



## 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 and 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, 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](http://www.illinois.net).

## ARTICLE 2 – TERM

**2.1 MSA Term.** This MSA shall be in effect for a period of five (5) years from the Effective Date (“**Initial Term**”) unless terminated earlier as otherwise provided for in this MSA, and shall automatically renew for one (1) year periods thereafter (each a “**Renewal Term**” and together with the Initial Term, shall be referred to as the “**Term**”) until either Party notifies the other Party of its intent not to renew the MSA at least sixty (60) days prior to the end of the Initial Term or any Renewal Term. 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 for the period of time specified in that Service Order (“**Service Term**”), unless terminated earlier as otherwise provided for in this Agreement. Thereafter, unless otherwise stated in the Service Order, the term of each such Service Order shall automatically renew for one (1) year periods (each a “**Service Renewal Term**”) pursuant to the terms of the Agreement until terminated by either Party upon thirty (30) days written notice prior to the end of the Service Term or the then current Service Renewal Term; provided, however, that Customer shall continue to be responsible for payment to DoIT for the Services to be terminated through the end of the thirty (30) day notice period plus any early termination charges which may apply. Customer will not receive notice of a Service Term or Service Renewal Term expiration date. After the Service Term and during any Service Renewal Term, DoIT reserves the right to increase rates for any services provided thereunder upon at least thirty (30) days’ notice.

**2.3 Voluntary Extensions.** This section 2.3 applies only to E-rate customers, *i.e.*, customers receiving support via the Schools and Libraries Fund of the Universal Service Administrative Company (“USAC”). For each service order any E-rate customer may execute voluntary extensions, with each voluntary extension having a term of 1 (one), 3 (three) or 5 (five) years. In no event shall the original term and extensions together exceed a total term of ten (10) years. A bandwidth upgrade is permitted during the initial term and during any voluntary extensions.

## 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. DoIT will either: (a) accept the Service Order (“**Service Order Acceptance**”) (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 Credit and Deposit.** If requested by DoIT, Customer shall complete and submit DoIT's standard credit application. DoIT may from time to time conduct a review of Customer's credit rating and payment history. DoIT may require Customer to pay a deposit before acceptance of a Service Order. Additionally, for any existing Services, DoIT may require (i) Customer to pay a deposit or (ii) an increase in the existing deposit, upon the failure of Customer to submit payment of any amount by the Due Date as a condition to the continued provision of such existing Services. DoIT shall refund any amount of deposit paid pursuant to this Section, less any amount for payments that Customer still owes to DoIT, when DoIT determines in good faith, based on Customer's credit rating and payment history, that such deposit is no longer necessary to ensure payment, but in no event later than after the termination of all Services and termination of this Agreement.

**4.2 Billing Commencement.** DoIT may commence billing and Customer shall be liable for payment for Services upon the Service Activation Date.

**4.3 Invoicing and Payment Terms.** DoIT will provide Customer with a monthly itemized invoice, for the Services together with all other charges due. 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). Unless otherwise stated in the Service Order or Service Schedule, DoIT shall invoice Customer for any NRC upon acceptance of a Service Order.

**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 – CANCELLATION**

**5.1 Cancellation.** Customer may cancel a Service Order at any time prior to the date of Service Order Acceptance for such Service without any further liability. 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, including, but

not limited to, any contracts entered into by DoIT in connection with this Agreement and any completed or incomplete installation services rendered, and the full cost of DoIT fiber and DoIT fiber facilities between the DoIT network and Customer property. If Customer requests cancellation at any time on or after the date DoIT has sent a Service Activation Notice to Customer, then Customer shall be liable for the early termination charges set forth in Article 6 below.

## **ARTICLE 6 – TERMINATION**

**6.1 Early Termination.** In the event that Customer terminates any Service after the Service Activation Date but prior to the end of the Service Term or Service Renewal Term, or DoIT terminates Services pursuant to a Customer Default, Customer shall be subject to early termination charges equal to (i) one hundred percent (100%) of all MRC for Services multiplied by the number of months remaining in the Service Term, or any Service Renewal Term, as the case may be; plus (ii) any and all installation charges, reasonable construction costs, charges from termination of Third Party Services, or other charges or costs which have been incurred by DoIT in providing Customer with Services. Customer may exercise such right to terminate for convenience by providing at least thirty (30) days prior written notice. The Parties agree that the charges in this Section are a genuine estimate of DoIT's actual damages in the event Customer terminates for convenience and are not a penalty.

**6.2 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 7 - EQUIPMENT AND INSTALLATION**

**7.1 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.

**7.2 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.

**7.3 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 8 – MAINTENANCE**

**8.1 Maintenance.** DoIT shall maintain a 24x7x365 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](http://www.illinois.net) and may be reached by calling 312.814.3648 Option 2 or by email at [doit.icn.cmc@illinois.gov](mailto: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 maintenance windows as detailed at <http://www.illinois.net>. DoIT will perform emergency network maintenance outside of the 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 9 - DEFAULT; SUSPENSION OF SERVICE**

### **9.1 Customer Default.**

- 9.1.1 Customer is in default of this MSA if Customer (a) fails to cure any monetary breach within five (5) days of receiving notice of the breach from DoIT; (b) fails to cure any non-monetary breach of any terms of the agreement within thirty (30) days of receiving notice of the breach from DoIT; or (c) files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law (each such event shall be a "**Customer Default**").
- 9.1.2 In the event of a Customer Default, DoIT may suspend Services to Customer until Customer remedies the Customer Default, or DoIT may terminate this MSA and/or any or all of the Services being provided hereunder. DoIT may at its sole option, but without any obligation, cure a non-monetary breach at Customer's expense at any point and invoice Customer for the same. These

remedies are in addition to and not a substitute for all other remedies contained in this MSA or available to DoIT at law or in equity.

## **9.2 DoIT Default.**

9.2.1 DoIT is in default of this MSA if DoIT fails to cure any non-monetary breach of any material term of this MSA within thirty (30) days of receiving written notice of the breach from Customer (“**DoIT Default**”); provided, however, that Customer expressly acknowledges that failure to meet the Service Availability Objectives in the Service Level Agreement is not subject to a claim of a DoIT Default. Customer’s exclusive remedies for any failure of DoIT to meet the Service Availability Objectives are set forth in the Service Level Agreement (“SLA”) available at [www.illinois.net](http://www.illinois.net).

9.2.2 In the event of a DoIT Default, Customer may terminate the Services and the Agreement upon written notice to DoIT. Any termination shall not relieve Customer of its obligations to pay all charges incurred hereunder prior to such termination.

## **ARTICLE 10 - IMPOSITIONS**

**10.1** All charges for the Services are exclusive of any Impositions (as defined below). Except for taxes based on DoIT’s net income, Customer shall be responsible for payment of all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise fees, rights of way fees or charges, license or permit fees, or other taxes, duties, fees, charges or surcharges (including regulatory fees), however designated, imposed on incident to, or based upon the provision, sale, or use of the Services (“**Impositions**”). Such Impositions may be shown on invoices as cost recovery fees. If Customer is entitled to an exemption from any Impositions, Customer is responsible for presenting DoIT with a valid exemption certificate (in a form reasonably acceptable to DoIT). DoIT will give effect to any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies to any Service billed by DoIT to Customer following DoIT’s receipt of such exemption certificate. Customer shall indemnify, defend and hold DoIT harmless from payment and reporting of all such Impositions, including costs, expenses, and penalties incurred by DoIT in settling, defending or appealing any claims or actions brought against DoIT related to, or arising from, the non-payment of Impositions.

## **ARTICLE 11 – CONFIDENTIALITY**

**11.1 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 12 – CUSTOMER'S REPRESENTATIONS AND WARRANTIES**

**12.1** 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.
- Customer's obligations under this Agreement do not conflict with any other agreement.

## **ARTICLE 13 – DoIT REPRESENTATIONS AND WARRANTIES**

**13.1** 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 14 – DISCLAIMER OF WARRANTY**

**14.1** 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 15 – LIMITATION OF LIABILITY**

**15.1** 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. 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.

Any Customer claims relating to this Agreement must be brought within sixty (60) days following the end of the term or termination.

#### **ARTICLE 16 – LIMITATION OF SERVICE**

**16.1** 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 17 – INDEMNIFICATION**

**17.1** 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 18 – FORCE MAJEURE

**18.1** 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 19 – MISCELLANEOUS PROVISIONS

**19.1 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.

**19.2 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.

**19.3 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.

**19.4 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.

**19.5 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.

**19.6 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 [www.ilga.gov/legislation/ilcs/ilcs.asp](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.

**19.7 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.

**19.8 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 217-557-6555 or by email at DoIT.ICN@illinois.gov.

If to Customer:

For Administrative:

For Billing Notices:

For Legal Notices:

For Maintenance Notices:

**19.9 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.

**19.10 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.

**19.11 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.

**19.12 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.

**19.13 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.

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

**19.15 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.

**19.16 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.

**19.17 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

**19.18 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.

**19.19 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.

**Department of Innovation & Technology (DoIT)**

Signature: \_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**[Customer name]**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Title: \_\_\_\_\_