

**DARK FIBER LEASE AGREEMENT
BY AND BETWEEN THE
LESSOR
AND
NEVADA GOVERNOR’S OFFICE OF SCIENCE, INNOVATION AND
TECHNOLOGY (LESSEE)**

This lease agreement, (“Agreement”), is by and between ***insert Lessee’s name**, and the State of Nevada represented by the Nevada Governor’s Office of Science, Innovation and Technology (Lessee) **a** **(enter Company Name)** **corporation/partnership/individual**, with its principal place of business located at ***insert Lessee’s address** (“Lessee”), and the Lessor Name (“Lessor”). Lessor and Lessee may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. Lessor owns, designs, constructs, operates, and maintains a Dark Fiber Optic Infrastructure (FOI) substantially located in and around the jurisdictional boundaries of Lessor . The Dark FOI has been designed without electronics and unlit fiber with strand capacity Lessor available for leasing (“Leasable Fiber(s)”) and supports state-of-the-art communications services to meet the requirements of Lessor , municipal institutions, and various commercial entities. Title to the FOI, and every part thereof, is vested exclusively in the Lessor ; and
- B. This Dark Fiber Lease Agreement shall be considered an all-inclusive master lease agreement and if Lessee desires to modify fiber miles or other configurations, Lessee shall submit a Fiber Request Application (“Application”), attached and incorporated by reference as Exhibit 1. Upon Lessor approval, each Application shall follow the terms and conditions set forth in this Agreement; and
- C. “Dark Fiber Optic Infrastructure” (FOI) is defined as unlit fiber optic, cable, splices, associated structures including conduits and boxes constructed and installed by, or on behalf of Lessor.
- D. “Dark Fiber Access Point” is a physical structure (cabinet, room, handhole, meet me box) that are collectively called points of demarcation or PODs, owned or leased by the Lessor where the Lessor ’s FOI terminates. Access to the POD’s are controlled by the Lessor and access to PODs is governed by the Lessor .
- E. Under this Agreement, Lessee is duly authorized, or otherwise qualified, to operate as a telecommunications company as required by applicable local, state or federal laws and intends to use Leasable Fibers from the FOI for lawful purposes; and

Agreement with *****Nevada Governor’s Office of Science, Innovation and Technology/Dark Fiber Rates/Exhibit 4

- F. Unless otherwise stated the term “days” shall mean calendar days; and
- G. This Agreement only applies to the services described herein.

AGREEMENT PROVISIONS

The Parties agree as follows:

1. GRANT AND SCOPE OF LEASE

- 1.1 **Grant.** Subject to the provisions of this Agreement and Exhibits, which are incorporated by reference, Lessor grants Lessee and Lessee accepts from Lessor, the right and privilege (“Lease”) to use certain of the Leasable Fibers (“Leased Fiber(s”).
- 1.2 **Fiber Request Application.** If Lessee desires to modify fiber miles, or number of fiber strands, Lessee shall submit a written Application to Lessor for permission to do so.
- 1.3 **Access Points.** For the purpose of this Agreement, “Access Points” shall be defined as service location(s) Lessee utilizes for the splicing of Leased Fiber to other fiber within the FOI. Access Points can be any POD or other points of interconnect designated by the Lessor. An Access Point is defined as any point, within the requested span of the Lessor’s FOI, in which the Lessee connects to the FOI. An Access Point may be located at a handhole along the fiber route, outside a building at a meet-me-box for entrance into a building or inside a building at the Point of Presence (PoP), which is an access point, location, facility or another location as otherwise specified by Lessor, established to connect with an Internet Service Provider (ISP) or other communicating entity.
 - 1.3.1 Lessee shall be responsible for the splicing of its leased fibers at all Access Points at its own expense unless the Lessor must, in its sole discretion, must perform the splice. In this case, the Lessee shall reimburse the Lessor for the cost of the splice at a rate not to exceed the Lessee’s normal splice costs by more than 20%.

Grant of Access to FOI Access Points . From time to time, Lessee will require access to Lessor’s FOI Access Points Lessor to conduct service initiation (splicing and equipment placement) or facilitate scheduled and non-scheduled maintenance and repair work associated with the Leased Infrastructure and related FOI. The Lessee shall provide at least 5 business day notice to the Lessor representative of this requirement for access to the Lessor Access Point(s). Lessor either through, its officers, employees,

agents, representatives, contractors will escort the Lessee during this scheduled access period.

Notwithstanding the foregoing, The Lessee shall have no right to alter, maintain or repair Lessor 's FOI. In no event shall Lessee, its officers, employees, agents, representatives, contractors, or subcontractors have access to fibers in the Lessor 's FOI not leased by Lessee. Nor shall the Lessee have access to any other Lessor facilities, equipment, or materials at any time.

- 1.4 **Private Property Access.** Private Property Access refers to any physical path within private property that extends from the Lessor 's FOI at the public right-of-way onto the third party owned real property ("Property") and typically terminates at the PoP and Lessee's Demarcation Point. Lessee shall be responsible for securing the Private Property Access and all necessary authorizations from the public right-of-way into the building, unless permission already exists.
- 1.5 **No Exclusivity.** Nothing in this Agreement is to limit Lessor 's right of use of, or right to lease Leasable Fiber not leased in this Agreement to others.
- 1.6 **Limitations.** This is a Lease for the Lessee use of the Leased Infrastructure only, subject to the terms and conditions herein.
 - 1.6.1 Lessor is not transferring or granting to Lessee any other interest or estate in the Leased Fibers, the FOI, or any other property interest, including any fee, easement, or any franchise rights, and nothing in this Agreement shall be construed as granting or creating any such rights.
 - 1.6.2 Lessee has no rights to sublease the Leased Fibers to a third party.
- 1.7 **No Agency.** Neither Party is the other Party's agent and neither party shall have any authority, express or implied, to act as agent of the other Party for any purpose.

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate **thirty (30) years** thereafter ("Lease Term"), or on the date resulting from an earlier termination as forth in Article 15.

- 2.1 **Extension Option Term.** The Lessor may, upon written application by Lessee, agree to an extension of the Lease Term in its sole discretion. Lessee must provide the Lessor at least 60 days notice, before the end of the term of Lessee's intent to seek an extension. If an extension is granted, the length of the extension shall be between one (1) and five (5) years. Lease payments and other fees for the extension shall remain the same as the initial term.

3. LEASE PAYMENT AND OTHER FEES

3.1 **One Time Lease Fee.** Lease Payments shall not exceed the construction costs reimbursed by the State for this route. The total number of strand miles leased by the Lessee is (36) strands for (Y) miles or (product of X*Y) strand miles._____. The leased fiber shall be remitted to the Lessee conclusion of testing of the fiber and acceptance of the test results by the Lessee. Fiber testing procedures appear as exhibit A in this agreement.

3.2 **Monthly Fiber Maintenance Payments.** Thirty (30) years of fiber maintenance fees are included in the initial IRU fee paid by the Lessee. After this period, the lessee, should it exercise the option to extend the dark fiber lease, shall pay the lessor the sum of \$250 per linear mile per year for routine maintenance and operations services. This price shall be fixed for entire period of the renewal.

Fiber maintenance procedures are outlined in section 6 of this agreement.

3.3 **Monthly Fiber Maintenance Payments:** Monthly Fiber Maintenance Payments shall be paid on an annual basis and are to accrue from the Date of the extension beyond the 30 year initial term, as defined in paragraph 4.7, in the month the Leased Fiber is delivered and the number of days following the Date of Delivery that the Leased Fiber is available to Lessee.

3.3.1 **Due Date of Quarterly Lease Payments.** Monthly Fiber Maintenance payments shall be due in advance by the 15th (or first non-Saturday, Sunday or National Holiday after the 15th) of the prior Month.

3.3.2 Lessor shall send an invoice dated no later than thirty (30) days prior to the monthly due date to Lessee as a reminder of the total amount of the quarterly monthly Fiber Maintenance Payment due before the dates set forth in 3.3.1. If Lessee does not receive such invoice, Lessee is still bound to pay the monthly by the dates set forth in 3.3.1, which amount is set forth in approved Application(s).

3.4 **Third-Party Charges.** Lessee shall reimburse Lessor for charges assessed or imposed on Lessor by third-parties related to this Agreement. Lessor shall advise Lessee, in advance, of potential or anticipated costs imposed by third-parties for accommodating Lessee's Infrastructure and which are directly attributable to Lessee, to the extent Lessor is aware of those charges in advance and can obtain an estimate from that third party. If Lessee does not agree to the charge imposed by the third-party, then Lessee shall be responsible for negotiating with that third-party and shall hold Lessor harmless from any claim of delay in completing the subject work due to Lessee's negotiations of the third-party charges. If Lessee chooses not to pay the third-party charges, then Lessor shall not perform the work requested by Lessee.

- 3.5 **Late Fee Payment.** If payment is not paid as required herein, a Late Fee Payment on unpaid, undisputed amounts of the payment shall accrue, until paid, at one and a half percent (1.5%) per month. If Lessee fails to pay any invoice, then provisions of paragraph 8.1 shall apply. Lessor may, in its discretion, suspend Lessee's access to the FOI until all outstanding invoices have been paid in full.
- 3.6 **Taxes and Franchise Fees.** None of the Lease Payments charged to Lessee pursuant to this Agreement includes any tax or franchise fee charged by any governmental entity. Lessee shall be solely responsible for paying any and all taxes, franchise fee or assessments by any governmental entity related to the Leased Infrastructure, if any, when due.
- 3.6.1 Lessor represents that currently, there is no tax imposed by Lessor that would be levied on Lessee associated with this Agreement.
- 3.6.2 Notice is hereby given that the property interest vested in Lessee may create a possessory interest which entities (other than Lessor) may deem subject to property taxation and Lessee may be subject to payment of property taxes therefor.
- 3.6.3 Lessee shall be solely responsible for opposing, protesting, appealing or challenging any tax or franchise fee imposed or asserted by any entity.

4. **LESSEE'S INTERFACE WITH LESSOR'S INFRASTRUCTURE**

- 5.1 **Lessee's Infrastructure.** Lessee shall assume ownership, installation, and maintenance responsibility for any Lessee installed infrastructure required to interconnect with the Lessor's FOI. This ownership will begin at least one foot from Lessor-owned splice cases, pull boxes, or other Lessor-owned structures.
- 5.2 **Lessee Covenants.** Except as expressly authorized by applicable laws or this Agreement, in the exercise and performance of its rights and obligations under this Agreement, Lessee agrees to the following:
- 5.2.1 Lessee shall comply with applicable federal, state and local laws in the exercise and performance of its rights and obligations under this Agreement. Lessee shall comply with any Lessor permit issued to Lessee in connection with the location of Lessee's Infrastructure within the public right-of-way. Lessee shall obtain, as required, any and all necessary approvals for the design, construction, installation, operation and testing of Lessee's Infrastructure to be located within Lessor.
- 5.2.2 Lessee shall not interfere in any manner with the existence and operation of any and all public rights-of-way, easements, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the express

written approval of the owner or owners of the affected property or properties. Lessee shall not do or permit anything to be done by anyone under its direct control or doing work on its behalf, other than Lessor, its employees, contractors, and agents, within public rights-of-way or easements or permit anyone under its direct control or doing work on its behalf, other than Lessor, its employees, contractors, and agents, to do anything that which may in any way obstruct or interfere with the rights of any person located within the public rights-of-way or Lessors easements, or injure them, or use or allow the public rights-of-way or easements to be used by under its direct control or doing work on its behalf for any improper or unlawful purpose. Notwithstanding the foregoing, this shall not be construed to prohibit Lessee from installing Infrastructure within Lessor designated PODs or access points or otherwise exercising its rights and carrying out its obligations under this Agreement, provided however that this sentence is not intended nor shall it be construed to increase Lessee's rights under this Agreement.

Would add that the Lessee is obligated to do three things associated with any installation activity:

- Dial State of Nevada (State 811) service a minimum of (2) two full working business days before any lessee excavation or digging work associated with lessee's installation of facilities
- Verify that locates associated with the (Nevada 811) service have been completed before digging/excavation occurs
- Return all construction areas, whether owned by the Lessor, another public entity or a private entity to pre-construction condition or better after installation of lessee's facilities is complete.

5.2.3 Lessee shall keep all parts of the Leased Infrastructure that belong to Lessor free of any liens that may be created or which may attach as the result of the acts or omissions of Lessee, its employees, contractors or agents. If any such lien is filed, Lessee shall indemnify and hold harmless Lessor from any and all costs to remove such lien, including but not limited to, reasonable attorneys' fees.

5.2.4 Lessee shall be permitted to pledge this Agreement as an asset for purposes of obtaining financing; however, if any entity to which this Agreement has been pledged actually perfects its interest therein, that entity must comply with the provisions of Article 12 ("Assignment"). Lessee may not, under any circumstances, pledge the actual dark fiber or Leased Infrastructure as an asset to anyone for any purpose. The Leased Infrastructure is public property owned by Lessor and shall not be pledged to any party.

5.2.5 Lessee shall not do or permit anything to be done by anyone under its direct control or doing work on its behalf, other than Lessor, its employees, contractors, and agents, in, on or about the Leased Infrastructure or Lessee's Infrastructure located within Lessor, which

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is prohibited by, or will in any way conflict with, any laws now in force by Lessor or which may hereafter be enacted or promulgated by an entity other than Lessor. However, if Lessor is aware of any laws, rules, ordinances, resolutions, or other regulations which are enacted or promulgated by a governmental entity (other than Lessor) after the Effective Date of this Agreement that materially (a) changes the economics of this Agreement, or (b) interferes with Lessee's rights provided hereunder, Lessor may provide Lessee sixty (60) days' notice of the required change(s) and if the Lessee does not agree to comply, Lessee shall have the right to terminate this Agreement without penalty.

- 5.2.6 Lessee shall not, in connection with this Agreement, commit, cause, maintain or permit nor suffer, or allow to be committed, caused, maintained or permitted by anyone under its direct control or doing work on its behalf, other than Lessor, its employees, contractors, and agents, any waste, abuse or destructive use within the public rights-of-way or easements, nor any public or private nuisance, nor any other act or thing which may disturb the quiet enjoyment of any other person lawfully using the public rights-of-way or easements.
- 5.2.7 Lessee shall not use or store Hazardous Materials of any kind on or near Lessor Property which could contaminate the Property, without prior written permission from Lessor. In the event that any Hazardous Material is spilled or leaked or otherwise released on the Property or any area in the vicinity of the Property as a result of Lessee's exercise of this Lease, Lessee shall promptly take all steps necessary to remove any contamination resulting from such activities. Lessee accepts full responsibility for all activities and costs incurred related to cleaning up the Property from the effects of such spill or leak. Lessee shall be responsible for meeting, and possess the means to satisfy, the requirements of all federal, state and local controlling agencies, such as the (State) Division of Environmental Protection, which may have jurisdiction over the region in which the Property is located or over the substance being used by Lessee on the Property.
- 5.2.8 **Hazardous Materials Defined.** The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42

U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) Chapter 459 of the Nevada Revised Statutes (Hazardous Materials) and (k) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (l) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (m) any petroleum products or fractions thereof, (n) asbestos, (o) polychlorinated biphenyls, (p) flammable explosives, (q) urea formaldehyde, and (r) radioactive materials and waste.

- 5.2.9 **Hazardous Materials Indemnity.** Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor), protect and hold Lessor harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Property, damages arising from any adverse impact or marketing of the Property and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Property by Lessee, Lessee's agents, employees, licensees or invitees or at Lessee's direction of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Licensee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Property, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term. For purposes of the indemnity provided herein, any acts or omissions of Lessee, or its employees, agents, customers, sublessees,

assignees, contractors or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee.

5.3 **Lessor Covenants.**

5.3.1 Lessor shall comply with applicable federal, state and local laws in the exercise and performance of its rights and obligations under this Agreement. Lessor shall comply with any Lessor permit issued in connection with the FOI within the public rights-of-way or easements. Lessor shall obtain, as required, any and all necessary approvals for the design, construction, installation, operation and testing of Lessor 's Infrastructure to be located within Lessor .

5.3.2 Lessor shall not do or permit anything to be done by anyone under its direct control or doing work on its behalf in, on or about the Leased Infrastructure or Lessee's Infrastructure located within Lessor , which is prohibited by or will in any way conflict with any laws now in force or which may hereafter be enacted or promulgated. However, if any laws, rules, ordinances, resolutions or other regulations which are enacted or promulgated by a governmental entity or made necessary by a weather emergency after the Effective Date of this Agreement that materially (a) changes the economics of this Agreement, or (b) interferes with Lessee's or Lessor's rights provided hereunder, Lessor shall provide Lessee sixty (60) days' notice of the required change and if the Lessee does not agree to comply, Lessor shall have the right to terminate this Agreement without penalty.

5.4 **No Access by Lessee.** Other than as authorized in this Agreement, Lessee is prohibited from accessing, directly or indirectly, the FOI, or any part thereof, the Lessor's utility facility on Lessor 's side of the Demarcation Points. Unauthorized access by Lessee to, or use of, the FOI, the transmission pathway, or any Lessor other utility facility (other than communications) shall constitute a material breach of this Agreement.

6. **MONITORING, OPERATION AND MAINTENANCE, ROUTE MODIFICATIONS, AND EMERGENCY REPAIRS.**

6.1 **General.** Lessor shall maintain the FOI in good operating condition and in accordance with the specifications set forth on Exhibit 3 throughout the term of this Agreement.

6.2 **Representatives.**

6.2.1 Lessee shall provide to Lessor , and update as changes occur, the current name, title, telephone number, and personal communications device number (including facsimile transmission number, cellular telephone

number, and) of a representative of Lessee, as set forth in paragraph 15.2 (“Lessee’s Representative”). Lessee’s Representative shall be kept informed of Lessor’s maintenance schedules and emergencies. If Lessee fails to keep Lessor informed of its current Lessee’s Representative, then Lessor shall not be held liable for any failure to meet any notification or response provisions, resulting directly therefrom.

6.2.2 Lessor shall provide to Lessee’s Representative the telephone number of a Lessor Representative that can be contacted on a 24/7 basis, including Lessor’s observed holidays, as set forth in paragraph 15.2 (“Lessor’s Representative”). Lessee may contact Lessor’s Representative to report any perceived damage to or failure, interruption or impairment of the Leased Infrastructure.

6.3 **Monitoring.**

6.3.1 Lessor shall monitor at least one fiber in the backbone FOI for cable continuity on a 24/7 basis. Lessor shall not monitor the Lessee’s leased fibers.

6.3.2 Lessor, at its sole cost and expense, shall undertake timely maintenance and repairs to cure deficiencies in the FOI. Lessee is responsible for all maintenance and repairs on Lessee’s side of the Demarcation Points. Where routine monitoring reveals a potential maintenance issue, each Party shall, with regard to their respective infrastructure, take reasonable and timely steps to address the issue prior to it affecting the operation or functionality of their respective infrastructures.

6.3.3 Lessee may conduct independent diagnostic testing, fault isolation, repair verification, and end-to-end network testing, as it deems appropriate, on Lessee’s side of the Demarcation Points. Lessee may notify Lessor’s Representative in writing if it is determined as a result of its independent testing and surveillance programs, review of Lessor - provided reports, or otherwise, that any part of the Leased Infrastructure does not conform to the Performance Standards set forth in Exhibit 3. The Parties shall confer to expedite trouble resolution and resolve possible differences in interpretation of trouble reports.

6.4 **Operations and Maintenance.** Lessor, at its sole cost and expense, shall schedule and perform routine operations, maintenance and repairs. Lessor shall provide written notification identifying the time, location, and nature of each routine maintenance and repair job potentially affecting the Leased Infrastructure and/or Lessee’s Infrastructure, and notify Lessee’s Representative, at the earliest possible time but not less than ninety-six (96) hours prior to the scheduled time.

6.5 **Route Modifications.** Lessor , at its sole cost and expense, may modify the FOI as conditions and circumstances may warrant. Lessor shall provide written notification to Lessee’s Representative identifying the time, location, and nature of each route modification at least ninety-six (96) hours prior to the schedule time, unless route modification is considered an Emergency, as defined in 6.6. These modifications may cause portions of the FOI to be relocated, permanently or temporarily, to one or more alternate locations within the public right-of-way or easement, and leased service properties. Lessee shall cooperate with Lessor to effect any such modifications, in each case at Lessor’s sole cost and expense.

6.6 **Emergency Repairs.** For the purpose of this Agreement, “Emergency” shall be defined as an abrupt failure of fiber optic cable functionality.

6.6.1 **Scope of Work.** The “Work” consists of Lessor or its contractor providing emergency maintenance response and restoration services, including appropriate supervision, technical expertise, labor, equipment, and materials to assess and restore functionality to Lessor’s fiber optic network and facilities whenever necessary. Lessor Emergency Services will be available on a 24/7 basis, including Lessor’s observed holidays. Emergency maintenance provided in this Article does not apply to fiber optic facilities not owned by Lessor. Lessor shall provide all equipment, manpower, supervision, certified fiber optic splicers, consumable materials, equipment, tools, construction equipment and machinery, utilities, transportation, any and all applicable taxes, and other facilities and work as necessary for the proper execution and completion of temporary and permanent emergency restoration for operation of the fiber optic communications network, as outlined in the following paragraphs, to the satisfaction of Lessee for the Work performed under this Agreement.

6.6.1.1 Execution of the Work shall include, at a minimum, the ability to respond as required herein upon report of damage to Lessor’s FOI, including the Lessee’s leased fibers and to perform:

6.6.1.1.1 Underground Trenching and placement/repair of conduit and infrastructure per Lessor’s Standards.

6.6.1.1.2 Placement of underground fiber optic cable and facilities in conduit system.

6.6.1.1.3 Placement of aerial fiber optic cable as necessary to execute the repair per Lessor’s standards.

6.6.1.1.4 Splicing, termination and testing of underground and or aerial fiber optic cable to Lessor 's Fiber Optics Standards.

6.6.1.2 **Point of Contact.** During Emergency Service, required communications regarding restoration shall be exchanged between Lessee and Lessor 's Representatives, as set forth in paragraph 15.2.

6.6.1.3 **Response Time.** Upon receipt of notification from Lessee's Representative to Lessor 's Representative, as set forth in paragraph 15.2, of service degradation or service interruption attributable to the Lessor 's FOI, Lessor shall exercise reasonable efforts to restore fiber optic network functionality following such notification. If Lessor cannot provide permanent restoration within four (4) hours, Lessor will exercise reasonable efforts to provide temporary restoration.

7. ACCESS TO LESSEE'S INFRASTRUCTURE

7.1 **Grant of Access.** From time to time access to Lessee's Infrastructure located within Lessor provided POD may facilitate scheduled and non-scheduled maintenance and repair work associated with the Leased Infrastructure and related FOI. Lessee shall cooperate with Lessor , its officers, employees, agents, representatives, contractors to allow ingress and egress for repairs to Leased Infrastructure and the FOI, at Lessor 's sole cost and expense. Notwithstanding the foregoing, Lessor shall have no right to alter, maintain or repair Lessee's Infrastructure. In no event shall Lessor , its officers, employees, agents, representatives, contractors, or subcontractors have access to Lessee's Infrastructure unless a representative of Lessee is present.

7.2 **Written Notice.** So long as an emergency situation does not exist, Lessor shall provide a written notice to Lessee's Representative at least forty-eight (48) hours in advance of any required ingress to Lessee's Infrastructure located within Lessor . If an emergency situation exists, Lessor shall provide a verbal request to Lessee's Representative.

8. DEFAULT PROCEDURES

If Lessee defaults in any of the following particulars:

- a. Fails to pay the fees prescribed in this Agreement with reasonable promptness as the same shall become due following no less than ten (10) days written notice from Lessor of such delinquency; or
- b. Breaches any other term or condition of this Agreement; then Lessor shall give Lessee written notice, either by mail or personal service, setting forth the nature

of the default and a demand that said default be cured and remedied. If Lessee fails, neglects or refuses within thirty (30) days after the giving of said notice to cure or remedy the default, or commence and diligently continue such cure, then Lessor, upon notice and without suit or other proceedings, may terminate this Agreement and cancel and annul the rights and privileges granted herein.

9. TERMINATION OF AGREEMENT

- a. **Termination by Lessee.** Lessee may terminate this Agreement without cause by giving Lessor written notice (“Notice of Termination”) which clearly expresses that Lessee’s intent to terminate the Agreement and Lessee shall be subject to the Termination Fee of which shall be fifty percent (50%) of the remaining Monthly Fiber Maintenance Payments due under the terms of the approved Application(s). The Monthly Fiber Maintenance Fee is based on the current fiber lease rate (at the time of Termination) without inclusion of the CPI Midwest adjustments. Notice of Termination shall become effective no less than ninety (90) days after Lessor receives such notice.
 - i. Lessee may terminate this Agreement for cause if Lessor fails to deliver the Leased Infrastructure on or before the date mutually agreed upon by the Parties and as set forth in approved Application(s), unless such failure is due to reasons beyond the control of Lessor or Force Majeure and shall not be subject to the Termination Payment. Such termination shall be without liability to either Lessor or Lessee unless, and to the extent that, the failure to meet the deadline is caused by Lessee.
- b. **Termination by either Party.** Either Party may terminate this Agreement if the FOI is substantially destroyed by Force Majeure such that it cannot be repaired at a reasonable cost and within ninety (90) days from the date of destruction. Either Party shall provide the other Party a Notice of Termination and termination shall become effective no less than thirty (30) days after a Party receives such notice. After either Party terminates the Agreement, Lessee shall not owe Lessor any Lease Payment or shall be entitled to an appropriate credit if pre-payments occurred. Lessee shall not be subject to the Termination Fee.
- c. For the purpose of this Agreement, “Force Majeure” shall be defined as any cause beyond the control of the Party affected, and which by exercise of reasonable due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Force Majeure includes Acts of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightning, epidemic, public emergency, war, riot, civil disobedience, labor strike, labor dispute, labor or materials shortage (however labor or materials shortage does not include the mere inability to obtain that labor or material at a particular price), sabotage, restraint by court order, restraint by public authority, or action or non-action by governmental authority or accident. No Party shall, however, be relieved of liability for


failure of performance if such failure is due to causes arising out of its own negligence or due to the removal of remediable causes which it fails to take reasonable efforts to remove or remedy within a reasonable time, or due to mere fluctuations in market prices. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

10. HOLD HARMLESS/INDEMNIFICATION

- a. To the extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify Lessor, its Lessor officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Lessor shall become liable arising from Lessee's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Lessee pursuant to this Agreement.
- b. Lessor shall not be liable to Lessee for damage caused to the FOI by independent third parties not under contract with Lessor that are engaged in construction or other business operations which damage the FOI. Lessor shall respond and repair any damage to the FOI caused by such third party as if it were an Emergency Repair under Article 6.5.
- c. Lessor shall not be liable to Lessee for any fines, penalties, claims or damages stemming from the interruption of, or interference with Lessee's Infrastructure. Lessor shall not be liable for incidental, punitive, exemplary, special, indirect or consequential damages, or lost profits, arising under or relating to this Agreement. Lessee shall be responsible for compliance with Nevada's presentment statute for any claims arising under this Agreement. Lessor shall not be liable for discretionary or governmental acts. Nothing in the preceding sentence shall be construed to limit the Lessor sovereign immunity or Lessee's indemnity obligations under this Agreement.
- d. Notwithstanding any other provision contained herein and without limiting any other restriction on damages contained in this Agreement, in the event of a breach of this Agreement by the Lessor, Lessee's total damages shall not exceed the amount of all Lease Payments tendered by Lessee to the Lessor during the Term and any extension hereof.

11. REPRESENTATION AND WARRANTIES

Lessor expressly warrants that it shall exercise reasonable efforts to maintain the FOI in good operating condition for normal use as contemplated by the manufacturers and

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in accordance with the specifications set forth in Exhibit 3. Lessor otherwise expressly disclaims any express or implied warranty beyond the manufacturer's warranty as to the fitness of any materials, equipment or any other part or all of the FOI or the Leased Infrastructure, constructed or to be constructed.

12. ASSIGNMENTS

Lessor and Lessee bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of Lessor which shall not be unreasonably withheld .

13. WAIVER

The Parties agree that waiver by the other Party of any one or more of the conditions of performance under this Agreement shall not be construed as a waiver(s) of any other condition of performance under this Agreement.

14. DISPUTE RESOLUTION

- a. Unless otherwise mutually agreed to by the Parties, any controversies between Lessee and Lessor regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- b. The Parties may agree on one mediator. If they cannot agree on one mediator, the parties shall consult the Association of Nevada Mediators for a neutral party referral. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- c. The costs of mediation shall be borne by the Parties equally.
- d. For any contract dispute, mediation under this Article is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in Nevada. In the event a dispute arising under this Agreement is litigated, in the event the Lessor is the prevailing party, it shall be awarded reasonable attorney fees and costs.

15. NOTICE

- a. All notices to the Parties shall, unless otherwise required in writing, shall be sent to Lessor addressed as follows:

Name and Address

And to Lessee addressed as follows:

Company Name
Address
Lessor /State/Zip
Telephone No.:
Facsimile No:

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

b. Routine Operations and Emergencies (Lessor and Lessee's Representative).

All notices to the Parties regarding routine operations and emergencies shall be sent to Lessor addressed as follows:

Secondary contact or for emergencies (24/7/365) and after normal business hours:

And to Lessee addressed as follows:

Company Name
Address
Lessor /State/Zip
Telephone No.:
Facsimile No:

Secondary contact or for emergencies (24/7/365) and after normal business hours:

Company Name
Address
Lessor /State/Zip
Telephone No.:
Facsimile No:

16. INTEGRATED DOCUMENT

This Agreement represents the entire agreement between Lessor and Lessee. No other understanding, agreements, conversations, or otherwise, with any representative of Lessor prior to execution of this Agreement shall affect or modify the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon Lessor .

17. AMENDMENT

This Agreement may be amended only with the written consent of both Parties.

18. CAPTIONS

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

19. LAW GOVERNING CONTRACT AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of Nevada. The venue of any suit filed by either Party shall be vested exclusively in the State of Nevada.

20. SEVERABILITY

In case any one or more of the provisions of this Agreement shall, for any reason, be invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

22. SUBLEASES

Lessee may sublease any property leased hereunder subject to prior written approval of the Lessor ; provided, in the event of a sublease pursuant to this Article 22, the sublessee shall be subject to all terms and conditions of this Lease Agreement; further provided, the Lessee and sublessee shall be jointly and severally liability for all obligations under this Lease Agreement.

(signature blocks)

EXHIBIT A – Fiber Technical Specifications

Cabled Fiber

The fiber optic cable shall generally be single-armored unless otherwise designated.

Optical Cable with Single Mode Fiber

- ◆ Attenuation at 1310 nm = 0.40 dB/km max
- ◆ Attenuation at 1550 nm = 0.30 dB/km max
- ◆ Zero Dispersion wavelength = 1300 to 1322nm
- ◆ Dispersion slope = <.092 ps/nm²*km typical

Acceptance Testing Procedures and Standards

Fiber Splice and connectivity testing:

Upon completion of end-to-end connectivity on the fibers, bi-directional span testing will be performed. Loss measurements will be recorded using an industry-accepted laser source and a power meter. OTDR traces will be taken and splice loss measurements will be recorded and summarized on data sheets. Copies of all data sheets will be made available in an electronic form agreed upon by both parties. .


- The power loss measurements shall be made at 1310 nm and 1550 nm, and performed bi-directionally.
- OTDR traces shall be taken in both directions at 1310 nm and 1550 nm.
- The end-to-end loss value as measured with an industry-accepted laser source and power meter should have an attenuation rating of less than or equal to the following:

Optical Cable with Single Mode Fiber

- (1) At 1310nm: (0.40 dB/km x km of cable) + (number of connectors x 0.5 dB) + (0.10 dB x number of splices).
- (2) At 1550nm: (0.30 dB/km x km of cable) + (number of connectors x 0.5 dB) + (0.10 dB x number of splices).

- OTDR testing only will be performed for bare fiber (unterminated fiber).
- Power meter testing only will be provided for spans that do not include any field splices.
- Spans of high distances will be tested at 1550 nm only; the cutoff distance where only 1550 nm tests will be performed is approximately 50-60 km (the actual cutoff distance will be dependent upon the actual loss characteristics of the span, which itself is based upon the attenuation of the fiber and the number of splice points).
- In the event live traffic is placed on fibers prior to delivery, fibers shall be deemed acceptable without final testing and will require no testing or documentation for splices.
- Events close in proximity to a launch (connectors or splices in a building) are not required in documentation.

Regarding fiber terminated at a Segment End Point Facility which is subsequently delivered to a Customer-owned optical termination panel in a colocation space:

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- Fiber testing shall be conducted at the Segment End Point.
- End-to-end connectivity testing shall include loss from fiber attenuation, splices and connectors at the FDP. The data will not include the fiber/cable and connectors from the optical termination panel to the end user colocation space.

