

Robert C. Edwards
Mayor

Susie Walters
Mayor Pro Tem

Cliff Ogburn
Town Manager



Town of Nags Head
Post Office Box 99
Nags Head, North Carolina 27959
Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

M. Renée Cahoon
Commissioner

John Ratzenberger
Commissioner

Marvin Dermers
Commissioner

NORTH CAROLINA
DARE COUNTY

SERVICE CONTRACT
PURCHASE ORDER # 14-02353

**THIS CONTRACT IS NOT VALID WITHOUT THE REQUIRED ACCOMPANYING/
CORRESPONDING PURCHASE ORDER**

(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 7th day of April, 2014, by and between the TOWN OF NAGS HEAD, a public body corporate of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and MCNC, a North Carolina nonprofit corporation located at 3021 E. Cornwallis Road, PO Box 12889, Research Triangle Park, NC 27709 (hereinafter referred to as "CONTRACTOR"), party of the second part.

1. **SERVICES TO BE PROVIDED AND AGREED CHARGES**

The services and/or material to be furnished under this contract (hereinafter referred to collectively as "SERVICES") and agreed charges are as follows:

MCNC shall provide Subscriber with 10Mbps Transport service and Internet and/or National Research Networks access to the server room in the Town of Nags Head Town Hall, 5401 S. Croatan Hwy, Nags Head, NC, via NCREN connections in the Research Triangle Park and Charlotte areas as designated by MCNC.

2. **DESCRIPTION OF PROJECT**

See attached addendum entitled NCREN Access and Fiber Transport Service Subscription Agreement, which is incorporated herein by reference.

3. **TERM OF CONTRACT**

The term of this CONTRACT for SERVICES shall be for three (3) years beginning on March 31, 2014 until the obligations of the CONTRACT are fulfilled and accepted by the TOWN pursuant to its terms or until the CONTRACT is terminated pursuant to its terms. Either party may nonetheless cancel this CONTRACT, during its initial term or any renewed term, and without fee or penalty, on sixty (60) days written notice to the other party by certified mail or personal delivery or as otherwise provided in the addendum attached to this Contract. The TOWN will not be entitled to a refund of any of the prior consideration paid before the SERVICES were terminated. This CONTRACT is subject to the availability of

funds to purchase the specified SERVICES and may be terminated at any time if such funds become unavailable.

Notwithstanding provisions of this Section 3 to the contrary, the following shall survive the termination of this CONTRACT: any provision in Section 1 regarding liquidated damages; the provisions of Section 4 regarding accrued amounts payable to CONTRACTOR; the provisions of Section 6 regarding indemnity; the provisions of Section 10 and the provisions of Paragraphs 3, 5, 6, 7 of the Addendum attached hereto and Paragraph 4 of the Terms and Conditions attached hereto.

4. PAYMENT TO CONTRACTOR

The TOWN agrees to pay at the rates specified in the addendum for SERVICES satisfactorily performed in accordance with this contract. Unless otherwise specified, the CONTRACTOR shall submit an itemized invoice to the TOWN monthly for SERVICE fees. Payment will be processed promptly upon receipt and approval by the TOWN of the invoice. SERVICE fees shall be billed in advance, and all invoices shall be due and payable thirty (30) days after the date of the invoice.

5. INDEPENDENT CONTRACTOR

Both the TOWN and the CONTRACTOR agree that the CONTRACTOR shall act as an independent contractor and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the CONTRACTOR'S duties under this contract. Accordingly, the CONTRACTOR shall be responsible for payment of all Federal, State and local taxes arising out of the CONTRACTOR'S activities in accordance with this contract, including by way of illustration by not limitation, CONTRACTOR'S Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required to be paid by CONTRACTOR.

In performing the SERVICES, the CONTRACTOR is acting as an independent contractor and shall perform SERVICES in accordance with currently approved methods and practice in the CONTRACTOR'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

6. INSURANCE AND INDEMNITY

The provisions of this Section 6 and any other indemnity or hold harmless provision provided or incorporated as part of this Contract shall obligate the TOWN to provide indemnification or hold harmless only to the extent permitted by law. Except as otherwise provided by applicable law, the provisions of the next and the fourth paragraphs in this Section 6 shall not be limited by provisions in this CONTRACT otherwise limiting a party's liability.

Except as otherwise provided by applicable law, each party shall indemnify and save harmless the other party, its agents and employees from and against all third party actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against said other party or which said other party must pay and incur by reason of or in any manner resulting from injury, loss or damage to persons or property resulting from negligent performance of or failure to perform any of the indemnifying party's obligations under the terms of this CONTRACT, except in no event will CONTRACTOR be liable for any loss of transport service and/or Internet and/or National Research Networks access outage, damage to or loss or destruction of data, damage to software or equipment, disclosure of data or any other loss, damage, expense or inconvenience related thereto, including any incidental, consequential, or indirect damages. Subscriber acknowledges that CONTRACTOR is not responsible for the nature or content of data available via NCREN and waives all claims against CONTRACTOR whether in contract, tort, strict liability, or otherwise for damages, losses, and injuries in connection with or arising out of the TOWN's or its end user(s)'s access to or use of NCREN and loss, destruction, damage and disclosure of data. Subscriber shall be responsible, to the greatest extent of the law, for notification to its users of any such damage. MCNC does not control and is not liable or responsible for the content of any information transmitted by Subscriber or its users.

If the TOWN has no duty or a limitation on any of its duties as to indemnity or hold harmless provisions due to applicable law, then, notwithstanding any provision to the contrary, said abatement or limitation also shall apply as to CONTRACTOR's duties as to indemnity or hold harmless provisions so that the effect of the indemnity and hold harmless provisions applicable under this CONTRACT are reciprocally applied.

The CONTRACTOR shall be fully responsible to the TOWN for the acts and omissions of CONTRACTOR's sub-contractors and of persons either directly or indirectly employed by it, as the CONTRACTOR is for the acts and omissions of persons directly employed by it. The TOWN shall be fully responsible to the CONTRACTOR for the acts and omissions of TOWN's sub-contractors and of persons either directly or indirectly employed by it, as the TOWN is for the acts and omissions of persons directly employed by it.

In addition, the CONTRACTOR shall comply with the North Carolina Worker's Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the CONTRACTOR is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the CONTRACTOR shall carry or ensure that its employees who provide the SERVICES carry reasonable medical/accident insurance for any injuries sustained by its employees or agents during the performance of SERVICES.

The CONTRACTOR agrees to furnish the TOWN proof of compliance with said Act or proof of reasonable medical/accident insurance of its employees who provide the SERVICES upon request.

Each party upon request by the other shall furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina, verifying the existence of any insurance coverage as required by this contract or, if not otherwise described, at industry standards. The Certificate will provide for thirty (30) days advance notice in the event of termination or cancellation of coverage.

7. HEALTH AND SAFETY

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with CONTRACTOR'S and its agent's performance of the work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all CONTRACTOR'S and its agent's employees from CONTRACTOR'S and its agent's performance of the work and bodily injury to other persons who may be affected by CONTRACTOR'S and its agent's negligent performance of the work.

8. NON-DISCRIMINATION IN EMPLOYMENT

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, creed, or national origin. In the event the CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be cancelled, terminated or suspended in whole or in part by the TOWN, and the CONTRACTOR may be declared ineligible for further contracts.

9. E-VERIFICATION OF EMPLOYEES

The CONTRACTOR represents and warrants that it has ensured and will ensure for itself and each subcontractor that it uses to perform obligations under this CONTRACT, that either:

- (1) The CONTRACTOR or subcontractor employs less than 25 employees; or

- (2) The CONTRACTOR or subcontractor: (a) employs 25 or more employees who are employed for 9 months or more during a 12-consecutive-month period; and (b) has used the E-Verify program, which program is operated by the United States Department of Homeland Security and is defined in N.C. Gen. Stat. § 64-25 (5), to verify the work authorization of each employee.

10. GOVERNING LAW

This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina, and the parties hereby submit to venue in and the personal jurisdiction of the said Courts.

11. OTHER PROVISIONS

This Contract is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

12. CONTRACT DOCUMENTS/AMENDMENTS

This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. Notwithstanding any provision in any attached addendum or exhibit to the contrary, in the event of any conflict between this contract (as considered without any attached addendum or exhibit) and any attached documents (including any addendum or exhibit), the contract language will prevail except limitations of liability (which limitations of liability shall not be deemed to include indemnification provisions) in any attached addendum or exhibit will prevail except as expressly limited in Section 6 above.

13. SIGNATURES

Both the TOWN and the CONTRACTOR agree to the above contract.

TOWN OF NAGS HEAD

Michelle Hayes
Witnessed or Attested By:



By: C. [Signature]

Title: Town Manager

Date: April 7, 2014 _____

Terri McGaughey
Witnessed or Attested By:
Terri McGaughey, Secretary
Corporate Seal:

CONTRACTOR: MCNC

By: Patricia L. Moody

Printed Name: Patricia L. Moody

Title: CFO/Treasurer _____

Date: April 7, 2014 _____

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

[Signature] 4-7-14
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]
TOWN ATTORNEY

Addendum

NCREN Access and Fiber Transport Service Subscription Agreement

This Subscription Agreement (the "Agreement") is executed by and between **Town of Nags Head** ("Subscriber"), and **MCNC**, a North Carolina nonprofit corporation; and this Agreement is incorporated as an addendum to a certain contract by and between MCNC and Subscriber which incorporates this Agreement by reference (the "Contract").

1. Commencing on the acceptance date, (the "Effective Date"), unless terminated as stated in paragraph 4 below, (a) Subscriber subscribes to MCNC's interactive telecommunications network known as the **North Carolina Research and Education Network ("NCREN")** for gateway access to backbone Internet and/or National Research Networks services and (b) in accordance with the terms of this Agreement and the Contract and the terms and conditions attached hereto MCNC agrees to provide the services to Subscriber specified in the Scope of Work section attached hereto (the "Services").

2. Subscriber agrees to pay MCNC a **monthly** fee of **\$635.00** for Internet Access and direct fiber transport services at **10Mbps** secured by MCNC at Subscriber's location. Additional capacity is available at additional rates throughout the term of this Agreement. All fees shall be billed monthly, in advance, and all invoices shall be due and payable thirty (30) days after the receipt of invoice. All Services shall be billed separately. Payments not received within 30 days after receipt of invoice may result in Services deactivation.

3. Subscriber has read, understands, and agrees to abide by the Acceptable Use Policies attached hereto and the Terms and Conditions set forth in this Agreement and attached hereto. If Subscriber or Subscriber's customers, employees, faculty, patrons, students, visitors, or any other person who is granted access to Subscriber's facilities or services (referred to collectively as "Users") fail to abide by the Acceptable Use Policies and the Terms and Conditions, MCNC may terminate Subscriber's or Subscriber's Users access, at MCNC's sole discretion, with 24 hours notice and Subscriber shall be liable for and, except as otherwise provided by applicable law, indemnify and hold harmless MCNC with respect to any such failure.

4. The provisions of this Section 4 are subject to and in no way limit the termination provisions provided in the Contract. The term of this Agreement shall be **from the Effective Date and continue for 36 months** unless Subscriber or MCNC provides the other party with written notice or unless the Contract is terminated as provided in Section 3 of the Contract, which termination shall also terminate this Agreement. This Agreement will renew automatically for successive one-year periods every anniversary unless Subscriber provides MCNC with written notice of its desire to terminate the Agreement no less than 60 days prior to the end of the current term or unless the Contract is terminated as provided in Section 3 of the Contract, which termination shall also terminate this Agreement. Fees may be adjusted annually by MCNC, provided, however, MCNC shall give Subscriber at least sixty (60) days prior notice of any such fee increase. If Subscriber objects in writing to any such fee increase within sixty (60) days of receipt of said notice, then Subscriber and MCNC shall attempt to agree on an mutually acceptable fee increase, and the previous (non-adjusted) fees shall continue until such agreement is achieved. If either party determines that such agreement is not likely, then that party may terminate the Agreement upon sixty (60) days' notice, as provide in Section 3 of the Agreement. Provisions of Paragraphs 3, 5, 6, 7 and Paragraph 4 of the Terms and Conditions survive any termination, including, but not limited to, any termination initiated by MCNC as set out in paragraphs 2, 3, 6 or 7 of this Agreement.

5. MCNC will use commercially reasonable efforts to provide the highest practical level and quality of service; however, Subscriber agrees that MCNC makes no warranties, express or implied in connection with NCREN. Subscriber agrees that MCNC will not be liable for any loss of service or other outage, damage to data, software or equipment, or any other loss, damage, expense or inconvenience, including any incidental, consequential, or indirect damages. Subscriber acknowledges that MCNC is not responsible for the nature or content of data available via NCREN, and, except as otherwise provided in the indemnification provisions of the Contract, hereby waives all claims against MCNC whether in contract, tort, or strict liability, for damages, losses, or injuries in connection with or arising out of Subscriber's access to or use of NCREN.

6. Subscriber warrants, represents and covenants that Subscriber and all data delivered to and transported on the MCNC network or otherwise the subject of the Services, and all content, access, release, storage, use and any and all other activities in respect thereto, is and will be compliant with federal, state, and local regulations, rules, standards, and practices as may be applicable to Subscriber and such data including compliance with applicable rules, regulations, and standards under the HIPAA Security and Privacy Rules and The Family Educational Rights and Privacy Act, the Graham-Leach-Bliley Act, export control laws and regulations, Payment Card Industry Data Security Standards, and Subscriber's data security policies and procedures. Subscriber further covenants that it will not allow access to the Services to any Users, person, or entity whose use of the Services is in any manner in breach or violation of the foregoing compliance responsibility requirements. Subscriber agrees to immediately notify MCNC of, and remedy, the breach or violation of, the foregoing warranties, representations, and covenants. If the Subscriber fails to timely remedy any such breach or violation, Subscriber agrees that MCNC may terminate Subscriber's or Users' access, at MCNC's sole discretion, with 24 hours notice or shorter depending on the circumstances, as determined solely by MCNC, and, except as otherwise provided by applicable law, Subscriber shall be liable for and indemnify and hold harmless MCNC with respect to such breach or violation of the warranties, representations and covenants hereunder.

7. Subscribers are permitted to use the Internet and National Research Networks services solely for Subscribers' Users. Subscribers will maintain integrity of the Internet and National Research Networks routing table by not announcing these routes to non-education/research based users. If Subscriber or Subscriber's Users fail to abide with this provision, Subscriber agrees that MCNC may terminate Subscriber's and/or Subscriber's Users access, at MCNC's sole discretion, with 24 hours notice and, except as otherwise provided by applicable law, Subscriber shall be liable for and indemnify and hold harmless MCNC with respect to any such breach or violation.

8. The Scope of Work, Acceptable Use Policies ("AUP"), Terms and Conditions, and NCREN Services Technical Information Form and Escalation Lists attached hereto are hereby incorporated into this Agreement and made part hereof. If, under any provisions of the AUP, the AUP or the AUP provided by an upstream provider is modified so as to make Subscriber liable for the payment of any expenses in excess of those otherwise required under the Contract and Agreement, then Subscriber may terminate the Contract and Agreement on written notice given by Subscriber to MCNC within thirty (30) days of said modification

SUBSCRIBER : TOWN OF NAGS HEAD

By: _____
Signature

Cliff Ogburn

Name (PRINT or TYPE)

Cliff Ogburn

Title: _____

Town Manager

April 7, 2014 _____

Signature Date

MCNC

By: _____
Signature

Patricia L. Moody

Name

CFO/Treasurer

April 7, 2014 _____

Signature Date

SCOPE OF WORK

- ◆ MCNC shall provide Subscriber with 10Mbps Transport service and Internet and/or National Research Networks access to the server room in the Town of Nags Head Town Hall, 5401 S. Croatan Hwy, Nags Head, NC, via NCREN connections in the Research Triangle Park and Charlotte areas as designated by MCNC.
- ◆ MCNC will use commercially reasonable efforts to manage such access 24 hours a day, 7 days per week with full operation support either via on-site assistance or pager access.
- ◆ MCNC will use commercially reasonable efforts to coordinate 99.5% average monthly uptime of the Internet facilities owned by MCNC. MCNC is not responsible for and makes no representation regarding components or downtime of the Service not owned by MCNC.
- ◆ MCNC will provide a single point of contact for this service arrangement.
- ◆ Subscriber will be required to provide conditioned space and continuous generator capable power to the equipment located at the site supplying the service.



Acceptable Use Policies (AUP)

1. Subscriber and Subscriber's employees, faculty, patrons, students, visitors, or any other person that is granted access to Subscriber's facilities or services (referred to collectively as "Users") shall avoid unnecessary network traffic and interference with other Users.
 - a. Subscriber and its Users shall not use the Service for any unlawful purpose. Without limiting the foregoing, Subscriber shall not permit its users to use the Services in violation of laws relating to copyright, trademark or libel/slander.
 - b. Unsolicited advertising by Subscriber or Subscriber's Users is strictly forbidden. For the purpose of this Policy, "unsolicited advertising" includes any transmission that describes goods or services and that is initiated by a vendor, provider, retailer, reseller, distributor or manufacturer of the described goods or services, or by a third party retained by, affiliated with, or related to the vendor, provider, retailer, reseller, distributor or manufacturer, or that meets the definition of any federal or relevant state law concerning unsolicited advertising sometimes referred to as "SPAM." This prohibition does not include either (i) discussions of a product or service's relative advantages and disadvantages by users of those products or services (unless the user is also the vendor, provider, retailer, reseller, distributor or manufacturer, or related to or affiliated with the vendor, provider, retailer, reseller, distributor or manufacturer), (ii) responses to questions, but only if such responses are direct replies to those who inquired via electronic mail, (iii) mailings to individuals or entities on a mailing list so long as the individual or entity voluntarily placed his/her or its name on the mailing list, or (iv) exceptions recognized by federal or relevant state law.
 - c. Any other type of mass mailing by Subscriber or Subscriber's Users resulting in unsolicited advertising or network spamming is strictly forbidden.
 - d. Neither Subscriber nor Subscriber's Users shall use the Services to stalk others, post, transmit, or originate any unlawful, threatening, abusive, fraudulent, hateful, defamatory, obscene, or pornographic communication, or any communication where the message, or its transmission or distribution, would constitute or would encourage conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, national, or international law.
 - e. Neither Subscriber nor Subscriber's Users shall access or attempt to gain access to any other User's or non-User's account or to any nonpublic or restricted portions of the MCNC networks. Also, neither Subscriber nor Subscriber's Users shall intercept or attempt to intercept data transmissions of any kind.
2. Subscriber acknowledges and agrees that MCNC has broad authority to interpret and apply these Acceptable Use Policies, in its sole discretion. MCNC may modify or amend the AUP at any time. MCNC shall provide notice of any such modifications or amendments by U.S. Mail, facsimile, email, or by posting a new policy on the MCNC website. Subscriber shall review regularly notices posted on-line. In the case of U.S. Mail, the modified AUP is effective three business days after mailing, for facsimile and emails, the modified AUP is effective as of the date sent by MCNC, and when MCNC posts a modified AUP it is effective upon posting. In all cases, the modified AUP is effective regardless of whether Subscriber actually reads such notice.

3. Upon receipt of notification by MCNC that Subscriber or Subscriber's Users have violated either the Acceptable Use Policies as set out in this document or the Acceptable Use Policies incorporated into this Agreement under Paragraph 5, Subscriber shall immediately terminate internet access for the User in violation of the Acceptable Use Policies and shall provide MCNC with written verification, through letter sent via US Mail, facsimile, or electronic mail, of such termination. If Subscriber either does not terminate internet access for the User in violation of the relevant AUP or that same User is again found in violation of the Acceptable Use Policies, MCNC may terminate Subscriber's service with 24 hours notice. If a total of four or more violations of the Acceptable Use Policies occur by Subscriber or any of Subscriber's Users (including a combination of different Users) within a one-month period, MCNC may terminate Subscriber's service with 24 hours notice. Notice to Subscriber shall be written and given pursuant to the Subscriber Escalation List.
4. Any violation of either this AUP or an AUP incorporated by reference as set out in paragraph 5 that allows MCNC to terminate Subscriber's service entitles MCNC to terminate the Contract and the NCREN Access and Fiber Transport Service Subscription Agreement ("Agreement"). Subject to the limitations provided in the Contract and except as limited by applicable law, Subscriber will be liable for and indemnify MCNC against any liabilities incurred by them as a result of any breach of this Agreement or the AUP.
5. MCNC's Acceptable Use Policy fully incorporates, by reference, all Acceptable Use Policies and Network Policies of its current upstream network service providers. Both MCNC and its upstream providers reserve the right to amend or modify these Acceptable Use Policies at any time. MCNC also reserves the right to change or add providers at any time. Subscriber can find a list of MCNC's providers on MCNC's website.
6. Use of the Services for commercial activity of any kind by Subscriber or Subscriber's Users is strictly forbidden. If Subscriber or Subscriber's Users desire to engage in commercial activity using the Services, Subscriber must enter into a separate Agreement and pay for a separate commercial service arrangement with MCNC. "Commercial activity" for the purpose of this Agreement is defined as any profit-oriented activity.

INITIALS: SUBSCRIBER CO

MCNC: plm

TERMS AND CONDITIONS

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

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

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

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

5. **Taxes:** All foreign, federal, state and local taxes, and all duties and governmental fees, whether stated in the Agreement or not, shall be the obligation of Subscriber except for taxes, if any, on MCNC's income, property, and

employment of MCNC employees. To the extent that MCNC is required or permitted to collect from Subscriber any Governmental Charges in connection with MCNC furnishing its Services, MCNC shall retain the right to do so. Governmental Charges are charges that result from the application, enforcement or interpretation of existing, new or revised laws or regulations, actions taken by federal, state, local or foreign regulatory authorities, or judicial acts or decisions that directly or indirectly impose costs on MCNC. Governmental Charges include, but are not limited to, those arising out of local, state, federal, foreign and third party actions, programs or requirements relating to Universal Service, number portability, TRS, E911, access, reciprocal compensation, franchising and CALEA.

6. **Representations; Indemnification:** Services specified in this Agreement will be performed per the Scope of Work section of this Agreement. However, MCNC cannot guarantee that any specific product, innovation or process will result from its efforts hereunder.

Subscriber recognizes and accepts that MCNC's efforts and obligations hereunder may be contingent in part upon the materials and specifications it receives from Subscriber. Subscriber also recognizes that certain materials it delivers to MCNC may be fragile, defective and/or unusable for the requested services, and that these materials may be subject to breakage, destruction or may otherwise be rendered unusable during the provision of services hereunder.

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

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

8. Customer Data Disclaimer: While MCNC makes every reasonable effort to protect Subscriber's data stored or transmitted on MCNC's system, MCNC will not be held liable for any damage to Subscriber's data including but not limited to: lost, destroyed, damaged, or disclosed as the result of equipment failure, break-in to the system or other causes. Subscriber acknowledges and agrees that the nature of the system or Services is not secure and thereby MCNC MAKES NO WARRANTY AS TO THE PROTECTION OF SUBSCRIBER'S DATA. Subscriber agrees to release and not hold liable MCNC for any damage to Subscriber's data including but not limited to: lost, destroyed, damaged or disclosure as a result of equipment failure, break-in to the system or other causes.

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

event, (c) provides prompt notice of the end of such event.

10. Waiver of Subrogation: To the extent permitted by law, Subscriber, on its own behalf and on the behalf of its affiliates, directors, officers, employees, and insurers, hereby waives and releases MCNC, its directors, officers, employees, contractors and others working on behalf of MCNC from any and all liability or responsibility to Subscriber, its affiliates, directors, officers, employees, and insurers or anyone claiming through or under Subscriber, its affiliates, directors, officers, employees, and insurers, by way of subrogation or otherwise, for any bodily, loss and damage to property, and any and all damages, costs, and liability insured by any self insurance of, and any insurance maintained by, Subscriber, whether caused by fire, any other casualty, or otherwise, unless caused by the fault or negligence of MCNC, its directors, officers, employees, contractors or others working on behalf of MCNC.

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

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

INITIALS: Subscriber CO MCNC plus



MCNC NCREN SERVICES TECHNICAL INFORMATION FORM

Company Name	Town of Nags Head
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Service Dates (Please note it could be up to 30 days before Service Begins)

Requested Date for Service	
Activation Date/Billing Start Date	
Deactivation Date	

Technical Contacts - 2 Required

	Contact 1	Contact 2
Name	Allen Massey	Mark Bernard
Address	5401 S. Croatan Hwy, Nags Head	5401 S. Croatan Hwy, Nags Head
Phone	252-449-2003	252-449-2010
Fax	252-441-4680	252-441-4680
Cell	252-216-6297	
Email	Allen.massey@nagsheadnc.gov	mark.bernard@nagsheadnc.gov

Billing Contact

Service Address

	Contact	Service Address
Name	Kim Kenny	2200 Lark Avenue, Nags Head
Address	PO Box 99 Nags Head, NC 27959	5401 S. Croatan Ave, Nags Head
Phone	252-441-5508	
Fax	252-441-4680	
Email	Kim.kenny@nagsheadnc.gov	

Connection Type

Please Check One

- Direct circuit Speed: 10M
- Frame-relay
- Other - Specify _____

Domain name

Please Check One

- New [Submitted by MCNC and billed directly to Subscriber]
Preferred Domain Name: _____
- Existing Domain Name: (nagsheadnc.gov)

Special Needs:

(Example - Site Specific After Hours Procedures) _____

ITEMS BELOW TO BE COMPLETED BY MCNC:

DNS provided by

Please Check One

- MCNC
- Customer

Server IP Address - Specify _____

IP Addresses:

Please Check One

New – MCNC will provide IP addresses based on need. Please provide the current number of public IP addresses in use by your Organization and projected number to be in use over the next year.
Current: 16 Projected: 20

Existing - Please provide IP ranges currently assigned or allocated to your Organization.
Numbers

In-addr DNS Server IP Address

Please call NCREN Network Engineering at 919.248.1111 or via e-mail at trouble@ncren.net for service and/or support

ACCEPTANCE OF SERVICE

The undersigned parties acknowledge and agree that the services described in the NCREN Transport Agreement ("Agreement") between Town of Nags Head ("Subscriber") and MCNC have been accepted or deemed accepted by the Subscriber as of the date below. This acceptance date is the agreed Effective Date as referenced in Paragraph 1 and 4 of the Agreement. This Acknowledgment of Acceptance is incorporated by reference into the Agreement on the terms and conditions of the Agreement.

Acceptance Date: _____, 20__

Location: _____

IN WITNESS WHEREOF, the parties have signed this Acknowledgement of Acceptance of Service.

MCNC	Subscriber: Town of Nags Head
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____



TOWN OF NAGS HEAD
PO BOX 99
5401 SOUTH CROATAN HIGHWAY
NAGS HEAD, NC 27959
Phone: (252)441-5508

Purchase Order/Voucher

**THIS NUMBER MUST APPEAR ON ALL INVOICES,
 PACKING LISTS, CORRESPONDENCE, ETC.**

NO. 14-02353

SHIP TO

TOWN OF NAGS HEAD / IT DEPT
 5401 S CROATAN HWY (PO BOX 99)
 NAGS HEAD, NC 27959

VENDOR

Vendor #: MCNC0003

MCNC
 3021 E CORNWALLIS ROAD
 PO BOX 12889
 RESEARCH TRIANGLE PA, NC 27709-2889

ORDER DATE: 03/31/14
 DELIVERY DATE: 03/28/14
 STATE CONTRACT:
 VENDOR ACCT NUM:
 VENDOR PHONE #: (919)248-1820
 VENDOR FAX #: (919)248-1101
 REQUISITION #: R1400792

MAIL INVOICE TO:

ATTN: ACCOUNTS PAYABLE
P.O BOX 99
NAGS HEAD, NC 27959

QUANTITY	DESCRIPTION	ACCOUNT NO	UNIT PRICE	TOTAL
2.00	ESTIMATED CHARGES FOR FY 13-14 PER CONTRACT ESTIMATED 2 MONTHS PAYMENTS MAY AND JUNE	10-441-1-5322-05 INTERNET COSTS	650.0000	1,300.00
			TOTAL	1,300.00

**THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER
 REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL
 CONTROL ACT.**

FINANCE OFFICER

PURCHASING AGENT

Please contact the Town of Nags Head if the prices indicated are not correct. The Town of Nags Head will not be responsible for incorrect pricing after the Purchase Order is received by the vendor for purchasing.