Community Anchor Institution

Master Service Agreement

This Master Service Agreement ("**MSA**") is made effective as of _____, 20_____ ("**Effective date**") by and between the Illinois Department of Innovation & Technology, an Illinois State Agency with an address of 120 West Jefferson Street, Springfield, IL 62704 ("**DoIT**") and _____, a _____, with an address of _____("**Customer**"). Each may be referred to herein as a "**Party**" and collectively as the "**Parties**".

PURPOSE

DoIT owns and operates the Illinois Century Network (ICN) a broadband backbone network with facilities for providing Intranet and Internet services throughout the State of Illinois. DoIT operates the ICN for the primary purpose of providing broadband services to Community Anchor Institutions (CAI) such as Illinois schools, institutions of higher education, libraries, museums, research institutions, State agencies, units of local government, and other non-commercial entities that provide services to Illinois citizens. In order to more fully accomplish its mission, DoIT issues individual Master Service Agreements to provide broadband services to such instrumentalities and entities.

ARTICLE 1 - GENERAL

1.1 Agreement Structure. The purpose of this MSA is to provide general terms, conditions and a framework within which Customer may from time to time purchase certain transport, dedicated internet access and colocation services ("**Services**") from DoIT for its use. This MSA and Service Orders (as defined in Section 1.2 below) and any other attachments incorporated therein shall collectively be referred to as the "**Agreement.**"

1.2 Orders for Services. Working directly with the Customer, DoIT staff will help identify available connectivity and service options and will assist Customer throughout the provisioning, installation and turn-up of the service. DoIT will prepare for the Customer a Service Order which will clearly identify the service, monthly recurring charge **("MRC")**, non-recurring charge **("NRC")**, and Customer billing contact information and address. Once DoIT has received a signed copy of the Service Order from the Customer, DoIT will begin the provisioning of the service. Each Service Order shall incorporate by reference, and shall be subject to the terms and conditions of this Agreement. All Service Orders shall be subject to the availability of the service requested and acceptance by DoIT. Customer acknowledges and agrees that Customer is solely responsible for the accuracy of all Service Orders and other information that it provides to DoIT.

1.3 **Order of Precedence**. In the event of an express conflict between a term(s) of this MSA and the term(s) of any Service Order signed by the Customer, precedence will be given in the following order: (a) the Service Order but solely with respect to the Service covered by that Service Order and provided that an authorized representative of DoIT has executed such Service Order; and (b) this MSA.

1.4 **Acceptable Use Policy**. Customer agrees to be bound by DoIT's Acceptable Use Policy which may be found at www.illinois.net.

ARTICLE 2 – TERM

2.1 **MSA Term**. This MSA shall be in effect until terminated by either party with thirty (30) days' notice written notice. A valid MSA is required in order to receive any service from DoIT and multiple Service Orders may be issued under the one valid MSA. Notwithstanding the foregoing, in the event that any Service Order remains in effect following such termination, this MSA shall govern and continue in effect with regard to such Service Order until the termination of such Service Order.

2.2 **Service Order Term**. The term of each Service Order shall commence on the Service Activation Date for such Service and continue unless terminated by either party with thirty (30) days' notice as provided for in this Agreement.

ARTICLE 3 – SERVICE ORDER PROCEDURE

3.1 To order a Service, Customer must execute a Service Order provided by DoIT. Customer may order additional Services from time to time by executing additional Service Orders. Upon receipt of an executed Service Order, DoIT will email an order acknowledgment letter to Customer to either: (a) accept the Service Order (b) request clarification of information on the Service Order; or (c) reject the Service Order. DoIT shall be under no obligation to accept a Service Order.

3.2 After installing a Service, DoIT will email an order completion notification to Customer to the email address designated by Customer. If Customer does not notify DoIT in writing within seventy-two (72) hours following receipt of the order completion notification that the Services do not conform to DoIT's specifications (with evidence of such non-conformance included in the notice), or if DoIT has not performed the testing ensuring compliance with service specifications listed in the service order "Acceptance Testing" due to Customer's failure to satisfy any of its obligations under this MSA related to installation, or if Customer begins using the Service for any purpose other than testing, the Service shall be deemed accepted, and such date shall constitute the "**Service Activation Date**."

ARTICLE 4 – BILLING AND PAYMENT

4.1 **Charges**. DoIT reserves the right to impose appropriate charges for Internet access, Intranet access, or both, at DoIT' sole discretion. Prior to instituting such charges, DoIT shall provide prior written notice of the charges and their effective date. Customer may withdraw from its participation in the ICN by notifying DoIT in writing within 30 days from receipt of the notice without incurring termination charges from DoIT up to the date of its withdrawal.

4.2 **Billing and Payment**. Customer shall pay DoIT all charges within 30 days of the invoice date or in accordance with the Illinois Local Prompt Payment Act (50 ILCS 505).

4.3 Taxes and Fees. Customer shall be responsible for payment of any and all applicable local, state, and federal taxes or fees (however designated).

4.4 Invoice Disputes. To the extent that Customer disputes any portion of an invoice, Customer shall notify DoIT in writing and provide detailed documentation supporting its dispute within forty-five (45) days of the invoice date or the Customer's right to any billing adjustment shall be waived. In the event of a billing dispute, Customer shall timely pay all undisputed amounts. If the dispute is resolved against Customer, Customer shall pay such amounts due from the date the payment was originally due. A dispute may not be based upon a claim that all or a portion of the charges for the Services were incurred by unauthorized users. If the dispute is resolved against DoIT, DoIT will issue credit for the disputed amount outstanding or provide service credits for any payments made.

ARTICLE 5 – TERMINATION

5.1 Termination by Customer Prior to Service Activation Date. In the event Customer requests cancellation of a Service after Service Order Acceptance and prior to the date DoIT has sent a Service Activation Notice for such Service, Customer shall be obligated to pay DoIT for any costs DoIT has incurred in provisioning the Service prior to the date of cancellation, including, but not limited to, any contracts entered into by DoIT in connection with this Agreement and any completed or incomplete installation services rendered.

5.2 Termination for Convenience. This Agreement or any Service Order may be cancelled by either party on thirty days (30) prior written notice with or without cause. Customer will be responsible for any outstanding costs outlined in the Service Order current at the time of termination.

5.3 Termination for Cause. DoIT shall notify Customer of any breaches of the terms of this Agreement or of any Service Order by Customer, or any individual acting directly or indirectly under color of authority of Customer. Customer shall have thirty (30) days to cure such breach. In the event such breach is not cured within the thirty (30) days this Agreement may be terminated by DoIT without further notice, obligation or liability to Customer.

ARTICLE 6 - EQUIPMENT AND INSTALLATION

6.1 Customer Equipment. Customer shall provide a router or other connectivity equipment approved by DOIT for direct connection to the Network and to replace, at its expense, this equipment if it reaches the end of its useful life or at the expiration of the manufacture's support period. DoIT shall identify and install the equipment needed by Customer at its site to access the ICN if desired by the Customer. Customer is responsible for purchasing its own equipment

Unless Customer agrees to release DoIT of management responsibilities, DoIT shall monitor and support Customer's router or approved access device, for sites directly connected to the ICN, in accordance with industry standards, provided Customer maintains at its sole expense a valid maintenance plan with equipment manufacturer.

If, on responding to a Customer initiated service call, DoIT and Customer jointly determine that the cause of the service deficiency was a failure, malfunction or the inadequacy of equipment other than DoIT's Equipment or DoIT's Network, DoIT reserves the right to assess a fee for actual time and materials expended during the service call.

6.2 DOIT Access to Customer Premises. Where applicable, Customer shall provide DoIT with access to all Customer locations for purposes of installation, maintenance, and repair of DoIT Equipment on Customer premises. DoIT shall provide reasonable notice under the circumstance to Customer prior to entering Customer's point of presence to install, maintain or repair any of the DoIT Equipment. Customer will provide a safe place to work and comply with all applicable laws regarding the working conditions on the Customer premises.

6.3 DOIT Equipment. DoIT, or its agent, may provide, install, maintain, repair, operate and control DoIT's equipment including but not limited to fiber, conduit, man holes, hand holes, ducts, electrical and optical equipment ("**DoIT Equipment**"). DoIT's Equipment shall remain the sole and exclusive property of DoIT, and nothing contained herein shall give or convey to Customer, or any other person, any right, title or interest whatsoever in DoIT's Equipment, notwithstanding that it may be, or become, attached to, or embedded in, realty. Customer shall not tamper with, remove or conceal any identifying plates, tags or labels identifying DoIT's ownership interest in DoIT's Equipment. Customer shall not adjust, align,
attempt to repair, relocate or remove DoIT's Equipment, except as expressly authorized in writing by DoIT. Customer shall be liable for any loss of or damage to DoIT's Equipment caused by Customer's negligence, intentional acts, or unauthorized maintenance and shall reimburse DoIT for the same, within thirty (30) days after receipt by Customer of a request for reimbursement.

ARTICLE 7 – MAINTENANCE

7.1 Maintenance. DoIT shall maintain a 24/7 Network Operations Center (NOC), the Communications Management Center (CMC), which will monitor the network and respond to customer calls and emails, perform network troubleshooting and engage network engineers and teams to resolve network issues, work with network and Internet Service Providers to resolve problems, and utilize a trouble ticketing program to track all incidences. CMC contact information is available at the Illinois Century Network website at www.illinois.net and may be reached by calling 800.366.8768 Option 2 or by email at DoIT.ICN.CMC@illinois.gov. DoIT shall perform regular and emergency maintenance on the network including upgrades to hardware and software, configuration changes or enhancements, or to increase network capacity and performance. DoIT has established a six hour maintenance window on Saturday morning beginning at 12:01 AM and concluding at 6:00 AM Central Time. DoIT will perform emergency network maintenance outside of this maintenance window based on the urgency of the maintenance. Customers of the network will be notified by email at least five business days in advance of planned maintenance and DoIT will attempt, when reasonably possible, to notify customers by email for emergency maintenance outside the maintenance window.

ARTICLE 8 – CONFIDENTIALITY

8.1 Confidentiality. Each Party, including its agents and subcontractors, to this Agreement may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this Agreement. Customer shall presume all information received from DoIT or to which it gains access pursuant to this Agreement is confidential. Customer information, unless clearly marked as confidential and exempt from disclosure under the Illinois Freedom of Information Act, shall be considered public. No confidential data collected, maintained, or used in the course of performance of the Agreement shall be disseminated except as authorized or required by law either during the period of the contract or thereafter. The Customer must return any and all data collected, maintained, created or used in the course of the performance of the Agreement, in whatever

form it is maintained, promptly at the end of the Agreement, or earlier at the request of DoIT, or notify DoIT in writing of its destruction. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.

ARTICLE 9 – CUSTOMER'S REPRESENTATIONS AND WARRANTIES

9.1 Customer both represents and warrants each of the following:

- It has all necessary power and authority to enter this Agreement and to perform all of its obligations hereunder and to manage and control and ensure each individual or entity that Customer authorizes, permits or allows to access the ICN or related services and equipment or facilities also complies with the terms of this Agreement in exercising such individual's access.
- This Agreement has been duly and validly authorized, executed and delivered by Customer and constitutes its valid and binding obligation.
- In performing its obligations hereunder, Customer will comply with all laws, rules and regulations of all governmental bodies having jurisdiction. Customer acknowledges that it is solely responsible for being aware of, and in compliance with, these applicable laws, rules and regulations, and that DoIT and the State of Illinois shall not be liable or responsible for Customer's failure to comply.
- Customer holds all required regulatory authorizations and permits to perform this Agreement according to its terms.

ARTICLE 10 – DoIT REPRESENTATIONS AND WARRANTIES

10.1 DoIT represents and warrants the following:

- DoIT has all necessary power and authority to enter this Agreement and to perform all of its obligations hereunder.
- This Agreement has been duly and validly authorized, executed and delivered by DoIT and constitutes its valid and binding obligation.
- In performing its obligations hereunder, DoIT will comply with all laws, rules and regulations of all governmental bodies having jurisdiction.
- DoIT holds all required regulatory authorizations and permits to provide the Services identified herein.

ARTICLE 11 – DISCLAIMER OF WARRANTY

11.1 Except for express warranties set forth in the Agreement DoIT and the State of Illinois disclaim all express or implied warranties, including without limitation, warranties of title, non-infringement, merchantability, or fitness for a particular purpose. Except as expressly set forth in the Agreement, customer assumes total responsibility for use of the services.

In addition to any other disclaimers of warranty stated in the Agreement, DoIT and the State of Illinois makes no warranty, guarantee, or representation, express or implied, that all security threats and vulnerabilities will be detected or that the performance of the services will render Customer's systems

invulnerable to security breaches. Customer is responsible for Customer's own network security policy (including applicable firewall and Network Address Translation (NAT) policies) and security response procedures.

ARTICLE 12 – LIMITATION OF LIABILITY

12.1 Neither Party, the State of Illinois, their affiliates, agents, or contractors shall be liable for any indirect, incidental, special, reliance, punitive, or consequential damages or for any loss of, or cost to recover, data, use, business, revenues, profits, or goodwill relating to the services performed under this Agreement, or any action or omission relating to third parties, regardless of the legal theory under which such liability is asserted.

ARTICLE 13 – LIMITATION OF SERVICE

13.1 Notwithstanding any other provision in this Agreement, this Agreement applies only to services provided directly to the Customer for the Customer's use. These provisions shall not apply to offerings by the Customer for services to third parties. This Agreement does not constitute a joint undertaking for the furnishing of any service to customers or other third parties of the Customer. Services provided to the Customer under this Agreement may be connected to other facilities between certain locations and thereby constitute a portion of end-to-end service furnished by the Customer to its customers or third parties. DoIT does not undertake to offer any services to any person or entity other than the Customer.

ARTICLE 14 – INDEMNIFICATION

14.1 To the extent allowed by law and subject to the terms and conditions set forth below, Customer agrees to indemnify, defend and hold harmless DoIT, its affiliates, the State of Illinois and their respective officers, officials, directors, employees and agents, from and against any and all liabilities, damages, taxes, tax penalties, claims, deficiencies, assessments, losses, suits, proceedings, actions, investigations, penalties, interest, costs and expenses of any kind, including without limitation, fees and expenses of counsel (whether suit is instituted or not and, if instituted, whether at trial or appellate levels) (collectively, the "Liabilities"), arising from or in connection with any and all claims, liens, damages, obligations, actions, suits, judgments, settlements or causes of action of every kind, nature and character, in connection with or arising out of the acts or omissions of Customer or its employees,
representatives, contractors, agents, officers or officials, third parties of the Customer using the services provided in this Agreement, including any breaches or violations by Customer of any of the covenants or agreements contained in this Agreement. This Section shall not relieve Customer from any liability it may have for its own negligence or misconduct, whether by act or omission, and the negligence or misconduct, whether by act or omission, of its employees, agents, officers, officials and directors, representatives, or contractors. The obligations and covenants contained in this Section shall survive
the expiration or termination of this Agreement.

ARTICLE 15 – FORCE MAJEURE

15.1 Notwithstanding anything to the contrary contained in this Agreement neither Party shall be liable for loss or damage or deemed to be in breach of this Agreement due to such Party's failure or delay of performance, wholly or in part, under this Agreement if such failure or delay of performance is due to causes beyond such Party's reasonable control ("Force Majeure Event"), including but not limited to: acts of God, fire, flood, explosion, storm or other catastrophic event; strikes or work stoppages; lockouts; acts of any government authority or of any civil or military authority including regulatory mandates; national emergencies, cable cut(s); sabotage; insurrections; riots; wars; and unforeseen acts of third Parties that cannot be avoided by acts of due care. Any delay resulting from a Force Majeure Event shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

ARTICLE 16 – MISCELLANEOUS PROVISIONS

16.1 IP Address Allocation Policy. DoIT shall provide all Internet Protocol ("IP") addresses needed for Customer and its equipment to use for the sole purpose of using the ICN to access the Internet and Intranet, provided that DoIT retains sole and absolute administrative control of each IP address provided, including without limitation, determining system requirements and deployment of each IP address, monitoring system use, and denying assignment of or revoking assignments of addresses. Use of DoIT addresses on other provider networks without DoIT written consent is prohibited.

16.2 SLA Credits. All credits for any type of disruption in services shall be governed by the "SLA". These credits shall be the Customer's sole and exclusive remedy for any disruption or interruption of the services in this Agreement. The Customer must be in good standing with DoIT and the State of Illinois with respect to account receivables being current in order to submit a claim for, or receive, any credits.

16.3 Resale. For Services purchased under this Agreement and at the Community Anchor Institution (CAI) rate, Customer shall prohibit, prevent, and not engage in any resale of the ICN except that a Customer may charge reasonable fees for cost recovery of sharing with other non-commercial entities. Customer may purchase services under a Wholesale/Commercial Entity Agreement and at the Wholesale/Commercial rate.

16.4 Connecting to ICN. For Services purchased under this Agreement and at the Community Anchor Institution rate, Customer shall prohibit and prevent any non-CAI entity from accessing, connecting to or interconnecting with the ICN in any manner or by any means.

16.5 Disruption of Service. DoIT reserves the right to block and/or terminate any connection to the ICN which is identified as causing a disruption of service on the backbone or to other customer connections and networks.

16.6 Applicable Law. This Agreement will be governed by the laws of the State of Illinois, without reference to its choice of law rules. Any claim against the State arising out of this Agreement must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). The State shall not enter into binding arbitration to resolve any agreement dispute. The State of Illinois does not waive sovereign immunity by entering into this Agreement. The official text of cited statutes is incorporated by reference (An unofficial version can be viewed at *http://www.ilga.gov/legislation/ilcs/ilcs.asp*. In compliance with the Illinois and federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the federal Rehabilitation Act and other applicable laws and rules the State does not unlawfully discriminate in employment, contracts, or any other activity.

16.7 Right and Authority. Each of the Parties hereto represents and warrants to the other that this Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and their respective agents, servants, employees, representatives, affiliates, heirs, executors, transferees, successors, and assigns, as the case may be.

16.8 Notices. If to DoIT: All inquiries and notices shall be, in writing, addressed to DoIT at 120 West Jefferson Street, Springfield, Illinois 62702, by telephone at 877-844-2724 or 217-557-6555 or by email at Doit.ICN@illinois.gov.

If to Customer : [customer to fill in]

Customer Organization Name

Address

Phone Number

Fax Number

Designated Email Address

Staff Contact (if designated)

16.9 Use of Marks. Neither DoIT nor Customer shall directly or indirectly hold itself out as or otherwise create the impression that it is sponsored, authorized, endorsed by, affiliated with, or an agent of the other Party or affiliate or successor thereof, including but not limited to using the name DoIT or ICN or the name of Customer, or of any affiliate, or any colorable imitation thereof in, or as part of, any DoIT or ICN name or trade name (collectively, the "Marks") or in any other confusing or misleading manner without the written consent of the other Party. The Parties acknowledge that all Marks are the exclusive property of the Party that is lawfully registered to hold such Marks. Customer may utilize DoIT and ICN Marks in its advertising with DoIT's prior written consent, and as long as it complies with all policies and procedures pertaining to this use prescribed by DoIT from time to time. Customer shall not use the Marks for any other purpose without the express prior written consent of DoIT.

16.10 Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, the Parties shall negotiate in good faith to agree on a substitute provision that is legal and enforceable and is as near as possible consistent with the intentions underlying the original provision. If the remainder of this Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

16.11 Interpretation. The construction of this Agreement shall not be construed against the Party causing its preparation but shall be interpreted on the basis of the plain meaning of the terms used which have been reviewed by both Parties in consultation with their respective counsel. Any provision of this Agreement officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination. In the event of a conflict between DoIT' and the Customer's terms, conditions and attachments, DoIT' terms, conditions and attachments shall prevail.

16.12 Availability of Appropriations (30 ILCS 500/20-60). This Agreement is contingent upon and subject to the availability of funds. DoIT, at its sole option, may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason, (2) the Governor decreases DoIT' funding by reserving some or all of the DoIT' appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly; or (3) DoIT determines, in its sole discretion or as directed by the Office of the Governor, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Customer will be notified in writing of the failure of appropriation or of a reduction or decrease.

16.13 Modifications. DoIT reserves the right to modify this Agreement at any time. DoIT shall provide 30 days prior written notice to Customer of any modification adopted by DoIT.

16.14 Assignability. Customer may not assign this Agreement or any of its obligations hereunder without DoIT's prior written consent.

16.15 Remedies. The rights and remedies of DoIT hereunder shall not be mutually exclusive; i.e., the exercise of one (1) or more of the provisions hereof shall not preclude the exercise of any other provision hereof. Customer acknowledges, confirms and agrees that damages may be inadequate for a breach or a threatened breach of this Agreement and, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy. Nothing contained in this Agreement shall limit or affect any rights
at law or by statute or otherwise for a breach or threatened breach of any provision hereof, it being the intent of this provision to clarify that the respective rights and obligations of the Parties shall be enforceable in equity as well as at law or otherwise.

16.16 Entire Agreement. This Agreement, the Service Level Agreement, and all applicable Service Orders consists of all the terms and conditions contained herein which articulate the full and complete understanding of the Parties pertaining to the subject matter of this Agreement. This Agreement supersedes any prior or subsequent understandings, proposals, representations, discussions, and/or agreements (oral or written), absent a specific reference therein superseding this Agreement.

16.17 Headings. The section headings in this Agreement are inserted as a matter of convenience and in no way define, limit, or describe the scope of extent of such section, or affect the interpretation of this Agreement

16.18 No Third Party Rights. This agreement is made only between the Parties hereof and shall not establish rights in any third party as a third party beneficiary or otherwise.

16.19 Counterparts/Facsimile Signatures. This MSA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This MSA may be delivered by facsimile transmission and facsimile signatures shall be treated as original signatures for all applicable purposes.

Illinois Department of Innovation & Technology (DoIT)

Signature: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Customer Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____