



SERVICE AGREEMENT

This Agreement is entered into on September 19, 2022, by and between Peninsula Fiber Network, LLC (PFN), a Michigan corporation located at 1901 West Ridge Street, Marquette, Michigan 49855, and Marquette Downtown Development Authority (Customer), a Michigan organization located at 337 West Washington Street, Marquette, Michigan 49855.

TERMS AND CONDITIONS

1. **SERVICE:** PFN may provide telecommunications services to Customer for the transport of telecommunications voice and data services (each a “Service” and collectively the “Services”) as described in the related Service Addendum(s) / Service Order(s). All Services shall be provided according to the terms and conditions as set forth herein, and as specified in an order from the PFN for Services and accepted and placed by Customer with PFN (Service Addendum(s)/Service Order(s)). The Agreement is comprised of the terms and conditions herein together with any Services indicated on accompanying Service Orders attached or incorporated by reference, and the forgoing shall be deemed one integrated agreement and not as separate severable contracts. Neither party shall have any obligations for any Service unless and until a Service Order details the Service to be provided and establishes fees for the Service, and is fully executed, for each Service. Before Customer agrees to a Service, PFN shall provide a quote (may be through an email) and the Service Order including what portions of the Service are provided: by a third party; as Non-Route Redundant Capacity Services or Route Redundant Capacity Services, and as Protected or Unprotected.

2. **DEFINITIONS:**
 - 2.A. **Affiliate:** It is defined as an entity which directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with, another entity, whereby “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract, or otherwise, and “controlling” and “controlled” have meanings correlative thereto, and whereby “owns” means the beneficial ownership of more than 50% of the voting securities or other equivalent voting interests of the entity. For clarity purposes Baraga Telephone Company (BTC), 204 – State Avenue, Baraga, MI 49908 and Hiawatha Communications Inc. (HCI), 108 W. Superior, Munising, MI 49862 (including its Affiliates) are not an Affiliate of PFN. PFN is an equal partnership of BTC and HCI. BTC and HCI are two separate entities not affiliated with each other. BTC and HCI created PFN in 2004 to leverage their expertise and assets by creating PFN for reaching beyond their service areas to provide affordable broadband services in Michigan’s Upper Peninsula that have little or no access to affordable broadband.

 - 2.B. **Off-Net:** “Services” are those where one or both locations to be connected are not directly served by PFN’s Network. Off-Net Services have a portion of the Services provided by another

Customer. The installation and any other applicable non-recurring charges contained in the Service Order are due with such first payment. In the event Customer fails to pay the total undisputed PFN's invoice amount on or before thirty (30) days after the due date, Customer shall also pay a late fee in the amount of the lesser of one and one-half percent (1-1/2%) of the unpaid balance per month or the maximum lawful rate under applicable state law. In the event that Customer reasonably and in good faith disputes any amount which appears on an invoice issued by PFN pursuant to this Agreement, customer shall not be required to pay that amount which is reasonably disputed until the dispute is resolved by the parties. Such nonpayment by the Customer shall not constitute a breach of Customer's obligation of payment to PFN. Customer must notify PFN that it disputes an invoice within 30 days of the invoice date. If the dispute is resolved in PFN's favor, no interest charges will be applied to the amount in dispute so long as it is paid within 30 days after Customer's receipt of the supporting documentation from PFN.

7. **SERVICE UPGRADES:** In the event Customer desires to upgrade the service capacity during the original Term of this Agreement, PFN agrees to renegotiate the terms of this Agreement without any termination liability for canceling the Service to incorporate the upgrade; provided (a) the MRC is equal or not less than the cancelled Service; (b) the Term of the new Service is at least 12 months or the length of the Term remaining on the cancelled Service whichever is greater, and (c) the remaining MRC charges on the cancelled Service would be waived. The parties will work together to mutually agree upon the terms and conditions of the upgrade.

8. **ADDITIONAL CHARGES:**

8.A. Any applicable federal, state or local use, excise, sales or privilege taxes, duties or similar liabilities, charged to or against PFN or Customer in connection with any service furnished under this Agreement shall be paid by the Customer in addition to the regular charges under this Agreement. PFN shall explain up front to Customer before invoicing the Customer any of these charges that are in addition to the MRC and NRC stated on the applicable PFN Service Order; so the Customer can properly budget for monthly charges.

8.B. PFN shall pay any real property, ad valorem, franchise fee or similar tax imposed upon PFN.

9. **SUSPENSION OF SERVICE:** In the event payment of the undisputed invoice amount is not received from Customer by PFN on or before the date due on an habitual basis, PFN shall have the right, after giving Customer ten (10) business days written notice, to suspend all Service to Customer until such time as Customer has paid in full all amounts which are not in dispute as stated in paragraph 6 above, including any late fees as specified herein.

10. **SYSTEM MAINTENANCE:** PFN and Customer agree to the following with respect to the maintenance of Services:

10.A. Preventative Maintenance: "Preventative Maintenance" refers to upgrades, and or routine maintenance or necessary alteration/repair of hardware or software or upgrades to increase

Customer via an email that the Services have been restored. A Service Interruption is deemed to begin when the Customer files a trouble report with PFN. The Interruption / Outage ends when the Service has been restored.

11. INTERRUPTION / OUTAGE OF TRANSMISSION:

11.A. In the event of an interruption in the transmission capacity provided by PFN under this Agreement, Customer shall be entitled to a credit for the PFN provided portion of the effected circuit in an amount equivalent to the proportionate monthly charge as provided in (B or C) below, subject to the provisions of (D) below. For the purpose of this paragraph, interruption is defined as any loss of transmission of more than thirty (30) minutes in duration on non-route redundant capacity, or ten (10) minutes on route redundant capacity, except that this will not count as an interruption for the purpose of this paragraph any interruption that arises from or is due to: 1) the fault or negligence of Customer; or 2) the failure of any interconnecting Local Exchange Carrier (LEC) facilities or other equipment not part of the PFN facilities and not within PFN control; or 3) any planned interruption agreed to in advance by Customer. All service outage credits are calculated from the time of Customer notification of outage condition to PFN to the time of restoral.

11.B. Credit for non-route redundant or hybrid (partially route redundant) service interruption shall be as follows: when an interruption occurs for a period of thirty (30) minutes or more, a credit will be allowed on the basis of thirty (30) minutes for each thirty (30) minutes or fraction thereof of interruption. Two or more interruptions occurring during any period of thirty (30) consecutive minutes shall be considered as one interruption.

Network Interruption Credit Allowance

Service Unavailability

30 Min – 6 hours	10% of monthly recurring charge for affected circuit
6 hours – 8 hours	20% of monthly recurring charge for affected circuit
8 hours – 12 hours	30% of monthly recurring charge for affected circuit
12 hours – 24 hours	50% of monthly recurring charge for affected circuit
24 hours or more	100% of monthly recurring charge for affected circuit

11.C. Credit for interruption in route redundant services shall be as follows: When an interruption occurs for a period of ten (10) minutes or more, a credit will be allowed for the PFN provided portion of the affected circuit. Where applicable, the credit will be given to Customer on the next invoice after the Customer request. Interruptions shall be measured from 1) the time Customer notifies PFN that an interruption has occurred to 2) the time of the restoration. The service interruption shall be verifiable, limited to that caused directly by the PFN owned/operated network, between PFN's point of presence and the Customer's point of presence and only applicable to services on route redundant systems. In the event of multiple service interruptions in any given month (calendar month), total monthly credit to Customer shall not exceed 100% of the monthly recurring charges for the applicable, affected digital capacities.

14. GENERAL LIMITATION OF LIABILITY:

14.A. Service Interruption / Outage Liability: In the event that Service is interrupted for any reason whatsoever, PFN shall not be liable for any damages suffered by Customer. That is, PFN shall not be liable for any direct, indirect, exemplary, incidental, consequential, special, actual, punitive or damages of any other type, or for any lost revenues or profits of any kind or nature whatsoever, regardless of foreseeability and even if PFN has been advised of the possibility of such damages. PFN's sole obligation in the event of a Service Interruption / Outage, for whatever reason, is to use its best efforts to resume the Service Credit will be calculated per Section 11.

14.B. General Liability: Except for losses or damages to third parties arising out of any obligation of 15. Indemnity or 16. Confidentiality hereunder, in no event will either party have any liability whatsoever to the other party for any indirect, direct, actual, special, exemplary, consequential, incidental or punitive damages, including loss of anticipated profits or revenue or of profits or revenue in connection with or arising from anything said, omitted or done under this Agreement or any Service Order or any other attachment hereunder, regardless of foreseeability and even if the other party has been advised of the possibility of such damages. The only exception to a party's limitation of liability under this Agreement shall be in the case where a party, its agents or employees, engage in a criminal act, gross negligence or willful and wanton misconduct.

14.C. Liability Limitation: To the extent either party has any liability not excluded under 14.A. or 14.B, such party shall not be liable, on an aggregate basis, for more than the amount of all Services contracted for by Customer during the period in which this Agreement is in effect.

15. INDEMNITY:

15.A. Indemnity. Each party shall indemnify, defend and hold the other party, its Affiliates and their respective officers, directors, agents and employees harmless against any claims, of third parties for personal injury, including death, and for damage to tangible real and personal property (including attorneys' fees and expenses) to the extent caused by the indemnifying party's negligent act, error or omission or failure to comply with applicable law.

15.B. Indemnification Procedures. Promptly after receipt by an indemnified party of a notice of any third-party claim or the commencement of any action, such indemnified party shall:

15.B.1 notify the indemnifying party in writing of any such claim;

15.B.2 provide the indemnifying party with reasonable assistance to settle or defend such claim, at the other party's own expense; and

15.B.3 grant to the indemnifying party the right to control the defense and/or settlement of such claim, at the indemnifying party's own expense.

15.C. The failure to so notify, provide assistance and grant authority and control shall relieve the indemnifying party of its obligation to the indemnified party only to the extent that the indemnifying party is prejudiced thereby.

18. CANCELLATION:

18.A. If this Agreement is cancelled by Customer due to reasons other than material breach of this Agreement by PFN, the Customer shall immediately pay PFN all charges then due plus a cancellation charge. (a) If such cancellation occurs in the first year of the Term, then the cancellation charge shall be the full amount of the remaining monthly charges for Service due for the first year plus seventy five percent (75%) of the remaining monthly charges for Service due during the remainder of the Term: (b) If such cancellation occurs after the first year of the Term, then the cancellation charges shall be sixty percent (60%) of the remaining monthly charges for the Interexchange Service due during the remainder of the Term. (c) In either event the cancellation charge shall also include an amount equal to any termination charges, expenses, fees or penalties incurred by PFN because of the cancellation of the Local Access described in the Service Order.

18.B. PFN may terminate this Agreement without any liability to Customer if it is prohibited from furnishing the Service or if any material rate or term contained herein is substantially changed by any third party, including order of a court of competent jurisdiction, the Federal Communications Commission, or other local, state or federal government authority.

18.C. Both parties acknowledge and agree that any Termination Liability pertaining to 18.B above, is a liquidated damage, and that the Termination Liability is not a penalty or punitive in nature.

19. DEFAULT:

19.A. Should a party be in default under this Agreement and/or applicable attachment, the non-defaulting party may terminate each Service affected by such default after the notice periods provided for in this Section. PFN or Customer, as the case may be, shall be in default of this Agreement if any of the following conditions occur:

19.A.1 For default by PFN in providing the Services, the provisions for the Service as set forth in Service attachment and in Section 11. Interruption / Outage of Transmission shall control initially and after the Interruption / Outage reaches the limits set forth in Section 11.D. Customer may give notice of default to PFN, and if Services are not restored within 48 hours of notice, Customer may terminate the effected Service Order or portion thereof.

19.A.2 A party breaches any other material obligation, covenant or term hereunder and fails to cure the breach within thirty (30) days of receipt of notice from the non-breaching party.

19.A.3 Notwithstanding Section 19.A.1 above, if Customer fails to pay for any undisputed amount of an invoice in accordance with the terms of payment of this Agreement and has not paid such amounts within thirty (30) days of receipt of a notice of breach from PFN.

20. ADDITIONAL PROVISIONS:

20.A. Waiver: The failure of either party to give notice of default or to enforce or insist upon

20.I. Headings: Descriptive headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

20.J. Attachments: Additional terms are set forth in the Service Order/s and Order Form that are attached or can be attached later.

20.K. Publicity: Neither party shall produce, publish or distribute any press release, advertising, or other publicity referring to the other party or its Affiliates or to this Agreement, without the prior written approval of the other party. Provider shall not post signs at any site at where services are being installed or serviced, except as required by law.

21. CONFIDENTIALITY: This Agreement, the terms of all transactions conducted under the

Agreement, and information communicated between the parties related to the Agreement and said transactions, as well as any other confidential information relating to Customer's business or customers which is so designated by Customer, or which by its nature would be reasonably understood to be confidential, are proprietary ("Confidential Information") and shall not be divulged to any third parties. Notwithstanding the foregoing, a party in receipt of Confidential Information may disclose Confidential Information to its employees, officers, directors, contractors, attorneys, accountants and agents to the extent such persons need-to-know the Confidential Information and such recipients are bound by substantially similar confidentiality obligations. Both parties acknowledge and agree that improper disclosure of Confidential Information will cause irreparable harm and injury to the non-disclosing party, and that in addition to any other remedies, the non-disclosing party shall be entitled to an injunction. Notwithstanding the foregoing, neither party shall be liable for disclosing Confidential Information that is otherwise available to the general public, is disclosed after receipt of the same from a third party that does not owe a confidentiality obligation to the non-disclosing party or **is required by law to be disclosed**, provided however, that the disclosing party promptly notices the non-disclosing party to allow for the non-disclosing party an opportunity to seek a protective order or injunction. Customer understands and agrees that the charges described herein are confidential and proprietary to PFN.

22. NOTICE:

22.A. Notices under this Agreement shall be in writing and delivered to the persons whose names and business addresses appear below or as otherwise provided for by proper notice hereunder and the effective date of any notice under this Agreement shall be the date of delivery of such notice, not the date of mailing.

22.B. Written notices required or permitted under this Agreement must be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed e-mail transmission addressed to the respective party as follows:

To PFN: Jim Bednarek
Peninsula Fiber Network