



## Master Service Agreement

This Master Services Agreement ("MSA") is effective as of the date Current Date, by and between **CLAY COUNTY RURAL TELEPHONE COOPERATIVE, INC., dba Endeavor Communications ("Endeavor")** on behalf of itself and its affiliates which provide Equipment and Services identified in the Schedules, and **Company Name**, whose primary address is **Company Address ("Customer")**.

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### 1. Provision of Services and Equipment

a. Endeavor will provide and the Customer agrees to pay for the communications, installation and maintenance services (collectively "Service"), and/or purchase or lease equipment ("Equipment"), described in this MSA and Schedules executed by Customer.

b. Customer acknowledges that certain Services may be governed by tariff or price schedule filed with the Federal Communications Commission and/or the state public utilities commission. In the event of any inconsistencies between this MSA and an applicable tariff, the tariff shall control except with respect to pricing, early termination charges or cancellation charges for which this MSA shall control.

c. Endeavor will provide, maintain and repair the Endeavor owned facilities and equipment used to provide the Services ("Endeavor(s) Network"), up to and including the point at which Endeavor's Network is made available for interconnection to Customer's premises equipment or inside wiring. Customer shall provide Endeavor reasonable access to Customer's premises during normal business hours for the purpose of installing, inspecting, testing, rearranging, repairing or removing any Endeavor Network components, including obtaining approvals, permits or licenses from third parties as necessary. Customer will cooperate in good faith and provide all reasonable information and authorizations required by Endeavor for the purpose of installing Services and/or Equipment, performing routine network grooming, maintenance, upgrades, and addressing emergencies, including but not limited to design layout records of any Customer or third party network elements to be connected to the Services and Letters of Agency allowing Endeavor to act on the Customer's behalf related to the Services and auxiliary third party services.

d. Only authorized agents and representatives of Endeavor may perform maintenance work with respect to Endeavor's Network. Any repair, alteration, configuration or servicing of Endeavor's Network, Services or Equipment by Customer or third parties without the written consent of Endeavor is a material breach of this MSA and cause for termination at Endeavor's sole option.

e. If Endeavor is unable to commence performance hereunder due to circumstances within Customer's control, any related costs incurred by Endeavor, including but not limited to travel at normal rate and overtime labor rate expenses, will be reimbursed by Customer. Customer will reimburse Endeavor for all costs incurred for installation, maintenance and repair if: (i) Endeavor's Network is altered, maintained or repaired by Customer than Endeavor, without Endeavor's prior written consent, (ii) the malfunction of the Service or Equipment is the result of mishandling, abuse, misuse, improper operation, improper storage, or improper installation by Customer (including use in conjunction with equipment electrically or mechanically incompatible); or (iii) if the problem originated from a source unrelated to Endeavor's Network and within Customer's control.

f. Customer will provide (i) suitable building facilities (including but not limited to space, environmental control, circuitry, power, backup power, and surge protectors) for the installation, operation, and maintenance of Endeavor's Network in accordance with manufacturer's documentation and Endeavor's installation standards, more fully described in the applicable Schedule; and (ii) a well-lighted and safe working area that complies with all local safety standards and regulations.

g. The Services or Equipment may be connected with the services or facilities of other carriers. Endeavor may, when authorized by Customer and as may be agreed to by Endeavor, act as Customer's agent for ordering facilities provided by other carriers to allow such connection of Customer's locations to Endeavor's Network or to the network of an underlying carrier or service.

h. Customer is responsible for all charges billed by other carriers or third parties. Endeavor shall not be responsible for the installation, operation, repair or maintenance or performance of equipment, facilities, software or service not provided directly by Endeavor. Customer is responsible to provide equipment compatible with the Service or Equipment and Endeavor's Network, and any wiring required to extend a communications termination and/or demarcation at the Customer premises. Customer will provide suitable building facilities for the provision of Services in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes, and Endeavor's installation standards.

i. Customer is solely responsible for the selection, implementation and maintenance of security features for protection against unauthorized or fraudulent use of the Services and Equipment. Customer is solely responsible for ensuring that all of Customer's data are adequately secured, documented and backed-up at all times. Endeavor and its contractors are not responsible or liable for data loss for any reason.

j. Endeavor will manage the Endeavor Network in Endeavor's sole discretion, and reserves the right to substitute, change or rearrange any equipment or facilities used in delivering Services or provisioning the Equipment. Endeavor will endeavor to provide reasonable notice prior to any scheduled maintenance, planned enhancements or upgrades, which may result in a degradation or disruption in Service. Endeavor reserves the right to suspend Service for emergency maintenance to Endeavor's Network without notice to Customer. Customer shall designate a primary contact for receipt of such notice.

k. Customer represents that its use of the Service and Equipment will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this MSA and Customer will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities with respect to such use.

I. Except as expressly identified in a Schedule, Customer and its employees shall be the only permitted end-user of the Services and leased Equipment. Customer shall not resell or bundle the Services or leased Equipment to any third-party, nor permit any third party to access the Services or leased Equipment in exchange for compensation of any kind.

## **2. Term**

a. The term of this MSA will commence as of the date the MSA is executed by both Parties (the "Effective Date") and will continue through the period of time stated in the Schedule (the "Service Term") with respect to any Service or Equipment provided pursuant to this MSA. Customer will purchase the Services, or lease Equipment, identified in each Schedule for the Service Term. Unless otherwise stated in the Schedule, the Service Term and billing for the Service will begin upon the earlier of: (i) Customer's use of the applicable Service(s) or Equipment; or (ii) five (5) days following Endeavor's installation of such Service(s) or Equipment. If neither party provides the other with written notice of its intent to terminate a Service at least sixty (60) calendar days prior to expiration, the Service Term of each Service will automatically renew for additional one-year periods, subject to the terms and conditions of this MSA and at the then applicable one-year term rate, excluding promotional rates. If the parties agree to negotiated renewal terms, such terms will not be effective unless and until documented in writing and executed by both parties.

## **3. Payment**

a. Customer shall pay all charges set forth in the Schedules and in applicable tariffs during the Service Term. Endeavor will invoice Customer any non-recurring charges ("NRC"), monthly recurring charges ("MRC"), and usage based charges.

b. In addition to the applicable charges set forth in the tariffs and Schedules, Customer shall pay all applicable federal, state or local sales, use, privilege, gross receipts, utility, value added, excise or other taxes (excluding taxes based on Endeavor's net income), or any charges in lieu thereof, and any applicable surcharges or fees, whether government mandated or Endeavor initiated including but not limited to Primary Interexchange Carrier Charge, Federal Pre-Subscribed Line Charge, Carrier Cost Recovery Surcharge, E-911, and Universal Service and Local Number Portability, in the amounts applicable at the time of billing. Customer shall also be responsible for third party charges and penalties incurred as a result of Customer's use of the Services or Equipment.

c. All payments shall be due upon receipt of invoice by Customer which go out on the first day of each month. Charges are delinquent after the due date of the 24<sup>th</sup> of that month and a \$5 penalty applies. If payment is not received before the second Wednesday of the following month, disruption of service may occur and a reconnection fee will apply. In the event Customer disputes any invoiced amount, Customer will pay all charges not disputed, and notify Endeavor of the dispute in writing, providing an explanation of the basis for the dispute. If Endeavor does not receive notice of a payment dispute by Customer within ninety (90) calendar days after the date of an invoice, such invoice will be final and not subject to further challenge. For the purpose of computing partial month charges, a month will consist of thirty (30) calendar days. Endeavor reserves the right to immediately suspend or terminate any or all Services or the installation or lease of any or all Equipment if Customer is overdue more than thirty (30) calendar days for payments that have not been disputed in good faith.

## **4. Cancellation and Early Termination Charges**

a. If Customer cancels any Service or Equipment prior to delivery of any Equipment or installation of the Service or Equipment, Customer shall pay a cancellation charge equal to the NRC and one (1) month of MRC for the Service, plus the total costs and expenditures of Endeavor in connection with establishing the Service prior to Endeavor's receipt of notice of cancellation, including but not limited to any Equipment restocking fees.

b. Following installation, Customer may terminate a Service or Equipment by providing at least thirty (30) calendar days prior written notice to Endeavor. All unpaid amounts shall be due upon termination of any Service identified in a Schedule for any reason. In addition, and unless otherwise specifically provided in the applicable Schedule, if any service or equipment is terminated by customer for any reason other than breach by Endeavor or by Endeavor due to Customer's breach, then Customer shall pay Endeavor a termination charge equal to the applicable MRC and all related taxes and surcharges multiplied by the number of months remaining in the Service Term plus any waived Installation Services as noted in a Schedule. Partial months shall be prorated.

c. Customer agrees that Endeavor's damages in the event of early termination will be difficult or impossible to ascertain, and that the charges identified in this Section are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

## **5. Limitation of Liability and Warranty Provisions**

a. The liability of Endeavor and its affiliates related to this MSA or the Service or Equipment provided under this MSA, shall in no event exceed the limitations of liability set forth in the applicable tariffs, or regulatory rule or order. In cases of an Outage, Endeavor's liability shall be limited to 1/720 of the MRC for each hour after Endeavor is notified of the Outage by any source. An "Outage" is an interruption in Service or use of the Equipment caused by a failure of Endeavor's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside Endeavor's direct control. Notwithstanding the above, Endeavor will not be liable to Customer for interruptions in Services or Equipment caused by failure of hardware or software, failure of communications services, power outages, or other interruptions not within the complete control of Endeavor. In addition, there will be no credits, reductions or set-offs against charges for Services or Equipment, or for interruptions of Services or Equipment, except as expressly set forth herein.

b. IN NO EVENT WILL ENDEAVOR OR ITS AFFILIATES BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, OR FOR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. ENDEAVOR AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS, LOSS OF USE, COST, CLAIM OR EXPENSE EXPERIENCED OR INCURRED BY CUSTOMER OR THIRD PARTIES RESULTING FROM THE USE OF THE SERVICES OR EQUIPMENT PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO DAMAGE, LOSS OR LOSS OF USE OF CUSTOMER DATA OR FRAUD BY THIRD PARTIES.

c. Endeavor warrants that Endeavor's Network will be maintained in good working order. If any Service or Equipment does not function substantially in accordance with applicable Service or Equipment specifications as a result of Endeavor's failure to maintain Endeavor's Network (excluding degradation related to the acts or omissions of Customer, a force majeure event, or scheduled maintenance), Endeavor's sole obligation is to repair or replace the affected Service or Equipment at Endeavor's expense. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ENDEAVOR DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO ENDEAVOR'S NETWORK, SERVICES OR EQUIPMENT PROVIDED PURSUANT TO THESE TERMS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FUNCTION.

ENDEAVOR DOES NOT WARRANT THAT THE SERVICES OR EQUIPMENT OR ACCESS OR OPERATION OF THE SERVICES OR EQUIPMENT WILL MEET CUSTOMER'S NEEDS, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.

d. This MSA shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by Endeavor. Customer agrees that Endeavor has not made, and that there does not exist, any warranty, express or implied, that the use by Customer of Endeavor's Services and/or the Equipment provided under this MSA will not give rise to a claim of infringement, misuse, or misappropriation of any intellectual property right.

## 6. Indemnification

a. Customer shall indemnify, defend and hold Endeavor and its affiliates, and their respective directors, officers, employees, successors, assigns and agents, harmless from and against any and all claims, loss, damage, cost or expense (including reasonable attorneys' fees) to the extent arising out or relating to any claim, action or proceeding brought by any third party based upon: (i) use of the Equipment or Services by Customer, including but not limited to the content of communications transmitted thereby; (ii) any infringement of intellectual property or misappropriation of any patent, copyright, trademark, trade secret or other proprietary right arising from Customer's use of the Equipment or Services, any combination of the Equipment or Services with other products or services not provided by Endeavor, or any modification of the Equipment or Services by Customer; (iii) any bodily injury (including illness or death) or property damage caused by Customer or anyone within its control. The obligations under this Section 6 are independent of any other obligation under this MSA.

b. Endeavor shall indemnify, defend and hold Customer and its affiliates, and their respective directors, officers, employees, successors, assigns and agents, harmless from and against any and all claims, loss, damage, cost or expense (including reasonable attorneys' fees) to the extent arising out or relating to any claim, action or proceeding brought by any third party based upon: (i) Endeavor's breach of this MSA; (ii) Endeavor's negligence or willful misconduct in the performance of its obligations under this MSA; (iii) any infringement of intellectual property or misappropriation of any patent, copyright, trademark, trade secret or other proprietary right arising from Endeavor's or provision of the Equipment or Services to Customer; or (v) any bodily injury (including illness or death) or property damage caused by Endeavor or anyone within its control. The obligations under this Section 6 are independent of any other obligation under this MSA.

## 7. Confidentiality

a. Both parties agree that all terms and conditions set forth in this MSA shall be considered confidential, and that details of the terms of this MSA, shall not be disclosed to third parties, other than affiliates, employees, agents or contractors who have a need to know such information in the scope of their employment or engagement, without the prior written consent of the other party, unless required by law.

b. Customer and Endeavor may disclose to each other information that is confidential in nature. In order to receive confidential treatment, all such information (hereafter "Information") shall be either: (i) clearly marked as confidential if written, or clearly identified as confidential if oral; or (ii) reasonably understood by the recipient, based on the nature of the Information or the circumstances of disclosure, to be confidential or proprietary to the discloser. Except as required by law or regulation, Customer and Endeavor agree not to disclose any Information to any third party and to keep Information in a secure place available only to employees, affiliates, contractors or agents who are subject to obligations of confidentiality no less restrictive than those set forth herein, and who need to know the Information for purposes of the business dealing between Customer and Endeavor, and to use Information only in connection with such business dealings. This Section is enforceable by injunction.

c. Information will lose its confidential status if obtained legitimately from a third party without restriction or upon the expiration of five (5) years from delivery of each item of Information. Information shall remain the property of the disclosing party and shall be returned to such party on request or upon termination of the business dealing between Customer and Endeavor.

## 8. Breach

a. **Breach by Customer:** If Customer fails to make any payment when due and such failure continues for ten (10) business days after notice, or Customer fails to comply with any other term or condition of this MSA or any Schedule and such failure continues for thirty (30) calendar days after notice, then Endeavor may either suspend the applicable Schedule (or any portion thereof) until the breach is remedied, terminate the applicable Schedule (or any portion thereof), or terminate this MSA and all Schedules. Notwithstanding the foregoing, Endeavor may immediately suspend Services and, after giving notice to Customer with an opportunity to respond appropriate to the circumstances and Customer's failure to respond, Endeavor may terminate any or all Services, retrieve Endeavor Network elements from the service location and Equipment for which title has not transferred to Customer, in the following circumstances: (i) in the event of unauthorized, unlawful or improper use or abuse of the Endeavor Network or Service; (ii) if, in the reasonable judgment of Endeavor, Customer's use of the Endeavor Network or Service has or will damage or have an adverse effect on Endeavor's Network, its personnel, property or service; (iii) such action is necessary to meet the exigencies of an emergency; or (iv) a court or other governmental authority having jurisdiction issues an order prohibiting Endeavor from furnishing the Equipment or Services to Customer.

b. **Breach by Endeavor:** If Endeavor has not remedied any breach within thirty (30) calendar days after Endeavor's receipt of written notice from Customer of such breach (providing reasonable detail), Customer may immediately terminate any or all Services and this MSA.

## 9. Force Majeure

In no event will either party or its affiliates be liable for any delay in performance directly or indirectly caused by events beyond their control, including, but not limited to: acts or omissions of the other party, its agents, employees or contractors; acts of God; acts of the public enemy; acts of the United States, a state or other political subdivision; fire, floods or other natural disasters; accidents; wars; terrorism; cyber security events; labor disputes or shortages; and inability to obtain material, power, equipment or transportation.

## 10. Assignment

This MSA may not be assigned by either party without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed, except that either party may assign this MSA to any successor to the business of such party by merger, consolidation or sale of assets or to any corporation controlling, controlled by or under common control with such party. Upon written notice and approval by Customer, Endeavor may subcontract portions of the work to be performed hereunder to provision the Services or Equipment.

#### **11. Work Site Conditions**

a. If asbestos, or material containing asbestos, or any other hazardous or toxic materials are discovered during work pursuant to this MSA, Endeavor will suspend its work for a reasonable period of time to permit Customer to engage a qualified firm to remove and dispose of the asbestos or other toxic or hazardous materials from the site. Such suspension may result in an equitable adjustment to the charges identified in the related Schedule, based on any increase in costs incurred by Endeavor.

b. Customer agrees to release, indemnify, defend and hold harmless Endeavor from and against any damages, losses, claims, demands or lawsuits arising out of or relating to the presence, removal or disposal of asbestos or any other hazardous or toxic material from the Customer's premises or location where Services or Equipment will be installed.

#### **12. Title and Risk of Loss**

a. Risk of loss or damage for Endeavor Network elements installed at a Customer designated service location shall pass to Customer at time of delivery to Customer.

b. Any Endeavor Network elements or Equipment installed at Customer's premises or location where Services or Equipment will be installed (which is leased or for which title has not transferred to Customer) remain the personal property of Endeavor or Endeavor's assignee, notwithstanding that it may be or become attached to or embedded in realty, and upon termination of this MSA or any Schedule (in whole or in part), all Endeavor property shall be returned to Endeavor in the same condition as installed, normal wear and tear excepted. Customer will not tamper with, remove or conceal any Endeavor identifying plates, tags or labels. In the event Endeavor property is not returned to Endeavor in accordance with this Section, Customer will be billed for and pay to Endeavor an amount equal to the retail value of the Endeavor property, except to the extent such failure is caused by the negligence or willful misconduct of Endeavor or its agents.

#### **13. Competition**

Customer recognizes the availability of competitive alternatives for receiving the Services and Equipment provided under this MSA, and has freely elected to enter into this MSA in order to receive the benefits it offers.

#### **14. Government Regulation**

To the extent that any Service(s) provided hereunder are subject to the jurisdiction of the Federal Communications Commission ("FCC") or any state public utilities commission or other regulatory agency, this MSA shall at all times be subject to changes, modifications, orders and rulings by the FCC and/or state public utilities commission or other regulatory agency. Endeavor reserves the right to suspend, modify or terminate any Service without liability where any statute, regulation and/or ruling, including modifications thereto, by any regulatory agency (including the FCC), legislative body or court of competent jurisdiction, (i) prohibits, restricts or otherwise prevents Endeavor from furnishing such Service, or (ii) has a material negative impact on Endeavor's performance hereunder or the benefits provided by this MSA. If provision of any Service pursuant to this MSA is subject to advance approval of the FCC and/or any state public utilities commission, this MSA shall not become effective with respect to such Service until after receipt by Endeavor of written notice of such approval.

#### **15. Governing Law**

This MSA shall be governed by and construed according to the laws of the State of Indiana without regard to its conflicts of laws provisions. Any related litigation may be brought in any State or Federal courts of competent jurisdiction within the State of Indiana. Customer and Endeavor consent to personal jurisdiction in such courts.

#### **16. No Waiver**

If either party fails, at any time, to enforce any right or remedy available to it under this MSA, that failure shall not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other party.

#### **17. Severability**

A declaration by any court, or other binding legal source, that any provision of this MSA or any Schedule is illegal and void, will not affect the legality and enforceability of any other provisions of this MSA, unless the provisions are mutually dependent.

#### **18. Notice**

All notices provided pursuant to this MSA will be in writing and delivered by registered or certified US Mail, postage prepaid, or by commercial overnight delivery service, or by facsimile, or by regular mail and shall be deemed delivered either on the date of return receipt acknowledgment (in the case of certified US Mail), or on the next day after the sending of the notice if sent overnight mail, or three (3) business days after mailing if by regular mail to the address of the party designated to receive such notice.

#### **19. Independent Relationship**

Each party understands and agrees that it and its personnel are not employees of the other party, and that each party is an independent contractor hereunder for all purposes and at all times.

#### **20. Dispute Resolution**

Except as otherwise specifically provided in or permitted by this MSA, all disputes arising in connection with this MSA shall first be resolved through good faith negotiation. If, after negotiating in good faith for a period of ninety (90) calendar days or any agreed further period, the parties are unable to resolve the dispute, then each party may seek resolution by exercising any rights or remedies available at law or in equity.

**21. Authorization and Entire Agreement**

Each party represents that the person executing this MSA is authorized to enter into this MSA on its behalf. This MSA and any Schedules executed by the parties constitute the entire agreement between the parties pertaining to the subject matter herein and supersedes all prior executed or written agreements, oral or written proposals, correspondence or memoranda with respect thereto. This MSA may not be modified, amended or supplemented except by written agreement signed by an authorized representative of each party. Notwithstanding anything otherwise stated, a Customer purchase order document (whether signed by one or both parties) shall be construed solely as evidence of Customer's internal business processes, and the terms and conditions contained thereon shall be void and of no effect or application toward this MSA.

Endeavor's Signature:
Printed Name:
Title:
Date:

Customer's Signature:
Printed Name:
Title:
Date: