

**ADDENDUM TO SERVICE AGREEMENT**  
**Between**  
**Laramie County Government and Visionary Communications LLC**

THIS ADDENDUM is made and entered into by and between Laramie County, Wyoming, P. O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and Visionary Communications LLC, 1001 S. Douglas Hwy, Suite 201, Gillette, Wyoming 82716 (hereinafter, "CONTRACTOR").

**I. PURPOSE**

The purpose of this Addendum is to modify the Service Agreement and accompanying documents submitted by Visionary Communications LLC to assist Laramie County installation of "dark fiber" as well as continued service of internet and dark fiber connectivity to several locations within Laramie County Government, attached hereto as Attachment 'A' and fully incorporated herein (hereinafter "Agreement").

**II. TERM**

This Addendum shall commence on the date last executed by the duly authorized representatives of the parties to this Addendum and Agreement and shall remain in full force pursuant to the terms of the Agreement and this Addendum.

**III. RESPONSIBILITIES OF CONTRACTOR**

A. CONTRACTOR shall provide and complete the services described in Attachment 'A', attached hereto and fully incorporated herein.

B. COUNTY shall pay CONTRACTOR in accordance with the terms set forth in Service Order SO-00033369 and SO-00033370 which are attached to the Agreement. Payment will be made upon receipt of the CONTRACTOR'S invoice to the COUNTY. No payment shall be made before the last signature is affixed to this Agreement. Payments shall be in accordance with Wyo. Stat. § 16-6-602 (as amended).

**IV. MODIFICATIONS**

A. Section 3.1 Procedure is modified as follows:

B. Section 4.18 is modified to add the following language at the conclusion of the paragraph:

- a. To the extent permitted by the Wyoming Public Records Act. W.S. §16-4-201 *et seq.*
- C. Section 4.20 is stricken and shall have no force and effect.
- D. Section 5.2 is stricken and shall have no force and effect.

## V. ADDITIONAL PROVISIONS

A. Independent Contractor: The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of COUNTY. CONTRACTOR is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CONTRACTOR 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. CONTRACTOR is free to perform the same or similar services for others.

B. Preference-Wyoming Labor: Should the subject of this agreement constitute the construction, reconstruction, improvement, enlargement, alteration, or repair, of any public works project or improvement, by signature below CONTRACTOR acknowledges the requirement for the use of Wyoming labor pursuant to W.S. §16-6-203 as amended, except in circumstances as provided by law including, but not limited to W.S. §16-6-201 *et seq.*

C. Entire Agreement: The MSA (20 pages), Service Order SO-00033369 (1 page), Service Order SO-0003370, Fiber Drop Access Agreement for the Courthouse (3 pages), Fiber Drop Access Agreement for the Juvenile Services Center (3 pages), Fiber Drop Access Agreement for Public Works (3 pages), and Addendum (6 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.

D. Assignment: Neither this Agreement and Addendum, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

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

F. Invalidity: If any provision of this 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 this Agreement and Addendum are fully severable.

G. Applicable Law and Venue: The parties mutually understand and agree this 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 this 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 to waive COUNTY's governmental immunity as provided in this Agreement and Addendum.

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

I. 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.

J. Governmental/Sovereign Immunity: 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 Agreement and 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, based on this Agreement and Addendum.

K. Third Parties: The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement and Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in this 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 this Agreement and Addendum.

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

M. Limitation on Payment: COUNTY's payment obligation is conditioned upon 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 CONTRACTOR, the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR 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 this Agreement in order to acquire similar services from another party.

N. Notices: All notices required and permitted under this Agreement 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.

R. 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.

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

T. Precedence: In the event of conflicting terms, the terms shall be as to the MSA, then the Service Order, then the Fiber Drop Form, and lastly the Addendum.

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*Signature Page*

**TO SERVICE AGREEMENT  
Between  
Laramie County Government and Visionary Communications LLC**

LARAMIE COUNTY, WYOMING

By: \_\_\_\_\_ Date \_\_\_\_\_  
Chairman, Laramie County Commissioners

ATTEST:

By: \_\_\_\_\_ Date \_\_\_\_\_  
Laramie County Clerk

Visionary Broadband:

By: DocuSigned by: Gina Dillard Date 11/8/2022  
Authorized Signature

REVIEWED AND APPROVED AS TO FORM ONLY

By: L.D. Wheeler Date 11.9.22  
Laramie County Attorney's Office

Visionary Communications, LLC Services Agreement

This agreement for carrier services (hereinafter "Service"), including the attached Service Order(s) (collectively referred to herein as the "Agreement") is made between Visionary Communications LLC,, dba Visionary Broadband, a Wyoming corporation (hereinafter "Visionary"), having offices at 1001 S Douglas Hwy, Suite 201, Gillette WY 82716, telephone number 307-685-5557 and (hereinafter "Customer"), having offices located at \_\_\_\_\_.

In order to be eligible to receive the terms and conditions contained in the Agreement, the Agreement must be signed and returned to Visionary within thirty (30) business days from the date Agreement was sent for Customer signature. Following execution of the Agreement by Visionary, the fully executed Agreement shall be sent to the Customer via preferred method, as defined in the Notice section of this Agreement.

The undersigned Parties have read and agree to the terms and conditions set forth in the Agreement. This Agreement, its exhibits and appendices and any documents expressly referred to in this Agreement constitute the entire agreement between the Parties and supersede all prior understandings and agreements, whether written or oral, that may relate to the subject matter of this Agreement.

Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed modified to the extent necessary (consistent with the intent of the Parties) to eliminate the illegal, invalid or unenforceable effect or to delete such provision if modification is not feasible, and the remaining terms shall continue in full force and effect.

This Agreement may be executed by the Parties in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same Agreement. Facsimile signatures shall be deemed to be and shall constitute and be treated as an original signed Agreement or counterpart.

In witness thereof, the Parties have caused this Agreement to be signed by their duly authorized representatives.

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

Name:

Title:

Date:

Notice Address:

Billing Address:

Billing Contact:

Billing email: Billing phone:

Visionary Communications Inc.

By:

*Gina Dillard*

94B300063B654AA...

Name: Gina Dillard

Title: VP Service Delivery

Date: November 11, 2022

Notice Address:

Visionary Communications LLC  
1001 S Douglas Hwy, Suite 201  
Gillette WY 82717-2799  
Attn: Contract Management

## 1.0 Definitions

"CPE" means Customer Premises Equipment used at the End User location or Customer location in conjunction with a Service.

"Customer Equipment" means CPE other than CPE for which Visionary has agreed [in a Service Order] to assume maintenance responsibility.

"Dark Fiber" See Appendix I

"Due Date" shall mean thirty (30) calendar days from the invoice date.

"Effective Date" means the date this Agreement is fully signed by both Visionary and Customer.

"End User" means Customer's clients or any third party who utilizes or accesses the Services or Visionary's network via the Services provided hereunder.

"Firm Order Commitment Date" means the date where the local exchange carrier or fiber provider will commit to having the circuit provisioned and available for use.

"Force Majeure" means an unforeseeable event beyond the reasonable control of that Party, including without limitation: act of God, fire, flood, labor strike, sabotage, cable cut not caused by Visionary or its underlying carrier, acts of terror, government laws or regulations, war or civil disorder.

"Leased Premises" refers to the location Visionary makes available for lease of the property described as the Colocation and further described on the Service Order

"MRC" means the monthly recurring cost of a Service, which will be as set forth and agreed upon by the Parties and documented on a Service Order, as applicable.

"NRC" means a one-time, non-recurring cost with respect to a Service, which will be as set forth and agreed upon by the Parties and documented on each Service Order, as applicable.

"Outage" The period of time when a service is not available.

"Outage Credit" means a credit specified and issued in accordance with the terms of Appendices B, C, D and E to this Agreement that is applied to reduce amounts otherwise due from Customer to Visionary for Services provided under this Agreement.

"Parties" means, collectively, Visionary and Customer.

"Past Due Date" shall mean the first business day that is thirty (30) calendar days from the invoice date.

"Service Order" means the order form representing a specific Service to be provided for a defined period to the Customer.

"Service Start Date" or "Ready for Service Date" means five (5) calendar days after Service activation by Visionary.

"Service" or "Services" means the underlying product used to provide telecommunications and data transport to the Customer.

"SLA" means the Service Level Agreements associated with Services under this Agreement as specified on Appendices B, C, D and E to this Agreement.

"Termination Liability Charges" means (i) all previously waived NRC for an applicable Service Order, (ii) all Monthly Recurring Costs (MRC) for any remaining months in the first twelve (12) months of the term of the then applicable Service Order Term, if any, and (iii) fifty percent (50%) of the MRC for the remaining months beyond the first twelve (12) months of the then applicable Service Order Term.

"Undisputed Payment" means the amount of an invoice with respect to which Customer has not properly and timely submitted a billing dispute.

## 2.0 Terms and Conditions

2.1 This Agreement sets forth the terms and conditions under which Visionary shall provide Services to Customer, as further specified on the Service Order for individual Services ordered by Customer. The terms of any active Service Orders shall supersede any inconsistent terms and conditions contained in this Agreement when specifically denoted in the Service Description.

2.2 This Agreement shall not be modified or amended except via written instrument agreeable to both Parties. In the event a conflict exists between this Agreement and terms of any Amendment hereto, the term in the Amendment shall



take precedence.

2.3 Visionary will provide the Services or cause the Services to be provided to Customer in accordance with this Agreement. Visionary may utilize an Affiliate or third party to provide Services to Customer and will present to the Customer consolidated invoices for some or all portions of the Services.

#### 2.4 Omitted

2.5 Taxes All fees owed by Customer to Visionary are exclusive of, and to the extent not otherwise exempt, Customer will be responsible for, all sales, use, excise, Federal Universal Service Fund and other taxes, including NECA tariff increases where applicable, that may be levied upon either Party (except for taxes based on Visionary's net income) in connection with this Agreement or on activities conducted using the Services. Each Party shall be solely responsible for all taxes on its own business and shall be responsible for any related tax filings, payment, protest, audit and litigation related thereto.

2.6 Visionary authorizes Customer to initiate orders for telecommunications circuits to Visionary's network, provided that Customer orders are for Services defined by a fully executed Service Order. Visionary has the right, in its sole discretion, to refuse any such Service Orders upon review.

2.7 Visionary shall provide Services in accordance with applicable State tariffs governing the provisions of such Services in the State provided. In the event of a conflict between tariff and this Agreement, where applicable, the conflict shall be resolved in the favor of the tariff. This provision is not applicable to unregulated and/or non-tariffed Services.

#### 3.0 Invoicing

3.1 Procedure Customer shall be invoiced by email and/or via U.S. Postal or courier service at Customer preference each month in advance of Service, for all amounts due and owing to Visionary. Payments are due within thirty (30) days following the invoice date (the "Due Date"). Unless otherwise specified in writing by Visionary, payments shall be made payable to "Visionary Communications" and mailed as directed on the invoice. Credit card, money order, wire transfers and cashier's checks, in each case representing immediately available funds, are also acceptable payment instruments.

3.2 Advance Invoice Visionary will invoice Customer in advance for all Services. All undisputed amounts other than a written disputed amount not received by Visionary in full by the Due Date, will be considered past due, and subject to a late payment fee of the lesser of one and one-half percent (1.5%) per month, or portion thereof, or the maximum amount allowed by law. Customer Services, individually or as a whole, may be terminated, disconnected, and equipment removed upon five (5) business days' notice if payment, less any timely and properly submitted billing disputes, is not received by the Due Date. Visionary may charge a \$500 reconnect fee for any individual Service at its sole discretion to restore such Service.

3.3 Dispute of Invoice Customer shall only be obligated to pay the Undisputed Payment amount on or before the Due Date. In order to properly dispute all or any portion of an invoice, Customer must give written notice to Visionary of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed) within sixty (60) calendar days following the date of the applicable invoice. The Parties shall use commercially reasonable efforts to resolve the dispute in good faith within a sixty (60) calendar day timeframe following the Customer's giving the notice of dispute. The Parties shall supply the other Party with additional information or documentation it shall reasonably request in order to determine the resolution of the dispute. If the dispute is resolved against the Customer, the Customer shall pay the disputed amounts plus interest at one and one-half percent (1.5%) per month from the date originally due. If Customer is entitled to credits or adjustments for disputed amounts, Visionary will credit Customer for the disputed amount and any interest on the disputed amount charged on its invoice issued the next billing cycle.

3.4. Attorney's Fees Customer shall also pay all collection costs incurred by Visionary (including, without limitation, reasonable attorneys' fees) for the collection of late payments.

#### 4.0 Term

4.1 This Agreement is for the term provided on the initial Service (the "Initial Term"). The Initial Term begins on the date of actual installation of the initial, individual Service and activation by the telephone company or Visionary, whichever comes first (hereinafter "Start Date"). To the extent that the term of any Service Order for any Service extends beyond the Initial Term or any Services are provided on a month-to-month basis, this Agreement shall remain in full force and effect for such Service until the expiration or termination of final active Service Order or the termination of the month-to-month Services under this Section 4.1 (the "Extension Term," and, collectively with the Initial Term, the "Term"), after which this Agreement will terminate. After the Initial Term, all Services shall automatically continue from month to month, at the then current month-to-month rate, with notice to Customer in writing, which month to month rate would be effective thirty (30) days from the date of notice, until terminated by Customer hereunder. After the Initial Term, Visionary, may, with thirty (30) day notice to Customer, terminate service. To terminate a Service provided on a month-to-month basis, Customer must give Visionary written notice, after which the Service will terminate at the end of thirty (30) calendar days, or a later date as requested by Customer. To terminate a Service at the end of the term specified in any Service Order, Customer must provide Visionary with written notice at least thirty (30) days prior to the end of such term. Customer will be liable for payment of, and Visionary will invoice Customer for Services, until they are considered terminated under this Section 4.1 or under Section 4.3 or 4.4.



4.2 Upon termination of this Agreement, Customer shall discontinue any and all use of Visionary's name and materials, including the use in advertising via web and in printed material, return or destroy any and all promotion material supplied by Visionary, cease representing itself as affiliated with Visionary.

4.3 Customer may cancel a submitted Service Order by providing Visionary with written notice of such cancellation. If Customer cancels a Service Order within three (3) business days after the date on which Visionary countersigns the Service Order, Customer will not be charged any cancellation fees for the terminated Service Order. If Customer cancels a Service Order more than three (3) business days after the date on which Visionary countersigns the Service Order, but prior to the Firm Order Commit Date for the individual Service, as communicated by Visionary, Customer shall pay Visionary a cancellation fee equal to the NRC outlined on the Service Order and all third-party construction, cancellation and/or termination charges incurred by Visionary, including any previously-waived NRCs from underlying fiber providers, with the exception of T1 (or DS1) services, which both parties agree to share actual expense incurred by Visionary for any Service Order cancellation prior to Firm Order Commitment Date. If Customer cancels a Service Order on or after the Firm Order Commit Date, Customer shall pay to Visionary all Termination Liability Charges. Upon cancellation of the Service Order under this Section 4.3, the applicable Service covered by the Service Order will be considered terminated. Customer may cancel a Service provided; A other than on a month-to-month basis upon no less than 30 days' prior written notice to Visionary.

4.4 Visionary may immediately terminate this Agreement and all Services hereunder for failure by Customer to timely pay amounts described in Section 3.2 due under this Agreement. If Visionary terminates for non-payment, Customer shall pay with a lump sum equal to the aggregate Termination Liability Charges due under this Agreement within ten (10) days' following Visionary's notice to Customer of termination.

4.5 At any time during the Term, if Customer fails to pay undisputed invoice(s) by the Due Date on more than two (2) occasions in any twelve (12) month period, Visionary may, at its election, require Customer to provide a deposit not to exceed three (3) months of MRC, calculated as an average of the last three (3) months of MRC for Services under this Agreement, within ten (10) calendar days.

4.6 Visionary shall notify Customer of the Start Date for the Service. In the event the Customer is unable or unwilling to accept Service at such time, the subject Service will be held available for a period not to exceed thirty (30) days from the Start Date, during which Service will be considered active, and will be invoiced as an active Service. Following this period, if the Customer has not accepted Service, Visionary has the right to terminate Service and invoice Termination Liability Charges.

4.7 Visionary shall use commercially reasonable efforts to install Service on or before the Start Date; however, the inability of Visionary to deliver the ordered Service by such date shall not constitute a default under this Agreement. Customer may terminate a Service Order accepted by Visionary without liability if Visionary fails to make the Service available for testing by the fortieth (40th) calendar day following the Firm Order Commitment Date unless that availability has been hindered by access to the location(s) at which Service is to be delivered, or Customer fails to complete necessary requirements or place necessary CPE to allow Visionary to meet this deadline. The right to terminate the delayed Service Order under this Section 4.7 is the Customer's sole and exclusive remedy for Visionary's failure to meet the Firm Order Commitment Date.

4.8 SLA terms are defined in Appendix B and Appendix C of this agreement and are incorporated by reference into this Agreement.

4.9 To receive an Outage Credit, Customer must comply with the procedures and requirements set forth in Appendix F, which is incorporated by reference herein. If Customer fails to comply with the conditions set forth in Appendix F, Customer shall have waived its right to Outage Credits with respect to the Outage (as defined in Appendix F) in question.

4.10 Outage Credits shall not apply if (a) Customer Equipment used in the Service has failed to operate properly and contributed to the Outage, (b) the Outage is due in whole or in part to Customer's or Customer's End User's use of the Service in violation of applicable law or in violation of instructions furnished by Visionary, (c) the Outage is related to routine maintenance outside normal business hours as communicated by Visionary in writing to the Customer no less than twenty-four (24) hours prior to such maintenance, and (d) to the extent the Outage is attributable to the fault of the Customer including, but not limited to, inadequate response time by the Customer. For avoidance of doubt, normal business hours shall be 7 am to 5 pm Monday through Friday, Mountain Time Zone, excluding United States federal holidays.

4.11 Customer may upgrade, add additional sites and move the physical location of all or part of Service to another location within Visionary's serving area, provided the following conditions for the move are met, (a) Visionary is the provider of the Services at the new location, (b) Customer advises Visionary that Service at the new location is to replace the existing Service, (c) Customer's request for the disconnection of the existing Service and the installation at the new location are received by Visionary on the same date, (d) Customer requests Visionary install Service at the new location on or prior to the disconnection date of the Service at the existing location (e) Customer pays all charges due at the existing location through the disconnection date and applicable non-recurring and recurring charges at the new location and (f) the underlying connection provided by Visionary, if contracted, can be replaced with a contract at the new location (g) underlying carrier agrees to move without penalty. No failure to provide a Service in accordance with the applicable SLA as a result of moving the location of the Service under this Section 4.11 will be considered an Outage or be eligible



for Outage Credits.

4.12 Customer understands that Service must be changed or altered by and with Visionary, regardless of type of Service. All changes and terminations must be directed to Visionary, with Customer understanding that contact with a third party does not alter this Agreement. Changes to the type of Services, assignment of new settings, support and/or programming of routers and any other Service alterations may incur a charge to the Customer at Visionary's then current labor rates or Visionary's contract provider's non-recurring rates. Customer must provide ample notice and opportunity to Visionary to quote and schedule the Service changes.

4.13 Customer hereby acknowledges that the Internet is not owned, operated, managed by, or in any way affiliated with Visionary or its Affiliates; it is a community network independent of Visionary. Customer's use of the Internet related to Internet Bandwidth and IP Solutions as defined in Appendix B is at Customer's sole risk and is subject to all applicable local, State, Federal, and international laws and regulations. Access to the Internet is dependent on numerous factors, technologies, and systems beyond Visionary's authority and control.

4.14 Access to networks connected to Visionary's network must be established under rules appropriate to those networks. Visionary exercises no control whatsoever over the content and information passing through its network.

4.15 Routine maintenance and periodic system repair, upgrades and reconfigurations, public emergency or necessity, Force Majeure, restrictions imposed by law, acts of God, labor disputes, and other situations, including mechanical or electronic breakdowns, may result in temporary impairment or interruption of Service. As a result, Visionary does not guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Service without notice. Except as expressly set forth in Section 4.9 with respect to Outage Credits, customer recontracts Visionary and its directors, officer, employees and agents from any and all obligations, charges, claims, liabilities, opportunity costs and fees incurred, whether foreseeable or unforeseeable, as the result of Service interruption, omission or degradation, including the impact resulting to the Customer. 24 hour notification will be given for planned outages.

4.16 Use of a Party's name, trademark, service mark, copyright or other intellectual property owned by a Party, or its Affiliates is strictly prohibited without the express written consent of a Party's corporate officer. Nothing herein constitutes a license authorizing the use of Party's name, trademark, service mark, copyright or other intellectual property owned by a Party or its Affiliates.

4.17 Customer represents that it is not by law or agreement with others, prohibited from entering into this Agreement.

4.18 The following information will be considered proprietary information under the Agreement concerning non-disclosure of information between Visionary and Customer: (a) any of the terms of this Agreement, including pricing and (b) the existence, negotiation or results of any arbitrations or settlements relating hereto.

4.19 The terms, representations and warranties of this Agreement may only be waived by a written instrument executed by the Party waiving compliance. Except as otherwise provided for herein, neither Party's failure at any time, to enforce any right or remedy available to it under this Agreement shall be construed as a continuing waiver of such right or a waiver of any other provision hereunder.

4.20 EXCEPT FOR VISIONARY'S INDEMNITY OBLIGATIONS UNDER SECTION 5.1, CUSTOMER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO OUTAGE CREDITS AS SET FORTH IN THIS AGREEMENT. IN NO CASE WILL VISIONARY BE LIABLE FOR ANY AMOUNTS EXCEEDING IN THE AGGREGATE THE AMOUNTS PAID BY CUSTOMER TO VISIONARY UNDER THIS AGREEMENT IN THE PRIOR TWELVE MONTHS. VISIONARY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER STATUTORY, EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. CUSTOMER ACKNOWLEDGES AND ACCEPTS THE REASONABLENESS OF THE FOREGOING WARRANTY DISCLAIMER AND LIMITATIONS OF LIABILITY.

4.21 Notwithstanding anything else in this Agreement, there are no third-party beneficiaries to this Agreement.

4.22 Customer shall be solely responsible for the following: (a) any costs associated with Customer Equipment; (b) access-related charges, including any charges for interconnection, cross-connection, installation, wiring and construction and other access-related charges; and/or (c) ordering, installing and ensuring proper operation of any and all equipment required to enable Customer to receive the Service, as set forth in any accepted Service Order.

4.23 Customer shall be responsible for supporting End Users of the Services solicited by or assigned to Customer, defined as Level 1 Support. Level 1 Support includes, but is not limited to, soliciting orders, completing orders, providing back-office and billing services and providing End User technical support. Customer warrants that communication with Visionary shall originate from Customer and not the End User.

4.24 Customer shall maintain a staff of adequately trained and competent personnel, knowledgeable of the specifications, features and advantages of the Services, including methods of supporting Services. Customer acknowledges that the Services are technically complex and require high-quality, individualized pre-sale and post-sale support.

## 5.0 Indemnification



**5.1 Indemnification by Visionary** Visionary shall indemnify, defend and hold harmless Customer and its affiliates, parents, officers, directors, employees, agents successors and assigns ("Customer Indemnified Parties"), from and against all claims, demands, liabilities, damages and costs including, without limitation, its reasonable attorneys' fees and other costs of defense, due to third party claims for death, bodily injury or property damage, to the extent caused by (i) Visionary's negligence or other tortious conduct or (ii) Visionary's failure to comply with its obligations under the Agreement. In no event shall Visionary be held liable to any Customer Indemnified Party for any damages arising out of (a) any Customer Indemnified Party's negligence or tortious conduct or intentional misconduct, (b) any Customer Indemnified Party's violation of the terms of the Services as set forth in this Agreement, (c) any Customer Indemnified Party's modification of the Services, (d) any Customer Indemnified Party's violation of applicable law. The obligations of Visionary under this Section 5 are for the benefit of Customer Indemnified Parties only and Visionary shall have no liability or responsibility to any other person in connection with any performance or nonperformance of this Agreement.

**5.2 Indemnification by Customer** Customer shall indemnify, defend and hold harmless Visionary and its affiliates, parents, officers, directors, employees, agents successors and assigns ("Visionary Indemnified Parties"), from and against all claims, demands, liabilities, damages and costs including, without limitation, its reasonable attorneys' fees and other costs of defense, arising from or relating to a third party claim relating to (a) Customer's breach of any terms of this Agreement; and (b) Visionary's provision of Services under this Agreement. In no event shall Customer be held liable to any Visionary Indemnified Party for any damages caused by the gross negligence of any Visionary Indemnified Party.

**5.3 Procedure** A Party entitled to indemnification under this Section 5 (an "Indemnified Party") shall promptly notify the other Party to this Agreement (the "Indemnifying Party") in writing of any claim, action or proceeding which may be subject to indemnification under this Agreement (an "Indemnity Claim"), but the failure to provide such prompt notice will not relieve the Indemnifying Party from its obligation to provide indemnity with respect to an Indemnity Claim except to the extent the Indemnifying Party is materially prejudiced by the failure to give prompt notice. The Indemnifying Party will have the sole control of the defense and any settlement negotiations with respect to the Indemnity Claim, except that the Indemnified Party may employ counsel to participate in the defense of any such Indemnity Claim, and the employment of such counsel shall be at the Indemnified Party's own expense, unless (i) the employment of such counsel has been authorized in writing by the Indemnifying Party, (ii) the Indemnified Party has reasonably concluded (based upon advice of counsel) that a conflict or potential conflict exists between the Indemnified Party and the Indemnifying Party that makes it impossible or inadvisable for counsel to the Indemnifying Party to conduct the defense of both the Indemnified Party and the Indemnified Party, or (iii) the Indemnifying Party has not in fact employed counsel reasonably satisfactory to the Indemnified Party to assume the defense of such Indemnity Claim within a reasonable time after receiving notice of an Indemnity Claim, in each of which cases the reasonable fees, disbursements and other reasonable charges of such counsel will be at the expense of the Indemnifying Party. Notwithstanding the foregoing provisions of this Section 5.3, the prior written consent of the Indemnified Party, which will not be unreasonably withheld, conditioned or delayed, will be required with respect to the settlement, compromise or consent of any Indemnity Claim in which such Indemnified Party is an actual or potential party unless such settlement, compromise or consent includes an unconditional recontract of the Indemnified Party from all liability arising out of such Indemnity Claim. At the request of the Indemnifying Party, the Indemnified Party will provide reasonable cooperation and, at the expense of the Indemnifying Party, assistance in the defense or settlement of any Indemnity Claim.

**6.1 Choice of Law** This Agreement and all disputes arising out of or relating to this Agreement will be governed by, enforced, and construed in accordance to the laws of the State of Wyoming. THE PARTIES AGREE THAT ANY ACTION BROUGHT BY EITHER PARTY UNDER OR IN RELATION TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION TO INTERPRET OR ENFORCE ANY PROVISION OF THIS AGREEMENT, SHALL BE BROUGHT EXCLUSIVELY IN, AND EACH PARTY AGREES TO AND DOES HEREBY SUBMIT TO THE JURISDICTION AND VENUE OF, ANY STATE OR FEDERAL COURT LOCATED IN CASPER, WYOMING AND AGREES THAT SUCH COURTS WILL NOT BE CONSIDERED, AND HEREBY WAIVES ANY CLAIM THAT SUCH COURTS CONSTITUTE, INCONVENIENT FORUM.

**6.2 Successor and Assigns** Neither Party shall assign any of its rights, obligations or privileges (by operation of law or otherwise) hereunder without the prior written consent, which shall not be unreasonably withheld, of the other Party. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by the reason of this agreement, except as expressly provided in this Agreement.

**6.3 Headings** Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

**6.4 No Ability to Bind Other Party** Neither Party shall have the authority to bind the other by contract or otherwise or make any representations or guarantees on behalf of the other. The relationship arising from this Agreement shall be and shall at all times remain that of an independent contractor, and does not constitute an agency, joint venture, partnership, employee relationship or franchise.

**6.5 Notices** All communications required or permitted to be given by this Agreement shall be made in writing and shall be sent by a recognized overnight commercial delivery or certified U.S. mail to the address for the respective Party shown on the signature page of this Agreement or such other address as either Party may specify from time to time in writing.

6.6 Force Majeure. Neither Party shall be liable for any failure or delay in the performance of its obligations under this Agreement for any cause beyond its reasonable control including, without limitation, acts of God, fire or other disaster or telecommunications, power or Internet failure. The occurrence of any such event shall toll the time period provided in this Agreement for performance by the affected Party.

6.7 Construction; Interpretation. The term "this Agreement" means this Visionary Communications, LLC Services Agreement together with the appendixes and exhibits hereto, as the same may from time to time be amended, modified, supplemented or restated in accordance with the terms hereof. No Party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions hereof, and all provisions of this Agreement shall be construed according to their fair meaning and not strictly for or against any Party. Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole, including the appendixes and exhibits, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement; (ii) masculine gender shall also include the feminine and neutral genders, and vice versa; (iii) words importing the singular shall also include the plural, and vice versa; and (iv) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation."

6.8 Survival. Customer's payment obligations to Visionary will survive the expiration and termination of this Agreement. In addition, the provisions of Sections 1, 2.5, 3.3, 4.1, 4.8, 4.9, 4.13 through 4.23 and 5 will survive the expiration and termination of this Agreement.

#### 7.0 Facilities

7.2 Fiber cross-connects to be used for Visionary services will need to be coordinated with Laramie County Information Technology staff.

7.3 Visionary equipment installation will be coordinated with Laramie County Information Technology Staff.

7.4 All non-emergency work within Laramie County facilities will need to have 24 hour advanced notice for approval by Laramie County Information Technology Staff.

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#### APPENDIX B – SERVICE LEVEL AGREEMENT (MEAN TIME TO REPAIR)

The Service Level Agreement ("SLA") between Visionary and Customer provides the following:

Equipment mean time to repair:

- 4 hour mean time to repair, within business hours
- 8 hour mean time to repair, outside business hours

Fiber optic, coaxial, Ethernet or cable pair mean time to repair:

- 4 hour mean time to repair, within business hours
- 8 hour mean time to repair, outside business hours

The above objectives shall apply to DS1, DS3, OC3, OC12, OC48, OC3, OC12, and OC48 capacity, Gigabit Ethernet services, and DSL-related services.

##### DSL SLA:

Network Availability – the goal for network availability is 100%, with each hour of DSL downtime qualifying Customer for one hour's Outage Credit for the Affected Service, applicable to only the DSL Services provided to Customer, by LATA. Network Availability is based on the ability to transmit and receive data from a particular LATA, measured from the time the trouble ticket is opened to the time the Service is again able to transmit and receive data as documented by Visionary.

Latency – the goal for DSL latency is 100ms or less to the Customer's router, with Outage Credits of 10% of MRC available for latency of 101ms to 120ms, and Outage Credits of 20% of MRC available for latency of 121ms or greater, by LATA. Latency will be measured via roundtrip pings averaged over an hour period, divided by two.

Packet Delivery – the goal for packet delivery is 99.5%, with Outage Credits of 10% of MRC available for packet delivery of 99.01 to 99.49%, Outage Credits of 25% of MRC available for packet delivery of 90.00 to 99.00%, and Outage Credits of 50% of MRC available for packet delivery of less than 99.00%, by LATA. Packet delivery measurements shall be conducted at an aggregate circuit level, measured as average packet loss over an hour period.

Jitter – the goal for jitter is 4ms, with Outage Credits of 10% of MRC available for jitter of 4 to 4.99ms, Outage Credits of 25% of MRC available for jitter of 5 to 5.99ms, and Outage Credits of 50% of MRC available for jitter of more than 6ms, by LATA. Jitter measurements shall be conducted at an aggregate circuit level, measured as average jitter over an hour period for UDP traffic.

The average network delay ("Latency") will be measured via roundtrip pings on an ongoing basis every five minutes to determine an average monthly performance level for Latency at the relevant Point of Presence within the Visionary Network. Latency equals the sum of roundtrip delay divided by two to calculate one-way latency results. Packet Delivery will be measured on an ongoing basis every five minutes to determine an average monthly performance level for packets delivered between the relevant POPs.

Jitter measures interpacket delay variance and packet loss in the Visionary Network and is measured on an ongoing basis every five minutes by generating synthetic User Datagram Protocol traffic. For purposes of this Appendix B, jitter means average monthly jitter as measured by Visionary on an ongoing basis in five-minute intervals.

##### Components Included:

All components (i.e., POPs, Routers, Circuits) of Visionary's network and the components of certain other carriers or backbone providers used by Visionary are covered by this SLA. The SLA is limited to components of Visionary's network. Service may be affected by LATA due to (i) Network Downtime under the Network Availability goal or (ii) the failure of the other goals in this SLA. Outage Credits shall be based only on the MRCs for locations in the particular LATA for which Customer is eligible to receive Outage Credits under the applicable SLA.

##### Components Excluded:

All other services and components relating to the Service, including without limitation the following, are not covered by the SLA: all access and connection facilities to the Master Aggregation ATM switch (i.e. DSL, PVC, local loop) at Qwest; the Master Aggregation ATM switch at Qwest; the ATM aggregation port at Qwest, the connection from the Master Aggregation ATM Switch to Visionary; Customer Premises Equipment; and any other services or components not operated by Visionary or are not a part of the Service. Network unavailability or increased latency, packet loss or jitter caused by the foregoing excluded components will not give rise to Outage Credits.

Normal and Emergency Maintenance Service Level Agreements for DSL mirror those found in Appendix E.

The length of each Outage shall be calculated in full minutes for the purposes of determining Outage Credits. The existence and end of each Outage and the Latency, packet delivery and jitter will be determined by Visionary in good faith based on network tests performed by Visionary. Under no circumstances will network tests performed by Customer be considered valid measurable criterion for the purposes of establishing Outage Credits.

## Appendix C – Dedicated Internet Access Service Level Agreement

Dedicated Internet Access is described as Internet connectivity produced by: (a) a dedicated, high-speed network connection between Customer's premises and Visionary or a Visionary affiliate's Internet Protocol network (Visionary Network); and (b) routing services, based on Transmission Control Protocol/Internet Protocol (TCP/IP). Service may also include the procurement of IP address space for Customer.

The monthly Service Availability Percentage for Dedicated Internet Access is calculated as follows:

$(\text{Minutes of Outage}) / 43,200$  (30 days x 24 hours/day x 60 minutes in an hour)

All relevant components of the Visionary IP Network (POPs, routers and circuits) are subject to this SLA. Local access and connection facilities used to access the Visionary Network and any Customer equipment are not included as components of the Visionary Network for purposes of this SLA; provided, however, solely for purposes of the Network Port Availability SLA, the components of the Visionary Network shall include any access circuits provided by Visionary but shall specifically exclude any access furnished or ordered directly by Customer from a third party.

### Network Port Availability

Goal	Outage Credit
100%	<5min no credit
5min - 1hr	1 day's credit and 1 day credit for each hour after until full month MRC

Latency to be defined on a per Service Basis

### Packet Delivery

Goal	Packet Delivery	Outage Credit
99.50%	99.01-99.49%	10% of MRC
99.50%	90.00-99.00%	25% of MRC
99.50%	<90.00%	50% of MRC

### Jitter

Goal	Packet Delivery	Outage Credit
2ms	2.1-3ms	10% of MRC
2ms	3.1-4ms	25% of MRC
2ms	>4ms	50% of MRC

Network Port Availability Measures Network Downtime versus Network Uptime. Network Downtime is based on periods when a particular DIA port of Customer is unable to transmit and receive data, and Network Uptime includes all other periods. Network downtime is recorded in the Visionary Network trouble ticket system and is measured from the time Customer opens a trouble ticket with Visionary as defined in Appendix E, to the time the affected Service is again able to transmit and receive data according to Visionary's records.

The average network delay ("Latency") will be measured via roundtrip pings on an ongoing basis every five minutes to determine an average monthly performance level for Latency at the relevant Point of Presence within the Visionary Network. Latency equals the sum of roundtrip delay divided by two to calculate one-way latency results. Packet Delivery will be measured on an ongoing basis every five minutes to determine an average monthly performance level for packets delivered between the relevant POPs.

Jitter measures interpacket delay variance and packet loss in the Visionary Network and is measured on an ongoing basis every five minutes by generating synthetic User Datagram Protocol traffic. For purposes of this Appendix C, jitter means average monthly jitter as measured by Visionary on an ongoing basis in five-minute intervals.

A Distributed Denial of Service attack ("DDoS") is characterized by an explicit attempt by attackers to prevent legitimate users of a Service from using that Service. DDoS attacks are not covered by this SLA.

The length of each Outage shall be calculated in full minutes for the purposes of determining Outage Credits. The existence and end of each Outage and all Latency, jitter and network port availability measurements will be determined by Visionary in good faith based on network tests performed by Visionary. Under no circumstances will network tests performed by Customer be considered valid measurable criterion for Outage, Latency, jitter or network port availability determinations for the purposes of establishing Outage Credits.



#### Appendix D - Private Line Service Level Agreement

Private Line Service is described as the carriage of interstate or intrastate traffic pursuant to the terms and conditions of Agreement and the Appendices. Private Line Service is a point to point dedicated switched/non-switched electrical and/or data optical transmission, over a physical circuit between two Points of Presence (PoPs) located on Visionary's, its affiliates, or its third-party vendor networks.

The monthly Service Availability Percentage for Private Line Service is calculated as follows:

$(\text{Minutes of Outage}) / 43,200$  (30 days x 24 hours/day x 60 minutes in an hour)

Private Line Service Descriptions:

DS1  
DS3  
OC3  
OC12  
OC48

SLA and Outage Credit Table, Service Availability

Upper-Level Lower-Level Outage Credit %

100.000%	99.99%	0%
<99.99%	99.95%	10%
<99.95%	99.00%	25%
<99.00%	0.00%	100%

The length of each Outage shall be calculated in full minutes for the purposes of determining Outage Credits. The existence and end of each Outage will be determined by Visionary in good faith based on network tests performed by Visionary. Under no circumstances will network tests performed by Customer be considered valid measurable criterion for Outage determination for the purposes of establishing Outage Credits.

#### Appendix E – Wave Service Level Agreement

The Service Level Agreement ("SLA") between Visionary and Customer provides the following:

Equipment mean time to repair:

- 4 hour mean time to repair, within business hours
- 8 hour mean time to repair, outside business hours

Fiber optic cable pair mean time to repair:

- 4 hour mean time to repair, within business hours
- 8 hour mean time to repair, outside business hours

The above objectives shall apply to 1Gbps, 2.5Gbps and 10Gbps Wave services.

The monthly Service Availability Percentage for Unprotected Wave Service is calculated as follows:

$(\text{Minutes of Outage}) / 43,200$  (30 days x 24 hours/day x 60 minutes in an hour)

Service Objectives for Uptime, Unprotected Wave 99.90% minimum

Upper-Level	Lower-Level	Outage Credit %
100.000%	99.9%	0.0%
<99.9%	99.7%	5%
<99.7%	99.2%	10%
<99.2%	98.5%	25%
<98.5%	0.0%	100%

#### Appendix F – Outage Credit Details

To receive an Outage Credit, Customer must (a) enter a trouble ticket at the time the failure to meet the SLA (the "Outage") occurs by contacting Visionary's Network Operating Center (NOC) via the online Visionary Communications, LLC Partner Portal, unless Visionary has itself opened the trouble ticket for such Service unavailability, (b) be current in its payment obligations under this Agreement for all amounts not in dispute by the Customer, and (c) request reimbursement for Outage Credits from Visionary as specified hereunder and submit to Visionary all necessary supporting documentation within thirty (30) calendar days of the date of invoice for the month in which the applicable Outage occurred. If Customer fails to comply with the conditions for Outage Credits as set forth, Customer shall have waived its right to such Outage Credits for Outages in such month.

An Outage shall not be deemed to have occurred in the event that the Service is unavailable or impaired due to any of the following:

- (i) Interruptions on a Service for which the Start Date has not yet commenced.
- (ii) Interruptions caused by the negligence, error or omission of Customer or others authorized by Customer to access, use or modify the Service or equipment used by Customer.
- (iii) Interruptions due to power failure at Customer or End User premises, or the failure or poor performance of Customer Equipment.
- (iv) Interruptions during any period in which Visionary or its agents are not afforded access to the End User premises where the access lines associated with the Service are terminated, provided such access is reasonably necessary to prevent a degradation or to restore Service.
- (v) Interruptions during any period that Visionary has communicated to Customer with twenty-four (24) hours' notice that the Service will be unavailable due to normal Maintenance or grooming purposes, or Customer has recontracted the Service to Visionary.
- (vi) Interruptions during any period that Customer elects not to recontract the Service for testing and/or repair and continues to use it on an impaired basis.
- (vii) Interruptions resulting from Force Majeure (including a Distributed Denial of Service (DDOS) attack);
- (viii) Interruptions resulting from Customer's use of Service in an unauthorized or unlawful manner.
- (ix) Interruptions resulting from a Visionary disconnect under Section 3.2 of the Agreement.
- (x) Interruptions resulting from incorrect, incomplete or inaccurate a Service Order from Customer.
- (xi) Interruptions due to improper or inaccurate network specifications provided by Customer.
- (xii) Interruptions resulting from a failure of an off-net carrier's loop or network that has no SLA.
- (xiii) Special configurations of the standard Service that have been mutually agreed to by both parties, unless a separate Service Level Agreement for the special configuration has been established with the Service Order; and
- (xiv) Visionary's inability to deliver Service by the Firm Order Commit Date.

Visionary will endeavor to perform all non-emergency Scheduled Maintenance during pre-established maintenance hours, or windows. Scheduled Maintenance refers to (a) upgrades of hardware or software, (b) upgrades to increase capacity, (c) other pre-scheduled network activity that may degrade the quality of the Services or cause Service interruptions.

Visionary will use reasonable efforts to perform all Scheduled Maintenance weeknights between the hours of 11:00 pm and 6:00 am Mountain Time Zone. Notifications for Scheduled Maintenance shall be provided by email at least 24 hours in advance of the work. It shall be the responsibility of the Customer to provide Visionary in writing with correct and effective contact emails for said notifications.

Emergency Maintenance shall refer to efforts to correct Visionary network conditions which require immediate correction. Emergency Maintenance, while being conducted, may degrade the quality of Services and may result in total disruption of Service. Visionary may undertake Emergency Maintenance at any time it deems necessary in its sole discretion.

Visionary shall endeavor to provide Customer notice of Emergency Maintenance as soon as is reasonably practicable under the circumstances.

#### Appendix G – Visionary NOC Guide

Visionary operates a 24-hour monitoring center that enables access to Visionary's Tier 1 and Tier II Network Operations Center (NOC) personnel 24 hours a day, 7 days a week, 365 days a year. To report any Outage or other service issues to the NOC, Customer must open a trouble ticket.

Customer may contact the NOC at the following telephone number: 307.685.5475.

Should Services be delivered to Customer using Customer-provided circuits, Customer is responsible for maintaining and troubleshooting its portion of the circuit. Visionary's NOC will assist Customer in determining troubleshooting steps for each portion of the Customer's Services.

#### Appendix H – Switched Ethernet Service Level Agreement

Switched Ethernet is described as the carriage of packets on an Ethernet network (either Metro or Long-Haul) pursuant to the terms and conditions of Agreement and the Appendices. Switched Ethernet is a point to point or point to multi-point switched electrical and/or optical transmission, over a physical circuit to a central switched point or hub on Visionary's, its affiliates, or its third-party vendor networks.

The monthly Service Availability Percentage for Switched Ethernet Service is calculated as follows:

$$((\text{Minutes of Outage}) / 43,200 \text{ (30 days x 24 hours/day x 60 minutes in an hour)})$$

#### Private Line Service Descriptions:

Metro Optical Ethernet  
Metro Switched Ethernet Service  
Ethernet Virtual Private Line

#### SLA and Outage Credit Table, Service Availability

##### Upper-Level Lower-Level Outage Credit %

100.000%	99.9%	0%
<99.9%	99.5%	5%
<99.5%	99.0%	10%
<99.0%	95.0%	25%
<95.0%	00.0%	50%

The length of each Outage shall be calculated in full minutes for the purposes of determining Outage Credits. The existence and end of each Outage will be determined by Visionary in good faith based on network tests performed by Visionary. Under no circumstances will network tests performed by Customer be considered valid measurable criterion for Outage determination for the purposes of establishing Outage Credits.



#### Appendix I- Dark Fiber Services

Dark Fiber Services Appendix is subject to, and made a part of, that Master Services Agreement ("MSA") entered into between Visionary and Customer. Visionary owns and operates telecommunications facilities and is in the business of leasing dark fiber optic strands between a specific A and Z Location on a Service Order with no add-drop capability, within the Visionary network ("Dark Fiber") Capitalized terms not defined herein will have the meaning ascribed to them in the MSA.

DEFINITIONS. The following additional definitions shall apply to Dark Fiber Services:

Allocated MRC means a portion of a Monthly Recurring Charge allocated by Segment on a pro-rata basis, unless otherwise specified in a Service Order.

Backbone means the primary Visionary cable(s) in a given metropolitan area or long-haul route. As used in a metropolitan context, a backbone is typically a multi-ring fiber optic communication system connected to the areas central offices, carrier hotels, points of presence and other telecommunications nodes. As used in a long-haul context, a backbone is typically a point-to-point multi-cable route connecting telecommunications nodes in two metropolitan areas. Both collect and carry telecommunications traffic gathered from smaller lines that interconnect with it.

Costs mean any applicable cancellation, termination or other charges from a third party, charges for make ready work, permitting and engineering fees, building access or license fees, special construction charges and/or materials and equipment costs.

Demarcation Point is the network interface point specified on a Service Order wherein Visionary hands-off Service to Customer.

Estimated Delivery Date is the date or delivery interval, specified in a Service Order, in which Visionary estimates the Dark Fiber Service to be available.

Lateral means a discrete fiber optic communication system Segment or spur owned by or acquired by Visionary that branches off from the Backbone to a Customer Location.

On-Net is a location to which, at the time that a Service Order is placed, Visionary (i) has available Dark Fiber, provisioned entirely on Visionary facilities (not including fiber optic infrastructure provided by a third-party supplier or requiring special construction) and (ii) has the right to connect its Dark Fiber to Customer at a designated termination point.

Off-Net is a location which does not meet the definition of On-Net.

Service Specifications means both the definitions and performance specifications of a Service detailed herein and in a Service Order.

Segment is a span of Dark Fiber between Locations specified in a Service Order.

Visionary POP refers to Visionary's point of presence at which Visionary provides interconnectivity to its network routes and facilities.

#### GRANT OF LEASE.

As of the Service Activation Date for any Dark Fiber ordered under a Service Order, Visionary agrees to lease to Customer, and Customer agrees to lease from Visionary, the number of strands of Dark Fiber in the configuration described in the Service Order. Any materials, equipment, fiber optic cable and other personal property shall remain Visionary's personal property even if installed to the real property of the Customer. Customer acknowledges that it has no option to purchase any part of the materials, equipment, fiber optic cable and other personal property of Visionary installed between the Demarcation Points. Customer shall keep Visionary's facilities and the Dark Fiber free from all liens, including but not limited to mechanics liens, and encumbrances by reason of the use of the Dark Fiber by Customer. If Customer fails to pay, or bring appropriate challenge to, any taxes, assessments, or other fees, and such failure results in the imposition of a lien or encumbrance on the Dark Fiber or an assessment directly against Visionary, Visionary shall have the right to pay the same and charge the amount thereof to Customer, who shall pay the same upon demand. This right is in addition to any other right provided to Visionary herein to remedy a breach of this Schedule. Customer shall be

responsible for obtaining and maintaining any rights or licenses required for it to lease, use, occupy or operate the Dark Fiber.

#### SERVICE REQUESTS AND DELIVERY.

Service Order Acceptance. Visionary may accept or reject any submitted Service Order in its sole discretion. Unless otherwise provided in the Agreement, Customer's obligations specified in an accepted Service Order are non-cancellable.

Service Start Date. After Visionary has determined that the Service conforms to the relevant Service Specifications (including power and OTDR testing to verify performance within industry standard for calculated budget loss), Visionary will notify Customer that the Service is delivered, meets the related Service Specifications and is available for use by Customer.

The "Service Activation Date" shall be the earlier of (i) the date on which Customer begins using the Service for any purpose other than testing or (ii) the date that Visionary has sent the Service Activation Notice to Customer. Customer shall have five (5) days in which to notify Visionary that it is rejecting the Service that does not meet the Service Specifications. If Customer has notified Visionary within such five (5) day period that the Service does not meet the Service Specifications, and provided that such notification is legitimate, then Visionary shall take such steps reasonably necessary to cause the Service to meet the Service Specifications, at which time Visionary shall issue a new Service Activation Notice and the acceptance process above shall be repeated. Customer's failure or delay to test the Service or failure or delay to utilize the Service on or after the Service Activation Notice date shall not prevent Visionary from billing Customer for the Service. The billing of any recurring charges shall begin on the Service Activation Date and continue throughout the Service Term. If the Service Activation Date is delayed as a result of Customer's failure to meet its responsibilities under the Agreement including obtaining the necessary Customer Requirements, Visionary may continue with the acceptance procedures to the extent possible and the Service Activation Date will be deemed to occur as of the Estimated Delivery Date or the date that Visionary is ready to deliver the related Service, whichever is later.

Incrementally Delivered Segments. Unless otherwise specified in a Service Order, Visionary may incrementally deliver individual Segments of a Service, when ready, which may result in different Service Activation Dates for such incrementally delivered Segments. The initial Service Term for each incrementally delivered Segment shall begin on its respective Service Activation Date and end after the period specified as the Service Term from the Service Activation Date of the last Segment delivered. The charge associated with a delivered Segment will be based on the Allocated MRC.

#### EQUIPMENT AND INSTALLATION.

Access and Customer Premises Obligations. In support of Visionary meeting the Estimated Delivery Date, Customer specifically acknowledges that Customer is responsible for all work and Costs on the premise side of each Demarcation Point, including technically compatible cross-connections. In addition, Customer shall be responsible for securing all rights and paying the related Costs to connect to the Demarcation Point and for securing all rights and paying the related Costs to access, occupy, and conduct typical telecommunication operations within each respective building (including any necessary rights for Visionary to enter and access each building), and for providing all necessary cable pathways (all of the preceding may include, but not be limited to, construction permits and underlying rights, building access and/or occupancy agreements, building access and/or occupancy fees, Lateral fees, riser fees, cross-connects and cross-connect fees, coordination at any third party owned location, and, where applicable, necessary space for Visionary's fiber termination panel). All of the above, collectively, shall be referred to as "Customer Requirements" and Customer shall reimburse Visionary in the event that a third-party bills Visionary for charges related to such Customer Requirements. Customer acknowledges that any delay in Customer providing such Customer Requirements may delay Visionary from completing work at any location.

Visionary Facilities. Visionary, or its agent, may provide, install, maintain, repair, operate and control Visionary's, conduit, fiber optic cable, fiber termination panels or any other equipment ("Visionary Facilities"). Customer shall be liable for any loss of or damage to Visionary Facilities caused by Customer's negligence, intentional acts, or unauthorized maintenance and shall reimburse Visionary for the same. If, on responding to a Customer initiated service call, Visionary reasonably determines that the cause of the service deficiency was a failure, malfunction or the inadequacy of facilities or equipment other than Visionary Facilities, Customer shall compensate Visionary for actual time and materials expended during the service call and for any work performed by Visionary on non-Visionary facilities.

#### USE OF SERVICE.

Subject to the limitations set forth in this Schedule, Customer shall use the optical fiber strands of the Service solely for lawful purposes. In no event whatsoever shall Customer directly or indirectly transfer, sell, assign, swap, exchange, lease, sublease, license, sublicense, resell or grant indefeasible or other rights of use in or to all or any part of the optical fiber strands as "dark fiber" as such term is commonly understood in the telecommunications industry. A violation of this provision shall be a material default and shall subject Customer to immediate termination.



Except as expressly set forth herein, the lease does not include the right of Customer to own, control, access, maintain, splice, adjust, align, cut, modify or revise the Dark Fiber. Customer will not install any equipment to be used with the Service that damages or interferes with Visionary network.

#### RELOCATION, ADJUSTMENTS & REPAIR.

Relocation. Customer acknowledges and agrees that, after the Service Activation Date, Visionary may be required (i) by any governmental authority under the power of eminent domain or otherwise, (ii) by the grantor or provider of any underlying right, (iii) by any other person having the authority to so require, or (iv) by the occurrence of any Force Majeure Event, to relocate the Segment(s) of the Visionary network. In such event Customer shall reimburse Visionary for its proportionate share of the Costs related to such relocation. Adjustments. When sold with MRC charges, The Monthly Recurring Charge for the Dark Fiber Service shall be adjusted annually effective December 31st of each year by the greater of (i) four percent (4%) or (ii) the cumulative increase in the U.S. Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average, published by United States Department of Labor, Bureau of Labor Statistics ("CPI Adjustment") for the preceding 12-month period. In the event the Bureau of Labor Statistics (or any successor organization) no longer publishes the CPI-U, Visionary may, in its reasonable discretion, designate a replacement index.

Fiber Optic Cable Repair & Restoration. Following receipt of Customer's notification of a Trouble Case, Visionary shall use its best efforts to respond on-site (if necessary) to the affected location(s) within two (2) hours of the initial Trouble Case, provided Visionary has all necessary access to the Customer Location(s), including Customer's Premises. In the event of a cable failure, Visionary shall use its best efforts to begin Service restoration within two (2) hours following identification of such failure. Visionary shall use its best efforts to then restore the functionality of the Dark Fiber Service no later than six (6) hours following initiation of restoration activities. During an outage Visionary shall contact Customer on a regular basis, to update the status of restoration. Visionary is responsible for ensuring that the maintenance personnel are properly trained and otherwise qualified to perform the maintenance on the Services. Customer shall procure for Visionary reasonable 24x7x365 access to Customer's Location(s) for purposes of both Routine and Non-Routine Maintenance

#### DARK FIBER SERVICE LEVEL AGREEMENT.

Mean Time to Repair. Visionary shall use its best efforts to respond on-site (if necessary) to the affected location(s) within four (4) of the initial report of failure. In the event of a cable failure, Visionary shall use its best efforts to begin Service restoration within two (4) four following identification of such failure. Visionary shall use its best efforts to then restore the functionality of the Dark Fiber Service no later than eight (8) hours following initiation of restoration activities.



#### Appendix J -Colocation

Visionary hereby makes available for contract a portion of the property described as the Colocation and further described in Service Order.

**Use.** Customer shall restrict its use to those reasonably related to wide area networking switches and routers and related appurtenances for the purposes of providing internet services and Internet Service Protocol (ISP) and shall not use or permit the use of the colocation for any other purpose, except as set forth herein, without the express written consent of Visionary. Customer shall carry on and conduct its business from time to time carried on upon the Leased Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, state, municipal or other competent authority and will not do anything on or in the Leased Premises in contravention of any of them. Customer shall not use Leased Premises for the placement and/or storage of any hazardous materials. It is Customer's obligation to determine whether its business is properly operating in the Leased Premises under zoning and other applicable state, federal, county, and Visionary laws. Use of and access across any Visionary-owned property outside of the gated and fenced area of the Leased Premises, including access to the communication tower, will first be communicated to Visionary Staff to ensure conflicts are minimized.

**Leased Premises.** Customer may use Leased Premises for the purpose of installing, maintaining, repairing and operating Equipment in accordance with the terms of this agreement. Notwithstanding anything to the contrary in this agreement, no improvements, modifications, changes or alterations to the Leased Premises or building shall be performed by Customer, unless approved, in writing, by Visionary.

**Access.** Customer shall have access to the space (24) twenty-four hours a day, (365) three hundred and sixty-five days a year, subject to reasonable security measures imposed by Visionary for the protection of the Building and its occupants. Customer must obtain prior approval from Visionary for any access by a third-party contractor.

**Power.** Power usage is expected to begin at a minimal amount but will be metered and monitored by Visionary. Visionary may request payment for power if usage becomes excessive. Should Visionary request payment for power usage and Customer fail to remit the same, Visionary has the right to terminate this Contract by providing Customer a sixty (60) day written notice to terminate.

**Insurance.** Customer will keep in full force and effect, comprehensive general liability insurance, employer's liability insurance and workers compensation insurance in an amount not less than that required by applicable law and risk casualty insurance covering the Customer Equipment in the amount of its full replacement value.

**Sublease and Assignment.** Customer shall have the right, with the written consent of Visionary, to sublease part of the Leased Premises for Internet Service Providers (ISP) or similar service providers' use. Visionary will at all times maintain its rights of access to the Leased Premises and to any Visionary Equipment within the Leased Premises. Customer shall at all times provide Visionary with access and space for Visionary Equipment within the Leased Premise.

#### COLOCATION SERVICE LEVEL AGREEMENT

For purposes hereof, a power failure or connectivity failure, expressly related to the Leased Premises as an Outage.

**Mean Time to Repair.** Visionary shall use its best efforts to respond on-site (if necessary) to the affected location(s) within four (4) of the initial report of failure. In the event of a cable failure, Visionary shall use its best efforts to begin Service restoration within four (4) following identification of such failure. Visionary shall use its best efforts to then restore the functionality of Power or Connectivity no later than eight (8) following initiation of restoration activities.



**VISIONARY<sup>TM</sup>**  
**BROADBAND**

**Fiber Drop Access Agreement**

Property Owner: Laramie County

Phone: 307.633.4340

Email: brad.alexander@laramiecountywy.gov

Service Address: 309 W 20<sup>th</sup> ST

City: Cheyenne

State: WY

Zip: 82001

Onsite Contact: Brad Alexander

Phone: 307.633.4340

Email: brad.alenander@laraiecountywy.gov

This agreement is between the Owner(s) of the property located at 309 W 20<sup>th</sup> ST, Cheyenne, WY 82001\_ and Visionary Broadband. This agreement gives Visionary Broadband permission to install a fiber optic connection on/to and/or across the property. By signing the agreement, the Owner(s) agrees to and represents that:

- A. The person(s) signing this document is the Owner(s) of the property identified above.
- B. The Owner(s) agrees to allow Visionary and/or any employee, contractor, representative or subcontractor of Visionary on the property to install, maintain and repair the fiber optic drop.
- C. Visionary will work with the Owner/Network Engineer to install the drop to the property. Any adjustments to VCN engineering may impact final pricing
- D. Locates will be called in by a Visionary Employee.
- E. A Representative from all utility companies will locate the utilities on the premises.
- F. Owner(s) will flag all sprinkler heads and any other utilities owned by the Owner(s) within the path chosen for the fiber drop if said drop is placed underground
- G. Visionary will install and maintain the fiber drop.
- H. Visionary will reasonably attempt to notify the Owner(s) in advance of construction, repair, or if Owner(s) choose, maintenance activities on their property. Visionary will try to accommodate any access requests by the Owner(s).
- I. Owner(s)/Tenant is responsible for maintaining the area above and around the drop area to preserve access by Visionary for construction, maintenance, and repair of the drop.
- J. Owner(s) may not use the drop for any activity or purpose other than those approved by Visionary.
- K. This agreement will transfer with any lease or sale of property. The drop will remain the property of Visionary unless formally abandoned.
- L. Owner(s)/Tenant shall not damage Visionary Broadband's equipment. Any damage to Visionary owned equipment on Owner(s) property or within Owner(s) home/structures shall be repaired/replaced by Visionary at the Owner(s)/Tenant(s) expense.
- M. Owner(s)/Tenant is responsible for their own internal network security including WIFI, firewall and device configuration. Visionary will determine the appropriate installation method of the drop, and coordinate with the property Owner(s) utilizing the best practices detailed below:





## Aerial Drop

- Technician will install an appropriate demarcation box. The demarcation box consists of an exterior mount weather proofed box that contains fiber optic cable.
- Technician will run a cable to the demarcation box from the alleyway or closest fiber optic access point, and then another fiber cable from the demarcation box through an entry point into the building. Entry point may be drilled in or use a pre-existing route if available. Technician will then mount an Optical Network Terminal, or ONT, within the building, and plug it into the closest available grounded outlet.
- A cable is routed to a router in the building. The router is typically placed next to the computer or in the utility room of the building, depending on the layout of the building and ability to place and secure cables.

## Underground Drop

- Visionary will work with Owner(s)/Tenant to determine conduit installation path. Markings will be placed to determine existing underground utilities on customers' premises. Conduit will be placed after locates are completed.
- Technician will determine the best place to enter customer building and place cable.
- Technician will install an appropriate demarcation box. The demarcation box consists of an exterior mount weather proofed box that contains fiber optic cable.
- Technician will run a cable to the demarcation box through conduit from the alleyway or closest fiber optic access point, and then another fiber cable from the demarcation box through an entry point into the building. Entry point may be drilled in or use a pre-existing route if available. Technician will then mount an Optical Network Terminal, or ONT, within the building, and plug it into the closest available grounded outlet.
- A cable is routed to a router in the building. The router is typically placed next to the computer or in the utility room of the building, depending on the layout of the building and ability to place and secure cables.

## Laramie County Stipulations

- Visionary will install a hand hole outside of the Laramie County Courthouse to intercept existing conduits into the building located on the East side of the building.
- Any damage to located utilities during installation to existing conduits, sprinkler lines, or electrical will be fixed at Visionary's expense. Unlocated or unmarked lines will be repaired at the expense of the owner.
- Fiber inside the building will need to have roughly 500 feet of length to be pulled into the IT Server room where the FTP will be installed.
- County IT will designate FTP location within the IT Server Room.
- Termination will be SC/APC style.

Print Name: \_\_\_\_\_ Sign Name: \_\_\_\_\_

Date: \_\_\_\_\_



**VISIONARY™**  
**BROADBAND**



# Service Order Form

email: business@visionarybroadband.com

phone: 307.687.9933 fax: 307.682.2519

postal mail: Visionary Broadband . PO Box 2799 . Gillette WY 82717-2799

physical: Visionary Broadband . 1001 S Douglas Hwy . Suite 201 . Gillette WY 82716

**Company Name:** Laramie County Dark Fiber (13794 Prairie Center Circle)

**Contact Name:** Brad Alexander

**Billing Email:** brad.alexander@laramiecountywy.gov

**Billing Address:** 309 West 20th Street, Cheyenne WY

**City/State/Zip:** Cheyenne WY 82001

**Phone:**

**Tax ID:**

**Account Number:** SF-294919

**Service Order Number:** SO-00033370

**Contract Date:** October 13, 2022

**Jurisdiction certification:**

**Percentage of Interstate**

**Utilization** (PIU - 0% or 100%):

**Circuit Description:**

Dark Fiber Lease 2 Strands \$1800MRC, \$0.00NRC // VCN to assign Internal Project manager //

**Charges:**

**Term:** 60 Months

\$1,800.00 MRC, does not include current taxes

\$0.00 NRC

NRC = Non-Recurring Cost, MRC = Monthly Recurring Cost

**Location A**

**Company:** Laramie County Dark Fiber

**Service Address:**  
13794 Prairie Cnt Circle Cheyenne WY 82001

**Local Contact:** Brad Alexander

**Local Phone:**

**Location Notes:**

**Location Z**

**Company:** Laramie County Dark Fiber

**Service Address:**  
309 West 20th Street Cheyenne WY 82001

**Local Contact:** Brad Alexander

**Local Phone:**

**Location Notes:**

Your signature below acknowledges you have read, understand and accept the Terms of this Service Order Form. This Service Order Form is subject to the Visionary Broadband Dedicated and High-Cap Service Agreement between the companies below, including the term length displayed on this form, and that you are duly authorized to execute and deliver this Contract as of the date set forth below. Customer can upgrade services, without penalty, in the middle of the term.

Visionary Communications, Inc.

**signed:**

*Gina Dillard*

**print:**

Gina Dillard

**title:**

VP of Service Delivery

**signed:**

**print:**

**title:** County Commissioner



**VISIONARY**  
BROADBAND

# Service Order Form

email: business@visionarybroadband.com

phone: 307.687.9933 fax: 307.682.2519

postal mail: Visionary Broadband . PO Box 2799 . Gillette WY 82717-2799

physical: Visionary Broadband . 1001 S Douglas Hwy . Suite 201 . Gillette WY 82716

**Company Name:** Laramie County (13794 Prairie Center Circle)

**Contact Name:** Brad Alexander

**Billing Email:** brad.alexander@laramiecountywy.gov

**Billing Address:** 309 West 20th Street, Cheyenne WY

**City/State/Zip:** Cheyenne WY 82001

**Phone:**

**Tax ID:**

**Account Number:** SF-294918

**Service Order Number:** SO-00033369

**Contract Date:** October 13, 2022

**Jurisdiction certification:** Internet

**Percentage of Interstate**

**Utilization** (PIU - 0% or 100%): 0 %

**Circuit Description:**

Enterprise - DIA - 1G/1G- \$600.00MRC, \$0.00NRC // Managed  
NID \$48.00 MRC, \$0.00NRC // Static IP /29 - \$25.00MRC,  
\$0.00NRC // Project manager to be assigned and manage  
process //

**Charges:**

**Term:** 60 Months

\$673.00 MRC, does not include current taxes

\$0.00 NRC

NRC = Non-Recurring Cost. MRC = Monthly Recurring Cost

**Location A**

**Company:** Visionary Broadband

**Service Address:**

**Local Contact:**

**Local Phone:**

**Location Notes:**

**Location Z**

**Company:** Laramie County (13794 Prairie Center Circle)

**Service Address:**

13794 Prairie Cnt Circle Cheyenne WY 82001

**Local Contact:** Rusty Tyler

**Local Phone:**

**Location Notes:**

Your signature below acknowledges you have read, understand and accept the Terms of this Service Order Form. This Service Order Form is subject to the Visionary Broadband Dedicated and High-Cap Service Agreement between the companies below, including the term length displayed on this form, and that you are duly authorized to execute and deliver this Contract as of the date set forth below. Customer can upgrade services, without penalty, in the middle of the term.

Visionary Communications, Inc.

DocuSigned by:

**signed:**

Gina Dillard

**print:**

Gina Dillard

**title:**

VP of Service Delivery

**signed:**

**print:**

**title:** County Commissioner