

OPEN ACCESS PROVIDER AGREEMENT



THIS AGREEMENT, made and entered into effective as of the date signed below, by and between _____, a corporation/limited liability company/limited liability partnership/general partnership/limited partnership/other (specify: _____), organized under the laws of the State of _____, hereinafter called "**Customer**," and **Public Utility District No. 1 of Jefferson County**, a Washington State Public Utility District, hereinafter called "**JPUD**". This Agreement becomes effective upon signature by both parties, the Effective Date. This Agreement expires one year after the Effective Date.

RECITALS: Customer desires to obtain Communication Transport Services ("CTS") on JPUD's Open Access Broadband Network; and

JPUD agrees to provide CTS and allow Customer to terminate its signal cable in facilities generally described in an attached associated Service Request.

Customer agrees to provide its services offered pursuant to this Agreement on an Open Access basis consistent with the Broadband Service Policies adopted by JPUD.

NOW, THEREFORE, Customer and JPUD, in consideration of mutual conditions and covenants herein after described, do agree as follows:

Overview: This Agreement states the general terms and conditions by which JPUD will deliver, and Customer will receive, any or all CTS provided by JPUD. This Agreement is intended to cover any and all CTS ordered by Customer and provided by JPUD. Customer may use services only for authorized and lawful purposes.

1. **Delivery of Services:** By submitting a Service Request, Customer agrees to take and pay for, and, by accepting the Service Request it becomes a Service Order, and JPUD agrees to provide the services(s) during the term described on the Service Order. JPUD has the right to limit the manner in which any portion of its network and facilities ("Network" or "JPUD Facilities") is used in order to protect the technical integrity of the Network. JPUD is not liable or responsible for content, errors in transmission, or failure to establish connection.
2. **Installation and Interconnection of Services:** Other than the facilities, termination equipment or other devices provided by Customer, and unless otherwise provided elsewhere in this Agreement or any attachments hereto, JPUD will pay for, provide, install, maintain, operate, control, and own any equipment, cable or facilities connected

to the Network ("System Equipment"), which equipment at all times remains JPUD's personal property, regardless of where located or attached. JPUD may change, replace or remove the System Equipment, regardless of where located, so long as the basic technical parameters of the service are not altered, and this Agreement constitutes Customer's consent to such change, replacement or removal. Customer may not rearrange or move or disconnect the System Equipment and is responsible for any damage to or loss of System Equipment caused by Customer's negligence or willful misconduct or that of its end users. JPUD has no obligation to install, maintain or repair any equipment owned or provided by Customer, except as may be specifically provided herein. If Customer's or an end user's equipment is incompatible with service, 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 services to Customer or other parties with whom JPUD contracts. If, in responding to a Customer initiated service call, JPUD reasonably determines that the cause of such service call is a failure, malfunction or inadequacy of Customer provided equipment or software, Customer will pay JPUD for such service call at JPUD's then prevailing rates.

JPUD may reconfigure, reprogram, substitute, rearrange or otherwise change any JPUD Facilities, whether such JPUD Facilities are on 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 Customer without Customer's knowledge or consent. Although no specific advance notification period is applicable, JPUD will use its best efforts to notify Customer of the planned timing of such activities and will use reasonable efforts to perform such activities at a time that is agreeable to Customer (except where emergency conditions exist or where such change is required by a governmental agency or other authority to take place immediately).

3. **Term:** Subject to the provisions of Sections 11 and 12, the initial term for each service will commence on the date indicated in the applicable Service Order. Thereafter, the service automatically renews for an additional 1-year term unless terminated by either party upon no less than 30 days' written notice prior to the end of the initial term, any time after the initial term, or unless otherwise agreed to in the Service Request. Any subsequent or renewal terms shall assume the same terms and conditions as the initial term unless otherwise stated in the Service Request. Written notice of termination shall be provided as required in Section 25. Upon termination of this Agreement, all rights of Customer to order new services cease and JPUD has no further obligations to furnish new services to Customer.
4. **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 System Equipment needed to provide services ordered by Customer,

JPUD will notify Customer that the services are available for Customer's use. These services are subject to but are not limited to a Monthly Recurring Charge ("MRC") as set forth in Service Order. JPUD reserves the right to change the MRC for such services at any time, after the initial term hereof upon 25 days prior written notice to Customer. The MRC does 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. JPUD reserves the right to recover any additional installation charges accrued during installation.

5. **Interest:** 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.
6. **Early Termination Charges:** If (a) Customer terminates this Agreement or any Service Order hereunder for reasons other than Cause; or (b) JPUD terminates this Agreement or any Service Order hereunder pursuant to Sections 11 or 12, then Customer will pay, within thirty (30) days after such termination: (i) all accrued but unpaid charges incurred through the date of such termination, plus (ii) an amount equal to fifty percent (50%) of the "MRC" for the then current term remaining in the unexpired portion of the then current Service Order, plus (iii) a pro rata portion of any and all credits received by Customer. If Customer desires to cancel a Service Order prior to accepting the services the following conditions apply, (I) where a Service Request is canceled by Customer prior to the start of any design work or installation of facilities, no charge applies, (II) when a service that requires special design work is canceled after the design work has begun, JPUD will charge an amount equal to the cost incurred for the associated design work time and materials to date, and (III) if cancellation is requested after completion of an installation, it will be treated as an early termination of service and is pursuant to the terms and conditions of this Section 6. In the event of early termination by either Party, Customer shall not be entitled to reimbursement of fees already paid to JPUD and shall not be entitled to receive services from JPUD as specified in the Agreement.
7. **Limitation of Liability:** The total liability of JPUD to Customer in connection with this agreement, 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 JPUD under this agreement for the one (1) month period prior to accrual of the most recent cause of action. In no event shall JPUD be liable for special, punitive, consequential, or incidental damages, including without limitation, lost revenue, profits or other benefit whether by tort, contract, or otherwise.

8. **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, pandemics, vandalism, cable cut, adverse weather conditions, governmental action, labor difficulties and supplier failures. 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.
9. **Assumption of Risk:** Customer recognizes that use of the Premises and JPUD's System Equipment including its Network shall be at its own risk, and therefore, expressly assumes any risk arising from the exercise of any rights, privileges or obligations identified herein.
10. **Indemnity:** Customer agrees to indemnify, defend, and hold harmless JPUD, and its Commissioners, officers, directors, employees, agents, and other representatives of JPUD. Customer shall indemnify, defend, and hold harmless JPUD from all losses or damages arising from Customer's breach of this Agreement, 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 provisions of Section 7, JPUD 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 JPUD.
11. **Termination by JPUD:** JPUD may terminate this Agreement or any Service Order hereunder, or suspend services, with prior written notice, upon (a) failure of Customer to pay any amounts as provided herein within thirty (30) days of invoice date; or (b) Customer's breach of any provision of this Agreement or any law, rule or regulation governing the services; or (c) if Customer provides false information to JPUD regarding Customer's identity, creditworthiness, or its planned use of the services; or (d) if JPUD deems it necessary to take any reasonable and lawful action to protect the property and rights of JPUD, and existing and potential customers of JPUD's services.
12. **Termination for Cause:** Either Party may terminate this Agreement for Cause. "Cause" shall mean a breach by the other party of any material provision of this Agreement, 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.
13. **Resale of Services:** Any service provided under this Agreement may be resold to or shared with other persons or entities at the option of Customer, subject to compliance with any applicable laws or Commission regulations governing such resale or sharing. 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 JPUD of any unauthorized use. JPUD has no obligation to provide notice to or otherwise communicate with the users or customers of Customers. In all its service offerings, Customer shall follow JPUD's Broadband Service Policies in its service offerings to its end-user customers, which by this reference are incorporated as if fully set forth herein, and such policies may be updated by the Board of Commissioners from time to time.

14. **Assignment:** Customer shall not assign, pledge, transfer or otherwise convey all or any part of the rights and privileges granted by this Agreement in any manner without prior written consent of JPUD, which consent it will not unreasonably withhold. Any transfer of this Agreement by merger, consolidation or liquidation of Customer, or any change in the ownership of or power to vote the majority of its outstanding voting stock (whether effected in one or more transactions or events occurring over any 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 Agreement, and the Broadband Service Policies.
15. **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 JPUD which JPUD does not collect for any reason, upon assessment thereof by the applicable taxing agency, and demand by JPUD, Customer shall immediately remit the same to JPUD or the agency, as directed by JPUD, even if such assessment arises after the termination of this Agreement.
16. **Representations and Warranties:** Each party represents and warrants that it has full power and authority to execute, deliver, and perform its obligations under this Agreement. JPUD represents and warrants to Customer that any services provided hereunder will be performed in a manner consistent with that of other reputable providers of the same or similar services in the same locality. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, JPUD MAKES NO WARRANTY, 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.
17. **Governing Law:** This Agreement is governed by and subject to the laws of the State of Washington, excluding its principles of conflicts of law.
18. **Litigation:** If either party commences litigation under this Agreement, the prevailing party is entitled to reimbursement of its costs and attorneys' fees from the other party.

19. **Remedies not Exclusive:** The remedies provided in this Agreement shall be in addition to all other remedies to which JPUD 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.
20. **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 Agreement 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 Jefferson County Superior Court of the State of Washington.
21. **Entire Agreement:** This Agreement and any addendums, attachments, Service Orders, the most current Broadband Service Policies, 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 Agreement shall be valid unless in writing and signed by both parties. In the event of any inconsistency between the terms contained in this 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 Agreement unless the context indicates otherwise.
22. **Waivers:** No waiver of any provision or breach of this Agreement 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 this Agreement or any other breach of this Agreement.
23. **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.
24. **Confidentiality:** Customer shall treat all information made available or disclosed to, or developed or obtained by, Customer as the result of or related to this Agreement (“Confidential Information”) as confidential, and shall not disclose or use Confidential Information for the benefit of any person other than JPUD; provided however, that Customer shall have no obligation with respect to that portion of Confidential Information which is disclosed by JPUD to others without any restriction on use or disclosure, or which must be disclosed to others under law. If Customer receives a request for Confidential Information from a third party, Customer shall promptly notify JPUD in writing of such request, and if Customer in good faith believes it is obligated to disclose the requested Confidential Information, JPUD and/or Customer shall be given

the opportunity to seek judicial or other protection of such Confidential Information, with the cooperation of JPUD or Customer.

25. **Notices:** All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be delivered in writing via email.

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

Customer

By:

Name _____

Title: _____

Date: _____

Public Utility District No.1 of Jefferson County

By:

Name _____

Title: _____

Date: _____