

**LARAMIE COUNTY CLERK  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM PROCESSING FORM**

**1. DATE OF PROPOSED ACTION:** October 17, 2017

**2. AGENDA ITEM:**    ☐ Appointments    ☐ Bids/Purchases    ☐ Claims  
  
☒ Contracts/agreements/leases    ☐ Grants    ☐ Land Use: Variances/Board App/Plats  
  
☐ Proclamations    ☐ Public Hearings/Rules & Reg's    ☐ Reports & Public Petitions  
  
☐ Resolutions    ☐ Other

**3. DEPARTMENT:** Information and Technology

**APPLICANT:** ACT                      **AGENT:** Brad Alexander

**4. DESCRIPTION:** Consideration of an agreement between Laramie County and Advanced Communications Technology for new internet service at Archer.

Amount \$602.00/Monthly plus onetime fee \$2355                      From                      To

**5. DOCUMENTATION:**    2 Originals

RECEIVED AND APPROVED AS  
TO FORM ONLY BY THE  
DEPUTY LARAMIE COUNTY  
ATTORNEY



Clerks Use Only:

Commissioner

Signatures

Ash \_\_\_\_\_

Co Attny \_\_\_\_\_

Heath \_\_\_\_\_

Assist Co Attny \_\_\_\_\_

Holmes \_\_\_\_\_

Grants Manager \_\_\_\_\_

Kailey \_\_\_\_\_

Outside Agency \_\_\_\_\_

Thompson \_\_\_\_\_

Action \_\_\_\_\_

Postponed/Tabled \_\_\_\_\_



### **Master Service Agreement for Transport Services**

This AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, ("Effective Date") by and between Advanced Communications Technology, Inc., a Montana Corporation, with its principal offices at 290 N. Brooks Street, Sheridan, Wyoming 82801, ("ACT") and Laramie County, 309 West 20<sup>th</sup> Street, P.O. Box 608, Cheyenne, Wyoming, 82003-0608 ("Customer"), individually "Party," or, collectively "Parties."

WHEREAS, Customer desires to obtain Transport Service(s) as more fully described in this Agreement and the attachments thereto ("Service" or "Services") from ACT and ACT is willing to provide the Service pursuant to the terms and conditions set forth herein;

NOW THEREFORE, Customer and ACT hereby mutually agree as follows:

#### **I. Rates and Service Offering.**

Upon the Effective Date of this Agreement, ACT agrees to take action to provide and Customer agrees to purchase Services pursuant to the terms of this Agreement at the rates and pursuant to any additional terms specific to each Service as set forth in a Circuit Order(s) signed by both parties and attached to this Agreement. Exhibit A is the initial Circuit Order incorporated into this Agreement. Subsequent Circuit Orders, if any, shall be designated by tracking numbers and shall be attached hereto and incorporated herein. Any and all such Circuit Orders, provided they are signed by both Parties and are attached to this Agreement are a part of this Agreement and are subject to the terms and conditions set forth in this Agreement. ACT shall not increase pricing to Customer during the Minimum Service Period set forth in the applicable Circuit Order, except to reflect increases in rates incurred by ACT from third party vendors or to reflect increases in applicable pricing from NECA. After both Parties have signed a Circuit Order, if Customer requests any changes to the engineering, provisioning, configuration, premise location or any other material provision of the Circuit Order, Customer shall be charged on an individual case basis a mutually agreed upon written fee for the additional work ACT incurs as a result of the request.

#### **II. Circuit Orders/Additional Circuit Orders.**

Each Circuit Order shall set forth the date upon which Customer requests that Service be

Page 1 of 14

Initials by both parties

A handwritten signature in blue ink, consisting of a stylized 'C' followed by a horizontal line, is written over a horizontal line.

installed "Requested Service Date,"; the nature of the Service to be installed, the Minimum Service Period of the requested Service, the construction charges, if any, and the applicable non-recurring, recurring and other charges. If ACT is requested to provide Local Access pursuant to Section IX, such request will be noted on the Circuit Order. In the event of a signed Circuit Order with a to be determined service date ("TBD"), ACT will issue a firm order confirmation within ten (10) business days of the signed Circuit Order.

Additional Circuit Orders may be prepared by ACT from time to time for additional Customer Services or for reconfiguration of existing Customer Services. Each additional Circuit Order, provided it is signed by both Parties, shall be deemed a part of this Agreement and shall be subject to the terms and conditions contained in this Agreement.

### **III. Definitions.**

All terms contained in this Agreement that begin with an upper case letter shall have the definitions expressly provided within this Agreement.

- A. "Minimum Service Period" means the minimum amount of time for which a Service must be subscribed to and paid for and which commences on the Service Date and ends at the expiration of the Service Term specified in the Circuit Order.
- B. "Local Access" means the interconnection from ACT's Point-of-Presence (POP) described in each Circuit Order to Customer's point of circuit termination.
- C. An "Interruption" means a complete interruption of transmission for a particular communications path within a particular Circuit.
- D. "Service Date" means the Requested Service Date for implementation of Service noted in each Circuit Order or the date transmission capacity first becomes available to Customer pursuant to the Circuit Order, whichever is later.
- E. "Off-Network" means facilities utilized by ACT which are not owned by ACT.

### **IV. Effective Date, Agreement Term, and Renewal.**

Unless it is terminated earlier pursuant to other Sections of this Agreement, this Agreement shall be in effect as of the Effective Date first written above and for a period of: five (5) years thereafter; or, the expiration of the last Minimum Service Period under any executed Circuit Order subject to this Agreement; or, if Service is being supplied after the Minimum Service Period, such Agreement shall continue on a month-to-month basis; whichever date is latest ("Agreement Term").

### **V. Start of Service, Minimum Service Period, and Service Acceptance.**

- A. The Minimum Service Period with respect to each Service provisioned pursuant to this Agreement shall be the Service Term specified on each corresponding Circuit Order. ACT shall use reasonable efforts to deliver each requested Service on or before the Requested Service Date as noted in the Circuit Order. However, the inability of ACT to deliver Service by the Requested

Page 2 of 14  
Initials by both parties

 \_\_\_\_\_



Service Date shall not constitute a default under this Agreement. If, at the conclusion of the Minimum Service Period for the Circuit Order, the Customer does not elect to sign a new Circuit Order with ACT for a Minimum Service Period, ACT shall, at its option, continue to provide the Service to Customer, subject to the terms and conditions of this Agreement, on a month-to-month-basis, cancellable by either Party on thirty days written notice at ACT's then standard monthly fees for such Service(s).

B. Upon installation and testing of the Service ordered in any Circuit Order, ACT will notify the Customer as to the completion of the Circuit Order. Upon receipt of notification, Customer shall have a period of seventy-two (72) hours to confirm that the Service has been installed and is properly functioning. Unless Customer delivers written notice to ACT within such seventy-two (72) hour period that the Service is not installed in accordance with the Circuit Order and functioning properly, the Service shall be deemed accepted, transmission capacity shall be deemed available and billing shall commence, regardless of whether Customer is otherwise prepared to accept delivery of the ordered Service. In the event that the Customer notifies ACT within the time period stated above that the Service is not installed and functioning properly, then ACT shall correct any deficiencies in the Service, and deliver a new completion notification date to the Customer which will be the new Service Date.

#### **VI. Payment Terms, Late Fees and Billing Disputes.**

A. Prices set forth in the Circuit Orders are in US Dollars. Customer shall pay ACT for Services at the rates and charges listed in the Circuit Orders. ACT will issue monthly invoices to Customer for all non-recurring and recurring charges and applicable taxes for all Services specified in the Circuit Orders. Payment from Customer is due within thirty (30) days of the invoice date. Any past due amounts are subject to an interest charge of the lower of one and one-half percent (1.5%) per month or the highest rate permitted by law, plus all reasonable fees, including attorney fees, and costs of collection.

B. Construction charges will be due in two installments; 75% of the total Construction Charges set forth in the Circuit Order are due within fourteen (14) days of the signed Circuit Order, and the remaining 25% is due within fourteen (14) days of ACT notifying the Customer of construction's completion. Any past due construction charges are subject to an interest charge of the lower of one and one-half percent (1.5%) per month or the highest rate permitted by law, plus all reasonable fees, including attorney fees, and costs of collection.

C. Customer has an affirmative obligation to provide written notice and supporting documentation for any good-faith dispute with charges in an invoice (a "Billing Dispute") within thirty (30) business days of the invoice date. Customer must pay the amount or portion of the invoice that is not subject to a Billing Dispute in accordance with the payment terms. If Customer does not report to ACT a Billing Dispute within the fifteen (15) business day period, Customer shall have irrevocably waived its right to dispute the invoice and any amounts billed pursuant to the invoice. ACT will use reasonable efforts to resolve Billing Disputes within forty-five (45) business days after its receipt of the Billing Dispute notice. If a Billing Dispute is not

Page 3 of 14  
Initials by both parties



\_\_\_\_\_

resolved within forty-five (45) business days after receipt of such notice, Customer shall pay the disputed amount to ACT and may commence arbitration against ACT without further informal conference or mediation in accordance with Section XIX (H). If the Billing Dispute is resolved in ACT's favor, the late payment fees under this Section VI shall apply to the unpaid amount until paid. In addition, if the Billing Dispute is resolved in ACT's favor in arbitration, Customer shall pay all of ACT's collection costs, arbitration costs and attorney fees, if any. If the Billing Dispute is resolved in Customer's favor, the late payment fees shall not apply and ACT shall promptly credit the Customer's account for the amount billed in error.

D. Without affecting any amounts due to ACT, if Customer fails to pay in full when due any invoice amount not properly and timely disputed, ACT shall have the right, with fifteen (15) days written notice to terminate this Agreement and all Services provided pursuant to it and the incorporated Circuit Orders. In the event of termination of this Agreement for non-payment pursuant to this section, Customer will be deemed to have terminated the Agreement early and will be subject to the liquidated damages provision outlined in Section XVI.

## **VII. Taxes and Surcharges.**

In addition to the charges noted in each Circuit Order, Customer shall pay any federal, state or local taxes and/or surcharges applicable to the Service provided by ACT. Invoices will contain an itemized description of expenses, charges, costs and all applicable taxes and/or surcharges. ACT will not collect applicable taxes and/or surcharges upon receipt of written official certification from Customer of its exemption from such.

## **VIII. System Maintenance.**

A. Scheduled maintenance of the ACT network will not normally result in Service Interruption or outage. However, in the event scheduled maintenance should require a Service Interruption or outage, ACT will exercise commercially reasonable efforts to (i) provide Customer with five (5) days' prior written notice of such scheduled maintenance, (ii) work with Customer in good faith to attempt to minimize any disruption in Customer's services that may be caused by such scheduled maintenance, and (iii) to perform such scheduled maintenance during the non-peak hours of 12:00 a.m. (Midnight) until 6:00 a.m. local time.

B. ACT may substitute, change or rearrange any equipment, facility or system used in providing Service any time and from time to time, but shall not thereby alter the Service as specified in each individual Circuit Order.

C. ACT may charge Customer for service calls at the rate generally charged by ACT to its customers.

## **IX. Local Access.**

A. In the event that Customer specifically requests in the Circuit Order that ACT provide

Page 4 of 14

Initials by both parties

 \_\_\_\_\_



Local Access, ACT shall hereby be appointed agent for Customer to arrange for interconnection from ACT's POP described in each Circuit Order to ACT's local loop facilities, Customer's local loop facilities, or local telephone operating company or other third party local loop facilities providing connectivity to Customer's Point of Circuit termination. The rates charged for Local Access Service as provided for under "Local Access" in each Circuit Order shall be subject to change in the event of rate adjustments by the local telephone operating company or other third party utilized by ACT in arranging such interconnection. Customer understands that ACT may rely on telephone operating companies or other third parties for installation and testing of Local Access Service. ACT will use its best efforts to assure that Local Access Service is available on the Requested Service Date specified in each Circuit Order. ACT shall have no liability to Customer in the event Local Access Service is not available on the Requested Service Date.

B. Notwithstanding the foregoing, Customer shall be free to order its own Local Access Service. Subject to Customer's own arrangements with the applicable Local Access provider, Customer shall have no financial obligation whatsoever to ACT for Local Access Service arranged solely by Customer with a third party. If ACT provides Customer with specific Channel Facility Assignment (CFA) for interconnection, then ACT will charge Customer for this Service.

C. Whether or not Customer orders Local Access Service directly from a third party or orders Local Access indirectly through ACT, Customer shall assume all liability for and shall indemnify, defend and hold harmless ACT on all claims for all charges for Local Access including, but not limited to, any termination or cancellation charges or penalties.

D. Under no circumstances shall ACT be liable to Customer or any other person for delay in installation, interruption of, quality of, or terms and condition of Local Access Service provided pursuant to this Agreement. Customer assumes all responsibility for and shall indemnify, defend and hold harmless ACT for any and all claims arising out of the provisioning of Local Access Service associated with this Agreement.

#### **X. Off Network Services.**

Customer may from time to time request that ACT obtain Services from and enter into contracts with third parties for facilities which are not owned or controlled by ACT ("Off-Network Services"). Customer shall assume all responsibility for and all liability for and indemnify, defend and hold harmless ACT on all claims and all charges for Off-Network Services provided at the request of Customer hereunder including, but not limited to, termination or cancellation charges or penalties. Under no circumstances shall ACT be liable to Customer, or any other person for delay in installation, interruption of, quality of, or terms and conditions of Off-Network Services.

#### **XI. Allowance for Interruption of Service.**

A. To report an Interruption in Service, Customer should contact ACT's designated Service Representative by phone. Customer agrees to provide ACT with supporting information as Page 5 of 14

Initials by both parties  \_\_\_\_\_

reasonably requested by ACT, and to the extent such information is available to Customer, which may include (as applicable), without limitation, affected circuit ID, circuit end-point(s), IP addresses, originating phone number and terminating phone number.

B. A "Service Interruption" will be deemed to have occurred only if the Interruption of Service to Customer is a result of a failure within the ACT-owned facilities, and only where the Interruption:

1. Is not the result of:
  - a. The negligence or acts of Customer or its agents; or
  - b. Circumstances or causes beyond the control of ACT including those of Force Majeure; or
2. Is not caused by scheduled Service maintenance, alteration, or implementation.

C. If a Service Interruption exceeds two (2) hours after the Customer Report, Customer may receive a credit from ACT calculated as set forth in (D) below, provided that Customer delivers a written request to ACT for a credit, with sufficient detail necessary to identify the affected Service, within thirty days of the end of the month for which a credit is requested.

D. Provided that Customer has met its obligations in this Section XI, ACT will provide Customer a credit allowance for a Service Interruption in excess of two (2) hours, calculated as follows: 1/1440 of the monthly charge set forth under the "Service Provider Charge" noted in the applicable Circuit Order, for each half-hour (½ hour or 30 minutes) beyond the initial two-hour Service Interruption that such Service Interruption continues. The Service Interruption shall be measured from the time of notice by Customer to ACT that an Interruption has occurred to the time of restoration of Service to Customer. The total amount of the credit shall not, in any event, exceed the previous month's monthly "Service Provider Charge."

E. When Service provided under one (1) or more Circuit Orders includes more than one (1) communications path, the Service Interruption credit allowance shall apply only to the path(s) interrupted.

F. In the event Customer experiences Chronic Outages (as defined below) with respect to any Service, Customer is entitled to terminate the affected Service, Circuit Order or this Agreement without further obligation or termination liability, by providing ACT with written notice within thirty (30) days following the date such Chronic Outages accrue. "Chronic Outages" is defined as four or more Service Interruptions, each consisting of thirty (30) or more minutes in any sixty (60) day period.

## **XII. Confidentiality.**

A. *Confidential Information.* As used in this Agreement, "Confidential Information" means information not generally known to the public, and maintained by the Party disclosing the information ("Disclosing Party") to the other Party (as confidential, whether of a technical,

Page 6 of 14  
Initials by both parties

  
\_\_\_\_\_



business or other nature that relates to the Services provided pursuant to this Agreement or that, although not related to such Services, is nevertheless disclosed as a result of the Parties' discussions pertaining to this Agreement and in that regard, should reasonably have been understood by the Party receiving such information ("Receiving Party"), because of (i) legends or other markings, (ii) the circumstances of disclosure, or (iii) the nature of the information itself to be proprietary and confidential to the Disclosing Party. Confidential Information may be disclosed in written or other tangible form (including information in computer software or held in electronic storage media) or by oral, visual or other means. For purposes of this Agreement, "Disclosing Party" includes affiliates of a Party who disclose Confidential Information to the Receiving Party regarding the Project.

*B. Use of Confidential Information.* The Receiving Party, except as expressly provided in this Agreement, shall not disclose the Disclosing Party's Confidential Information to anyone without the Disclosing Party's prior written consent. The Receiving Party shall take all steps necessary to safeguard and protect such Confidential Information from unauthorized access, use or disclosure by or to others including, but not limited to, maintaining appropriate security measures and providing access on an as-needed basis only. The Parties will treat Confidential Information using the same degree of care used to protect its own confidential or proprietary information of like importance, but, in any case, using no less than a reasonable degree of care. The Receiving Party shall not deface any notice of copyright, trademark, logo, legend or other notice of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party. The Receiving Party shall not use Confidential Information for any purpose other than with respect to the Project.

*C. Exceptions.* The provisions of Subsection B of this Section shall not apply to any information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Receiving Party without confidentiality restrictions at the time of its receipt from the Disclosing Party; (iii) is rightfully received from a Third Party who did not acquire or disclose such information by a wrongful or tortuous act, or in breach of a confidentiality restriction; (iv) can be shown by documentation to have been independently developed by the Receiving Party without reference to any Confidential Information; or (v) is identified by the Disclosing Party as no longer proprietary or confidential.

*D. Receiving Party Personnel.* The Receiving Party shall restrict the possession, knowledge, development and use of Confidential Information to its employees, agents, subcontractors, consultants, advisors and entities controlled by it (collectively, "Personnel") who have a need to know Confidential Information in connection with this Agreement. The Receiving Party's Personnel shall have access only to the Confidential Information they need for such purposes. The Receiving Party shall ensure that its Personnel are bound by the confidentiality obligations set forth in this Agreement, and that such Personnel comply with this Agreement.

*E. Disclosures to Governmental Entities.* If, in the opinion of its counsel, the Receiving Party becomes legally obligated to disclose Confidential Information, the Receiving Party shall give the Disclosing Party prompt written notice sufficient to allow the Disclosing Party to seek a

Page 7 of 14  
Initials by both parties

  
\_\_\_\_\_



protective order or other appropriate remedy, and shall, to the extent practicable, consult with Disclosing Party in an attempt to agree on the form, content, and timing of such disclosure. Notwithstanding the preceding sentence, notification to the Disclosing Party shall not be required if such notification is not permitted by law or would interfere with applicable law enforcement activities.

*F. Ownership of Confidential Information.* All Confidential Information disclosed under this Agreement (including information in computer software or held in electronic storage media) shall remain the exclusive property of the Disclosing Party, and the Receiving Party shall have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise conveyed by this Agreement with respect to Confidential or other information.

### **XIII. LIMITATION OF LIABILITY EXCLUSION OF WARRANTIES.**

**A. LIMITATION OF LIABILITY. REGARDLESS OF LANGUAGE APPEARING TO THE CONTRARY IN ANY OTHER SECTION OF THIS AGREEMENT, ANY CIRCUIT ORDER, OR ANY OTHER DOCUMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, ANY LOSS OF INCOME OR PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA,) WHETHER BASED ON BREACH OF CONTRACT, STATUTORY VIOLATION(S), BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE) OR ANY OTHER BASIS IN LAW OR EQUITY. THIS NEGOTIATION OF LIMITATION OF LIABILITY IS FUNDAMENTAL TO THE BARGAIN ON WHICH THIS AGREEMENT IS BASED. WITHOUT WAIVING ANY EXCLUSION OF LIABILITY, IN NO EVENT SHALL ACT'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY ARISING OUT OF, UNDER, OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED PURSUANT TO THE AGREEMENT EXCEED THE AMOUNT OF THE MONTHLY SERVICE PROVIDER CHARGE(S) ACTUALLY PAID BY CUSTOMER TO ACT PURSUANT TO THIS AGREEMENT FOR THE TWELVE MONTHS IMMEDIATELY PRECEDING THE INCIDENT WHICH ALLEGEDLY GIVES RISE TO THE CLAIM OR CLAIMS.**

**B. NO WARRANTY. ACT MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF THE FACILITIES, SERVICES, OR AS TO ANY OTHER MATTER. ACT DISCLAIMS WITHOUT LIMITATION ANY AND ALL WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT ARISING FROM COURSE OF PERFORMANCE,**



**COURSE OF DEALING OR USAGE OF TRADE. ACT HEREBY EXCLUDES AND DISCLAIMS ALL WARRANTIES.**

**XIV. Indemnification.**

Each Party ("Indemnitor") will defend, indemnify and hold harmless the other and its employees, officers, directors and partners (each, an "Indemnitee") from and against all third-party claims, actions, damages, liability, costs, fees and expenses, including without limitation reasonable attorney's fees, for physical damage to tangible property or bodily injury arising from Indemnitor's negligence or willful misconduct in connection with the performance of this Agreement.

Customer agrees to assume all liability for and indemnify, defend and hold harmless ACT, from and against all liability, loss, cost, damage expense or cause of action, of whatsoever character, or injury, or death of any person, damage to or destruction of any property and all related expenses including, but not limited to, reasonable attorneys' fees, investigators' fees and litigation expenses resulting in whole or in part from any of the following:

A. Claims for libel, slander, infringement of copyright or unauthorized use of a trade secret, trademark, trade name or service mark or patent infringement that result from the transmission of material over the system of ACT or otherwise result from the acts or omissions or unauthorized use of trade secrets or trade names by the Customer; and,

B. Claims by any person not a Party to this Agreement arising out of negligence, gross negligence or willful act or omission of Customer, its agents, servants, employees, contractors (excluding ACT), or representatives; and,

C. Claims, except as otherwise set forth herein, for the breach of or failure to comply with any term or condition of this Agreement by Customer, its officers, employees, invitees, or agents.

ACT will defend, indemnify and hold Customer harmless from and against all third-party claims, actions, damages, liabilities, costs, fees and expenses, including without limitation reasonable attorney's fees, arising from ACT's violation of any third-party intellectual property right due to the configuration of ACT's Network.

**XV. Customer Default, Cease Processing Service Orders, Suspension of Services, and Termination of Agreement.**

A. ACT may cease accepting or processing orders for Services, and/or suspend any and all Services in connection with this Agreement, and/or terminate this Agreement and all Services associated therewith at any time upon Customer's Default. Customer's Default includes any of the following:

1. Any failure of Customer to timely pay in full any charge or any invoice as provided in

Initials by both parties

 \_\_\_\_\_



this Agreement;

2. Any other breach by Customer of any material provision of this Agreement continuing for thirty (30) days after receipt of notice thereof; and
3. Any Customer insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver, or similar event.

B. Should ACT terminate Services pursuant to this Section or Sections, the Customer shall be deemed to have cancelled the Agreement and the Services provided pursuant to this Agreement and the Customer shall be liable for liquidated damages calculated pursuant to Section XVI below.

C. Customer may terminate this Agreement without termination liability if ACT fails to cure, following thirty days written notice: (i) its material breach of any provision of this Agreement or any law, rule or regulation governing the Services; or (ii) any insolvency, bankruptcy assignment for the benefit of creditors, appointment of trustee or receiver or similar event with respect to ACT.

#### **XVI. Cancellation and Liquidated Damages.**

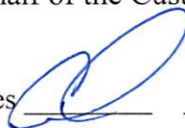
A. Either Party shall have the right to cancel this Agreement without liability if ACT is prohibited from furnishing the Service by force majeure, the Wyoming Public Service Commission, the Federal Communications Commission, or any other federal or state authority; provided that, notwithstanding the above, the Customer shall be liable for all charges for construction and all charges for Services provided prior to cancellation of the Agreement under this subsection.

B. In the event that Customer cancels, or is deemed to have cancelled this Agreement or any Service or Services provided pursuant to this Agreement after Customer's execution of a Circuit Order, or if this Agreement is otherwise terminated at any time during a Minimum Service Period for any reason other than that stated in Subsection A of this Section, Customer agrees to pay to ACT as liquidated damages (and not as a penalty) the following sums which shall become due and owing as of the effective date of cancellation or termination:

1. All engineering, construction, and installation charges quoted by ACT to provide the Service or Services;
2. All amounts previously invoiced by ACT, if any;
3. As to each Service: the sum of (100%) of the recurring monthly charges for that Service (as reflected in the prior month's invoice) multiplied by the number of months remaining in the applicable Minimum Service Period for that Service; or if no recurring monthly charge for that Service has been invoiced, the sum equal to One Thousand Dollars (\$1000) multiplied by the number of months remaining in the applicable Minimum Service Period for that Service; and,
4. Any disconnection, early termination or cancellation charges reasonably incurred by ACT on behalf of the Customer.

Page 10 of 14

Initials by both parties

 \_\_\_\_\_

## **XVII. Portability.**

Subsequent to the Service Date of a Circuit Order, in lieu of terminating the Service(s) pursuant to that Circuit Order, Customer may by written notice to ACT request that said Service(s) be replaced by new Service(s). ACT shall permit such Service substitution without a cancellation fee for the old Service(s) if:

1. Customer agrees to pay and in fact pays the monthly Service fee on the Service which is being taken out of operation until ACT installs the new replacement Service;
2. The Minimum Service Period of the replacement Service(s) is for a period of time at least equal to the remaining Minimum Service Period of the old Service(s);
3. The monthly Service charge for the new Service shall be equal to or greater than that of the old Service(s); and
4. The requested replacement Service(s) is/are available on ACT's network as determined by ACT.

## **XVIII. No License, Joint Venture, Partnership or Employer Relationship.**

No license, joint venture or partnership, express or implied, is granted by ACT pursuant to this Agreement. The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be solely responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of all federal, state, and municipal taxes, chargeable or assessed with respect to its employees, such as social security, unemployment, workers' compensation, disability insurance, and federal and state withholding.

## **XIX. General Agreement Terms.**

A. *Non-waiver.* The failure of either Party to enforce strict performance of any provision of this Agreement shall not be construed as a waiver of its right to assert or rely upon such provision or any other provision of this Agreement.

B. *Assignment.* Either Party may assign its rights and delegate its duties under this Agreement only with the express, written consent of the other Party, which consent shall not be unreasonably withheld.

C. *Binding on Successors.* This Agreement shall bind, apply to and govern the parties, their successors, and their assigns provided that no such assignment shall relieve the assigning Party of its obligations hereunder.

 \_\_\_\_\_



D. *Modifications in Writing Only; Entire Agreement.* This Agreement may only be modified, altered or supplemented in writing, by execution of a written addendum signed by both Parties. This Agreement and the Circuit Orders signed by both Parties constitute the entire Agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

E. *Notices.* All notices, demands, or requests which may be given by any Party to any other Party pertaining to this Agreement shall be in writing addressed to the authorized signers of this Agreement or his/her replacement, and shall be deemed to have been duly given on the date delivered in person, or if delivered via the United States Mail via First Class, within three business days after deposit therein, postage prepaid.

Notices shall be addressed as follows:

1. To ACT:

Advanced Communications Technology, Inc.  
General Manager  
290 North Brooks St  
Sheridan, WY 82801  
Fax: 307-673-0911

2. To Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party may change such address or change said designation or title of the individuals by written notice issued and delivered as above. Although e-mail will not be used to provide notice, the Parties may utilize e-mail to facilitate informal communications.

F. *Force Majeure.* With the exception of payment of charges due for Services already provided under this Agreement, either Party shall be excused from its performance if its performance is prevented by acts or events beyond the Party's reasonable control including but not limited to: severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

 \_\_\_\_\_

G. *Governing Law.* This Agreement shall be governed by the laws of the State of Wyoming except to the extent that federal communications law shall apply.

H. *Informal Mediation and Binding Arbitration.* The Parties desire to resolve all differences arising out of, or relating in any way to this Agreement, the Services provided pursuant to the Agreement, the payment for those Services and, or the Termination or Cancellation of this Agreement (Hereinafter collectively referred to as a "Dispute" or "Disputes") by informal resolution, and if that is unsuccessful by binding arbitration. Each of the Parties expressly waive the right to bring any cause of action of any nature, whether legal or equitable against the other Party and/or its affiliates for any and all Disputes in any Court, except only as may be necessary to enforce the arbitrator's determination and award in accordance with this Agreement, if any. The Parties agree that jurisdiction and venue for enforcement of the arbitrator's determination and award, if any shall lie solely with the District Court of Wyoming, situated in Sheridan, Wyoming. The Parties shall first attempt to informally resolve any Dispute by providing written notice of same to the other and requesting a conference to resolve same. The conference will be held within thirty (30) days of receipt of the request, and may be conducted telephonically. During the conference the Parties will make reasonable efforts to amicably resolve the controversy. In the event either Party remains dissatisfied after the conference, the Parties agree that any Dispute shall be submitted to a single arbitrator under the commercial arbitration rules of the American Arbitration Association (AAA). The decision of the arbitrator shall be final and binding upon the Parties. No appeal may be taken from the Arbitration. The Arbitration shall be held in Cheyenne, Wyoming, at a site selected by AAA. The Arbitrator shall be selected pursuant to the rules of AAA. Except in cases where an Arbitrator determines that Customer has improperly failed to pay charges in an invoice or invoices and therefore Customer is liable for all ACT's costs and attorney fees associated with the dispute and Arbitration, each Party shall bear its own costs of Arbitration, including attorney fees and the Parties will equally split the cost of the Arbitrator's fees.

I. *Entire Agreement.* This Agreement contains the entire Agreement of the Parties hereto and supersedes all prior or contemporaneous agreements and understandings, oral or written, between the Parties hereto as of this date with respect to the subject matter hereof with the exception of any Non-Disclosure Agreement between both parties.

J. *Compliance with Laws and Severability.* This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal and state laws, rules, and regulations.

K. *Headings.* The headings of the Sections or Subsections of this Agreement are intended solely for the convenience of the Parties and shall in no way be held to explain, modify, amplify or aid in the interpretation of the provisions hereof.

L. *Counterparts.* This Agreement may be executed in several counterparts each of which shall constitute an original, but all of which shall constitute one and the same instrument.

M. *No Third Party Beneficiaries.* The provisions of this Agreement and the rights and

Initials by both parties



\_\_\_\_\_



obligations created hereunder are intended for the sole benefit of ACT and Customer, and do not create any right, claim or benefit on the Party of any person or entity not a Party to this Agreement.

N. *Survival of Provisions.* Any obligations of the Customer relating to monies owed, as well as the provisions of this Agreement relating to confidentiality, payment of invoices, limitations of liability, disclaimer of warranties, liquidated damages, indemnifications, and binding arbitration, and all other provisions which by their nature could reasonably be construed to survive the termination, cancellation or expiration of this Agreement, shall survive the termination, cancellation or expiration of this Agreement.

O. *Rule of Construction.* No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

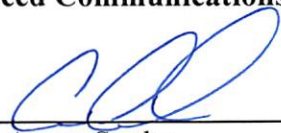
P. *Unenforceable Provision.* The illegality or unenforceability of any provisions of this Agreement does not affect the legality or enforceability of any other provision or portion. If any provision of this Agreement is deemed illegal or unenforceable for any reason, there shall be deemed to be made such minimum change in such provision or portion as is necessary to make it valid and enforceable as so modified.

IN WITNESS WHEREOF, the Parties acknowledge that: the person signing below is their authorized representative; the Parties are in agreement to the terms and conditions found within this Agreement; and the Parties do hereby execute and authorize this Agreement as of the day, month and year first written above:

**Advanced Communications Technology, Inc.**

**Laramie County, Wyoming**

BY:

  
\_\_\_\_\_  
Aaron Sopko  
General Manager

BY: \_\_\_\_\_

[Name]  
[Title]

 \_\_\_\_\_

## **ADDENDUM TO AGREEMENT BETWEEN LARAMIE COUNTY & ADVANCED COMMUNICATIONS TECHNOLOGY, INC.**

THIS ADDENDUM is made and entered into by and between Laramie County, 309 West 20th Street , P.O. Box 608, Cheyenne Wyoming, 82003-0608 (hereinafter referred to as "COUNTY") and Advanced Communications Technology, Inc., a Montana Corporation, with its principal offices at 290 N. Brooks Street, Sheridan, Wyoming 82801, ("ACT" or "CONTRACTOR"). The parties agree as follows:

### **I. PURPOSE**

The purpose of this Addendum is to modify the attached Master Service Agreement for Transport Services ("Agreement").

### **II. MODIFICATIONS**

- A. Part VI of the Agreement, titled "Payment Terms, Late Fees and Billing Disputes," is modified to reflect that the language which contains strikethrough is omitted and that the strikethrough language is of no further force or effect:

A. Prices set forth in the Circuit Orders are in US Dollars. Customer shall pay ACT for Services at the rates and charges listed in the Circuit Orders. ACT will issue monthly invoices to Customer for all non-recurring and recurring charges and applicable taxes for all Services specified in the Circuit Orders. ACT shall bill Customer by detailed invoice submitted to the Laramie County Clerk, Finance Office. Payments shall be in accordance with WYO. STAT. § 16-6-602, as amended. No payment shall be made before the last signature is affixed to this Agreement. Any past due amounts are subject to an interest charge of the lower of one and one-half percent (1.5%) per month or the highest rate permitted by law.

B. Construction charges will be due in two installments; 75% of the total Construction Charges set forth in the Circuit Order are due within fourteen (14) days of the signed Circuit Order, and the remaining 25% is due within fourteen (14) days of ACT notifying the Customer of construction's completion. Any past due construction charges are subject to an interest charge of the lower of one and one-half percent (1.5%) per month or the highest rate permitted by law.

C. Customer has an affirmative obligation to provide written notice and supporting documentation for any good-faith dispute with charges in an invoice (a "Billing Dispute") within forty-five calendar days of the invoice date. Customer must pay the amount or portion of the invoice that is not subject to a Billing Dispute in accordance with the payment terms. If Customer does not report to ACT a Billing Dispute in accordance with this subsection within the forty-five day period, Customer shall have irrevocably waived its right to dispute the invoice and any amounts billed pursuant to the invoice. ACT will use



reasonable efforts to resolve Billing Disputes within forty-five (45) business days after its receipt of the Billing Dispute notice.

- B. Part IX titled “Local Access,” sections C and D are omitted and of no force or effect. Part IX section C is further amended to include the following language:

“Whether or not Customer orders Local Access Service directly from a third party or indirectly through Act, Customer shall assume liability for all charges for Local Access including but not limited to any termination or cancellation charges or penalties.”

- C. Part XII titled “Confidentiality,” is amended to include the following language at the end:

“Notwithstanding the above provisions, ACT recognizes that the duties and obligations of Customer with respect to this Section may be limited and controlled by the operation of State or Federal law regarding the disclosure of publicly held records. ACT agrees that Customer shall not be held in breach or default of this Agreement in the event that information related to this Agreement and its subject matter is released in accordance with and pursuant to any applicable law or regulation, including, but not limited to, the Wyoming Public Records Act, Wyo. Stat. § 16-4-201 *et seq.*, as amended. ACT further agrees that it bears the sole responsibility for demonstrating in any court or other forum that the information designated as ‘proprietary trade secrets’ in this Section is in fact confidential, and not subject to disclosure.”

- D. Part XIV of the Agreement, titled “Indemnification,” is omitted and of no further force or effect and is replaced with the following language:

“Each party to this Agreement shall be responsible for any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.”

- E. Part XVI titled “Cancellation and Liquidated Damages,” section B is omitted and of no force or effect.

- F. Part XIX of the “General Agreement Terms,” is amended as follows:

- i. Section A titled “Assignment,” is omitted and of no force or effect, and is replaced with the following:

The rights granted herein to ACT may not be assigned without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, ACT may assign, whether in whole or in part, the rights granted herein without the consent of the County if the assignment is to a parent, subsidiary, affiliate or related company of ACT. In the event of any assignment by ACT, whether of a type requiring the County’s consent or not or any subsequent assignment by any successor, the assignor shall be obligated to ensure,

and will warrant that the assignee shall remain fully responsible for all obligations, responsibilities and liabilities, (including, but not limited to, requirements as to indemnity and insurance).

- ii. Section H titled “Informal Mediation and Binding Arbitration,” is omitted and of no further force or effect, and is replaced with the following:

Any claim or cause of action arising out of, or in connection to the terms of the Agreement and this Addendum shall be brought by filing suit within two (2) years of the date the facts giving rise to the claim(s) or cause(s) of action occurred. Failure to commence a course of action within two years in accordance with this paragraph shall constitute a waiver of such claim or cause of action.

### III. ADDITIONAL PROVISIONS

A. Entire Agreement: This Addendum (4 pages), Exhibit 1--Insurance Requirements for Most Contracts (3 pages), the Master Service Agreement for Transport Services (14 pages), and the Service Order Form (1 page), as modified in this Addendum, represent the entire and integrated agreement and understanding between the parties and supersede all prior negotiations, statements, representations and agreements, whether written or oral.

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

C. Contingencies: ACT certifies and warrants no gratuities, kick-backs or contingency fees were paid in connection with the Agreement, nor were gratuities, kick-backs or contingency fees made contingent upon the award of the Agreement.

D. Applicable Law/Venue: The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. This provision is not intended nor shall it be construed to waive COUNTY's statutory governmental or sovereign immunity.

E. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/ Sovereign Immunity, as provided by any applicable law including Wyo. Stat. §§ 1-39-101 through 121 (as amended), by entering into the Agreement and this Addendum. 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.

F. Conflict of Interest: COUNTY and ACT affirm, to their knowledge, no ACT employee has any personal beneficial interest whatsoever in the Agreement described herein. No staff member of ACT, compensated either partially or wholly with funds from the Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to the Agreement.



G. Limitation on Payment: COUNTY's payment obligation is conditioned on the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by ACT the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify ACT at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate the Agreement in order to acquire similar services from another party.

H. Confidentiality: ACT recognizes that the duties and obligations of County may be limited and controlled by the operation of State or Federal law regarding the disclosure of publicly held records. ACT agrees that County shall not be held in breach or default of this Agreement in the event information related to this Agreement and its subject matter is released in accord with and pursuant to any requirement in applicable law or regulation, including, but not limited to, the Wyoming Public Records Act, Wyo. Stat. § 16-4-201 et seq., as amended. Nothing in this paragraph shall be construed as consent by ACT to waive confidentiality afforded by applicable law. ACT further agrees that if an action is brought asserting that items which are deemed confidential pursuant this Agreement should not be confidential, ACT bears the sole responsibility for demonstrating in any court or other forum that information designated as confidential is in fact confidential, and not subject to disclosure.

I. Insurance: The ACT shall obtain insurance, and provide certificates and policies, to the County's satisfaction and subject to requirements substantially similar to those set out in Exhibit 1--Insurance Requirements for Most Contracts, which is attached and incorporated her by reference.

J. 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.

**LARAMIE COUNTY, WYOMING**

By: \_\_\_\_\_  
Troy Thompson, Chairman, Laramie County Commissioners

Date \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Debra Lee, Laramie County Clerk

Date \_\_\_\_\_

**ACT: ADVANCED COMMUNICATIONS TECHNOLOGY, INC.**

By: \_\_\_\_\_  
Aaron Sopko, General Manager

Date 10/05/2017

**REVIEWED AND APPROVED AS TO FORM ONLY**

By: \_\_\_\_\_  
Gladys Ayokosok, Deputy Laramie County Attorney

Date 10/10/2017





## SERVICE ORDER FORM

### ADVANCED COMMUNICATIONS TECHNOLOGY

290 N BROOKS STREET • BOX 7039 • SHERIDAN, WY 82801

888.304.8889 • FAX: 307.673.0911 • EMAIL: sales@acthq.net

#### CUSTOMER INFORMATION

Company Name: Laramie County I.T. Department  
Contact Name: Brad Alexander  
Contact Email: balexander@laramiecounty.com  
Billing Address: 13797 Prairie Center Circle  
City, State, Zip: Cheyenne, WY 82009  
Contact Phone: 307-633-4340

Request Date: 02/06/2017  
Requested Due Date: TBD by customer  
Originator: Lorne Morris  
ACT Circuit ID: \_\_\_\_\_

#### Technical Contact

Contact Name: Brad Alexander  
Contact Email: balexander@laramiecounty.com  
Contact Phone: 307-633-4340

#### SERVICE INFORMATION

#### Service Status

#### Type of Handoff

##### Description of Service:

100M Direct Internet Access w/BGP. LCITD will allow ACT to splice and use two fiber strands from manhole at intersection of Prairie Circle Dr & Archer Pkwy to 13797 Prairie Center Circle server room at no charge to reduce construction fees charged to LCITD. If customer cancels service before end of term, early termination fees will apply.

New

RJ-45 Copper

#### Service Type

#### MTU Size

Unprotected

#### Circuit Information:

QTY	Type	Service Term	Jurisdiction*	Monthly Recurring Charge (MRC)	Non-Recurring Charge (NRC)
1	100M DIA	60 Month	Interstate	\$ 602.00	\$ 2,355.00

\*Per Federal Communications Commission regulations, Customer is required to indicate whether traffic on Provider's circuit(s) is interstate or intrastate in nature. The traffic is considered Interstate if 10% or more does not originate or terminate in the same state in which the circuit is located. It is considered Intrastate only if more than 90% originates and terminates in the same state in which the circuit is located.

#### Location A:

Company: ACT Core  
Service Address: \_\_\_\_\_  
Local Contact : \_\_\_\_\_  
Local Phone: \_\_\_\_\_

#### Location Z:

Company: Laramie County I.T. Department  
Service Address: 13797 Prairie Center Circle  
Cheyenne, WY 82009  
Local Contact : Brad Alexander  
Local Phone: 307-633-4340

#### Advanced Communications Technology, Inc.

Laramie County I.T. Department

Authorized Signature \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Authorized Signature \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FUSF Exempt: ☐ YES ☐ NO If YES: \_\_\_\_\_

Customer's signature acknowledges that Customer has read, understands, and agrees to each of the terms and conditions as stated in the Master Services Agreement (MSA) between the parties, referenced above. Customer's signature below represents that Customer has read, understood, and accepts such terms and conditions. Price(s) do not include applicable local, state, and federal taxes.

**Exhibit 1**  
**Insurance Requirements for Most Contracts**

ACT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by ACT, his agents, representatives, employees or subcontractors.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if ACT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

3. **Workers' Compensation:** as required by the State of Wyoming with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the ACT's profession with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate. (*If applicable – see footnote next page*)

If the ACT maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by ACT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

**Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

The Entity, its officers, officials, employees and volunteers are to be covered as additional insured's on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of ACT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to



ACT's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

### ***Primary Coverage***

For any claims related to this contract, ACT's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance of self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of ACT's insurance and shall not contribute with it.

### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of Entity.

### ***Waiver of Subrogation***

ACT hereby grants to Entity a waiver of any right to subrogation which any insurer of ACT may acquire against the Entity by virtue of the payment of any loss under such insurance. ACT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require ACT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claims administration, and defense expenses within the retention.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

### ***Claims Made Policies (note – should be applicable only to professional liability, see below)***

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract work.***

3. If coverage is cancelled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, ACT must purchase “extended reporting” coverage for a minimum of ***five (5)*** years after completion of work.

#### ***Verification of Coverage***

ACT shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive ACT’s obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

#### ***Special Risks or Circumstances***

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.