

## CERTIFICATION AGREEMENT

### IMPORTANT – THIS IS A CONTRACT

READ CAREFULLY THE TERMS AND CONDITIONS OF THIS CERTIFICATION AGREEMENT (“AGREEMENT”) BEFORE PROCEEDING.

BY CHOOSING “YES – I AGREE” BELOW, YOU AND/OR THE ENTITY IN WHICH YOU ARE AN AUTHORIZED AGENT OF AND EXECUTING ON BEHALF OF (REFERENCED HEREIN AS “YOU”) ARE ENTERING INTO A LEGALLY BINDING AGREEMENT EFFECTIVE AS OF THE EFFECTIVE DATE (DEFINED BELOW) WITH FTTH COUNCIL, A NON-PROFIT CORPORATION HAVING A BUSINESS ADDRESS OF 1623 MAPLE STREET, LAKE OSWEGO, OREGON 97034 (REFERENCED HEREIN AS “CERTIFIER”).

BY CHOOSING “YES - I AGREE” BELOW, YOU ALSO ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU SHOULD CHOOSE “NO – I DO NOT AGREE” WHICH WILL TERMINATE THIS ON-LINE SESSION AND RETURN YOU TO THE HOME PAGE.

#### 1. BACKGROUND AND PURPOSE.

- a. Certification. Certifier is the owner of all right title and interest in and to the mark shown in **SCHEDULE A** to this Agreement (hereinafter, the “Certification Mark”) which it licenses as a certification mark to others to identify services that Certifier has certified in accordance with its Standard for Certification (defined herein).
- b. License. If you wish to obtain the right to use the Certification Mark, you meet the Standard for Certification, then Certifier is willing to grant you such a right, subject to the terms and conditions of this Agreement.

#### 2. DEFINITIONS.

- a. **“Agreement”** shall have the definition set forth in the first paragraph of this document.
- b. **“Application”** means the on-line application that you submitted at Certifier’s website requesting the License granted herein.
- c. **“Certification”** means the process in which you submit information regarding your services to Certifier for evaluation, the administrative process by which Certifier confirms that the services meet the technical requirements for certification as specified in Certifier’s Standard for Certification, and Certifier’s providing written notice to you that it is willing to certify your services. For purposes of this Agreement, you are authorized to use the Certification Mark pursuant to the terms and conditions of this Agreement only after (i) Certifier has evaluated your services and provided written notice to you that

your services are entitled to certification, (ii) you have received a password from Certifier indicating that Certifier has determined in its sole discretion that your services meet Certifier's Standard for Certification, and (iii) you have executed this Agreement.

- d. **"Certification Mark"** shall have the meaning set forth in Section 1(a).
- e. **"Certified Service(s)"** shall mean providing commercially available services over installations of FTTH which have met the Standard for Certification.
- f. **"Certifier"** and **"You"/ "you"** shall have the meanings set forth in the first paragraph of the Agreement.
- g. **"Customized Certification Mark"** shall have the meaning set forth in Section 5(b).
- h. **"FTTH"** or "fiber-to-the home" shall mean a telecommunications architecture in which a communications path is provided over optical fiber cables extending from the telecommunications operator's switching equipment to (at least) the boundary of the home living space or business office space (the side of the building). This communications path is provided for the purpose of carrying telecommunications traffic to one or more subscribers and for delivering one or more services (for example internet access, telephony and/or video-television).
- i. **"FTTH Mark"** shall have the meaning set forth in Section 10.
- j. **"License"** shall have the meaning set forth in Section 3(a).
- k. **"Party"** shall mean and refer to Certifier or you each individually, and **"Parties"** shall collectively mean and refer to you and Certifier.
- l. **"Standard for Certification"** shall mean, unless otherwise modified or revised in accordance with the terms of this Agreement, installations of FTTH (i) within your network, and (ii) which are your FTTH installations.
- m. **"Term"** shall have the meaning set forth in Section 15(a).

### **3. CERTIFICATION MARK LICENSE.**

a. License Grant. Subject to the terms and conditions of this Agreement, Certifier grants you the right to use the Certification Mark and any Customized Certification Mark in connection with Certified Services (the "License").

b. Sub-license. You shall have the right to sub-license the use of the Certification Mark and any Customized Certification Mark to your affiliates and to third parties with which you have contracted to advertise, promote, market or provide the Certified Services, provided that such affiliate and/or third party agrees in writing to no less than the terms and conditions of this Agreement.

### **4. LICENSE REQUIREMENTS AND LIMITATIONS.**

a. Standard for Certification. You shall comply with Certifier's entire Standard for Certification. You are solely responsible for keeping yourself informed of the current Standard for

Certification by reviewing from time to time the version posted on Certifier's website and for making any changes necessary to your services to remain in compliance with Certifier's Standard for Certification, as may be made by Certifier in its sole and absolute discretion from time to time during the term of this Agreement. Certifier is under no obligation to inform you of changes to the Standard for Certification other than by posting the Standard for Certification on its website, but Certifier agrees to refrain from taking action without prior affirmative notice to you if the provision upon which Certifier's action is to be based is materially different from the Standard for Certification applicable to this Agreement on the Effective Date. If you do not agree to comply with the Standard for Certification, your sole remedy is to terminate this Agreement as provided herein.

b. Certification Requirements. You shall at all times comply with the entire Standard for Certification as established by Certifier, or as modified by Certifier from time to time during the term of this Agreement.

c. Modifications to Certified Services. You shall not offer, promote, market and/or sell materially different Certified Services using the Certification Mark or Customized Certification Mark without disclosing such materially different Certified Services in writing and re-submitting an Application for Certification to Certifier. For purposes of this Agreement, materially different Certified Services are services that involve more than an immaterial change in features, function and/or product offering as compared to the Certified Services.

d. Certain Geographic or Usage Limitations. In the event that Certifier determines that the use of the Certification Mark or Customized Certification Mark may in any particular manner or jurisdiction violate any applicable laws or regulations, be contrary to public policy or may subject Certifier and/or you to any third party claims, legal proceedings, or liabilities, you agree, upon receipt of notice and request from Certifier, to promptly cease from all use of the Certification Mark and any Customized Certification Mark as directed by Certifier.

e. Control. Certifier shall have absolute determination and control, in its sole discretion, over the design, redesign, modification, change, enhancement, improvement, authorized or unauthorized use, manner and degree of application, manner and extent of registration, maintenance, protection, enforcement, ownership, licensing, use and termination of the Certification Mark and any Customized Certification Mark, the Standard for Certification, and its process for certifying others' services.

## **5. SPECIFIC USE RESTRICTIONS.**

The License may be used solely in connection with Certified Services in accordance with the terms and conditions of this Agreement, including, without limitation the following:

- (a) Except as expressly otherwise provided in this Section 5(b), you shall not modify, enhance, or change the Certification Mark or FTTH Mark.
- (b) You shall not combine the Certification Mark or FTTH Mark with another mark, except that you may place your mark(s) in the left-hand portion of the Certification Mark in the spaces designed "FTTH brand logo here" and/or "Corporate provider name here" as shown in **SCHEDULE B** attached hereto ("Customized Certification Mark").

- (c) You shall not register or attempt to register the Certification Mark, the Customized Certification Mark, the FTTH Mark, or any derivatives or variations thereof in any jurisdiction;
- (d) You shall assist Certifier, to the extent reasonably necessary and at Certifier's expense, to protect or to obtain protection of Certifier's rights to the Certification Mark and FTTH Mark;
- (e) You shall not use the Certification Mark, Customized Certification Mark, or FTTH Mark, as a domain name, including, without limitation, as a sub-domain name, or as a trade or service name;
- (f) Your use of the Certification Mark or Customized Certification Mark in connection with any service constitutes your representation that the service is in full compliance with the relevant published Standard for Certification of Certifier;
- (g) You shall not use the Certification Mark or Customized Certification Mark: (a) in any manner that is likely to reduce, diminish, or damage the goodwill, value, or reputation associated with the Certification Mark; (b) in any manner as would violate the rights of any third parties; (c) in any manner as would result in any third party claim or in any governmental investigation, claim, or proceeding alleging unlawful or improper use of the Certification Mark or Customized Certification Mark; and (d) on or in connection with services other than Certified Services and promotional materials pertaining thereto.

**6. PERIODIC REVIEW OF YOUR SERVICES.**

You shall, upon the request of Certifier and at your cost, provide Certifier with specifications regarding your services offered in connection with the Certification Mark and/or Customized Certification Mark within ten (10) business days from receipt of its written request.

**7. NON-CONFORMING/NON-COMPLIANCE.**

If at any time the Certified Service fails in more than an immaterial degree to conform with the Standard for Certification that was the basis for the Certification, Certifier shall inform you in writing and upon Certifier's written request, you shall cease all use of the Certification Mark and/or Customized Certification Mark on or in connection with your services.

**8. THIRD PARTY INFRINGEMENT.**

You shall promptly notify Certifier if you become aware of any infringement of the Certification Mark and/or Customized Certification Mark by a third party. You shall neither have the right nor the obligation to prosecute any infringement claims against third parties.

**9. OWNERSHIP.**

You recognize the great value of the goodwill associated with the Certification Mark and any Customized Certification Mark and acknowledge that the Certification Mark, Customized Certification Mark (with exception of that portion which includes your mark(s) that were added as provided in this Agreement) and all rights therein and the goodwill pertaining thereto belong exclusively to Certifier. You shall not during the term of this Agreement, or thereafter, attack the

title or any right or interest of Certifier in and to the Certification Mark or Customized Certification Mark or attack the validity of this Agreement.

**10. LICENSE.**

You acknowledge and agree that the Certification Mark includes as a component a service mark of Certifier, specifically, the service mark, FTTH COUNCIL FIBER TO THE HOME and design (the "FTTH Mark") which is depicted in the lower right-hand corner of the Certification Mark in **Schedule A** attached hereto. Certifier grants you a limited non-exclusive, revocable, non-transferable, royalty-free license to use the FTTH Mark solely in connection with the Certification Mark and/or the Customized Certification Mark to promote FTTH through your offering of Certified Services under the Certification Mark and/or the Customized Certification Mark ("Licensed Services"). For purposes of maintaining Certifier's rights in the FTTH Mark and this license, you agree to provide Licensed Services which are of high quality and of a high standard. Your compliance with the terms and conditions of this Agreement with respect to your use of the Certification Mark in connection with Certified Services are sufficient to meet Certifier's quality control requirements as specified herein. You further acknowledge and agree that Certifier is the sole owner of the FTTH Mark and that all use of the FTTH MARK shall inure to its benefit.

**11. ADVERTISING.**

The Certification Mark and/or Customized Certification Mark may be used in advertising provided that the advertising does not represent or imply that any non-certified services have been certified. Certifier reserves the right to review and approve in advance your use of the Certification Mark and/or Customized Certification Mark. In addition, you agree to provide Certifier copies of representative uses of the Certification Mark and/or Customized Certification Mark upon Certifier's request.

**12. NO WARRANTIES BY LICENSOR.**

Certifier provides the License without warranty of any kind. TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING WITH RESPECT TO THE CERTIFICATION, THE LICENSE, AND THE CERTIFICATION MARK.

**13. LIMITATION OF LIABILITY.**

IN NO EVENT SHALL THE LICENSOR BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIM IS BASED AND EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

**14. LIMITATION OF LIABILITY - INDEMNIFICATION.**

You shall indemnify and hold Certifier and its respective representatives, employees, officers directors and agents harmless from against any and all claims, suits, losses, liabilities, damages, judgments, costs and expenses (including attorney fees) (i) incurred, caused by, arising from or relating to any breach of this Agreement by you, (ii) claimed, obtained or sustained by any third party, whether for personal injury, misrepresentation, or otherwise, arising out of or relating to the advertising, promotion, use, marketing, rendering and/or sale of Certified Services or Licensed

Services, or (iii) arising out of any personal injury, property damage, or other claims which are caused directly or indirectly, in whole or in part, by your negligence, illegal acts or omissions.

Certifier shall indemnify and hold you and your representatives, employees, officers, directors and agents harmless from against any and all claims, suits, losses, liabilities, damages, judgments, costs and expenses (including attorney fees) (i) incurred, caused by, arising from or relating to any breach of this Agreement by Certifier, (ii) incurred, caused by, arising from or relating solely to your use of the FTTH Mark, or (iii) arising out of any personal injury, property damages, or other claims which are caused directly or indirectly, in whole or in part, by Certifier's negligence, illegal acts or omissions.

**15. TERM AND TERMINATION.**

a. Term. This Agreement is effective as of the Effective Date and shall continue until terminated by a Party as provided herein ("Term").

b. Termination.

1. You may terminate this Agreement without cause for any or no reason by giving thirty (30) days or more prior written notice to Certifier. Termination shall be effective upon receipt of the notice.

2. Certifier may terminate this Agreement by giving thirty (30) days or more prior written notice to you in the event that (i) Certifier withdraws its Certification Mark from use and/or (ii) in the event that Certifier determines that the use of the Certification Mark or Customized Certification Mark may in any in any particular manner or jurisdiction violate any applicable laws or regulations, be contrary to public policy or may subject Certifier and/or you to any third party claims, legal proceedings, or liabilities. Termination shall be effective upon receipt of the notice.

3. In the event of a breach of this Agreement, the Party alleging breach shall provide written notice, to the Party alleged to have committed such breach, regarding the nature of the alleged breach. The Party alleged to have committed the breach shall have thirty (30) days from receipt of the written notice to cure the alleged breach. If the alleged breach is not cured by the expiration of the thirty (30) day period, the Party alleging breach may at its option terminate this Agreement by providing written notice of termination to the other Party, and such termination is effective upon the Party's receipt of the written notice of termination.

c. Cessation of use. Upon termination of this Agreement, you shall cease use of the Certification Mark and any Customized Certification Mark and shall cause each sublicensee to cease use of the same.

**16. NON-WAIVER.**

No waiver of any right or remedy on one occasion by either Party will be deemed a waiver of such right or remedy on any other occasion. There are no representations, promises, warranties, covenants or undertakings other than those contained in this Agreement, which represent the entire understanding of the Parties. The failure of either Party hereto to enforce, or the delay by either Party in enforcing any of its rights under this Agreement, shall not be deemed a continuing waiver or

a modification thereof, and either Party may, within the time provided by applicable law, commence appropriate legal proceedings to enforce any or all of such rights.

**17. ASSIGNMENT AND TRANSFER.**

You shall not assign this Agreement, in whole or in part, without the prior written consent of Certifier. In addition, you shall not transfer your certification of Certified Services to another person, without the prior written consent of Certifier.

**18. NO AGENCY.**

Nothing herein contained shall be construed to place the Parties in the relationship of partners or constitute a joint venture, and you shall have no power to obligate or bind Certifier in any manner whatsoever.

**19. NOTICE.**

Any notice or other communication required or permitted to be given hereunder, including, without limitation, any submissions, approvals, or consents, shall be given in writing and may be delivered in the following manner: hand delivery, via Registered Mail, or Certified Mail, Return Receipt Requested (properly addressed and stamped with the required postage, to the applicable Party at its address specified below), or delivered by recognized overnight courier/ expedited service (such as Federal Express, UPS or DHL), and shall be deemed effective upon receipt.

To Certifier: FTTH Council  
Attn: President  
1623 Maple Street  
Lake Oswego, OR 97034

To you: To you at the specified address contained in  
your Application.

Either Party may, from time to time, change the individual to receive notices or its address by giving the other Party notice of the change in accordance with this section.

**20. MODIFICATIONS**

Any modifications to this Agreement must be in writing and signed by both Parties.

**21. HEADINGS.**

The paragraph headings used in this Agreement are for convenience only and shall have no legal effect whatsoever.

**[YES – I AGREE]**

**[NO – I DO NOT AGREE]**

SCHEDULE A



SCHEDULE B

