

FORM OF CONTRACT

THIS AGREEMENT is made and entered into this ____ day of ____, 2016 by and between the Eastern Shore of Virginia Broadband Authority ("ESVBA"), a public body of the Commonwealth of Virginia, and Declaration Networks Group, Inc., ("DNG" or "Service Provider") a Delaware corporation authorized to do business within the Commonwealth (collectively, the "Parties" or individually, a "Party").

RECITALS

WHEREAS, ESVBA is a Virginia wireless service authority created pursuant to § 15.2-5431.1 of the Code of Virginia and is deploying a fiber network for the benefit of Northampton and Accomack Counties on the Eastern Shore of VA.; and

Whereas, ESVBA wishes to encourage private-sector companies to expand broadband network coverage to provide residential and small business broadband access for the economic benefit of the people of Northampton and Accomack Counties, and to promote improved education, healthcare and public safety; and

WHEREAS, ESVBA has in the past ,and will in the future, directly or indirectly offer incentives on a nondiscriminatory basis to private sector companies to expand their offerings of internet services in said Counties; and

Whereas, ESVBA on September 24, 2015 issued a formal Request For Proposals to enter into a Public-Private Partnership with a single Internet Service Provider establishing the conditions under which ESVBA would offer concessionary terms of service to that entity in return for a firm commitment from that entity to provide, in a timely fashion, 100% Spectrum Coverage to a specified geographic area on the Eastern Shore of Virginia; and

WHEREAS, Declaration Networks Group is a broadband access company that uses wireless technologies and White Space to provide broadband access to residential and small business customers; and

WHEREAS, Declaration Networks Group is deploying a wireless broadband access network in Northampton and Accomack Counties to provide internet, data, and voice services, and was the successful proposer in the aforementioned Request For Proposals issued by ESVBA;

THEREFORE, in consideration of the foregoing and the terms and conditions provided herein, the parties agree to the following:

ESVBA will provide to Service Provider Internet services defined herein at the specified discounted price defined herein.

Service Provider will 1) deploy a wireless broadband access network in Northampton and Accomack Counties to provide broadband Internet services to the residential and small business markets, 2) with service coverage defined herein, and 3) within the timeline defined herein.

I. GENERAL NETWORK REQUIREMENTS

The Service Provider's network will be a broadband network capable of providing transport of multiple communications capabilities as described herein. The network will provide customers with highly reliable transport of broadband internet connectivity. Service Provider's network shall provide high reliability and performance in order to support the transport of multiple applications and communications capabilities. Service Provider's network is capable of supporting the applications identified in the RFP Sect IX Supplemental Network Requirements Related to Exhibit A, specifically:

1. Internet Access
2. Data Transport
3. WAN intranet capability
4. Voice over IP
5. Real-time compressed video streaming
6. Point-to-multipoint, broadband internet access
7. Point-to-multipoint secure data transfer for proprietary systems
8. SCADA data transport

II. Coverage

Service Provider shall provide and maintain 100% Spectrum Coverage to Northampton and Accomack Counties within twenty-four (24) months of contract execution, with the exception of Restricted Areas in Northampton and Accomack Counties, and those areas which require Fiber Extensions of ESVBA-owned fiber prior to service, which areas will obtain 100% Spectrum Coverage no later than twelve (12) months after completion of the Fiber Extensions. 100% Spectrum Coverage shall mean the ability for Service Provider's wireless signal in Accomack and Northampton Counties, excluding Restricted Areas to adequately provide Broadband Services to any residential structure, place of business or other property in all seasons. Restricted Areas shall mean Tangier Island, private property, when property owner does not allow Service Provider to utilize their property, and any other defined area where the wireless frequencies utilized by Service Provider are prohibited by the State and Federal government or other certified regulating organization.

Mandatory minimum coverage requirements, in addition to the twenty four (24) month obligations set forth in this section, are:

1. within one year of the Effective Date of this Agreement, Service Provider shall provide 100% Spectrum Coverage to 50% of all residents and small businesses in Northampton County and;

2. within one year of the Effective Date of this Agreement, Service Provider shall provide 100% Spectrum Coverage to 25% of all residents and small businesses in Accomack County.

The ESVBA reserves the right to determine if Service Provider has obtained 100% Spectrum Coverage by testing for Service Provider's wireless frequencies at any residential structure, place of business, or other property that might potentially require Broadband Services, that the ESVBA chooses. ESVBA shall test 100% Spectrum Coverage by placing an antenna (provided by Service Provider) between ground level and up to sixty (60), in twenty (20) foot increments. ESVBA must receive an adequate signal from Service Provider for broadband services at one elevation at that location. Service Provider's signal must be adequate for the advertised broadband services in all seasons. Service Provider shall, at its own cost, provide ESVBA with wireless equipment and any support documentation, which the Service Provider is deploying at customer's locations for ESVBA's testing. This testing does not include Restricted Areas.

Service Coverage Provisions

1. No fewer than 75% of Qualified Residents will have Broadband Service available to them per the pricing schedule in Section III.
2. No more than 20% of Qualified Residents, which may require special construction such as poles/trenching, will have Broadband Service available to them at the standard monthly charges in the pricing schedule in Section III and an NRC for special construction no greater than 75% above the standard NRC for the applicable service.
3. No more than 5 % of Qualified Residents will not be able to get service. These may include customers who will not allow Service Provider to use the appropriate methods to provide service or, for some extraordinary reason, service cannot be provided due to the physical nature of the customer's structure or property.
4. Qualified Residents are defined for this Agreement as a customer (residential or small business) requesting broadband access service that is not in a Restricted Area and has paid in full all non-recurring and recurring fees as permitted in this Agreement.

Service Provider shall provide the ESVBA quarterly reports which shall detail the following:

1. All service orders within current coverage received including date, name, and address for service
2. All service orders within current coverage installed with standard MRC's and NRC's
3. All service orders installed within current coverage with standard MRC's and increased NRC's
4. All service orders within current coverage rejected or could not be installed by Service Provider.
5. All service interest requests outside of current coverage area.

III. BROADBAND SERVICE TIERS AND PRICING

Service Provider’s MRC and NRC pricing shall not increase during the term of the agreement with the following exceptions:

1. Tier 1 (5 Mb/s up and 5 Mb/s down) shall not increase for the Term of the Agreement.
2. All Tiers standard MRC’s & NRC’s shall not increase for the first three (3) years of the Agreement.
3. Tiers 2, 3, & 4 MRC’s & NRC’s may not increase during the first three (3) years of the Term, and thereafter may increase for the remaining two years by a total of no more than Consumer Price Index (CPI) or 20% whichever is greater.
4. Any increases will be restricted to the initial term, and if Agreement is renewed then any additional increases greater than CPI or 5% per year, whichever is greater, for additional terms shall be mutually agreed upon.
5. In the event of renewal for subsequent terms, there shall be no additional price increases during the initial three (3) years of said renewal term, and shall thereafter be subject to the limitations set forth in subsections 1 through 4, above.

Standard Broadband Service Pricing					
Tier	Download Speed	Upload Speed	MRC	NRC	Term
1	5 Mb/s	5 Mb/s	\$50	\$298	1 yr
2	10 Mb/s	5 Mb/s	\$60	\$298	1 yr
3	20 Mb/s	10 Mb/s	\$75	\$298	1 yr
4	30 Mb/s	10 Mb/s	\$100	\$298	1 yr

- Monthly Recurring Charges (MRC): The monthly charges from the Service Provider to the Subscriber for Broadband Services
- Non-Recurring Charges (NRC): One-time fee charged to the Subscriber by the Service Provider for the installation of Broadband Service, and do not include change-in-service charges, reconnection charges and similar fees not related to initial installation.
- Term: The minimum length of time that the Broadband Service is to be provided to the Subscriber by the Service Provider

IV. COMPLIANCE MONITORING

1. Service Provider shall provide to the ESVBA updated maps of the Counties which shall clearly display where Broadband Service is currently available and a timeline for when it will become available. These maps shall be updated on a quarterly basis and Service Provider shall provide a web link for the ESVBA’s website which shall direct inquiries to the Service Provider’s website to a specific area which provides information and updates regarding the wireless broadband deployment.

2. The Service Provider shall conduct an annual subscriber satisfaction survey pertaining to quality of service, which will be made available to the ESVBA.
3. Service Provider shall maintain the following records and provide quarterly reports to the ESVBA the following statistical information:
 - a) Written complaints about any aspect of the Service Provider’s operations, including, complaints about employee courtesy.
 - b) Records of outages, indicating date, duration, area, and the number of subscribers affected, type of outage, and cause.
 - c) Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved
 - d) A file showing the area of coverage for service and estimated timetable to commence providing service in areas not currently served.
4. Service Provider shall maintain the following records and provide quarterly reports to the ESVBA the following statistical information:
 - a) Service request information including:
 - (1) Date of service order request by customer
 - (2) Date of service installation
 - (3) Address of customer
 - b) Number of repair service requests received in the previous quarter.
 - c) Number of repeat repair service requests by customer with dates.
 - d) Breakdown by type of complaint received (ex. “complete outage” or “intermittent or slow service”, etc.).
 - e) Breakdown by cause of problem (ex. “Subscriber equipment” or “CPE” or “system”, etc.).
5. Service Provider shall submit a written annual report to the ESVBA, which shall include:
 - a) A summary of the previous calendar year’s activities in development of the system
 - b) A summary of the quarterly reports provided to the ESVBA
 - c) Maps of the areas within the counties where service is available to subscribers

V. OTHER NETWORK REQUIREMENTS

Service Provider shall ensure that the network service reliability uptime for Core Network Nodes is 99.9% uptime as measured on a monthly basis. 99.9% network uptime/availability is defined as gives following periods of potential downtime/unavailability of 43 minutes and 7 seconds.

A. Standby Power

Service provider shall provide at minimum eight (8) hour battery and standby power generating capacity at all of its Core Network Nodes.

B. Network Current Technology

The Service Provider will commit to maintain current technology at the level required to support services throughout this Agreement.

C. Security/ Encryption

The Service Provider must maintain an industry standard level of security over all network segments during normal operation, without undue burdens being placed on authorized users while accessing the network.

D. Rights-of-Way

The Service Provider is responsible for obtaining all permissions, easements and rights of way to install and maintain their network equipment including, but not limited to, any frequencies required for wireless transmission.

VI. ESVBA –SERVICE PROVIDER RELATIONSHIP

In consideration of the Service Provider's compliance with this Agreement, ESVBA will provide non-dedicated Internet Access as described in Exhibit 'A' to Service Provider at no charge other than as specified below in Section VII and Section X, under the following conditions.

ESVBA will provide Service Provider with Internet access and Ethernet Virtual Private Line (EVPL) service to Service Provider's towers/poles of fifty (50) feet or greater height. DNG will provide adequate –48VDC power and appropriate heating/cooling to support the ESVBA hardware at each tower location.

- A. Non-Dedicated Internet Access circuits must terminate on free standing towers/poles with a height greater than or equal to fifty (50) feet, above ground level at the tower/pole location, i.e. no buildings or other structures.
- B. ESVBA non-dedicated Internet Access circuits must terminate to Service Providers wireless access equipment. No wireline extensions from towers/poles, or ESVBA's network equipment will be permitted.
- C. Cellular/mobile services (CDMA, GSM, LTE, EV-DO, etc.), by Service Provider, Service Provider's customers, or any other means are strictly prohibited.
- D. ESVBA will waive for Service Provider ESVBA's generally-applicable standard fees and charges, as may be adopted by the ESVBA governing body from time to time for non-dedicated internet access. Nothing herein shall prevent ESVBA from offering any services to third parties at the ESVBA's standard rates in now in effect or hereafter adopted.

VII. ESVBA COMPENSATION & CHARGES

- A. Amount of Compensation. In consideration of waiver of fees by the ESVBA described in this Agreement, the Service Provider shall pay a Gross Receipts Fee to the ESVBA, on a quarterly basis, throughout the duration of this Agreement. The Gross Receipts Fee shall be ten percent (10%) of Service Provider's Gross Receipts received from Service Provider's subscribers.
- B. Each payment of the Gross Receipts Fee shall be calculated as of the first day of the month in the months of January, April, July, and October, and due and payable by the 5th business day of these months.

- C. Payments not received within thirty (30) days from the quarter ending date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date or the highest rate allowed by law, whichever is greater, but not to exceed eighteen percent (18%) in any event.
- D. No acceptance of any payment shall be construed as an accord by the ESVBA that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the ESVBA may have for further or additional sums payable or any other claim or right. All amounts paid shall be subject to audit and re-computation by the ESVBA, provided that such audit and re-computation is requested within one year of the date payment was due. Any adjustments or corrections determined by the audit will be payable within thirty (30) days of acceptance by Service Provider. If the ESVBA requests in writing that the Service Provider provide, or cause to be provided, any information reasonably within the scope of the audit, and the Service Provider fails within thirty (30) days of receipt of the request to provide such information or cause it to be provided, then the one year period shall be extended by one day for each day or part thereof that such failure continues and Grantee shall pay Liquidated Damages in the amount of \$250.00 per day.
- E. Service Provider shall pay a \$1,000 NRC for install at towers/poles which are within three pole spans of the ESVBA fiber. Standard NRCs will apply for greater distances
- F. Gross Receipts Fee shall include, without limitation, the following:
 - 1. Any revenue received from Subscribers for Broadband Services, net of refunds, rebates, or discounts made to Subscribers or other third parties including installation charges for Broadband Services, however, NRC's for Broadband Services shall be waived from Gross Receipts Fee for a period of twenty four (24) months from the execution date of the Agreement. Thereafter, NRC's shall be included in the Gross Receipts calculation.
 - 2. Revenue received from Subscribers for change-in-service fees, reconnection charges and similar fees.
 - 3. Revenue received from Subscribers for routers, switches, or other equipment leased or sold to Subscribers in connection with the delivery of Broadband Services to such Subscribers.
 - 4. Revenue received from Subscribers for service charges and late fees attributable to delinquent accounts.
 - 5. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing.

Fees collected from Subscribers for the payment of Gross Receipt Fees to be paid to the ESVBA are not to be deemed to be taxes and are not deducted from the total gross revenue figure on which Gross Revenue Fees are paid.

VIII. ESVBA'S RIGHT TO INSPECT CERTAIN RECORDS.

1. Service Provider's records, which shall include billing and revenue accounting records and contract files, project correspondence, customer complaint and resolution documentation and any other supporting evidence necessary to substantiate and calculate the Gross Receipts Fee or other charges or payments related to this Agreement, or to substantiate compliance by Service Provider with all other performance metrics in this Agreement (all the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the ESVBA's agents or authorized representatives to the extent necessary to adequately permit evaluation and verification of any payments due to either party under this Agreement, or any offsets thereto, and to verify compliance with Service Provider performance metrics.
2. For the purpose of such audits, inspections, examinations and evaluations, the ESVBA's agent or authorized representative shall have access to said records from the effective date of this Agreement, and throughout the term thereof, and until five (5) years after the Termination Date of each Term.
3. ESVBA's agents or its authorized representatives shall, for audit purposes only, have access to the Service Provider's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with this provision. ESVBA's agents or its authorized representatives shall give Service Provider reasonable advance notice of intended audits, which shall be conducted in a manner that does not interfere unreasonably with Service Provider's daily operations or performance of the Project. Service Provider shall be afforded an opportunity to mark as confidential and proprietary, as applicable, any documents reproduced by ESVBA in the course of an audit, so that Service Provider may invoke the applicable protections afforded under the Virginia Freedom of Information Act.
4. Protection of Records from Disclosure.
 - a. If Service Provider believes that any work product or any other document or item subject to transmittal to or review by ESVBA under the terms of this Agreement or any other Contract Document contains trade secrets, confidential financial information or other information that is exempt or protected from disclosure pursuant to applicable law, Service Provider shall identify such information prior to such transmittal or review and earmark with specificity the documents for which the protection is sought and provide a statement of the reasons why such protection is necessary. As a public body subject to the Virginia Freedom of Information Act and related statutes, ESVBA cannot guarantee the confidentiality of any documents not so designated.

- b. ESVBA recognizes that certain documents or materials of Service Provider obtained or copied by ESVBA may contain information exempt from disclosure or otherwise protected under applicable law. Should any such items that have been earmarked as confidential or proprietary become the subject of a request for public disclosure, the ESVBA shall withhold such items from disclosure, and notify the person or entity making the request, within the applicable timeframes prescribed by law, that such documents are not subject to disclosure. ESVBA will use reasonable efforts to notify Service Provider of such requests and the response made by ESVBA. In the event that the exempt status of the documents is challenged, ESVBA will use reasonable efforts to notify Service Provider of the challenge, and the date by which it anticipates responding, and Service Provider may assert in writing to ESVBA any claim that such items are protected from disclosure and provide the relevant section of the Virginia Code authorizing such protection from disclosure.
 - i. If Service Provider fails to make such assertion within four (4) Working Days after ESVBA notifies Service Provider of its intended response, ESVBA shall have the right to make such disclosure or other response in ESVBA's sole discretion.
 - ii. If Service Provider makes a timely assertion that the requested items contain information exempt from disclosure or otherwise protected under applicable law, ESVBA shall make a written determination of the nature and scope of the protection to be afforded. If ESVBA decides to disclose the information, it will use reasonable efforts to communicate that decision to the Service Provider forty-eight (48) hours prior to the disclosure.
 - III. If ESVBA's denial of a request for disclosure of items is challenged in court, Service Provider shall assist ESVBA in its defense, and shall indemnify ESVBA for direct damages assessed and reasonable costs ESVBA incurs in such defense.

IX. TERM

This Agreement shall become effective on the date when both parties have executed the agreement (“Effective Date”).

The initial term of this Agreement is five (5) years with a subsequent five (5)-year renewal, at the option of the Service Provider provided that the Service Provider meets the following metrics:

1. 100% Spectrum Coverage within twenty four (24) months of Effective Date.
2. Broadband Services provisioned as per Section II and Section III
3. Clean audits by the ESVBA, or ESVBA’s designated third party auditor, revealing no material deficiencies, which have not been cured in thirty (30) days, in Service

Provider's performance under this Agreement. Additionally, a statement by the Auditor that, *“We conducted our audit in accordance with Generally Accepted Auditing Standards. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We believe that our audit provides a reasonable basis for our opinion. In our opinion, the financial statements of the Company present fairly, in all material respects, the financial position of the Company, and the results of its operations and its cash flows for the year in accordance with generally accepted accounting principles.”*

4. No undisputed, overdue payments to ESVBA.
5. No other material breach of the Agreement, or breaches which have not been resolved.

X. GENERAL PROVISIONS

A. Nondiscrimination

Service Provider shall comply at all times with all applicable laws, rules, and regulations relating to nondiscrimination. All Service Provider rates and charges shall be published and non-discriminatory for all Subscribers receiving similar services, regardless of race, religion, gender, age, or other protected classification under state or federal law.

Service Provider shall not deny Service, or otherwise discriminate against Subscribers, or any other persons on the basis of race, religion, gender, age, or other protected classification under state or federal law.

Service Provider shall not take any retaliatory action against a Subscriber because of the Subscriber's exercise of any right it may have under federal, state, or local law, nor may the Service Provider require a Subscriber to waive such rights as a condition of service.

B. Compliance With Laws

The Service Provider is responsible for compliance with all Local, State and/or Federal laws and regulations.

C. Deleted.

D. Drug-Free Workplace

During the performance of this Agreement, the Service Provider agrees to (i) provide a drug-free workplace for the Service Provider 's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in violation of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Service Provider that the Service Provider maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontractor or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free

workplace” means a site for the performance of work done in connection with a specific Agreement awarded to a Service Provider in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

E. Independent Entity.

Service Provider shall have no authority to contract for or obligate ESVBA in any way. In performance of Service Provider’s obligations, it is understood that Service Provider shall be, at all times and for all purposes, acting and performing as an independent entity and not as an employee, partner, or affiliate of ESVBA. Nothing in this Agreement shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the Service Provider and the ESVBA, AND the relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. No employee or agent of Service Provider shall represent to any person that he or she is an employee, partner, or affiliated with the ESVBA. Any grants or funding which the Service Provider receives shall be the sole responsibility of the Service Provider, and the ESVBA will not be obligated to back, repay or assume any grants or funding obligations of the Service Provider.

F. Insurance

Service Provider shall at all times maintain in full force and effect, at its own cost and expense, during the Term, the following insurance coverage by a company authorized to do business in the Commonwealth of Virginia:

1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for personal injury or death of any one person or property damage to the property of any one person, and two million dollars (\$2,000,000) combined single limit for personal injury or death of any two or more persons or property damage to the property of any two or more persons. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Service Provider’s business in the Counties.
2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.
3. Workers’ Compensation Insurance meeting all legal requirements of the Commonwealth of Virginia.
4. Employers’ Liability Insurance in the following in the amounts of: Bodily Injury by Accident: \$100,000; and Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.
5. The ESVBA, its officers, boards, commission, agents, and employees shall be designated as additional insureds under each of the insurance policies required in this Article 10

except Worker's Compensation, Employer's Liability Insurance, and Copyright Infringement Insurance.

6. The insurance policies mentioned above shall state that the policies are extended to cover the liability assumed by the Service Provider under the terms of the Agreement and shall contain the following statement: "It is hereby understood that this policy may not be canceled until thirty (30) days after receipt by the ESVBA by mail of written notice of such intent to cancel coverage."
7. Each of the required insurance policies shall be with sureties qualified to do business in the Commonwealth of Virginia, with an A-/VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.
8. Service Provider shall deliver to the ESVBA Certificates of Insurance showing evidence of the required coverage contemporaneous with execution of the Agreement.

G. Indemnification

1. The Service Provider shall, at its sole cost and expense, indemnify and hold harmless the ESVBA and its officials, boards, commissions, agents and employees against any and all claims, suits, causes of action, proceedings and judgments for damages arising out of this Agreement, and of the operation of the Service Provider's network under this Agreement. These damages include, but are not limited to, penalties or damages arising out of copyright infringements and antitrust violations, and damages arising out of the failure by the Service Provider to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the Service Provider's network, whether or not any act or omission complained of is authorized, allowed or prohibited by the Service Provider and/or arising out of the Service Provider improperly crossing private property, or breach of any warranty or representation contained in this Agreement.
2. Nothing in this Section shall be deemed to prevent the ESVBA from participating in the defense of any litigation by retaining its own counsel at its sole cost and expense. No recovery by the ESVBA of any sum shall be a limitation upon the liability of the Service Provider to the ESVBA under the insurance and indemnification provisions herein, except that sums received by the ESVBA shall be deducted from any recovery which the ESVBA establishes against the Service Provider under this Agreement.
3. Service Provider shall have the right to defend, settle or compromise any claim or action arising hereunder, provided, however that in the event that the terms of any such settlement do not include a full and unconditional release of the ESVBA and the ESVBA does not consent to the terms of any such settlement or compromise, Service Provider shall not settle the claim or action.

H. Enforcement and Termination of Agreement

1. Notice of Violation: In the event that a Party believes that the other Party has not complied with the terms of the Agreement, the Party alleging non-compliance (“Complaining Party”) shall notify the Party believed to be out of compliance (“Alleged Non-complying Party”) in writing of the exact nature of the alleged non-compliance.
2. Right to Cure or Respond: The Alleged Non-complying Party shall have thirty (30) days from receipt of the written notice described in this Article to: (i) respond to the Complaining Party, if the Alleged Non-complying Party contests (in whole or in part) the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default as promptly as possible and notify the Complaining Party of the steps being taken and the projected date that they will be completed with the exceptions for default arising from obligations under Sections II and III.
3. Enforcement: the ESVBA may apply one or a combination of the following remedies if the Service Provider is in default under any material provision of the Agreement, which remains uncured beyond the applicable cure period. DNG may apply one or a combination of the remedies c, d, e, f below if DNG determines that the ESVBA is in default under any material provision of the Agreement, which remains uncured beyond the applicable cure period.:
 - a) Impose from the date of the event constituting the default, but not prior thereto, the full cost on Service Provider of any fees waived or discounted under this Agreement, or any portion thereof as the ESVBA may determine;
 - b) Draw upon the Security Fund described in Paragraph (H)(5);
 - c) Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages;
 - d) Commence an action at law for monetary damages or seek other relief at law or in equity; or
 - e) In the case of a material default by the Service Provider, terminate this agreement by written notice specifying the effective date of termination; or,
 - f) Apply any other remedy provided for in this Agreement or applicable federal, state or local laws.
4. Security Fund: To ensure the performance of its obligations under this Agreement, the Service Provider shall establish a security fund in the form of a Letter of Credit for the benefit of ESVBA in the amount of \$5,000 dollars. If at the time of drawing of Security Funds by the ESVBA, the funds available under the Letter of Credit are insufficient to cover the amounts due to ESVBA, the balance of such amounts due shall continue as the obligation of the Service Provider. Within thirty (30) days of being notified that any amount has been drawn by the ESVBA, the Service Provider shall restore the Security Fund under the Letter of Credit to the total amount specified above.
5. Upon termination of this Agreement, unless otherwise agreed by the parties, the Service Provider shall retain ownership of any towers and equipment constructed or purchased by Service provider, and ESVBA shall retain ownership of all infrastructure constructed by

ESVBA. ESVBA shall not be obligated to dismantle, remove or replace any of Service Provider's equipment and shall not be liable to any third party for Service Provider's failure to do so. Service Provider shall indemnify and hold harmless ESVBA for and from any and all claims of third parties arising from Service Provider's operations hereunder, including without limitation Service Provider's failure to maintain, remove, dismantle repair or replace any of Service Provider's equipment, or for Service Provider's failure to operate in accordance with all applicable laws and regulations

I. Liquidated Damages

1. Because the Service Provider's failure to comply with provisions of this Agreement may result in injury to the ESVBA that may be difficult to quantify, the ESVBA and the Service Provider agree that liquidated damages will be assessed against the Service Provider for certain violations of provisions this Agreement., and that such liquidated damages will be chargeable to the Service Provider's Security Fund up to the limits specified below in the event of non-payment by the Service Provider. On an annual basis from the Effective Date of this Agreement, liquidated damages in total will not exceed \$20,000dollars.The Service Provider hereby agrees that the liquidated damages specified herein are reasonable and do not constitute a penalty or fine. The liquidated damages shall not apply if failure to perform is excused by Force Majeure provisions and shall only apply from the date that notice of the deficiency is provided to the Service Provider. The Service Provider will be provided a cure period of 15 business days from notification from ESVBA for each complaint to provide justification or resolution to the disputed installation. After the two (2) year construction period and subject to the service restrictions of this Agreement, failure to provide Broadband Service to a Qualified Resident within sixteen (16) weeks of a request for Broadband Service, when such failure is reported by the Qualified Resident to the ESVBA and referred to the Service Provider by the ESVBA: \$10 per day, not to exceed \$500 in the aggregate;
2. Failure to provide quarterly service reports or quarterly payment information to ESVBA, obtain, maintain or replenish the security fund in a timely fashion: \$150 per day for each day after written notice has been provided by the ESVBA of such failure;
3. Failure to comply, within ten (10) days, with this Agreement's Customer Service Standards with respect to customer complaints, when such failure is reported by the customer to the ESVBA and referred to the Service Provider by the ESVBA: \$10 per complaint

In no event shall payment of liquidated damages excuse the Service Provider from full performance of all obligations hereunder or prevent the ESVBA from invoking any other remedies in the event of Service Provider Default.

J. Binding Acceptance:

This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. The Service Provider by acceptance of this Agreement acknowledges that it has not been induced to enter into this Agreement by any understanding or promise or other statement whether oral or written by or on behalf of the ESVBA or by any other Person concerning any term or condition of this Agreement not expressed herein.

K. Assignment:

This Agreement may not be assigned, transferred, pledged, or hypothecated without the consent of the ESVBA, which shall not be unreasonably withheld, conditioned or delayed.

L. Preemption:

In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the ESVBA.

M. Force Majeure

Force Majeure shall be defined as an event, or events, reasonably beyond the ability of Service Provider to anticipate and control (including, but not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, and tornadoes), the damages from which could not have been mitigated by the exercise of ordinary diligence.

N. Exclusivity

While this Agreement grants specific rights to the Service Provider, it does not exclude any other service provider(s) from utilizing the ESVBA network to provide broadband services to the public. *The ESVBA reserves the right to provide service to all service providers and the ESVBA's customers at its published rates, and to modify those rates in its sole discretion in accordance with its standard procedures.*

Subsequent to execution of agreement, if ESVBA approves generally-applicable rates which are lower than the rates provided in this Agreement, then Service Provider has the option of using the lower rates, but, Service Provider shall nevertheless remain obligated to meet all the terms and conditions of the Agreement.

O. No Waiver

The failure of a Party on one or more occasions to exercise a right or to require compliance or performance under this Agreement, or any applicable law or regulation, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by that Party, nor to excuse the other Party from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

P. Dispute Resolution

1. The ESVBA and Service Provider shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. Either party may give the other party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include (a) a statement of that party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within thirty [30] days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
2. If the dispute has not been resolved by nonbinding means as provided herein within 30 days of the initial notice, the ESVBA may proceed in accordance with any remedy it may have at law or in equity, including without limitation those in paragraph I of Section XVII. In the case of claims made by Service Provider, if the matter is not resolved within 30 days by nonbinding means, the Board of Directors of the ESVBA shall make a final determination which may be contested by Service Provider within six (6) months by initiating an action in the Circuit Court of Accomack County, Virginia, however, no legal action may be commenced by Service Provider on any such contractual claim prior to rendering of a decision by the governing body of the ESVBA unless no decision has been rendered within sixty (60) days of the initial notice of the claim, in which case Service Provider's claim shall be deemed denied, and its sole remedy shall be to appeal as provided herein.

Q. Choice of Law

This Agreement shall be governed by and construed and interpreted in accordance with the laws of Commonwealth of Virginia which are applicable to agreements which are negotiated, executed, delivered and performed solely in such jurisdiction, and any action pursuant to or regarding this Agreement may be brought in the Commonwealth of Virginia, specifically, the Accomack Circuit Court. The Service Provider waives any objection to jurisdiction of the state and Federal Courts of the Commonwealth of Virginia. If there is jurisdiction in the federal

system, such action shall be brought in the United States District Court for the Eastern District of Virginia

R. Immigration Reform And Control Act Of 1986

Service Provider certifies that it does not and will not during the performance of this Agreement employ illegal alien workers or otherwise violate the Federal Immigration Reform and Control Act of 1986.

S. Non-disclosure of Information

1. The Parties acknowledges that in the course of performing the services under this Agreement, its personnel and subcontractors (if any) might have access to confidential and/or sensitive information about the business, operations, customers and employees of the other Party. If either Party provides or has provided confidential or proprietary information ("Confidential Information") designated as such to the other Party, the receiving Party shall, subject to applicable law, and the procedure set forth in Part VIII, hold such information in confidence and shall afford it the same care and protection that it affords to its own confidential and proprietary information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party, except as otherwise provided below. All Confidential Information, unless otherwise specified in writing, shall be used by the receiving Party only for the intended purposes set forth in this Agreement. The Parties agree that, except as directed by the disclosing Party, the Parties will not at any time during or after the term of the Agreement:
Disclose any Confidential Information to any third party, or
Permit any third party to examine and/or to make copies of any reports, documents or electronic data containing confidential information, or
Use any confidential information for any reason other than in the performance of the Agreement. Upon termination of the Agreement the Parties will return to the other, or at the other Party's request destroy all reports, documents, electronic data and other matter that comes into the Party's possession or control, which contains or relates to Confidential Information. Neither Party will be required to treat as confidential any information which:
 - a) The Party could demonstrate was in its possession prior to the execution of the Agreement.
 - b) Has become generally available in the public domain without breach of the Agreement.
 - c) Becomes lawfully available to the Party from a source other than the other Party.
2. Any release of proprietary or confidential information by the Service Provider or Service Provider's employees shall be considered a breach of the agreement.
3. Exceptions. The provisions of this Section shall not apply to (1) any required disclosures to any government authority, (2) disclosures required under the Freedom of Information Act and applicable state or local government open records laws, (3) retention of

documents by ESVBA as may be required by law relating to maintenance and preservation of public records.

- T. The provisions of this section shall survive the termination of the Agreement in perpetuity.
- U. **Procurement Documents.** The Request for Proposal issued by the ESVBA is incorporated herein by reference and all of its terms and conditions shall be binding upon Service Provider unless specifically altered or amended by this Agreement.
- V. **Entire Agreement.** This Agreement and the exhibits attached hereto is the entire agreement between the Parties, supersedes all previous representations, understandings or agreements, and there are no covenants, promises, agreements, conditions or understandings; either oral or written, between them other than are herein set forth. No alteration, amendment, change, or addition to this Agreement shall be binding upon Parties unless reduced to writing and signed by each party.

XI. REPRESENTATIONS AND WARRANTIES

Service Provider represents and warrants that as of the Effective Date and thereafter:

- A. The Service Provider is authorized to do business in Virginia.
- B. The Service Provider is currently in compliance with, and will throughout the term of this Agreement comply with, all applicable local, state, and federal laws and regulations including, but not limited to, regulations promulgated by the FCC, SEC and SCC. Service Provider will, within ten (10) business days of a request by the ESVBA to produce evidence of any filings which might be required to document such compliance, produce such evidence.
- C. The Service Provider has the requisite power and under applicable law and Service Provider's organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required, to enter into and legally bind the Service Provider to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement, and its performance under this Agreement will not result in the breach or violation of any provision of its by-laws or of any statute, regulation, agreement, judgment, or decree to which it is subject
- D. Service Provider is financially able to perform all commitments made in this Agreement and, subject to Confidentiality provision of the Agreement, agrees to provide financial statements as they become available but not later than the regular reporting deadlines. evidencing this ability
- E. To the best of its knowledge there is no action or proceeding pending or threatened against the Service Provider which would impair its ability to perform under this Agreement
- F. Service provider will maintain its books in accordance with GAAP, and shall permit access and copying by ESVBA or its agents in accordance with Section V, (G).

XII.SUPPLEMENTAL DEFINITIONS

- A. Affiliate: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with another person.
- B. Control: The ability to exercise de facto or de jure control over day-to-day policies and operations or the management of corporate affairs.
- C. Person: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- D. Core Equipment Nodes: Core Equipment Nodes are the Service Provider's network equipment nodes which provide network services to multiple customers as opposed to network equipment at a residence, which serves one specific customer. Examples of Core Equipment Nodes are routers, switches, transceivers, receivers, etc. that are at key locations such as the Service Provider's data center, point of presence, or towers/poles.
- E. Fiber Extensions: The eight (8) proposed fiber extensions by the ESVBA (Oyster, Cheapside, Wachapreague, Quinby, Pungoteague, Harborton, Greenbackville, Sanford).
- F. Subscriber: Any person, or end users located in Accomack or Northampton Counties or served by ESVBA fiber, who elects to subscribe to, for any purpose, services provided by Service Provider and whose premises are lawfully activated to receive service from Service Provider.
- G. FCC- United States Federal Communications Commission
- H. SEC-United States Securities and Exchange Commission
- I. SCC- Virginia State Corporation Commission
- J. Termination Date – The effective date of any termination of this Agreement, whether by expiration of the term of the Agreement as set forth in Section XVI or by termination in the event of material breach of this Agreement as set forth in Section XVII, Paragraph H.

Exhibit 'A'

The Eastern Shore of Virginia Broadband Authority (ESVBA) will provide Declaration Networks (SERVICE PROVIDER) Internet access and Ethernet Virtual Private Line (EVPL) service to towers/poles fifty (50) feet or greater.

- A. Layer 3 service shall be terminated at no more than three (3) different aggregation/hub sites, which shall be located at a tower/pole site. Layer 3 services are subject to the following restrictions:
1. Non-Dedicated Internet Access circuits must terminate on free standing towers/poles with a height greater than or equal to fifty (50) feet, above ground level at the tower/pole location, i.e. no buildings or other structures.
 2. ESVBA's Acceptable Usage Policy
 3. ESVBA's IP justification for IP space.
 4. Total aggregate Non Dedicated Internet bandwidth between the three (3) sites shall not exceed 4 Gb/s and shall be provisioned in 100Mb/s increments, as needed and will provide static routing of IP space to the Service Provider provided Layer-3 core routers at each of the three (3) aggregation sites. In the event that additional Non Dedicated Internet Bandwidth is required, ESVBA shall provide an additional 2 Gb/s provided that Service Provider is meeting all requirements of the Agreement and there are no undisputed, overdue payments to the ESVBA. Service Provider will be required to provide signed service orders for incremental Internet bandwidths at either of the hub sites.
 5. Each Hub site will be limited to a maximum of 1Gbps of Internet and a maximum of 4Gbps of aggregate E-Line EVPL services.
 6. SERVICE PROVIDER will provide adequate -48VDC power and appropriate heating/cooling to support the ESVBA hardware at each tower location.
 7. Fiber extensions from any wireless tower site are strictly prohibited.
 8. Due to the demands of the Internet, the limitations of other networks that comprise the Internet, and the configuration of the Customer's equipment, the maximum speed may only be available on a "burst basis". The actual maximum bandwidth available depends on how many users are accessing the network simultaneously at any given time. The ESVBA shall not exceed a ratio of 15:1 oversubscription of the non-dedicated Internet core and will undertake reasonable efforts at network management, traffic analysis, operational procedures and user policies that ensure appropriate bandwidth at all times for as many customers as possible.
 9. Service Provider shall be able to change the bandwidth at Hub locations and ESVBA shall make such changes within five business days of receiving a signed changed order. Non recurring set up charges for changes in bandwidth greater than one time per calendar year per site may be charged \$250 per request at ESVBA's sole discretion.
 10. ESVBA shall ensure that the network service reliability uptime for Core Network Nodes is 99.9% uptime as measured on a monthly basis.
 11. In the event of any routing anomaly, Denial of Service attack, blacklisting of ISP addresses, internet fraud complaints or other events related to the Internet traffic to and

from the Service Provider's customers, ESVBA shall endeavor to assist Service Provider to resolve such issues.

12. ESVBA shall endeavor to notify Service Provider of major network outages and restoration activities on ESVBA's network and shall schedule a maintenance time frame for work which directly affects Service Providers service

- B.** ESVBA will provide Layer 2 transport service between wireless tower sites to one of their three (3) hub locations. Layer 2 transport services shall be of the format of a Metro Ethernet E-Line service where the ESVBA will provide a single or multiple 1Gbps handoff(s) at the hub site and provide SERVICE PROVIDER individual S-tagged traffic for SERVICE PROVIDER to dereference to each end-tower location. Each EVPL E-Line circuit shall be provisioned in 100Mbps increments, as needed. SERVICE PROVIDER will be required to provide signed service orders for incremental bandwidth changes on any individual E-Line EVPL service.

Layer 2 services are subject to the following restrictions:

1. Circuits must terminate on free standing towers/poles with a height greater than or equal to fifty (50) feet, above ground level at the tower/pole location, i.e. no buildings or other structures.
2. A maximum of fifty (50) towers, including hub sites, can be connected
3. Fiber extensions from any wireless tower site are strictly prohibited.
4. SERVICE PROVIDER will provide adequate -48VDC power and appropriate heating/cooling to support the ESVBA hardware at each tower location.
5. Cellular/mobile services (CDMA, GSM, LTE, EV-DO, etc.), by Service Provider, Service Provider's customers, or any other means are strictly prohibited.
6. Service Provider shall be able to change the bandwidth at Hub locations and ESVBA shall make such changes within five business days of receiving a signed changed order. Non recurring set up charges for changes in bandwidth greater than one time per calendar year per site may be charged \$250 per request at ESVBA's sole discretion.
7. In the event of any routing anomaly, Denial of Service attack, blacklisting of ISP addresses, internet fraud complaints or other events related to the Internet traffic to and from the Service Provider's customers, ESVBA shall endeavor to assist Service Provider to resolve such issues

C. ESVB Network Management Reporting

1. In the event of a service affecting network outage, ESVBA will, upon request, provide an incident report to Service Provider regarding the cause of the outage.
2. ESVBA shall provide Service Provider access to the customer utilization portal to view Service Provider's network usage.
3. The ESVBA and Service Provider will make reasonable efforts to meet as needed to discuss network issues and extensions.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

EASTERN SHORE OF VIRGINIA BROADBAND
AUTHORITY

By: _____
Title: _____

COMMONWEALTH OF VIRGINIA

County/City of _____, to wit:

The foregoing Agreement was acknowledged before me this ___ day of _____, 2016 by
_____, the _____ of the Eastern Shore of
Virginia Broadband Authority, acting on behalf thereof

Notary Public

My Commission Expires: _____
Notary Number: _____

()

By: _____
Title: _____

COMMONWEALTH OF VIRGINIA

County/City of _____, to wit:

The foregoing Agreement was acknowledged before me this ____ day of _____, 2016 by
_____, the _____ of the (INSERT SERVICE
PROVIDER NAME), acting on behalf thereof

Notary Public

My Commission Expires: _____
Notary Number: _____