to exercise care and caution to preserve the integrity and security of all operation systems, equipment, and facilities located on District or the RSP's business premises covered by this Agreement. The District has the right to limit the manner in which any portion of its network and facilities is used to protect the technical integrity of the network.

4. Facility Access Conditions

The RSP shall have no right of access to District property, equipment, or communications infrastructure other than as may be located on RSP's business premises. RSP personnel shall be granted access to District-owned equipment only as authorized by the District's technical contact as set forth in Exhibit B. When access shall be granted, RSP's employees shall utilize and retain possession of any keys to District-owned sites and shall not allow duplication or use by contractors or others who are not direct employees of the RSP. The RSP shall provide an employee to remain with contractors or maintenance personnel engaged by the RSP for activities at District-owned sites.

The RSP shall ensure the District has full and unrestricted access to District-owned communications infrastructure located on the Retail Customer's premises and reasonable access to District-owned communications infrastructure located on RSP's premises.

5. Interconnectivity and Demarcation on Retail Customer Premises

The RSP's local loop access point shall be as mutually agreed for each circuit as specified in the *Telecommunications Customer Service Policies of the Public Utilities District of Jefferson County, Washington*.

The RSP or retail customer shall be responsible for all internal communications infrastructure necessary for their business operation. The point of demarcation on Retail Customer's business premises shall be the retail customer's input port on the terminal equipment installed by the District on such business premises. The RSP shall own the cable connecting into the port; the District shall own the terminal equipment and all communications infrastructure leading from the business premises site.

6. Trouble Reports

The District will be responsible for maintaining signal from the point signal is received by the District to the point that signal is returned to the RSP. Any testing beyond the District's equipment will be the responsibility of the RSP.

Exhibit B
CONTACTS

The RSP and the District shall keep each other informed, in writing, of technical, business, and mailing contacts as required in the below listed table.

| <u>Technical Contact</u> | <u>District</u> | <u>RSP</u> |
|---|--|------------|
| Name | Jefferson PUD | |
| Location | | |
| Address | 310 Four Corners Rd | |
| | | |
| City, State & Zip | Port Townsend WA 98368 | |
| Daytime Phone | (360) 385-8358 | |
| Fax Number | | |
| Emergency Phone Number | (360) 316-1214 | |
| E-mail | broadband@jeffpud.org | |
| | | |
| <u>Notice Contact</u> | | |
| Name | Jefferson PUD | |
| Attention | Lori Rae, Broadband Coordinator | |
| Address | 310 Four Corners Rd | |
| | | |
| City, State & Zip | Port Townsend WA 98368 | |
| Daytime Phone | (360) 385-8358 | |
| Fax Number | | |
| Emergency Phone Number | (360) 316-1214 | |
| | | |
| <u>Billing Address</u> | | |
| Name | Jefferson PUD | |
| Address | 310 Four Corners Rd | |
| City, State & Zip | Port Townsend WA 98368 | |
| | | |
| SPIN# | N/A | |
| UBI# | N/A | |
| TIN# | N/A | |
| 24 X 7 Technical Contact Phone # (District Ability to Contact Provider) | N/A | |
| 24 X 7 Customer Contact Phone # (Customer Ability to Contact Provider) | NoaNet Network Operations Center (NOC) - 866.662.6380 | N/A |
| Liability Insurance Carrier | Public Utility Risk Management Systems (800) 562-5226 | |