

GENERAL TERMS AND CONDITIONS

For Enterprise Services provided by Conterra Ultra Broadband, LLC or its Affiliate(s)

This agreement with Conterra Ultra Broadband, LLC or its Affiliate(s), as specified in the Order, (“Conterra”) includes these General Terms and Conditions and the terms contained on the Enterprise Services Order Form (“Order”), any written addenda, including those terms incorporated by reference (collectively, the “Agreement”). Customer and Conterra may be referred to as the “Parties” and individually as a “Party”.

1. Defined Terms. The terms defined herein shall have the meanings set forth below, unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:

Affiliate. An entity that controls, is controlled by, or is under common control with Customer or Conterra, as applicable, including any such entity that becomes a Customer Affiliate or Conterra Affiliate after the date of the Agreement.

Customer. “Customer” shall be the entity listed on the Enterprise Services Order Form.

Effective Date. The date of the last signature to the Enterprise Services Order Form, unless otherwise specified.

Firm Order Commitment (“FOC”) Date. The date on which Conterra indicates the Service will be ready and available for acceptance testing by Customer.

In-Service Date. In-Service Date as used herein shall mean the earlier of: (i) actual use of the Services; (ii) the date the Service is installed and is running in test mode in accordance with the requirements of this Agreement, with no trouble tickets established by Customer, or (iii) seven (7) days after delivery of the circuits, facilities and/or Service to Customer’s premise in the event Customer fails to test such circuit, facilities and/or Service.

Order or Enterprise Services Order Form. An order for Service issued pursuant to the Agreement, and unless otherwise agreed, each Order shall specify the type of Service ordered; quantity of circuits; origination and destination points; Point of Demarcation; requested Service Date; Service Commitment Period, if any, or if applicable, a periodic term (e.g., month-to-month term); price; and billing address. An Order may be sent by mail or by facsimile or other electronic means.

Planned Service Outage. Any Service Outage caused by scheduled maintenance or planned enhancements or upgrades to Conterra’s network.

Point of Demarcation. The interface between Conterra and Customer, whether at Customer’s POP or other Customer- designated terminal equipment. Such point will be identified in the Order and designate the point at which Conterra’s responsibility to provide Service ends and Customer’s responsibilities begin.

Point of Presence (“POP”). A specific location where Customer originates and/or terminates its service.

Service or Services. Conterra provided telecommunications and related services.

Service Outage. A disruption or degradation of Service and/or Services that fails to meet the performance specifications set forth in the Agreement or applicable service level agreement.

Service Commitment Period or Term. The committed service term set forth in an Order.

2. Scope of Agreement; Orders. Customer may purchase Services pursuant to the terms and conditions set forth in the Agreement. Customer shall order Service(s) by submitting an Order.

3. Price, Credits and Billing. Charges specified in each Order will accrue beginning on the In-Service Date. When Service is initiated on a day other than the first day of the month or terminates on a day other than the last day of the month, the charge for that month will be determined by pro-rating the monthly payment based upon the number of days Customer received Service.

Conterra will invoice Customer for monthly recurring charges (“MRCs”) each month, in advance, as set forth in the applicable Order. Payment of undisputed amounts shall be made within thirty (30) calendar days from the date of receipt of each invoice and shall be sent to the address specified on the invoice. Customer shall provide Conterra with written notice of any disputed charge(s) within sixty (60) days after the date shown on the invoice or, subject to applicable law, Customer shall be deemed to have waived its rights to dispute. If any undisputed amounts due under this Agreement are not received by the due date, Conterra shall have the right to impose a late payment charge of the lower of 1.5% per month or the highest rate legally permissible thereon, said charge to be payable on demand and to be in addition to other remedies available under the Agreement or by law, including the right to modify the payments terms and/or require a security deposit.

4. Taxes. Customer shall be responsible for all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services, excluding taxes based on Conterra’s net income. Customer shall be responsible for the payment of all surcharges in effect from time to time, as required or permitted by applicable law, regulation or tariff.

To the extent a sale is claimed to be subject to a tax exemption, and Customer provides Conterra with a proper tax exemption certificate, Conterra agrees to exempt Customer from the collection of taxes to the extent warranted by such certificate(s). Failure to timely provide such certificate will result in no exemption being available to Customer for any period prior to the date that the Customer presents a valid certificate. Customer acknowledges and certifies that, for the duration of the Term, the interstate traffic (including Internet and international traffic) will constitute ten percent (10%) or less of the total traffic on the fiber network provided by CONTERRA.

5. Equipment, Installation and Acceptance Testing. Customer, at its expense, will maintain all of its equipment in a good and workmanlike manner. Conterra will, provide, install, operate, repair, maintain and control the equipment necessary to provide Service to Customer.

Unless otherwise set forth in an Order, Conterra will provide Service to the Point of Demarcation, per the Order.

Customer shall not adjust, remove, relocate, align, or attempt to repair, Conterra’s equipment except as expressly authorized in advance in writing by Conterra. Each Party will be liable for any loss or damage to the other Party’s equipment arising from that Party’s negligence, intentional act, or unauthorized maintenance.

Upon termination of the Agreement or an Order as otherwise provided herein, Conterra reserves the right to remove any of its equipment, returning Customer or its customers’ property, where applicable, to its original condition, reasonable wear and tear excepted.



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- 6. Planned Service Outages.** Conterra shall notify Customer in writing no less than ten (10) days prior to any scheduled Service Outage.
- 7. Termination.** In the event of a Customer breach of any term or provision of the Agreement, and subject to a thirty (30) day right to cure (unless otherwise subject to a different cure period expressly set forth in the Agreement), Conterra shall have the right, in addition to any other remedies it has under the Agreement or by law, at its option, to: (i) Suspend its performance or payment/credit obligations with respect to the affected Service; and/or (ii) Terminate the affected Service(s) without further liability upon providing written notice of such termination to the defaulting Party; and/or (iii) Terminate the Agreement without further liability upon providing written notice of such termination to the defaulting Party.
- 8. Early Termination Liability.** In the event Customer cancels or terminates any Service under the Agreement prior to the end of the Service Commitment Period for its convenience, or Conterra terminates any Service as a result of Customer's uncured breach in accordance with Section 8, Customer shall pay Conterra a termination charge calculated as follows: (i) if such termination is to be effective in year 1-2 of the Term, then the termination charge shall be equal to all remaining MRCs for the Service Commitment Period, in addition to a single payment equal to all third-party cancellation charges, (ii) if such termination is to be effective beyond the first 2 years of the Term, then such termination charge shall be equal to fifty percent (50%) of all remaining MRCs for the Service Commitment Period, in addition to all third party cancellation charges.
- 9. Limitation of Liability; Disclaimer of Warranties.** **CONTERRA'S LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF: (I) CUSTOMER'S MRCs DURING THE PERIOD IN WHICH THE DAMAGE OCCURS, OR (II) CUSTOMER'S MRCs MULTIPLIED BY SIX (6). IF CUSTOMER'S SERVICE IS INTERRUPTED, CONTERRA'S LIABILITY WILL BE LIMITED TO A PRO-RATA CREDIT FOR THE PERIOD OF INTERRUPTION. CUSTOMER AGREES THAT THE PRICING OF SERVICES REFLECTS THE INTENT OF THE PARTIES TO LIMIT CONTERRA'S LIABILITY AS PROVIDED HEREIN. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, ITS EMPLOYEES, SUBCONTRACTORS, AND/OR AGENTS, OR ANY THIRD PARTY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE DAMAGES, OR LOST PROFITS.**

The foregoing shall not apply to undisputed charges owed by Customer for Services otherwise provided in accordance with the terms of the Agreement. THE QUALITY OF SERVICE PROVIDED HEREUNDER SHALL BE CONSISTENT WITH INDUSTRY STANDARDS. CONTERRA MAKES NO OTHER WARRANTIES HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. Service Credits, Support and Maintenance.

Credits. If Customer experiences a Service Outage for more than 15 consecutive minutes, Customer will receive, at Customer's written request, one (1) day credit for each cumulative hour of Service Outage in any calendar month. Provided Conterra's network experiences at least one (1) hour of Service Outage in any given calendar month, additional Service Outage of less than one (1) hour will result in a proportional Service credit. (Example: 3 hours, 30 minutes of Service Outage will result in 3.5 days of Service credits.) Credits will appear on the next available monthly invoice. Customer shall be entitled to no more than one (1) month Service credit for any given month.

Conterra Support. Conterra shall, at its option and convenience, repair or replace any Conterra infrastructure not functioning in accordance with Conterra's contracted specifications for the Services. Customer support will be available on a commercially reasonable basis via telephone, via electronic mail or through Conterra's Internet site at www.conterra.com ("Internet Site"). Telephone numbers for such Customer support are posted on the Conterra Internet Site and are included in the Order.

If Customer's use of the Services requires that Conterra visit Customer's premises for assistance, repair, deployment or connection, Conterra shall be entitled to charge Customer Conterra's then prevailing rates for labor and related costs for each such visit, and Customer agrees to pay Conterra such charges as are reasonable and documented. Conterra does not undertake to correct or repair, and shall have no responsibility for the correction or repair of, software, hardware or equipment that Conterra does not supply. Conterra will undertake commercially reasonable network management, traffic analysis, operational procedures and user policies to support the applicable service level standards.

Conterra Response Times. Conterra shall provide a customer support service contact point. Conterra shall respond within an average of four (4) hours to any Customer notification made to this contact point of any failure of any Conterra infrastructure to meet the applicable service level standards or Services specifications.

11. Notices; Publicity and Disclosure. Except as otherwise expressly set forth, notices concerning the Agreement shall be in writing and shall be given or made by means of certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective Parties. A notice that is sent by facsimile shall also be sent by one of the other means set forth. Notices to Conterra shall be made to Conterra Ultra Broadband, LLC, 2101 Rexford Road, Suite 200E, Charlotte, NC 28211, Attention: Legal Department, Fax: 704.936.1801. Notices to Customer shall be sent to the address set forth on the applicable Order. Notices for change in ownership, change in name of firm, or change in mailing address must be given by either Party by mailing to the other Party within thirty (30) days of such change.

The Parties agree not to provide copies of the Agreement, or otherwise disclose the terms of the Agreement, to any third party without the prior written consent of the other; provided, however, that either Party may, without obtaining the other's consent, provide copies or make disclosures to prospective purchasers of the business of the Party or of any Affiliate or to prospective lenders for purposes of obtaining financing, so long as such third parties are bound by obligations of confidentiality; and to any regulatory or judicial body requesting such information or in connection with any professional service utilized by either Party.



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12. Intentionally Left Blank.

13. Compliance with Laws; Acceptable Use. Parties shall comply with all applicable federal, state and local laws, government regulations and orders, including, without limitation, laws, government regulations and orders with respect to employment. Customer agrees that all use of the Services shall be in accordance with the Conterra Acceptable Use Policy, as set forth at www.conterra.com and incorporated herein by this reference.

14. Force Majeure. Neither Party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the Delayed Party (“Condition”).

If any such Condition occurs, the Party delayed or unable to perform (“Delayed Party”), upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis during the continuance of such Condition (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period), provided, however, that the Party so affected shall use its best reasonable efforts to avoid or remove such Condition, and both Parties shall proceed immediately with the performance of their obligations under the Agreement whenever such causes are removed or cease.

15. Right of Access. Subject to its receipt of prior written notice, Customer shall permit reasonable access to its facilities in connection with the Service.

16. Choice of Law; Jurisdiction. The construction, interpretation and performance of the Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles that would require the application of the laws of any other jurisdiction and subject to the exclusive jurisdiction of its federal or state courts in North Carolina. Any suit brought by either Party against the other Party for claims arising out of the Agreement shall be brought in the court of the State of North Carolina, Mecklenburg County. The application of the UN Convention on Contracts for the International Sale of Goods is specifically excluded from the Agreement.

17. Assignment. Either party may assign this Agreement to an Affiliate or acquirer of all or substantially all of its assets without any advance consent from the other party, but each party shall provide the other with notice and complete all paperwork necessary to effectuate any change in ownership or other account changes. Otherwise, Customer may not assign its rights and obligations under this Agreement without Conterra's advance written consent. Any attempted assignment in violation of this provision is void.

18. Regulatory Change. In the event that a regulatory change materially alters the technical feasibility or economics of providing a Service, Conterra may amend any contract term or pricing in response. Conterra will notify Customer in writing when exercising this right, after which Customer will have thirty (30) days from the date of the notice to terminate the adversely impacted Services without incurring any termination liability by notifying Conterra in writing. If Customer does not respond in writing to Conterra within thirty (30) days, Customer waives its right to terminate without liability. Customer’s remedy pursuant to this Section shall not apply for rates otherwise agreed upon by the Parties as subject to change.

19. Miscellaneous. Relationship of Parties. Persons furnished by Conterra shall be solely the employees or agents of Conterra and shall be under the sole and exclusive direction and control of such Party. They shall not be considered employees of Customer for any purpose. Nothing contained in the Agreement is intended to give rise to a partnership or joint venture between the Parties or to impose upon the Parties any of the duties or responsibilities of partners or joint ventures. **Non-waiver.** Either Party's failure to enforce any of the provisions of the Agreement or any Order, or to exercise any option, shall not be construed as a waiver of such provisions, rights, or options, or affect the validity of the Agreement or any Order.

20. Severability. If any of the provisions of the Agreement shall be invalid or unenforceable, then such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement. The entire Agreement shall be construed as if not containing the invalid or unenforceable provision or provisions, and the rights and obligations of Conterra and Customer shall be construed and enforced accordingly. **Section Headings.** The headings of the several Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of the Agreement. **Survival of Obligations.** The respective obligations of the Parties under the Agreement that by their nature would continue beyond the termination, cancellation or expiration, shall survive any termination, cancellation or expiration, including, but not limited to, obligations to indemnify, insure and maintain confidentiality

21. Entire Agreement. The Agreement together with its exhibits constitutes the entire agreement between the Parties and cancels or supercedes all contemporaneous or prior agreements, whether written or oral, with respect to the subject matter of this Agreement. No modifications shall be made to the Agreement unless in writing and signed by authorized representatives of the Parties.

CONTERRA

CUSTOMER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____