SOUTH DAKOTA NETWORK, LLC
MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is in effect as of this 13th day of July, 2021, ("Effective Date") between, City of Rapid City ("Customer") and South Dakota Network, LLC (dba SDN Communications), a South Dakota limited liability company ("SDN") (hereinafter, Customer and SDN may be referred to in the aggregate as "Parties" and each singularly as a "Party").

This Agreement supersedes and replaces all prior agreements, including all previously executed Master Agreements for Services, between Customer and SDN. All existing Services currently provided to Customer by SDN under a previously executed Master Agreement for Service shall remain in full force and effect as specifically set forth in each applicable "Schedule". Each "Schedule" previously executed by Customer shall be considered an "Order for Services" as defined within this Agreement and shall be subject to the terms and conditions of this Agreement.

The Parties agree as follows:

1. Services.

   a. During the Term of this Agreement, Customer may order from SDN services specified in the attached Exhibit A (the "Services") by submitting to SDN an order for such Services on such form as SDN may prescribe from time to time (each an "Order for Services"). The term, rates, and charges for the Services shall be set forth in the Order for Services. Each Order for Services submitted by Customer and accepted by SDN shall be considered a separate contract between the Parties that incorporates the terms and conditions of this Agreement.

   b. Ownership and control of the SDN network, facilities, and equipment shall at all times be and remain in SDN, and SDN shall have the right to remove its Services, cable, and any other equipment used in connection therewith upon termination of this Agreement. Any conflict in language between this Agreement and an Order for Services, its term or its pricing will be resolved in favor of the Order for Services.

2. Term/Renewal/Termination.

   a. The term of this Agreement is for one (1) year commencing on the Effective Date and shall automatically renew for additional one (1) year periods unless either Party gives the other Party notice of its intent not to renew at least thirty (30) days prior to the expiration of the then current term, provided, however, that this Agreement shall remain in full force and effect and be incorporated into every Order for Services for the entire term of every Order for Services. It is expressly understood and agreed that each Order for Services shall continue in full force and effect, including incorporation of the terms and conditions of this Agreement, during its term notwithstanding any termination or expiration of this Agreement. The foregoing language notwithstanding, this Agreement and any Order for Services are deemed to be in effect and

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operational on at least a month-to-month basis upon acceptance and use of a Service by Customer with SDN, in its sole discretion, determining the Effective Date.

b. The initial term of each Order for Services shall be the term identified in such Order for Services. If at the expiration of the initial term specified in each Order for Services, Customer shall not have exercised any option to renew contained therein or entered into a new Order for services with SDN for such Services, then the existing Order for Services shall automatically renew on a month-to-month basis at the then-existing rate unless terminated by either Party upon thirty (30) days prior written notice to the other Party.

c. If any Services are terminated after execution of the applicable Order for Services and prior to Service Activation Date for such Order for Services, Customer agrees to pay to SDN: (i) those costs reasonably incurred by SDN through the date of receipt of termination and (ii) any non-recurring fees SDN incurs from other suppliers in connection with cancellation of the Services.

d. Customer may for any reason voluntarily terminate Service before the end of the Term. In the event of a voluntary termination, Customer shall notify SDN in writing that it desires to terminate Service. The written notice shall set forth the effective date of termination, which shall be no less than thirty (30) days from the date of the notice. Customer shall be responsible for any monthly charges as follows 100% years 1-2, 50% year 3, 25% year 4 and 0% year 5.

e. If the Federal Communications Commission, a state Public Utilities or Service Commission or a court of competent jurisdiction, issues a rule, regulation, law or order which has the effect of canceling, changing or superseding any material term or provision of this Agreement or an Order for Services (collectively, "Regulatory Requirement"), then the Parties shall attempt to mutually agree on a modification and amendment of this Agreement and the affected Order for Services in such a way as is necessary to comply with such Regulatory Requirement. Should the Parties not be able to agree on modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then upon written notice either Party may, to the extent practicable, terminate that portion of this Agreement or Order for Services impacted by the Regulatory Requirement, or if the entire Agreement or the affected Order for Services is impacted in such a way as to make continuation impossible, either Party may terminate the Agreement and/or the affected Order for Services with no further obligation or liability hereunder, except any non-recurring fees SDN incurs from other suppliers in connection with cancellation of such Services and any outstanding invoices still owed by Customer.

f. In the event of a termination of this Agreement or of any Services provided under this Agreement, the Parties shall work cooperatively to minimize any potential interruptions of Service and/or other disruptions or inconveniences to customers.

3. Payment. Customer shall pay the sums specified in each Order for Services within forty-five (45) days of the date of the invoice ("Due Date"). Payment for the month in which the Service is installed shall be made in a prorated amount for that portion of the month for which the

2

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Service is available. In addition, Customer shall pay any taxes, including sales tax, universal service fees, user fees, permit fees or similar charges, related to the use of the Services provided. Customer shall be responsible for payment of any off-network loop costs, to include any increases imposed during the term of the Agreement or any Order for Services, which are considered pass-through costs by SDN. SDN shall have the right to immediately discontinue all Services provided under this Agreement if Customer fails to pay any sums due and owing to SDN within forty-five (45) days of the Due Date.

4. **Operation and Maintenance of the Network.** SDN shall be responsible for the operation and maintenance of its network in accordance with the performance specifications as agreed to in the applicable Order for Services. In the event of failure or degradation of the performance of the SDN network to a point where the Service provided to Customer is inferior to these performance specifications (a service-affecting condition), SDN shall proceed immediately and with due diligence to restore its network to the level of performance specified in the Order for Services. SDN shall use its best efforts to repair any service-affecting condition within twenty-four (24) hours following receipt of telephonic or electronic notice of the condition in accordance with Section 14 of this Agreement, provided however, that SDN shall have no responsibility or liability to Customer for any disruption in Service. In the event that any such service-affecting condition shall extend beyond twenty-four (24) hours, SDN’s sole obligation to Customer shall be to rebate that portion of the monthly service charge prorated over the period of time during which Service is unavailable to Customer. In the event that any service-affecting condition shall extend beyond seventy-two (72) hours, or that more than three (3) such occurrences of more than four (4) hours each, shall occur within any calendar year affecting Service provided under this Agreement, Customer shall have the right at its option to terminate that Service upon thirty (30) days written notice to SDN. Any such termination shall place the Parties in the same position as if the term of that Service had expired.

5. **Insurance.** Contractor(s) and personnel employed by either Party to perform work on the premises of the other Party shall provide and maintain at all times during the provision of services to the Parties the following types of insurance in the following minimum amounts, which insurance shall be issued by companies approved by the Parties:

   a. Worker’s Compensation Insurance complying with the law of the state or states in which the services are to be provided and Employers Liability Insurance with limits of $1 million each accident, including occupational disease coverage with limits of $1 million each employee, $1 million policy limit.

   b. General Liability Insurance with a single combined limit for bodily injury and property damage of $2 million each occurrence.

The foregoing insurance shall be evidenced by certificates of insurance that shall be delivered upon request to the Parties. The certificates of insurance shall show that the insurance is prepaid and in full force and effect and that such insurance shall not have been canceled, non-renewed or changed during the term of this Agreement or during any extension thereof, without at
least thirty (30) days written notice to the other Party. The maintenance of insurance by the contractor shall in no way limit or affect the extent of the contractor’s liability.

6. **Indemnification.**

a. Each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits or other actions or any liability whatsoever, including, but not limited to, costs and attorneys' fees and expenses, whether suffered, made, instituted or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for loss, damages to or destruction of property, whether or not owned by others, resulting from the indemnifying Party’s performance or failure to perform under this Agreement, regardless of the form of action; except for that portion of liability which is caused by the gross negligence or willful misconduct of the Party claiming indemnification.

b. Each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits or other actions or any liability arising from or relating to any actual or alleged infringement or misappropriation of any patent, trademark, copyright, trade secret or any actual or alleged violation of any other intellectual property or proprietary rights arising from or in connection with the Leased Fiber and Equipment provided under this Agreement or use.

c. Indemnification is conditioned upon: (a) the indemnified Party promptly notifying the indemnifying Party of any action taken against the indemnified Party relating to the indemnification; (b) the indemnifying Party having sole authority to defend any such action, including the selection of legal counsel; (c) the indemnified Party may engage separate legal counsel only at its sole cost and expense; and (d) in no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party.

7. **Limitation of Liability.** Neither Party shall be liable to the other for any incidental, indirect, punitive, special or consequential damages of any kind including, but not limited to, any loss of use, loss of business, or loss of profit, and regardless of the form of the action, whether in contract, warranty, strict liability or tort, including without limitation, negligence of any kind, and regardless whether a Party was advised, had reason to know, or in fact knew of the possibility of liability. SDN shall not be liable for the acts, omissions or delays caused by third party vendors. Unless otherwise provided for in this Agreement (including Section 6), any SDN liability to Customer for any damages of any kind shall be limited to the total amount paid to SDN in the three (3) months prior to the most recent cause of action; provided, however, if the claim relates to an outage of a circuit, the claim will be limited to an out-of-service credit determined by a prorated amount equal to the charges due for each twenty-four (24) hour period service has not been satisfactorily provided. Remedies under this Agreement are exclusive and limited to those expressly stated in this Agreement.

8. **Default/Termination.** Failure of either Party to cure a material default under this Agreement as soon as reasonably practical, but not less than thirty (30) days after receipt of written
notice thereof, shall entitle the other Party to immediately terminate this Agreement. A default that is not susceptible to cure within thirty (30) days shall not give rise to a right of termination, provided cure is commenced within ten (10) days and diligently pursued to completion.

9. Lawfulness of Agreement. This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations of any court or governmental agency of competent jurisdiction. If a court or a governmental agency of competent jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement shall terminate. If a provision of this Agreement is so terminated but the Parties legally, commercially, and practically can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect. This Agreement also incorporates by this reference the terms of SDN's Acceptable Use Policy ("AUP"), which is available on SDN's Internet site at https://sdncommunications.com/policies/acceptable-use-policy/. Any material change in the terms of the AUP will be communicated by SDN to its Customers in writing at least thirty (30) days prior to the effective date of such change.

10. WARRANTIES. Except as may otherwise be stated in this Agreement, THERE ARE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Force Majeure. If performance by SDN of any obligation under this Agreement is prevented, restricted or interfered with by causes beyond SDN's control, including, but not limited to, the failure or malfunction of Customer-supplied equipment, acts of God, explosions, vandalism, cable cuts, natural disasters, power failure, national emergencies, insurrections, riots, war, strike, lockouts, boycotts, work stoppages or other labor difficulties, delays caused by third party vendors, or any order, regulation or other actions of any governmental authority, agency instrumentality or any civil or military authority, SDN shall be excused from such performance on a day-to-day basis to the extent of such restrictions or interference. SDN shall use reasonable commercial efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch.

12. SDN Equipment. Customer shall not and shall not permit others to rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any SDN provided equipment or facilities ("Equipment") without the written consent of SDN. Such Equipment is for use in connection with the Services and shall not be used for any purpose other than that for which SDN provided it. In the event that Customer or a third party tampers with or attempts to maintain the Equipment without first obtaining written approval, in addition to any other remedies for breach by Customer of Customer's obligations, Customer shall pay SDN for any damage to the Equipment and any ongoing service charges in the event that maintenance or inspection of the Equipment is required as a result of Customer's breach of this subsection. In no event shall SDN be liable to Customer or any other person for interruption of Service or for any other loss, cost or damage caused or related to tampering with the Equipment.

5
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13. **Customer-Provided Facilities.** Customer has sole responsibility for installation, testing, and operation of Customer-provided facilities, services, and equipment. The failure of Customer-provided facilities, services, and equipment will not relieve Customer of its obligation to pay for Services under this Agreement; nor is Customer relieved of its obligation to pay for Services from the Customer Due Date, if Customer is not prepared to accept services on such date. SDN shall not be responsible for the operation or maintenance of any Customer-provided facilities, unless specifically agreed to in writing. SDN shall not be responsible for the transmission or reception of communications or signals by Customer-provided facilities or for the quality of, or defects in, such transmission or reception.

14. **Notices.** Notices shall be in writing and, except where the context otherwise requires, shall be by hand delivery, electronically verified email or facsimile or mailed by prepaid U.S. Certified Mail, Return Receipt Requested, addressed to:

South Dakota Network LLC  
ATTN: CEO  
2900 West 10th Street  
Sioux Falls, SD 57104  
Fax: 605-334-4782  
contracts@sdncommunications.com

City of Rapid City  
ATTN: Jim Gilbert  
300 6th Street  
Rapid City SD 57701  
jim.Gilbert@rgov.gov

For technical assistance or outage reporting:

South Dakota Network LLC  
Email: support@SDN24x7.com  
Phone: 877-287-8023

or at such other addresses as the respective Parties may from time to time designate in writing. Except where the context otherwise requires, all such notices shall be deemed to have been given on the day received.

15. **Waiver.** Any failure of a Party to assert any of its rights under any provision of this Agreement shall not constitute a waiver or termination of such rights.

16. **Choice of Law.** The Parties agree that the laws of the State of South Dakota shall apply to this Agreement. Any disputes or other matter requiring adjudication or arbitration will be venued in the state and federal jurisdiction located in Minnehaha-Pennington County, South Dakota.

17. **Assignment.** The Customer shall not assign this Agreement to any other entity or party without the express written consent of SDN. However, either Party shall have the right to
assign, convey or otherwise transfer its rights, title, interest, and obligations under this Agreement, in whole or in part, to any entity controlled by, controlling or under common control of the Party, or any entity into which the Party may be merged or consolidated or which purchases all or substantially all of the assets of the Party.

18. Confidentiality.

a. To facilitate the conduct of business between the Parties with respect to the Agreement and any Order for Services, it may be necessary for the Parties to disclose to each other technical, customer, personnel and/or business information in written, graphic, oral or other tangible or intangible form. Such information may include proprietary material, as well as material subject to and protected by laws regarding privacy, secrecy of communications or trade secrets (“Confidential Information”).

b. Confidential Information does not include any information that: (a) is or becomes publicly available without breach of this Agreement, (b) can be shown by documentation to have been known to the Receiving Party at the time of its receipt from the Disclosing Party, (c) is received from a third party without a duty of confidentiality, or (d) can be shown by documentation to have been independently developed by the Receiving Party without reference to any Confidential Information provided by the Disclosing Party.

c. The Receiving Party may use Confidential Information only to exercise its rights and perform its obligations under this Agreement. Except as expressly provided for in this Agreement, the Receiving Party will not disclose Confidential Information to anyone not covered by this paragraph without the Disclosing Party’s prior written consent. The Receiving Party will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature. Additionally, the Receiving Party will restrict the possession, knowledge, and use of Confidential Information of its employees and contractors who have a need to know Confidential Information in exercising its rights or performing its obligations under this Agreement.

d. The Receiving Party may disclose Confidential Information as required by law; provided, however, that the Receiving Party shall (a) when permitted by law, give the Disclosing Party prompt written notice of a disclosure requirement to allow the Disclosing Party to seek a protective order or other appropriate remedy, (b) take reasonable actions and provide reasonable assistance to the Disclosing Party to secure confidential treatment of the Confidential information at the cost of the Disclosing Party, and (c) disclose only such Confidential Information as is required by law.

e. All Confidential Information acquired by either Party from the other shall be and shall remain the exclusive property of the Disclosing Party. At the Disclosing Party’s request, the Receiving Party will return promptly to the Disclosing Party or destroy any copies of such

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Confidential Information that is in written, graphic or other tangible form, and provide to the disclosing Party a list of all such material destroyed.

f. The Parties agree that any disclosure of Confidential Information in violation of this Section 18 or any other nondisclosure agreement executed between the Parties will cause irreparable harm and injury to the non-violating Party. That Party shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to temporary, preliminary, and permanent injunctive relief enjoining and restraining the violating Party from doing or continuing to do any such act, violations, or threatened violations.

g. The obligations with respect to Confidential Information shall extend for a period of two (2) years beyond completion of the Term of this Agreement and any Order for Services, including any extensions or renewals thereof; provided, however, that customer information and either Party’s trade secrets shall remain confidential forever.


a. The security of the Parties’ networks and the data transmitted and stored using the Parties’ equipment and facilities is the responsibility of both Parties. SDN does not guarantee that it will be able to prevent, detect or mitigate efforts by persons seeking, whether unlawfully, maliciously or for whatever reason, to improperly access (e.g. hack or attack) or otherwise invade and compromise SDN’s systems, equipment, facilities, data, and data storage.

b. SDN’s obligation to provide Services is conditioned on Customer not allowing the Services to be used for any unlawful purposes or in violation of applicable law or regulation. SDN may take whatever action is deemed necessary in its sole discretion to protect its network, access to other or third-party networks, and end user customers. Customer is responsible for activities of its end users that are illegal or seek to misuse or compromise SDN’s Services or facilities.

c. Customer is responsible for selection, implementation, and maintenance of security features to protect against unauthorized use. Customer is responsible for protecting all account access authentication and information using whatever measures are commercially and technically available.

20. Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator is final and may be entered in any court having jurisdiction thereof.

21. Entire Agreement. This Agreement, together with all Exhibits, Notices, Appendices, and any jointly executed written supplements to this Agreement, constitutes the entire Agreement and the complete understanding between the Parties. No other verbal or written representation of any kind affects the rights or the obligations of the Parties regarding any of the provisions in this Agreement.
The Parties hereby execute and authorize this Agreement as of the last date written below:

SOUTH DAKOTA NETWORK, LLC:
By: [Signature]
Its: VP of Sales
Date: Sep 9, 2021

City of Rapid City:
By: [Signature]
Its: Mayor
Date: 9-7-21

By: [Signature]
Its: Finance Director
Date: 9-7-21

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EXHIBIT A
SDN Services

Managed Router

SDN's managed router product includes all necessary hardware, and administration of an SDN owned and controlled device to terminate customer network connections at a customer's location.

Managed Firewall

SDN's managed firewall product includes all necessary hardware, software, monitoring, and administration of an SDN owned and controlled security device at a customer location. In addition to the management of the device, the product optionally includes:

- Anti-Virus and Anti-Malware protection
- Intrusion Detection and Prevention (IDPS, IPS)
- Application Control
- Web Content Filtering

Remote Network Monitoring

SDN's Remote Network Monitoring is a customized 24x7x365 Device Monitoring Solution covering a multitude of standard Internet Protocol devices, including routers, switches, servers, firewalls and web-driven services. This offering provides an up-down status of their availability and allows you to monitor key network performance indicators via a secure custom portal.

DDoS Protection

SDN's DDoS Protection service monitors, reports, and optionally offers mitigation for Distributed Denial of Service attacks that can disrupt critical business services such as internet, email, and websites.

Internet

SDN's dedicated, symmetrical internet service offers access in bandwidths between 10 Mbps up to 100 Gigabit with multiple autonomous networks available for diversity.

Point to Point Services

- Ethernet E-line – An Ethernet based point-to-point connectivity product providing a direct connection between exactly two customer locations over various switched Ethernet network topologies.

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○ TDM Private Line—Point-to-point connectivity product based on various TDM transport technologies, at T1, DS3, and OC-3 to OC-192 rates, between exactly two customer locations.

○ Wavelength—Dedicated point-to-point connectivity product providing connectivity between exactly two customer sites over an SDN WDM optical network. Provides bandwidth options of 1 to 100Gbps Ethernet, and 2.5Gbps, 10Gbps, and 100Gbps optical rates.

Point to Multi-Point Services

○ ELAN — Layer 2 Ethernet based point to multi-point service connecting one customer site to 2 or more additional customer sites.

○ TDM Layer 3 VPN — Layer 3 TDM based point to multi-point service connecting one customer site to 2 or more additional TDM or Ethernet based customer sites.

○ Ethernet Layer 3 VPN — Layer 3 Ethernet based point to multi-point service connecting one customer site to 2 or more additional TDM or Ethernet based customer sites.

BRAG

Broadband Remote Access Gateway — An Internet VPN based service connecting a customer site to a customer’s existing private Layer 3 VPN network.

SDWAN

The Software Defined Wide-Area Network (SDWAN) service provides customers with a hybrid solution that utilizes both traditional MPLS, internet, and wireless services along with the flexibility and security of managed services.
"City of Rapid CIty Signed MSA" History

Document created by Greg Robinson (grobinson@sdncom.com)
2021-09-09 - 6:09:21 PM GMT - IP address: 66.231.0.100

Document emailed to Ryan Punt (ryan.punt@sdncommunications.com) for signature
2021-09-09 - 6:10:37 PM GMT

Email viewed by Ryan Punt (ryan.punt@sdncommunications.com)
2021-09-09 - 7:03:45 PM GMT - IP address: 18.206.199.142

Document e-signed by Ryan Punt (ryan.punt@sdncommunications.com)
Signature Date: 2021-09-09 - 7:04:36 PM GMT - Time Source: server - IP address: 66.231.0.100

Agreement completed.
2021-09-09 - 7:04:36 PM GMT