

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated November 30th, 2016 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Frontier Communications of America, Inc. on behalf of itself and its Affiliates, a Connecticut Corporation ("Contractor"). For the purposes of this Agreement, Affiliate means an entity controlled by, controlling, or under common control with Contractor. City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. City issued Request for Proposals No. 1074-16 on June 24, 2016, seeking proposals for the provision of Internet access services.

B. Contractor submitted a proposal dated July 11, 2016 in response to RFP No. 1074-16.

C. City desires to utilize the services of Contractor as an independent contractor to provide Internet access services.

D. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

E. City desires to retain Contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

#### 1. Contractor's Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services (the "Services"), attached as **Exhibit A and Exhibit C**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Justin Mewhinney, Account Executive (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Time for Performance. Contractor shall commence and perform all Services in conformance with the project timeline, set forth in **Exhibit A**.

D. Standard of Performance. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

**2. Term of Agreement.** The term of this Agreement shall be from the Effective Date until the date that is three (3) years after the Commencement Date, unless sooner terminated as provided in Section 12 of this Agreement. The Commencement Date shall be the date that the Internet connectivity specified in the Scope of Services has been delivered, tested by City staff and deemed to be fully functional and operational, as reasonably determined by the City Representative. The Parties anticipate that the Commencement Date will occur within 90-120 days after the Project Kick Off Meeting Date as specified in Exhibit A, Scope of Work. The City Manager shall have the option, in his sole discretion, to extend the term for up to two additional 1-year periods.

### **3. Compensation.**

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Contractor at the monthly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. No compensation is due for the period prior to the Commencement Date. In no event shall Contractor be paid more than \$4,485 per month (\$3900 monthly reoccurring charge and applicable monthly government taxes) (the "Maximum Compensation").

B. Expenses. The amount set forth in paragraph 3.A. above shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

B. Additional Services. City shall not allow any claims for additional Services performed by Contractor, unless the City Council or City Representative, if applicable, and the Contractor Representative authorize the additional Services in writing prior to Contractor's performance of the additional Services or incurrence of additional expenses. Any additional Services or expenses authorized by the City Council or City Representative shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional Services and expenses in accordance with Section 4 of this Agreement.

#### **4. Method of Payment.**

A. Invoices. Contractor shall submit to City an invoice, on a monthly basis for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly or monthly rates charged, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten (10) business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

C. Audit of Records. In accordance with Section 11 hereunder, Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this Agreement available during Contractor's regular working hours to City for review and audit by City.

**5. Independent Contractor.** Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

#### **6. Information and Documents.**

A. Contractor understands and agrees that, because City is a party to this Agreement, provisions of the California Open Records Law and other laws relating to public records may apply to records kept by Contractor. Contractor agrees to fully comply with such laws, and to cooperate with City in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records to City or others upon the request of City. Compliance and cooperation of Contractor shall be at its sole cost and expense.

B. Except but for Contractor's specific and properly marked proprietary and confidential information, Contractor covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and unless prohibited by law, shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a

subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

C. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

D. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Notwithstanding the foregoing, Information shall remain the property of the disclosing party and shall be returned to such party on request or upon termination of the business dealing between City and Contractor.

E. Each party's covenants under this Section 6 shall survive the expiration or termination of this Agreement.

**7. Conflicts of Interest.** Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar Services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 7 into any subcontract that Contractor executes in connection with the performance of this Agreement.

## **8. Indemnification.**

### **A. Indemnities for Third Party Claims.**

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers,

attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 8, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 8 shall survive the expiration or termination of this Agreement.

## **9. Insurance.**

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal and advertising injury and property damage and a general aggregate limit of \$2,000,000.00. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds. These limits can be satisfied through a combination of primary liability and excess liability policies.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section 9. These limits can be satisfied through a combination of primary liability and excess liability policies.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

4) Errors and Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 9 shall be issued by an insurer authorized to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under Section 9.

C. Additional Insured. The commercial general liability and automobile liability policies shall contain an endorsement naming City, its officers, employees, and agents as additional insureds.

D. Primary and Non-Contributing. The commercial general liability and automobile liability insurance policies required under this Section 9 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The commercial general liability, automobile liability, and workers' compensation insurance policies required under this Section 9 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. [Intentionally Deleted]

G. Cancellations to Coverage. For any of the insurance policies required under Section 9 of this Agreement, Contractor or its insurance carriers shall provide City with thirty (30) days prior written notice should the issuing insurer cancel the policy before the expiration date. Regardless whether or not notice of cancellation is made, failure of Contractor to provide the required coverages under this agreement and proof thereof for any period of this agreement shall constitute a breach of contract and inure to the City all rights of action set forth in paragraph H of this section.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 9 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 9, and if Contractor fails to obtain compliant insurance within five (5) days after receipt of written notice of such failure or non-compliance from City, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all required endorsements evidencing and effecting the coverages required under this Section 9. Contractor shall maintain current certificate(s) and required endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof within two weeks of the expiration of the coverages. Any failure of Contractor to provide the required coverages under this agreement and proof thereof for any period of this agreement shall constitute a breach of contract and inure to the City all rights of action set forth in paragraph H of this section.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that is appropriate for the type and level of service being provided.

## **10. Mutual Cooperation.**

A. Cooperation. Each party shall provide the other party with all pertinent Data, documents and other requested information as is reasonably available for each party's proper performance of the obligations required under this Agreement.

**11. Records and Inspections.** Contractor shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

## **12. Termination of Agreement.**

A. If City cancels any Service or Equipment prior to delivery of any Equipment or installation of the Service or Equipment, City shall pay a cancellation charge equal to one (1) month of MRC for the Service, plus the total costs and expenditures of the Contractor in connection with establishing the Service prior to Contractor's receipt of notice of cancellation which shall not exceed \$20,000.00 .

B. Following installation, City may terminate a Service or Equipment by providing at least thirty (30) days prior written notice to Contractor. All unpaid amounts shall be due upon termination of any Service identified in a Fee Schedule for any reason other than Non Appropriation of Funds. In addition, if any Service or Equipment is terminated by City for any reason other than Non Appropriation of Funds, breach by Contractor or by Contractor due to City's breach, then City shall pay Contractor a termination charge equal to the applicable MRC and all related taxes and surcharges multiplied by the number of months remaining in the Service Term. Partial months shall be prorated.

C. City agrees that Contractor's damages in the event of early termination will be difficult or impossible to ascertain, and that the charges identified in this Section are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

**13. Force Majeure.** Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other



casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

**14. Default.**

A. If the City Manager or his delegate determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Contractor with written notice of the default. Contractor shall have thirty (30) calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement. City shall have no obligation or duty to continue to compensate Contractor for any work performed after such termination.

**15. Notices.** Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Contractor's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

Attn: Sanford Taylor/IT Director  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5067  
Email: staylor@citymb.info

If to Contractor:

Frontier Communications  
111 Field Street  
Rochester, NY 14620  
Att: Contracts Management  
Commercial\_Sales\_Contract\_Requests@ftr.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney  
1400 Highland Avenue  
Manhattan Beach, CA 90266  
Telephone: (310) 802-5061  
Email: qbarrow@citymb.info

Frontier Communications  
General Counsel  
401 Merritt  
7 Norwalk, CT 06851

**16. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender

identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**17. Prohibition of Assignment and Delegation.** Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent; except that Contractor may assign this Agreement to any successor to the business of the party by merger, consolidation or sale of assets or to any corporation controlling, controlled by or under common control with Contractor; provided that, such assignee has the financial, operational, technical and other necessary capabilities and resources to accomplish, and agrees to accomplish, any and all obligations under this Agreement in a manner consistent with the terms and conditions of this Agreement.

**18. No Third Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**19. Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

**20. Final Payment Acceptance Constitutes Release.** The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within (30) thirty calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Contractor, its employees, sub-contractors and agents.

**21. Corrections.** In addition to the above indemnification obligations, Contractor shall correct, at its expense, all errors in the work which may be disclosed during City's review of Contractor's report or plans. Should Contractor fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Contractor. In addition to all other available remedies City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Contractor under this Agreement up to the amount of the cost of correction.

**22. Non-Appropriation of Funds.** Payments to be made to Contractor by City for services preformed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Contractor's services beyond the current fiscal year, the Agreement shall cover payment for Contractor's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year. If City exercises this termination right under the provisions of this Section 22, it may not during the unexpired original term of Services obtain like services from another provider.

**23. Exhibits.** Exhibits A, B, and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

**24. Entire Agreement and Modification of Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

**25. Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

**26. Word Usage.** Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

**27. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

**28. Business Days.** "Business days" means days Manhattan Beach City Hall is open for business.

**29. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or

relates to this Agreement (whether contract, tort or both) shall be resolved in a superior or federal court with geographic jurisdiction over the City of Manhattan Beach.

**30. Attorneys' Fees.** In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to seek the recovery actual attorneys' fees, experts' fees, and other costs, in addition to all other relief to which that Party may be entitled.

**31. Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

**32. Counterparts.** This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

**33. Corporate Authority.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of the Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

*[SIGNATURE PAGE FOLLOWS]*

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,  
a California municipal corporation


Contractor:

Frontier Communications of America, Inc.,  
a Connecticut Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By:  \_\_\_\_\_  
Name: Justin Mewhinnen  
Title: Account Executive

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_


ATTEST:

By: \_\_\_\_\_

Name: Liza Tamura

Title: City Clerk

APPROVED AS TO FORM:

By:  \_\_\_\_\_

Name: Quinn M. Barrow

Title: City Attorney

APPROVED AS TO CONTENT:

By: \_\_\_\_\_

Name: Bruce Moe

Title: Finance Director

## **EXHIBIT A SCOPE OF SERVICES**

Contractor shall provide the services specified in the RFP, which is incorporated herein by this reference. In the event of any conflict between the RFP, the Agreement, and the provisions of this Scope of Services, the provisions of this Scope of Services shall control. For purposes of this Scope of Services the City is referred to as "Customer" and Contractor is referred to as "Frontier".

### **Scope of Work**

#### **a. Specifications:**

i. Frontier Communications, Internet Service Provider ("ISP"), shall provide one (1) Gigabit of business class internet connectivity without bursting capabilities DIA (dedicated Internet Access) to each of the locations listed below:

- City Hall Data Center located at 1400 Highland Avenue, Manhattan Beach, CA 90266
- Public Works Yard located at 3621 Bell Avenue, Manhattan Beach, CA 90266
- Fire Station 2 located at 1400 Manhattan Beach Boulevard, Manhattan Beach, CA 90266

ii. ISP shall provide bandwidth 24 hours per day, 365 days per year.

iii. ISP shall have technical support 24 hours per day, 365 days per year.

iv. ISP shall maintain network monitoring capability and notify the City at the point of any disruption of service; at no time shall it take longer than thirty (30) minutes to send notification from the time the outage occurs.

v. ISP shall provide web-based bandwidth utilization reporting upon request.

vi. ISP shall grant the City primary and authoritative control over the services.

vii. ISP shall install all services and equipment included in the proposal.

xiii. Project Timeline. The ISP shall begin project implementation on a mutually agreed date i.e. kick off meeting. The ISP shall complete Internet service installation within project timeline. If installation interval for Ethernet services exceeds the time period provided by the ISP, the City shall be credited 100% of the monthly recurring charge for the service(s) being delayed. Frontier represents that its standard installation interval for Ethernet services is 90-120 days.

#### **b. Service Descriptions:**

**Ethernet Internet Access** is a data service comprised of a User Network Interface (UNI) and an Ethernet Virtual Connection (EVC) to the Internet which provides traffic separation, privacy, and security.

Obligation of Customer. Customer is responsible to ensure appropriate processes and protocols are in place for rate shaping to the amount of throughput ordered. Customer acknowledges that failure to comply with this responsibility may negatively impact Service performance.

Internet Acceptable Use Policy and Security. Customer shall comply, and shall cause all Service users to comply, with Frontier's Acceptable Use Policy ("AUP"), which Frontier may modify at any time. The current AUP is available for review at the following address, subject to change: [http://www.frontier.com/policies/commercial\\_aup/](http://www.frontier.com/policies/commercial_aup/). Customer is responsible for maintaining awareness of the current AUP and adhering to the AUP as it may be amended from time to time. Failure to comply with the AUP is grounds for immediate suspension or termination of Frontier Internet Service, notwithstanding any notice requirement provisions of the Agreement. Customer is responsible for the security of its own networks, equipment, hardware, software and software applications. Abuse that occurs as a result of Customer's systems or account being compromised or as a result of activities of third parties permitted by Customer may result in suspension of Customer's accounts or Internet access by Frontier. Customer will defend and indemnify Frontier and its affiliates with respect to claims arising from Customer's or third parties' usage of Frontier Internet access through Customer's hardware or software.

### **c. General Terms**

This Scope of Services will be managed for operational compliance by the IT Department. The City reserves the right to reasonable access to the contractor's personnel for the purposes of the Services provided under this Agreement. The City also reserves the right to permanently remove specific personnel from the City's premises for carelessness, incompetence, insubordination or otherwise objectionable and whose continued employment on City property is not in the best interest of the City.

1. Customer acknowledges that certain Services may be governed by tariff or price schedule filed with the Federal Communications Commission and/or the state public utilities commission. In the event of any inconsistencies between this agreement and an applicable tariff, the tariff shall control except with respect to pricing, early termination charges or cancellation charges for which this Agreement shall control.
2. Frontier will provide, maintain and repair the Frontier owned facilities and equipment used to provide the Services ("Frontier's Network"), up to and including the point at which Frontier's Network is made available for interconnection to Customer's premises equipment or inside wiring. Customer shall provide Frontier reasonable access to Customer's premises during normal business hours for the purpose of installing, inspecting, testing, rearranging, repairing or removing any Frontier Network components, including obtaining approvals, permits or licenses from third parties as necessary. Customer will cooperate in good faith and provide all reasonable information and authorizations required by Frontier for the purpose of installing Services and/or Equipment, performing routine network grooming, maintenance, upgrades, and addressing emergencies, including but not limited to design layout records of any Customer or third party network elements to be connected to the Services and Letters of Agency allowing Frontier to act on the Customer's behalf related to the Services and auxiliary third party services.

3. Only authorized agents and representatives of Frontier may perform maintenance work with respect to Frontier's Network. Any repair, alteration, configuration or servicing of Frontier's Network, Services or Equipment by Customer or third parties without the written consent of Frontier is a material breach of this agreement and cause for termination at Frontier's option.

4. If Frontier is unable to commence performance hereunder due to circumstances within Customer's control, any related costs incurred by Frontier, including but not limited to travel at normal rate and overtime labor rate expenses, will be reimbursed by Customer. Customer will reimburse Frontier for all costs incurred for installation, maintenance and repair if: (i) Frontier's Network is altered, maintained or repaired by any party other than Frontier, without Frontier's prior written consent, (ii) the malfunction of the Service or Equipment is the result of mishandling, abuse, misuse, improper operation, improper storage, or improper installation by anyone other than Frontier (including use in conjunction with equipment electrically or mechanically incompatible); or (iii) if the problem originated from a source unrelated to Frontier's Network.

5. Customer will provide (i) suitable building facilities (including but not limited to space, circuitry, power, backup power, and surge protectors) for the installation, operation, and maintenance of Frontier's Network in accordance with manufacturer's documentation and Frontier's installation standards and (ii) a well-lighted and safe working area that complies with all local safety standards and regulations.

6. The Services or Equipment may be connected with the services or facilities of other carriers. Frontier may, when authorized by Customer and as may be agreed to by Frontier, act as Customer's agent for ordering facilities provided by other carriers to allow such connection of Customer's locations to Frontier's Network or to the network of an underlying carrier or service.

7. Customer is responsible for all charges billed by other carriers or third parties. Frontier shall not be responsible for the installation, operation, repair or maintenance or performance of equipment, facilities, software or service not provided directly by Frontier. Customer is responsible to provide equipment compatible with the Service or Equipment and Frontier's Network, and any wiring required to extend a communications termination and/or demarcation at the Customer premises. Customer will provide suitable building facilities for the provision of Services in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes, and Frontier's installation standards.

8. Customer is solely responsible for the selection, implementation and maintenance of security features for protection against unauthorized or fraudulent use of the Services and Equipment. Customer is solely responsible for ensuring that all of Customer's data are adequately secured, documented and backed-up at all times. Frontier and its contractors are not responsible or liable for data loss for any reason.

9. Frontier will manage the Frontier Network in Frontier's sole discretion, and reserves the right to substitute, change or rearrange any equipment or facilities used in delivering Services or provisioning the Equipment. Frontier will endeavor to provide reasonable notice prior to any scheduled maintenance, planned enhancements or upgrades, which may result in a degradation or disruption in Service. Frontier reserves the right to suspend Service for emergency maintenance to Frontier's Network without notice to Customer. Customer shall designate a primary contact for receipt of such



notice. For purposes of this provision emergency maintenance refers to a disruption due to planned emergency maintenance or to the extent of an event outside Frontier's direct control. Frontier will endeavor to provide Customer notice of emergency maintenance as soon as practicable given the circumstances of the emergency maintenance.

#### **Limitation of Liability.**

The liability of Frontier and its affiliates related to this Agreement or the Service or Equipment provided under this Agreement, shall in no event exceed the limitations of liability set forth in the applicable tariffs, or regulatory rule or order. If there is no applicable tariff, regulatory rule or order, the total amount paid for the applicable Service or Equipment during the prior 12 months. Except as otherwise provided in Exhibit C, in cases of an Outage, Frontier's liability shall be limited to 1/720 of the MRC for each hour after Frontier is notified of the Outage. An "Outage" is an interruption in Service or use of the Equipment caused by a failure of Frontier's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside Frontier's direct control. Notwithstanding the above, Frontier will not be liable to Customer for interruptions in Services or Equipment caused by failure of hardware or software, failure of communications services, power outages, or other interruptions not within the complete control of Frontier. In addition, there will be no credits, reductions or set-offs against charges for Services or Equipment, or for interruptions of Services or Equipment, except as expressly set forth herein.

**IN NO EVENT WILL FRONTIER OR ITS AFFILIATES BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, OR FOR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. FRONTIER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS, LOSS OF USE, COST, CLAIM OR EXPENSE EXPERIENCED OR INCURRED BY CUSTOMER OR THIRD PARTIES RESULTING FROM THE USE OF THE SERVICES OR EQUIPMENT PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO DAMAGE, LOSS OR LOSS OF USE OF CUSTOMER DATA OR FRAUD BY THIRD PARTIES.**

This limitation of liability does not apply to Frontier's obligations of indemnification under Section 8 of the Professional Services Agreement.

Frontier warrants that Frontier's Network will be maintained in good working order. If any Service does not function substantially in accordance with applicable Service specifications as a result of Frontier's failure to maintain Frontier's Network (excluding degradation related to the acts or omissions of Customer or anyone using the Services, a force majeure event, or scheduled maintenance), Frontier's sole obligation is to repair the affected Service at Frontier's expense. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND FRONTIER DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO FRONTIER'S NETWORK, SERVICES OR EQUIPMENT PROVIDED PURSUANT TO THESE TERMS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FUNCTION. FRONTIER DOES NOT WARRANT THAT THE SERVICES OR EQUIPMENT OR ACCESS OR OPERATION OF THE SERVICES OR EQUIPMENT WILL MEET CUSTOMER'S NEEDS, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.

**This Agreement shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by Frontier. Customer agrees that Frontier has not made, and that there does not exist, any warranty, express or implied, that the use by Customer of Frontier's Services and/or the Equipment provided under this Agreement will not give rise to a claim of infringement, misuse, or misappropriation of any intellectual property right.**

**EXHIBIT B  
APPROVED FEE SCHEDULE**

**3 Year Term (option to extend with additional two 1-year periods)**

**Each location below will receive Class C block of IPv4 addresses:**

- **City Hall Data Center located at 1400 Highland Avenue, Manhattan Beach, CA 90266  
1Gb/1Gb Ethernet Internet Access, \$1250 monthly recurring charge;  
254 static Class C IPs, \$50 monthly recurring charge; \$0.00 Non-Recurring Charges,  
Installation charges waived;**
- **Public Works Yard located at 3621 Bell Avenue, Manhattan Beach, CA 90266  
1Gb/1Gb Ethernet Internet Access, \$1250 monthly recurring charge;  
254 static Class C IPs, \$50 monthly recurring charge; \$0.00 Non-Recurring Charges,  
Installation charges waived;**
- **Fire Station 2 located at 1400 Manhattan Beach Boulevard, Manhattan Beach, CA  
90266  
1Gb/1Gb Ethernet Internet Access, \$1250 monthly recurring charge;  
254 static Class C IPs, \$50 monthly recurring charge; \$0.00 Non-Recurring Charges,  
Installation charges waived;**

## **EXHIBIT C**

Ethernet SLA attached as separate Word Document but is hereby Exhibit C attached hereto and incorporated herein.



**Ethernet Data Service & Ethernet Internet Access  
Service Level Attachment  
Frontier Confidential**

This Ethernet Data Service & Ethernet Internet Access Service Level Attachment ("SLA") applies to Ethernet Services ordered pursuant to an Ethernet Internet Access Schedule, Ethernet Virtual Private Line (EVPL) Schedule, or Ethernet Local Area Network (E-LAN) Schedule executed by and between Insert Customer Name ("Customer") and Frontier Communications of America, Inc. ("Frontier"). The terms of this SLA apply exclusively to the Ethernet network elements directly within Frontier's management responsibility and control ("On-Net Service").

**1. Operational Objectives**

- A. **Availability:** Circuit Availability is the ability to exchange data packets with the nearest Frontier Internet PoP or On-Net Customer egress port (Z location) via the ingress port (A location). "Service Outage" occurs when packet transport is unavailable or when the output signal is outside the limits of this service guarantee. Availability is measured by the number of minutes during a calendar month that the On-Net Service is operational, divided by the total minutes in that calendar month. Calculation is based on the stop-clock method beginning at the date and time of the Customer-Initiated trouble ticket and ends when Frontier restores SLA-compliant circuit operation. Frontier's On-Net Service Availability commitment and applicable Service credit are outlined in Table 1A, subject to Sections 3 and 4 below.

Table 1A: Ethernet & EIA SLAs		
Circuit Availability (CA)		MRC Service Credit
Availability	99.95%	Below 99.95% Service Credit 30% MRC Below 95.0% Service Credit 50% MRC

- B. **Mean Time to Repair (MTTR):** MTTR is a monthly calculation of the average duration of time between Trouble Ticket Initiation (in accordance with Section 2B) and Frontier's reinstatement of the On-Net Service to meet the Availability performance objective. The MTTR objectives, and credits applicable to a failure to meet such objectives, are outlined in Table 1B, subject to Sections 3 and 4 below.

Table 1B: Ethernet & EIA SLAs		
Mean Time To Repair		MRC Service Credit
MTTR	4 Hours	10% MRC above 4 hrs 25% MRC above 6 hrs

**2. Performance Objectives**

- A. **Packet Delivery:** The Frame Loss Ratio (FLR) is a round trip measurement between Ingress and egress ports (NIDs) at the Customer's A and Z locations of packet delivery efficiency. FLR is the ratio of packets lost, round trip, vs. packets sent. Packet delivery statistics are collected for one calendar month. Credits will be based on Frontier's verification of packet delivery performance between NIDs at Customer's Service Location. The packet delivery SLA applies to CIR-compliant packets on Ethernet LAN / WAN circuits only. This packet delivery guarantee does not apply to Ethernet Internet services. Frontier offers three FLR Quality of Service (QoS) levels for Ethernet Data Service. The applicable SLA is based on the QoS level, as outlined in Table 1C. Ethernet Gold and Platinum are premium level services designed to support commercial customers' mission-critical and real time applications.

- **Silver QoS service** is Frontier's basic business class data service with improved performance across all standard performance parameters. Ethernet Silver SLA, termed Standard Data (SD) Service, is Frontier's upgraded replacement of Best Effort Ethernet designed specifically for the commercial customer.
- **Gold QoS service** is a premium business data service featuring enhanced performance parameters with packet forwarding priority set to *Priority Data*.
- **Platinum QoS service** carries Frontier's highest QoS performance parameters and includes voice grade packet forwarding priority set to *Real Time*.

Table 1C: Ethernet Frame Loss Ratio (FLR)		
Packet Loss QoS Level	Frame Loss Ratio (FLR)	MRC Service Credit
Silver [Standard Data Service]	0.10%	10%
Gold [Priority Data Service]	0.05%	15%
Platinum [Real Time Service]	0.01%	20%

If packet delivery performance falls below the applicable packet delivery percentage, Customer will be entitled to a Service credit as outlined in Table 1C, subject to Sections 3 and 4 below.

- B. **Latency:** Latency, Frame Transfer Delay (FTD), is the maximum packet delivery time measured round-trip between Customer's A and Z locations at the Committed Information Rate (CIR). Latency is measured across On-Net Service paths between Ingress and egress NIDs. Measurements are taken at one-hour intervals over a one month period. Credits are based on round-trip latency of 95<sup>th</sup> percentile packet. The Frame Transfer Delay SLA is limited to CIR-compliant packets on Ethernet LAN / WAN circuits ONLY. The FTD guarantee does not apply to Ethernet Internet services. Customer must meet the following criteria to qualify for Service credits on the EvPL Latency SLA outlined in Table 1D and Table 1E:

- Access loops at Customer locations A and Z must have optical fiber connectivity from the Serving Wire Center to the NIDs at each premise to qualify for Fiber Loop FTD SLA. Otherwise, Frontier will honor the Copper FTD SLA for the circuit.

- Each SLA guarantee is associated with ONLY one QoS Level. Frontier will honor the Service credit associated with the QoS level ordered for On-Net Services. Customer will be entitled to Service credits if the Service fails to meet applicable Performance Objective as outlined in Table 1D and Table 1E subject to Sections 3 and 4 below.

Table 1D: Ethernet Frame Transfer Delay (FTD): Fiber Loop			
Latency QoS Level	Round Trip Delay (< 50 Miles)	Round Trip Delay (> 50 Miles Intrastate)	MRC Service Credit
Silver [Standard Data Service]	20 ms	45 ms	10%
Gold [Priority Data Service]	12 ms	32 ms	15%
Platinum [Real Time Service]	9 ms	24 ms	20%
Interstate Latency metrics are engineered and set for specific solutions			
Table 1E: Ethernet Frame Transfer Delay (FTD): Copper Loop			
Latency QoS Level	Round Trip Delay (< 50 Miles)	Round Trip Delay (> 50 Miles Intrastate)	MRC Service Credit
Silver [Standard Data Service]	40 ms	65 ms	10%
Gold [Priority Data Service]	30 ms	50 ms	15%
Platinum [Real Time Service]	27 ms	42 ms	20%
Interstate Latency metrics are engineered and set for specific solutions			



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- C. **Jitter:** Packet Jitter, Frame Delay Variance (FDV), is the difference in end-to-end one way delay between selected packets in a data stream with any lost packets being ignored. Frontier guarantees average FDV (inter-packet differential) performance on On-Net Service transmissions will meet performance parameters outlined in the tables below. Credits are based on the monthly average Frame Delay Variance. This FDV SLA is limited to CIR-compliant packets on Ethernet LAN / WAN circuits ONLY. The FDV guarantee does not apply to Ethernet Internet services. Customer must meet the following criteria to qualify for Service credits on the EvPL Jitter SLA:

- Access loops at Customer Service Locations A and Z must have optical fiber connectivity from the Serving Wire Center to the NIDs at each Service Location to qualify for Fiber Loop FDV SLA. Otherwise, Frontier will honor the Copper FDV SLA for the circuit.
- Each SLA guarantee is associated with ONLY one QoS Level. Frontier will honor the Service credit associated with the QoS level ordered for On-Net Services, as outlined in the applicable Ethernet Service Schedule. Customer will be entitled to the credit as outlined in Table 1F and Table 1G if On-Net Services fail to meet applicable service level objectives, subject to Sections 3 and 4 below.

Table 1F: Ethernet Frame Delay Variance (FDV) - Fiber Loop				Table 1G: Ethernet Frame Delay Variance (FDV) - Copper Loop			
Jitter QoS Level	Average Jitter Per Site (< 50 Miles)	Average Jitter Per Site (> 50 Miles)	MRC Service Credit	Jitter QoS Level	Average Jitter Per Site (< 50 Miles)	Average Jitter Per Site (> 50 Miles)	MRC Service Credit
Silver [Standard Data Service]	≤ 9 ms	≤ 14 ms	10%	Silver [Standard Data Service]	≤ 9 ms	≤ 14 ms	10%
Gold [Priority Data Service]	≤ 4 ms	≤ 10 ms	15%	Gold [Priority Data Service]	≤ 4 ms	≤ 10 ms	15%
Platinum [Real Time Data Service]	≤ 2 ms	≤ 7 ms	20%	Platinum [Real Time Data Service]	≤ 2 ms	≤ 7 ms	20%

- **Interstate SLA guarantees:** Specific SLA parameters for Frame Loss Ratio (FLR), Frame Transfer Delay (FTD), and Frame Delay Variance (FDV) guarantees are determined by Frontier Region Engineering assessment for each Interstate circuit and not covered by this SLA.

**3. Service Outage Reporting Procedure.**

- A. Frontier will maintain a point-of-contact for Customer to report a Service Outage, twenty-four (24) hours a day, seven (7) days a week.
- B. When On-Net Service is suffering from a Service Outage, Customer must contact Frontier's Commercial Customer Support Center at 1-(888) 637-9620 to identify the Service Outage and initiate an investigation of the cause ("Trouble Ticket"). Responsibility for Trouble Ticket initiation rests solely with Customer. Once the Trouble Ticket has been opened, the appropriate Frontier departments will initiate diagnostic testing and isolation activities to determine the source. In the event of a Service Outage, Frontier and Customer will cooperate to restore the Service. If the cause of a Service Outage is a failure of Frontier's equipment or facilities, Frontier will be responsible for the repair. If the degradation is caused by a factor outside the control of Frontier, Frontier will cooperate with Customer to conduct testing and repair activities at Customer's cost and at Frontier's standard technician rates.
- C. A Service Outage begins when a Trouble Ticket is initiated and ends when the affected On-Net Service is Available; provided that if the Customer reports a problem with a Service but declines to allow Frontier access for testing and repair, the Service will be considered to be impaired, but will not be deemed a Service Outage subject to these terms.
- D. If Frontier dispatches a field technician to perform diagnostic troubleshooting and the failure was caused by the acts or omissions of Customer or its employees, affiliates, contractors, agents, representatives or invitees; then Customer will pay Frontier for all related time and material costs at Frontier's standard rates.

**4. Credit Request and Eligibility.**


- A. In the event of a Service Outage, Customer may be entitled to a credit against the applicable On-Net Service MRC if (i) Customer initiated a Trouble Ticket; (ii) the Service Outage was caused by a failure of Frontier's equipment, facilities or personnel; (iii) the Service Outage warrants a credit based on the terms of Section 1; and (iv) Customer requests the credit within thirty (30) days of last day of the calendar month in which the Service Outage occurred.
- B. Credits do not apply to Service Outages caused, in whole or in part, by one or more of the following: (i) the acts or omissions of Customer or its employees, affiliates, contractors, agents, representatives or invitees; (ii) failure of power; (iii) the failure or malfunction of non-Frontier equipment or systems; (iv) circumstances or causes beyond the control of Frontier or its representatives; (v) a Planned Service Interruption; or (vi) Emergency Maintenance. In addition, Customer will not be issued credits for a Service Outage during any period in which Frontier is not provided with access to Maintenance. "Planned Service Interruption" means any Service Outage caused by scheduled maintenance, planned enhancements or upgrades to the Frontier network; provided that Frontier will endeavor to provide at least five (5) business days' notice prior to any such activity if it will impact the Services provided to Customer. "Emergency Maintenance" means maintenance which, if not performed promptly, could result in a serious degradation or loss of service over the Frontier network.
- C. Notwithstanding anything to the contrary, all credit allowances will be limited to maximum of 50% of the MRC for the impacted On-Net Service, per month. For cascading failures, only the primary or causal failure is used in determining Service Outage and associated consequences. Only one service level component metric can be used for determining Service credits. In the event of the failure of the Service to meet multiple metrics in a one-month period, the highest Service credit will apply, not the sum of multiple Service credits.



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- D. This SLA guarantees service performance of Frontier's Ethernet data services only. This SLA does not cover TDM services [DS1, NxDS1, or DS3 services] or other voice or data services provided by Frontier. This SLA does not apply to services provided over third party facilities, through a carrier hotel, or over Frontier facilities which terminate through a meet point circuit with a third party carrier.
- E. The final determination of whether Frontier has or has not met SLA metrics will be based on Frontier's methodology for assessment of compliant performance. Service Outage credits are calculated based on the duration of the Service Outage, regardless of whether such Service Outage is the result of failure of the Service to meet one or more performance metric.
- F. Credit allowances, if any, will be deducted from the charges payable by Customer hereunder and will be expressly indicated on a subsequent bill to Customer. Credits provided pursuant to this SLA shall be Customer's sole remedy with regard to Service Outages.
5. **Chronic Outage:** An individual On-Net Service qualifies for "Chronic Outage" status if such service fails to meet the Availability objectives, and one or more of the following: (a) a single Trouble Ticket extends for longer than 24 hours, (b) more than 3 Trouble Tickets extend for more than 8 hours, during a rolling 6 month period, or (c) 15 separate Trouble Tickets of any duration within a calendar month. If an On-Net Service reaches Chronic Outage status, then Customer may terminate the affected On-Net Service without penalty; provided that Customer must exercise such right within ten (10) days of the On-Net Service reaching Chronic Outage status and provide a minimum of 15 days prior written notice to Frontier of the intent to exercise such termination right.

This SLA constitutes the entire agreement between the parties pertaining to the subject matter herein and supersedes all prior oral and written proposals, correspondence and memoranda with respect thereto, and may not be modified in any manner except by mutual written agreement.

Frontier Communications of America, Inc.	<Insert Customer's Name>
Frontier's Signature: 	Customer's Signature:
Printed Name: Justin Mewhinner	Printed Name:
Title: AE	Title:
Date: 11-30-16	Date: