

ADDENDUM TO BLUEPEAK BUSINESS SERVICES AGREEMENT
between
BLUEPEAK and LARAMIE COUNTY

THIS ADDENDUM is made and entered into by and between Laramie County, P.O. Box 608, Cheyenne, Wyoming 82003, (“COUNTY”) and Clarity Telecom, LLC d/b/a Bluepeak, 5100 S. Broadband Lane, Sioux Falls, SD 57108 (“BLUEPEAK”) (COUNTY and BLUEPEAK collectively known as “Parties” herein.) The Parties agree as follows:

I. PURPOSE

The purpose of this Addendum is to modify the “Bluepeak Business Services Agreement” (Agreement), which is attached hereto and incorporated herein. The Agreement consists of a “BUSINESS SERVICE ORDER” (1 page) dated January 24, 2025, and a “MASTER SERVICES AGREEMENT” (9 pages). The purpose of the Agreement is for BLUEPEAK to provide internet service at the Laramie County Senior Services Center, 4100 East Pershing Boulevard, Cheyenne, WY. For purposes of reference and interchangeability: COUNTY is referred to as “Customer” in the Agreement.

II. TERM

This Addendum shall commence on the date last executed by the duly authorized representatives of the parties to this Addendum and shall remain in full force and effect until the Agreement and Addendum are completely performed or terminated.

III. RESPONSIBILITIES OF COUNTY

COUNTY shall pay BLUEPEAK the sum of \$31,600.00, as provided for in the Agreement. That amount consists of a \$100.00 installation fee and 36 monthly payments of \$875.00. Payment for materials and services to be provided under the Agreement will be made upon receipt of the BLUEPEAK’S monthly invoice to the COUNTY. No payment shall be made before the last signature is affixed to this Addendum. Payments shall be in accordance with Wyo. Stat. § 16-6-602 (as amended).

IV. RESPONSIBILITIES OF BLUEPEAK

BLUEPEAK shall provide and complete the services set forth in the attached Agreement.

V. MODIFICATIONS OF AGREEMENT

1. Paragraph 1 (“Rates and Charges”) of Section 3 (“PAYMENT AND CHARGES”) is hereby modified to include the following: “The rates and charges shall not exceed the amounts agreed to in the ‘Responsibilities of County’ section of this Addendum without

further approval of the Board of County Commissioners.”

2. Paragraph 3 (“Taxes”) of Section 3 (“PAYMENT AND CHARGES”) is hereby modified to apply to the extent the COUNTY will be required to pay taxes as a government entity.
3. In paragraph 5 (“Billing”) of Section 3 (“PAYMENT AND CHARGES”), the last sentence is hereby **removed**.
4. Section 4 (“CREDIT APPROVAL”) of the Agreement is hereby **removed**.
5. Section 11 (“LIABILITY”) of the Agreement is hereby **removed** because the matters discussed in that section are resolved in General Provisions of this Addendum in paragraph 6.
6. Section 12 (“INDEMNIFICATION”) of the Agreement is hereby **removed** because the matters discussed in that section are resolved in General Provisions of this Addendum in paragraph 10.
7. Section 13 (“TERM AND TERMINATION”) is hereby **modified** as follows: paragraph 3 shall include the following at the end of (iii): “provided that, where feasible, Bluepeak will provide Customer with notice of such violation and the opportunity to correct the violation before taking action.” In addition, the Agreement and Addendum may be terminated upon mutual written agreement by both parties.
8. Section 15 (“GOVERNING LAW; ALTERNATIVE DISPUTE RESOLUTION”) of the Agreement is hereby **removed**, as is the paragraph on page 8 of the Master Services Agreement that references arbitration. That paragraph is in all capital letters and is located directly above the signature blocks. The matters discussed in section 15 and the referenced paragraph are resolved in General Provisions of this Addendum in paragraph 7.
9. In Section 16 (“ASSIGNMENT”), everything after “purchased” is **removed** and replaced with the following: “or acquired the Laramie County Senior Service Center at 4100 East Pershing Boulevard. Bluepeak may assign this Agreement or an Order, in whole or in part, without the Customer’s consent. Any assignee assumes all Bluepeak’s obligations under this Agreement.”
10. Section 18 (“MISCELLANEOUS”) of the Agreement is hereby removed because the matters discussed in that section are resolved in General Provisions of this Addendum in paragraph 2.
11. The “CUSTOMER ACKNOWLEDGEMENT” paragraph on page 9 of the Master Services Agreement is hereby **removed**.

All sections, paragraphs, or provisions “removed” under this Modifications section will have no force or effect on the Parties.

VI. GENERAL PROVISIONS

1. Independent Contractor: The services to be performed by BLUEPEAK are those of an independent contractor and not as an employee of the COUNTY. BLUEPEAK is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. BLUEPEAK assumes responsibility for its personnel who provide services pursuant to this Contract and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. BLUEPEAK is free to perform the same or similar services for others.

2. Entire Agreement: The Order and Agreement (10 pages) and this Addendum (5 pages) represents the entire and integrated agreement and understanding between the parties in regard to the subject matter herein and supersedes all prior negotiations, statements, representations and agreements, whether written or oral. Customer should also consult Bluepeak's website at the on-line location specified at the top of this Agreement to be sure that Customer is aware of the applicable Acceptable Use Policies, Network Management Practices, Privacy Policies, applicable tariffs, online product descriptions, and other policies or practices that are applicable to Customer's use of the Services (collectively "Policies"). Customer's use of the Services shall be deemed acknowledgment that Customer has read and agreed to the Policies as a part of this Agreement.

3. Modification: The Agreement and Addendum shall be modified only by a written agreement, duly executed by all parties hereto.

4. Invalidity: If any provision of the Agreement and Addendum is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties the provisions of the Agreement and Addendum are fully severable.

5. Applicable Law and Venue: The parties mutually understand and agree the Agreement and Addendum shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning the Agreement and Addendum or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming or the Federal District Court, District of Wyoming. This provision is not intended nor shall it be construed or interpreted to waive the COUNTY'S governmental immunity.

6. Governmental/Sovereign Immunity: Except for in any proceeding related to the enforcement of the terms and conditions of this Addendum and/or the Agreement, in which proceedings COUNTY agrees this Governmental/Sovereign Immunity shall not apply and the COUNTY shall not use Governmental/Sovereign immunity as a defense, COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. §

1-39-101 et seq., by entering into this Addendum and Agreement. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement and Addendum.

7. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of the Agreement and Addendum because of race, color, gender, creed, handicapping condition, or national origin.

8. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

9. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and the Agreement and Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in the Agreement and Addendum shall operate only between the parties to the Agreement and Addendum, and shall inure solely to the benefit of the parties to the Agreement and Addendum.

10. Indemnification: Each party to this Addendum and Agreement shall assume the risk of any liability arising from its own actions or omissions or the actions or omissions of its employees and agents at all times. Neither party agrees to insure, defend, or indemnify the other.

11. Notices: All notices required and permitted under the Agreement and Addendum shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

12. Addendum Controls: Where a conflict exists or arises between any provision or condition of this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

13. Compliance with Law: The parties agree that they shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

14. Assertion of Agency. By signing below for BLUEPEAK, the individual (hereinafter "signor") asserts they have authority to bind BLUEPEAK to this agreement and that any asserted entity is not defunct or dissolved.

[Remainder of page intentionally left blank, signatures on following page]

ADDENDUM TO BLUEPEAK BUSINESS SERVICES AGREEMENT
between
BLUEPEAK and LARAMIE COUNTY

SIGNATURE PAGE

LARAMIE COUNTY

By: _____ Date _____
Chairman, Laramie County Commissioners

ATTEST:

By: _____ Date _____
Laramie County Clerk

CLARITY TELECOM, LLC d/b/a BLUEPEAK

By:  _____ Date 3/24/2025
Signed by: Billy Parker
E3987F9992BB436...

This Agreement is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY:

By:  _____ Date 4-10-25
Laramie County Attorney's Office



Bluepeak Business Services Agreement

BUSINESS SERVICE ORDER

Name of Customer: Dominic Davis

Phone:

Name of Business: Laramie County Senior Service

Date: January 24, 2025

Physical Address: 4100 E Pershing Blvd Cheyenne WY 82001

Billing Address: 310 W 19th Street Cheyenne WY 82009

Contract Terms: 36 month(s)

Sales Rep: Melissa Johnson

Product	Line Description	New vs Existing	Qty	Sales Price	Install Fees	Monthly Charges
Data						
5 Static IPs	/29 static IP, Jumbo Fram, and BGP option	New	1	\$75.00	\$0.00	\$75.00
Bluepeak Executive Internet	Bluepeak Executive Internet	New	1	\$800.00	\$0.00	\$800.00
Inst Data	Inst Data	New	1	\$100.00	\$100.00	\$0.00
Pricing subject to approval after internal review				Total:	\$ 100.00	\$ 875.00

Special Instructions:	
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Promotional Offer Details:	
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Directory Listing Information - Address:			
Directory Listing:		YP Heading:	
Listing:		SIC Code:	
Phone:		YPH Code:	

This Service Order is subject to and is hereby incorporated by reference into the Business Services Agreement between the Customer named on this Service Order and Clarity Telecom, LLC d/b/a Bluepeak. You agree and understand that prices do not include taxes, fees, or surcharges, which may include government-imposed fees and taxes, government program fees (such as TRS and universal service), and non-governmental fees and charges (such as subscriber line charges, line fees, access charges and carrier service fees) will vary depending upon your service location and the services to which you subscribe. The taxes and fees may be changed at any time. During the initial term of this Service Order, your quoted MRC for Internet services will not change. Video service prices are subject to annual increases.

_____ (Initials)



BY ENTERING INTO AN ORDER WITH CLARITY TELECOM, LLC D/B/A BLUEPEAK, OR ANY OF ITS AFFILIATES (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "BLUEPEAK"), CUSTOMER HEREBY AGREES TO THE TERMS OF THIS MASTER SERVICES AGREEMENT (THIS "AGREEMENT"). ALL ORDERS AND ANY TERMS AND CONDITIONS, GUIDEBOOKS AND SERVICE GUIDES, PROVIDED ON BLUEPEAK'S WEBSITE, AS MODIFIED FROM TIME TO TIME, ARE INCORPORATED BY REFERENCE INTO THIS AGREEMENT AS IF THOSE DOCUMENTS ARE SET FORTH ORIGINALLY HERE, INCLUDING THE ACCEPTABLE USE POLICY, PRIVACY POLICY, NETWORK MANAGEMENT PRACTICES, AND GENERAL TERMS AND CONDITIONS. SEE <https://mybluepeak.com/terms-conditions/> TO REVIEW THE CURRENT VERSIONS OF SUCH DOCUMENTS. TO THE EXTENT THAT THERE ARE ANY INCONSISTENCIES OR CONFLICTS BETWEEN THIS ORDER AND SUCH ON-LINE DOCUMENTS, THIS AGREEMENT SHALL CONTROL. BY USING THE SERVICES, CUSTOMER ACKNOWLEDGES THAT IT HAS READ AND AGREES TO THE TERMS OF THESE DOCUMENTS.

1. DEFINITIONS

1. "Effective Date" is the date that the last Party signs the Agreement.
2. "Order" means a written, electronic, or verbal order, or purchase order governed by the terms and conditions of this Agreement, submitted, or confirmed by Customer and accepted by Bluepeak, which identifies specific Services; quantity ordered; Bluepeak's Agreement number, title, and execution date; billing address; ship to address; and service/installation address, as applicable. Verbal Orders are deemed confirmed upon Customer's written acknowledgement, or Customer's use, of a Service.
3. "Services" means wireline or wireless business communications services not governed by Tariffs, including basic or telecommunications services, information or other enhanced services, and non-regulated professional services provided by Bluepeak to Customer pursuant to an Order.

2. SERVICES AND FACILITIES

1. Bluepeak agrees to provide Customer with a broadband Internet connection, as provided in the accompanying Order during the Term of this Agreement. Bluepeak requires reasonable access to each Service location throughout the Term as necessary to provide the Services and to review, install, inspect, maintain, repair, or remove any Bluepeak-provided cabling, conduit, hardware, equipment, and other facilities used to provide the Services ("Facilities"). If Customer owns or controls the Service location(s), Customer hereby grants to Bluepeak permission to enter the Service location(s) in order for Bluepeak to fulfill its obligations and exercise its rights under this Agreement. If a Service location is not owned or controlled by Customer, Customer will obtain, with Bluepeak's reasonable assistance, an appropriate right of access for Bluepeak. If such right of access for Bluepeak is not obtained by either party, then Bluepeak may decline Customer's request for Services, or terminate or amend the affected Order with respect to the Service location that Bluepeak cannot access, without any liability to Customer. Bluepeak may perform, either before or after acceptance of an Order, an installation review (including a review of Customer's inside wiring) of each proposed Service location prior to installation of the Services to determine the serviceability of such network location and/or the need to extend Bluepeak's Facilities to provide the Services at the Service location. If during the installation review, review of available facilities and access, site preparation, or installation activities, Bluepeak determines that additional work is required to enable Bluepeak to deliver the Services to the Service location, Bluepeak will notify Customer of any additional Service charges in excess of the amounts previously specified in a quote or Order. Upon request, Customer shall provide Bluepeak with accurate site and/or physical network diagrams or maps of a Service location, including electrical and other utility service maps.

3. PAYMENT AND CHARGES

1. Rates and Charges. Customer will pay Bluepeak the rates and charges for the Services set forth in this Agreement and any Order under this Agreement, including all charges associated with establishing Customer's Services or related to Bluepeak's installation or provisioning costs.



2. **Rate Adjustments.** Bluepeak may impose additional fees, charges, or surcharges on Customer to recover amounts that Bluepeak is required or permitted to collect, or pay to others in support of, or to comply with, statutory or regulatory programs, plus a commercially reasonable amount to recover the administrative costs associated with such charges or programs.
 3. **Taxes.** Bluepeak's rates and charges for the Services do not include taxes, which shall be billed to and payable by Customer in addition to the Service charges. Notwithstanding any other provision of this Agreement, if Customer is required by law to make a deduction or withholding from any amount due to Bluepeak, or if Customer has an applicable exemption from certain taxes, then Customer must notify Bluepeak in writing and provide reasonable documentation evidencing the foregoing.
 4. **Invoicing.** Unless otherwise set forth in an Order, any and all invoicing for Services shall be submitted to Customer for payment within thirty (30) days of the Service being provided. Customer is responsible for all charges, no matter the interval at which they are billed. Any objection to billed charges must be reported to Bluepeak within sixty (60) days of the invoice date.
 5. **Billing.** Unless otherwise set forth in an Order, Bluepeak shall invoice Customer in advance at Customer's notice address specified in the Order (or at such other address of which Customer may advise Bluepeak in writing) for all Services and additional services provided during each calendar month or other mutually agreeable billing cycle. Customer shall pay Bluepeak for all Charges upon receipt of the invoice. Account is/will be considered past due thirty (30) days after invoice date and late fees will be assessed on the last business day of the month at 1.5% per month. Service is subject to suspension or termination if an account remains unpaid for a period of sixty (60) days or more from the date of billing. Customer agrees to reimburse Bluepeak for all reasonable expenses, including reasonable attorney's fees, for collection of past due accounts.
 6. **Disputed Invoice Charges.** If Customer disputes a charge in good faith, Customer may withhold payment of that charge if Customer makes timely payment of all undisputed charges within the payment period, as described in Section 3.5, and provides Bluepeak with a written explanation of the reasons for Customer's dispute of the charge. Customer must cooperate with Bluepeak to promptly resolve any disputed charge. If Bluepeak determines, in good faith, that the disputed charge is invalid, Bluepeak will notify Customer and, within five business days of receiving notice, Customer must pay the charge.
4. **CREDIT APPROVAL.** Bluepeak's provision of Services is subject to the credit approval of Customer. As part of the credit approval process, Bluepeak may require Customer to provide a deposit or other security. Additionally, during the Agreement Term, if Customer's financial circumstances or payment history becomes reasonably unacceptable to Bluepeak, Bluepeak may require adequate assurances of future payment as a condition of continuing provision of the Services. Customer's failure to provide adequate assurances required by Bluepeak is a material breach of the Agreement. Bluepeak may provide Customer's payment history or other billing information to any credit reporting agency or industry clearinghouse.
5. **ORDERS.**
1. Orders are binding only upon acceptance in writing by Bluepeak. Bluepeak will notify Customer of rejected orders.
 2. **Cancellation.** Customer may cancel an Order at any time before Bluepeak begins delivering the Services, but Customer must pay any actual costs Bluepeak incurs in connection with Customer's cancellation. After commencement of Services, the Order becomes non-cancellable and subject to all early termination fees.
6. **WARRANTIES.** EXPECT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE SERVICES PROVIDED BY BLUEPEAK UNDER THIS AGREEMENT ARE PROVIDED WITHOUT ANY REPRESENTATIONS, WARRANTIES, OR IMPLICIT WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, COMPATIBILITY OF SOFTWARE OR EQUIPMENT, OR ANY RESULTS TO BE ACHIEVED THEREFROM. WITHOUT LIMITING THE FOREGOING, BLUEPEAK MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE OR PRODUCT WILL BE ERROR-FREE, UNINTERRUPTED, OR OUTAGE-FREE, AND THE SERVICES AND PRODUCTS MAY BE



SUBJECT TO HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF THE CUSTOMER.

7. **EQUIPMENT AND FACILITIES.** Bluepeak shall not be responsible for the installation, operation, maintenance, repair or replacement of any Customer-provided communications equipment. Where such equipment is connected to the facilities furnished by Bluepeak pursuant to this Agreement, the responsibility of Bluepeak shall be limited to the furnishing of facilities offered under this Agreement and to the maintenance and operation of such facilities. Notwithstanding the above, Bluepeak shall not be responsible for: (a) the transmission or reception of signals by Customer-provided equipment or for the quality of, or defects in, such transmissions or reception; or (b) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.
8. **INSTALLATION.** Customer will reasonably cooperate with Bluepeak and its agents in connection with installation of the Services. Customer is responsible for damage to Bluepeak-owned facilities and equipment located on Customer premises, excluding damage caused by Bluepeak. Bluepeak may refuse to install Services or may discontinue and disconnect Services without notice, if any condition on Customer's premises is unsafe or likely to cause injury to any person using Services or if Customer is in breach of this Agreement.
9. **CUSTOMER RESPONSIBILITIES.**
 1. **Acceptable Use Policy (AUP).** With the purchase of Services that connect to the Internet, Customer must comply with Bluepeak's Acceptable Use Policy posted on its website and as amended from time to time.
 2. **Abuse and Fraud.** Customer will not use Services: (1) for fraudulent, abusive, unlawful, or destructive purposes, including unauthorized or attempted unauthorized access to, or alteration, abuse, or destruction of, Bluepeak or any third-party information; (2) in any manner that causes interference with Bluepeak's or another's use of the Bluepeak-provided network; or (3) for any other purpose not specifically authorized by this Agreement. Customer will cooperate promptly with Bluepeak to prevent third parties from gaining unauthorized access to the Services via Customer's facilities.
 3. **Reseller.** Customer represents that it is not a reseller of any telecommunication services provided under this Agreement as described in the Telecommunications Act of 1996, as amended, or applicable state law and acknowledges it is not entitled to any reseller discounts under any laws.
 4. **Security.** Bluepeak has adopted and implemented, and will maintain, a corporate information security program designed to protect Customer information, materials and data accessed and possessed by Bluepeak from loss, misuse and unauthorized access or disclosure. Such program includes formal information security policies and procedures. The Bluepeak information security program is subject to reasonable changes by Bluepeak from time to time. Bluepeak's standard service offerings do not include managed security services such as encryption, intrusion detection, monitoring or managed firewall. Customer is responsible for selecting and using the level of security protection needed for all Customer data stored or transmitted via the Service and using reasonable information security practices, including those relating to the encryption of data.
10. **PRIVACY AND CONFIDENTIALITY.**
 1. **PHI.** By providing Services, Bluepeak does not require or intend to access any confidential health related information of Customer's clients, which may include group health plans, that constitutes Protected Health Information ("PHI"), as defined in 45 C.F.R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules").
 2. **Nondisclosure Requirements.** If the parties have not executed a mutual nondisclosure agreement, this provision will govern their exchange of information. Neither Party will disclose any Confidential Information (defined below) received from the other party, or otherwise discovered by the receiving party, to any third party, except as expressly permitted in this Agreement. This obligation will continue until two years after the Agreement expires or terminates. Confidential Information includes, but is not limited to, pricing and terms of the Agreement, and information relating to the disclosing party's technology, business affairs, trade secrets, development and research information, and marketing or sales plans (collectively the "Confidential Information"). The receiving party may disclose Confidential Information to its subsidiaries, Affiliates, agents, and consultants with a need to know, if they are not competitors of the disclosing party and are subject to a confidentiality agreement at least as protective of the



disclosing party's rights as this provision. The parties will use Confidential Information only for the purpose of performing under this Agreement or for the provision of other Bluepeak services. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (A) is in the possession of the receiving party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (B) is or becomes publicly known, through no wrongful act or omission of the receiving party; (C) is received without restriction from a third party free to disclose it without obligation to the disclosing party; (D) is developed independently by the receiving party without reference to the Confidential Information, or (E) is required to be disclosed by law, regulation, or court or governmental order. The parties acknowledge that the receiving party's unauthorized disclosure or use of Confidential Information may result in irreparable harm. If there is a breach or threatened breach of the Agreement, the disclosing party may seek a temporary restraining order and injunction to protect its Confidential Information. This provision does not limit any other remedies available to either party. The party who breached or threatened to breach its nondisclosure obligation under the Agreement will not raise the defense of an adequate remedy at law. Bluepeak will not be deemed to have accessed, received, or be in the possession of Customer Confidential Information solely by virtue of the fact that Customer transmits, receives, accesses, or stores such information through its use of Bluepeak's Services.

11. **LIABILITY**

1. **Direct Damages.** Each party's maximum liability for damages caused by its failure(s) to perform its obligations under the Agreement is limited to: (A) proven direct damages for claims arising out of personal injury or death, or damage to real or personal property, caused by the party's negligent or willful misconduct; and (B) proven direct damages for all other claims arising out of the Agreement, not to exceed in the aggregate, in any 12-month period, an amount equal to Customer's total net payments for the affected Services purchased in the month preceding the month in which the event giving rise to the claim occurred. Customer's payment obligations, Customer's liability for early termination charges, and the parties' indemnification obligations under the Agreement are excluded from this provision.
2. **Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT. CONSEQUENTIAL, INCIDENTAL, AND INDIRECT DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOST PROFITS OR REVENUES (EXCLUDING AMOUNTS PAYABLE BY CUSTOMER HEREUNDER), AND LOSS OF BUSINESS OPPORTUNITY, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.
3. **Unauthorized Access and Hacking.** Except for physical damage to Customer's transmission facilities or Customer premise equipment directly caused by Bluepeak's negligence or willful misconduct, Bluepeak is not responsible for unauthorized access to, or alteration, theft, or destruction of, Customer's data, programs or other information through accident, wrongful means, or any other cause while such information is stored on or transmitted across Bluepeak-provided network facilities or Customer-provided equipment.

12. **INDEMNIFICATION**

1. **Mutual Indemnification for Personal Injury, Death or Damage to Personal Property.** Each party will indemnify, defend, and hold harmless the other party, its directors, officers, employees and agents from and against all third-party claims for damages, losses, liabilities, or expenses, including reasonable attorneys' fees, arising directly from bodily injury, death, or damage to tangible personal property that is alleged to have resulted, in whole or in part, from the negligence or willful misconduct of the indemnifying party or its subcontractors, directors, officers, employees or authorized agents in connection with the performance of this Agreement while on-site at Customer's premises.
2. **Customer Indemnification.** Customer will indemnify, defend, and hold harmless Bluepeak, Bluepeak's officers, directors, agents, and employees against all third-party claims for damages, losses, liabilities, or expenses, including reasonable attorneys' fees, arising out of:



1. Customer's failure to obtain required permits, licenses, or consents necessary to enable Bluepeak to provide the Services (e.g., landlord permissions or local construction licenses). This provision does not include permits, licenses, or consents related to Bluepeak's general qualification to conduct business;
 2. Customer's transmissions, or transmissions by parties authorized by Customer, of, information, data, or messages over the Bluepeak-provided network leading directly or indirectly to third-party claims: (1) for libel, slander, invasion of privacy, infringement of copyright, and invasion or alteration of private records or data; (2) for infringement of patents arising from the use of equipment, hardware or software not provided by Bluepeak; and (3) based on transmission and uploading of information that contains viruses, worms, other destructive media or other unlawful content; or
 3. Bluepeak's failure to pay any tax to the extent that Bluepeak relied on Customer's claimed exemption under applicable law.
3. **Bluepeak Indemnification.** Bluepeak will indemnify, defend, and hold harmless Customer, Customer's officers, directors, agents, and employees against third-party claims enforceable in the United States alleging that Services as provided infringe any third-party United States patent or copyright or contain misappropriated third-party trade secrets. Bluepeak's obligations under this Section will not apply if the infringement or violation is caused by Customer's modification to Bluepeak-provided software, equipment, or Services; combination of Bluepeak-provided Services or products with other services or products; functional or other specifications that were provided by or requested by Customer; or Customer's continued use of infringing Services after Bluepeak provides reasonable notice to Customer of the infringement. For any third-party claim that Bluepeak receives, or to minimize the potential for a claim, Bluepeak may, at its sole option, procure the right for Customer to continue using the Services; replace or modify the Services with comparable Services; or terminate the affected Services or this Agreement.
4. **Rights of Indemnified Party.** To be indemnified, the party seeking indemnification must promptly notify the other party in writing of the claim (unless the other party already has notice of the claim); give the indemnifying party full and complete authority, information and reasonable assistance for the claim's defense and settlement; and not, by any act, admission, or acknowledgement, materially prejudice the indemnifying party's ability to satisfactorily defend or settle the claim. The indemnifying party will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel, so long as such settlement does not result in any admission of guilt or liability on the part of the indemnified party, imposes any obligation or liability on the indemnified party, or has a judicially binding effect on the indemnified party (other than monetary liability for which the indemnified party is indemnified by the indemnifying party). The indemnified party will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but the indemnifying party will retain sole control of the claim's settlement or defense.
5. **Remedies.** The foregoing provisions of this Section state the entire liability and obligations of the indemnifying party and any of its Affiliates or licensors, and the exclusive remedy of the indemnified party, with respect to the claims described in this Section 12.

13. TERM AND TERMINATION.

1. **Agreement Term.** The period set forth in the Order during which Bluepeak provides Services to Customer is defined as the "Agreement Term." This Agreement applies from the Effective Date until the Agreement Term expires or terminates. Bluepeak will not accept Orders for Services after expiration of the Agreement Term, but this Agreement will continue to apply to Orders properly placed during the Agreement Term. If Customer continues to use maintenance or managed Services following the termination or expiration of the Agreement Term or an Order issued during the Agreement Term for such Services, Bluepeak may, at its sole discretion, provide those Services on a time and material basis at Bluepeak's then-current rates without applying any discounts or credits under the Agreement, however, this Agreement will govern Bluepeak's provision of such Services.
2. **Service Order Term.** Individual Orders may carry their own service Term and/or termination procedures that apply to that specific contracted Service, and in such case, such Term and procedures shall govern the service provided under the Order only.



3. **Termination by Either Party.** Except as otherwise provided herein, either party may terminate this Agreement, without liability of any kind, in the event of the other party's material breach that remains uncured thirty (30) days after the non-breaching party provides written notice of such breach. The Service may be terminated by Bluepeak, with or without notice: (i) if acts of Customer, including furnishing false credit information, indicate intent to defraud Bluepeak; (ii) Customer has not paid amounts due; or (iii) if Customer violates regulatory requirements, federal or state law or use of the Service in violation of Bluepeak acceptable use policy, data privacy/security policies, and/or any other terms and conditions applicable to the Services. Bluepeak may also terminate this Agreement or any Order for convenience by providing thirty (30) days advance written notice to Customer.
4. **Early Termination.** In the event of any early termination other than for Bluepeak's material breach or Bluepeak's early termination for convenience, Customer shall pay the remaining months to fulfill the Term times the monthly Rate on the Order.
5. **Term Expiration.** Upon Term expiration, Customer may continue the Service according to renewal options made available by Bluepeak (if any) at that time. If Customer does not elect an additional service period or does not request discontinuance, then the Service Term will automatically renew for the same service period.
6. **Suspension of Services.** Bluepeak shall have the right, at its option, without prior notice, and in addition to any other rights of Bluepeak expressly set forth in this Agreement and any other remedies it may have under applicable law to suspend Services or any component thereof if Customer fails to comply with any applicable laws or regulations or this Agreement, including obtaining required access rights for Bluepeak, or if Customer or its end users' use of the Service is determined by Bluepeak, in its sole discretion, to result in a material degradation of the Bluepeak network until Customer remedies any such noncompliance or degradation. Any suspension shall not affect Customer's on-going obligation to pay Bluepeak any amounts due under this Agreement. If Bluepeak suspends any Service, Bluepeak may require the payment of reconnect or other charges before restarting the suspended Service.

14. **FORCE MAJEURE.**

1. Neither party shall be liable to the other, nor shall any remedy be extended, for any failure of performance under this Agreement due to causes beyond that party's reasonable control, including but not limited to: acts of God, fire, explosion, flood, earthquake, tornado, storms, any law, order, regulation, action or request of any government or regulatory entity or agency, or any civil or military authority; emergencies; civil unrest, insurrections, riots, wars; power failure, equipment failure, pandemic or epidemic, supply chain disruptions, material, supply or equipment shortages or delays, industrial or labor dispute, inability to obtain necessary supplies and other similar conditions or occurrences.

15. **GOVERNING LAW; ALTERNATE DISPUTE RESOLUTION.**

1. **Governing Law.** This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of South Dakota without regard to its choice of law provisions.
2. **Waiver of Jury Trial and Class Action.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A JURY TRIAL AND ANY RIGHT TO PURSUE ANY CLAIM OR ACTION RELATING TO THIS AGREEMENT ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY.
3. **Alternate Dispute Resolution.** Any dispute arising out of or relating to this Agreement, including the alleged breach, termination, validity, interpretation, and performance thereof ("Dispute") shall be resolved with the following procedures: Upon written notice of any Dispute, the parties shall attempt to resolve it promptly by negotiation between executives who have authority to settle the Dispute and this process should be completed within 30 days (the "Negotiation"). Any Dispute not resolved through Negotiation shall be resolved by arbitration in accordance with the Federal Arbitration Act (and other applicable federal law). The party desiring to arbitrate the Dispute shall first notify the other and the parties shall work together to determine a mutually acceptable time and location. The arbitration will be held at a regional location in the State of Colorado using one arbitrator agreed to by the parties, unless the Dispute exceeds one million dollars (USA) in which case there shall be three arbitrators, as a panel, one chosen by each party and the third chosen by the two arbitrators chosen by the parties. The arbitrators may award costs and/or attorneys' fees to the prevailing party. The parties further agree that the arbitrator shall have



no authority to award non-monetary or equitable relief, and any monetary award shall not include punitive damages. Nothing contained in this section will limit either party's ability to seek injunctive relief in any court. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which may exist under the Federal Arbitration Act. The parties will arbitrate disputes in confidence, including the results thereof, all of which shall be subject to the confidentiality provisions of this Agreement as if such information was the confidential information of the other party. Each party shall bear its own costs incurred in connection with the arbitration. Other costs will be allocated as the arbitrator directs. THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY COURT IN ANY ACTION FOR THE ADJUDICATION OF SUCH CLAIM OR DISPUTE.

16. **ASSIGNMENT.**

1. Customer may not assign any rights or obligations under this Agreement or an Order without Bluepeak's prior written consent, except that Customer may assign the Agreement, after 30 days prior written notice to Bluepeak, to an Affiliate or an entity that has purchased all or substantially all of Customer's assets. Bluepeak may assign this Agreement or an Order, in whole or in part, without Customer's consent.

17. **NOTICES.**

1. Notices required under this Agreement must be submitted in writing to the Party's address for notice listed in this Agreement or Order and, in the case of a dispute, notices must also be sent to: in the case of Bluepeak: Clarity Telecom, LLC d/b/a Bluepeak Attn: Compliance Officer 5100 S. Broadband Lane Sioux Falls, SD 57108 in the case of Customer: to the address set forth on the applicable Order.

18. **MISCELLANEOUS**

1. **Entire Agreement.** This Agreement together with the Orders, constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement supersedes all prior understandings, promises, and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement, including without limitation any prior confidentiality or non-disclosure agreement between the parties regarding the purchase and sale of Services. Customer should also consult Bluepeak's website at the on-line location specified at the top of this Agreement to be sure that Customer is aware of the applicable Acceptable Use Policies, Network Management Practices, Privacy Policies, applicable tariffs, online product descriptions, and other policies or practices that are applicable to Customer's use of the Services (collectively "Policies"). Customer's use of the Services shall be deemed acknowledgment that Customer has read and agreed to the Policies as a part of this Agreement.

The individuals signing below hereby represent, warrant and covenant to each other, to Bluepeak, and to Customer, that they are duly authorized to execute and deliver this Agreement on behalf of the party for which they have signed, effective as of the date signed by Bluepeak.

BY EXECUTING THIS AGREEMENT BELOW, CUSTOMER ACKNOWLEDGES THAT THE PARTIES DESIRE TO RESOLVE ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT THROUGH ARBITRATION AND BY AGREEING TO ARBITRATION, CUSTOMER IS GIVING UP VARIOUS RIGHTS, INCLUDING THE RIGHT TO TRIAL BY JURY AND TO BRING CLAIMS AS CLASS ACTIONS.

BLUEPEAK

CUSTOMER

Signature: _____

Signature: _____

Print Name: Melissa Johnson

Print Name: _____

Title: Business Field Sales Mgr

Title: _____

Date: _____

Tax ID #:



Service Address: 4100 E Pershing Blvd Cheyenne
WY 82001

Phone:

CUSTOMER ACKNOWLEDGEMENT: By signing, I represent, warrant and acknowledge that: (i) I am at least 18 years of age and the owner of or tenant in the premises at the service location(s) identified in the Service Order and have authority to authorize the work or service specified in, and to be bound by, the Service Order and this Agreement; (ii) Clarity Telecom, LLC d/b/a Bluepeak may contact me at the phone number above (or such other phone number or email address provided by me to BLUEPEAK), which may include autodialed calls, pre-recorded or artificial voice messages, and mobile service commercial email messages; (iii) BLUEPEAK manages its Internet Network according to specific Practices and Procedures, which can be found at *****.mybluepeak.com; (iv) the Agreement is subject to automatic renewal and early termination fees; and (v) I have read, understood and agree to the contractual terms and notices set forth in this Agreement, including those relating to the PHONE SERVICE E911 NOTICE. The applicable General Terms, Service Policies and Tariffs can be found at *****.mybluepeak.com .

PIN # _____

BLUEPEAK requires that you create a 4-digit PIN that will be required when you request changes to your BLUEPEAK Business account. You agree that you are responsible for the security, confidentiality and use of your PIN and shall immediately notify BLUEPEAK if there has been an unauthorized release, use or compromise of any such PIN. If you share your PIN with employees, agents or others that interact with BLUEPEAK on your behalf and that representative is no longer authorized to make changes on your behalf, it will be your responsibility to immediately contact BLUEPEAK and change the PIN. BLUEPEAK is not liable for any loss, cost, expense, or other liability arising out of any unauthorized access to a service or Customer account by use of Customer's PIN.

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