



## Connectivity Terms and Conditions

**1. Acceptance:** Products or Services provided by MCNC shall be governed by these terms and conditions. No changes in these terms or conditions (including any waiver thereof) shall be valid unless in writing and signed by both parties. Subscriber acknowledges that the terms and conditions in this Agreement replace and supersede (a) any other terms and conditions regarding the subject matter of this Agreement and (b) any and all terms and conditions that may be printed on Subscriber's written inquiry, orders, or other documentation as to said subject matter.

**2. Delivery Schedule:** MCNC will deliver the products and services to be provided hereunder by the delivery date in the Scope of Work section of this Agreement or, if no such date is provided therein, by the Effective Date.

**3. Maintenance Schedule:** MCNC will provide one week advance notice for scheduled maintenance and planned outages of the fiber or capacity service, and twenty-four (24) hours advanced notice for emergency maintenance; however, no notice is required for response to service problem and/or maintenance and repair of an outage or imminent outage of the fiber, capacity, or other services or facility. MCNC's normal maintenance window is midnight to 6:00 a.m. local time.

**4. Ownership of New Developments, Equipment and Fiber:** MCNC shall retain ownership of, and Subscriber shall claim no interest in, the proprietary technology and processes of MCNC. MCNC shall retain ownership of all equipment which MCNC may provide to Subscriber to be utilized for the network connection. MCNC will be responsible for all maintenance costs associated with this equipment. If fiber is being constructed, MCNC shall be the owner of the fiber and Subscriber, by signing this Agreement, grants to MCNC an easement for constructing, maintaining, repairing, replacing, and otherwise accessing the fiber in and around where the fiber is located; except, if all of the services are terminated, then upon said service termination Subscriber shall be the owner of the portion of said fiber on Subscriber's property only, and MCNC's interest in said portion of the fiber, all duties related thereto, and said easement shall terminate and MCNC may disconnect said fiber portion from MCNC's remaining fiber. This provision of this paragraph shall survive the termination of this Agreement.



**5. Taxes:** All foreign, federal, state and local taxes, and all duties and governmental fees, whether stated in the Agreement or not, shall be the obligation of Subscriber except for taxes, if any, on MCNC income. To the extent that MCNC is required or permitted to collect from Subscriber any Governmental Charges in connection with MCNC furnishing its Services, MCNC shall retain the right to do so. Governmental Charges are charges that result from the application, enforcement or interpretation of existing, new or revised laws or regulations, actions taken by federal, state, local or foreign regulatory authorities, or judicial acts or decisions that directly or indirectly impose costs on MCNC. Governmental Charges include, but are not limited to, those arising out of local, state, federal, foreign and third party actions, programs or requirements relating to Universal Service, number portability, TRS, E911, access, reciprocal compensation, franchising and CALEA.

**6. Representations; Indemnification:** Services specified in this Agreement will be performed per the Scope of Work section of this Agreement. However, MCNC cannot guarantee that any specific product, innovation or process will result from its efforts hereunder. Subscriber recognizes and accepts that MCNC's efforts and obligations hereunder may be contingent in part upon the materials and specifications it receives from Subscriber. Subscriber also recognizes that certain of the materials it delivers to MCNC may be fragile, defective and/or unusable for the requested services, and that these materials may be subject to breakage, destruction or may otherwise be rendered unusable during the provision of services hereunder.

**7. Limitation of Liability:** NEITHER MCNC NOR THIRD PARTY PROVIDERS OF COMPONENTS OF SERVICE OR EQUIPMENT (INDIVIDUALLY OR COLLECTIVELY, "THIRD PARTY PROVIDERS") MAKE ANY REPRESENTATION OR WARRANTY TO SUBSCRIBER OF ANY KIND, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY SUCH WARRANTIES TO BE IMPLIED WITH RESPECT TO THE PRODUCT OR SERVICES FURNISHED TO SUBSCRIBER, AND ALL SUCH IMPLIED WARRANTIES ARE HEREBY DISCLAIMED. IN NO EVENT SHALL MCNC OR THIRD PARTY PROVIDERS BE LIABLE TO SUBSCRIBER FOR EXPENSES, DAMAGES OR OTHER LOSSES INCURRED BY SUBSCRIBER AS A RESULT OF DELIVERY DELAYS; FOR SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR FOR "LOST PROFITS" OR LOST DATA, INCURRED BY SUBSCRIBER ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT OR COMPONENTS OF SERVICE OR EQUIPMENT FURNISHED BY THIRD PARTY PROVIDERS; OR FOR ANY ACTUAL DAMAGES INCURRED BY SUBSCRIBER DUE TO ANY COMPONENTS OF SERVICE OR EQUIPMENT FURNISHED BY THIRD PARTY PROVIDERS. SUBSCRIBER WAIVES ANY CLAIMS IT MAY HAVE AS TO COMPONENTS



OF SERVICE OR EQUIPMENT FURNISHED BY THIRD PARTY PROVIDERS. ORAL STATEMENTS MADE BY MCNC'S EMPLOYEES AND AGENTS DO NOT CONSTITUTE WARRANTIES, SHALL NOT BE RELIED UPON AS SUCH BY SUBSCRIBER, AND ARE NOT PART OF THIS AGREEMENT. IN NO EVENT SHALL MCNC'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY RECEIVED BY MCNC DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM GIVING RISE TO SUCH LIABILITY FIRST AROSE. Third Party Providers are a third party beneficiary of this paragraph.

**8. Customer Data Disclaimer:** While MCNC makes every reasonable effort to protect Subscriber's data stored or transmitted on MCNC's system, MCNC will not be held liable for any damage to Subscriber's data including but not limited to: lost, destroyed, damaged, or disclosed as the result of equipment failure, break-in to the system or other causes. Subscriber acknowledges and agrees that the nature of the system or Services is not secure and thereby MCNC MAKES NO WARRANTY AS TO THE PROTECTION OF SUBSCRIBER'S DATA. MCNC will use commercially reasonable efforts to coordinate 99.5% average monthly uptime of the Internet facilities owned by MCNC subject to the standard exceptions of Paragraphs 2 and 9 herein. MCNC is not responsible for and makes no representation regarding components or downtime of the Service not owned by MCNC. Subscriber agrees to release and not hold liable MCNC for any damage to Subscriber's data including but not limited to: lost, destroyed, damaged or disclosure as a result of equipment failure, break-in to the system or other causes.

**9. Force Majeure:** In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision, including but not limited to Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, the affected Party's performance shall be temporarily excused and no party is entitled to terminate this Agreement due to such occurrence; provided, that the affected Party resumes performance as soon as it is reasonably able to do so and that the affected Party (a) provides the other Party prompt notice of the nature of the event, (b) uses commercially reasonable efforts to



address and mitigate the cause and effect of such event, (c) provides prompt notice of the end of such event.

**10. Waiver of Subrogation:** To the extent permitted by law, Subscriber, on its own behalf and on the behalf of its affiliates, directors, officers, employees, and insurers, hereby waives and releases MCNC, its directors, officers, employees, contractors and others working on behalf of MCNC from any and all liability or responsibility to Subscriber, its affiliates, directors, officers, employees, and insurers or anyone claiming through or under Subscriber, its affiliates, directors, officers, employees, and insurers, by way of subrogation or otherwise, for any bodily, loss and damage to property, and any and all damages, costs, and liability insured by any self-insurance of, and any insurance maintained by, Subscriber, whether caused by fire, any other casualty, or otherwise, and even if caused by the fault or negligence of MCNC, its directors, officers, employees, contractors or others working on behalf of MCNC,. Subscriber's policies of insurance shall contain a clause or endorsement waiving the right of subrogation as to MCNC, its directors, officers, employees, contractors and others working on behalf of MCNC and provide that such waiver and release shall not adversely affect or impair such policies or prejudice any right of MCNC to recover as an additional insured thereunder. Subscriber agrees that Subscriber shall provide MCNC a copy of such policies with such clause or endorsement.

**11. Confidentiality:** All material and information provided to MCNC shall be considered non-confidential unless it is expressly identified as "confidential."

**12. General Provisions:** This Agreement shall be construed and interpreted solely in accordance with the laws of North Carolina. MCNC's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach or default. This Agreement and any attachments contain the full understanding of the parties with respect to the subject matter hereof. The provisions of the Agreement shall be severable, and the invalidity, illegality or unenforceability of any provision shall not affect the enforceability or validity of any other provision.