



This **CONFIDENTIALITY, NON-CIRCUMVENTION AND NON-DISCLOSURE AGREEMENT** (“*Agreement*”) is made and entered into as of \_\_\_\_\_ (the “*Effective Date*”) by and between \_\_\_\_\_, an \_\_\_\_\_ (“*Recipient*”), located at \_\_\_\_\_ and GovNET Inc., an Arizona corporation (“*Disclosing Party*”), located at 7835 E. McClain Drive, Scottsdale, Arizona 85260. Recipient and Disclosing Party shall be referred to herein individually as a “*Party*” and collectively referred to herein as the “*Parties*.”

#### RECITALS

**WHEREAS**, Recipient is either engaged, or contemplated to be, by Disclosing Party to provide certain services for the benefit of Disclosing Party, with respect to Disclosing Party’s acquisition, sale, resale, leasing, financing, licensing, maintenance, replacement and operation of point-to-point microwave voice and data telecommunications systems and their constituent components, within and outside of the State of Arizona (the “*Work*”), which relationship contemplates Recipient to be provided certain Confidential Information (defined below) during the term in which Recipient provides services to Disclosing Party (the “*Term*”); and

**WHEREAS**, Disclosing Party desires to ensure that Recipient will not directly or indirectly cause or permit the circumvention of Disclosing Party’s efforts by Recipient and others, with regard to the Confidential Information or otherwise; and

**WHEREAS**, Recipient agrees to receive, and may have received, such Confidential Information subject to the terms and conditions of this Agreement.

#### AGREEMENT

**NOW, THEREFORE**, in consideration of the above-stated Recitals, which by this reference are incorporated into this Agreement, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Recipient, the Parties agree as follows:

**Section 1. Definitions.** In addition to the definitions provided throughout this Agreement, the following definitions will apply to describe certain terms used herein:

“**Confidential Information**” shall mean information, whether written or oral, received by Recipient and its Representatives (defined below), whether developed by or on behalf of Disclosing Party, its Representatives (whether or not developed in whole or in part by Recipient), or its customers, including, but not limited to data, reports, proposals, documentation, technical information, pricing information, specifications, designs, software, diagrams, and such documents relating to markets, customers, suppliers, inventions, products, procedures, research and development, business plans, financial information, organizational information, information concerning employees and consultants, financial statements, client lists, referral sources and such other documents as are otherwise clearly marked on the first page of the document as “Confidential,” “Proprietary,” or such similar indication of its confidential status. Confidential Information does not include information Recipient demonstrates by documentary evidence, has become available for unrestricted public use following execution of this Agreement without any breach of this or any similar agreement. In the event Confidential Information is the basis of, is incorporated into or is reflected in other documents, whether separately or jointly generated by the

Parties, such other documents shall be deemed Confidential Information subject to the terms of this Agreement.

“**Representatives**” shall mean the members, managers, directors, officers, agents, affiliates and employees of a party to this Agreement.

## **Section 2. Non-Disclosure Obligations.**

(a) For a period beginning with the Effective Date, and continuing for five (5) years from the end of the Term, Recipient (i) shall not cause, disclose or divulge or permit to be disclosed or divulged to any person, firm, corporation or entity, whether directly or indirectly, the Confidential Information (except as provided in Section 2(c)) and (ii) shall protect and maintain the Confidential Information with the highest degree of care used in the protection of confidential and proprietary information within the wireless telecommunications industry in the State of Arizona. Recipient further agrees not to use Confidential Information for any purpose, except for providing services to Disclosing Party. Recipient further agrees not to decompile, disassemble or reverse-engineer any hardware, software, firmware and other equipment. Nothing in this Agreement shall be construed as a requirement for Disclosing Party to disclose any Confidential Information to Recipient.

(b) Recipient will not cause, suffer or permit any of its Representatives to undertake any of the actions prohibited in Section 2 (a) or to disclose to any third party (except as provided in Section 2(c)): (i) the Confidential Information, (ii) the fact that Recipient has requested or received Confidential Information; or (iii) any of the terms, conditions and other facts with respect to the relationship between Disclosing Party and Recipient.

(c) Recipient shall limit access to the Confidential Information to those of its Representatives (i) who need to know such information solely for the purpose of providing services to Disclosing Party; (ii) who have been informed of the confidential nature of such information; and (iii) who agree to act in accordance with the terms of this Agreement. Recipient shall cause its Representatives to observe the terms of this Agreement and shall be responsible for any breach of this Agreement by any of its Representatives. Recipient shall take all reasonable measures, including, without limitation, court proceedings, to restrain its Representatives from unauthorized disclosure of the Confidential Information.

(d) The restrictions set forth in this Section 2 shall not apply with respect to Confidential Information which Recipient can clearly demonstrate (i) is already available to the public; (ii) becomes available to the public through no fault of Recipient and its Representatives; (iii) was known to Recipient on a nonconfidential basis prior to the Effective Date, as shown by written records in its possession at that time; or (iv) becomes available on a nonconfidential basis from a source that, to the best of the knowledge of Recipient, is not under an obligation to Disclosing Party.

**Section 3. Non-Circumvention Obligation.** Recipient will not (a) interfere with, circumvent, avoid, bypass or obviate; or permit any of its Representatives to interfere with, circumvent, avoid, bypass or obviate Disclosing Party’s (or any of its Representatives’) rights and agreements in respect of the Work; or (b) without Disclosing Party’s prior written consent (i) enter into discussions with any third party disclosed or introduced to Recipient by Disclosing Party (or any of its Representatives), or (ii) initiate and negotiate in respect to any transactional relationship with any such third party (or any of its Representatives) in connection with the Work; or (c) circumvent or attempt to circumvent the discussions and negotiations currently underway or hereafter entered into by Disclosing Party (or any of its Representatives) and any third party (or any of its Representatives) with respect to the Work.

**Section 4. Proprietary Interest.** Nothing in this Agreement shall be construed to grant to Recipient a license to any Confidential Information disclosed or to any patents, trademarks, copyrights or any other intellectual property derived from the Confidential Information.

**Section 5. Return or Destruction of Confidential Information.** If requested by Disclosing Party, Recipient will, (i) within three (3) days of such request promptly deliver to Disclosing Party all documents and other

materials comprising Confidential Information, whether in its possession or under control of its Representatives, together with all copies and summaries thereof; or (ii) in the event Disclosing Party provides its prior written consent, Recipient will destroy all documents and other materials constituting Confidential Information in its possession or under the control of its Representatives. Recipient agrees that, if requested by Disclosing Party, an authorized officer will certify to Disclosing Party in writing that all such information and materials have been delivered or destroyed in accordance with the terms of this Agreement. Notwithstanding the delivery or destruction of Confidential Information and related materials required by this Section 5, any and all duties and obligations existing under this Agreement will remain in full force and effect.

**Section 6. Remedies.** Recipient hereby recognizes that any breach, threatened breach or alleged breach of any of the terms and provisions of this Agreement can cause irreparable harm to Disclosing Party, for which Disclosing Party would have no adequate remedy at law. Therefore, in the event of a breach, threatened breach or alleged breach of this Agreement, in addition to any and all other rights and remedies Disclosing Party may have under this Agreement or otherwise, Disclosing Party may immediately seek any judicial action that Disclosing Party may deem necessary including, without limitation, obtaining of temporary and preliminary injunctive relief. Such a remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement, but shall be in addition to all other remedies available at law and equity. The prevailing party in any action brought for the enforcement and breach of this Agreement shall be entitled to an award of its costs of litigation, including court costs, expert witness fees and attorneys' fees actually incurred in this matter.

**Section 7. No Waiver.** The Parties agree that no failure or delay by a Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. Recipient further agrees that its obligations of confidentiality under this Agreement shall survive any termination of this Agreement unless specifically waived in writing by Disclosing Party and, in the event of any such termination, Receiving Party shall not, and shall not cause, suffer or permit any of its Representatives, directly or indirectly, to use, market, manufacture, or disclose to others or assist others in using, marketing or manufacturing any Confidential Information.

**Section 8. Choice of Law.** The Parties mutually acknowledge and agree that this Agreement shall be construed and enforced in accordance with the laws of the State of Arizona, excluding any choice of law provisions. The Parties agree to consent to the exclusive jurisdiction of the state and federal courts of Arizona to enforce any breach or resolve any dispute arising from this Agreement and each Party waives any defense of inconvenient or improper forum. The Parties acknowledge that this Section 8 is subject to the jurisdiction of the court of competent jurisdiction for injunctive relief specified in Section 6.

**Section 9. Entire Agreement.** This Agreement represents the entire agreement between the Parties concerning the subject matter hereof. No modification of this Agreement or waiver of the terms and conditions hereof will be binding upon a Party unless approved in a writing signed by the Parties.

**Section 10. Interpretation.** Each Party has reviewed this Agreement and has been given an opportunity to obtain the assistance of counsel. Any rule of construction holding that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against either Party. The captions of this Agreement are for convenience and reference only and shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement. Any determination of invalidity or unenforceability of any particular clause or provision of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement. Where applicable, the term "and" includes the conjunctive and the disjunctive, the singular includes the plural (and vice versa) and the masculine includes the feminine, or the neuter.

**Section 11. Assignment.** Neither Party shall have the right to assign or transfer this Agreement or any rights or obligations hereunder without prior written consent of other Party; provided, however, Disclosing Party may assign or transfer this Agreement or any rights or obligations hereunder to any of Disclosing Party's subsidiaries or affiliates on notice to Recipient. Any other assignment or transfer shall be null and void. Subject to the foregoing, this Agreement shall be binding upon each Party, its permitted transferees, successors and assigns.

**Section 12. Notice.** No notice or other communication shall be deemed given unless sent in any of the manners, as specified in this Section to such Party at that Party's address described at the beginning of this Agreement. All notices and other communications hereunder shall be in writing and shall be deemed given: (a) upon receipt if delivered personally (unless subject to clause (b) or if mailed by registered or certified mail, return-receipt requested; (b) at noon on the business day after dispatch if sent by a nationally recognized overnight courier for next-morning delivery; or (c) upon the completion of transmission (which is confirmed by telephone or by a statement generated by the transmitting machine) if transmitted by telecopy or other means of facsimile which provides immediate or near immediate transmission to compatible equipment in the possession of Recipient.

**Section 13. Severability.** The terms and provisions of this Agreement shall be deemed severable, and in the event any term or provision hereof or portion thereof is deemed or held to be invalid, illegal or unenforceable, such provision shall be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the Parties, and, in any event, the remaining terms and provisions of this Agreement shall nevertheless continue and be deemed to be in full force and effect and binding upon the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement, intending to be bound as of the Effective Date.

**RECIPIENT**

\_\_\_\_\_

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

Date: \_\_\_\_\_

**DISCLOSING PARTY**

GovNET INC., an Arizona corporation

By: \_\_\_\_\_  
Karen McCoy, Vice President

Date: \_\_\_\_\_