

## BUSINESS CLASS SERVICE AGREEMENT

Kansas Fiber Network, LLC (hereinafter “KsFiberNet”) and Customer, as named on the Service Order, hereby agree to the following terms and conditions for KsFiberNet’s provision of services to Customer.

**1. EFFECTIVE DATE, SERVICES, AND SERVICES TERM.** This Business Class Service Agreement, along with the order for service (“Service Order(s)”), any exhibits attachments and the policies and procedures found on KsFiberNet’s website: [www.ksfiber.net/forms-policies/](http://www.ksfiber.net/forms-policies/), comprise the entire agreement between the parties (“Agreement”) for each service described in the Service Order (the “Service”). This Agreement supersedes any and all prior discussions, representations, memoranda, or agreements; oral or written, between the parties related hereto. KsFiberNet reserves the right, in its sole reasonable discretion, to reject any Service Order prior to KsFiberNet’s signature. This Agreement is fully binding and enforceable as of the date the Service Order(s) is/are signed by both parties (“Effective Date”). KsFiberNet agrees to provide to Customer (subject to availability and adequacy of underlying service) and Customer agrees to procure from KsFiberNet, the Services, at the locations set forth and for the number of months set forth (“Services Term”) as detailed on the Service Order(s) incorporated as part of this Agreement. The Services Term commences upon installation of the Services by KsFiberNet (“Installation Date”). KsFiberNet will use reasonable efforts to install Services on the date agreed upon by the parties; however, KsFiberNet does not guarantee that Services will be installed and provisioned on Customer’s desired due date. Upon the expiration of the Services Term, this Agreement and the Services will continue on a month-to-month basis until terminated by either party on thirty (30) days’ written notice to the other party.

**2. RATES, CHARGES, BILLING AND PAYMENT.** Rates and charges are set forth in the Service Order. Customer shall pay for all monthly service charges, plus one-time set-up, installation and/or construction charges as set forth in the Service Order. Unless stated otherwise herein, monthly charges for Services shall *begin* upon the Installation Date, and installation charges, if any, shall be *due upon* the Installation Date. Payments are due on the date set forth on the KsFiberNet invoice (“Payment Due Date”), provided, however, that no such due date is less than Net thirty (30) days. Customer must provide payment in full on the Payment Due Date. If Customer believes it has been billed in error or otherwise disputes a charge, Customer must notify KsFiberNet in writing within ninety (90) days of the date of the invoice containing the disputed charge. Customer’s notice must specifically detail the dispute and provide supporting documentation for the amount in dispute. KsFiberNet will investigate all disputes and notify Customer of the results of its investigation and, if appropriate, credit Customer’s account or notify Customer of denial of the dispute. KsFiberNet may assess a late fee of 1.5% per month (not to exceed the maximum rate allowed under state law) on any undisputed balances not paid when due or any disputed balances later found to be correct. Late fees may be assessed, as of the

original Payment Due Date, against any disputed amount denied by KsFiberNet. KsFiberNet has the option to suspend Services and/or to pursue any and all other legal remedies until payment is made. Termination of Services may follow. Customer will pay any and all costs incurred in collection of rates and charges due and payable, including reasonable attorney’s fees and all collection agency costs, whether or not a suit is instituted. All payments hereunder will be in U.S. currency.

This Agreement is subject to credit approval. Customer hereby authorizes KsFiberNet to conduct a credit search and agrees to provide KsFiberNet with information regarding payment history for communications services, number of years in business, financial statement analysis and commercial credit bureau rating. KsFiberNet may require Customer to tender a deposit up to the maximum permitted by law to guarantee payment hereunder. Such deposit may have, as an additional component, deposit for any KsFiberNet-provided Customer Premise Equipment. When Customer establishes acceptable credit history or upon termination of this Agreement, KsFiberNet will return the balance of the deposit, if any, to Customer along with interest as required by law.

KsFiberNet shall not be liable for any third party charges arising from or related to the termination of any previous agreement for services or the failure of Customer to terminate any previous agreement for services. If any property owner, under which Customer is a tenant, assesses a fee against KsFiberNet in order to, or as a result of, the provisioning of any Services to Customer, KsFiberNet may pass through such charges to Customer.

**3. POLICIES AND PROCEDURES.** KsFiberNet may change its policies and procedures found at [www.ksfiber.net/forms-policies/](http://www.ksfiber.net/forms-policies/) upon thirty (30) days’ notice to Customer. Use of KsFiberNet services after the thirty (30) day notice period shall be deemed consent to the changed policies and procedures.

**4. FRAUD.** Customer is responsible for payment of any charges incurred due to fraud, abuse, or misuse of the Services, whether known or unknown, to Customer. It is the Customer’s obligation to take all measures to ensure against such occurrences.

**5. TAXES, SURCHARGES, FEES AND ASSESSMENTS.** Customer is responsible for payment of any and all federal, state and local taxes, surcharges, or fees, as may be imposed from time to time (excluding KsFiberNet income taxes). KsFiberNet will collect all such taxes, surcharges, and fees unless Customer provides KsFiberNet with proof of exemption. Customer shall notify KsFiberNet in writing if Customer’s tax-exempt status changes during the term of this Agreement. Customer will indemnify KsFiberNet for any and

all costs, claims, taxes, charges, and surcharges levied against KsFiberNet relative to such exempt status. Surcharges and assessments, which are not required by regulatory agencies, but which KsFiberNet is permitted to charge to recover expenses, may be applied. All such charges will be set forth on a detailed invoice.

**6. COMPLIANCE WITH LAW.** This Agreement is subject to all applicable federal, state, and local laws, regulations, rulings, orders and other actions of governmental agencies having jurisdiction over the Service(s) (“Rules”), and the obtaining and continuance of any required approvals and/or authorizations. KsFiberNet will use good faith reasonable efforts to obtain, retain, and maintain such approvals and authorizations. If any such Rule adversely affects the Services or requires KsFiberNet to provide Services other than in accordance with the terms of this Agreement, either party may, without liability to the other party, terminate the affected Services upon thirty (30) days prior written notice to the other party. In performing their obligations under this Agreement, the parties will comply with all applicable Rules.

**7. SERVICES, MAINTENANCE AND UPGRADE OF FACILITIES.** Services will meet industry standards. KsFiberNet will maintain its facilities and equipment used to provide the Services as set forth in its policies and procedures, at no additional charge to Customer, except where work or service calls result from failure or malfunction in, or improper operation of, Customer’s facilities and/or equipment. In such event, Customer will reimburse KsFiberNet for the cost of the required maintenance at KsFiberNet’s standard time and material rate plus any taxes imposed upon KsFiberNet related to such maintenance, and Customer shall be responsible for the cost of repair or replacement of KsFiberNet equipment that is damaged by Customer’s actions or equipment.

KsFiberNet reserves the right to suspend Service for scheduled maintenance or planned enhancements or upgrades upon twenty-four (24) hours’ notice to Customer or to suspend Service for emergency repairs to KsFiberNet’s network without notice to Customer. KsFiberNet equipment will remain the sole and exclusive property of KsFiberNet or KsFiberNet’s assignee. Customer will not tamper with, remove or conceal any KsFiberNet identifying plates, tags or labels. Customer will indemnify, hold harmless and defend KsFiberNet against any liens placed on KsFiberNet equipment due to Customer’s action or inaction. Any lien will be discharged by Customer within ten (10) days of notice of filing. Failure to discharge any such lien is a material breach of this Agreement, and may result in immediate termination.

Customer will provide equipment compatible with the Services and KsFiberNet’s network and facilities. Customer will bear the costs of any additional apparatus reasonably required to be installed because of the use of KsFiberNet’s network or facilities. Upon termination of the Service, Customer shall, upon notice from KsFiberNet, return the KsFiberNet-provided equipment to KsFiberNet, if any, in accordance with the

instructions in the notice. Customer’s damage to the equipment or failure to return the equipment as directed, shall constitute Customer acceptance of ownership of and responsibility for the equipment and KsFiberNet may invoice Customer for the then fair market value of such equipment.

KsFiberNet reserves the right to substitute, change or rearrange any equipment used in delivering Services that does not affect the quality, cost or type of Services. KsFiberNet will manage its network in KsFiberNet’s sole discretion. Customer will provide all reasonable information, authorizations, and access required by KsFiberNet for the purpose of installing Services, performing routine network grooming, maintenance, upgrades, and addressing emergencies.

**8. SERVICE INTERRUPTION CREDITS.** Credits are subject to the limitation of liability set forth in Section 10, and shall only be given for disruption of Services in accordance with this Section 8. Upon request, Customer shall be entitled to a credit for any disruption that exceeds twenty-four (24) hours and for which KsFiberNet is the sole cause of such disruption and such disruption is not the result of (i) scheduled maintenance that occurs between the hours of 11:00 pm and 6:00 am; (ii) planned enhancements, or upgrades; (iii) acts or omissions by Customer, its employees, agents, contractors or end users; (iv) failure of facilities or equipment not provided by KsFiberNet; (v) failure of Customer provided power; (vi) KsFiberNet is not allowed access to the premises of Customer or Customer’s end-users necessary for repair or restoration of Service; and (vii) Force Majeure Events. Such credit shall be based upon the ratio of the duration of the service interruption (measured from the time the interruption is reported to or detected by Company, whichever occurs first) to the total time in a thirty (30) day month (“Total Time”). That ratio, multiplied by the monthly recurring charge (“MRC”) for the affected Service shall determine the amount of the credit allowance.

**For example:**

$$\frac{\text{Total Time} - \text{duration of service interruption}}{\text{Total Time}} * \text{MRC}$$

**9. DISCLAIMER/LIMITED WARRANTY.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, KSFIBERNET MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. KSFIBERNET DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

**10. LIMITED LIABILITY.** KSFIBERNET’S LIABILITY AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES AND/OR THIS AGREEMENT, WILL BE SOLELY LIMITED TO AN AMOUNT NO GREATER THAN THE AMOUNTS PAID BY CUSTOMER TO

KSFIBERNET DURING THE MONTH OF THE OCCURENCE OF ANY CLAIM. IN NO EVENT WILL KSFIBERNET BE LIABLE TO THE CUSTOMER FOR LOSS OF USE, INCOME OR PROFITS, LOSS OF REVENUES, LOSS OF SAVINGS OR HARM TO BUSINESS OR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES, REGARDLESS OF THE FORSEE ABILITY THEREOF.

**11. CUSTOMER WARRANTIES.** (a) The Customer represents and warrants that it is an entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms; (b) Customer represents and warrants that neither its equipment nor facilities will pose a hazard to KsFiberNet's equipment or facilities or create a hazard to KsFiberNet's personnel or customers or the public in general; (c) Customer represents and warrants that its use of the Services will comply and conform with all Rules and it will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities having jurisdiction over the Service(s); (d) Customer represents and warrants that it will not resell all or a portion of the Service(s) provided by KsFiberNet under this Agreement. Customer will indemnify and hold KsFiberNet harmless from any and all loss, liability, claim, demand, and expense (including reasonable attorneys' fees) related to Customer's violation of this Section 11.

**12. CONFIDENTIAL INFORMATION.** Customer Proprietary Network Information ("CPNI") shall only be disclosed in accordance with the Rules and KsFiberNet's policies and procedures.

In addition to the foregoing, the parties may have access to certain information, the ownership and confidential status of which is highly important to the other party and is treated or designated by one of the parties as confidential (herein referred to as "Confidential Information"). Neither party will disclose the other party's Confidential Information, directly or indirectly under any circumstances, to any third person without the express written consent of the other party, and neither party will copy, transmit, reproduce, summarize, quote, or make commercial or other use whatsoever of the other party's Confidential Information, except as may be necessary to perform its duties hereunder or as required by the Rules. Each party will exercise the highest degree of care in safeguarding the other party's Confidential Information against loss, theft, or other inadvertent disclosure and take all steps necessary to maintain such confidentiality.

**13. INDEMNIFICATION; INSURANCE.** Customer will indemnify, hold harmless, and defend KsFiberNet, its officers, directors, parent and/or affiliated companies, employees, agents and subcontractors from liabilities, claims or damages and expenses whatsoever (including reasonable attorney's

fees) arising out of or in connection with Customer's use of the Services and/or Customer's end-users or third parties use of the Services, resale, or sharing of the Services. Customer's indemnification obligations do not apply to claims for damages to real or tangible personal property or for bodily injury or death which is solely caused by KsFiberNet due to KsFiberNet's gross negligence or willful misconduct.

Customer will carry insurance in amounts and coverages as required by KsFiberNet and shall provide a certificate of insurance to KsFiberNet evidencing such. At no time nor under any circumstance is KsFiberNet responsible to Customer for damage to property or loss of use thereof in the event it fails to procure insurance as required hereunder.

**14. DEFAULT/TERMINATION.** Customer's use of the Services provided herein and any equipment associated therewith will not: (a) interfere with or impair service over KsFiberNet's network; (b) impair privacy of any communications over such network; (c) cause damage of any nature to KsFiberNet's assets or customers; or (d) be used in violation of any of KsFiberNet's policies and procedures, including the KsFiberNet Acceptable Use Policy ("AUP"), found at [www.ksfiber.net/forms-policies/](http://www.ksfiber.net/forms-policies/). KsFiberNet may immediately suspend or terminate, without liability, the Services for any violation of these provisions. If Services are suspended pursuant to this Section 14, reconnection charges may apply.

Except as set forth above, if either party violates any provision of this Agreement the non-defaulting party may send the defaulting party written notice detailing the default. The defaulting party will have: (a) ten (10) days from the date of the written notice to cure a payment default, or (b) thirty (30) days from the date of the written notice to cure a non-payment default. If the defaulting party fails to cure, the non-defaulting party may terminate this Agreement and any Services hereunder upon notice or pursue any and all other legal remedies. For purposes of clarity, Customer shall be deemed to be in default, and KsFiberNet may invoke its rights in this Section 14, if Customer makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; or, if an involuntary petition in bankruptcy or other insolvency action against Customer is filed and not dismissed within sixty (60) days.

If Customer terminates this Agreement or all or any part of the Services at any time after the Effective Date, or if KsFiberNet terminates this Agreement as a result of Customer's uncured default, KsFiberNet may charge Customer an early termination fee equal to and including any or all of the following: (a) 100% of the total MRC, surcharges and taxes for the Services Term then remaining for months 1-12 of the Service Term, plus 75% of the remaining MRC that would have been incurred for the Service for months 13 through 24, plus 50% of the remaining MRC that would have been incurred for the Service for months

25 through the end of the Service Term, if applicable; and (b) any unpaid activation, installation and/or special construction charges and any third party termination charges related to the installation or cancellation of any off-net service; and (c) all other fees or costs, whether previously waived or not, less amounts already paid. Customer acknowledges that KsFiberNet's damages for early termination would be difficult to determine and the termination charge(s) constitutes liquidated damages and are not intended as a penalty but as a mutually-agreed upon amount representing, but not limited to, lost revenue, proportionate or actual third party costs and capital expenditures, and internal costs. All such amounts will become immediately due and payable by Customer to KsFiberNet.

Customer will not be liable for the early termination fees set forth above if KsFiberNet defaults under the Agreement or if Customer orders from KsFiberNet, at the time of Service termination, services of equal or greater MRC than the Services terminated and the new services are approved by KsFiberNet. Separate recovery for the same damages is not permitted under this Agreement by either party.

**15. FORCE MAJEURE.** In the event that either party's performance is delayed, prevented, or inhibited because of any Act of God, fire, casualty, delay or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut-down of facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any third party communications or computer network or any other cause beyond such party's reasonable control, the party's performance will be excused and the time for the performance will be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event will not constitute grounds for a declaration of default by either party hereunder.

**16. GENERAL.** Except as otherwise permitted herein, any amendment must be in writing and signed by the parties hereto. Electronic or facsimile copies of this Agreement and any amendments or modification hereto, including electronic or facsimile signatures, will be accepted by the parties as originals. The failure of either party to insist upon the performance of any provision or to exercise any right granted hereunder, will not be construed as a waiver of such provision(s), and the same will continue in full force. If any provision hereof is held to be invalid, void, or unenforceable, the remainder of the provisions will nevertheless remain unimpaired and in effect. All notices to Customer under this Agreement will be in writing and will be made by one or more of the following methods: U.S. mail, overnight delivery, certified mail with return receipt requested, electronic mail, or on Customer's invoice. Notices to Customer will be sent to the address of record, and in the event of multiple addresses, to the address of the parent account. In the case of a notice to KsFiberNet, all notices under this Agreement will be in writing and will be made by personal delivery, overnight delivery, or certified mail, return receipt requested to the President, Kansas

Fiber Network, LLC, 8201 E 34<sup>th</sup> Street Cir N, Bldg. 1500, Wichita, KS 67226-1409. The various rights and remedies given to or reserved by either party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach or any provision be considered a condonement of any continuing or subsequent breach of the same provision. Customer may not assign its obligations hereunder without the prior written consent of KsFiberNet, which will not be unreasonably withheld. This Agreement will be governed by and interpreted in accordance with the laws of the State of Kansas, irrespective of its choice-of-law principles. Any action against a party arising out of this Agreement shall be brought, exclusively, in the state or federal courts in Sedgwick County, KS. Nothing in this Agreement is intended to, or shall be construed, as creating a partnership or any third-party beneficiaries. The provisions of Sections 2, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 shall survive termination. KsFiberNet reserves the right to revise the terms and provisions of all of its policies and procedures as it deems appropriate and this Agreement is subject to all revisions.