

REQUEST FOR PROPOSALS
FOR
FURNISHING AND DELIVERY
OF
DARK FIBER
FOR
THE CURATORS OF THE UNIVERSITY OF MISSOURI
ON BEHALF OF
THE MISSOURI RESEARCH AND EDUCATION NETWORK (MORENET)
RFP # 23051
DUE DATE: NOVEMBER 9, 2022
TIME: 2:00 PM CDT

THE CURATORS OF THE UNIVERSITY OF MISSOURI
Prepared by: Heather Reed
Senior Business Services Consultant
University of Missouri Procurement
2910 LeMone Industrial Blvd
Columbia, MO 65201

Date Issued: October 4, 2022

RFP #23051

DARK FIBER

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NOTICE TO RESPONDENTS

The University of Missouri requests proposals for the Furnishing and Delivery of Dark Fiber, **RFP #23051** which will be received by the undersigned at University of Missouri Procurement, until **November 9, 2022 at 2:00 p.m. CDT. The University assumes no responsibility for any supplier's on-time receipt at the designated location for proposal opening.**

In the event a Respondent chooses to use the Word version of the RFP to aid in preparation of its response, the Respondent should only complete the response information. Any modification by the Respondent of the specifications provided will be ignored, and the original wording of the RFP shall be the prevailing document.

If you have any questions regarding the RFP, please send them to:

*Heather Reed
University of Missouri Procurement
2910 LeMone Industrial Blvd
Columbia, Missouri 65201
reedhr@umsystem.edu*

All questions regarding the RFP must be received no later than Wednesday, November 2, 2022.

The University reserves the right to waive any informality in Request for Proposals and to reject any or all Request for Proposals.

THE CURATORS OF THE UNIVERSITY OF MISSOURI
Prepared by: Heather Reed
Senior Business Services Consultant
University of Missouri Procurement
2910 LeMone Industrial Blvd
Columbia, MO 65201

**UNIVERSITY OF MISSOURI
REQUEST FOR PROPOSAL (RFP)
GENERAL TERMS AND CONDITIONS
&
INSTRUCTIONS TO RESPONDENTS**

A. General Terms and Conditions

1. **Purpose:** The purpose of these specifications is to require the furnishing of the highest quality equipment, supplies, material and/or service in accordance with the specifications. These documents, and any subsequent addenda, constitute the complete set of specification requirements and proposal response forms.
2. **Governing Laws and Regulations:** Any contract issued as a result of this RFP shall be construed according to the laws of the State of Missouri. Additionally, the supplier shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
3. **Taxes:** The supplier shall assume and pay all taxes and contributions including, but not limited to, State, Federal and Municipal which are payable by virtue of the furnishing and delivery of item(s) specified herein. Materials and services furnished the University are not subject to either Federal Excise Taxes or Missouri Sales Tax.
4. **Sovereign Immunity:** The Curators of the University of Missouri, due to its status as a state entity and its entitlement to sovereign immunity, is unable to accept contract provisions, which require The Curators to indemnify another party (537.600, RSMo). Any indemnity language in proposed terms and conditions will be modified to conform to language that The Curators are able to accept.
5. **Preference for Missouri Firms:** In accordance with University policy, preference shall be given to Missouri products, materials, services, and firms when the goods or services to be provided are equally or better suited for the intended purpose. In assessing overall value, consideration will be given to the extent to which proximity or Missouri preference of the supplier provides potential advantages or reduction of risks. Firms are considered "Missouri firms" if they maintain a regular place of business in the State of Missouri.
6. **Appropriation:** The Curators of the University of Missouri is a public corporation and, as such, cannot create indebtedness in any one year (the fiscal year beginning July 1 to June 30) above what they can pay out of the annual income of said year as set forth in 172.250, RSMo. Therefore, if the University determines it has not received adequate appropriations, budget allocations or income to enable it to meet the terms of this contract, the University reserves the right to cancel this contract with 30 days' notice.

7. **Equal Opportunity and Non-Discrimination:** In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against any recipients of services, or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. The contractor shall comply with federal laws, rules, and regulations applicable to subcontractors of government contracts including those relating to equal employment of minorities, women, persons with disabilities, and certain veterans. Contract clauses required by the United States Government in such circumstances are incorporated herein by reference.
8. **Supplier Diversity Participation:** The University of Missouri System is committed to and supports supplier diversity as an essential part of the University's mission and core values. To qualify as a Diverse Supplier, the company must be at least 51% owned and controlled by someone in one of the recognized groups (see below). These firms can be a sole proprietorship, partnership, joint venture or corporation. Diverse suppliers should be certified from a recognized certifying agency.

The University of Missouri recognizes the following groups:

- MBE (Minority Owned Business Enterprise)
 - African American
 - Asian American (including Pacific Asian and Subcontinent Asian)
 - Hispanic American
 - Native American
- WBE (Women Owned Business Enterprise)
- DVBE (Service-Disabled Veteran Owned Business Enterprise)
- VBE (Veteran Owned Business Enterprise)
- LGBT (Lesbian, Gay, Bisexual, Transgender)
- DBE (Disadvantaged Business Enterprise)

Tier 2 Diverse Supplier Spending and Reporting: The University strongly encourages Supplier Diversity participation in all contracts for goods and services. Tier 2 spend is spend reported by primary (non-diverse) suppliers of the University of Missouri who subcontract work to or make purchases from a diverse supplier. Depending upon the contract, primary (non-diverse) suppliers may be asked to submit Tier 2 information with Women and Diverse Owned Companies. Suppliers have two options in reporting Tier 2 dollars depending on the terms on the contract: Direct and Indirect. Definitions and further explanation of these options is included in the Supplier Diversity Participation Form attached hereto.

Supplier Diversity Participation Form: If a respondent will be utilizing a diverse supplier as part of this contract, they must indicate their Supplier Diversity participation levels on the Supplier Diversity Participation Form included in this RFP (see Attachment A). The Respondent must describe what suppliers and/or how the Respondent will achieve the Supplier Diversity goals. Evaluation of proposals shall include the proposed level of Supplier Diversity participation. Proposals that do not meet the participation requirements for Supplier Diversity will not receive any of the points during proposal review.

Suppliers will be responsible for reporting Tier 2 diverse supplier participation on an agreed upon timing (e.g. quarterly, annually) when business is awarded.

The University may monitor the supplier's compliance in meeting the Supplier Diversity participation levels committed to in the awarded proposal. If the supplier's payments to participating diverse suppliers are less than the amount committed to in the contract, the University reserves the right to cancel the contract, suspend and/or debar the supplier from participating in future contracts.

9. **Applicable Laws and Regulations:** The University serves from time to time as a contractor for the United States government. Accordingly, the provider of goods and/or services shall comply with federal laws, rules and regulations applicable to subcontractors of government contracts including those relating to equal employment opportunity and affirmative action in the employment of minorities (Executive Order 11246), women (Executive Order 11375), persons with disabilities (29 USC 706 and Executive Order 11758), and certain veterans (38 USC 4212 formerly [2012]) contracting with business concerns with small disadvantaged business concerns (Publication L. 95-507). Contract clauses required by the Government in such circumstances are incorporated herein by reference.
10. **Anti-Discrimination Against Israel Act:** If this Contract involves the acquisition or disposal of services, supplies, information technology, or construction and has a total potential value of \$100,000 or more, and if Supplier is a company with ten (10) or more employees, then Supplier certifies that it, and any company affiliated with it, does not boycott Israel and will not boycott Israel during the term of this Contract. In this paragraph, the terms "company" and "boycott Israel" shall have the meanings described in Section 34.600 of the Missouri Revised Statutes.
11. **Applicable Digital Accessibility Laws and Regulations:** The University affords equal opportunity to individuals with disabilities in its employment, services, programs and activities in accordance with federal and state laws, including Section 508 of the Rehabilitation Act, 36 C.F.R., Pt. 1194. This includes effective communication and access to electronic and information communication technology resources, and the University expects that all products will, to the greatest extent possible, provide equivalent ease of use for individuals with disabilities as for non-disabled individuals. The University of Missouri has adopted the Web Content Accessibility Guidelines (WCAG), as specified by the University of Missouri Digital Accessibility Policy.

Supplier shall: (1) deliver all applicable services and products in reasonable compliance with University standards (Web Content Accessibility Guidelines 2.0, Level AA or above); (2) provide the University with an Accessibility Conformance Report detailing the product's current accessibility according to WCAG standards using the latest version of the Voluntary Product Accessibility Template (VPAT); (3) if accessibility issues exist, provide a "roadmap" plan for remedying those deficiencies on a reasonable timeline to be approved by the University; (4) promptly respond to assist the University with resolving any accessibility complaints and requests for accommodation from users with disabilities resulting from supplier's failure to meet

WCAG guidelines at no cost to the University; and (5) indemnify and hold the University harmless in the event of any claims arising from inaccessibility.

When installation, configuration, integration, updates, or maintenance are provided, the supplier must ensure these processes are completed in a way that does not reduce the original level of WCAG conformance. If at any point after procurement it is determined that accessibility improvements need to be made in order to comply with the WCAG standards, the supplier agrees to work with the University to remedy the non-compliance by submitting a roadmap detailing a plan for improvement on a reasonable timeline. Resolution of reported accessibility issue(s) that may arise should be addressed as high priority, and failure to make satisfactory progress towards compliance with WCAG, as agreed to in the roadmap, shall constitute a breach of contract and be grounds for termination or non-renewal of the agreement.

- 12. Applicable Health Related Laws and Regulations:** If these specifications or any resulting contract involves health care services or products, the Supplier agrees to maintain, and will further assure such compliance by its employees or subcontractors, the confidential nature of all information which may come to Supplier with regard to patients of the University. All services provided pursuant to this contract shall be provided in accordance with all applicable federal and state laws including The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, sections 261-264 (the Administrative Simplification sections) and the regulations promulgated pursuant thereto and regulations of the Joint Commission on Accreditation of Healthcare Organization and The Centers for Medicare & Medicaid Services (CMS).

Respondents understand and agree that the Curators of the University of Missouri, in the operation of MU Health Care, is regulated under federal or state laws with regard to contracting with suppliers. The Respondent represents that it is not currently excluded or threatened with exclusion from participating in any federal or state funded health care program, including Medicare and Medicaid. Respondent agrees to notify the University of any imposed exclusions or sanctions covered by this representation.

The University will regularly check the "List of Excluded Individuals/Entities" (LEIE), maintained by the Office of Inspector General, United States Department of Health and Human Services ("OIG") to determine if any Respondents have been excluded from participation in federal health care programs, as that term is defined in 42 U.S.C. §1320a-7b(f). The University reserves the sole right to reject any respondents who are excluded by the OIG, who have been debarred by the federal government, or who have otherwise committed any act that could furnish a basis for such exclusion or debarment.

13. Compliance with CDC Guidelines: (If Applicable)

Due to the changing nature of the COVID-19 pandemic, successful Supplier will monitor and comply with CDC and other federal, state, and local guidance; modifications to University operating procedures; and directives of University relating to protection of the health and safety of the University community.

NOTIFICATION TO UNIVERSITY IN EVENT OF POSITIVE COVID-19 CASE:

In the event any of the successful Contractor's personnel who have or are presently performing services for the University of Missouri (a) tests positive for COVID-19, or (b) has been in close contact with someone that tests positive for COVID-19, the successful Contractor shall immediately notify the University designated contact, and take immediate action to quarantine such person and any other Contractor Personnel who may have come in contact with the person testing positive for COVID-19, and assist University in identifying any other persons on the University campus who may have come in contact with such person. Contractor must clean and disinfect all areas any infected person may have contacted on University's campus, and any cleaning or sanitation costs resulting from a positive COVID-19 test of Contractor personnel are the sole cost and responsibility of Contractor.

14. **Inventions, Patents, and Copyrights:** The Contractor shall pay for all royalties, license fees, patent or invention rights, or copyrights and defend all suits or claims for infringements of any patent or invention right or copyrights involved in the items furnished hereunder. The Contractor shall defend, protect, and hold harmless the University its officers, agents, servants and employees against all suits of law or in equity resulting from patent and or copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

Copyrights for any item developed for the University shall be the property of the University and inure to its benefit and the Contractor shall execute such documents as the University may require for the perfection thereof.

15. **Contractor Gifts:** The contractor shall refrain in offering any offers of gifts to the University, and all University of Missouri employee's, in accordance with University of Missouri Policy #26301, Suppliers.

B. Instructions to Respondents

1. **Request for Proposal (RFP) Document:** Respondents are expected to examine the complete RFP document and all attachments including drawings, specifications, and instructions. Failure to do so is at Respondents' risk. It is the Respondents' responsibility to ask questions, request changes or clarifications, or otherwise advise the University if any language, specifications or requirements of the RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source.

Any and all communications from Respondents regarding specifications, requirements, competitive Request for Proposal process, etc., should be directed to the University buyer of record referenced in this RFP. It is the responsibility of the person or organization communicating the request to ensure that it is received.

The RFP document and any attachments constitute the complete set of specifications and Request for Proposal response forms. No verbal or written information that is obtained other

than through this RFP or its addenda shall be binding on the University. No employee of the University is authorized to interpret any portion of this RFP or give information as to the requirements of the RFP in addition to that contained in or amended to this written RFP document. In case of any doubt or difference of opinion as to the true intent of the RFP, the decision of the University's Chief Procurement Officer shall be final and binding on all parties.

2. **Preparation of Request for Proposals:** All Request for Proposals must be submitted in the format and number of copies as specified in the detailed specifications and must be enclosed in a sealed envelope plainly marked: **Request for Proposal #23051 for Dark Fiber, and emailed to reedhr@umsystem.edu.**

To receive consideration, Request for Proposals must be received, prior to the Proposal due date and time stated in this RFP. It is the respondent's full responsibility for the actual delivery of Proposals

Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All Requests for Proposals must meet or exceed the stated specifications or requirements. All equipment and supplies offered must be new, of current production, and available for marketing by the manufacturer unless the RFP clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered. Unless specifically stated and allowed in the Detailed Specifications and Special Conditions, all pricing submitted in response to this RFP is firm and fixed.

Whenever the name of a manufacturer, trade name, brand name, or model and catalog numbers followed by the words "or equal" or "approved equal" are used in the specifications, it is for the purpose of item identification and to establish standards of quality, style, and features. Proposals on equivalent items of the same quality are invited. However, to receive consideration, such equivalent proposals must be accompanied by sufficient descriptive literature and/or specifications to clearly identify the item and provide for competitive evaluation. The University will be the sole judge of equality and suitability. Whenever the name of a manufacturer is mentioned in the specifications and the words "or equal" do not follow, it shall be deemed that the words "or equal" follow unless the context specifies "no substitution." Unless noted on the Request for Proposal form, it will be deemed that the article furnished is that designated by the specifications. The University reserves the right to return, at contractor's expense, all items that are furnished which are not acceptable as equals to items specified and contractor agrees to replace such items with satisfactory items at the original proposal price.

Time will be of the essence for any orders placed as a result of this RFP. The University reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the respondents Proposal and accepted by the University. Unless otherwise specified in the Detailed Specifications and Special Conditions, all proposals shall include all packing, handling, and shipping charges FOB destination, freight prepaid and allowed.

3. **Submission of Proposals:** Respondent shall furnish information required by the solicitation in the form requested. The University reserves the right to reject proposals with incomplete information or which are presented on a different form. All proposals shall be signed, in the appropriate location, by a duly authorized representative of the Respondent's organization. Signature on the proposal certifies that the Respondent has read and fully understands all RFP specifications, plans, and terms and conditions.

By submitting a proposal, the Respondent agrees to provide the specified equipment, supplies and/or services in the RFP, at the prices quoted, pursuant to all requirements and specifications contained therein. Furthermore, the Respondent certifies that: (1) the proposal is genuine and is not made in the interest of or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, or corporation; (2) the Respondent has not directly or indirectly induced or solicited any other Respondent to submit a false or sham proposal; (3) the Respondent has not solicited or induced any person, firm, or corporation to refrain from responding; (4) the Respondent has not sought by collusion or otherwise to obtain any advantage over any other Respondent or over the University.

Modifications or erasures made before proposal submission must be initialed in ink by the person signing the proposal. Proposals, once submitted, may be modified in writing prior to the exact date and time set for the RFP closing. Any such modifications shall be prepared on company letterhead, signed by a duly authorized representative, and state the new document supersedes or modifies the prior proposal. The modification must be submitted marked "Proposal Modification" and clearly identifying the RFP title, RFP number and closing date and time. Proposals may not be modified after the RFP closing date and time. Telephone and facsimile modifications are not permitted.

Proposals may be withdrawn in writing, on company letterhead, signed by a duly authorized representative and received at the designated location prior to the date and time set for RFP closing. Proposals may be withdrawn in person before the RFP closing upon presentation of proper identification. Proposals may not be withdrawn for a period of sixty (60) days after the scheduled closing time for the receipt of proposals.

All proposals, information, and materials received by the University in connection with an RFP response shall be deemed open records pursuant to 610.021 RSMo. If a Respondent believes any of the information contained in the Respondent's response is exempt from 610.021 RSMo, the Respondent's response must specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption; otherwise, the University will treat all materials received as open records. The University shall make the final determination as to what materials are or are not exempt

4. **Evaluation and Award:** Any clerical errors, apparent on its face, may be corrected by the Buyer before contract award. Upon discovering an apparent clerical error, the Buyer shall contact the Respondent and request clarification of the intended proposal. The correction shall be

incorporated in the notice of award. The University reserves the right to request clarification of any portion of the Respondent's response in order to verify the intent. The Respondent is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.

The University reserves the right to make an award to the responsive and responsible Respondent whose product or service meets the terms, conditions, and specifications of the RFP and whose proposal is considered to best serve the University's interest. In determining responsiveness and the responsibility of the Respondent, the following shall be considered when applicable: the ability, capacity, and skill of the respondent to perform as required; whether the respondent can perform promptly, or within the time specified without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the respondent; the quality of past performance by the Respondent; the previous and existing compliance by the Respondent with related laws and regulations; the sufficiency of the Respondent's financial resources; the availability, quality and adaptability of the Respondents equipment, supplies and/or services to the required use; the ability of the respondent to provide future maintenance, service and parts.

The University has established formal protest procedures. For more information about these procedures, contact the Buyer of Record.

In case of any doubt or difference of opinion as to the items and/or services to be furnished hereunder, the decision of the Assistant Vice President Management Services, UM System shall be final and binding upon all parties.

The University reserves the right to accept or reject any or all proposals and to waive any technicality or informality.

5. **Contract Award and Assignment:** The successful Respondent(s) shall enter into a contract prepared by the University. The Contract Documents shall include the Advertisement for Request for Proposals, Specifications and Addenda, Exhibits, Request for Proposal Form, Form of Contract, Statement of Work, Letter of Award, University Purchase Order, and Form of Performance Bond, if required.

The contract to be awarded and any amount to be paid thereunder shall not be transferred, sublet, or assigned without the prior approval of the University.

6. **Contract Termination for Cause:** In the event the Contractor violates any provisions of the contract, the University may serve written notice upon Contractor and Surety setting forth the violations and demanding compliance with the contract. Unless within ten (10) days after serving such notice, such violations shall cease and satisfactory arrangements for correction be made, the University may terminate the contract by serving written notice upon the Contractor; but the liability of Contractor and Surety for such violation; and for any and all damages resulting there from, as well as from such termination, shall not be affected by any such termination.

7. **Contract Termination for Convenience:** The University reserves the right, in its best interest as determined by the University, to cancel the contract by given written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.
8. **Warranty and Acceptance:** The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished or adopted by the University, (2) be fit and sufficient for the purpose expressed in the RFP, (3) be merchantable, (4) be of good materials and workmanship, (5) be free from defect. Such warranty shall survive delivery and shall not be deemed waived either by reason of the University's acceptance of or payment for such equipment, supplies, and/or services.

No equipment, supplies, and/or services received by the University pursuant to a contract shall be deemed accepted until the University has had a reasonable opportunity to inspect said equipment, supplies and/or services. All equipment, supplies, and/or services which do not comply with specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

9. **Payment:** Preferred settlement method is through the use of Electronic Accounts Payable solutions. Payment terms associated with these forms of payment will be issued as net 30 after the date of invoice. Payment terms associated with settlement by check will be net 30 days. Cash discounts for prompt payment may be offered but they will not be considered in determination of award unless specifically stated in the Detailed Specifications and Special Conditions. The University may withhold payment or make such deductions as may be necessary to protect the University from loss or damage on account of defective work, claims, damages, or to pay for repair or correction of equipment or supplies furnished hereunder. Payment may not be made until satisfactory delivery and acceptance by the University and receipt of correct invoice have occurred.

For consulting services and/or contract labor services performed for MU Health Care, the hourly rate and the number of hours worked must be included in the agreement and/or on the invoice submitted. Payment may not occur unless this information has been provided.

The University encourages suppliers to opt into its Single-Use Account (SUA) credit card program for payment of invoices. The SUA is an electronic, credit card-based payment solution that acts like a check. It provides a single 16-digit virtual account number for each payment. Similar to a check, the credit limit on each SUA is set to the specific payment amount. Payment terms for Suppliers who participate in the SUA program are Net 0 as opposed to the standard Net 30 terms.

10. **Accounting Practices:** The Contractor shall maintain, during the term of the contract, all books of account, reports, and records in accordance with generally accepted accounting practices and standard for records directly related to this contract. The Contractor agrees to make available to the University, during normal business hours, all book of account, reports and records relating to this contract for the duration of the contract and retain them for a minimum period of one (1) year beyond the last day of the contract term.
11. **Debarment and Suspension Certification:** The Contractor certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency in accordance with Executive Order 12549 (2/18/86).
12. **Cooperative Purchasing:** The intended coverage of this RFP, and any Agreement resulting from this solicitation, shall be for the use by all faculty, staff, students, departments, locations, and affiliates of the University of Missouri, including MU Health Care.

The University of Missouri System seeks to make the terms and prices of this contract available to other higher education institutions and public entities in the State of Missouri. Extension of the terms and prices to any or all other Missouri higher education institutions and public entities is at the discretion of respondents and shall not be considered in the award of this contract. The contractor shall further understand and agree that participation by other higher education institutions and public entities is discretionary on the part of these institutions, and the University of Missouri System bears no financial responsibility for any payments due the contractor by such entities, nor will the University be responsible for contract administration for other institutions.

UNIVERSITY OF MISSOURI
DETAILED SPECIFICATIONS AND SPECIAL CONDITIONS

1. OBJECTIVE

The Curators of the University of Missouri, a public organization, propose to contract on behalf of Missouri Research and Education Network (hereinafter referred to as "University") with an organization (hereinafter referred to as "Supplier"), to provide **Dark Fiber** from MOREnet's existing point-of-presence at 1102 Grand Ave. to the University of Missouri-Kansas City as described herein.

MOREnet seeks to acquire two strands of dark fiber from 1102 Grand Ave to 2411 Holmes Street and from 2411 Holmes Street to 5123 Holmes Street that is diverse from an existing dark fiber route on a long-term agreement under contract through 12/31/2039 per the specifications herein.

2. BACKGROUND UNIVERSITY INFORMATION

Missouri Research and Education Network (MOREnet) is part of the University of Missouri System, connecting higher education, elementary and secondary education, public libraries, state agencies, healthcare facilities, government agencies, and other non-profit organizations in Missouri to the state-wide network for access to the Internet and Internet2. MOREnet operates as a membership organization governed by its members and dedicated to providing high-speed, high-quality connectivity to the Research and Education community in Missouri while keeping costs low.

MOREnet serves schools, libraries, higher education, government, healthcare as well as other non-profit sector entities and has traditionally received discounts for goods and services. Vendors are encouraged to consider their commitment to education as well as to economic and community development and explore/create special pricing in responding to this RFP.

3. AWARD OF CONTRACT

The University reserves the right to reject any or all proposals and make an award(s) to a more competitive consortium offering.

In making an award, both the price and quality of the proposal will be considered. The quality of the proposal will be evaluated based on the proposed technologies, the inclusion of "Evaluation Question" items, and previous experiences with the Respondent.

Note: Any respondents Request for Proposal that makes material modifications to the University's Terms and Conditions may be found non-responsive, as solely determined by the University.

The University of Missouri will prepare and submit a contract for execution by the successful Request for Proposal(s).

The Curators of the University of Missouri is a public corporation and, as such, cannot create an indebtedness in any one year (the fiscal year beginning July 1 to June 30) above what they can pay out of the annual income of said year as set forth in Section 172.250 RS MO. Therefore, if the University determines it has not received adequate appropriations, budget allocations or income to enable it to meet the terms of this contract, the University reserves the right to cancel this contract with thirty (30) days' notice.

4. RESPONDENT'S PROPOSAL

To be considered for selection, Respondents must submit a complete response to this Request for Proposal that complies with all technical specifications. Proposals shall remain open and subject to acceptance for 120 days from the date of proposal opening.

Fancy presentations, binders, and other extraneous materials are neither needed nor desired. Request for Proposals should be submitted on 8½x11" paper. Brochures, literature, and other marketing materials should not be included unless they are an integral part of the Request for Proposal. When using any language that has meaning to your firm yet may be more or less specific than the industry meaning, please define the term in your response.

Information regarding Request for Proposal network infrastructure, routing, and design may be submitted separately as proprietary information, see Confidentiality of Information below, that is to be held in confidence. Request for Proposal response must clearly indicate when this information is proprietary and confidential. Pricing, meet or exceed specification responses, and any comments/remarks not related to network infrastructure and design will not be considered proprietary and/or confidential information.

Confidentiality of Information:

All records received from a Respondent will be deemed public records and presumed to be open. If the Respondent submits with the Request for Proposal any information claimed to be exempt under the Revised Statutes of Missouri, Chapter 610, this information must be placed in a separate envelope and marked with:

"This data shall not be disclosed outside the University or be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the Request for Proposal; however, if a contract is awarded to this Respondent as a result of or in connection with the submission of such information, the University shall have the right to duplicate, use, or disclose this information to the extent provided in the contract. This restriction does not limit the University's right to use information contained herein if it is obtained from another source."

5. DELIVERY

Delivery terms will be negotiated.

6. INSTRUCTIONS FOR PROPOSAL RESPONSE

Responses should be enumerated in the same order and fashion of the Mandatory Specifications outlined within. Respondents are required to **fully** respond with compliance statements to each of the mandatory specifications. Respondents are required to fully respond with description of ability and how to meet the evaluation questions.

Respondents must be clear and concise in responses in order to be fully credited in the evaluation. Attach and reference any relevant documentation that would ensure the evaluating committee the Mandatory specifications are met. If “no response” or insufficient response to substantiate compliance is provided, the University reserves the sole right to reject supplier’s proposal from further consideration. Do not include responses that are superfluous or irrelevant to the specific question asked and do not include large graphics. These are not valuable in the volume of information the various evaluating teams must review.

Respondent must complete and return the University Proposal Form with proposal response. Supplier quote sheets are not acceptable forms of bidding and could cause rejection of response. **All proposals must be plainly marked: Request for Proposal #23051 for Dark Fiber and emailed to: reedhr@umsystem.edu. Please allow transmittal time to ensure your response is received no later than the time stated on the RFP cover page.**

Note: Any Respondent’s Request for Proposal that makes material modifications to the University’s Terms and Conditions may be found non-responsive, as solely determined by the University.

Confidentiality of Information:

All records received from a Supplier will be deemed public records and presumed to be open. If the supplier submits with the Request for Proposal any information claimed to be exempt under the Revised Statutes of Missouri, Chapter 610, this information must be placed in a separate envelope and marked with:

"This data shall not be disclosed outside the University or be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the Request for Proposal; however, if a contract is awarded to this Supplier as a result of or in connection with the submission of such information, the University shall have the right to duplicate, use, or disclose this information to the extent provided in the contract. This restriction does not limit the University's right to use information contained herein if it is obtained from another source."

7. EVALUATION AND CRITERIA FOR AWARD OF PROPOSAL

Respondents must meet the mandatory/limiting criteria. If requirements are not met, the respondents are disqualified from further evaluation/award. At the sole option of the University, the functional/technical review team may decide to go on a site visit, at their expense, or request

suppliers to perform a presentation/demonstration to confirm specifications are met as provided in responses. The University could elect to not award to a potential respondent if site visits/presentations revealed compliance inconsistency.

Proposals will be awarded based upon the functional and financial evaluation.

8. MANDATORY CRITERIA

Respondents must meet all mandatory requirements in this section in order to continue with a response to this RFP. Any Respondent that does not meet all the following requirements will be removed from further consideration.

8.1. Respondent must provide a fiber route from Neutrality at 1102 Grand Ave. (6th floor, meet-me-room) to the University of Missouri – Kansas City, School of Medicine at 2411 Holmes Street (room 106) and a fiber route from the University of Missouri – Kansas City, School of Medicine at 2411 Holmes Street (room 106) to the University of Missouri – Kansas City Newcomb Hall at 5123 Holmes Street (room M1-315A). If respondent needs to perform a site visit at either University of Missouri – Kansas City location, contact Jim Schonemann at (816) 235-5386 or via email at schonemannj@umkc.edu.

8.2. A diverse route to the University of Missouri – Kansas City is required and must not be along the same route as the existing fiber (see Appendix A – Existing Fiber Route for details). Describe how your proposed solution addresses this.

8.3. Describe your service levels, repair procedures, and escalation process in the event of an outage or fiber cut.

8.4. It is desired that the fiber be ready for production service as quickly as possible. Describe your timeline for delivering the fiber.

8.5. It is desired that the Respondent have a second pair of fiber available along the route for rollover/equipment upgrades. Describe how your proposed solution accomplishes this.

8.6. It is required that all fiber and connectors adhere to the appropriate ITU/IEEE/ANSI standards for the items included in this RFP.

8.7. Dark fiber must be single mode fiber suitable for DWDM networking at 100Gbps and greater per wavelength using commercially available equipment.

8.8. Respondent must supply a map of the proposed solution(s) in an electronic format. Map must include the actual route of the fiber. Map(s) must be in KML/KMZ, ESRI ShapeFile or other format supported by ESRI's ArcGIS software.

8.9. Negotiations for dark fiber must be based on the attached Appendix B – Fiber IRU Agreement and Appendix C – Maintenance and Colocation Agreement (M&O).

8.10. The Respondent must provide the following prior to service activation:

8.10.1. Direct voice telephone access to the Respondent's Network Operations Center (NOC) Point of Contact for problem resolution 24 hours a day, 7 days a week (24x7).

8.10.2. Clear and documented procedures to report and escalate problems as well as a communications methodology that will be used to follow up with MOREnet technical staff.

REQUEST FOR PROPOSAL FORM

REQUEST FOR PROPOSALS
FOR
FURNISHING AND DELIVERY
OF
DARK FIBER
FOR
THE CURATORS OF THE UNIVERSITY OF MISSOURI
ON BEHALF OF
THE MISSOURI RESEARCH AND EDUCATION NETWORK
RFP #23051
DUE DATE: NOVEMBER 9, 2022
TIME: 2:00 PM, CDT

The undersigned proposes to furnish the following items and/or services in accordance with all requirements and specifications contained within this Request for Proposal issued by the University of Missouri.

AUTHORIZED RESPONDENT REPRESENTATION

Authorized Signature		Date	
Printed Name		Title	
Company Name			
Mailing Address			
City, State, Zip			
Phone No.		Federal Employer ID No.	
Fax No.		E-Mail Address	
Number of calendar days delivery after receipt of order: _____		Payment Terms: _____ Note: Net 30 is default. Early pay discounts encouraged.	
Select Payment Method: SUA ACH Check			
Circle one: Individual Partnership Corporation			
If a corporation, incorporated under the laws of the State of _____			
Licensed to do business in the State of Missouri? ___yes ___no			
Maintain a regular place of business in the State of Missouri? ___yes ___no			

This signature sheet must be returned with your proposal.

ATTACHMENT A PRICING

Route Path 1 – Netrality to Univ. of Missouri – Kansas City, School of Medicine

Location A – Netrality	Location B – School of Medicine
Netrality 1102 Grand Ave., 6 th Floor Meet-Me-Room Kansas City, MO 64106	University of Missouri – Kansas City School of Medicine 2411 Holmes Street, Room 106 Kansas City, MO 64108

Route Path 2:

University of Missouri – Kansas City, School of Medicine to Univ. of Missouri – Kansas City

Location B – School of Medicine	Location C – Univ. of Missouri-Kansas City
University of Missouri – Kansas City School of Medicine 2411 Holmes Street, Room 106 Kansas City, MO 64108	University of Missouri – Kansas City Newcomb Hall 5123 Holmes Street, Room M1-315A Kansas City, MO 64110

Description	One-Time Cost
Fiber IRU – (through 12/31/2039)	\$

Description	Annual Recurring Cost
Maintenance & Operation	\$

Pricing MUST INCLUDE ALL COSTS, including construction, RoW/easements, and any other costs related to the delivery of the proposed solution.

Attachment B Existing Fiber Route

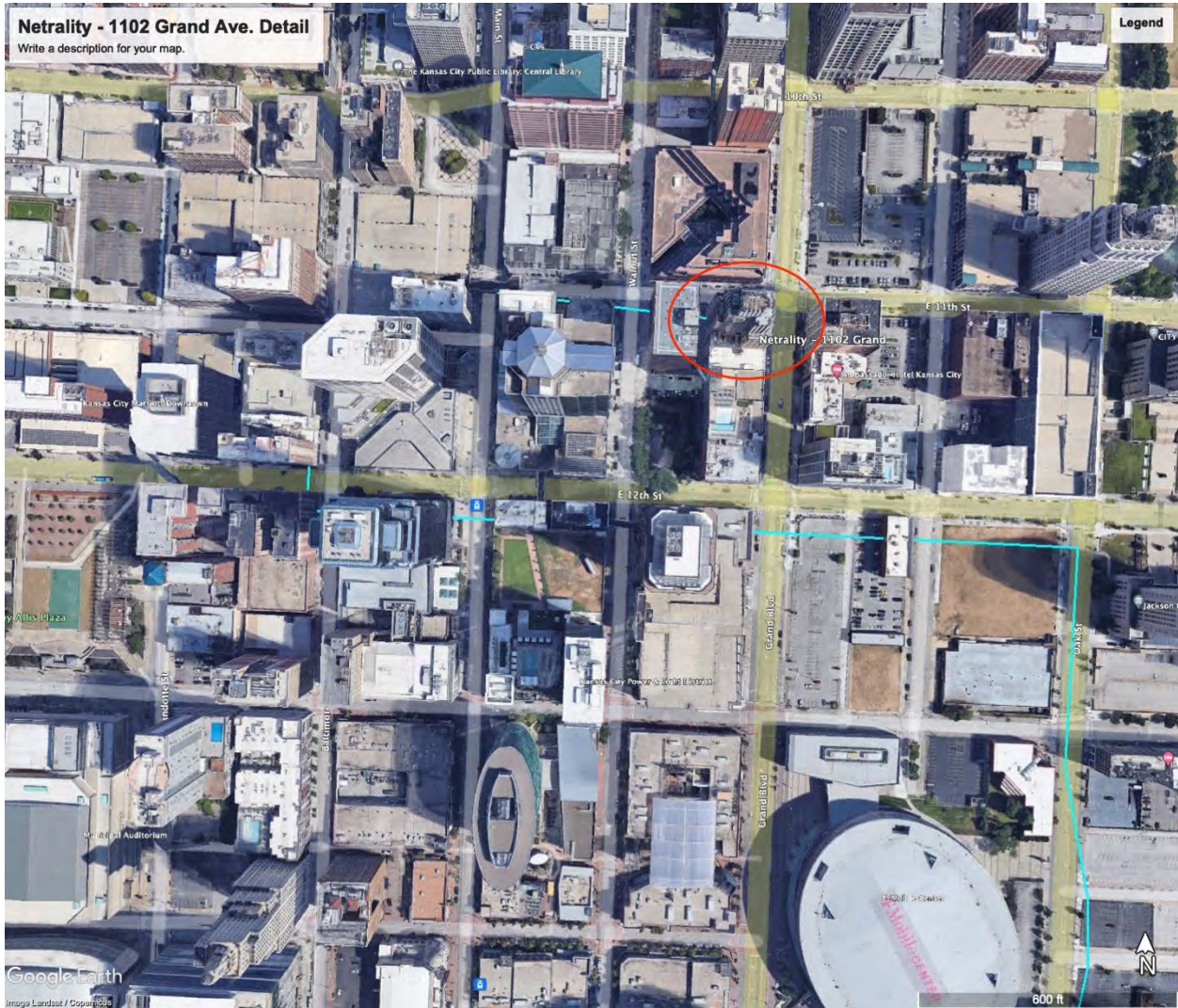


Figure 1



Figure 2

The existing route leaves Neutrality at 1102 Grand Ave and heads west along East 11th Street then turns south on Baltimore Ave to East 12th Street where it turns east. The route continues to Oak Street where it turns south and continues along Gillham Road on the west side of Children’s Mercy Hospital (see Figure 1). The route continues along Gillham Road and then continues along Rockhill Road to the University of Missouri – Kansas City campus (see Figure 2). ***For more detail, reference the .KMZ file included with the RFP.***

As specified, the proposed route MUST be diverse from the existing route referenced in this appendix.

**ATTACHMENT C
SUPPLIER DIVERSITY PARTICIPATION FORM**

The University of Missouri System is committed to and supports supplier diversity as an essential part of the University’s mission and core values. The University’s Supplier Diversity efforts reflect this mission.

Tier 2 Supplier Diversity Information - The University strongly encourages Supplier Diversity participation in all of its contracts for goods and services. Tier 2 Spend is spend reported by primary (non-diverse) suppliers of the University of Missouri who subcontract work to, or make purchases from a diverse supplier. Depending upon the contract, primary (non-diverse) suppliers will be asked to submit Tier 2 information with Women and Diverse Owned companies. Suppliers have two options in reporting Tier 2 dollars depending on the terms of the contract: Direct and Indirect. Awarded suppliers may be asked to utilize CVM Solutions for reporting Tier 2 spend.

- Direct dollars - those dollars directly spent with Women and Diverse Owned suppliers in the fulfillment of the contract.

- Indirect dollars - based on a percentage of revenue the University represents to the supplier. An example is as follows:
 - Supplier's Total Revenues: \$10,000,000
 - Revenues from University \$: \$ 4,000,000
 - University % of Total Revenues: 40% (#2 divided by #1)
 - Total MBE Dollars \$: \$ 150,000
 - Total WBE Dollars \$: \$ 150,000
 - Total University Attributable MBE \$: \$ 60,000 (#3 multiplied by #4)
 - Total University Attributable WBE \$: \$ 60,000 (#3 multiplied by #5)
 - Total University Attributable MWBE \$: \$ 120,000 (Sum of #6 and #7)
 - University % Attributable Revenue: 3% (#8 divided by #2)

1. Does your company have a Supplier Diversity Program? If so, describe efforts your company has made to increase business with Women and Diverse Owned businesses (i.e. does your company have a policy statement, participate in outreach activities, promote diverse firm subcontracting, publicize contract opportunities, provide certification assistance, etc.?) Please provide examples (use additional pages if needed): _____

2. If you are a non-diverse owned company, what percentage of your company's total contracting and procurement spend for the prior year was with Women and Diverse Owned businesses? Are you able to provide this information specific to University of Missouri business?

3. If you are a non-diverse owned company, complete the following table indicating the percentage your company will subcontract with certified Women and Diverse Owned businesses should your company be the successful bidder. Note: If your company does not plan to use Women and Diverse Owned businesses to fulfill your contract obligations, please explain why not.

Supplier Name	% of Contract	Specify Direct or Indirect

If there are questions regarding supplier diversity at the University, contact Teresa Vest, vestt@umsystem.edu.

-----**THIS FORM MUST BE SUBMITTED WITH THE RESPONSE**-----

**ATTACHMENT D
SUPPLIER REGISTRATION INFORMATION**

Completion of this section is strongly encouraged. Please review and check ALL applicable boxes.

SMALL BUSINESS CONCERN: Yes No

The term “small business concern” shall mean a business as defined pursuant to Section 3 of the Small Business Act and relevant regulations issued pursuant thereto. Generally, this means a small business concern organized for profit, which is independently owned and operated, is not dominant in the field of operations in which it is bidding. We would consider any firm with 500 employees or less a “small business concern”.

WOMAN OWNED BUSINESS (WBE): Yes No

A woman owned business is defined as an organization that is 51% owned, controlled and/or managed, by a woman. The determination of WBE status depends solely on ownership and operation and is not related to employment. The firm should be certified by a recognized agency (e.g., state, local, federal, etc.). Please see Public Law 106-554 for more detail.

MINORITY BUSINESS ENTERPRISE (MBE): Yes No

A minority business is defined as an organization that is 51% owned, controlled and/or managed by minority group members. The determination of minority status depends solely on ownership and operation and is not related to employment. The firm should be certified by a recognized agency (e.g., state, local, federal, etc.). Please see Public Law 95-507 for more detail. Place an X by the appropriate space below.

1. Asian-Indian - A U.S. citizen whose origins are from India, Pakistan and Bangladesh (A)
2. Asian-Pacific - A U.S. citizen whose origins are from Japan, China, Indonesia, Malaysia, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Thailand, Samoa, Guam, the U.S. Trust Territories of the Pacific or the Northern Marianas. (P)
3. Black - A U.S. citizen having origins in any of the Black racial groups of Africa. (B)
4. Hispanic - A U.S. citizen of true-born Hispanic heritage, from any of the Spanish-speaking areas Mexico, Central America, South America and the Caribbean Basin only. (H)
5. Native American - A person who is an American Indian, Eskimo, Aleut or Native Hawaiian, and regarded as such by the community of which the person claims to be a part. (N)

Attachment E – Fiber IRU Agreement

THIS IRU AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2022 by and between _____ (“Grantor”) and The Curators of the University of Missouri, a public corporation of higher education, (Grantee”).

RECITALS

- A. Grantor has constructed or acquired a fiber optic communications system (the “Grantor System”) as generally described and depicted on Exhibit A attached hereto.
- B. Grantor further has installed within one of the conduits of the Grantor System a high fiber count fiber optic cable (the “Cable”).
- C. Grantee desires to obtain the indefeasible right to use the number of fibers in the locations identified in Exhibit A attached hereto.
- D. Grantor desires to grant to Grantee an indefeasible right to use the fibers and other facilities described herein, all upon and subject to the terms and conditions set forth below.

ARTICLE 1 DEFINITIONS

- 1.01 “Acceptance Date” shall mean the date when Grantee delivers notice of acceptance of a Completion Notice with respect to the Grantee Fibers in accordance with Article 8.
- 1.02 “Acceptance Testing” shall have the meaning set forth in Article 8.
- 1.03 “Affiliate” shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person (“control,” “controlled by” and “under common control with” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise).
- 1.04 “Associated Property” shall mean the tangible and intangible property needed for the use of the Grantee Fibers as permitted by this Agreement, as and to the extent more particularly described in this Agreement, including but not limited to all associated conduits, poles and underlying rights of Grantor as necessary to effectuate this Agreement, but excluding any electronic and/or optronic equipment.
- 1.05 “Cable” shall have the meaning set forth in the Recitals.
- 1.06 “Completion Notice” shall have the meaning set forth in Section 8.02.

- 1.07 “Costs” shall mean the actual direct costs paid or payable in accordance with the established accounting procedures generally used by Grantor and which Grantor utilizes in billing third parties for reimbursable projects, including the following: (i) internal labor costs, including wages, salaries, benefits and overhead (provided that overhead shall not exceed ten percent (10%) of wages, salaries and benefits), and (ii) other direct costs and out of pocket expenses on a direct pass-through basis.
- 1.08 “Effective Date” shall have the meaning set forth in Section 5.01.
- 1.09 “Force Majeure Event” shall have the meaning set forth in Article 14.
- 1.10 “Governmental Authority” shall mean any federal, state, regional, county, city, municipal, local, territorial, or tribal government, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and sewer authorities.
- 1.11 “Grantee Fibers” shall have the meaning set forth in Article 3.
- 1.12 “Grantor Facilities” shall mean such facilities as may be mutually agreed upon between Grantor and Grantee pursuant to a separate Maintenance and Collocation Agreement which are owned, leased or otherwise used by Grantor to accommodate or house switch equipment, fiber optic transmission and/or associated ancillary equipment to serve as a switch terminal, transport concentrator, hub terminal or junction.
- 1.13 “Grantor System” shall have the meaning set forth in the Recitals.
- 1.14 “Impositions” shall mean all taxes, fees, levies, imposed duties charges or withholdings of any nature (including without limitation ad valorem, real property, gross receipts, taxes and franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement and/or imposed upon the Grantor System, or any part thereof, by any Governmental Authority.
- 1.15 “IRU” shall have the meaning set forth in Article 3.
- 1.16 “IRU Fee” shall be the fee specified in Exhibit B.
- 1.17 “Person” shall mean any natural person, corporation, partnership, limited liability company, business trust, joint venture, association, company or Governmental Authority.
- 1.18 “Prime Rate” shall mean, as of any relevant date, the interest rate most recently published in the Money Rates Section of The Wall Street Journal as the prime rate.
- 1.19 “Proprietary Information” shall have the meaning set forth in Section 18.01.
- 1.20 “Required Rights” shall have the meaning set forth in Section 7.01.
- 1.21 “Route Miles” shall mean the actual number of route miles, or portion thereof, for the Grantor System as constructed.

1.22 "Scheduled Completion Date" shall mean, subject to Force Majeure Events, the date set forth on Exhibit A.

1.23 "Segment" means a discrete portion of the System Route between two points of presence or a point of presence and a System end point, and may include a lateral segment between the System backbone and a System end point.

1.24 "System Route" shall have the meaning set forth in Section 2.01.

1.25 "Term" shall have the meaning set forth in Article 5.

ARTICLE 2 SYSTEM ROUTE

The Grantor System will connect the points as identified on Exhibit A attached hereto, and all of which together are herein called the "System Route"). The System Route may be amended to include any additional fiber segments or capacity that is constructed by Grantor or obtained by Grantor from another provider, as agreed to in writing by the parties.

ARTICLE 3 GRANT OF IRU

As of the Effective Date, as defined in Section 5.01, Grantor hereby grants to Grantee, and Grantee hereby acquires from Grantor (i) an exclusive indefeasible right of use in, for the purposes described herein, the number of fibers set forth in Exhibit A to be specifically identified in the Cable (the "Grantee Fibers"); (ii) an associated and non-exclusive indefeasible right of use, for the purposes described herein, in the Associated Property respecting the System Route, and (iii) and associated and non-exclusive license to use the Grantor Facilities as set forth in the separate Maintenance and Collocation Agreement entered into by the parties of even date herewith, all upon and subject to the terms and conditions set forth herein (collectively the "IRU"). Additionally, Grantor hereby grants to Grantee, and Grantee hereby acquires from Grantor, the right to sub-grant the IRU to one or more third parties. Notwithstanding any other provisions in this Agreement, in the event of such a sub-grant, all of Grantee's rights and obligations under this Agreement shall be assumed by such third parties for the duration of the sub-grant, unless the parties agree otherwise in writing.

ARTICLE 4 FEES

4.01 Grantee agrees to pay, as compensation for the use of the Grantee Fibers, the IRU Fee set forth in Exhibit B.

4.02 In addition to the foregoing amounts, Grantee shall pay directly or reimburse Grantor for all other reasonable, pre-approved (by Grantee) sums, costs, fees and expenses which are expressly provided to be paid by Grantee under this Agreement.

4.03 Grantor will send Grantee invoices for payments of the IRU Fee and Grantee shall pay such invoiced amounts within thirty (30) days after the Acceptance Date. Grantor will send Grantee invoices for payments of all other reasonable, pre-approved (by Grantee) sums, costs, fees and expenses owed by Grantee to Grantor hereunder and Grantee shall pay such invoiced amounts within thirty (30) days after receipt of such invoice by Grantee.

ARTICLE 5
TERM

5.01 The IRU with respect to the Grantee Fibers shall become effective on the first day when both (i) the Acceptance Date with respect to the Grantee Fibers has occurred and (ii) Grantor has received payment of all of the IRU Fees then due to Grantor hereunder (the "Effective Date"). The Term with respect to the IRU shall commence on the Effective Date, and shall continue for the useful life of the Grantee Fibers, as determined solely by Grantee, but in no event less than twenty (20) years, unless properly abandoned in accordance with Section 5.04 below or terminated in accordance with Article 15 (the "Term").

5.02 Grantor and Grantee acknowledge and agree that Grantee (and/or any third party who receives a sub-grant of the IRU from Grantee as permitted by Article 3) shall be treated for accounting and federal and all applicable state tax purposes as the exclusive beneficial owner of the Grantee Fibers. Grantor and Grantee (and or any third party who receives a sub-grant of the IRU from Grantee as permitted by Article 3) shall file (or caused to be filed with respect to any consolidated returns) their respective tax returns and other returns and reports for their respective Impositions on such basis and, except as otherwise required by law, not take any positions inconsistent therewith.

5.03 Subject to Article 15, this Agreement shall become effective on the date hereof and shall terminate on the date of a termination pursuant to Article 15, Section 5.04 or Section 6.01, or upon expiration of the Term, except that those provisions of this Agreement which are expressly provided herein to survive such termination shall remain binding on the parties hereto.

5.04 If at any time during the Term Grantee determines that, with respect to all or any portion of the Grantor System, the Grantee Fibers have reached the end of their useful life (as determined by Grantee in its sole discretion), or Grantee otherwise desires to not retain the IRU, Grantee shall have the right to abandon all or such portion of the IRU by ninety (90) days written notice to Grantor. In the case of abandonment, this Agreement shall terminate as to such portion abandoned, and Grantee shall not be entitled to a refund of any of the IRU Fee paid.

5.05 The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, Grantee may terminate its obligations under this agreement, if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. Grantee's decision as to whether sufficient appropriations are available shall be accepted by the Grantor and shall be final and binding.

5.06 Grantee shall provide sixty (60) days notice, if possible, of its intent to terminate for non-appropriation. Such termination shall relieve the Grantee, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant purchase order.

ARTICLE 6
CONSTRUCTION AND DELIVERY OF GRANTEE FIBERS

6.01 All Segments of the Grantee Fibers shall be complete, operational and available for use by Grantee by the Scheduled Completion Dates, as set forth on Exhibit A. If a Scheduled Completion Date is not met, the actual completion date (“Actual Completion Date”) shall be deemed to be that date on which Grantor delivers a Completion Notice as provide in Section 8.02. If the Actual Completion Date does not occur within ninety (90) days after the Scheduled Completion Date for any reason other than a Force Majeure Event, Grantee may, in addition to the remedies set forth in Article 15, at any time thereafter, provide Grantor with written notice of its intent to terminate this Agreement, either in whole or with respect to any Segment which was not delivered. In the event that Grantor fails, for reasons other than a Force Majeure Event, to render the Grantee Fibers in conformance in all material respects with the technical specifications as required by Section 8.02 within thirty (30) days after receipt of such a notice of intent to terminate, Grantee may provide Grantor with written notice of its termination of this Agreement in whole or in part, in which event Grantor shall refund to Grantee, within thirty (30) days of Grantor’s receipt of such a notice of termination, any amounts previously paid hereunder by Grantee to Grantor with respect to the terminated Segments.

6.02 To the extent the delivery of any Segment of the Grantee Fibers requires completion of construction, such construction shall be performed in accordance with the specifications set forth on Exhibit E and may include a requirement that Grantor provide a performance bond in a form and in an amount as determined by Grantee. All lateral Segments shall be constructed from a point on the backbone of the Grantor System to a building access point as set forth on Exhibit A and shall generally be located at a point within the building or a manhole outside the building. Grantor will construct all lateral Segments diversely to the end point (i.e. two distinct physical routes will be used to connect the lateral interconnection point on the Grantor's backbone to the end point within or near the building). The design and route of all lateral Segments to be constructed will be as agreed upon by the parties.

6.03 Within six (6) months after the Acceptance Date, Grantor will provide Grantee as-built drawings complying with the specifications set forth in Exhibit E. If there is a material change in the as-built drawings as a result of maintenance or relocation, Grantor will update such as-built drawings with respect to the relevant Segments within ninety (90) days following completion of such change.

ARTICLE 7
REQUIRED RIGHTS

7.01 Grantor represents and warrants that it will obtain and maintain in full force during the Term all rights, licenses, permits, authorizations, rights-of-way, easements and other agreements which are necessary for Grantor to obtain in order to permit Grantor to construct, install and maintain the Grantee Fibers and Grantor Facilities in accordance with this Agreement and to convey the IRU and all other rights under this Agreement to Grantee (collectively, the “Required Rights”). Grantee represents and warrants that it will obtain, prior to the commencement of the Term, and maintain in full force and effect for and during the Term all rights, licenses, permits, authorizations, franchises and other approvals which are necessary for Grantee to obtain in order to permit Grantor to grant the IRU to Grantee and for Grantee to use the Grantee Fibers. Upon Grantee’s request, Grantor shall make available for inspection by Grantee copies of all information, documents, agreements, and permits obtained or acquired by Grantor in performing its duties pursuant to this Section 7.01 pertaining to the Required Rights, as may be redacted to protect disclosure of confidential business and proprietary terms.

7.02 Grantor represents and warrants that the Required Rights permit the IRU grant to Grantee contemplated by this Agreement. Grantor represents that it is not in default under any of the Required Rights that would permit the grantor of a Required Right to terminate such right prior to its stated expiration date, or would otherwise materially, adversely impair or affect Grantee's ability to use the Grantee Fibers and Associated Property, or exercise its rights with respect thereto, as provided and permitted hereunder, and, to the best of its knowledge, none of the grantors are in default under the existing Required Rights documents. Grantor further represents and warrants that to the best of its knowledge, no language or requirement in the Required Rights imposes material requirements, restrictions and/or limitations upon Grantee's right to use the Grantee Fibers and Associated Property as provided and permitted hereunder.

7.03 Grantor shall either require that the initial stated term of each Required Right be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the Term, or if the initial stated term of any such Required Right expires, in accordance with its ordinary terms, on a date earlier than the last day of the Term, Grantor shall, at its sole cost, exercise any renewal rights there under or otherwise acquire such extensions, additions and/or replacements as maybe necessary in order to cause the initial stated term or any subsequent term of the Required Right to be continued until a date that is not earlier than the last day of the Term of this Agreement.

ARTICLE 8 ACCEPTANCE TESTING AND COMPLETION

8.01 Grantor shall test the Grantee Fibers in accordance with the procedures and standards specified in Exhibit C ("Acceptance Testing") and the fiber specifications set forth on Exhibit D. Grantor shall provide Grantee with not less than ten (10) days advance notice of the date and time of such Acceptance Testing so that Grantee may have the opportunity to have a person(s) present to observe such Acceptance Testing and to conduct its own testing, if desired. Acceptance Testing shall progress along each Segment or lateral Segment so that test results may be reviewed in a timely manner. Grantee shall be responsible for the timely completion of any work or installation required in order for it to place the Grantee Fibers into operation (and Grantee's failure to complete such work shall not be grounds for rejection of a Completion Notice).

8.02 Upon the successful completion of Acceptance Testing, Grantor shall provide written notice of same to Grantee (a "Completion Notice"). Grantor shall contemporaneously deliver a copy of the results of the Acceptance Testing for the Grantee Fibers (if and to the extent that Grantor has not previously delivered same) and Grantee shall, within thirty (30) days of receipt of the Completion Notice, either accept or reject the Completion Notice (Grantee shall be permitted to reject only if Grantee specifies a material failure of the Grantee Fibers to satisfy the requirements of this Agreement) by delivery of written notice to Grantor. In the event Grantee rejects the Completion Notice, Grantor shall promptly, and at no cost of Grantee, commence to remedy the defect or failure specified in Grantee's notice. Thereafter Grantor shall again conduct Acceptance Testing and (if successfully completed) provide Grantee a Completion Notice. The foregoing procedure shall apply again and successively thereafter until Grantor has remedied all defects or failures specified by Grantee.

ARTICLE 9
IMPOSITIONS

9.01 Grantor and Grantee acknowledge and agree that it is their mutual objective and intent to minimize, to the extent feasible, the administrative expenses associated with and the aggregate Impositions payable with respect to the Grantor System and the Grantee Fibers. The parties further acknowledge that Grantee is a tax-exempt organization under federal, state and local law, that it is not the intent of the parties to impose on Grantee, by contract or otherwise, the obligation to pay an Imposition that Grantee would otherwise be exempt from paying if imposed directly on Grantee, and that Grantee intends to seek exemptions from payment of Impositions. The parties agree that they will cooperate with each other and coordinate their mutual efforts to achieve such objectives in accordance with the provisions of this Article. In the event Grantee is not successful in obtaining an exemption for an Imposition levied on the Grantee Fibers, it agrees to reimburse Grantor for its proportionate share of such taxes pursuant to the provisions of this Article 9.

9.02 Grantor shall be responsible for and shall timely pay any and all Impositions with respect to the construction or operation of the Grantor System to the extent that such Impositions (i) are imposed or assessed prior to the Acceptance Date or (ii) are imposed or assessed (regardless of when) with respect to the Grantor System in exchange for the right to occupy public or private rights-of-way, poles, conduit or other locations in which the physical facilities of the Grantor System are situated. Notwithstanding the foregoing obligations, Grantor shall have the right to challenge any such Impositions

9.03 Following the Acceptance Date, and except with respect to Impositions constituting ad valorem property taxes levied against the Grantee Fibers (which are addressed in Section 9.04 below), Grantor shall timely pay any and all Impositions imposed upon or with respect to any portion of the Grantee Fibers to the extent such Impositions have not been separately assessed or imposed upon or against the respective interests of Grantor and Grantee in that portion of the Grantor System. To the extent is has not obtained an exemption from payment, Grantee shall reimburse Grantor for its proportionate share of any such Imposition. The portion of any increase in an Imposition which Grantee shall be obligated to pay shall be determined (i) to the extent possible, based upon the manner and methodology used by the particular Governmental Authority imposing such Imposition (e.g., on the cost of the relative property interests, historic or projected revenue derived therefrom, or any combination thereof); or (ii) if the same cannot be so determined, then based upon Grantee's proportionate share of the Total Fiber Count in the affected portion of the Grantor System.

9.04 Following the Acceptance Date and except to the extent prohibited by applicable laws or regulations or to the extent Grantee has obtained an exemption therefore, Grantee shall separately file returns for and pay any and all ad valorem property taxes imposed on or assessed against all or any portion of the Grantee Fibers. In the event that applicable laws or regulations require Grantor to file returns for and pay any and all ad valorem property taxes imposed on or assessed against the Grantee Fibers, Grantor shall do so and Grantor shall be entitled to reimbursement from Grantee for the ad valorem property tax payments made respecting the Grantee Fibers.

9.05 Notwithstanding any provision herein to the contrary, but subject to Section 9.02 above, Grantor shall have the right to contest any Imposition (including by nonpayment of such Imposition provided such nonpayment does not materially adversely affect the rights to be delivered to Grantee pursuant hereto). Any refunds or credits resulting from a contest brought pursuant to this Section shall be divided between Grantor and Grantee in the same proportion as to which such refunded or credited Impositions were borne by Grantor and Grantee.

9.06 Grantor and Grantee agree to cooperate fully in the preparation of any returns or reports relating to the Impositions. Grantor and Grantee further acknowledge and agree that the provisions of this Article are intended to allocate the Impositions expected to be assessed against or imposed upon the parties with respect to the Grantor System based upon the procedures and methods of computation by which Impositions generally have been assessed and imposed to date, and that material changes in the procedures and methods of computation by which such assessments are assessed and imposed could significantly alter the fundamental economic assumptions underlying the transactions hereunder to the parties. Accordingly, Grantor and Grantee agree that, if in the future the procedures or methods of computation by which Impositions are assessed or imposed against the parties change materially from the procedures or methods of computation by which they are imposed as of the date hereof, the parties will negotiate in good faith an amendment to the provisions of this Article in order to preserve, to the extent reasonably possible, the economic intent and effect of this Article as of the date hereof.

ARTICLE 10 USE OF GRANTOR SYSTEM

10.01 Grantee represents and warrants that it (and or any third party who receives a sub-grant of the IRU from Grantee as permitted by Article 3) will use the Grantee Fibers and the IRU hereunder in compliance with all applicable government codes, ordinances, laws, rules and regulations.

10.02 Subject to the provisions of this Agreement, Grantee may use the Grantee Fibers and the IRU for any lawful purpose. Grantee acknowledges and agrees that it has no right to use any fibers other than the Grantee Fibers included or incorporated in the Grantor System, and that Grantee shall keep any and all of the Grantor System (other than sub-grants to third parties of the IRU permitted by Article 3) free from any liens, rights or claims of any third party attributable to Grantee.

10.03 Grantee shall not use the Grantee Fibers in a way which physically interferes in any way with or otherwise adversely affects the Grantor System or the use by any other Person of the Grantor System or any electronic or optronic equipment used by such Person in connection with the Grantor System.

10.04 Grantor agrees and acknowledges that it has no right to use the Grantee Fibers during the Term, and that, from and after the Effective Date of the grant of the IRU, Grantor shall keep the Grantee Fibers and the IRU in the Associated Property, other than any Associated Property as to which Grantor shall have provided to Grantee a nondisturbance agreement, free from (a) any liens of any third party attributable to Grantor, and (b) any rights or claims of any third party attributable to Grantor. Grantor shall obtain from any entity in favor of which Grantor in its discretion shall have granted after the date hereof a security interest or lien on all or part of the Grantee Fibers and the IRU a written nondisturbance agreement substantially to the effect that such lienholder acknowledges Grantee's rights and interests in and to the Grantee Fibers, the Associated Property and this Agreement, and agrees that Grantee shall not be diminished, impaired or interfered with in any adverse respect by such lienholder.

10.05 Grantee and Grantor shall comply with any requirements applicable to their respective rights and obligations hereunder by any Governmental Authority.

ARTICLE 11
INDEMNIFICATION

11.01 Subject to the provisions of Article 12, Grantor hereby agrees to indemnify, defend, protect and hold harmless Grantee, and its employees, trustees, curators, officers and directors, from and against: (i) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorney fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of the indemnifying party, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees and vendors arising out of or in connection with the performance by the indemnifying party of its obligations under this Agreement; (ii) any claims, liabilities or damages arising out of any violation by the indemnifying party of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by the indemnifying party of its obligations under this Agreement; and (iii) any claims, liabilities or damages arising out of any breach by the indemnifying party of its obligations under this Agreement.

11.02 Subject to the provisions of Article 12, Grantee hereby agrees, to the extent permitted by Missouri law and without waiving sovereign immunity to assume responsibility for : (i) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorney fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of the Grantee, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees and vendors arising out of or in connection with the performance by the Grantee of its obligations under this Agreement; (ii) any claims, liabilities or damages arising out of any violation by the Grantee of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by the Grantee of its obligations under this Agreement; and (iii) any claims, liabilities or damages arising out of any breach by the Grantee of its obligations under this Agreement.

11.03 Grantor and Grantee agree to promptly provide each other with notice of any claim which may result in an obligation hereunder. The responsible party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the other party, which consent shall not be unreasonably withheld or delayed.

11.04 Grantor and Grantee each expressly recognize and agree that its obligation under this Article is not a condition precedent to the continuing performance of its other obligations, if any, hereunder. In the event that a party shall fail for any reason to undertake its obligations under this Article, the injured party hereby expressly recognizes that its sole remedies in such event shall be the right to bring legal proceedings against the other party for its damages as a result of the other party's said failure. These rights and obligations shall survive the termination of this Agreement for a period of twelve (12) months.

ARTICLE 12
LIMITATION OF LIABILITY

Notwithstanding any provision of this Agreement to the contrary, and subject to the liquidated damages provisions in Section 15.03, neither party shall be liable to the other party for any special, incidental, indirect, punitive or consequential damages, or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with such party's failure to perform its respective obligations hereunder, including, but not limited to, loss of profits or revenue (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), or claims of customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other party or any other cause whatsoever, including breach of contract, breach of warranty, negligence, or strict liability, all claims for which damages are hereby specifically waived. Nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party; provided, however, that neither party shall make any claim for indirect, special or consequential damages against any third party who, directly or through one or more parties, has a right of indemnification, impleader, cross-claim, contribution or other right of recovery against a party to this Agreement. Each party shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the other to pursue any such action against such third party.

ARTICLE 13
INSURANCE

13.01 During the term of this Agreement, Grantor shall obtain and maintain the following insurance: (i) Commercial General Liability including coverage for (a) premises/operations, (b) products/completed operations, (c) personal and advertising injury, (d) contractual liability, and (e) explosion, collapse and underground hazards, with combined single limit of not less than \$5,000,000.00 each occurrence or its equivalent; (ii) Worker's Compensation in amounts required by applicable law and Employer's Liability with a limit of at least \$1,000,000.00 each accident; (iii) Automobile Liability including coverage for owned/leased, non-owned or hired automobiles with combined single limit of not less than \$1,000,000.00 each accident; and (iv) any other insurance coverages required under or pursuant to the Required Rights. Grantee shall obtain during the Term of this Agreement, not less than \$2,000,000.00 combined single limit liability insurance for personal injury and property damage.

13.02 Both parties expressly acknowledge that a party shall be deemed to be in compliance with the provisions of this Article if it maintains an approved self-insurance program providing for retention of up to \$1,000,000.00. If either party provides any of the foregoing coverages on a claims made basis, such policy or policies shall be for at least a three (3) year extended reporting or discovery period.

13.03 Unless otherwise agreed, all insurance policies shall be obtained and maintained with companies rated A or better by Best's Key Rating Guide and each party shall, upon request, provide the other party with an insurance certificate confirming compliance with the requirements of this Article.

13.04 Grantee and Grantor shall each obtain from the insurance companies providing the coverages required by this Agreement, the permission of such insurers to allow such party to waive all rights of subrogation and such party does hereby waive all rights of said insurance companies to subrogation against the other party, its affiliates, subsidiaries, assignees, officers, directors and employees.

13.05 In the event either party fails to maintain the required insurance coverages and a claim is made or suffered, such party shall to the extent permitted by law and without waiving sovereign immunity, indemnify and hold harmless the other party from any and all claims for which the required insurance would have provided coverage.

ARTICLE 14

FORCE MAJEURE

Neither party shall be in default under this Agreement, and such party's performance of an obligation shall be excused and extended, if and to the extent and during the period that any failure or delay in such party's performance of one or more of its obligations hereunder is proximately caused by any of the following conditions, each of which shall be deemed a "Force Majeure Event": Any act of God; shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefore; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; failure of a third party to provide or to recognize a Required Right (provided Grantor is not in default thereunder and has made timely and reasonable efforts to obtain the same); any other cause beyond the reasonable control of such party and, in the case of Grantor, a Grantee Delay Event

ARTICLE 15

DEFAULT

15.01 If (i) Grantee makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy, other insolvency protection against Grantee is filed and not dismissed with 120 days; or (iii) Grantee fails to observe and perform any of its material obligations under the terms and provisions of this Agreement and such failure continues without cure for a period of thirty (30) days after written notice from Grantor (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantor may take any or all of the following actions: If the default consists of a failure of Grantee to pay the IRU Fee, Grantor may terminate this Agreement and the Term, in which event Grantor shall have no further duties or obligations hereunder; and Grantor may retake permanent possession and use of all portions of the Grantor System as to which Grantee had acquired any right of use under this Agreement, may remove any electronic, optronic or other equipment of Grantee that is connected to the Grantor System, and may, if Grantee does not make arrangements to take possession of such removed Grantee equipment within thirty (30) days, sell or otherwise dispose of the Grantee equipment in any manner. In the event of any other default hereunder, Grantor may, subject to Article 12, pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance or injunctive relief.

15.02 If (i) Grantor makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy, other insolvency protection against Grantor is filed and not dismissed within 120 days; or (iii) Grantor materially fails to observe and perform any of its obligations under the terms and provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice from Grantee (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantee may, subject to Section 15.03 below, (A) terminate this Agreement and the Term, in which event Grantee shall have no further duties or obligations hereunder, and (B) subject to Article 12 and Section 15.03, pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance or injunctive relief.

15.03 Grantee shall also have the right to terminate this Agreement as a result of delay in the delivery of the Grantor System, for reasons other than a Force Majeure Event, to the extent that such right is provided under the provisions of Section 6.01. In addition, if, other than as caused by a Force Majeure Event, Grantor has not delivered a Completion Notice respecting any Segment, including any lateral Segment, within sixty (60) days after the Scheduled Completion Date with respect thereto, then from and after such date and until the installation is completed, Grantee shall receive a credit of one half percent (.5%) off the IRU Fee for such Segment (as liquidated damages and not as a penalty) for each month or partial month (prorated based on a thirty-day month) of delay thereafter; provided, that in no event shall the amount of the credit provided to Grantee hereunder be greater than five percent (5%) of the IRU Fee for that Segment.

ARTICLE 16 ASSIGNMENT

16.01 Grantor may assign, encumber or otherwise transfer this Agreement or any of its rights and interests therein to any other Person at any time; provided that Grantor shall not be released from its obligations to Grantee hereunder. Grantor may also sell, transfer, lease, license, grant indefeasible rights of use and enter into similar agreements or arrangements with other Persons respecting any fibers and conduit constituting a part of the Grantor System, other than with respect to the Grantee Fibers. Nothing contained in this Agreement shall be deemed or construed to prohibit Grantee from entering into similar agreements or arrangements with other Persons respecting any fibers and conduit, whether or not contained within the Grantor System.

16.02 Grantee may not assign, encumber or otherwise transfer this Agreement or any of its rights and interests therein to any other Person without the prior written consent of Grantor, which consent may not be unreasonably withheld. Notwithstanding the foregoing, Grantee shall have the right, without the Grantor's consent, but with prior written notice to the Grantor, to sub-grant all or part of the IRU to one or more third parties pursuant to Article 3. Further, without Grantor's consent, but with prior written notice to Grantor, Grantee may assign or otherwise transfer this Agreement (i) as collateral to any institutional lender of Grantee subject to the prior rights and obligations of the parties hereunder; (ii) to any Affiliate of Grantee, or to any entity into which Grantee may be merged or consolidated or which purchases all or substantially all of the assets of Grantee; provided that Grantee shall not be released from its obligations hereunder. Any assignee or transferee shall continue to be subject to all of the provisions of this Agreement.

16.03 This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

16.04 Notwithstanding, anything to the contrary contained herein, nothing in this Agreement shall be construed to prohibit or restrict Grantee's ability to provide "lit" capacity services to third parties, including, without limitation, selling, leasing, or granting IRUs in optical waves, or "lambdas," and private line capacity.

ARTICLE 17
REPRESENTATIONS AND WARRANTIES

17.01 Each party represents and warrants that: (i) it has the full right and authority to enter into, execute and deliver this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and (iv) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal governmental agency, court or body.

17.02 Grantor represents and warrants that the Grantor System that it has constructed or acquired has been designed, engineered, installed, and constructed substantially in accordance with the terms and provisions of this Agreement, any and all applicable building, construction and safety codes, as well as any and all other applicable governmental laws, codes, ordinances, statutes and regulations. In the event (i) the Grantee Fibers fail to perform in accordance with the specifications contained in Exhibit "D" after the Acceptance Date, (ii) such failure is not simultaneously occurring in the other fibers in the Cable along the affected segment of the Grantor System (i.e. a fiber cut), and (iii) Grantor cannot, after using commercially reasonable efforts, repair the Grantee Fibers in such a manner as to bring them within the specifications contained in Exhibit "D", then Grantor shall provide Grantee with an equal number of fiber(s) to replace such non-performing Grantee Fiber(s) in the affected segment for the remainder of the Term, provided that such fiber(s) are in inventory and available for Grantee's use, with such availability being determined in Grantor's reasonable discretion

17.03 Grantor represents and warrants that the Grantor System shall perform and conform in a manner consistent with the representations and statements contained in its response to Grantee's Request for Proposal pertaining to the Grantee Fibers.

17.04 Grantee acknowledges and agrees that Grantee's sole rights and remedies with respect to any defect in or failure of the Grantee Fibers to perform in accordance with the applicable vendor's, contractor's or manufacturer's specifications with respect to the Grantee Fibers, other than a defect or failure resulting from a fiber cut or Grantor's operations and maintenance of the Grantor System or except where such defect or failure is caused by the negligent acts or omissions of Grantor, shall be limited to the particular vendor's, contractor's or manufacturer's warranty. Grantor will assign to Grantee all manufacturers' warranties that pertain to the Grantee Fibers, to the extent that they are assignable. If a manufacturer's warranty is not assignable, Grantor shall undertake commercially reasonable efforts to obtain such maintenance, repair, replacement or other remedial actions by vendors, contractors or manufacturers as may be called for under the terms of any such warranty. Grantor shall also reimburse Grantee's costs for any maintenance Grantee has incurred as a result of any breach of a vendor's, contractor's or manufacturer's warranty, to the extent the manufacturer, contractor or vendor pays such costs.

17.05 EXCEPT AS SET FORTH IN THE FOREGOING SECTIONS , OR IN SECTIONS 7.01 AND 7.02, GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GRANTEE FIBERS OR THE GRANTOR SYSTEM, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 18
CONFIDENTIALITY

18.01 Grantor and Grantee agree that if either party provides any other confidential or proprietary information to the other party (such confidential or proprietary information are hereafter collectively referred to as the "Proprietary Information"), all such Proprietary Information shall be held in confidence, and the receiving party shall afford such Proprietary Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) in order to avoid disclosure to or unauthorized use by any third party. The parties acknowledge and agree that all information disclosed by either party to the other in connection with or pursuant to this Agreement shall be deemed to be Proprietary Information, provided that verbal information is indicated as being confidential or proprietary when given and promptly confirmed in writing as such thereafter. Grantor further agrees that any information it receives during the Term of this Agreement which concerns the personal, financial, or other affairs of Grantee, its curators, officers, employees or students shall be kept confidential in accordance with this provision and in conformance with all state and federal laws relating to data privacy. All Proprietary Information, unless otherwise specified in writing, shall remain the property of the disclosing party, shall be used by the receiving party only for the intended purpose, and such written Proprietary Information, including all copies thereof, shall be returned to the disclosing party or destroyed after the receiving party's need for it has expired or upon the request of the disclosing party. Proprietary Information shall not be reproduced except to the extent necessary to accomplish the purpose and intent of this Agreement, or as otherwise may be permitted in writing by the disclosing party.

18.02 The foregoing provisions of Section 18.01 shall not apply to any Proprietary Information which (i) becomes publicly available other than through the disclosing party; (ii) is required to be disclosed by a governmental or judicial law, order, rule or regulation; (iii) is independently developed by the receiving party; or (iv) becomes available to the receiving party without restriction from a third party.

18.03 Notwithstanding Sections 18.01 and 18.02 either party may disclose Proprietary Information to its employees, agents, lenders, funding partners and legal and financial advisors and providers to the extent necessary or appropriate in connection with the negotiation and/or performance of this Agreement or in obtaining financing, provided that each such party is notified of the confidential and proprietary nature of such Proprietary Information and is subject to and agrees to be bound by the same restrictions on its use and disclosure.

18.04 Neither party shall issue any public announcement or press release relating to the execution of this Agreement without the prior approval of the other party, which approval shall not be unreasonably withheld.

18.05 In the event either party shall be required to disclose all or any part of this Agreement in, or attach all or any part of this Agreement to, any regulatory filing or statement, each party agrees to discuss and work cooperatively, in good faith, with the other party, to protect, to the extent possible, those items or matters which the other party deems confidential and which may, in accordance with applicable laws, be deleted therefrom and/or otherwise maintained in confidential status.

18.06 The provisions of this Article shall survive the termination of this Agreement for two years.

ARTICLE 19
NOTICES

All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by facsimile transmission followed by another form of written notification which is capable of providing proof of delivery, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

IF TO GRANTOR:

with copies to:

IF TO GRANTEE:

The Curators of the University of Missouri

with copies to:

or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday), on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

ARTICLE 20
ENTER AGREEMENT; AMENDMENT

This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

ARTICLE 21
RELATIONSHIP OF THE PARTIES

The relationship between Grantee and Grantor shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including but not limited to federal income tax purposes. Grantor shall have no authorization, express or implied, to bind the Grantee to any agreements, liability, or understanding except as expressly set forth herein. Grantor shall be solely responsible for the acts of Grantor, its employees and agents.

ARTICLE 22
COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

ARTICLE 23
CONSTRUCTION AND INTERPRETATION OF AGREEMENT

The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

ARTICLE 24
ENFORCEMENT AND WAIVER

If any term or provision of this Agreement, the deletion of which would not materially adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible. No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

ARTICLE 25
GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Missouri without reference to its choice of law principles.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written.

GRANTOR:

By: _____

Printed Name: _____

Title: _____

GRANTEE:

By: _____

Printed Name: _____

Title: _____

EXHIBIT A

Vendor provided Physical Description of the Network

EXHIBIT B

Pricing

The IRU Fee.

The IRU Fee for the use of the Grantee Fibers shall be \$_____

The IRU Fee shall be paid in accordance with the following terms:

1. One hundred percent (100%) of the IRU Fee for all Segments shall be invoiced upon the Acceptance Date for the last Segment delivered pursuant to Article 8 of the IRU Agreement.

EXHIBIT C

Fiber Splicing, Testing, and Acceptance Standards and Procedures

1. End-to-End Testing

A. After Grantor has established end-to-end connectivity on the Fibers during initial construction, it shall:

- perform bi-directional optical time domain reflectometer ("OTDR") end-to-end tests to record splice loss measurements,
- test continuity to confirm that no fibers have been "frogged" or crossed at any splice points, and
- record loss measurements using a light source and a power meter.

B. At Fiber termination points, the pigtail splice loss shall be less than 1.0 dB, and the reflection level at such termination points shall be less than -50dB.

C. When a Fiber has been spliced, the splice loss shall not be greater a .30 dB bi-directional loss.

D. When a Fiber on a Span has been spliced, the bi-directional splice loss on the Span shall not be greater than .15 dB.

E. Grantor shall perform the bi-directional end-to-end testing 1550 nm. The results of such tests for any given Span shall not be deemed within specification unless showing loss measurements between fiber distribution panels at each end of such Span in accordance with the loss specifications set forth by the cable manufacturer's specifications for dB per kilometer loss as shown in Exhibit D. Grantor shall measure and verify losses for each splice point in both directions and average the loss values. Grantor shall mark any splice points as Out-of-Spec ("OOS") that have an average loss value, based on bi-directional OTDR testing, in excess of 0.3 dB. However, the .3 dB loss spec does not apply to fibers that are being spliced that have different mode-fields. Splice loss may be higher due to the mode-field mismatch. Any such splice points shall be subject to Section 4, below.

2. Post-Construction Testing

After performing permanent splicing (in conjunction with repair of a cable cut, replacement of a segment of cable, or other work after initial installation and splicing of the cable), the test procedures set forth in Section 1 (End-to-End Testing) of this Exhibit shall apply to the relevant fibers and cable segments. The provisions in Sections 4 (OTDR Equipment and Settings) and 5 (Acceptance Test Deliverables) of this Exhibit, that are relevant to such testing shall also apply. Grantor may, after the Acceptance Date, adopt any alternative methods of testing that are generally accepted in the industry and that provide sufficient data to fulfill the objectives of the tests set forth in this Exhibit.

3. Out-of-Spec Splices

OOS splices shall be noted, but shall not preclude Acceptance of a fiber if the OOS condition does not affect transmission capability (based on use of then-prevailing telecommunications industry standards applicable to equipment generally used with the relevant type of fiber) or create a significant possibility of an outage. In the event the Grantee is later able to reasonably establish that the OOS splice affects service, Grantor shall take necessary action to bring the splice into compliance with the applicable specifications under Section 1 of this Exhibit.

3. OTDR Equipment and Settings

Grantor shall use OTDR equipment and settings that are, in its reasonable opinion, suitable for performing accurate measurements of the fiber installed. Such equipment and settings shall include, without limitation, the Laser Precision CMA4000 models and compatible models for OTDR testing, and the following settings:

A. Index of refraction settings:

	1310 nm	1550 nm
Lucent Truwave (Classic and RS)	1.4707	1.4701
Corning SMF-28	1.4675	1.4681
Corning SMF-LS	1.471	1.470
Corning LEAF	N/A	1.469
Corning MetroCore	N/A	1.469
Sumitomo Fiber	1.467	1.467

B. Tests of a pigtail connector and its associated splice:

CMA4000
4 km Range
50ns Pulse
1. m Resolution

4. Acceptance Test Deliverables

Grantor shall provide computer media (CD-ROM) and or hard copies containing the following information for the relevant fibers and cable segments:

- A. Verification of end-to-end fiber continuity with power level readings for each fiber taken with a stable light source and power meter.
- B. Verification that the loss at each splice point is either (i) in accordance with Section 1.C. above or (ii) in accordance with the requirements of Section 3 of this Exhibit.
- C. The final bi-directional OTDR test data, with distances.
- D. Cable manufacturer, cable type (buffer/ribbon), fiber type, number of fibers, points.

EXHIBIT D

Vendor provided Fiber Specifications

EXHIBIT E

Construction Specifications

1. Material
 - Steel or PVC conduit shall be minimum schedule 40 wall thickness.
 - Any exposed steel conduit, brackets or hardware (e.g., bridge attachments) shall be hot-dipped galvanized after fabrication.
 - All split steel shall be flanged.
 - ADVANCE \d3Handholes shall have a minimum H-15 loading rating.
 - ADVANCE \d3Manholes shall have a minimum H-20 loading rating.
 - Warning signs shall display universal do not dig symbol, "Warning-Buried Fiber-Optic Cable," company name and logo, local and emergency One Call toll-free numbers.
2. Minimum Depths

Minimum cover required in the placement of the conduit/cable shall be forty-two inches (42"), except in the following instances:

- The minimum cover in ditches adjacent to roads, highways, railroads and interstates is forty-eight inches (48") below the clean out line or existing grade, whichever is greater.
- The minimum cover across streams, river washes, and other waterways shall be sixty inches (60") below the clean out line or existing grade, whichever is greater.
- At locations where the cable crosses other subsurface utilities or other structures, the cable/conduit shall be installed to provide a minimum of twelve inches (12") of vertical clearance from the utility/obstacle. The cable/conduit can be placed above the utility/obstacle, provided the minimum clearance and applicable minimum depth can be maintained; otherwise the cable/conduit shall be installed under the existing utility or other structure.
- In rock, the cable/conduit shall be placed to provide a minimum of eighteen inches (18") below the surface of the solid rock, or provide a minimum of forty-two inches (42") of total cover, whichever requires the least rock excavation.
- Where existing pipe is used, current depth is sufficient.

3. Buried Cable Warning Tape

All cable/conduit shall be installed with buried cable warning tape. The warning tape shall be:

- laid a minimum of twelve inches (12") above the cable/conduit
- generally placed at a depth of twenty-four inches (24") below grade and directly above the cable/conduit
- a minimum of three inches (3") wide and display "Warning-Buried Fiber-Optic Cable," a company name, logo and emergency one-call toll-free number repeated every twenty-four inches (24").

4. Conduit Construction

- Conduits may be placed by means of trenching, plowing, jack and bore, multi-directional bore or directional bore.
- Conduits shall generally be placed on a level grade parallel to the surface, with only gradual changes in grade elevation.
- Steel conduit shall be joined with threaded collars, Zap-Lok or welding. (Welding is the preferred method.)
- All jack and bores shall use HDPE or steel conduit.
- All directional or mini-directional bores shall use HDPE or steel conduit.
- Any cable placed in swamp or wetland areas shall be placed in HDPE, PVC, or steel conduit.

Where required by the permitting agency:

- all crossings of paved city, county, state, federal, and interstate highways, or railroad crossings shall be encased in steel conduit,
- all longitudinal cable runs under paved streets shall be placed in steel or concrete encased PVC conduit,
- all cable placed in metropolitan areas shall be placed in steel or concrete covered PVC conduit, and
- at all foreign utility/underground obstacle crossings, steel conduit shall be placed and shall extend at least five feet (5') beyond the outer limits of the obstacle in both directions.

5. Innerduct Installation

- No cable shall be placed directly in any split/solid steel conduit without innerduct.
- Innerduct(s) shall extend beyond the end of all conduits a minimum of eighteen inches (18").

6. Cable Installation in Conduit

- The cable shall be installed using either a sealed pneumatic cable blowing system or a powered pulling winch and hydraulic powered assist pulling wheels.
- The maximum pulling force to be applied to the cable shall be six hundred pounds (600 lbs.).
- Sufficient pulling assists shall be available and used to insure the maximum pulling force is not exceeded at any point along the pull.
- The cable shall be lubricated at the reel and all pulling assist locations.
- A pulling swivel breakaway rated at six hundred pounds (600 lbs.) shall be used at all times.
- Splices shall be allowed only at planned junctions and reel ends.
- All splices shall be contained in a handhole or manhole.
- A minimum of twenty meters (20m) of slack cable shall be left in all intermediate

handholes and manholes.

- A minimum of thirty meters (30m) of slack cable shall be left in all splice locations.
- A minimum of fifty meters (50m) of slack cable shall be left in Transmission Sites and points of presence.
- PVC conduit/innerduct may be split, with the cable installed inside the split duct and plowed in.

7. Manholes and Handholes

- Manholes shall be placed in traveled surface streets and shall have locking lids.
- Handholes shall be placed in all other areas, and be installed with a minimum of eighteen inches (18") of soil covering lid.

8. EMS Markers

EMS Markers shall be placed directly above the lid of all buried handholes or shall be fabricated into the lids of the handholes.

9. Cable Markers (Warning Signs)

- Cable markers shall be installed at all changes in cable running line direction, splices, pull boxes, assist-pulling locations, and at both sides of street, highway or railroad crossings.
- Markers shall be spaced at intervals of no more than five hundred feet (500') apart in metropolitan areas (areas where there is either extensive development and improvement or rapid growth (new building construction)) and within line of sight (not to exceed one thousand feet (1,000')) in non-metropolitan areas.
- Markers shall be positioned so that they can be seen from the location of the cable and generally set facing perpendicular to the cable running line.
- Splices and pull boxes shall be marked on the cable marker post.

AS-BUILT DRAWING SPECIFICATIONS

1. Alignment Sheets

A. As-Built Alignment Sheets shall include:

- survey information (either from existing data or new information)
- cable and conduit information
- splice locations
- assist point locations with permanent structures
- survey stations
- Transmission Site locations
- optical distances to the nearest Transmission Sites from each splice location.

B. As-Built Alignment Sheets shall be updated with actual construction field data.

C. The scale of As-Built Alignment Sheets shall not exceed 1" = 200' in metropolitan areas (areas where there is either extensive development and improvement or rapid growth (new building construction)) or 1" = 500' in non-metropolitan areas.

2. Format

Drawings shall be "blue lines", as such term is understood in the industry. Grantor may, after the Acceptance Date, adopt any replacement method of creating or providing drawings that is generally accepted in the industry and that provides equivalent information.

Attachment F – Maintenance & Collocation Agreement

THIS MAINTENANCE AND COLLOCATION AGREEMENT (this "Agreement") is made this ____ day of _____, 2022 by and between _____ ("Grantor") and The Curators of the University of Missouri, a public corporation of higher education, (Grantee").

RECITALS

A. Pursuant to the IRU Agreement entered into by Grantor and Grantee of even date herewith (the "IRU Agreement"), Grantee has the right to acquire an IRU from Grantor in certain Grantee Fibers.

B. Grantee desires to acquire from Grantor and Grantor wishes to provide to Grantee certain operations and maintenance services, as set forth herein; and

C. Grantee also desires to acquire from Grantor and Grantor wishes to provide to Grantee certain collocation services, as set forth herein.

ARTICLE 1 DEFINITIONS

Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the IRU Agreement.

1.01 "Agreement Term" shall have the meaning set forth in Section 6.01.

1.02 "Costs" shall mean the actual direct costs paid or payable in accordance with the established accounting procedures generally used by Grantor and which Grantor utilizes in billing third parties for reimbursable projects, including the following: (i) internal labor costs, including wages, salaries, benefits and overhead (provided that overhead shall not exceed ten percent (10%) of wages, salaries and benefits), and (ii) other direct costs and out of pocket expenses on a direct pass-through basis.

1.03 "Force Majeure Event" shall have the meaning set forth in Article 11.

1.04 "Grantor Facilities" shall mean the facilities identified on Exhibit B-1 which are owned, leased or otherwise used by Grantor to accommodate or house switch equipment, fiber optic transmission and/or associated ancillary equipment to serve as a switch terminal, transport concentrator, hub terminal or junction, as well as facilities used by Grantor to regenerate the signal of lit fibers or optically amplify Grantee's lit fibers.

1.05 "Interconnection Points" shall have the meaning set forth in Article 3.

1.06 "Interest Holders" shall have the meaning set forth in **Exhibit A**.

1.07 "Interest Rate" shall mean the prime rate (as published in the most recent edition of the "Money" section in the Wall Street Journal) plus 2%.

1.08 "Monthly Charge" shall have the meaning set forth in Section 2.03.

- 1.09 "Proprietary Information" shall have the meaning set forth in Section 15.01.
- 1.10 "Relocating Authority" shall have the meaning set forth in Section 2.02.
- 1.11 "Scheduled Maintenance" shall have the meaning set forth in Exhibit A.
- 1.12 "Taxes" shall have the meaning set forth in Article 7.
- 1.13 "Total Fiber Count" shall include all fibers in the affected portion of the System Route, including, without limitation, fiber which is owned or controlled by any grantor of a Required Right, by other grantees of Grantor and including fiber in the System Route which is located in other conduits of the Grantor System in the same affected portion.
- 1.14 "Unscheduled Maintenance" shall have the meaning set forth in Exhibit A.

ARTICLE 2
MAINTENANCE AND RELOCATION

2.01 Maintenance. From and after the Effective Date, regardless of whether Grantee has commenced its payment of the Monthly Charge in accordance with the procedures contained in Section 2.03 hereof, Grantor shall maintain the Grantor System in accordance with the maintenance requirements and procedures set forth in Exhibit A attached hereto. The costs of all Scheduled Maintenance (as defined in Exhibit A) of the Grantee Fibers shall be borne by Grantor until Grantee has commenced payment of the Monthly Charge in accordance with the procedures contained in Section 2.03. Thereafter, the costs of all Scheduled Maintenance of the Grantee Fibers shall be borne by Grantee, in the form of the Monthly Charge. Additionally, Grantee shall reimburse Grantor for its proportionate share of the Costs of any Unscheduled Maintenance (as defined in Exhibit A) not solely caused by the negligent acts or omissions of Grantor if but only if the total Costs of such Unscheduled Maintenance exceeds five thousand dollars (\$5,000.00) per occurrence, which Costs shall be allocated to Grantee pro rata based on the number of Grantee Fibers and the Total Fiber Count in the affected portion of the Grantor System; provided that the Costs allocated to Grantee shall not include Costs associated with Unscheduled Maintenance of empty conduits in the Grantor System.

2.02 Relocation. If, after the Acceptance Date, Grantor is required (i) by any Governmental Authority under the power of eminent domain or otherwise, (ii) by the grantor or provider of any Required Right, (iii) by any other Person having the authority to so require (each a "Relocating Authority"), or (iv) by the occurrence of any Force Majeure Event, to relocate the Grantor System or any portion thereof, Grantor shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. Grantee shall be kept fully informed of determinations made by Grantor in connection with such relocation, and any such relocation shall incorporate fiber meeting or exceeding the specifications set forth in Exhibit D of the IRU Agreement and be subject to Acceptance Testing and shall maintain the same Segment end points identified in the IRU. Any relocation shall be performed by Grantor so as to minimize the disruption of Grantee's use of the Grantee Fibers. Unless the relocation is (i) solely the result of the negligent acts or omissions of Grantor, or (ii) solely the result of a business determination by Grantor to relocate the Grantor System where Grantor is not required to relocate the Grantor System by a Relocating Authority, Grantee shall reimburse Grantor for its proportionate share of the Costs (including Acceptance

Testing and including amounts paid to a Relocating Authority to avoid relocation) related to such relocation (to the extent Grantor has not been reimbursed by the Relocating Authority) allocated to Grantee pro rata based on the number of Grantee Fibers and the Total Fiber Count in the affected portion of the Grantor System, but excluding Costs associated with relocation of empty conduits in the Grantor System. If Grantor receives reimbursement from a Relocating Authority that exceeds Grantor's costs of the relocation, Grantor shall pay to Grantee its pro rata share of the reimbursement based on the number of Grantee Fibers and the Total Fiber Count in the affected portion of the Grantor System.

2.03 Monthly Charge. In consideration of Grantor's responsibilities set forth in this Agreement, Grantee shall pay _____ to Grantor each month during each year, with respect to each Segment, commencing with the Acceptance Date and continuing until the expiration of the Term of the IRU shall have occurred. The components of the Monthly Charge relating to maintenance are described in Exhibit A.

2.04 The Monthly Charge shall be due and payable on the first day of each month during the Term of this Agreement. In the event the Acceptance Date or expiration of the Term occurs other than on the first day of the month, the Monthly Charge shall be prorated for the first or last month of the Term, as the case may be.

ARTICLE 3 INTERCONNECTION POINTS

3.01 In addition to the connections in the Grantor Facilities, Grantee shall have the right to request that Grantor interconnect Grantee's communications system with the Grantee Fibers at such manholes, handholes and other splice points as are determined and designated by Grantor and Grantee on Exhibit A. ("Interconnection Points")

3.02 Grantor may route the Grantee Fibers through Grantor's space in any Grantor Facilities, in Grantor's sole discretion; provided such routing shall not materially adversely affect Grantee's use of the Grantee Fibers or Associated Property hereunder and Grantor shall be responsible for all costs and expenses associated therewith.

3.03 In the event that Grantee desires to cross-connect the Grantee Fibers with other fibers provided by Grantee or another carrier within a Grantor Facility, Grantee shall execute a separate fiber connection agreement with terms and conditions substantially the same as the terms and conditions of this Agreement. In the event that Grantee desires to interconnect the Grantee Fibers with other fibers provided by Grantee or another carrier at a location other than a Grantor Facility, Grantee shall comply with Grantor's then-current interconnection policies and guidelines.

3.04 Except for the lateral Segments provided for in the IRU Agreement, any lateral or other fiber segment required or desired by Grantee in order to connect its business locations or other communication end points with the Grantor System (each a "Lateral Segment") shall be the subject of a separate agreement between the parties. In the event that Grantee desires to interconnect one or more Lateral Segments with the Grantor System, Grantee shall notify Grantor of this fact. Provided that the interconnection of the Lateral Segment is at a splice point or other interconnection point identified pursuant to Section 3.01 above, Grantee shall have the right to construct or otherwise arrange for the construction or acquisition of such Lateral Segment(s).

3.05 Any additional work respecting the Grantor System or the Grantee Fibers required by Grantee and which is not otherwise set forth in this Agreement, in the interconnection policies and guidelines or in the fiber connection agreement, shall be undertaken only by Grantor in Grantor's sole discretion at Grantee's request and shall be performed within a reasonable amount of time consistent with industry accepted practices; Grantee shall reimburse Grantor for all Costs incurred in connection with such additional work.

3.06 Grantee may request access to any Grantor Facility for any of its personnel, contractors or technicians by contacting Grantor's Customer Care Department (_____) which is responsible for authorizing access to such individuals in the Grantee profile. Access shall not be unreasonably withheld and shall be provided in a timely manner.

ARTICLE 4
COLLOCATION SPACE AND POWER

4.01 Grantor has or will construct Grantor Facilities along the Grantor System. Grantee shall be provided with the use of space (the "Collocation Space") and power in those facilities as specified in Exhibit B, and shall pay the fees specified in Exhibit B in accordance with the terms hereof.

4.02 Grantor shall provide Grantee with written notification that the Collocation Space ordered by Grantee within each Grantor Facility is ready for Grantee's occupancy (the "Collocation Completion Notice").

4.03 After Grantee's receipt of the Collocation Completion Notice and Grantee's payment of the associated fees, Grantor hereby grants to Grantee, and Grantee hereby acquires from Grantor a non-exclusive license to use, for the purposes described herein, during the Agreement Term, the designated Collocation Space in the Grantor Facilities, all upon and subject to the terms and conditions set forth herein.

4.04 Subject to the provisions of this Agreement, Grantee may use the Collocation Space in the Grantor Facilities for any lawful purpose. Grantee agrees to keep the designated Collocation Space in the Grantor Facilities free from any liens, rights or claims of any third party attributable to Grantee.

4.05 During the Term of the Agreement, Grantee shall have the right to increase or decrease its Collocation Space and power requirements; provided that any increases shall be subject to availability in the Grantor Facilities. In addition, Grantor agrees to provide Grantee with reasonable notice of any planned expansion in any Grantor Facilities and shall provide Grantee with a preferential right to request additional space in such facilities, on terms and conditions substantially similar to the terms and conditions of this Agreement. Grantee may exercise its right to license additional space by providing Grantor with a notice of intent to increase space no later than forty-five (45) days after receiving notice from Grantor of a planned expansion.

ARTICLE 5
OPERATIONS

5.01 Grantee shall (at its full cost and expense) have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, re-grooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of the Grantee Fibers; provided, such control and responsibility by Grantee shall not adversely affect the use by any other Person of the Grantor System and/or any electronic or optronic equipment used by such Person in connection therewith.

5.02 Grantee acknowledges and agrees that except for the items included as part of the Grantor Facilities as described in Exhibit B, Grantor is not supplying nor is Grantor obligated to supply to Grantee any optronic or electronic equipment or related facilities, all of which are the sole responsibility of Grantee, nor is Grantor responsible for performing any work other than as specified in this Agreement.

ARTICLE 6.
TERM

6.01 The term of this Agreement shall begin on the date of execution of this Agreement and shall continue for a period through December 31, 2039 (the "Initial Term").

6.02 The expiration or termination of this Agreement shall not affect the rights or obligations of any party hereto with respect to any payment hereunder for services rendered prior to the date of termination and any provisions which are expressly provided herein to survive such termination or expiration shall remain binding on the parties hereto.

6.03 Notwithstanding anything to the contrary contained in this Agreement, the parties recognize that this Agreement shall automatically terminate in the event that either party terminates the IRU Agreement in its entirety.

ARTICLE 7
TAXES

If any sales taxes, valued added taxes or similar charges or impositions ("Taxes") are asserted against Grantor as a result of Grantor's provision of the maintenance and relocation services under this Agreement by any local, state, national, international, public or quasi-public governmental entity or foreign government or its political subdivision, Grantee shall be responsible for such Taxes, provided, however, that such Taxes shall not include any tax imposed upon, or measured by, Grantor's income. Grantor shall provide to Grantee all documentation received by Grantor concerning any such Taxes and shall provide any forms reasonably requested by Grantee in order to qualify any payment due hereunder for an exemption or refund. Grantor will invoice all applicable Taxes as a separately stated item on the invoice.

ARTICLE 8
INDEMNIFICATION

8.01 Subject to the provisions of Article 9, Grantor hereby agrees to indemnify, defend, protect and hold harmless Grantee, and its employees, trustees, curators, officers and directors, from and against: (i)

any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorney fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of the indemnifying party, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees and vendors arising out of or in connection with the performance by the indemnifying party of its obligations under this Agreement; (ii) any claims, liabilities or damages arising out of any violation by the indemnifying party of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by the indemnifying party of its obligations under this Agreement; and (iii) any claims, liabilities or damages arising out of any breach by the indemnifying party of its obligations under this Agreement

8.02 Subject to the provisions of Article 9, Grantee hereby agrees, to the extent permitted by Missouri law and without waiving sovereign immunity to assume responsibility for : (i) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorney fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of the Grantee, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees and vendors arising out of or in connection with the performance by the Grantee of its obligations under this Agreement; (ii) any claims, liabilities or damages arising out of any violation by the Grantee of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by the Grantee of its obligations under this Agreement; and (iii) any claims, liabilities or damages arising out of any breach by the Grantee of its obligations under this Agreement.

8.03 Grantor and Grantee agree to promptly provide each other with notice of any claim which may result in an obligation hereunder. The responsible party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the other party, which consent shall not be unreasonably withheld or delayed.

8.04 Grantor and Grantee each expressly recognize and agree that its obligation under this Article is not a condition precedent to the continuing performance of its other obligations, if any, hereunder. In the event that a party shall fail for any reason to undertake its obligations under this Article the injured party hereby expressly recognizes that its sole remedies in such event shall be the right to bring legal proceedings against the other party for its damages as a result of the other party's said failure. These rights and obligations shall survive the termination of this Agreement for a period of twelve (12) months.

ARTICLE 9 LIMITATION OF LIABILITY

Notwithstanding any provision of this Agreement to the contrary, neither party shall be liable to the other party for any special, incidental, indirect, punitive or consequential damages, or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with such party's failure to perform its respective obligations hereunder, including, but not limited to, loss of profits or revenue (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), or claims of customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other party or any other cause whatsoever, including breach of contract, breach of warranty, negligence, or strict liability, all claims for which damages are hereby specifically waived. Nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party; provided, however, that neither party shall make any claim for indirect, special or consequential damages

against any third party who, directly or through one or more parties, has a right of indemnification, impleader, cross-claim, contribution or other right of recovery against a party to this Agreement. Each party shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the other to pursue any such action against such third party.

ARTICLE 10
INSURANCE

10.01 During the Agreement Term, Grantor shall obtain and maintain the following insurance: (i) Commercial General Liability coverage, with combined single limit of not less than \$1,000,000.00 each occurrence or its equivalent; and (ii) any other insurance coverages specifically required by statute or pursuant to Grantor's Required Rights. Grantee shall obtain during the Term of this Agreement, at its own expense, not less than \$2,000,000 combined single limit liability insurance for personal injury and property damage.

10.02 Grantee acknowledges that it retains the risk of loss for loss of or damage to (including loss of use) Grantee's personal property located in any Grantor Facilities. Grantee shall, at its option, maintain a program of property insurance or self-insurance covering loss or damage to its personal property located in a Grantor Facility. Grantee shall waive and/or cause its property insurance carrier to waive all rights of subrogation against Grantor for loss or damage to Grantee's personal property located in a Grantor Facility.

10.03 Both parties expressly acknowledge that a party shall be deemed to be in compliance with the provisions of this Article if it maintains an approved self-insurance program providing for a retention of up to \$1,000,000.00. If either party provides any of the foregoing coverage on a claims made basis, such policy or policies shall be for at least a three (3) year extended reporting or discovery period.

10.04 Unless otherwise agreed, all insurance policies shall be obtained and maintained with companies of sound financial standing and each party shall, upon request, provide the other party with an insurance certificate confirming compliance with the requirements of this Article.

10.05 Grantee and Grantor shall each obtain from the insurance companies providing the coverage required by this Agreement, the permission of such insurers to allow such party to waive all rights of subrogation and such party does hereby waive all rights of said insurance companies to subrogation against the other party, its affiliates, subsidiaries, assignees, officers, directors and employees.

10.06 In the event either party fails to maintain the required insurance coverage and a claim is made or suffered, such party shall to the extent permitted by law and without waiving sovereign immunity, indemnify and hold harmless the other party from any and all claims for which the required insurance would have provided coverage.

ARTICLE 11
FORCE MAJEURE

Neither party shall be in default under this Agreement, and such party's performance of an obligation shall be excused and extended, if and to the extent and during the period that any failure or delay in such party's performance of one or more of its obligations hereunder is proximately caused by any of the following conditions, each of which shall be deemed a "Force Majeure Event": Any act of God; shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefore; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; failure of a third party to provide or to recognize a Required Right (provided Grantor is not in default thereunder and has made timely and reasonable efforts to obtain the same); any other cause beyond the reasonable control of such party and, in the case of Grantor, a Grantee Delay Event.

ARTICLE 12
DEFAULT

If a party fails to observe and perform the terms and provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice from the other party (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then such non-defaulting party may (A) terminate this Agreement, in whole or in part, in which event the non-defaulting party shall have no further duties or obligations hereunder, and (B) subject to Article 9, pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctive relief.

ARTICLE 13
ASSIGNMENT

13.01 Grantor may assign, encumber or otherwise transfer this Agreement or any of its rights and interests therein to any other Person at any time; provided that Grantor shall not be released from its obligations to Grantee hereunder. Grantor may also sell, transfer, lease, license, grant indefeasible rights of use and enter into similar agreements or arrangements with other Persons respecting any fibers and conduit constituting a part of the Grantor System, other than with respect to the Grantee Fibers. Nothing contained in this Agreement shall be deemed or construed to prohibit Grantee from entering into similar agreements or arrangements with other Persons respecting any fibers and conduit, whether or not contained within the Grantor System.

13.02 Grantee may not assign, encumber or otherwise transfer this Agreement or any of its rights and interests therein to any other Person without the prior written consent of Grantor, which consent may not be unreasonably withheld. Notwithstanding the foregoing, Grantee shall have the right, without the Grantor's consent, but with prior written notice to the Grantor, to sub-grant all or part of the IRU to one or more third parties pursuant to Article 3. Further, without Grantor's consent, but with prior written notice to Grantor, Grantee may assign or otherwise transfer this Agreement (i) as collateral to any institutional lender of Grantee subject to the prior rights and obligations of the parties hereunder; or (ii) to any Affiliate of Grantee, or to any entity into which Grantee may be merged or consolidated or which purchases all or substantially all of the assets of Grantee; provided that Grantee shall not be released from its obligations hereunder. Any assignee or transferee shall continue to be subject to all of the

provisions of this Agreement.

13.03 This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

ARTICLE 14
REPRESENTATIONS AND WARRANTIES

Each party represents and warrants that: (i) it has the full right and authority to enter into, execute and deliver this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; (iv) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

ARTICLE 15
CONFIDENTIALITY

15.01 Grantor and Grantee agree that if either party provides any other confidential or proprietary information to the other party (the contents of this Agreement and any other confidential or proprietary information are hereafter collectively referred to as the "Proprietary Information"), all such Proprietary Information shall be held in confidence, and the receiving party shall afford such Proprietary Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) in order to avoid disclosure to or unauthorized use by any third party. The parties acknowledge and agree that all information disclosed by either party to the other in connection with or pursuant to this Agreement shall be deemed to be Proprietary Information, provided that verbal information is indicated as being confidential or proprietary when given and promptly confirmed in writing as such thereafter. Grantor further agrees that any information it receives during the Term of this Agreement which concerns the personal, financial, or other affairs of Grantee, its regents, officers, employees or students shall be kept confidential in accordance with this provision and in conformance with all state and federal laws relating to data privacy, including. All Proprietary Information, unless otherwise specified in writing, shall remain the property of the disclosing party, shall be used by the receiving party only for the intended purpose, and such written Proprietary Information, including all copies thereof, shall be returned to the disclosing party or destroyed after the receiving party's need for it has expired or upon the request of the disclosing party. Proprietary Information shall not be reproduced except to the extent necessary to accomplish the purpose and intent of this Agreement, or as otherwise may be permitted in writing by the disclosing party.

15.02 The foregoing provisions of Section 15.01 shall not apply to any Proprietary Information which (i) becomes publicly available other than through the disclosing party; (ii) is required to be disclosed by a governmental or judicial law, order, rule or regulation; (iii) is independently developed by the receiving party; or (iv) becomes available to the receiving party without restriction from a third party.

15.03 Notwithstanding Sections 15.01 and 15.02 either party may disclose Proprietary Information to its employees, agents, lenders, funding partners and legal and financial advisors and providers to the extent necessary or appropriate in connection with the negotiation and/or performance of this Agreement or in obtaining financing, provided that each such party is notified of the confidential and proprietary nature of such Proprietary Information and is subject to and agrees to be bound by the same restrictions on its use and disclosure.

15.04 Neither party shall issue any public announcement or press release relating to the execution of this Agreement without the prior approval of the other party, which approval shall not be unreasonably withheld.

15.05 In the event either party shall be required to disclose all or any part of this Agreement in, or attach all or any part of this Agreement to, any regulatory filing or statement, each party agrees to discuss and work cooperatively, in good faith, with the other party, to protect, to the extent possible, those items or matters which the other party deems confidential and which may, in accordance with applicable laws, be deleted therefrom and/or otherwise maintained in confidential status.

15.06 The provisions of this Article shall survive the termination of this Agreement for two years.

ARTICLE 16
NOTICES

All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by facsimile transmission followed by another form of written notification which is capable of providing proof of delivery, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

IF TO GRANTOR:

with a copy to:

IF TO GRANTEE:

with a copy to:

or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the same day as facsimile transmission (or the first business day

thereafter if faxed on a Saturday, Sunday or legal holiday), on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

ARTICLE 17

ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party. The duly authorized representative of Grantor shall be the Director of Purchasing Services or her designee.

ARTICLE 18

RELATIONSHIP OF THE PARTIES

The relationship between the parties shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including but not limited to federal income tax purposes. Grantor shall have no authorization, express or implied, to bind the Grantee to any agreements, liability, or understanding except as expressly set forth herein. Grantor shall be solely responsible for the acts of Grantor, its employees and agents

ARTICLE 19

COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

ARTICLE 20

CONSTRUCTION AND INTERPRETATION OF AGREEMENT

The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

ARTICLE 21

ENFORCEMENT AND WAIVER

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or

unenforceable clause or provision as may be possible. No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

ARTICLE 22
GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Missouri without reference to its choice of law principles.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GRANTOR

By _____
Title:

GRANTEE

By _____
Title:

Exhibit A
Maintenance Requirements and Procedures

Maintenance

Scheduled Maintenance. Routine maintenance and repair of the Grantee Fibers described in this section ("Scheduled Maintenance") shall be performed by or under the direction of Grantor, at Grantor's reasonable discretion and in accordance with industry standards. Scheduled Maintenance shall commence upon the Effective Date. Scheduled Maintenance shall only include the following activities:

- patrol of Grantor System route on a regularly scheduled basis, which will not be less than monthly, unless hi-rail access is necessary, in which case, it will be quarterly;
- maintenance of a "Call-Before-You-Dig" program and all required and related cable locates;
- maintenance of sign posts along the Grantor System right-of-way with the number of the local "Call-Before-You-Dig" organization and the "800" number for Grantor's "Call-Before-You-Dig" program; and
- assignment of fiber maintenance technicians to locations along the route of the Grantor System.

Unscheduled Maintenance. Non-routine maintenance and repair of the Grantee Fibers which is not included as Scheduled Maintenance ("Unscheduled Maintenance") shall be performed by or under the direction of Grantor and in accordance with industry standards. Unscheduled Maintenance shall commence upon the Effective Date. Unscheduled Maintenance shall consist of:

- "Emergency Unscheduled Maintenance" in response to an alarm identification by Grantor's Operations Center, notification by Grantee or notification by any third party of any failure, interruption or impairment in the operation of fibers within the Grantor System, or any event imminently likely to cause the failure, interruption or impairment in the operation of fibers within the Grantor System.
- "Non-Emergency Unscheduled Maintenance" in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of fibers within the Grantor System not covered by Scheduled Maintenance. Grantee shall immediately report the need for Unscheduled Maintenance to Grantor in accordance with reasonable procedures promulgated by Grantor from time to time. Grantor will log the time of Grantee's report, verify the problem and dispatch personnel immediately to take corrective action.

Operations Center

Grantor shall operate and maintain an Operations Center ("OC") staffed twenty-four (24) hours a day, seven (7) days a week by trained and qualified personnel. Grantor's maintenance personnel shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Grantor shall have its first maintenance personnel at the site requiring Emergency Unscheduled Maintenance activity within four (4)

hours after the time Grantor becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by Force Majeure Events. Grantor shall maintain a toll-free telephone number to contact personnel at the OC and shall provide such number to Grantee. Grantor shall also maintain an "escalation list" that identifies the responsible personnel of Grantor (and their contact information) based on the duration of an outage resulting in Unscheduled Maintenance ("Escalation List") and provide a copy of the Escalation List, and updates thereto, to Grantee. Grantor's OC personnel shall dispatch maintenance and repair personnel along the system to handle and repair problems detected in the Grantor System: (i) through the Grantee's remote surveillance equipment and/or upon notification by Grantee to Grantor, or (ii) upon notification by a third party.

Grantor will not be responsible for monitoring the performance or operation of the Grantee Fibers; in the event that Grantee detects a failure in the operation of the Grantee Fibers which may indicate the need for Unscheduled Maintenance, Grantee shall report same to Grantor's OC.

Cooperation and Coordination

- In performing its services hereunder, Grantor shall take workmanlike care to prevent impairment to the signal continuity and performance of the Grantee Fibers. The precautions to be taken by Grantor shall include notifications to Grantee. In addition, Grantor shall reasonably cooperate with Grantee in sharing information and analyzing the disturbances regarding the cable and/or fibers. In the event that any Scheduled or Unscheduled Maintenance hereunder requires a traffic roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of the Grantee, then Grantee shall, at Grantor's reasonable request, make such personnel of Grantee available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Grantor in performing such maintenance as required of Grantor hereunder.
- Grantor shall notify Grantee as soon as is practicable under the circumstances, but in no event less than five (5) business days prior to the date in connection with any Planned Service Work Period ("PSWP") of any Scheduled Maintenance and as soon as possible after becoming aware of the need for Unscheduled Maintenance. A "Planned Service Work Period" shall mean the time window that Grantor typically uses for performing Scheduled Maintenance. Grantee shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with Grantor's ability to perform its obligations under the Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Grantor shall notify Grantee at Grantor's earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.

Facilities

- Grantor shall maintain the Grantor System in a manner which will permit Grantee's use, in accordance with the terms and conditions of the Agreement.
- Grantee will be solely responsible for providing and paying for any and all maintenance of all electronic, optronic and other equipment, materials and facilities used by Grantee in connection with the operation of the Grantee Fibers, none of which is included in the maintenance services to be provided hereunder.

Cable/Fibers

- Grantor shall perform appropriate Scheduled Maintenance on the cables contained in the Grantor System in accordance with Grantor's then current preventive maintenance procedures which shall not substantially deviate from standard industry practice.
- Grantor shall have qualified representatives on site any time Grantor has reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of any cable.
- Grantor shall maintain sufficient capability to teleconference with Grantee during an Emergency Unscheduled Maintenance in order to provide regular communications during the repair process. When correcting or repairing cable discontinuity or damage, including but not limited to in the event of Emergency Unscheduled Maintenance, Grantor shall use commercially reasonable efforts to repair traffic-affecting discontinuity within nine (9) hours after Grantor's representatives arrive at the problem site and have the ability to begin uninterrupted repair activities. The aforementioned nine (9) hour time frame is merely an estimate, and repair times may increase depending upon such variables as fiber counts and the location of the problem site. For a more accurate estimate of how long the repairs will take for any given Emergency Unscheduled Maintenance, Grantee should contact Grantor's Service Management Center (_____). In order to accomplish the above-referenced objectives, it is acknowledged that the repairs so effected may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Emergency Unscheduled Maintenance, Grantor shall commence its planning for permanent repair, and thereafter promptly shall notify Grantee of such plans, and shall implement such permanent repair within an appropriate time thereafter. Restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule. If the fiber is required for immediate service, the repair shall be scheduled for the next available PSWP.
- In performing repairs, Grantor shall comply with the splicing specifications as set forth in Exhibits "C" and "D" to the IRU Agreement. Grantor shall provide to Grantee any modifications to these specifications as may be necessary or appropriate in any particular instance.
- Grantor's representatives that are responsible for initial restoration of a cut cable shall carry on their vehicles the typically appropriate equipment that would enable a temporary splice, with the objective of restoring operating capability in as little time as possible. Grantor shall maintain and supply an inventory of spare cable in storage facilities supplied and maintained by Grantor at strategic locations to facilitate timely restoration.

Planned Service Work Period

Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the parties. Generally, this work should be scheduled after midnight and completed before 6:00 a.m. local time. The intent is to avoid jeopardy work during high-traffic periods.

Restoration

- Grantor shall respond to any event giving rise to the need for Unscheduled Maintenance (in any event, an "Outage") as quickly as possible (allowing for delays caused by Force Majeure Events) in accordance with the procedures set forth herein.
- When restoring a cut cable in the Grantor System, the parties agree to work together to restore all traffic as quickly as possible. Grantor, promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the cable and shall begin restoration efforts. Grantor shall splice fibers tube by tube or ribbon by ribbon or fiber buffer by fiber buffer, rotating between tubes, ribbons or buffers operated by the parties having an interest in the cable, including Grantee and all future fiber users of the system (collectively, the "Interest Holders"); provided that, operating fibers (i.e., fibers which have been jumpered to Grantee's or another party's space or equipment) in all buffer tubes or ribbons or fiber bundles shall have priority over any non-operating fibers in order to allow transmission systems to come back on line; and provided further that, Grantor will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced and all traffic restored. Notwithstanding the foregoing, Grantor does not guarantee any specific rotational prioritization for Grantee in light of the overriding requirement for expediency in restoration of service to all parties.

Subcontracting

Subject to notification and approval by Grantee, which approval shall not be unreasonably withheld, Grantor may subcontract any of the maintenance services hereunder; provided that Grantor shall require the subcontractor(s) to perform in accordance with the requirements and procedures set forth herein. The use of any such subcontractor shall not relieve Grantor of any of its obligations hereunder.

Credits

In the event of an Emergency Unscheduled Maintenance event that (i) is not caused by any act or omission of Grantee or a failure of equipment provided by Grantee, (ii) is a service impacting failure, and (iii) is not beyond the Segment End Points (an "Outage"), then Grantor shall use commercially reasonable best efforts to promptly repair traffic-affecting discontinuity to at least one path. Any failure of Grantor to restore at least one path of Grantee Fibers within twelve (12) hours after Grantor's representatives arrival at the problem site (other than as caused by a Force Majeure Event), shall entitle Grantee to a credit of 0.25% of the annual Monthly Charge for the affected segment for each hour an Outage that lasts longer than twelve (12) hours; or in the event Grantee has elected to pay a single upfront payment as provided in Section 2.03 of the Agreement, Grantee shall be entitled to a credit of 0.25% of what would have been paid as an annual Monthly Charge, which credit may be applied against any charges assessed against Grantee under this Agreement, at Grantee's discretion.

With respect to each segment, in no event shall the sum of credits in any given calendar year exceed the yearly Monthly Charges payable during such calendar year. Any credits shall be applied to the next Monthly Charge invoice. This Section sets forth the sole and exclusive remedies of Grantee respecting a failure of Grantor to respond to or restore service in accordance with the procedures contained herein.