

# Master Optical Fiber and Facilities Agreement

## Idaho County

This Master Optical Fiber and Facilities Agreement ("Agreement"), is effective as of the date it is fully executed ("Effective Date") by and between **Idaho County**, Idaho, a body politic and corporate duly organized and existing under and pursuant to the provisions of the Constitution and laws of the State of Idaho, ("County"), and \_\_\_\_\_, a Limited Liability Company, organized under the laws of the State of \_\_\_\_\_, and doing business in the State of Idaho, ("Company"). County and Company are sometimes individually referred to herein as a "Party" or collectively as the "Parties."

### Recitals

- A. Whereas, County owns, maintains and otherwise has the rights to use an optical fiber middle mile in ground system and facility network for the purposes of providing telecommunication services. The middle mile network runs from Grangeville, Idaho, through Nezperce, Idaho to Orofino, Idaho and includes network facilities in each of the three cities. The network is located in and crosses portions of Idaho, Lewis and Clearwater Counties, as well as the Nez Perce Reservation. Extensions of the network includes aerial fiber-to-the-premise ("FTTP") buildouts in the cities of Grangeville and Nezperce. The middle mile in ground conduit and fiber components, the constructed facilities in each of the three cities and the FTTP, all of which may be expanded from time-to-time, comprise the DIGB2-Idaho County fiber optic, **open access network** and may be referenced herein as the "System."
- B. Whereas, County's System is an OPEN ACCESS NETWORK as defined in the Idaho Broadband Strategic Plan. As such, the System is a physical broadband network infrastructure that provides dark fiber access to municipalities, community institutions, rural cooperatives, and nonprofit and communications companies utilizing a cost recovery-based model of operations and maintenance.
- C. Whereas, County's System was financed by public monies competitively awarded by the Idaho Department of Commerce, Idaho Broadband Office, with matching funds contributed by District II Interoperability Governance Board ("DIGB2") member counties, including Idaho, Lewis, Nez Perce and Latah and the cities of Grangeville and Nezperce.
- D. Whereas, County's broadband mission is to expand broadband access and services across the multi-county area, prioritizing unserved and underserved, rural communities to support economic development, public safety, healthcare delivery, and education to improve the quality of life in rural Idaho, as delineated in the Idaho County Broadband Strategic Plan.
- E. Whereas, The System is a dark fiber optic infrastructure ("Dark FOI") with unlit strand capacity available for lease and includes both the middle mile and last mile FTTP architecture. This leasable "Dark Fiber" is optical fiber through which no light is

# **Master Optical Fiber and Facilities Agreement**

## **Idaho County**

transmitted, and no signal is carried. It is unactivated deployed fiber, with no necessary equipment attached to light the fiber and carry a signal to serve customers.

- F. Whereas, Company is an internet service provider (an "ISP") that operates or intends to utilize a portion of the System Dark Fiber to provide telecommunication FTTP services to end users adjacent to, or within the System and/or may require Dark Fiber to transport signal traffic across the middle mile portion of the System to connect to an adjoining system.
  
- G. Whereas, Company is authorized to provide telecommunication services in Idaho as required by applicable local, state and federal laws.
  
- H. Whereas, Company supports the County's Open Access Network System requirement and desires to operate as an ISP in a non-discriminatory basis to provide advanced, high speed, affordable broadband FTTP end user communication services to the County residents, businesses and anchor institutions consistent with the terms of this Agreement.
  
- I. Whereas, Company agrees to maintain, repair and upgrade its equipment as needed to meet this Agreement service delivery commitment, and further commits to participate in an annual technical review process to identify and adopt and implement evolving technology and equipment standards as a best-practice.
  
- J. County has determined that this Agreement furthers the County's goal of operating a physical broadband open access network infrastructure that provides dark fiber access to municipalities, community institutions, rural cooperatives and non-profit and communications companies utilizing a cost-recovery based model of operations and maintenance.
  
- K. Whereas, County and Company may execute one or more Agreements, and each shall provide the specific details of the optical fiber, facilities and services provided by the County to the Company subject to the terms and conditions therein.

**NOW THEREFORE**, in consideration of the above recitals and the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

### Agreement

1. **LEASED FACILITIES.** The County will lease certain dark fibers ("Leased Fibers") and related facilities ("Leased Facilities") and provide certain other services to the Company as identified on a Service Order Summary (SOS) executed by the County and the Company consistent with this Agreement. The last such Service Order Summary shall control.

# Master Optical Fiber and Facilities Agreement

## Idaho County

1.1 Optical Fiber Specifications: Leased fiber within the system will meet the following specifications, as measured by an optical time domain reflectometer (“OTDR”):

Parameter	Specifications	Units
Maximum Attenuation	1310nm (A1)	.50 dB/km
Maximum Attenuation	1550nm (A2)	.40 dB/km
Cladding Diameter	125 +/- 3	nm
Cutoff Wavelength	1250 +/- 100	nm
Zero Dispersion Wavelength	1310 +/- 12	nm
Maximum Dispersion	1285 – 1330 nm	3.5 ps/nm Km
Reference: EIA RS – 455 test method		

1.2 Leased Fiber Test and Notice: The Company shall have the right but not the obligation to test the Leased Fiber, at the Company’s expense, during the five (5) day period prior to the planned commencement of use of the Leased Fiber for compliance with the technical specifications referenced in Section 1.1. After testing, the Company shall send an acceptance notice to the County acknowledging either acceptance of the Leased Fibers as tested or that the Leased Fibers do not comply with the technical specifications. If the Company fails to provide notice within five (5) days prior to commencement of its use, then the Company will be deemed to have accepted the Lease Fibers.

1.3 Failed Test for Leased Fibers: If the result of any test performed pursuant to Section 1.2 shows that any portion of the Leased Fiber is not operating in accordance with the technical specifications set forth in Section 1.1, the County will take prompt and reasonable action to bring the non-conforming Leased Fibers into compliance and notify the Company. Thereafter, the Company will have (but not the obligation to) ten (10) days following such notice to retest the Leased Fibers and again notify the County as per the provisions in Sections 1.1 and 1.2. If the County is unable or elects not to bring the noncomplying Leased Fiber into compliance, this Lease and the relevant Service Order Summary shall terminate as to these Leased Fibers.

1.4 Operability of Company Equipment: In no event shall the unavailability, incompatibility, delay in installation, malfunction, or any other impairment of any company interconnection equipment or Company’s suppliers (e.g., a local access telephone service provider) be the basis for an extension of any testing or notification periods, or for rejecting any Leased Fibers.

2. **USE OF LEASED FACILITIES**. Except for incidental use by the Company to monitor or maintain its own equipment, the Company shall use the leased Facilities as an ISP, operating as a telecommunication system to end users adjacent to, connect to and maintain active service delivery to end users within the County System service area, and for no other use, unless specifically authorized by a lease agreement modification. Company is expected to connect and maintain service to at least two hundred (200) active FTTP service connections within 180 days of executing this Agreement.

# **Master Optical Fiber and Facilities Agreement**

## **Idaho County**

2.1 Default-Unauthorized Use: Company shall be in default under this Agreement if it (i) ceases conducting the Authorized Use for any period exceeding thirty (30) days; or (ii) conducts any other use without first obtaining a validly executed lease modification. In conducting its Authorized Use, the Company shall properly and fairly serve the public, providing reasonable hours of operation and suitable service. Furthermore, Company, as an ISP, will accept and support County Open Access parameters and stipulations to make FTTP services available and connect residences, businesses and CAIs through reasonable and non-discriminatory access arrangements that:

- a. Allow multiple Internet Service Providers to ride on the System Network;
- b. Permit System ISPs to differentiate their product offerings, services and needs; and
- c. Require the ISP to offer service on equal terms to all eligible Broadband Service Locations within the current service areas of the System Network.

Additionally, the selected Network Operations and Maintenance provider will not limit the ability of ISPs or their customers to run applications, use services and connect services of their choice to the System Network.

2.2 Use by Company: The County reserves the right to limit the way any portion of its System and Facilities are used by the Company to protect the technical integrity of the System. However, if the County's limits materially deprive the Company of the benefits contemplated in this Agreement and each Service Order Summary, then the Company may terminate this Agreement and the applicable Service Order Summary as its sole and exclusive remedy.

2.3 No Flammable or Dangerous Materials: The County's property, and the System therein, shall not be used by the Company to store, use, distribute, or otherwise handle flammable or dangerous materials, excepting only such uses which are necessary to conduct the Authorized Use. At the request of the County, the Company shall provide a list of all flammable or dangerous materials stored or used within the County's property.

2.4 No Other Equipment: Only equipment related to the Authorized Use shall be used or operated by the Company on County property. County may impose reasonable and technically necessary limitations on use of the System solely to prevent material harm to the physical integrity of the System. Any such limitation shall be applied in a nondiscriminatory manner, supported by documented technical justification, and communicated to Company in writing with an opportunity to cure where practicable.

2.5 No Liens: If a Party causes a mechanic's, materialman's, or vendor's lien, or similar lien to become attached to the System fiber or facilities, then such Party will, upon becoming aware of such lien, promptly notify the other Party in writing, and promptly take all necessary steps to cause such lien to be discharged and released of record without cost to the other Party.

3. **RENT PAYMENTS AND OTHER PAYMENTS**. The term "Rent" as used herein includes all applicable fees and charges, including, without limitation, power usage fees, rack fees, early disconnect charges, and other non-recurring charges, based on and commenced as specified in each Service Order Summary, plus applicable Idaho tax if any.

# **Master Optical Fiber and Facilities Agreement**

## **Idaho County**

3.1 Invoicing, Payment, Late Charge, and Interest: The County will bill the Company monthly, in advance, for all Rent due to the County, plus the customary and anticipated power charges. All amounts will be due within thirty (30) days of the date of mailing the invoice to the address provided by the Company in the Service Order Summary. However, the failure of the County to provide a monthly invoice shall not relieve the Company of the obligation to pay Rent. A late charge of one percent (1%) per month may be assessed against past due Rent from the date such Rent became due. Additionally, if Rent is not received when due, the Company shall pay the County an additional fee of One Hundred Dollars (\$100) or five percent (5%) of the delinquent payment, whichever is greater, to defray costs of collecting and handling such late payment. The County reserves the right to audit power usage and bill/refund accordingly.

3.2 Rent Adjustment: Rates, fees, and charges set forth in any Service Order Summary shall remain fixed during the Initial Term. Following the Initial Term, County may adjust such rates no more than once per twelve (12) month period, and any increase shall not exceed the lesser of (i) three percent (3%) annually, or (ii) the percentage increase in the Consumer Price Index (CPI-U, U.S. City Average). Any proposed adjustment shall be provided in writing at least sixty (60) days prior to its effective date.

4. **TAXES AND FEES PAID BY COMPANY.** In addition to Rent paid to the County, the Company will pay on or before the date due all applicable taxes, franchise, license, and permit fees assessed against it for the conduct of its business (including as a telecommunications service provider) arising out of the use of the Leased Fibers or equipment pursuant to this Lease (the "Taxes"). Upon request of the County, the Company will provide proof of payment to the County of the Taxes paid. In the event of any refund, rebate, reduction, or abatement to the Company of any such Taxes, the Company will be entitled to receive the entire benefit of such refund, rebate, reduction, or abatement.

4.1 Indemnification for Taxes: The Company does hereby save, defend, and indemnify the County from any claim, demand, or expense (including all penalties, interest, and costs, as well as reasonable attorneys' fees) occasioned by Company's failure to timely pay any such Taxes or resulting from any proceeding contesting the imposition of any such Taxes.

4.2 Excise Taxes: Company shall additionally pay all applicable excise taxes or those taxes imposed in lieu of excise tax. In the event the County is in any way prohibited by law from requiring Company to pay any such tax and by reason thereof the County pays any such tax, then, and in any event, the County shall be entitled to increase the amount of the fee payable by Company to the County by the amount of any tax paid and by the amount of any increased tax required to be paid.

5. **SYSTEM MAINTENANCE.** All maintenance and repair to the Leased Fiber and the other portions of the System (other than equipment or facilities installed by the Company), including, but not limited to, conduit, inner-duct, poles, and equipment, shall be the responsibility of the County. The County (or its designated contractors, consultants, or subcontractors) shall provide the

## **Master Optical Fiber and Facilities Agreement Idaho County**

maintenance in accordance with standard industry practices, including standard industry timeframes.

5.1 Routine Maintenance: For routine and scheduled work affecting service on the System, the County will make reasonable efforts to schedule maintenance that will result in as little disruption of service under this Lease as reasonably possible, during off peak hours, and at such times and dates as will provide the Company with not less than ten (10) business days' notice prior to the commencement of work. The County will provide notice to the Company by the method provided for in the applicable Service Order Summary, or by the method requested by the Company in writing superseding the method provided in the most recent Service Order Summary.

5.2 Emergency Work: Emergency work (as reasonably determined by the County) arising from an unscheduled disruption of service, or the imminent threat of disruption of service, may be conducted by the County at any time without prior notice.

5.3 Company Notification of Unscheduled Disruption of Service: If the Company discovers an unscheduled disruption of service, or emergency, the Company may contact the County using the emergency contact information the County will (and as may be updated from time-to-time) provide to the Company.

5.4 Cooperation for Unscheduled Disruption of Service: Each Party shall maintain the capability to accept, process, and dispatch personnel in response to trouble reports, without unreasonable delay, after the performance of appropriate tests and attempts to isolate the trouble remotely. If testing and remote trouble isolation procedures are ineffective, each Party will reasonably assist the other in efforts to isolate the trouble. If the trouble is isolated to a Party's facilities or equipment, such Party will take all reasonable and necessary steps to clear the trouble and restore the services as quickly as possible.

5.5 Early Termination: If the County fails to comply with the maintenance obligations contained in this Lease, the Company shall have the right, upon thirty (30) days' written notice and opportunity to cure, to terminate this lease and all Service Order Summary(s) as its sole and exclusive remedy for such maintenance failure.

5.6 Service Levels: County shall use commercially reasonable efforts, consistent with industry standards for public fiber infrastructure, to maintain availability of the Leased Fiber. In the event of a non-Force Majeure outage exceeding seventy-two (72) consecutive hours occurs, Rent attributable to the affected Leased Fiber shall be abated as a pro-rata daily credit on the monthly billing for the duration of the outage. Nothing herein shall be construed as creating a guarantee of uninterrupted service.

# **Master Optical Fiber and Facilities Agreement**

## **Idaho County**

6. TERM. This Agreement shall commence on the Effective Date and shall remain in effect for an initial term of \_\_\_\_\_ (“Initial Term”), unless earlier terminated for cause as expressly provided herein. Following the Initial Term, the Agreement shall automatically renew on a month-to-month basis unless either Party provides not less than ninety (90) days’ prior written notice of termination. Termination without cause shall not be permitted during the Initial Term.

6.1 Renewal: Unless otherwise provided therein, each Service Order Summary will automatically renew for successive terms of one (1) month each as to the Leased Fiber and Facilities specified therein, unless terminated by notice in writing and delivered by either Party to the other Party not less than thirty (30) days prior to the end of the term specified or any renewal term.

6.2 Equipment Removal at end of Term: Upon expiration or termination of this Agreement, Company will disconnect and remove any Company equipment from County facilities, leave the facilities in a neat and orderly manner and repair any damage directly caused by any equipment removal at Company expense, excluding normal wear and tear. If not removed within thirty (30) days, County may remove the equipment at Company’s expense or assume title to such equipment.

6.3 Step-In Rights: As System owner, County reserves the right to temporarily step-in and attempt to maintain continuity of service should Company’s participation under this Agreement terminate or expire. County’s intention is to eliminate gaps in service for end users and will attempt to identify and/or arrange for replacement ISP providers or may temporarily assign service delivery to another System user while a more permanent solution is identified.

7. INDEMNIFICATION AND HOLD HARMLESS. The Company shall defend (with legal counsel acceptable to the County), indemnify, and hold the County, its officers, employees, and agents harmless from any and all demands, claims, judgments, or liability for loss or damage arising as a result of accidents, injuries, or other occurrences (i) occasioned by either the negligent or willful conduct of the Company or its agents; or (ii) made by any person or entity holding under the Company, or any person or entity on the County's property as a result of Company's activities hereunder, regardless of who the injured party may be. This indemnification and hold harmless shall not apply to the extent the damages were caused by the negligence or willful misconduct of the County.

7.1 Liability of County: County shall be responsible only for the acts, omissions or negligence of County’s own employees. “Employee” for the purposes of this Agreement shall be defined as set forth in Idaho Code Section 6-902. Nothing in this Agreement shall extend the tort responsibility or liability of County beyond that required by the Idaho Tort Claims Act (Idaho Code §§ 6-901 et seq.).

7.2 Agreement Liability: In no event will either Party be liable to the other for any indirect, incidental, special, punitive or consequential damages whatsoever, arising out of, or in connection with this Agreement or an SOS, including but not limited to lost profits, lost revenue, loss of

# **Master Optical Fiber and Facilities Agreement**

## **Idaho County**

goodwill, loss of anticipated savings, or loss of business opportunity incurred or suffered by either Party whether in an action in contract, or tort, even if the other Party or any other person has been advised of the possibility of such damages.

7.3 Content of Transmitted Data or Communications: County disclaims all liability or responsibility whatsoever for the content (including the nature of materials, opinions, and views) of any and all data or communications transmitted, other than by County or a person acting at County's direction or on County's behalf in, across, on through or over the County Network System after Company's acceptance thereof pursuant to Section 1. Company agrees that it will make no claim whatsoever against County relating to the content of any data or communications transmitted, other than by County or a person acting at County's direction, or on County's behalf in, across, on through or over the County System, Facilities or Network.

7.4 Agreement Covenants- County Personnel: No covenant or agreement contained in this Agreement shall be deemed to be a covenant or agreement of any Commissioner, officer, or employee of the County in an individual capacity. No recourse shall be had for any claim based on the Agreement against any Commissioner, officer, or employee, past, present or future, of the County under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

7.5 Funding Limitation Covenants: No covenant or agreement contained in this Agreement shall be deemed to be a covenant or agreement of the State of Idaho, Department of Commerce, Idaho County, or otherwise obligate the State of Idaho or Idaho County, to make any future appropriation of funds.

8. **CASUALTY LOSS**. County officials and employees, contractors, County insurance carrier and County casualty insurance policies shall not be liable or responsible to Company for any property loss or damage done to Company's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be Company's sole responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of County, Company, any third party, or act of nature. It is noted that as between the Parties, Company can best protect this risk with insurance. Company hereby releases and discharges County officials and employees, contractors, County's insurance carrier and County's casualty insurance policy from any claims for loss or damage to Company's property.

9. **FORCE MAJEURE**. Neither Party will be liable to the other for any failure of performance under this Agreement due to causes beyond its control which such Party was unable to avoid or overcome through reasonable diligence (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood, earthquake or other catastrophes; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders

# Master Optical Fiber and Facilities Agreement

## Idaho County

therefore; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions; national emergencies; terrorism; insurrections; riots, wars; or third party strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events"). Company will not be obliged to pay for services not rendered during a Force Majeure Event.

### 10. TERMINATION.

10.1 Condemnation: If at any time during the Term of this Agreement, all or any significant portion of the Network System is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, either Party may elect to terminate, without incurring any liability therefor after the date of termination, this Agreement and all SOSs upon giving the other Party not less than sixty (60) days' prior written notice. In the event this Agreement is terminated pursuant to this Section, both Parties will be entitled to participate in any condemnation proceedings to seek to obtain compensation via separate awards for the economic value of their respective interests in the Network System.

10.2 Damage to or Destruction of Network System: If at any time during the Term of this Agreement, all or any significant portion of the Network System is damaged or destroyed beyond feasible repair, both Parties shall be entitled to seek to recover the economic value of their respective interest in the Network System (i) under any insurance policy carried by either Party or any third Party, or (ii) seek recovery from any third party which may be legally responsible for causing such damage or destruction.

10.3 Catastrophic Outage: If at any time during the Term of this Agreement the ability of the Leased Dark Fiber to transmit telephone, telecommunications and video services is interrupted or degraded below a minimum of .25 DBM (Decibels per Millivolt) attenuation per splice as established by OTDR (Optical Time Domain Reflectometer): (i) in the case of a Force Majeure Event, for thirty (30) consecutive days, or (ii) in the case of a non-Force Majeure Event, for fifteen ( 15) consecutive days, after notice to County, then either Party may elect to terminate this Agreement and all SOSs without liability upon giving thirty (30) days written notice to the other Party.

10.4 Default- Dispute Resolution: In the event either Party fails to cure a default within the applicable cure period, or a dispute arises, the Parties agree as follows:  
applicable cure period, or a dispute arises, the Parties agree as follows:

- a. A breach or dispute arising between Company and County that cannot be resolved, shall first be submitted to mediation within thirty (30) days of a written request of one Party on the other.
- b. The Parties may agree on one mediator.
- c. The mediator shall be duly licensed in the State of Idaho with at least 5 years of mediation experience and be in good standing with the Idaho State Bar ("Mediator").

## **Master Optical Fiber and Facilities Agreement Idaho County**

- d. Each party agrees to pay one half (1/2) of any costs and fees of the Mediator and will be responsible for their own attorney fees with respect to the Mediation.

For any Agreement dispute, mediation under this Section is a condition precedent to filing any action in court. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in Idaho.

**10.5 Referendum or Court Ruling:** If a referendum or final decision of a court will prevent performance of this Agreement by County, then this Agreement and all rights and obligations associated therewith shall terminate effective immediately, except for any undischarged rights and obligations accruing prior to the effective date of termination. If Company is not in default of any Agreement provision on the effective date of termination, any fees prepaid by Company shall be promptly refunded. County shall not be responsible for any costs, damages, or other expenses of any kind resulting from or relating to termination of this Agreement under this provision.

**11. ASSIGNMENT.** No assignment hereof, sublease, or assignment or licensing of any rights or obligations hereunder in whole or in part (hereinafter collectively referred to as a "Transfer") shall be valid for any purpose without the prior written consent of County, which consent may be withheld for any reason in County's sole and absolute discretion; provided, however, nothing herein shall prohibit Company from selling or offering telecommunication services over the Leased Dark Fiber to customers in the ordinary course of business. Any attempted Transfer without the prior written consent of County shall be void and an event of default and breach under this Agreement, and further shall, at the option of County, terminate this Agreement. Notwithstanding the foregoing, Company may assign this Lease without the County's prior written consent on thirty (30) days' prior notice to County when such assignment is (a) to a wholly-owned affiliate, successor in interest, or acquirer of substantially all of its assets that has the capacity and expressed the commitment to fulfill the requirements set forth in the Lease provided Company and such transferee are jointly and severally liable for the obligations hereunder, or (b) if necessary, to be in compliance with the rules and/or regulations of any regulatory agency, governmental agency, legislative body or court of competent jurisdiction. A copy of such Transfer document shall be provided to County within thirty (30) days of the effective date of the Transfer.

**11.1 Remedy if County Denies Transfer:** If County refuses to consent to a Transfer, Company's sole remedy shall be the right to bring a declaratory judgment action to determine whether County was entitled to refuse such Transfer under the terms of this Agreement.

**11.2 No Waiver of Future Consents:** No consent by County to any Transfer shall be a waiver of the requirement to obtain such consent with respect to any other or later Transfer. Acceptance of License Fees or other performance by County following a Transfer, whether or not County has knowledge of such Transfer, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

# Master Optical Fiber and Facilities Agreement

## Idaho County

12. **WAIVER OF TERMS OR CONSENT TO BREACH.** No term or provision of this Agreement shall be waived and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the Party claimed to have waived or consented to such breach. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute a waiver of or consent to any subsequent or different breach. If either Party shall fail to enforce a term of this Agreement breached by the other Party, such failure to enforce shall not be considered consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

13. **FREEDOM OF ACTION.** Nothing in this Agreement will restrict the County in utilizing the remainder of the Network System, without limitation, for any purpose whatsoever; provided, however, that no such use unreasonably interferes with the use of the Leased fibers by the Company as provided for in this Agreement and each Service order Summary.

14. **COMPLIANCE WITH LAW AND CONTINUING GRANT AGREEMENT REQUIREMENTS.** Each Party agrees that it will perform its respective rights and obligations hereunder in accordance with all applicable local, state and federal laws, rules, and regulations, including any grant funding obligations. Without limiting the generality of the foregoing, the Company shall comply with any and all County-imposed rules and regulations relating to the use of the Network System, as those rules and regulations may be adopted or amended from time to time.

14.1 Affordable Connectivity / Low Income Service Requirements (ACP): The County System has been constructed with a Capital Project Fund Grant awarded by the State of Idaho. Although the ACP has since been discontinued, and County is not aware of any substitute requirement that currently exists, there remains a grant obligation for ISPs utilizing the County System to participate in a federal low-income broadband subsidy program should one be enacted. Company is required to comply.

14.2 Data Reporting Obligations: Consistent with County grant expenditure and performance reporting obligations, Company is required to track and provide the County with Network utilization information on a quarterly basis. The report should include the number of current, active users, the broadband service location information, service tier plans offered, pricing, number of subscribers of each plan and a breakdown of residential, business and Community Anchor institutions served.

15. **RELOCATION OF THE FACILITIES.** Company recognizes that, from time to time, County may elect or be required to relocate the Network System or a portion thereof. County shall be solely responsible for all costs incurred in relocating the Network System and shall use reasonable efforts to do so in a manner that will not cause any material interruption in Company's use of the Leased Fiber. Company will have no claims for direct damages against County for disruption of service arising out of such relocation. For routine and/or minor relocations ("Minor Relocations") no notice is required. For relocations where updated drawings or mapping will be provided ("Substantial Relocations"), County will give Company at least twenty-one (21) days' prior written notice of any

# Master Optical Fiber and Facilities Agreement

## Idaho County

Substantial Relocation. County will deliver to Licensee updated drawings with respect to the relocated Licensed Dark Fiber, including any route miles specified in the drawings, within ninety (90) days' following the completion of such Substantial Relocation.

Any relocation pursuant to this Section will not affect the terms of this Lease Agreement; provided, however, in the event of a Substantial Relocation, Company may elect to terminate without liability the applicable SOS as to the Dark Fiber affected, by notice in writing provided to County no later than ten (10) business days following the receipt by Company of the notice from County regarding the planned Substantial Relocation.

16. INSURANCE. Company shall at all times during the Term of this License Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers authorized to do business in the state(s) of operation. Company shall require its subcontractors and agents to maintain the same insurance:

16.1 Commercial General Liability Insurance: Insurance covering claims for bodily injury, death, personal injury or property damage (including loss of use) occurring or arising out of the license, use or occupancy of any premises in connection with this License Agreement by Licensee, including coverage for premises-operation, products/completed operations and contractual liability with respect to the liability assumed by Licensee hereunder. A combination of primary and umbrella/excess liability insurance can be used to meet the minimum total limits of insurance but shall not be less than the following:

Each Occurrence	\$2,000,000
General Aggregate	\$3,000,000
Products/Completed Operations	\$2,000,000
Personal & Advertising Injury	\$2,000,000

16.2 Workers' Compensation Insurance: Such insurance shall comply with statutory limits as required in the state(s) of operation; and providing coverage for any employee entering onto any premises in connection with this Agreement, even if not required by statute. Additionally, Employer's Liability or "Stop Gap" insurance with limits of not less than \$100,000 each accident.

16.3 Comprehensive Automobile Liability Insurance: Such insurance shall cover the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with this Agreement, with limits of at least \$2,000,000 per occurrence for bodily injury and property damage.

16.4 Other Insurance: to the same extent such other insurance coverage is required of County pursuant to County's right-of-way leases with railroads, electrical power or other third parties (each a "Right of Way Owner"). Provided however, no later than ten (10) days following the receipt by Company of the notice from County regarding such other insurance requirements, Company may

## **Master Optical Fiber and Facilities Agreement Idaho County**

elect, as its sole and exclusive remedy, to terminate this Agreement together with any applicable SOSs by providing written notice in writing to County.

17. INSURANCE POLICY PROVISIONS. The foregoing insurance policies shall name County (and any underlying Right of Way Owner if required) as an additional named insured by way of a policy endorsement. Company shall provide certificates of insurance and, if requested, copies of any policy to County. Receipt of such certificate or policy by County does not constitute approval by County of the terms of such policy. Furthermore, the policy of insurance required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to County except upon thirty (30) days' prior written notice from the insurance company to County; (iii) contain an express waiver of any right of subrogation by the insurance company against County and County's elected officials, employees or agents; (iv) expressly provide that the defense and indemnification of County as an "additional insured" will not be effected by any act or omission by Company which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is the subject of a claim or suit; and (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

17.1 Failure to Obtain and Maintain Insurance: If Company fails to procure and maintain the insurance described above, County shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums. Company shall pay to County upon demand the full amount paid by County.

17.2 Prudent Business Insurance: Company believes and states that the insurance obligation herein does not exceed that which Company would otherwise normally place upon itself and obtain in order to operate its business in a prudent manner.

17.3 Increase in Insurance Limits: County may require adjustments to insurance limits only upon a material change in risk profile directly related to Company's use of the System, and in no event shall the required limits exceed commercially reasonable levels for similarly situated telecommunications providers operating comparable facilities.

18. DEFAULT. If (a) Company fails to make a timely payment of Fees due pursuant to Section 3 hereof or any other amount Licensee is obligated to pay pursuant to this Agreement, including interest due on all past due amounts, within thirty (30) days after written notice from County, or (b) if either Party fails to perform a nonmonetary obligation and such failure shall continue for a period of thirty (30) days after the other Party shall have delivered written notice of such failure, (unless in the case of non-monetary default such failure cannot be reasonably cured within such thirty (30) day period, and the defaulting Party is diligently pursuing such cure), then the defaulting Party shall be in default hereunder and the other Party at its sole option may (i) terminate this Agreement upon written notice, in which event the other Party shall have no further duties or obligations hereunder

# **Master Optical Fiber and Facilities Agreement**

## **Idaho County**

or under any SOS, and (ii) pursue all legal remedies it may have relating to such default, except as otherwise limited by the provisions of this Agreement.

18.1 Bankruptcy or Insolvency: If either Party shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent, or shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of either Party as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee or liquidator of either Party of all or substantially all of the assets of either Party shall be appointed in any proceeding brought by either Party, and shall consent to or acquiesce in such appointment, then the other Party, at its sole option, may immediately terminate this Agreement and all SOSs upon written notice.

19. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY. The relationship between Company and County shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency agreement between the Parties hereto. Company and County in performing any of their obligations hereunder shall be independent contractors or independent parties and shall discharge their contractual obligations as such and at their own risk.

20. NO LIMITATION ON SYSTEM MANAGEMENT. Nothing in this Agreement shall limit County's ability to contract for the management and administration of the Network System, the Company's Dark Fiber or County's obligations hereunder; provided, however, such third-party management shall not relieve County of its responsibilities under this Agreement.

21. NO THIRD-PARTY BENEFICIARIES. This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and assigns and shall not be construed as granting rights to any person or entity, other than the Parties, including, but not limited to, any customer of Company, or imposing on either Party obligations to any person or entity other than a Party.

22. SEVERABILITY. In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstances by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Agreement.

## **Master Optical Fiber and Facilities Agreement**

### **Idaho County**

23. **GOVERNING LAW.** This Agreement shall be interpreted in accordance with the laws of the State of Idaho and venue for any action brought hereunder shall be in Idaho County, Idaho. Further, both Parties waive any right to removal to federal court.

24. **TITLE.** All rights, title and interest in the System provided by the County hereunder and not conveyed under this Agreement shall at all times remain exclusively with the County.

25. **COMPANY NOT AN END USER.** The Company hereby certifies that it will not be the end user of Leased Fiber or Facilities under this Agreement, is in the business of providing telecommunications services and is authorized to provide those services in the territory covered by County's Network System, and that such services can be provided on fiber optic cable such as that owned by the County.

26. **PUBLIC RECORDS AND CONFIDENTIALITY.**

26.1 **Public Records:** Company acknowledges that information submitted to County is potentially subject to the Idaho Public Records Law and is potentially open to public inspection to the extent required by the law.

26.2 **Confidentiality:** Company may identify information that Company believes is non-disclosable by County, including, but not limited to, trade secrets and financial information submitted to County as confidential. Company shall prominently mark any information for which it claims confidentiality with the mark "Confidential," prior to submitting such information to County. County shall treat any information so marked as confidential except as provided below.

26.3 **Public Record Requests:** If County receives a request for disclosure of confidential information so marked, or otherwise intends to disclose said information, County shall provide Company with written notice of the request or intent, including a copy of the request or other basis for the intent to disclose. Company shall have three (3) Business Days within which to provide a written response to County, by statutory or other legal authority identifying the information it claims as exempt and specify by citation to the statutory or other legal authority which is the basis for the claimed exemption. County shall retain the right to determine whether it is required to release or disclose the confidential information under applicable law. If, after considering Company's written response, County determines that it is required to release or disclose all or some portion of the information, County shall provide Company with a written notice to that effect a minimum of three (3) Business Days prior to releasing or disclosing the information; thereafter County may release or disclose said information unless prohibited by court order. Notwithstanding the foregoing, nothing in this Section 26.3 shall prevent County from timely releasing information that, in County's sole discretion, County believes to be a public record subject to disclosure under the Idaho Public Records Law. Company agrees that County shall not be liable for any loss or damage from

# Master Optical Fiber and Facilities Agreement

## Idaho County

disclosure of information arising out of the Idaho Public Records Law and agrees nothing herein shall be considered a waiver of County's immunity thereunder.

27. NO PERSONAL LIABILITY. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate or limited liability company assets of such Party. No Party shall seek to pierce the corporate or limited liability company veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any official, shareholder, employee, affiliate, officer or director of the other Party.

28. FURTHER COOPERATION. Parties each agree to cooperate with and support the other in complying with any requirements applicable to their respective rights and obligations hereunder. To this end, the Parties acknowledge and agree that they will execute and deliver all such further documents and instruments and do all such further actions and things as may be reasonably required to carry out the full intent and meaning of this Agreement and to affect the transactions contemplated hereby.

29. NOTICES. All notices and other communications required or permitted under this Agreement will be deemed properly given if sent by (i) United States first class mail, postage prepaid, registered or certified, return receipt requested, (ii) Federal Express or similar nationally recognized overnight courier service, (iii) by hand delivery, or (iv) transmitted by electronic mail with a hard copy sent within one (1) Business Day by any of the foregoing means. For purposes of notice, the addresses of the Parties shall be as follows unless subsequently updated by separate notice as provided below:

COMPANY: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

COUNTY: Idaho County  
Attn: Fiber Optic Network System  
Mailing Address: 320 West Main St., Rm# 5  
Grangeville, ID 83530  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

# **Master Optical Fiber and Facilities Agreement**

## **Idaho County**

### **30. CERTIFICATIONS REQUIRED BY IDAHO LAW.**

30.1 Certification 1: Company hereby certifies, pursuant to Section 67-2346, Idaho Code, that Company, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of goods or services from Israel or territories under its control. The terms in this Section defined in Section 67-2346, Idaho Code, shall have the meanings set forth therein.

30.2 Certification 2: Company hereby certifies, pursuant to Section 67-2359, Idaho Code, that Company, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, is not currently owned or operated by the Government of China and will not for the duration of this Agreement be owned or operated by the Government of China. The terms in this Section defined in Section 67-2359, Idaho Code, shall have the meanings set forth therein.

30.3 Certification 3: Company hereby certifies, pursuant to Section 67-2347A, Idaho Code, that Company, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, is not currently engaged in, and will not for the duration of this Agreement engage in a boycott of any individual or company because the individual or company: (i) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (ii) engages in or supports the manufacture, distribution, sale, or use of firearms, as defined in Section 18-3302(2)(d), Idaho Code. The terms in this Section defined in Section 67-2347A, Idaho Code, shall have the meanings set forth therein.

31. **INTERPRETATION.** This Agreement has been submitted to the scrutiny of both Parties hereto and their counsel, if desired. In any dispute between the Parties, the language of the Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not for or against either the County or the Company.

32. **ATTORNEYS' FEES - LEASE ENFORCEMENT.** The substantially prevailing Party in any action to enforce any term or condition of this Agreement shall be entitled to an award of their reasonable costs and attorney fees.

33. **COUNTERPARTS AND ELECTRONIC TRANSMISSION.** This Agreement may be executed and signed in counterparts, all of which taken together shall constitute one and the same instrument. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission, shall be the same as delivery of the original.

**Master Optical Fiber and Facilities Agreement  
Idaho County**

34. ENTIRE AGREEMENT. This Agreement and any SOSs constitute the entire agreement between the Company and County with respect to the subject matter hereof; and all prior agreements, representations, statements, negotiations and undertaking are hereby superseded.

IN WITNESS WHEREOF, THE Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

COUNTY:

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

Board of Idaho County Commissioners

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

R. Skipper Brandt, Chairman

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

Ted Lindsley, Commissioner

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

Brad Higgins, Commissioner

ATTEST:

\_\_\_\_\_  
Kathy Ackerman, Clerk

COMPANY: \_\_\_\_\_

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

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

Company Position: