

This Master Services Agreement (hereinafter “**MSA**”) is between CityLink Fiber Holdings, Inc., d/b/a CityLink Telecommunications, a New Mexico Corporation (hereinafter “**CityLink**”) and the individual or legal person whose name appears on the signature line of the Service Order Form or on any document that incorporates this Agreement by reference (hereinafter “**Customer**”), and is effective on the Effective Date as listed on the Service Order Form.

1. Defined Terms. Capitalized terms shall have the following meanings or the meanings assigned to them in the other Sections of the Agreement:

“**Agreement**” shall mean the Service Order Form(s), this MSA, the Service Level Agreement (SLA), any Addendum to this Master Services Agreement, and the AUP, collectively, and are hereby incorporated in this MSA by reference and together collectively constitute the Agreement. The Agreement is the complete and exclusive agreement between the parties regarding its subject matter and supersedes and replaces any prior agreement, understanding or communication, written or oral. Any conflict between the documents shall be resolved by reading the documents in the foregoing order of precedence.

“**AUP**” shall mean CityLink’s Acceptable Use Policy, posted and available on the Effective Date at <http://www.citylinkfiber.com/fine-print/>, as it may be amended from time to time in accordance with Section 6 (AUP) of this MSA.

“**Business Day**” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Mountain Standard Daylight Time, excluding any day that banks in the United States are required or permitted to be closed.

“**Effective Date**” shall mean the day that Customer accepts the Agreement, either by signing CityLink’s Service Order Form or this MSA, or by using the Service, which ever occurs first.

“**Services**” shall mean the provision of the service or services, as described in the Service Order Form(s), any Addendum, and the Service Level Agreement, and other services such as maybe agreed upon between the Customer and CityLink.

“**Services Commencement Date**” shall mean the date CityLink communicates with Customer advising them that Services are now available for Customer use.

2. Term. The initial term of the Agreement shall begin on the Services Commencement Date and continue for the period stated in the Service Order Form (the “**Initial Term**”). CityLink and Customer may agree to one or more additional terms having a fixed number of months to follow the expiration of the Initial Term (each a “**Renewal Term**”). If, upon expiration of the Initial Term, no Renewal Term has been established by agreement of the parties, the Agreement shall automatically renew for successive extended terms equal to the Initial Term, at the then current price for Services, (each an “**Extended Term**”) until CityLink or Customer provides the other with at least sixty (60) days advance written notice of termination, or until the Parties mutually agree on new terms. The Initial Term applicable to any Service Order Form executed subsequent to the Effective Date shall begin on the Services Commencement Date stated in that Service Order Form and continue for the period stated in that Service Order Form.

3. Services. Contingent upon Customer’s satisfaction of CityLink credit approval, which may require a deposit and CityLink’s verification of the information provided by Customer, CityLink agrees to provide Services in accordance with the terms of the Agreement, and as specified in the Service Order Form(s). Any required deposit will not accrue interest to the benefit of the Customer. In addition to the Services enumerated in the Service Order Form(s), CityLink may, from time to time, perform certain additional services on an hourly fee basis, customization of Services at Customer’s request, services as required in the AUP, and other professional technical services (collectively, “**Supplemental Services**”). Supplemental Services will be performed only with Customer’s advance approval and will be invoiced at CityLink’s then published rates or other rates approved in advance in writing by Customer, **provided, however, that CityLink may perform Supplemental Services for the fees stated in the AUP as necessary to remediate problems caused by AUP violations, without obtaining advance Customer consent.**

4. Payments. (a) Fees. Customer agrees to pay any and all fees enumerated in the Service Order Form(s), as well as CityLink’s standard fees for Supplemental Services as described in Section 3 (Services) above. CityLink’s first invoice to Customer shall include any installation fees, any required deposit, and the first month’s fee for Services. CityLink requires payment in full of its first invoice, before provisioning Services. Following the Services Commencement Date, monthly recurring fees shall be invoiced in advance on or around the first day of each calendar month, and are due upon receipt. Invoices for Supplemental Services, excess data transfer, voice long distance, reinstatement of service, switching and upgrade fees and other non-recurring amounts shall be due upon receipt. Customer acknowledges that it is responsible for excess data transfer fees that may result from a denial of service or other attacks directed towards Customers service(s). Credits due Customer by CityLink under the SLA may be given, at CityLink’s option, against the invoice for the month in which the event(s) occurred or the following month. SLA credits will only be applied to

those accounts in good standing. Payments must be made in United States dollars. CityLink may charge interest on amounts that are overdue by ten (10) days or more at the lesser of 5.0% per month or the maximum non-usurious rate under applicable law. CityLink may suspend Services upon two (2) Business Days' advance written notice to Customer if payment for Services is overdue. Fees not disputed within thirty (30) days of due date are conclusively deemed accurate. Customer agrees to pay CityLink then current reinstatement fee following a suspension of Services for non-payment of an invoice or an AUP violation. Customer may be required to place a deposit with CityLink to have service reinstated, said deposit shall not accrue interest to the benefit of the Customer. Customer agrees to pay CityLink's reasonable costs of collection of overdue amounts, including collection agency fees, attorney fees and/or court costs.

All payments are to be made payable to CityLink Fiber Holdings, Inc., and are non-refundable.

(b) Early Termination. Customer acknowledges that the amount of the monthly recurring fee for Services, as enumerated in the Service Order Form(s), is based on Customer's agreement and commitment to pay the fee for the entire Initial Term. In the event CityLink terminates the Agreement for Customer's breach of the Agreement in accordance with Section 14 (Termination), or Customer terminates Services other than for CityLink's breach in accordance with Section 14 (Termination), all fees due under the Agreement, including the monthly recurring fees for the remaining portion of the Initial Term, less any deposits, are due on the Business Day following termination of Services.

(c) Taxes. Customer is responsible for paying all taxes relating to Services, including but not limited to sales, VAT, franchise or license fees or similar tax imposed on the provision of Services, regardless of whether CityLink actually invoices for said taxes at the time Services are provided. If Customer is located in the European Union, Customer will remit VAT at the appropriate rate unless Customer provides CityLink with a valid VAT number or evidence acceptable to CityLink that Customer is using Services for a valid business purpose, or other acceptable documentation supporting the exclusion of VAT taxes. CityLink must be in physical possession of a valid tax exemption certificate prior to the removal of any tax charge. Any tax exemption certificates provided to CityLink shall only be valid for 12 months, and must be resubmitted to CityLink every 12 months. It is the responsibility of the Customer to assure a current and valid tax exemption certificate is on file with CityLink.

5. Customer Obligations. Customer agrees and understands that it is responsible for the following, at its expense:

(a) Security Precautions. Customer shall use prudent and reasonable security precautions in connection with its use of Services and, if Customer resells Services, require its clients and customers to use prudent and reasonable security precautions. Said prudent and reasonable security precautions shall include, but not be limited to, abiding by Visa CISP and MasterCard SDP security standards for credit-card transactions, changing default passwords for any and all devices attached to the Internet, and securing any and all access points to the Internet, including disabling open access points by placing passwords on wireless access points.

(b) Data Back Up. Notwithstanding any agreement by CityLink to provide data storage or back up services, Customer is solely responsible for creating and maintain a current copy of all content (including software, data and other information) stored on Customer's servers, that may be stored on servers located at Customer location or at a CityLink ColoLink™ facility, and store the copy in a reasonably secure location other than a CityLink server or location. Customer shall indemnify and hold CityLink harmless for any loss of data under any theory of law or cause of action.

(c) Law, AUP. Customer shall fully and completely comply with all laws applicable to the use of Services and with CityLink's AUP, and if Customer resells Services, require its clients and customers comply with all applicable laws and CityLink's AUP.

(d) Investigation of AUP. Customer shall cooperate with CityLink's reasonable investigation of any suspected violation of the AUP, and shall immediately respond to any actions deemed necessary and prudent by CityLink.

6. AUP. Customer agrees that CityLink may, in its reasonable commercial judgment consistent with industry standards, amend the AUP from time-to-time, which may modify any restrictions and conditions on Customer's use of Services. Amendments to the AUP are effective on the date of amendment, and Customer is solely responsible for reviewing the AUP from time-to-time, so as to become acquainted with any new restrictions or conditions placed therein. Customer agrees, acknowledges and understands that a lack of knowledge or notice in a change in the AUP shall not serve as an excuse for not abiding by any new terms in the AUP.

7. Suspension of Services. Customer agrees that CityLink may suspend Services to Customer without notice and without liability if: (i) CityLink reasonably believes that Services are being used in violation of the AUP; (ii) Customer fails to cooperate with any reasonable CityLink investigation of any suspected violation of the AUP; (iii) there is a denial of service attack on Customer's servers or other event for which CityLink reasonably believes that the suspension of Services is necessary to protect its network or its other customers; (iv) as requested by a law enforcement or government agency; or (v) as otherwise provided for in the Agreement.

8. Warranties.

(a) Reciprocal. The parties represent and warrant to one another that: (i) each has the power and authority and the legal right to enter into the Agreement and to perform its obligations under the Agreement; (ii) each has taken all necessary action on its part to authorize the execution and delivery of the Agreement; and, (iii) the execution and delivery of the Agreement and the performance of its obligations hereunder do not conflict with

or violate applicable laws or regulations, and do not conflict with or constitute a default under its charter documents. If Customer is an individual, Customer represents and warrants to CityLink that he or she is at least 18 years of age, and has read, understood and consents to the Agreement in its entirety.

(b) Customer. Customer represents and warrants to CityLink that: (i) the information Customer has provided and will provide to CityLink for purposes of establishing and maintaining Services is accurate; (ii) Customer will not use Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D:4 and D:3, as set forth in Supplement No. 1 to Part 740 of the United States Export Administration Regulations, or for any illegal purpose; and (iii) Customer shall not provide access to Services to any person (including any natural person or government or private entity) that is located in or is a national of any embargoed or highly restricted country under United States Export Regulations. Customer represents and warrants to CityLink that Services will not be used in a manner that a failure of the service could cause personal injury, loss of limb, loss of sight, or loss of life. Customer agrees to indemnify and hold CityLink harmless against any and all third-parties harmed from Customer's use of Services, regardless of the cause of harm, fault, legal theory or cause of action.

9. Unauthorized Use of Services. Customer is responsible for the security of Services provided pursuant to this Agreement, and CityLink agrees only to perform the specific security services described in the Service Order Form(s). Customer shall be responsible for any unauthorized use of Services by any person, and shall pay all fees incurred for its account by any person using Services, unless such unauthorized use results from CityLink's failure to perform its obligations hereunder the Agreement. Customer agrees to safeguard and protect any access codes, passwords, usernames, etc provided by CityLink for the use of Services under this Agreement.

10. Customer Premise Equipment. CityLink may provide certain equipment, hardware, software, cables, and electronics, (collectively "**Customer Premise Equipment** or **CPE**"), for the delivery of Services. All such equipment will at all times remain the unconditional and exclusive property of CityLink, regardless on how the equipment may be installed or attached to Customer's premises. CityLink shall at all times, have reasonable and uninhibited access to CPE for the purpose of repair, upgrade, removal, the provisioning of additional services and any other reasonable purpose as solely determined by CityLink. Customer understands and agrees that it is responsible for the safe keeping and security of the CPE, and should such CPE be damaged, lost, stolen, converted, misplaced or misappropriated, Customer will reimburse CityLink for the full value of the CPE.

11. Indemnification. The parties agree that the indemnification obligations defined in this Section shall be in lieu of and supersede any indemnification obligations that may otherwise exist by law.

(a) Customer. Customer agrees to indemnify and hold harmless CityLink, CityLink's affiliates, and each of their respective officers, directors, attorneys, agents, contractors, and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability or cause of action arising out of or related to: (i) the actual or alleged use of Services in violation of: (A) the AUP, (B) any other portion of the Agreement, or (C) applicable law, by any person regardless of whether such person has been authorized to use Services by Customer, except for unauthorized use that results from CityLink's failure to perform its obligations under the Agreement, or (ii) any dispute regarding the control of Customer's account with CityLink. Without limitation of the foregoing, Customer shall pay CityLink \$250.00 per hour for time reasonably spent by CityLink personnel to respond to third party complaints regarding Customer's use or alleged use of Services in violation of the AUP, including complaints under the Digital Millennium Copyright Act.

(b) Reciprocal. Each party agrees to indemnify and hold harmless the other party, the other party's affiliates, and each of their respective officers, directors, attorneys, agents, and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability arising out of or related to the indemnifying party's actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right.

(c) Procedures. A party seeking indemnification under this Section shall provide prompt notice of its claim for indemnification to the indemnifying party; provided, however, that failure to give prompt notice shall not affect the indemnifying party's obligations under this Section unless and to the extent that the failure materially prejudices the defense of the matter. The indemnified party will have the right to select counsel to defend it in respect of any indemnified matter under this Section; provided, however, that the counsel selected must be reasonably satisfactory to the indemnifying party. The indemnified party will keep the indemnifying party informed of the status of any litigation or dispute resolution procedure, will give reasonable consideration to the suggestions and requests of the indemnifying party with respect to the conduct of the litigation or dispute resolution procedure, and will not settle any matter covered by this Section without the prior consent of the indemnifying party, which shall not be unreasonably withheld. Notwithstanding anything in this Section to the contrary, if the indemnifying party is indemnifying multiple persons related to the subject matter of the indemnification, the indemnifying party shall have the right to seek consolidation of all such actions and to select counsel to defend the actions. Amounts due under this Section shall be paid as incurred and may be offset against other amounts due under the Agreement.

12. Disclaimer of Warranties.

CITYLINK DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY

CONFIDENTIAL AND PROPRIETARY

SECURE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT WITH THE USE OF THE SERVICE THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION, AND PROPERTY.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, CITYLINK DISCLAIMS ANY AND ALL WARRANTIES NOT EXPRESSLY STATED IN THE AGREEMENT INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. CUSTOMER IS SOLELY RESPONSIBLE FOR THE SUITABILITY OF THE SERVICES CHOSEN. ALL GOODS AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, EXCEPT AS EXPRESSLY STATED IN THE SERVICE LEVEL AGREEMENT OR OTHER PORTION OF THE AGREEMENT.

13. Limitation of Damages. The parties agree that the allocations of risk made in this Section are reasonable and that they would not enter into the Agreement without these limitations on liability.

THE CREDITS DESCRIBED IN THE SLA AND SERVICE ORDER FORM ARE CUSTOMER'S SOLE REMEDIES FOR CITYLINK'S FAILURE TO MEET THE GUARANTIES AND WARRANTIES STATED IN THOSE DOCUMENTS, PROVIDED THAT THIS PROVISION DOES NOT LIMIT CUSTOMER'S RIGHT TO TERMINATE THIS AGREEMENT AS PROVIDED IN SECTION 14 (TERMINATION) BELOW IF SUCH FAILURE(S) CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT.

EXCEPT AS DESCRIBED IN THE SLA, CITYLINK SHALL NOT BE LIABLE TO THE CUSTOMER FOR HARM CAUSED BY OR RELATED TO CUSTOMER'S USE OF THE SERVICES OR INABILITY TO USE SERVICES UNLESS THE HARM WAS CAUSED BY CITYLINK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, OR FOR DAMAGES THAT COULD HAVE BEEN AVOIDED BY THE USE OF REASONABLE DILIGENCE, ARISING IN CONNECTION WITH THE AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF CITYLINK AND ANY OF ITS INSURANCE PROVIDER(S), EMPLOYEES, AGENTS OR AFFILIATES, UNDER ANY THEORY OF LAW (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND INFRINGEMENT) OR CAUSE OF ACTION SHALL BE A PAYMENT OF MONEY NOT TO EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SERVICE FOR THE ONE MONTH PRIOR TO THE OCCURENCE OF THE EVENT(S) GIVING RISE TO THE CLAIM.

NO CLAIM MAY BE ASSERTED BY EITHER PARTY AGAINST THE OTHER PARTY WITH RESPECT TO ANY EVENT, ACT OR OMISSION THAT OCCURRED MORE THAN TWO (2) YEARS PRIOR TO SUCH CLAIM BEING ASSERTED.

14. Termination.

(a) Customer. The Agreement may be terminated by Customer prior to the expiration of the Initial Term, any Renewal Term, or Extended Term without liability (except for amounts due for Services through the effective date of termination) if: (i) CityLink fails in a material way to provide Services in accordance with the terms of the Agreement and does not cure the failure within ten (10) days of Customer's written notice describing the failure in reasonable detail, or (ii) CityLink materially violates any other provision of the Agreement and fails to cure the violation within thirty (30) days of Customer's written notice describing the violation in reasonable detail.

(b) CityLink. The Agreement may be terminated by CityLink prior to the expiration of the Initial Term, any Renewal Term, or Extended Term, without liability by CityLink if: (i) upon two (2) Business Days written notice if Customer is overdue on the payment of any amount due under the Agreement; (ii) Customer materially violates any other provision of the Agreement, including the AUP, and fails to cure the violation within thirty (30) days of a written notice from CityLink describing the violation in reasonable detail; (iii) upon one (1) Business Days notice if Customer's use of Services is used in violation of a material term of the AUP more than once; or (iv) upon reasonable notice if CityLink is threatened with a legal claim for copyright or patent infringement related to the provision of Services and is unable to modify Services in a way that avoids an ongoing risk of liability. In the case of termination in this Section under subparts (i) through (iii), Customer shall be liable, and owe CityLink, for all fees due under the Agreement, including the monthly recurring fees for the remaining portion of the existing Term, less any deposits, and shall be due on the Business Day following termination of Services.

15. Confidentiality.

(a) Confidential Information. Confidential Information is: (i) with respect to CityLink, CityLink's unpublished prices for Services, audit and security reports, server configuration designs, network designs, fiber network maps and designs, and other proprietary technology, (ii) with respect to Customer, content transmitted to or from, or stored by Customer on, CityLink's servers, and (iii) with respect to both parties, other information that is conspicuously marked as "confidential" or if disclosed in non-tangible form, is verbally designated as "confidential" at the time of disclosure and confirmed as confidential in a written notice given within one (1) day of disclosure; but excludes any information which is independently developed by

a non-disclosing party as shown by such party's written business records, is or becomes generally available to the non-disclosing party or the public other than through violation of the Agreement, or is required to be disclosed by law or regulation. Each party agrees not to disclose the other's confidential information to any third party except to its service providers, agents and representatives who need to know the information to represent or advise it with respect to the subject matter of the Agreement; and provided that such service providers, agents and representatives are bound by confidentiality restrictions at least as stringent as those stated in the Agreement.

(b) CityLink's Use of Customer's Name. Customer agrees that CityLink may publicly disclose that CityLink is providing services to Customer and may include Customer's name in promotional materials, including press releases and on CityLink's Website. Neither party may publicly use the other party's logo or other trade or service mark without that party's permission, said permission not unreasonably withheld.

(c) Requests for Customer Information. Notwithstanding anything to the contrary above, Customer agrees that CityLink may, without notice to Customer, (i) report to the appropriate authorities any conduct by Customer or any of Customer's clients, customers or end users, that CityLink reasonably believes violates any applicable law, or (ii) provide any information, including Confidential Information, it has about Customer, or any of its clients, customers or end users, in response to a formal or informal request from a law enforcement or government agency. CityLink may provide any information, including Confidential Information, it has about Customer, or its clients, customers or end users, in response to a formal request in a civil action that on its face meets the requirements for such a request.

16. Software. Customer agrees not to remove, modify or obscure any copyright, trademark or other proprietary rights notices that appears on any software provided by CityLink. Customer may not reverse engineer, decompile, or disassemble any CityLink provided software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation, or is permitted by the terms of any "open source" license that governs the use of the software. If the Service Order Form(s) indicates that CityLink uses Microsoft software to provide Services, Customer agrees to the Customer License Terms for Microsoft software that appear at <http://www.citylinkfiber.com/fine-print/mslic.pdf>, and agrees that if it resells such Services, it will require each of its clients or customers to agree to those terms.

17. Third Party Products. As a convenience to Customer, CityLink may from time to time arrange for Customer's purchase or license of third party software, services, and other products not included as part of Services, and/or may provide support to Customer in relation to those products. CITYLINK MAKES NO REPRESENTATIONS OR WARRANTY WHATSOEVER REGARDING SUCH THIRD PARTY PRODUCTS AND RELATED SUPPORT SERVICES AND THEY ARE PROVIDED "AS IS." Customer's use of third party software, services, and other products is governed by the terms of any license or other agreement between Customer and the third party.

18. Notices. Notices to CityLink under the Agreement shall be given in writing via first class mail or established and well-known express courier to Legal Counsel, CityLink Fiber Holdings, Inc., at CityLink's principal office address:

CityLink Fiber Holdings, Inc.
Attn: Legal Counsel
505 Marquette Ave NW, Suite LL-110A
Albuquerque, NM 87102

Notices to Customer shall be given via electronic mail to the individual designated as the Contact on the Service Order Form(s) or by means reasonable under the circumstances, including an e-mail to a last known contact. Notices shall be deemed received on the day delivered, or if that day is not a Business Day, on the first Business Day following the day delivered.

19. Miscellaneous.

(a) Solicitation of CityLink Employees. Customer agrees that it shall not solicit any CityLink employee for employment with Customer or any other person during the term of the Agreement and for twelve (12) months following termination of the Agreement. In the event of a violation of this provision, in addition to any other right CityLink may have at law or in equity, Customer shall make a one-time payment to CityLink in the amount of fifty percent (50%) of the employee's base remuneration for one year.

(b) Ownership. Each party acknowledges and agrees that the other party retains exclusive ownership and rights in its trade secrets, inventions, copyrights, and other intellectual property, and that CityLink shall own any intellectual property that it may develop in the course of performing Services. Customer does not acquire any ownership interest or rights to possess CityLink's server(s) or other hardware, and has no right of physical access to the hardware. Upon termination of the Agreement, Customer agrees to promptly release any Internet protocol numbers, addresses or address blocks assigned to Customer in connection with Services (but not any URL or top level domain or domain name) and agrees that CityLink may take steps to change or remove any such IP addresses.

(c) Governing Law, Jurisdiction, and Venue. The Agreement shall be governed by the laws of the State of New Mexico, exclusive of its choice of law principles, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. EXCLUSIVE VENUE FOR ALL DISPUTES ARISING OUT OF OR RELATING TO THE AGREEMENT SHALL BE THE STATE AND FEDERAL COURTS IN BERNALILLO COUNTY, NEW MEXICO, AND EACH PARTY IRREVOCABLY CONSENTS TO SUCH

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PERSONAL JURISDICTION AND WAIVES ALL OBJECTIONS THERETO.

(d) Modifications. The Agreement may be amended only by a formal written agreement signed by both parties, except for: (i) amendments of the AUP as described in Section 6, above; (ii) a Renewal Term that is agreed to by Customer via means of CityLink's online renewal process, and (iii) changes to the "Server Specifications," "Software and Services," or fees section of Service Order Form(s). The terms and conditions on either party's purchase order or other business forms are not binding on the other party unless they are expressly incorporated into a formal written agreement signed by both parties.

(e) Non-Waiver. A party's failure or delay in enforcing any provision of the Agreement will not be deemed a waiver of that party's rights with respect to that provision or any other provision of the Agreement. A party's waiver of any of its rights under the Agreement is not a waiver of any of its other rights with respect to a prior, contemporaneous or future occurrence, whether similar in nature or not.

(f) Captions. The captions in the Agreement are not part of the Agreement, but are for the convenience of the parties.

(g) Counterparts. Any documents signed in connection with the Agreement may be signed in multiple counterparts, which taken together will constitute one original.

(h) Survival. The following provisions will survive expiration or termination of the Agreement: fees, indemnity obligations, confidentiality obligations, provisions limiting liability and disclaiming warranties, provisions regarding ownership of intellectual property, these miscellaneous provisions, and other provisions that by their nature are intended to survive termination of the Agreement.

(i) Force Majeure. Neither party shall be in default of any obligation under the Agreement if the failure to perform the obligation is due to any event beyond that party's control, including, without limitation, significant failure of a portion of the local power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry.

(j) No Third Party Beneficiaries. There are no third party beneficiaries to the Agreement. Neither insurers nor Customer's clients or customers shall be deemed third party beneficiaries to the Agreement.

(k) Severability. In the event any term of this Agreement is held unenforceable by a court of competent jurisdiction, the remaining portion of the Agreement will remain in full force and effect, provided that the Agreement without the unenforceable provision(s) is consistent with the material economic incentives of the parties leading to the Agreement.

(l) Relationship between the Parties. The parties are independent contractors and not partners or joint ventures. Neither party is the agent of the other, and neither party may represent to any person that it has the power to bind the other on any agreement or contract. The Agreement is non-exclusive. CityLink may provide service to any person, including a competitor of Customer.

(m) Assignment. Customer may not transfer the Agreement without CityLink's prior written consent, said consent for assignment is contingent on the assignee meeting CityLink's credit approval criteria. CityLink may assign the Agreement in whole or in part.