

## NETWORK, SERVICES, ACCESS, AND MARKETING AGREEMENT

THIS **NETWORK, SERVICES, ACCESS, AND MARKETING AGREEMENT** (this “**Agreement**”) is made as of the 13<sup>th</sup> day of April 2018 (the “**Effective Date**”), by and between **RANCHO SANTA FE ASSOCIATION**, a California nonprofit corporation (“**RSFA**”), and **RACE TELECOMMUNICATIONS, INC.**, a California Corporation (“**Race**”), individually a “**Party**” and collectively the “**Parties**.”

### RECITALS

**WHEREAS**, RSFA is the manager of a common interest development consisting of a community of businesses and residences located within the property identified on Exhibit A (the “**Community**”); and

**WHEREAS**, RSFA has the authority to enter into this Agreement, and the right, power, and authority to allow Race the rights described herein;

**WHEREAS**, Race is a telecommunications utility certified and regulated by the State of California, and regulated by the Federal Communications Commission (the “**FCC**”);

**WHEREAS**, Race desires to provide various communications services, including, but not limited to, broadband internet, voice, and video (the “**Services**”), to the residents, tenants, licensees, lessees, and other authorized occupants of the Community (each such person or entity, a “**Community Member**” and each such person entity purchasing Services from Race, a “**Customer**”);

**WHEREAS**, RSFA will design, build, install, and own a fiber optic network capable of connecting to all currently serviceable residential and commercial addresses in the Community (the “**Network**”); and

**WHEREAS**, Race will construct Lateral Connections (as defined in Section 3.a), maintain the Network, and provide Services using the Network, all subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **The Network.**

a. **Construction.** RSFA will design, build, install, and own the Network pursuant to the terms and specifications set forth on Exhibit B. The Network will include a Central Office (the “**CO**”), a conduit system, and a single-mode fiber optic backbone with a fiber count sufficient to dedicate a single fiber to each current residence (each, a “**Residence**”) and business (each, a

“**Business**”) in the Community, as more particularly set forth on Exhibit B. The Network architecture shall provide for dedicated home-run fiber from the CO to each Residence and Business in the Community. However, it is expressly understood that RSFA is not responsible for installing any internet service provider (“**ISP**”) equipment in the CO or elsewhere as may be necessary for Race to provide Services to the Community Members, and the installation of any such equipment to provide Services shall be Race’s sole responsibility. Race shall perform its own point to point testing of the fiber strands installed as part of the Network prior to installing its own equipment for purposes of providing Services. Race’s installation of any equipment to provide Services shall be deemed to be Race’s acceptance of the Network and acknowledgment that the Network has been properly installed in accordance with the terms of this Agreement and is in operational condition.

b. Management of CO. - RSFA shall control access to and use of the CO, provided, however, that RSFA may elect to have the CO managed and operated by a third party operator (including, without limitation, Race). In such event, RSFA will enter into a separate management agreement for use and management of the CO.

c. Network Facilities for Race’s Use. RSFA will assign 12 dedicated fibers for Race’s use to extend from the Network to the Race manhole for the 2 internet connections to be provided by Race pursuant to Section 2.a below. In addition, Race may license up to 3 of the 23” racks (each, a “**Rack**”) to be installed in the CO (as referenced in Exhibit B) to use as collocation space for Race-controlled equipment. Race and RSFA (or other third party managing and operating the CO) will enter into an industry standard licensing agreement identifying the specific Racks to be used by Race, upon the following terms and conditions:

- Race will pay a monthly rate of \$400 per Rack (the “**Rack Fee**”), subject to 3% increases each anniversary of the Effective Date.
- Use of Racks by Race in addition to the allocation set forth above shall be at market rates and subject to then-current availability, as determined by RSFA in its sole discretion.
- The Rack Fee shall be payable to RSFA on the first of each month without notice, demand, or offset.
- There will be no fractional use of any Rack. If one shelf in a Rack is utilized, the entire Rack will be deemed utilized.

- RSFA (or its third party manager) will not charge Race any installation or other one-time fee to use a new Rack, provided, that, Race shall be solely responsible for the cost to install any of its equipment in each Rack.

d. Ownership of the Network. The Network (including the CO) shall at all times be and remain the sole and personal property of RSFA, its successors, assigns, and/or transferees. Race shall have no rights, licenses, title, interest, or obligations regarding the Network or the Community except as expressly set forth in this Agreement. Nothing in this Agreement shall be construed to grant or vest in Race any property right, title, or interest to the Network. Without limiting the generality of the foregoing, Race shall not use the Network or any other RSFA-funded infrastructure to serve customers outside of the Community without the express written permission of RSFA, which may be withheld in RSFA's sole and absolute discretion.

## 2. Race's Responsibilities.

a. Race Infrastructure. Race will provide two physically diverse network connections to connect the Network to the internet, following the pathways to the Community set forth on Exhibit C. Race will install, operate, maintain, and repair, at Race's sole cost, any power conditioning equipment in the CO which is necessary or Race determines is otherwise desirable in connection with performing its obligations under this Agreement. Race shall, at Race's sole cost and expense, install, operate, maintain, and repair all ISP equipment necessary to provide the Services to Community Members. Without limiting the generality of the foregoing, Race will own, install, operate, maintain, and repair an Optical Line Terminal with current generation GPON (G.984, 2.4/1.2 Gb/s) and active Ethernet (802.1ah, 1.0/1.0 Gb/s) cards in the CO to service Customers, at Race's expense.

### b. Network Performance, Operation and Maintenance.

i. General Obligations. Subject to the terms of this Agreement and to the extent permitted by applicable law, Race will be exclusively responsible for operating, maintaining, repairing, upgrading, and otherwise managing the Network for the benefit of RSFA and the Community. Without limiting the generality of the foregoing, as part of Race's obligations hereunder, Race shall:

- operate, maintain, repair, and upgrade the Network with state-of-the-art technologies as such technologies are developed and will provide the most current and stable technologies available for the delivery of a minimum of 1 Gigabit per second ("**GBPS**") to each Customer subscribing to services on the Network;

- perform Network maintenance and repair using trouble-ticket generation and tracking, and dispatch repair technicians in a timely manner consistent with best practices in the industry for response times;
- monitor, mark, and track all Network locations and Lateral Connection locations for DigAlert purposes in compliance with California Government Code §4216 (“**California 811 Law**”);
- implement security measures in accordance with best industry practices to prevent or minimize cyberattacks (including denial-of-service attacks); and
- subject to Section 15 (Transition Obligations), surrender the Network in good operating condition to RSFA or to any successor operator designated by RSFA upon expiration or earlier termination of this Agreement. Without limiting the generality of the foregoing, all the Network and Lateral Connections will remain in place and are the property of RSFA and the applicable Community Member. Race may remove electronics provided by Race in the CO and any CPE (as defined in Section 11) upon termination, provided, that, RSFA will have the option to purchase such electronics and CPE at the current book value (net of depreciation) upon termination, all as calculated in accordance with generally accepted accounting principles.

Race will not block, filter, or reduce the speed of any internet-based service, even if that service is competitive with a Race service.

ii. Casualty. In the event the Network (including the CO) is damaged by a casualty, RSFA shall either (i) direct Race to perform all necessary repairs to restore the Network to the condition existing prior to the casualty at RSFA’s cost, or (ii) if the damage to the Network is substantial and is not fully covered by available insurance proceeds and/or the funds reserved through collection of the Network Recovery Fee (defined in Section 10), RSFA may notify Race of its intention not to restore the Network. If RSFA elects option (i), Race shall promptly and diligently perform all necessary repairs to minimize any service interruptions, provided, that, such repairs shall be paid for by RSFA out of available insurance, Network Recovery Fee, or other RSFA funds. Race shall use commercially reasonable efforts to perform the restoration and repair work in an efficient, timely, and economical manner and shall consult with RSFA on bids received and keep RSFA informed throughout the performance of such work. If RSFA elects option (ii), Race may elect, by written notice to RSFA delivered within 30 days after Race receives RSFA’s notice, to either repair and restore the Network at Race’s sole cost and expense or to terminate this Agreement. If Race fails to deliver written notice within such 30-day period, Race will be deemed to have elected to terminate this Agreement.

iii. Link Capacity. Race will monitor aggregate in-service internet link utilization at five-minute intervals. A single “**link saturation day**” will be deemed to occur when the five-minute link utilization average exceeds 75% of the link capacity at least once in a 24-hour period. If three link saturation days occur during the preceding 30 days, Race must upgrade the link capacity at its own expense within a commercially reasonable timeframe (no more than 30 days). By no later than the 15<sup>th</sup> day of each month, Race will send to RSFA a report containing the five-minute average link utilization data for the previous month. Link saturation days caused by a denial-of-service attack, or other malicious system attacks, will not trigger this upgrade requirement.

c. Access and Use of Network by Other Service Providers.

i. **General Obligations.** Subject to RSFA’s rights set forth herein, Race agrees to operate the Network in an “open access” fashion and otherwise in accordance with all applicable laws and regulations. In so doing, Race shall provide non-discriminatory service and access to the Network to other communications service providers (each, a “**Service Provider**”) provided such Service Provider uses standards-based equipment that allows for interoperability. However, subject to the terms of this Agreement and the requirements of applicable law, other Service Providers accessing the Network shall not offer a service that is directly competitive with the Services offered by Race.

ii. **Access by Service Providers.** During the Term of this Agreement, subject to the limits set forth herein, Race shall be responsible for negotiating on an individual case basis the terms of access to and use of the Network by Service Providers, provided that such terms and conditions (i) are subject to the prior written approval of RSFA, (ii) are reasonably non-discriminatory, (iii) include fees which are consistent with commercially reasonable market rates for the access being provided, and (iv) are documented in a form of agreement acceptable to RSFA. Race will collect all fees from any such Service Provider (the “**Network Access Fees**”) and shall pay RSFA the RSFA Revenue Payment (as defined in Section 9.a) with respect to such Network Access Fees pursuant to the terms and conditions set forth in Section 9.a. It is expressly understood that the terms and conditions of any such access to the Network shall in all cases be subject to prior written approval by RSFA, who retains final and sole discretion in permitting such access to the Network and in the documentation governing such access.

d. Documentation. Race will keep and maintain all records, drawings, and other documentation necessary or otherwise appropriate in connection with operating, maintaining, and repairing the Network, installing the Lateral Connections, and providing the Services, consistent with best practices in the telecommunications industry. Without limiting the generality of the

foregoing, Race will maintain electronic copies of as-built drawings and records for all Lateral Connections and fiber splices, which records will identify which specific fibers are assigned to which Customer. In addition, Race will keep and maintain all applicable Customer records, including, without limitation, the Services purchased by each Customer and the amounts paid therefor. Race shall transfer all such documentation, drawings, and records to RSFA upon expiration or earlier termination of this Agreement. In addition, RSFA is entitled to reasonable access to all records maintained by Race with respect to operation, maintenance, and repair of the Network during the Term (as defined in Section 13). Race will provide such access within 5 days of RSFA's request. Whenever reasonably possible, Race will provide copies of such Customer information and all other records in an electronic spreadsheet (Microsoft Excel or other format reasonably acceptable to RSFA), and such records shall include such information and detail as reasonably necessary for RSFA or a successor operator to provide the same or comparable services to such Customers.

e. Performance Reviews. RSFA shall have the right to conduct periodic performance reviews to ensure that Race is managing the Network in accordance with this Section 2 and otherwise complying with its obligations under this Agreement. If it is determined that Race is not managing the Network in accordance with the terms and standards set forth in this Agreement, Race will promptly take such actions as may be necessary to address the deficiencies or lack of compliance identified in any such performance review.

f. Construction Rules. With respect to any construction work within the Community performed by or on behalf of Race in performing its obligations hereunder, Race shall comply, and shall cause all of its contractors, subcontractors, vendors, and agents to comply, with the Construction Rules attached hereto as Exhibit D, as they may be modified and amended by RSFA from time to time (the "**Construction Rules**"), and to carry the minimum insurance set forth on Exhibit J. RSFA shall provide Race with written notice of any modifications to the Construction Rules.

### 3. Services Provided by Race.

a. Lateral Connections. It is acknowledged that the Network to be constructed by RSFA does not include the fiber lateral connections from the Network to each Business or Residence in the Community (each, a "**Lateral Connection**"). If a Community Member wishes to receive telecommunication services through the Network, Race shall enter into Service Contract (as defined in Section 3.b. below) with such Community Member to construct the Lateral Connection, as more particularly set forth in Section 3.b below. Race may, at Race's cost, engage subcontractors to install such Lateral Connection on Race's behalf for such Community Member, provided, that, such subcontractors must

be licensed, reputable, and agree to comply with the Construction Rules and carry at the minimum insurance required pursuant to Exhibit J. It is acknowledged that each Community Member will own its own Lateral Connection, and such Lateral Connection shall not be considered part of the Network owned by RSFA. Each Customer will receive Services through a Lateral Connection by connecting either directly to an active Ethernet port or, if a direct connection to an active Ethernet port is not technically feasible or appropriate under the circumstances, a GPON 1:32 splitter located in the CO. RSFA will supply all splitters as necessary, and Race will supply all active Ethernet electronics.

b. Service Contracts. Prior to providing any Services or otherwise allowing a Community Member to connect to the Network, Race will enter into a service contract (a “**Service Contract**”) with the Community Member, which Service Contract shall be in form and substance acceptable to RSFA and shall include:

- Commercially reasonable terms and conditions for construction of the Lateral Connection between the applicable Community Member’s Residence or Business and the Network, which Lateral Connection shall be completed at a cost to the Community Member of no more than \$6.25 per linear foot of conduit installed (which fee shall be equitably reduced if a Community Member has already installed conduit or performed trenching suitable for installation of the fiber Lateral Connection);
- A Service Level Agreement (a “**SLA**”) in favor of each Customer pursuant to which Race commits to meet minimum performance standards with respect to the operation of the Network, including, by way of example and not limitation: availability and reliability, quality of service, speed, frequency of outages, and mean-time-to-restoration (MTTR), acceptable to RSFA. The SLA will at all times require performance by Race that is at least as favorable as the performance provided by other Service Providers in similar residential and commercial properties in Southern California;
- Commercially reasonable terms and conditions pursuant to which Race will provide its Services to the Community Member and reflecting the pricing which has been reviewed and approved by RSFA; and
- At Race’s option, an installation fee to receive the Services from Race, provided, that, such installation fee shall not exceed:
  - \$250 in connection with a one-year Service Contract;
  - \$150 in connection with a two-year Service Contract; or

- o \$0 in connection with a three-year or longer Service Contract.

Race shall obtain RSFA's prior written approval to its form of Service Contract, or any modifications to a previously approved form of Service Contract, prior to entering into such Service Contract with any Community Member. Except as expressly set forth in this Agreement, RSFA shall review and approve all pricing for Services prior to implementation, including both initial prices and any future pricing changes proposed by Race. Further, at all times during the Term, Race will offer pricing for Services that is at least 10% below the comparable services provided to surrounding communities in the Southern California marketplace, excluding the Network Recovery Fee collected by Race for RSFA's benefit, as described in Section 10.

c. Services to be Provided. Race shall, at its sole cost and expense, offer to the Community the following Services: (i) local and long-distance voice-grade telephony services ("**Voice Services**"); (ii) multi-channel high-definition video delivery services ("**Video Services**"); (iii) high-speed internet services with minimum speeds of 1 GBPS ("**Internet Services**"); and (iv) any other services that RSFA and Race mutually agree shall be included within the definition of "Services," each as more particularly set forth on Exhibit E and at the initial pricing set forth on Exhibit E. If any Businesses in the Community wish to receive higher-capacity Internet Service (carrier class) than the standard 1 GBPS service offered, Race shall be responsible for negotiating on an individual case basis the rates, terms, and conditions for receiving such enhanced services, provided, that, all such rates, terms, and conditions shall be (i) subject to the prior written approval of RSFA, (ii) reasonably nondiscriminatory, (iii) commercially reasonable (consistent with market rates for services provided); and (iv) documented in a form of agreement acceptable to RSFA. Race will continuously research and analyze technologies under development to ensure its Customers are receiving the most current Services available in the marketplace.

d. Performance Obligations.

i. Standard of Care. At all times during the Term of this Agreement, Race shall provide the Services at a level which meets or exceeds industry standards for performance and customer care, and in accordance with all applicable laws. Without limiting the generality of the foregoing, such performance standards will require performance that is at least as favorable as the performance provided by other Service Providers in similar residential properties in Southern California.

ii. Interference. Race shall not unreasonably disrupt, adversely affect, or interfere with RSFA, any Community Member (residential or commercial), Customer, or other person or entity in the Community. If any such interference occurs, Race shall rectify such interference promptly following



written notice from RSFA, or such Community Member, Customer, or other person or entity.

iii. Restoration of Property. Race shall at all times and in all respects ensure that its employees, officers, partners, members, affiliates, agents, and contractors conduct themselves in a professional and workmanlike manner, in conformity with the highest standard of conduct in the industry and in compliance with all of the contractual and fiduciary obligations of Race arising hereunder. Any damage or loss of any kind caused by Race or any of its employees, officers, partners, members, affiliates, agents, or contractors to any premises or any equipment, facilities, or other property located within the Community, including to any Residence or Business, shall be the sole responsibility of Race, and Race shall promptly provide for repair, restoration, or replacement of any such damaged or lost premises or property, at its sole expense and to the satisfaction of RSFA.

iv. Technical Support, Customer Service, Service Maintenance. Race shall be exclusively responsible for all technical support and customer care, including order, provisioning, billing, collections, service monitoring, service maintenance, service restoration, and customer inquiries, with respect to the Services. Race shall perform this function in accordance with Section 4, consistent with industry best practices, and in a manner designed to yield high levels of Customer satisfaction.

4. Compliance with Laws; Regulatory Matters. Race shall perform its obligations under this Agreement in a manner such that the Network and Race's provision of the Services shall at all times comply with all applicable laws, rules, and regulations of any governmental authority, including, without limitation, (i) any franchise agreement to which Race is a party, which is applicable to the provision of Services in the franchise area where the Community is located, (ii) the Telecommunications Act of 1934, as amended, the Telecommunications Act of 1996, as amended, and all FCC regulations, rules, and orders promulgated thereunder, and (iii) any other federal and state laws and regulations relating to the provision of communications services, and any regulatory matter, obligation, or filing required by the FCC or the California Public Utilities Commission (the "CPUC"), or any other regulatory group, agency, or authority that governs, oversees, or otherwise regulates communications utilities. Race shall be exclusively responsible for managing the regulatory process to ensure that the Services and related facilities are operated in compliance with the law and in good standing at all times. This obligation shall include, without limitation, all rate filings, inspections, reporting, lab testing, certifications, and bonding required by any governmental authority or regulatory agency.

5. **Complimentary Services Provided by Race.** On or prior to the date that Services are available in the Community, RSFA and Race will enter into a Service Contract acceptable to RSFA, pursuant to which Race will provide RSFA with the Services set forth below free of charge (in addition to any other Services RSFA may request at Race's standard rates within the Community for the Services being requested):

a. **Complimentary Account and Intranet.** Race will provide RSFA one complimentary account which will include dedicated high speed Internet Service (1 GBPS) and dedicated Voice Service to a location in the Community, but will not include Video Service, at no charge. RSFA will determine where the Services will be provisioned. Additionally, Race will work with RSFA at no cost to RSFA to establish a private intranet that runs over dedicated fiber and serves the RSFA offices, golf course, tennis club, security office, and possibly other Community facilities (the "**RSFA Intranet**"). Such assistance by Race shall include configuring Race routers with proper virtual local area networks (VLANs) as necessary to set up the RSFA Intranet.

b. **Video Channels.** Race shall, at no charge to RSFA, provide to RSFA two video channels on the Race IPTV system for exclusive use by RSFA, which video channels shall be consistent with video products or services being offered to the Community. RSFA is responsible for providing and installing the necessary equipment and related technical services to install the channels, provided, that, Race agrees to provide reasonable assistance with such installation. RSFA will be exclusively responsible for content. RSFA may not use such video channels to provide services to the Community that are substantially similar to Race's Video Service.

6. **Community Satisfaction.** In addition to the SLAs provided on an individual basis to each Customer as part of the Service Contract, Race commits to maintain a level of customer satisfaction on a Community-wide basis reasonably acceptable to RSFA. RSFA may consider all reasonably available information, facts, and circumstances in determining Community satisfaction. Without limiting the generality of the foregoing, it is acknowledged that the Parties currently intend for the RSFA Advisory Board (as defined in Section 12) to develop and implement regular customer-satisfaction surveys to measure overall satisfaction of all Customers and to establish a minimum target score as the benchmark upon which Race's performance will be measured. The frequency of such Customer satisfaction surveys shall be determined by the RSFA Advisory Board. Failure to meet such minimum performance standards, or two periods of declining performance (after establishment of an initial benchmark through the first such survey conducted), will each trigger a dispute resolution process in accordance with Exhibit G and may result in termination of the Agreement. Notwithstanding the foregoing, if the RSFA determines that the surveys

conducted by the RSFA Advisory Board are not sufficient to measure Customer satisfaction in the Community, RSFA may rely upon other means of measuring Customer satisfaction within the Community in RSFA's sole discretion.

7. **Right of First Refusal for New Service.**

a. **Request for New Service.** If a new or emerging service is desired by RSFA or its Community Members, which is not a Service then offered by Race (a "**New Service**"), Race will have a right of first refusal to provide such New Service to the Community. In such event, RSFA will submit a written request for Race to provide the New Service, and Race shall notify RSFA in writing within 30 days after Race's receipt of such request either declining or accepting the request to provide such New Service. Failure by Race to notify RSFA that it intends to provide the New Service within such 30-day period shall be deemed to be Race's election not to provide such New Service.

b. **Implementation of New Service by Race.** If Race timely notifies RSFA of its intent to provide such New Service, Race shall develop a comprehensive plan for implementing such New Service, including any equipment and Network upgrades required to provide the New Service and proposed charges for the New Service for RSFA's review and approval. Race shall provide such plan to provide the New Service to RSFA for its review no later than the date that is six months after Race's receipt of RSFA's notice requesting the New Service. If Race has not delivered to RSFA its comprehensive plan for providing the New Service to the Community within such six-month period, Race shall be deemed to have declined the right to provide the New Service for purposes of this Section 7. If Race timely delivers such plan, RSFA shall review and approve such plan or identify any objections thereto in a timely manner. Upon receipt of any objections by RSFA, Race shall promptly revise its plan to address RSFA's concerns and resubmit it to RSFA for review. Race shall not implement any plan to provide New Services to the Community until RSFA has approved such plan. Upon receipt of RSFA's approval to its plan, Race shall use all commercially reasonable and diligent efforts to implement such plan and offer the New Service to the Community as soon as possible thereafter.

c. **New Service Not Provided by Race.** If Race declines or is deemed to have declined to provide the New Service, RSFA shall be free to arrange for other Service Providers to provide the New Service to the Community, even if that New Service is directly competitive with a service provided by Race. In addition, notwithstanding anything to the contrary herein, if Race elects to provide the New Service, but RSFA and Race are unable to agree on a mutually acceptable implementation plan for Race to provide the New Service to the Community within 45 days after Race delivers its first proposed plan to provide such New Service to RSFA, RSFA shall be entitled to arrange for other Service

Providers to provide such New Service, even if such New Service is directly competitive with a service provided by Race. Race will cooperate with other Service Providers to implement the New Service, including, without limitation, providing appropriate access to the Network on commercially reasonable rates and terms in accordance with the terms of Section 2.c.

8. **On-site Service Organization.** Race will establish and provide throughout the Term, an on-site service organization capable of delivering the performance levels required under this Agreement and the applicable Service Contract. Race will also maintain an outside plant service organization capable of completing 20 Lateral Connection installations per week until the Community is at least 75% served. Thereafter, Race will maintain sufficient service staff to complete 10 Lateral Connection installations per week. Race will at all times operate and maintain an RSFA-specific web site, which can be accessed by links on both RSFA's web site and Race's web site, through which Community Members will be able to order Services, provide feedback, report outages, and access a FAQ section specific to the Community.

9. **Payment of Revenue Share Amounts; Revenue Guaranty.**

a. **Revenue Share Payments.** In consideration of the rights granted by RSFA to Race and in recognition of RSFA's ownership of the Network, Race shall pay to RSFA the RSFA Revenue Payments (as defined below) monthly, no later than the 20<sup>th</sup> day of each month for Network Access Fees received the immediately preceding month (falling completely or partially within the Term). As used herein, the "**RSFA Revenue Payment**" shall mean an amount equal to all Network Access Fees received by Race during the applicable calendar month multiplied by 90%. Race will retain the remaining 10% of such Network Access Fees.

b. **Revenue Guaranty.** If, as of the seventh month after the date Race first provides any Customer (other than RSFA) in the Community with any Service (such date, the "**Turn-Up Date**"), Race has not achieved top-line (gross) monthly revenue ("**Gross Revenue**") from all sources in the Community of \$35,000 per month or more, the terms of this Section 9.b shall apply. In such event, RSFA agrees to pay Race an amount equal to the difference between the Gross Revenue received by Race for each month during the Revenue Guaranty Period (defined below) and \$35,000 (the "**Gross Revenue Supplement**"), to ensure Race achieves at least \$35,000 per month Gross Revenue during the Revenue Guaranty Period. The "**Revenue Guaranty Period**" is the 24-month period commencing on the first day of the seventh month after the Turn-Up Date, and ending the last day of the 30th month after the Turn-Up Date. RSFA shall pay Race any Gross Revenue Supplement within 30 days after receipt of an invoice therefor, accompanied by a sales report (in accordance with Section 9.c

below) showing all Gross Revenue received by Race for the applicable month and a calculation of the Gross Revenue Supplement payable. Under no circumstances will RSFA have any obligation to pay the Gross Revenue Supplement prior to or after the Revenue Guaranty Period. Further, except for RSFA's obligation to pay the Gross Revenue Supplement during the Revenue Guaranty Period, RSFA makes no guaranty, representation, or warranty with respect to the amount of Gross Revenue, profits or other income Race will receive in connection with this Agreement. For purposes of this Section 9.b, it is acknowledged that Gross Revenue shall include, without limitation, all monthly Service fees, installation or set-up fees, Network Access Fees (except for RSFA Revenue Payment amounts), and equipment rental fees, but shall exclude any RSFA Revenue Payment amounts, fees to install Lateral Connections, or Network Recovery Fees (as defined in Section 10) collected by Race.

c. Report and Audit.

i. Revenue Report. On or before the 15<sup>th</sup> of each month, Race shall provide an explanatory report (in Microsoft Excel format or other format reasonably acceptable to RSFA) that clearly displays, for the immediately prior month (i) the calculation of the Gross Revenue received by Race or its affiliates from all sources (with separate line items for the source of such Gross Revenue and, to the extent practicable, each Service provided) and any other charges or amount paid to Race by Customers within the Community; (ii) the number of Customers receiving each Service; (iii) the number of Service Providers paying Network Access Fees for access to the Network; (iv) the Network Access Fees collected by Race and the calculation of any RSFA Revenue Payment payable by Race to RSFA; (v) during the Revenue Guaranty Period, any Gross Revenue Supplement payable by RSFA to Race and the calculation thereof; and (vi) the Network Recovery Fees collected by Race (collectively, the "**Revenue Report**").

ii. Audit Right. RSFA shall have the right, once each year, to appoint an independent certified public accountant of a recognized accounting firm to audit Race's financial records dating back to the later of (i) the Effective Date or (ii) the date immediately following the last period for which an audit under this Section 9.c.ii was conducted (the "**Audit Period**"), relating to all components of the Revenue Report.

A. In connection with the performance of such audit, Race shall provide RSFA with access, upon reasonable advance notice and during normal business hours and in such a manner as shall not unreasonably interfere with Race's business, to its books, records, and financial accounts relating to the items included in the Revenue Report. To the extent practicable, Race will provide such books, records, and

account information to RSFA in electronic format (Microsoft Excel or other format reasonably acceptable to RSFA).

B. The expenses for such an audit shall be borne by RSFA unless the audit discloses an underpayment by Race of 5% or more for any Audit Period or that Race overcharged RSFA for any Gross Revenue Supplement by 5% or more, in which case the expenses of the audit shall be borne by Race. The amount of any underpayment made by Race (or the amount by which Race overbilled RSFA for any Gross Revenue Supplement) shall bear interest at the Interest Rate (as defined in Section 9.d.), from the date such amount should have been paid until fully paid (or the date such overbilled amount was paid until repaid).

C. Any additional amounts due to RSFA as a result of the audit shall be paid within 30 days following written notice from RSFA to Race of the underpayment (or the amount by which Race overbilled RSFA for any Gross Revenue Supplement), which notice shall include a copy of the audit.

D. Notwithstanding the foregoing, RSFA shall have the right to undertake such an audit on a quarterly basis rather than an annual basis during the Term after any audit discloses an underpayment (or overbilling) of 3% or more for any Audit Period

d. Interest on Late Payments. Any payment to be made by one Party to the other Party under this Agreement that is not made on or before the date that such payment is due shall bear interest at the lesser of (i) 10% per annum, and (ii) the maximum rate permitted by law (the “**Interest Rate**”), from the date due until fully paid.

10. Network Recovery Fee and Reserves. In addition to amounts charged by Race to Customers for Services, RSFA will charge Customers a monthly fee, designed to recover RSFA’s investment in the Network and to establish reserves for Network replenishment (such fee, the “**Network Recovery Fee**”). RSFA shall determine the amount of the Network Recovery Fee at its sole discretion and may change, modify, or eliminate the Network Recovery Fee at any time upon 30 days prior written notice to Race, in its sole discretion. Race will collect the Network Recovery Fee each month as a clear line item on Customer invoices and will remit to RSFA the actual collected Network Recovery Fee monthly, no later than the 20<sup>th</sup> day of each month for Network Recovery Fees collected the immediately preceding month. It is expressly understood that Race will remit to RSFA the entirety of the Network Recovery Fees collected from Customers without any deduction or offset. In no event shall Race charge RSFA or any Customer any administrative or handling fee for collecting the Network Recovery Fee or remitting it to RSFA.

11. **Easements.** If and to the extent reasonably necessary for Race to operate and maintain the Network and to provide the Services in accordance with the terms of this Agreement, RSFA will provide Race with appropriate limited and non-exclusive easements or licenses, in commercially reasonable form and substance acceptable to RSFA, with respect to real property owned by RSFA. If any licenses or easements from individual Community Members are necessary to construct Lateral Connections, to connect the Lateral Connections to the Network or to install any equipment on a Customer's premises (commonly referred to as "CPE") necessary to provide the Services to such Customer, Race will secure such licenses or easements (in commercially reasonable form and substance acceptable to RSFA). All easements or licenses entered into by Race will be assignable to RSFA, and Race shall assign all such easements to RSFA upon expiration or earlier termination of this Agreement. Any easements entered into pursuant to this Section 11 must (i) include correct legal descriptions of the easement area; (ii) be in recordable format sufficient to create an insurable real property interest; and (iii) be otherwise in commercially reasonable form and substance acceptable to RSFA.

12. **RSFA Advisory Board.** Race and RSFA will establish an advisory board consisting of 1 representative from Race, 3 representatives from RSFA (consisting of 2 staff members and 1 director), and 1 Community Member (the "Advisory Board"), with 3 members of the Advisory Board constituting a quorum and the vote of 3 members required for action. The Advisory Board will serve as a platform for cooperation, review, consultation and recommendations to be made in connection with the Network, the provisioning of Services, the quality of Services, and Customer satisfaction. The Advisory Board will meet quarterly. RSFA and Race will mutually agree upon appropriate rules and procedures to govern the RSFA Advisory Board.

13. **Term.** Subject to the termination rights set forth in Section 14.b, the initial term of this Agreement (the "Initial Term") will be 10 years, commencing on the Effective Date. This Agreement will automatically extend for up to two 5-year extension terms (each, an "Extension Term"), unless either RSFA or Race delivers **written** notice to the other Party electing not to extend the Term for the applicable Extension Term by no later than the date which is 9 months prior to the then-current expiration date. If either Party delivers such notice, the Term will expire on the then-current expiration date and all remaining unexercised Extension Terms shall terminate and be of no further force or effect. The Initial Term, together, as applicable, with any Extension Term, is referred to herein as the "Term." Upon expiration of the scheduled Term, this Agreement shall continue on a month to month basis unless terminated by RSFA in writing by delivering at least 30 days prior written notice of such termination to Race.

14. **Default and Remedies.**

a. **Material Breach.** If either Party fails to perform its obligations under this Agreement in accordance with the terms hereof, such failure shall be a breach of this Agreement. As used herein, a “**Material Breach**” means (i) a material breach under applicable law, or (ii) any of the following events, each of which the Parties expressly agree shall be considered a Material Breach under this Agreement (in addition to, and without limiting clause (i) above): (A) a failure by Race to meet any of its obligations under any of Sections 2, 3, 4, 5, 8, and 15 of this Agreement; (B) a failure by Race to make any payment required under this Agreement pursuant to Section 9.a and 10 herein; (C) a failure by Race to furnish any reports or documentation required to be furnished to RSFA under this Agreement; (D) a failure by Race to permit RSFA to conduct any audit or performance review authorized under this Agreement; (E) any assignment of this Agreement or any rights or obligations of Race under this Agreement in violation of Section 17.a; and (F) any breach, inaccuracy, or untruthfulness of any representation or warranty on the part of Race set forth in this Agreement. Notwithstanding anything to the contrary herein, it is understood that a Material Breach shall not be grounds for termination under Section 14(b)(i) below, if such Material Breach was materially caused by an act, omission, or representation by the non-breaching Party or a Force Majeure Event (as defined in Section 24).

b. **Termination Rights.**

i. **Termination due to Material Breach.** Either RSFA or Race may terminate this Agreement by delivering written notice of such termination to the other Party in the event of a Material Breach by the other Party where the breaching Party does not cure such Material Breach within 30 days after receiving written notice of such Material Breach from the non-breaching Party. Notwithstanding the foregoing, if with the exercise of commercially reasonable efforts, it is not practicable to cure such Material Breach within such 30-day period, the cure period shall be extended for a commercially reasonable period (up to an additional 60 days) if the breaching Party continues to exercise commercially reasonable efforts to cure such Material Breach. Conversely, this Agreement may be terminated in the event of a Material Breach without giving 30 days' notice and opportunity to cure notwithstanding the foregoing if (i) the breaching Party provides written notice to the non-breaching Party that the breaching Party will not attempt to cure such Material Breach within 30 days of notice of a Material Breach, (ii) the breaching Party is not diligently working to cure such Material Breach in a reasonable and good faith manner at all times during the applicable cure period, or (iii) the Material Breach is not capable of being cured.



ii. Bankruptcy. Either RSFA or Race may terminate this Agreement by delivering written notice of such termination to the other Party if there is a filing by or against the other Party of a petition to have the other Party adjudged a debtor under applicable bankruptcy laws (unless in the case of a petition filed against a Party, the same is dismissed within 90 days).

iii. Other Breach, Controversy or Dispute. RSFA may terminate this Agreement by delivering written notice of such termination to Race, if a controversy, dispute, or breach (which is not a Material Breach) is not resolved pursuant to the dispute resolution procedures set forth in Section 1 of Exhibit G.

iv. Loss of License. RSFA may terminate this Agreement by delivering written notice of such termination to Race if (A) Race loses any franchise or other necessary license to provide the Services to the Community; (B) a court or governmental authority with jurisdiction issues a final judicial or regulatory order as a result of which Race is prevented from complying with this Agreement; (C) the Services provided by, or the obligations of, Race pursuant to this Agreement become inconsistent with the rules and regulations of the FCC, the CPUC, or other applicable governmental authority with jurisdiction and Race cannot provide such Services or meet such obligations consistent therewith using reasonable means.

c. Injunctive Relief. Notwithstanding any other provision of this Agreement to the contrary, it is expressly agreed that, in addition to any other remedies available to RSFA under this Agreement or at law, RSFA may seek injunctive relief or specific performance of the obligations of Race hereunder in an appropriate court of law or equity in the County of San Diego in the State of California. The Parties acknowledge that it will be impossible to measure in money the damages that would be suffered if Race fails to comply with certain obligations under this Agreement and that in the event of any such failure RSFA will be irreparably damaged and will not have an adequate remedy at law. If any action should be brought in equity by RSFA against Race to enforce any of the provisions of this Agreement, Race shall not raise the defense that there is an adequate remedy at law.

d. Nonexclusive Remedy; Dispute Resolution Procedures. The election of any remedy under this Agreement or otherwise shall not be deemed to preclude or otherwise limit in any way the pursuit of other remedies for the breach of this Agreement or with respect to any breach, inaccuracy or untruthfulness of any representation or warranty under this Agreement, including, without limitation, claims for damages. However, the Parties agree that, except with respect to RSFA's rights under Section 14.c, (i) the Parties shall follow the dispute resolution procedures set forth in Section 1 of Exhibit G to resolve any controversy, dispute or breach which does not constitute a Material

Breach, and (ii) the Parties will follow the dispute resolution procedures set forth in Section 2 of Exhibit G if the parties dispute the occurrence of a Material Breach or are unable to agree upon the appropriate remedy (including damages payable, subject to Section 20) following a Material Breach.

15. **Transition Obligations.** Upon expiration or earlier termination of this Agreement, Race shall work cooperatively with RSFA to ensure a seamless transition to another service provider, so customers have no service interruption. In this regard, RSFA shall have the option, exercisable by delivering written notice to Race, to cause Race to provide RSFA or any other Service Provider designated by RSFA such assistance as is reasonably necessary to operate, maintain, and manage access to and use of the Network, to continue providing Services to Customers in accordance with the terms of this Agreement, and to otherwise resume the duties of Race arising under this Agreement until such time as RSFA is able to transition operation of the Network to another Service Provider. Race shall provide such services at no additional cost.

16. **Exclusive Marketing; Publicity.** The Services to be provided hereunder will be branded as “RSF Connect” and, where appropriate, “Powered by Race.” RSFA and Race will each market the Network and the Services to be provided to the Community in accordance with an initial marketing plan mutually acceptable to the Parties (the “**Marketing Plan**”). The Marketing Plan will be reviewed and updated at least once per year by Race, with any such updates subject to review and approval by RSFA before implementation. All marketing materials shall be professionally prepared, at Race’s cost, and Race shall provide RSFA with such marketing materials and any training necessary for RSFA to perform its marketing obligations hereunder at no cost to RSFA. RSFA will not market any other Service Provider to its Community Members during the Term, except to the extent of a New Service provided by another Service Provider pursuant to Section 7.c. Except as may be required by law or governmental or regulatory authority or as set forth in the Marketing Plan, no public announcement, circular, or press release in connection with the subject matter of this Agreement shall be made or issued by or on behalf of a Party without the written approval of the other Parties (such approval not to be unreasonably withheld or delayed).

17. **Assignment.**

a. **By Race.**

i. **Transfers Generally.** Except as expressly permitted in this Section 17.a, Race will not assign, license, or otherwise transfer (including any transfer by operation of law) all or any part of this Agreement or Race’s rights or obligations hereunder, without first obtaining RSFA’s prior written consent, which shall not be unreasonably withheld so long as the proposed assignee is a qualified Service Provider. If Race wishes to assign this Agreement to an

unaffiliated third Party, Race will provide RSFA with such information as RSFA may reasonably deem necessary for RSFA to consider the proposed assignment, including, without limitation, the terms of the proposed assignment and information sufficient to determine if the proposed assignee Service Provider is qualified. In addition, RSFA is entitled to condition any consent on receipt of documentation acceptable to RSFA, evidencing the assignment of this Agreement and such assignee's assumption of Race's obligations hereunder. Under no circumstances will Race be entitled to mortgage, encumber, pledge, or hypothecate this Agreement or its rights and obligations hereunder. No transfer of this Agreement (regardless of whether RSFA's consent is required) shall release Race from any liability or obligations hereunder.

ii. Permitted Transfers. Notwithstanding the foregoing, Race may, without RSFA's consent, but with prior written notice to RSFA, transfer this Agreement to a Service Provider purchasing all or substantially all of Race's assets or stock without first obtaining such consent from RSFA, provided, that, such Service Provider is qualified to assume Race's obligations hereunder. In the event Race intends to assign this Agreement to a Service Provider purchasing all or substantially all of Race's assets or stock as permitted hereunder, Race shall provide RSFA with information on the successor Service Provider which is sufficient to determine if such Service Provider is qualified, along with reasonable documentation of such transfer, and the successor Service Provider's assumption of Race's obligations hereunder. Notwithstanding anything to the contrary herein, if RSFA reasonably and in good faith does not agree that the successor Service Provider is qualified, RSFA shall have the right to terminate this Agreement and purchase Race's Business (as defined in Exhibit H) at Fair Business Value, as determined in accordance with Exhibit H.

iii. Qualified Service Provider. As used herein, a "qualified" Service Provider must be reputable, duly licensed, and experienced in managing networks similar to the Network and in providing services such as the Services to be provided by Race hereunder, with a track record of high quality service and solid customer satisfaction.

b. By RSFA. Except as expressly permitted in this Section 17.b, RSFA will not assign this Agreement or its rights and obligations hereunder without first obtaining Race's consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, RSFA may, without Race's consent, but with notice to Race, assign this Agreement to (i) an affiliate which controls, is controlled by, or is under common control with, RSFA, (ii) another Community association, (iii) a party purchasing all or substantially all of the Community's property. In such event, RSFA shall be released from all liability accruing from and after the date of such transfer.

18. **Insurance.** Race shall carry the minimum insurance and otherwise comply with the insurance obligations set forth in Exhibit J.
19. **Indemnification.** Each Party shall indemnify, defend, and hold harmless the other Party (along with its officers, directors, partners, members, managers, agents, employees, successors and assigns) in connection with claims, losses, damages, liabilities, costs, expenses (including, without limitation, attorneys' fees and expert witnesses' fees and costs), and lawsuits (collectively, "**Claims**") to the extent caused by the negligence or willful misconduct of the other Party or its agents, employees or contractors. In addition to the foregoing, Race shall indemnify, protect, defend and hold harmless RSFA and RSFA's officers, directors, partners, members, managers, agents, employees, successors and assigns from and against any and all Claims arising from (a) the installation, maintenance, repair and use of the Network, including any interference caused thereby, (b) Race's use of the CO, or any activity, work or thing done, permitted, or suffered by Race and its agents and employees in or about the CO or in the Community, and/or (c) any third party claims arising out of breach or default in the performance of any obligation on Race's part to be performed under the terms of this Agreement. The indemnifying Party shall control and pay the reasonable expenses of defending any claims which are subject to the foregoing indemnification. In connection therewith, the indemnifying Party shall have the right to settle any such claim subject to the indemnified Party's consent, which consent shall not be unreasonably withheld, conditioned, or delayed. The indemnified Party shall have the right, at its own expense, to participate in the defense of such claims. This provision shall survive the termination or expiration of this Agreement.
20. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, LOSS OF CUSTOMERS OR CLIENTS, LOSS OF GOODWILL, OR LOSS OF PROFITS ARISING IN ANY MANNER FROM THIS AGREEMENT AND THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS HEREUNDER.
21. **No Liens.** Race shall pay all costs for work performed by or on account of it and shall keep the Network and Community free and clear of mechanics' liens or any other liens arising in connection with such work. Without limiting the foregoing, the Parties agree that Race shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material, or services and shall discharge any such liens 30 days after receipt of written notice thereof by bonding, payment, or otherwise.
22. **Compliance With Laws.** The Parties shall comply with all applicable laws, codes, rulings, and regulations with respect to this Agreement.

23. **Hazardous Substances.** Race shall not place or install any Hazardous Substance on, in, above, or under any portion of the Community. If a representative of Race shall discover, uncover, or disturb any Hazardous Substance on, in, above, or under any portion of the Community, then Race shall promptly stop any work in progress at such location and report such findings to RSFA. Race shall not conduct any further work in such area without RSFA's prior written approval. As used herein, "**Hazardous Substance**" means a substance that is defined, listed in, or otherwise classified pursuant to any applicable laws, rules, or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," or "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitibility, corrosivity, reactivity, radioactivity, carcinogenicity, reproductive toxicity, or "EP toxicity," and petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

24. **Force Majeure.** If the performance of any of the obligations of a Party under this Agreement is materially interfered with by any reason or any circumstances not caused by any act or omission of such Party and beyond the reasonable control of such Party, including, but not limited to, fire, explosion, power failure or power surge, acts of God, earthquakes, war, revolution, civil commotion, or requirement of any government or legal body or any representative of any such government or legal body, or labor unrest, including, but not limited to, strikes, slowdowns, picketing, or boycotts (a "**Force Majeure Event**"), then the affected Party shall be excused from performance for such period as such Party's performance is rendered impossible by such Force Majeure Event so long as such Party is diligently attempting to resume performance. Nonperformance by a Party's agent or subcontractor shall not be considered a Force Majeure Event.

25. **Survival.** The following Sections of this Agreement shall survive expiration or termination of this Agreement: this Section 25, and Sections 14 (Default and Remedies), 15 (Transition Obligations), 19 (Indemnification), 20 (Limitation of Liability), 21 (No Liens), 23 (Hazardous Substances), 24 (Force Majeure), 26 (Representations), 27 (Notices), 31 (Governing Law and Venue), 32 (Attorneys' Fees), 33 (No Waiver), and 35 (Confidentiality). In addition, Race's obligation to make RSFA Revenue Payments pursuant to Section 9.a of this Agreement, and any other obligations to make payments to RSFA, shall survive any expiration or termination of this Agreement to the extent that such obligations shall have accrued prior to the expiration or termination of this Agreement or during any transition period.

26. **Representations.** Each Party represents and warrants to the other that (a) such entity is qualified to do business in the jurisdiction in which the

Community is located, (b) all necessary partnership or corporate approvals, if any, have been obtained to authorize the execution, delivery, and performance of this Agreement, (c) the execution, delivery and performance of this Agreement will not result in a breach or default under any other agreement to which such Party is a party or contravene any organizational documents, laws, orders, statutes, or regulations applicable to such Party or its assets, and (d) this Agreement, upon the execution and delivery thereof by such Party, is the valid and legally binding obligation of such Party enforceable in accordance with its terms. In addition, Race represents and warrants to RSFA that, as of the Effective Date, Race is a certificated, bonded, registered, and in good standing with, and regulated by, the CPUC. Race has obtained all certifications, licenses, authorizations, notifications, and other approvals necessary to allow Race to provide the Services and perform all of its obligations contemplated by this Agreement.

27. **Notices.** Any notices required hereunder shall be in writing and shall be sent by (a) U.S. mail, postage prepaid, return-receipt requested or (b) a nationally recognized overnight courier service to the applicable Party at the address set forth below, or at such other address as may be designated at a later date in a notice delivered pursuant to the terms hereof:

If to RSFA:

For U.S. Mail:

Rancho Santa Fe Association  
PO Box A  
Rancho Santa Fe, CA 92067  
Attention: Christy Whalen

For Nationally Recognized Overnight Courier Service:

Rancho Santa Fe Association  
17022 Avenida de Acacias  
Rancho Santa Fe, CA 92067  
Attention: Christy Whalen

If to Race

Race Telecommunications  
1325 Howard Ave. #604  
Burlingame, CA 94010  
Attention: Raul Alcaraz

28. **Entire Understanding.** This Agreement contains the entire understanding of the Parties and, except as specified herein, may not be modified except by a writing signed by both of the Parties.
29. **Counterparts.** This Agreement may be executed in any number of counterparts all of which when taken together shall constitute one and the same document.
30. **Further Assurances.** Each of the Parties hereto agrees to execute such further documentation as shall be reasonably required by the other Party in order to effectuate the intention of this Agreement.
31. **Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of California without giving effect to such state's principles of conflicts of law. Venue shall reside in the federal and state courts of San Diego County, California.
32. **Attorneys' Fees.** In the event that either RSFA or Race shall institute any action or proceeding (including any dispute resolution proceeding set forth in Exhibit G) against the other relating to the provisions of this Agreement, the prevailing Party shall be entitled to recover the cost of its legal fees and expenses from the non-prevailing Party.
33. **No Waiver.** One or more waivers of a breach of any covenant, term or condition of this Agreement by either Party shall not be construed by the other Party as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval of either Party to or of any act by the other Party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act.
34. **Severance.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by an arbitrator, court, or other authority of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not be affected or impaired thereby in any way, and such invalid, illegal, or unenforceable provision shall be construed by limiting such provision so as to be valid, legal, and enforceable to the maximum extent permitted by law.
35. **Confidentiality.** Except as may be required by law or as may be otherwise be agreed in writing by the Parties (including, without limitation, the Marketing Plan), no Party will disclose any Confidential Information (as defined below) exchanged between them as a result of this Agreement, without the prior written consent of the other Party. Notwithstanding the foregoing, any Party may disclose any Confidential Information to its employees, agents or professional advisors on a "need to know" basis solely for the purposes of

carrying out its obligations under this Agreement. For purposes of this Agreement, "**Confidential Information**" means (i) all information that any Party furnishes to the other Parties on or after the date of this Agreement, which such Party designates as proprietary or confidential by use of a legend, label, or similar designation, (ii) with respect to oral information, all such information that any Party states is to be proprietary or confidential, and (iii) all information that should reasonably be considered proprietary or confidential, provided, that, the Parties acknowledge and agree that this Agreement and the terms and conditions set forth herein are not confidential. All Confidential Information which may be provided by a Party shall continue to be the property of the Party furnishing such Confidential Information and no rights or licenses, express or implied, are granted to any Confidential Information, except as expressly provided in this Agreement. The obligations under this Section 35 shall survive the expiration or termination of this Agreement for a period of five years.

36. **No Partnership.** The Parties acknowledge that they have no intention, and this Agreement shall in no way be construed, to form a partnership or other joint venture between the parties.

37. **Integration.** All addenda, schedules, and exhibits are incorporated in and made part of this Agreement. In the case of any conflict between this Agreement and any addendum, schedule, or exhibit, this Agreement shall control unless the Parties have expressly agreed and stated otherwise in writing.

*[Signatures on following page.]*



**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the day and year first above written.

**RSFA:**

**RANCHO SANTA FE ASSOCIATION,**  
a California nonprofit corporation

By:   
Name: Christy Whalen  
Title: Manager

**RACE:**

**RACE TELECOMMUNICATIONS, INC.,**  
a California corporation

By: \_\_\_\_\_  
Raul Alcaraz  
President, Race Communications

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the day and year first above written.

**RSFA:**

**RANCHO SANTA FE ASSOCIATION,**  
a California nonprofit corporation

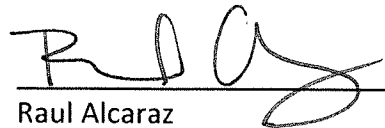
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RACE:**

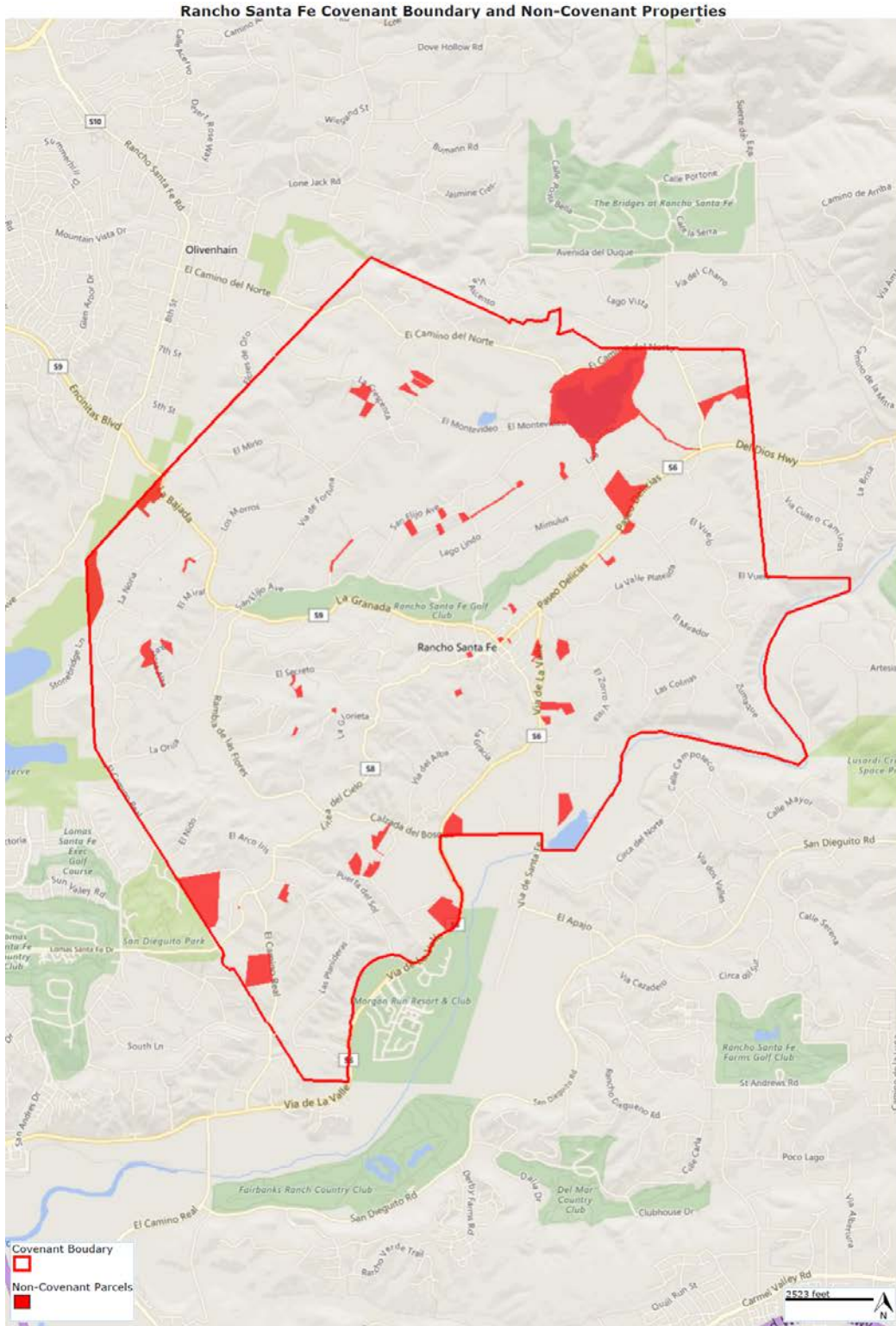
**RACE TELECOMMUNICATIONS, INC.,**  
a California corporation

By:  \_\_\_\_\_

Raul Alcaraz  
President, Race Communications

# EXHIBIT A

## COMMUNITY





## **EXHIBIT B**

### **NETWORK AND CO SPECIFICATIONS**

A. **Specifications of the Network**: RSFA will, at RSFA's cost, design, build, and install the Network, in a good and workmanlike manner in compliance with all applicable federal, state, and local laws and regulations. The Network to be constructed shall include:

- A conduit system providing access to all existing residences and businesses within the community (exclusive of the Lateral Connections from each applicable Residence or Business structure to the street, which is the responsibility of each Customer).
- A fiber optic backbone, consisting of single-mode, dispersion-shifted, large effective area, carrier-quality fiber optic cable with a sufficient fiber count to provide a single dedicated home-run fiber to each current Residence and Business in the Community.

Race will review and consult with RSFA's design firm for the conduit system prior to procurement and installation of the Network in the conduit and shall respond in a timely manner (within 5 business days) to any requests by RSFA (or its design firm) for input.

B. **Specifications for the CO**: RSFA will, at RSFA's cost, design, build, and install the CO, in a good and workmanlike manner in compliance with all applicable federal, state, and local laws and regulations. The CO shall provide approximately 640 square feet of space (16' x 40'), with 9 foot ceilings, and shall be serviced by dual air conditioners and backup power generation, as RSFA determines to be appropriate. In addition, RSFA will install 23" Racks with grounding protection in the CO. RSFA acknowledges that RSFA shall be responsible for:

- Constructing the CO building;
- Installation of all mechanical, plumbing, electrical systems, fire/life/safety systems and non-fiber/ISP low voltage infrastructure;
- Raceway/conduit within the CO to a designated point outside the CO; and
- Installation of Racks.

Any other installations necessary to provide the Services shall be Race's responsibility, including without limitation, any power conditioning equipment and all ISP equipment. Race will review and consult with RSFA's design firm with respect to the layout of the CO and associated systems to ensure that the facilities and layout of the CO will be sufficient for Race to provide the Services. In this regard, Race will respond in a timely manner (within 5 business days) to any requests by RSFA (or its design firm) for input with respect to the design and layout of the CO, including, without limitation, Race's desired layout for

Racks in the CO, Race's power density needs, and Race's stopping point for its fiber in the CO.



## **EXHIBIT D**

### **CONSTRUCTION RULES**

1. **Notification to RSFA; Construction Requirements.** Prior to commencing construction within the Community, all contractors shall provide RSFA the following (i) proof of the insurance required pursuant to Exhibit J, (ii) a scope of the work to be performed, (iii) evidence that the contractors/subcontractors are duly licensed and certified to the extent applicable for the work being performed; and (iv) copies of all applicable construction permits and approvals.
2. **Damage.** Any damage caused by contractors or sub-contractors to the Community is Race's responsibility. Race will be held liable for the actions of its contractors, subcontractors, and/or workers and shall promptly commence to repair the damage.
3. **Minimizing Dust, Debris, Noise, Etc.** Contractors and sub-contractors must use commercially reasonable preventative measures to minimize dust, dirt, noise, paint fumes, and other nuisances to Community Members during construction.
4. **Cleanup of Construction Areas.** Contractors and sub-contractors are required to clean each job site on a daily basis. The trash receptacles in the Community may not be used for disposing of construction or installation debris.
5. **Working Hours.** Working hours for any construction work are limited to Monday through Friday, 7:00 a.m. to 7:00 p.m., and Saturday, 7:00 am to 5:00 p.m. No work is allowed on Sundays or on the following holidays: New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving, and Christmas Day. Workers may access the Community 30 minutes before the applicable "Working Hours," but may not make any disruptive noise until "Working Hours" begin. Painting that does not disrupt others and work that does not create disturbing noise, vibrations, or odors is not subject to the "Working Hours" limitation.
6. **Conduct by Workers.** Workers are prohibited from creating nuisance noise unrelated to the construction work. All workers must wear shoes, pants, or shorts, and shirts in the Community at all times.
7. **Traffic.** Contractors and sub-contractors will not block or materially interrupt traffic within the Community in the course of construction. If any work will require street closures, such closures will be coordinated in advance with RSFA.
8. **Safety.** Contractors and sub-contractors will put up appropriate barriers and warnings with respect to construction hazards, including open trenches or ditches.



9. Race Responsibility. Race is responsible for any violations by Race's contractors or subcontractors of these Rules.
10. Compliance. All work shall comply with all laws, rules, regulations, and codes of the city, state and federal government agencies having jurisdiction, including obtaining all necessary construction permits.
11. Utility Interruption. Contractors shall not cause any interruptions of utility service and shall at all times comply with California 811 Law.

## **EXHIBIT E**

### **SERVICES PROVIDED BY RACE**

Race shall, at its sole cost and expense, offer the following Services to the Community, at the following initial pricing:

1. *Voice Services*. Race will offer local and long-distance Voice Services using voice over internet protocol technology (VoIP). Voice Services will include unlimited calling in the Continental US for \$10 per month per line (for Customers using Race Internet Services), 911 emergency services, commercially reasonable packages for international calling, and a complete menu of calling and class features, consistent with what is customarily offered by first class Service Providers, including, without limitation, call forwarding, voice mail, caller ID, call blocking, and conferencing ability.
2. *Video Services*. Race will offer multi-channel high-definition Video Services (CATV) with capability of providing approximately 300 channels of standard definition and high definition channels over Internet Protocol (IP), known as IPTV, for \$98.00 per month. Race will offer a complete range of ancillary services for IPTV including set-top boxes and DVRs. Channel content will include local/national network channels, a complete line of sports channels, and premium subscription channels such as HBO and Showtime.
3. *Internet Services*. Race will offer high speed Internet Service with minimum speeds of 1 GBPS for residential Customers for \$70.00 per month. Business Customers may contract for Race's 1 GBPS business Internet Service for \$200.00 per month or for higher-capacity, dedicated, carrier-class Internet Service at rates negotiated pursuant to Section 3.c.
4. *Other*. Any other service that RSFA and Race mutually agree shall be included within the definition of "Services" for purposes of the Agreement.

**EXHIBIT F**

**[INTENTIONALLY OMITTED]**

## **EXHIBIT G**

### **DISPUTE RESOLUTION PROCEDURES**

Except for RSFA's rights under Section 14.c, if the Parties have a controversy or dispute under this Agreement, the following dispute resolution procedures shall apply:

**1. Controversies and Disputes Not Relating to Material Breaches.** If the Parties have a controversy or dispute regarding the provision of Services under this Agreement, whether a connection is technically feasible, or one Party's breach of its obligations under this Agreement (other than a controversy or dispute constituting to a Material Breach of this Agreement, which shall not be subject to this Section 1 and shall be governed by Section 2 below) and such controversy or dispute is not resolved at an operational level, the Parties shall initially attempt to resolve such controversy or dispute by submitting it to the RSFA Advisory Board for up to 90 days for resolution. If the RSFA Advisory Board is unable to reach a mutually satisfactory resolution of such controversy or dispute within such period, then the Parties shall submit such controversy or dispute to the President of Race and senior management representatives of RSFA for a period of up to 30 days. If the President of Race and RSFA senior management representatives are unable to resolve such controversy or dispute during this time, RSFA may thereafter, in its sole discretion, notify Race in writing of RSFA's desire to terminate this Agreement pursuant to this Section 1.

**2. Arbitration of Other Claims, Controversies and Disputes.** Subject to Section 1 of this Exhibit G and Section 14.c, any claim, controversy, or dispute, whether sounding in contract, statute, tort, fraud, misrepresentation, or other legal theory, between or among the Parties or their officers, directors, or employees arising out of this Agreement shall be resolved by arbitration. The Federal Arbitration Act, 9 U.S.C. §§ 1-15, not state law, shall govern the use of arbitration for all claims. Unless Race and RSFA mutually agree upon an arbitrator to conduct such arbitration (the "**Arbitrator**"), Race and RSFA shall each select one arbitrator who shall be engaged in the practice of law in California. The two arbitrators shall thereupon collectively choose an individual arbitrator to serve as the Arbitrator. The Arbitrator shall conduct the arbitration under the then current rules of the American Arbitration Association. The arbitration shall be held in San Diego, California. The Arbitrators' award shall be final and binding and may be entered in any court having jurisdiction thereof. The prevailing Party, as determined by the Arbitrator, shall be entitled to recover the cost of its legal fees and expenses from the non-prevailing Party.

## **EXHIBIT H**

### **DETERMINATION OF PURCHASE PRICE**

- Definition of Fair Business Value.** As used in this Agreement, the “**Fair Business Value**” means the amount a willing buyer would pay and a willing seller would accept for Race’s business enterprise in the Community (“**Race’s Business**”) if the Business were offered for sale in the open market, taking into consideration all reasonable factors and circumstances, including, without limitation, the cost to create another business like Race’s Business, the assets and liabilities of Race’s Business, and the anticipated net revenues from Race’s Business (capitalized or discounted as appropriate).
- Determination of Fair Business Value.** If RSFA is entitled to purchase Race’s Business under the terms of the Agreement (including, without limitation, pursuant to the terms of Section 17.a), RSFA may notify Race of its interest in purchasing Race’s Business and request Race’s determination of the Fair Business Value. Race shall deliver to RSFA Race’s good faith determination of the Fair Business Value, along with all relevant supporting documentation, within 30 days after Race’s receipt of such request. If RSFA does not agree with Race’s determination of the Fair Business Value, the Parties shall meet and negotiate the Fair Business Value in good faith. If the Parties are unable to come to agreement on the Fair Business Value within 30 days after Race delivers its determination of the Fair Business Value to RSFA, Race and RSFA shall each engage a business valuation professional (each, a “**Valuation Professional**”) within 30 days after the expiration of such 30-day period, which Valuation Professional must be reputable and have experience in valuing businesses similar to Race’s Business. If only one Party engages a Valuation Professional within such 30-day period, the determination of the Fair Business Value by such Valuation Professional shall be deemed to be the Fair Business Value for all purposes under this Agreement. If both Parties timely engage Valuation Professionals, the Valuation Professionals will promptly meet and use commercially reasonable efforts to agree upon the Fair Business Value of Race’s Business. The Fair Business Value, as mutually agreed by the Valuation Professionals, shall be deemed to be the Fair Business Value. If the Valuation Professionals are unable to mutually agree on the Fair Business Value within 30 days after expiration of the above 30-day period, either party may elect to submit the dispute to arbitration in accordance with Section 2 of Exhibit G .

**EXHIBIT I**

**[INTENTIONALLY OMITTED]**

**EXHIBIT J**

**INSURANCE REQUIREMENTS**

**1. Race Insurance Obligations.**

a. **Minimum Coverage.** Race, at its sole cost and expense, shall procure, pay for and keep in full force and effect during the Term, the following types of insurance, in at least the amounts and in the forms specified below:

i. ***Liability.*** Race shall carry commercial general liability insurance with coverage limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, advertising injury, death and property damage liability, insuring against any and all liability of the insured arising out of the maintenance or use of the Network (including the CO), or related to the exercise of any rights of Race pursuant to this Agreement, subject to increases in amounts as RSFA may reasonably require from time to time. All such liability insurance shall specifically insure the performance by Race of the indemnity agreement set forth in Section 19 of the Agreement. Race shall also maintain umbrella excess liability insurance on a following form basis in excess of the above commercial general liability insurance with limits not less than \$5,000,000 per occurrence and aggregate.

ii. ***Worker's Comp.*** Race shall carry worker's compensation coverage as required by law, including employer's liability coverage, with a limit of not less than \$1,000,000.00. Such insurance shall include a waiver by Race's insurer of any right of subrogation in favor of RSFA.

iii. ***Automobile Liability.*** Race shall carry commercial automobile liability insurance insuring all owned, non-owned, and hired vehicles used in the conduct of Race's business with limits of liability of not less than \$1,000,000 per occurrence combined single limits for bodily injury and property damage.

b. **Race Insurance Requirements.** All policies of insurance Race is required to carry hereunder shall be issued by insurance companies with a general policy holder's rating of not less than "B+" and a financial rating of not less than Class "VIII", as rated in the most current available "Best's Key Rating Guide", and which are authorized to do business in the State of California. All such policies, except for the worker's compensation coverage, shall name and shall be for the mutual and joint benefit and protection of Race and RSFA and shall name RSFA (and any other parties identified by RSFA to Race with potential liability in connection with Race's activities in the Community), as an additional insured. Executed copies of the policies of insurance or certificates thereof shall be delivered to RSFA prior to Race commencing its obligations under this Agreement. Thereafter, executed copies of renewal policies or certificates thereof shall be delivered to RSFA prior to the expiration of the term of each policy. All

policies of insurance delivered to RSFA must contain a provision that the company writing the policy will give to RSFA at least 30 days' prior written notice of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All policies required of Race herein shall read that such policies are primary policies and any insurance carried by RSFA shall be excess and noncontributing with such policies.

**2. Contractor Insurance Obligations.**

a. **Minimum Coverage.** Race will cause any contractors, subcontractors, vendors, or other third parties entering into the Community to perform work on behalf of Race, to carry the following insurance at a minimum:

(i) **Liability.** Commercial general liability policy with a minimum combined single limit of \$1,000,000 each occurrence and \$2,000,000 in the aggregate, and with a broad form endorsement to include premises, operations, independent contractors, completed operations, and contractual liability;

(ii) **Worker's Comp.** Worker's compensation and employer's liability insurance with limits of at least \$1,000,000 for each accident; and

(iii) **Automobile Liability.** Automobile liability insurance covering all owned, non-owned, and hired vehicles with limits of liability of not less than \$1,000,000 each occurrence.

b. **Contractor Insurance Requirements.** The general liability policies shall be endorsed to name as additional insured parties for the period of time the work is in progress, RSFA, any Community Member whose property will be impacted by the construction, or such other parties as may be designated by RSFA. Such policies shall be primary and non-contributory to any insurance policies held by RSFA. Executed copies of the policies of insurance or certificates thereof shall be delivered to RSFA prior to Race commencing its obligations under this Agreement. All policies of insurance must contain a provision that the company writing the policy will give the additional insured parties at least 30 days' prior written notice of any cancellation or lapse or the effective date of any reduction in the amounts of insurance.