



TERMS AND CONDITIONS OF SERVICE

The following terms apply to services provided by Lightower Fiber Networks II, LLC, or any Affiliate thereof, where incorporated by reference in a contract or service order executed by any of those provider entities and by the customer. For purposes of this Agreement, the term “Provider” shall mean the entity identified as the “Provider” on the Service Order, or the Affiliate of Provider actually providing the Service pursuant to Section 1.3 below.

PART I--GENERAL TERMS APPLICABLE TO ALL SERVICES

The following terms apply to all services provided by Provider:

1. SERVICES, SERVICE ORDERS, AND SUPPLEMENTS.

1.1 Services and Service Orders. These terms and conditions, (collectively with the Service Order in which they are incorporated, the “Agreement”) apply to all the telecommunications and related services provided by Provider to Customer (each, a “Service”). Each Service will be specified in a service order executed by the Parties (each, a “Service Order”). Purchase orders issued by Customer shall not be deemed to amend, modify or supplement this Agreement or any Service Order issued hereunder and shall not be legally binding on Provider unless otherwise agreed in writing by Provider. The term “Customer” shall mean the entity identified on the Service Order. Provider and Customer are collectively referred to as the “Parties” or individually as a “Party”.

1.2 Supplemental terms. As further detailed herein, specific types of Services are subject to additional terms and conditions as detailed in Parts II, III, IV, V and VI of these terms and condition (each of Part II, Part III, Part IV, Part V and Part VI is sometimes referred to herein as a “Supplement”).

1.3 Provider Affiliates. Customer acknowledges and agrees that at Provider’s option, Services may be provided by Provider, or by an Affiliate of Provider. In addition, Service Orders may be executed by an Affiliate of Provider, and in such event, any and all references to “Provider” herein shall be deemed to be a reference to the applicable Affiliate of Provider that executed such Service Order. The term “Affiliate” as used hereunder shall mean, with respect to either Party, any entity controlled by, in control of, or under common control with such Party. In particular, Services provided in the states below will be provided by either Provider or by the Affiliate of Provider designated below:

Fiber Technologies Networks, L.L.C.:	IN, KY, MI, OH, WV, WI
Fibernet Direct Florida LLC:	FL, GA
Fibernet Direct Texas LLC:	LA, OK, TX
Access Fiber Group, Inc.:	AL, MO, TN
Wilshire Connection, LLC:	CA
Lightower Fiber Networks II, LLC:	CT, DE, DC, IL, ME, MD, MA, NH NJ, NY, NC, PA, RI, VT, VA

2. TERM.

2.1 Service Term. The term (each a “Service Term”) for each Service begins on the Acceptance Date (as defined below) applicable to such Service, and remains in effect until the expiration of the initial Service Term specified in the applicable Service Order, provided that the Service Term shall automatically extend for consecutive one-year renewal terms, unless either Party notifies the other of its intent not to

renew at least ninety (90) days prior to the expiration of the then-current initial or renewal Service Term.

2.2 Acceptance Date. The “Acceptance Date” for each Service shall be the earliest of (a) the date on which Customer delivers written notice of acceptance, (b) the date on which Customer begins to use the Service, other than for testing purposes, or (c) the second (2nd) business day following Provider’s delivery of notice of the installation of the Service (such notice, a “Connection Notice”), unless Customer notifies Provider in writing within said two-day period of a Defect in the Service, specifying in detail the nature of such Defect. A “Defect” exists if the Service fails to perform materially in accordance with its technical specifications as set forth in the applicable Supplement (“Specifications”). Upon receipt of notice of a Defect, Provider and Customer shall work cooperatively to promptly remedy such Defect, and Provider shall deliver another Connection Notice, whereupon the process described in the first sentence of this Section shall apply again. If the Acceptance Date is delayed as a result of any failure, act or omission of Customer, Provider will give Customer written notice to cure such failure within five (5) calendar days. If Customer fails to cure within such period, the Acceptance Date will be deemed to be the end of such five (5) calendar-day period.

3. PAYMENT TERMS.

3.1 Charges. Provider will invoice Customer for any non-recurring charge (“NRC”) associated with the Service upon or after execution of the applicable Service Order. The monthly-recurring charge (“MRC”) associated with the Service shall begin to accrue on the Acceptance Date of such Service. Provider will invoice Customer the MRC associated with the Service in advance, except Provider will invoice Customer usage based charges (if any) associated with the Service in arrears. An MRC for a partial month will be pro-rated. Customer shall be responsible for payment of the MRC for the entire Service Term specified in the applicable Service Order.

3.2 Payments; Late Payments. Customer shall pay each invoice within thirty (30) days of the date of the invoice (the “Due Date”), without setoff or deduction. In the event Customer fails to make any payment by the Due Date, Customer shall pay a late charge on all past due amounts at the rate of one and one-half percent (1.5%) per month, compounded monthly (or, if lower, the maximum rate allowed by law). Further, Provider shall be entitled to recover from Customer all collection costs, including attorney fees.

3.3 Disputed Payments. Customer may in good faith dispute charges set forth in an invoice, provided Customer notifies Provider of such dispute in writing no later than sixty (60) days after the date of the invoice. Failure of Customer to so notify Provider of any dispute shall constitute a waiver by Customer of any dispute. In the event Customer so disputes any amount in good faith, Customer must submit a documented claim in writing for the disputed amount and pay the undisputed amounts in accordance with Section 3.2. Customer shall submit all documentation as may reasonably be required to support the claim. If the dispute is resolved in favor of Customer and Customer previously paid the disputed amount to Provider, Provider will apply a

credit to Customer's account in the amount of the dispute in the next billing cycle. If the dispute is resolved in Provider's favor and Customer has withheld the disputed amount, Customer must pay the disputed amount (together with the late payment charge pursuant to Section 3.2) within five (5) business days following notice of the resolution of the dispute.

4. TAXES AND FEES. All charges set forth in Service Order(s) are exclusive of, and Customer shall be responsible for and agrees to pay, any and all applicable international, federal, state and local use, excise, sales, value added, consumption, gross receipts, access, franchise and other taxes, fees, assessments, duties and surcharges (including, without limitation, any universal service fund surcharge) in connection with the provision, sale or use of the Service or facility furnished to Customer (collectively referred to as "Taxes"). Customer shall not be responsible for, and Taxes will not include, taxes on Provider's net income. If Customer believes it is exempt from Taxes, Customer shall provide Provider with a valid and duly executed exemption certificate and any other information with respect to such exemption as Provider may require; such certificate will be honored from the date that Provider receives such certificate and additional information from Customer. If any such exemption is ruled invalid by the tax or governmental authority for any reason, Customer shall reimburse Provider for any Taxes, including without limitation any penalties and interest, arising from or in connection with such invalid claim of exemption.

5. PROVIDER EQUIPMENT AND NETWORK; CUSTOMER EQUIPMENT.

5.1 Provider Equipment; Provider Network. The telecommunications devices, apparatus and associated equipment owned, leased, or otherwise obtained by Provider to provide Services ("Provider Equipment") and Provider's fiber optic cable network and associated optical/electronic equipment used to deliver Services, whether owned, leased or otherwise obtained by Provider (the "Provider Network") shall remain the sole and exclusive property of Provider notwithstanding that it may be or become attached or affixed to real property, and nothing contained herein or in any Service Order grants or conveys to Customer any right, title or interest in any Provider Equipment or the Provider Network. Customer may not, and may not permit others to, alter, adjust, encumber, tamper, repair, rearrange, change, remove, relocate, or damage any Provider Equipment or the Provider Network without the prior written consent of Provider. Customer may not cause any liens to be placed on any Provider Equipment or the Provider Network, and will cause any such liens to be removed within ten (10) days of Customer's knowledge thereof. Customer shall be liable to Provider for any loss or damage to the Provider Equipment or Provider Network caused by Customer or Customer's employees, contractors, agents or end users. Nothing herein shall prevent Provider from using the Provider Network and Provider Equipment to provide service to other customers.

5.2 Extension of Network. To the extent a Service Order requires Provider to complete construction, extend the Provider Network and/or obtain additional Underlying Rights, Customer shall use commercially reasonable efforts to assist Provider in obtaining such Underlying Rights as necessary to provide the Service. Provider may, without liability to either Party, terminate a Service prior to delivery, if Provider encounters unexpected construction costs, or unavailability of or excess costs for Underlying Rights that make the construction economically or legally infeasible. Following the Acceptance Date of the Service, in the event that Provider is unable to maintain any necessary Underlying Rights without incurring additional costs, unless Customer bears the costs of obtaining such

Underlying Rights, Provider may cancel the applicable Service Order and shall incur no liability to Customer hereunder. Without limiting the foregoing, Provider shall not be deemed to be in breach of this Agreement for its failure to meet any anticipated Service installation or delivery date if such failure is caused, in whole or in part, by (i) a Force Majeure Event, (ii) failure to obtain, or delay in obtaining, any required Underlying Rights, (iii) construction delays, or (iv) any other circumstances beyond the control of Provider. "Underlying Rights" means any and all agreements, licenses, conduit use agreements, pole attachment agreements, leases, easements, building access rights, rights-of-way, franchises, permits, governmental and regulatory approvals and authorizations, and other rights, consents, and approvals that are necessary to construct, install, maintain, operate, and repair the Provider Network and/or for Provider to provide a Service. Without limiting the foregoing, Underlying Rights include agreements for Off-Net Services that are necessary for Provider to provide a Service. "Off-Net Services" shall mean any services provided by a third-party. "On-Net Services" shall mean Services that use transmission and related facilities owned and controlled by Provider.

5.3 Customer Equipment. Customer shall, at its own expense, procure any equipment necessary to implement or receive Service ("Customer Equipment"). Provider will have no obligation to install, maintain, or repair Customer Equipment. Promptly upon notice from Provider, Customer shall eliminate any hazard, interference or Service obstruction that any such Customer Equipment is causing or may cause as reasonably determined by Provider.

6. MAINTENANCE.

6.1 Scheduled Maintenance. Provider will endeavor to conduct (or cause to be conducted) scheduled maintenance that is reasonably expected to interrupt Service between 12:00 midnight and 6:00 a.m. local time or, upon Customer's reasonable request, at a time mutually agreed to by Customer and Provider. Provider will use commercially reasonable efforts to notify Customer of scheduled maintenance that is reasonably expected to interrupt Service via telephone or e-mail, no less than five (5) days prior to commencement of such maintenance activities. Customer shall provide a list of Customer contacts for maintenance and escalation purposes, which may be included on the Service Orders, and Customer shall provide updated lists to Provider, as necessary.

6.2 Emergency Maintenance. Provider may perform emergency maintenance in its reasonable discretion, with or without prior notice to Customer, to preserve the overall integrity of the Provider Network. Provider will notify Customer as soon as reasonably practicable of any such emergency maintenance activity that materially and adversely impacts a Service.

6.3 Service Issues. Customer may notify Provider's Network Operating Center ("NOC") of Service problems by telephone 888-LT-FIBER, or at the contacts listed in Provider's Customer Support Information provided to Customer, which may be updated by Provider from time to time. If Provider dispatches a field technician to Customer or an end-user location and the problem is caused by (i) the Customer Equipment or any end-user's equipment or (ii) any acts or omissions of Customer or its end user, or of any of its or their invitees, licensees, customers or contractors, Customer will pay Provider for any and all associated time and materials at Provider's then-standard rates.

7. IMPLEMENTATION REQUIREMENTS.

7.1 Access. Unless otherwise provided for in the applicable Service Order, Customer, at its own expense, shall secure throughout the Service Term any easements, leases, licenses or other agreements necessary to allow Provider to use pathways into and in each building at which Customer's or its end-user's premises is located, to the Demarcation Point. Such access rights shall grant to Provider the right to access such premises to the extent reasonably requested by Provider to install, maintain, repair, replace and remove any and all equipment, cables or other devices Provider deems necessary to provide the Service. Upon expiration or termination of the applicable Service Term, Customer shall grant Provider access to its premises as necessary to enable Provider to remove the Provider Equipment. Provider, its employees, contractors and agents shall have access to any Provider Equipment or facilities at a Customer or end user premises. Notwithstanding anything to the contrary herein, Provider shall have no liability for any delay or failure in its performance to the extent caused by any delay or failure of Customer (including, but not limited to, the failure to provide Provider prompt access) and/or caused by any notice or access restrictions or requirements. "Demarcation Point" shall mean the network interface point where Provider hands off the Service to Customer. The Demarcation Point delineates where responsibility for the Parties' respective networks, equipment and/or maintenance obligations begin and end. Customer is responsible, at its sole cost and expense, for connecting to the Demarcation Point.

7.2 Space and Power. Customer shall procure and make available to Provider, at Customer's locations and at end user locations where a Service is provided, at Customer's sole cost and expense, adequate space, AC power and HVAC for Provider Equipment.

7.3 Property Owner Not Liable. Neither Customer nor any of Customer's end-users shall have any recourse against any property owner or property manager of any premises to which any Service is delivered and/or at which Provider's Network or Equipment is located, as a result of or in reliance upon this Agreement. Without limiting the foregoing, this provision shall not be construed to impose any liability on Provider, nor shall Provider have any liability, for or on behalf of such property owner or property manager.

8. DEFAULT & REMEDIES

8.1 Default By Customer; Suspension. In the event (i) Customer fails to timely and fully make any payment required hereunder, and such payment breach is not cured within five (5) days after written notice thereof, or (ii) Customer breaches any other provision of this Agreement and such breach is not cured within thirty (30) days after receipt of written notice thereof, then Provider may, at its sole option, either (a) terminate any and all Services, (b) suspend the affected Service to which the breach is related without further notice to Customer, and/or (c) pursue any other remedies available to Provider at law, or in equity.

8.2 Default By Provider. Customer may terminate a Service in the event Provider breaches this Agreement with respect to such Service and such breach is not cured within thirty (30) days after Provider's receipt of written notice thereof, provided that if a breach subject to this Section 8.2 cannot be cured within thirty (30) days, but is capable of being cured within a reasonable time thereafter, then Customer may not terminate the Service if Provider commences to cure within said thirty (30) days and thereafter diligently and continuously pursues such cure to completion, or Provider provides Customer reasonable assurance that the same breach to the same Service will not subsequently occur.

8.3 Disconnection Requests. Customer shall submit all requests for disconnection of Services in writing to Provider. Such disconnection effective date will be the later of (i) thirty (30) days from Provider's receipt of such disconnection request, or (ii) the date requested by Customer in the disconnection request. Each disconnection request must specify the Customer name and address, email address and telephone number of the person authorizing the disconnect, the circuit ID for the Service to which the disconnect request applies, the service type, and requested disconnection date. Upon termination of a Service, Provider shall have the right (but not the obligation) to act on behalf of and as agent for Customer to terminate all cross-connects relating to such Service, including cross-connects ordered by Customer. Upon request Customer shall confirm to the applicable supplier of the cross-connect(s) that Provider is authorized to terminate such cross-connects on Customer's behalf.

9. INSURANCE.

9.1 Insurance. Each Party shall procure and maintain the following insurance coverage:

- Commercial General and Umbrella Liability Insurance. Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$5,000,000 for each occurrence. CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract;
- Workers Compensation Insurance. Workers compensation and employers liability insurance as required by the laws and regulations applicable to the employees who are engaged in the performance of any activities hereunder or under a Service Order.

9.2 Type and Proof of Insurance. The insurance coverage required by this Section 9 shall be obtained on an occurrence basis from carriers having a Best Rating Service rating of A- or better. Upon request, a Party will provide the other Party a certificate of insurance or other proof of such insurance.

10. LIMITATION OF LIABILITY; INDEMNIFICATION.

10.1. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OF DATA, OR LOST BUSINESS, REVENUE, PROFITS OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICE OR ANY SERVICE ORDER, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. PROVIDER'S TOTAL LIABILITY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT FOR ANY AND ALL CAUSES OF ACTION AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, SHALL BE LIMITED TO THE LESSER OF: (A) PROVEN DIRECT DAMAGES OR (B) THE AGGREGATE AMOUNT OF PAYMENTS MADE BY CUSTOMER TO PROVIDER FOR THE AFFECTED SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CIRCUMSTANCES GIVING RISE TO THE CLAIM OCCURRED. IN NO EVENT

SHALL PROVIDER BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE ACTS OR OMISSIONS OF THIRD PARTIES, INCLUDING UNDERLYING SERVICE PROVIDERS, OR ANY THIRD-PARTY EQUIPMENT OR SERVICES NOT PROVIDED BY PROVIDER.

10.2. Indemnification. Except to the extent of the other Party's negligence or willful misconduct, each Party shall indemnify, defend, release, and hold harmless the other Party, its Affiliates, directors, members, officers, employees, managers, agents, representatives, and contractors (collectively, "Indemnitees") from and against any third-party action, claim, suit, judgment, damage, demand, loss, or penalty, and any cost or expense associated therewith (including but not limited to reasonable attorneys' fees, expert fees and costs) (collectively, "Claims") imposed upon such Indemnitee(s) by reason of damage to real or tangible personal property or for bodily injury, including death, as a result of any act or omission on the part of the indemnifying Party in connection with the performance of this Agreement. In addition to the foregoing, Customer shall indemnify, defend, release, and hold harmless Provider and its Indemnitees from and against any third-party Claims brought against such Provider and its Indemnitees arising from or in connection with Customer's (or its end users') unlawful use of a Service.

10.3. Indemnification Process. If a Party ("Indemnifying Party") is required to indemnify the other Party ("Indemnified Party") pursuant to Section 10.2, the Indemnified Party shall promptly notify the Indemnifying Party. The Indemnifying Party will be permitted to assume primary control of the defense of the action with counsel of the Indemnifying Party's choice. The Indemnified Party will cooperate in the defense of the action as requested by the Indemnifying Party. The Indemnified Party may, but shall not be required to, participate in the defense of the action with its own counsel, at its own expense. The Indemnifying Party will assume the cost of the defense on behalf of the Indemnified Party and its Affiliates (other than the expense of Indemnified Party's counsel pursuant to the immediately preceding sentence) and will pay all expenses and satisfy all judgments which may be incurred or rendered against the Indemnified Party or its Affiliates in connection therewith, provided that the Indemnifying Party shall not enter into or acquiesce to any settlement containing any admission of or stipulation to any guilt, fault, or wrongdoing on the part of the Indemnified Party or which would otherwise adversely affect the Indemnified Party without the Indemnified Party's written consent.

11. REPRESENTATIONS AND WARRANTIES.

11.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT, EITHER EXPRESS, IMPLIED OR STATUTORY, AND PROVIDER HEREBY EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, (i) NON-INFRINGEMENT, (ii) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND (iii) PERFORMANCE OR INTEROPERABILITY OF THE SERVICE WITH ANY CUSTOMER OR END-USER EQUIPMENT. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY SERVICES PROVIDED BY OR FURNISHED BY ANY THIRD PARTY.

11.2 Each Party represents and warrants to the other that (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, (b) it will comply with all

applicable federal, state and local laws, statutes, rules and regulations in connection with the provision and use of the Services, and (c) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms.

12. CONFIDENTIALITY; SERVICE MARKS; PUBLICITY.

12.1 Confidentiality. Neither Party, without the other Party's prior written consent, shall disclose to any third party, including but not limited to its customers or prospective customers, any information supplied to it relating to the disclosing Party, its Affiliates, and/or its customers by the other Party which has been designated as confidential, proprietary or private or which, from the circumstances, in good faith should be treated as confidential ("Proprietary Information"). Proprietary Information shall not include any of the following: (i) information that has been, or is subsequently, made public by the disclosing Party; (ii) information that is independently developed by the receiving Party; and (iii) information that has been previously known by or disclosed to the receiving Party by a third party not bound by confidentiality restrictions. Pricing information exchanged in connection with this Agreement, or included in any Service Order hereunder, and the terms and conditions of this Agreement, are hereby designated as confidential without further obligation on the part of either Party to mark or designate it as such. Neither Party shall permit any of its employees, Affiliates or representatives to disclose Proprietary Information to any third person, and it shall disclose Proprietary Information only to those of its employees, Affiliates, and representatives who have a need for it in connection with the use or provision of Services required to fulfill this Agreement. If a receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then to the extent permitted by applicable law, such receiving Party shall provide the disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Proprietary Information, the disclosing Party, at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or shall waive the receiving Party's compliance with the requirements of the foregoing sentence with respect to all or part of such Proprietary Information.

12.2 Service Marks, Trademarks and Publicity. Neither Party shall: (a) use the name, service mark, trademark, trade name, logo, or trade dress of the other Party; or (b) refer to the other Party in connection with any advertising, promotion, press release or publication, unless it obtains the other Party's prior written approval.

13. ASSIGNMENT. Neither Party will assign or transfer this Agreement without the other Party's prior written consent, such consent not to be unreasonably withheld. Any assignment made in violation of this requirement shall be void and invalid. Notwithstanding the foregoing, either Party may assign this Agreement upon notice and without the other Party's consent to a person or entity (i) that controls, is controlled by or is under common control with the assigning Party, (ii) which purchases all or substantially all of its assets or equity, or (iii) resulting from any merger, consolidation or other reorganization involving such Party. Moreover, and notwithstanding anything to the contrary herein, Provider may freely assign or pledge its rights hereunder to one or more lenders for financing purposes.

14. FORCE MAJEURE. Neither Party shall be liable, nor shall any credit or other remedy be extended, for any delay or failure to fulfill any obligation under this Agreement or any Service Order due to any cause beyond a Party's reasonable control, including, but not

limited to: acts of God, flood, extreme weather, fire, natural calamity, terrorism, any moratorium, law, order, regulation, action or inaction of any governmental entity or civil or military authority, power or utility failures, fiber or cable cuts caused by third parties, unavailability of rights-of-way, national emergencies, insurrection, riots, wars, strikes, lock-outs, work stoppages or other labor difficulties, pole hits, or material shortages (each a "Force Majeure Event").

15. NOTICES. All notices, requests, or other communications (excluding invoices) shall be in writing and either transmitted via (i) overnight courier or hand delivery, (ii) certified or registered mail, postage prepaid and return receipt requested, or (iii) e-mail, with a requested delivery or read receipt, to the Parties at the following addresses. Notices shall be deemed delivered upon receipt. Notices to the Customer shall be sent the Customer address or email address (as the case may be) as specified in the Service Order. Notices to the Provider shall be sent to the following:

Crown Castle Fiber
80 Central Street
Boxborough, MA 01719
Attention: Chief Operating Officer
Jason.Campbell@crowncastle.com

With a copy to:
Crown Castle Fiber
80 Central Street
Boxborough, MA 01719
Attention: General Counsel
Dave.Mayer@crowncastle.com

A Party may change the address for notices by notice to the other Party provided pursuant to this Section 15.

16. MISCELLANEOUS

16.1 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law principles.

16.2 No Third-Party Beneficiaries. The covenants, undertakings, and agreements set forth in this Agreement are solely for the benefit of and enforceable by the Parties or their respective successors or permitted assigns. It is the explicit intention of the Parties hereto that no person or entity other than the Parties (and, with respect to the provisions of Section 10, the Indemnitees) is or shall be entitled to any legal rights under this Agreement.

16.3 Relationship of the Parties. The relationship between the Parties hereunder is not that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute or create a partnership, joint venture or similar relationship. Nothing in this Agreement shall be construed to authorize either Party to represent the other Party for any purpose whatsoever without the prior written consent of such other Party.

16.4 Order of Precedence. If any conflict or contradiction exists between these general terms and conditions and a Supplement, the terms of a Supplement will control. If any conflict or contradiction exists between a Supplement and the terms of a Service Order, the

terms of the Service Order will control. If any conflict or contradiction exists between these general terms and conditions and the terms of a Service Order, the terms of the Service Order will control.

16.5 Non-Exclusivity. This Agreement is non-exclusive. Both Parties may enter into similar arrangements with others, and Provider may, as part of its normal business undertakings, actively market its services to any person or entity anywhere in the world, including but not limited to in competition with Customer and/or Customer's end users.

16.6 Non-Waiver. The waiver by any Party hereto of a breach or a default under any of the provisions of this Agreement, any Supplement or any Service Order, or the failure of any Party, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall not thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provision, right or privilege hereunder.

16.7 Survival. The terms and provisions contained in this Agreement that by their nature and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance and termination or early termination of this Agreement, including, without limitation, provisions for indemnification, confidentiality, and the making of payments due hereunder.

16.8 Headings. Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

16.9 Severability; Void or Illegal Provisions. If any part of this Agreement, Supplement or a Service Order shall be determined to be invalid or unenforceable by a Court of competent jurisdiction, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of this Agreement or such Service Order. The remainder of this Agreement will continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the Parties. The Parties will replace the severed provision with a provision that reflects the initial intention of the Parties.

16.10 Entire Agreement; Amendment. This Agreement, including all Supplements, Service Orders, exhibits and addenda attached hereto is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior negotiations, understandings and agreements, whether oral or written, with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties.

16.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. The Parties agree that fully-executed electronic copies or facsimile copies of this Agreement and corresponding Service Orders are legally binding and shall act as originals for the purpose thereof.

PART II—TERMS APPLICABLE TO DARK FIBER SERVICE

1. The terms in this Part II apply only to dark fiber Services.

2. ADDITIONAL TERMS

The following additional terms and conditions shall apply to the provision of such dark fiber Services.

“Cable” means fiber optic cable with fiber optic filaments contained in any suitable jacketing or sheath that is already in place, or is yet to be installed, and to which Provider has or will have access by ownership, lease, right to use, or otherwise.

“Customer Fibers” or “Service” means the Fibers that are licensed to Customer under a Service Order.

“Fibers” means the fiber optic filaments contained in the Cable.

“Location” is an address wherein Provider will hand off Service to Customer.

“Route” means the geographic path along which the Cable and Customer Fibers are located.

“Route Segment” means a portion of the Route between any two Locations.

“Service Credit” means a credit that Customer may be eligible to receive if Provider fails to meet the Service levels set forth in Section 7.2 below.

“Service Outage” means a loss of continuity or other material degradation of the Customer Fibers such that Customer is unable to utilize the Customer Fibers for transmission of optical signals.

3. FIBER SPECIFICATIONS

3.1. **Type and Constitution.** Single-mode Fibers are made of high grade doped silica core surrounded by a silica cladding; and coated with a dual layer, UV-cured acrylic-based coating.

Properties	Units	Single Mode	Single Mode Enhanced	MetroCor	NZDSF
<u>Glass Geometry</u>					
Mode Field Diameter at 1310 nm	(μm)	9.2 ± 0.4	9.2 ± 0.4	N/A	N/A
Mode Field Diameter at 1550 nm	(μm)	10.4 ± 0.8	10.4 ± 0.8	8.1 ± 0.5	9.2 ± 0.8
<u>Fiber Attenuation (Loose Tube/Ribbon)</u>					
Maximum value at 1310 nm	(dB/km)	0.35/0.40	0.35/0.40	0.5	N/A
Maximum value at 1550 nm	(dB/km)	0.25/0.30	0.25/0.30	0.25/0.30	0.25/0.30
<u>Polarization Mode Dispersion (PMD)</u>					
Max. Ind. Fiber PMD @ 1550 nm	(ps/ $\sqrt{\text{km}}$)	≤ 0.2	≤ 0.2	≤ 0.2	≤ 0.2
PMD Link Value	(ps/ $\sqrt{\text{km}}$)	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.1

3.2. Splicing Requirements

- (a) Bi-directional splice value (“Splice Value”) ≤ 0.20 dB at 1550 nm. In exceptional cases, a Splice Value may be accepted if its value is higher than 0.20 dB at 1550 nm. An exception case is, for instance, when three (3) re-trials of a splice cannot improve the Splice Value. The Splice Value will be given by the equation:

$$\frac{(\text{Splice attenuation from A to B}) + (\text{Splice attenuation from B to A})}{2}$$

- (b) Splice attenuation average (“Splice Attenuation Average”) ≤ 0.15 dB at 1550 nm. The Splice Attenuation Average is given by:

$$\frac{\sum \text{Splice Values}}{\text{Number of splices in the Route Segment}}$$

- (c) It is recognized by the Parties that due to the use of ribbon fiber optic cable on some of the segments, the Splice Value of individual splices may exceed 0.20 dB. However, the Splice Attenuation Average for any Route Segment as designated in (b) above shall supersede all other splicing requirements in cases where Splice Values that 0.20 dB exist.

3.3. Connectors

- (a) Maximum Unitary ODF/S Connector (1 connector + 1 adapter + 1 connector)
- (b) Maximum Connector/pigtail loss. The attenuation contribution of each pigtail with associated connector is considered to be 1.0 dB, comprised of 0.8 dB connector loss and 0.20 dB splice loss (pigtail to cable splice).
- (c) Minimum connector return loss: 40dB at 1550 nm.

4. USE OF SERVICE; ACCESS TO CUSTOMER FIBERS; RELOCATION

4.1 License. Subject to the terms and conditions set forth in the Agreement and this Supplement Provider and Customers may from time to time execute one or more Service Orders pursuant to which Provider grants to Customer a license to use Customer Fibers designated on the Service Order. Each Service Order will specify the number, identity, type, and route of the Customer Fibers, and the permitted Locations where Customer may access the Customer Fibers. Provider may not be the owner of the Customer Fibers but may instead lease, license, or acquire a right to use such Customer Fibers from a third party together with the right to sub-lease Customer Fibers to Provider's customers.

4.2 Limitations on Rights and Obligations. In addition to, and not in limitation of, any limitations set forth in the Agreement, the Parties agree that:

4.2.1 Use by Customer. Customer shall have no right or interest in the Customer Fibers other than a license to use the Customer Fibers. A license of Customer Fiber does not convey any ownership interest in the Customer Fibers or the Cable. Customer is solely responsible for all optical and other equipment required to enable Customer to utilize the Customer Fibers for optical communications.

4.2.2 Use by Provider. Nothing herein shall be construed as limiting or restricting Provider or its Affiliates in any manner from using its or their own Cables, fibers, or any other facilities, easements and/or rights of way for the installation of additional fiber optic cables, for use as telecommunications facilities, or for any other purpose.

4.2.3 Subordination. Customer understands and agrees that Provider's ability to grant Customer the license to use the Customer Fibers pursuant to this Agreement, and to attach, install, construct, operate, and maintain the Provider Network and Customer Fibers, is at all times subject and subordinate to, and limited by, the Underlying Rights, applicable laws, rules, ordinances, codes, and regulations. By virtue of the Agreement, Customer shall only have the license to use the Customer Fibers or related facilities, expressly granted herein, and, in no event, shall such license be construed to be greater than the Underlying Rights to use such Customer Fibers. Provider shall not be liable for any acts or omissions by Provider, its employees or affiliates that interfere with or otherwise affect Customer's use of the Customer Fibers to the extent such acts or omissions are required by the Underlying Rights, including, without limitation acts or omissions that deny the use of, alter or remove the Cable.

4.2.4 Sublicensing. Customer shall not assign, sell, transfer, lease, sublease, license, sub-license, or otherwise grant a right to use, the Customer Fibers to any third party without the prior written consent of Provider.

4.2.5 Access to Customer Fibers. Customer may access the Customer fibers only at the Demarcation Points specified in the applicable Service Order. Customer may not access or take any action that impacts the Customer Fibers or the Cable at any other locations.

4.3 Relocation.

4.3.1 Relocation Required By Provider. In the event that Provider is required by any underlying service provider, public authorities, or lawful order or decree of a regulatory agency or court or any other reason beyond Provider's reasonable control, to relocate or modify any or all Cable on the Route upon which the Customer Fibers are located, Provider's costs for any such work shall be shared on a pro rata basis with Customer. Provider shall not be responsible for the costs of, nor shall it be liable for, the removal, relocation or replacement of any Customer Equipment or other Customer property on the Customer's side of the Demarcation Point. If the relocation or replacement of the Cable is requested or caused by a third party, Provider shall attempt to obtain reimbursement of Provider's costs from said third party. Notice to Customer will be provided as soon as reasonably practicable. Neither Provider nor any of its affiliates or agents shall incur liability for any outage, disruption, degradation, interference, or interruption of any Service in connection with any such removal or relocation. Provider and Customer shall cooperate in performing such relocation or modifications so as to minimize any interference with the use of the Customer Fibers and the Cable and to avoid conflicting physically or otherwise interfering with joint users of the Cable or any other property impacted by the installation, construction, maintenance or use of the Cable, to the extent reasonably possible. Any such relocation shall be accomplished consistently with the Specifications.

4.3.2 Relocation Requested By Customer. Customer may request relocation of the Customer Fibers. Any such relocation shall be subject to Provider's approval (which shall be in Provider's sole discretion), the execution of a Service Order, and Customer's payment to Provider of



additional charges as Provider may require. No relocation or replacement of the Cable or related facilities shall be performed without the prior written agreement of Provider, which shall be in Provider’s sole discretion.

5. TERMINATION AND CONDEMNATION

5.1 Termination of Route Segment. In addition to, and not in limitation of, any rights set forth in the Agreement, any Route Segment or other Service may be terminated by Provider, without liability (unless due to a default by Provider under any applicable Underlying Rights agreement), upon reasonable notice to Customer, to the extent Provider is no longer authorized under the Underlying Rights to install, construct, maintain, operate, or convey the license to use the Cable or other property as contemplated by the Agreement. If a Route Segment is terminated pursuant to Section 5.1, Provider shall make reasonable efforts to find alternate capacity or facilities owned or controlled by Provider to meet Customer’s needs, but, under no circumstances shall Provider be obligated to contract for or to construct new facilities, or otherwise incur any additional cost or expenses, to replace the Cable or Customer Fibers on the Route Segments terminated under Section 5.1.

5.2 Condemnation Proceedings/Termination Rights. If at any time during the Service Term, all or any significant portion of the Cable 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 and, after exercise of the Parties’ commercially prudent efforts, the Cable cannot be relocated pursuant to Section 4.3 herein, either Party may elect to terminate the impacted Service upon giving the other thirty (30) days prior written notice. If the applicable Service is terminated in accordance with this Section, the applicable Service shall be deemed canceled and neither Party shall have any further obligations to the other, except that both Parties shall be entitled to participate in any condemnation proceedings to seek to obtain compensation via separate awards for the economic value of their respective interest in the Cable.

6. FEES

Customer shall pay the fees set forth in Service Orders executed hereunder. On January 1 of each year, the MRCs shall be escalated by the greater of (i) increase in the Consumer Price Index – All Urban Consumers (CPI-U) issued in December of the previous year (any such adjustment will reflect any increase, but not any decrease, in the Consumer Price Index for the previous 12 months) or (ii) three percent (3%). In addition, in the event that amounts charged to Provider under any Underlying Rights are increased or Provider’s costs or expenses are increased due to any Underlying Rights, Provider shall have the right to charge Customer for its pro rata share of such increases, which shall be added to the MRCs to be paid by Customer for the applicable Service Term.

7. SERVICE LEVEL AGREEMENT

7.1 MTTR Objectives.

7.1.1 Mean Time to Respond. “Mean Time to Respond” is the average time required for Provider to begin troubleshooting a reported failure. The Mean Time to Respond objective is two (2) hours from Provider’s receipt of notice of such failure.

7.1.2 Mean Time to Repair. “Mean Time to Repair” is the average time required to restore Service to an operational condition as defined herein. The Mean Time to Repair objective is eight (8) hours from Provider’s receipt of notice of such failure.

7.2 Service Outage. Subject to this Section 7, in the event of a Service Outage, Customer may be entitled to a Service Credit as provided in Section 7.3 below. A Service Outage shall be deemed to begin upon the earlier of Provider’s actual knowledge of the Service Outage or Provider’s receipt of notice from Customer of the Service Outage, and end when the Service is operational and in material conformance with the applicable Specifications. Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Service Order, in no event shall a Service Outage or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Provider of this Supplement, the Agreement or any Service Order.

7.3 Service Level Objective. If Provider fails to repair a Service Outage within eight (8) hours of notice from Customer of such Service Outage (“Repair Window”), Customer may be entitled to a Service Credit as follows:

Measurement Timeframe	Service Credit for Affected Service
Per Incident	1/30 th of the MRC of the affected Service for each consecutive twelve (12) hour period (or fraction thereof) after the Repair Window up to a maximum of 50% of the MRC

7.4 Service Credits. The number of minutes of separate and discrete Service Outages will not be cumulated to determine the applicable Service Credit. Service Credits hereunder may not be applied to usage charges, government fees, taxes, or surcharges, or any third party charges passed through to Customer by Provider. Service Credits issued to Customer hereunder shall be Customer’s sole and exclusive remedy at law or in equity on account of any Service Outage. Service Credits will not be issued to Customer if Customer’s account with Provider is in arrears. Notwithstanding anything to the contrary herein, the above-stated Service Credits shall not apply to Off-Net Services, and in the event of a Service Outage or other failure of any Off-Net Service provided by Provider to Customer, Provider agrees to pass through a credit equal to the credit received by Provider from its underlying provider(s) for such Service Outage, in lieu of the above-stated Service Credits. In no

event shall Provider's total liability for all Service Outages and/or failure to meet any objectives or parameters set forth in this Supplement in any month exceed a credit equal to fifty percent (50%) of the MRC for the affected Service for such month.

7.5 Service Credit Request. Customer must submit a written request to claim a Service Credit no later than thirty (30) days following the event that gives rise to Customer's right to request the Service Credit. Failure to request a credit within such period shall constitute a waiver of any claim for a Service Credit.

7.6 Events Excepted From Service Credit. Notwithstanding the foregoing, Customer shall not receive any Service Credit for any Service Outage, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Customer's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Customer Equipment, Customer provided optical fiber, End User equipment or Customer's vendor's equipment;
- c. Failure of electrical power not provided by Provider;
- d. Election by Customer, after requested by Provider, not to release the Service for testing and repair;
- e. Provider's inability to obtain access required to remedy a defect in Service, including lack of access due to utility safety restrictions;
- f. Scheduled maintenance periods;
- g. Scheduled upgrade of Service at the request of Customer;
- h. Force Majeure Event; or
- i. Disconnection or suspension of the Service by Provider pursuant to a right provided under this Agreement.

PART III-TERMS APPLICABLE TO ETHERNET SERVICES

1.0 The terms in this Part III apply only to Ethernet Service.

1.1 “Ethernet Service” or “Service” means a method of switched communication between or among two or more Locations using the Ethernet protocol defined by IEEE 802.3. Ethernet Services may be ordered and provisioned either as On-Net Services or Off-Net Services. Ethernet Service includes, without limitation, the following types of Services:

- (a) **E-Line**: a port-based service providing dedicated UNIs for point to point connections. E-Line supports a single EVC between two (2) UNIs.
- (b) **Ethernet Virtual Private Line (EVPL)**: a VLAN based service providing multiplexed UNIs allowing multiple EVCs per UNI.
- (c) **Ethernet LAN (E-LAN)**: a VLAN based meshed service providing many-to-many services with dedicated or service-multiplexed UNIs. E-LAN supports transparent LAN service and multipoint Layer 2 VPNs.
- (d) **Metro-E Advanced Private Line**: a dedicated point-to-point switched Ethernet service provided within a metro area over dedicated fiber transport.
- (e) **ENNI (External Network to Network Interface)**: an interconnection point between the Provider and Customer Ethernet networks as defined in MEF Specification 26.

1.2 “Class of Service” or “CoS”: Provider offers CoS with Ethernet Service. CoS enables Customer to differentiate traffic by assigning Bandwidth with various classes of network priority designated by Customer. If Customer elects CoS, (i) Customer’s traffic must be marked by Customer in accordance with Provider’s available classes of network priority, and (ii) Customer traffic will be prioritized in accordance with the assigned network priority. If Customer does not elect CoS, Customer’s traffic will be treated with the default network priority level. Provider offers the following classes of CoS ranging from highest to lowest in terms of network priority:

- Mission Critical
- Business Critical
- Business Priority
- Standard Default class for all Ethernet Services.

1.3 Protection Options.

Protection Option	Description	Minimum Location Requirements			
		Space	Power	Environmental Control	Back Up Power
Unprotected (Level A Access)					
1	Level A Access means the access portion of the Service (i.e. the segments from the last Provider Network switching hub (or for Metro-E Advanced Private Line the lateral segments from the Provider Network backbone) to the point of entry of the Location) is provided over a single fiber path without protection. Level A Access consists of the following minimum requirements at each Location: (i) a single point of entry into the Location; (ii) one (1) Provider Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to the Customer from the Provider Equipment.	(1)	(2)	(4)	Not applicable

Optical Protection (Level AA Access)					
2	Level AA Access means the access portion of the Service (i.e. the segments from the last Provider Network switching hub to the point of entry of the Location) is provided over two (2) separate fiber paths, one of which is the working (primary) path and the other the protect (secondary) path. Provider is responsible for managing the Failover Switching at each Location. Level AA Service consists of the following minimum requirements at each Location: (i) a single point of entry into the Location; (ii) one (1) Provider Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to the Customer from the Provider Equipment.	(1)	(2)	(4)	(6)
Dual Path Protection (Level AAA)					
3	Level AAA Access means the access portion of Service (i.e. the segments from the last Provider Network switching hub to the point of entry of the Location) is provided over two (2) separate fiber paths, one of which is the working (primary) path and the other the protect (secondary) path. Failover Switching at each Location will be provided by Customer or by Provider as specified in the Service Order. Level AAA Service consist of the following minimum requirements at each Location: (i) two (2) separate points of entry into the Location; (ii) two (2) Provider Equipment chassis; (iii) one (1) line card per chassis; (iv) 4-fiber handoff to the Customer from the Provider Equipment, with two fibers handed off from one of the Provider Equipment chassis and two fibers handed off from the other Provider Equipment chassis; and (v) Customer Equipment must have dual-card redundancy (i.e., separate cards, one for one of the 2-fiber handoffs and the other for the second 2-fiber handoff).	(1)	(3)	(5)	(7)

(1) Secure space for Provider Equipment at each Location with 24x7x365 access.

(2) Dedicated electrical circuit for Provider Equipment (i.e. the circuit has no other load from the Provider Equipment to a circuit breaker) at each Location from the public utility.

(3) Redundant, dedicated electrical circuit at each Location from the public utility (i.e. each power circuit is fed from a different circuit breaker panel and has its own circuit breaker).

(4) Substantially dust free with temperature control that maintains temperature between 50 and 80-deg F and humidity control that maintains relative humidity below 80%.

(5) Substantially dust free with temperature control that maintains temperature between 60 and 80-deg F and humidity control that maintains relative humidity between 40% and 60%

(6) Provider (or Customer if the Parties agree) to install and maintain a minimum of four (4) hours of standby power

(7) Provider (or Customer if the Parties agree) to install and maintain a minimum of eight (8) hours of standby power and Customer shall provide emergency power generation

2. ADDITIONAL DEFINITIONS

“Bandwidth” or “BW” means the amount of data (quantified as “Mbps” or “Gbps”) made available to Customer.

“Ethernet Virtual Connection” or “EVC” is a logical connection between two or more UNIs.

“Failover Switching” means the automatic restore and reroute of a Service to an alternate transmission path.

“Location” is an address wherein Provider will hand off Service to Customer.

“Service Credit” means a credit that Customer is eligible to receive if Provider fails to meet the Service levels set forth in Section 5.2 below,

“Service Outage” means a complete interruption of communications between any two (2) or more Locations.

“User Network Interface” or “UNI” means the interface used to interconnect Customer to the Provider Network which provides a reference point for demarcation between the Customer’s network and the Provider Network.

“Virtual Local Area Network” or “VLAN” means a data communication network, configured using the IEEE 802.1q standard, that logically interconnects computers and network devices, allowing a group of hosts to communicate, regardless of Location, as if they were attached to the same physical media.

“VPN” means a virtual private network.

3. SPECIFICATIONS

3.1 The Specifications applicable to Ethernet Services are as follows:

Technical Specifications:

- IEEE 802.3

4. USE OF SERVICE

4.1 Interstate Services. Customer acknowledges that Provider has no ability to determine whether the communications traffic carried via the Service is jurisdictionally interstate or intrastate. Unless otherwise stated in the applicable Service Order, Customer acknowledges and agrees that the communications traffic to be carried via the Provider Network shall be jurisdictionally interstate, pursuant to the Federal Communications Commission’s mixed-use “10% Rule” (47 CFR 36.154, 4 FCC Rcd. 1352).

4.2 Acceptable Use. Customer may use the Service(s) for its own use. Customer acknowledges that Provider does not monitor the content of the Service(s) traffic unless required by law and Customer shall be solely liable and responsible for the content of any communications transmitted via the Service(s).

4.3 Inter-Carrier Agreement. Provider and Customer agree that where Customer is a licensed carrier, this Agreement, to the extent it is subject to FCC regulation, is an inter-carrier agreement which is not subject to the filing requirements of section 211(a) of the Communications Act of 1934 (47 U.S.C. 211[a]) as implemented in 47 C.F.R. 43.51.

5. SERVICE LEVEL AGREEMENT

5.1 Service Outage. Subject to this Section 5, in the event of a Service Outage to any Service or a failure to meet any performance parameters set forth in Section 5.2 B, C or D below, Customer may be entitled to a Service Credit in accordance with the applicable Service Level Objective set forth in section 5.2 below. A Service Outage shall be deemed to begin upon the earlier of Provider’s actual knowledge of the Service Outage or Provider’s receipt of notice from Customer of the Service Outage, and end when the Service is operational and in material conformance with the applicable Specifications, as documented by Provider’s records. Notwithstanding anything to the contrary in this Supplement, the Agreement or any Service Order, in no event shall a Service Outage, defect or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Provider of this Supplement, the Agreement or any Service Order.

5.2 Service Level Objectives.

A. Service Availability

"Service Availability" refers to the percentage of time during a calendar month that a Service is available for use by Customer.

Available for use is defined as the time during which there is no Service Outage.

Service Availability is calculated as follows = $\frac{43,200 - (\text{number of minutes of Service Outage during the calendar month})}{43,200}$

If Service Availability in any month exceeds the number of minutes or hours set forth in the table below, Customer shall be entitled to a Service Credit equal to the percentage of the Service MRC set forth in the following table:

Service Level	Availability Objective	Measurement Timeframe	Service Credit		
			Cumulative Duration of Service Outage(s)	% of MRC	
On-Net Service - Level A Access					
1	Service Availability	99.9%	One Month	0 to 43.2 mins.	0%
				>43.2 mins. to 10 hrs.	5%
				>10 hrs. to 16 hrs.	10%
				>16 hrs. to 24 hrs.	20%
				>24 hrs. to 36hrs.	40%
				> 36 hrs.	50%
On-Net Service - Level AA Access					
2	Service Availability	99.99%	One Month	0 to 4.32 mins.	0%
				>4.32 mins. to 30 mins.	5%
				>30 mins to 1 hr.	10%
				>1hrs. to 8 hrs.	20%
				>8 hrs. to 16 hrs.	30%

				>16 hrs. to 24 hrs.	40%
				>24 hrs.	50%
On-Net Service - Level AAA Access					
3	Service Availability	99.999%	One Month	0 to 43 secs.	0%
				> 43secs. to 4 mins.	5%
				>4 mins. to 10 mins.	10%
				>10 mins. to 2 hrs.	20%
				>2 hrs to 8 hrs.	40%
				>8 hrs	50%

B. Network Latency

“Network Latency” is the average round-trip transmission time (in milliseconds) for packets to travel on the Provider Network (including, but not limited to, link insertion delays, propagation delays and queuing delays in the Provider Network). Network Latency is determined by Provider by averaging sample measurements taken each calendar month between Provider’s designated points of presence.

If Network Latency in any month exceeds the number of milliseconds set forth in the table below and such failure is service-impacting, Customer shall be entitled to a Service Credit equal to the percentage of the Service MRC set forth in the following table:

NETWORK LATENCY				
	CoS Designation - % of MRC			
Domestic US	Standard	Business Priority	Business Critical	Mission Critical
45ms or less	No Credit	No Credit	No Credit	No Credit
>45ms to 50ms	No Credit	No Credit	No Credit	10%
>50ms to 65ms	No Credit	No Credit	10%	20%
>65ms to 70ms	No Credit	10%	20%	30%
>70ms	10%	20%	30%	50%

C. Frame Delivery Rate (Packet Delivery)

“Frame Delivery Rate” is the ratio of performance test frames successfully received from Provider Network relative to the number of performance test frames offered to Provider Network. Frame Delivery Rate is determined by Provider by averaging sample measurements taken each calendar month between Provider’s designated points of presence.

If Frame Delivery Rate in any month is less than the percentages set forth in the left column of the table below and such failure is service-impacting, Customer shall be entitled to a Service Credit equal to the percentage of the Service MRC set forth in the following table:

FRAME DELIVERY RATE				
	CoS Designation - % of MRC			
Domestic US	Standard	Business Priority	Business Critical	Mission Critical
99.999% or greater	No Credit	No Credit	No Credit	No Credit
99.99% to 99.998%	No Credit	No Credit	No Credit	10%
99.9% to 99.98%	No Credit	No Credit	10%	20%
99% to 99.8%	No Credit	10%	20%	30%
Less than 99%	10%	20%	30%	50%

D. Frame Delay Variation (Jitter)

“Frame Delay Variation”, also known as packet jitter, is a measurement of the average variation (measured in milliseconds) in the time delay for packet transfers between two performance test frames. Frame Delay Variation is determined by Provider by averaging sample measurements taken each calendar month between designated points of presence.

If Frame Delay Variation in any month exceeds the number of milliseconds set forth in the table below and such failure is service-impacting, Customer shall be entitled to a Service Credit equal to the percentage of the Service MRC set forth in the following table:

FRAME DELAY VARIATION	
	CoS Designation - % of MRC

Domestic US	Standard	Business Priority	Business Critical	Mission Critical
2ms or less	No Credit	No Credit	No Credit	No Credit
>2ms to 3ms	No Credit	No Credit	No Credit	10%
>3ms to 4ms	No Credit	10%	15%	30%
>4ms	10%	20%	30%	50%

5.3 Service Credits. Service Credits hereunder are calculated as a percentage of the MRC set forth in the Service Order. Service Credits issued to Customer hereunder shall be Customer’s sole and exclusive remedy at law or in equity on account of any Service Outage and/or failure to meet any objectives or parameters (including, without limitation, Network Latency, Frame Delivery Rate (Packet Delivery) or Frame Delay Variation (Jitter)) set forth in this Supplement. If an incident affects the performance of the Service and results in a period or periods of interruption, disruption, failure or degradation in Service, entitling Customer to one or more credits under multiple service level standards, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to credits under multiple service level standards for the same incident. Service Credits will not be issued to Customer if Customer’s account with Provider is in arrears. Notwithstanding anything to the contrary herein, the above-stated Service Credits shall not apply to Off-Net Services; in the event of a Service Outage or other failure of any Off-Net Service provided by Provider to Customer, Provider agrees to pass through a credit equal to the credit received by Provider from its underlying provider(s) for such Service Outage, in lieu of the above-stated Service Credits. In no event shall Service Credits in any month for any and all interruptions, disruptions, failures, and/or degradations in Service (including, without limitation, any Service Outages or failure to meet any Network Latency, Frame Delivery Rate (Packet Loss), Frame Delay Variation (Jitter) or other objectives or parameters set forth in this Supplement) exceed fifty percent (50%) of the MRC for the affected Service for that month.

5.4 Service Credit Request. Customer must submit a written request to claim a Service Credit no later than thirty (30) days following the event which gives rise to Customer’s right to the Service Credit. Failure to request a Service Credit within such period shall constitute a waiver of any claim for a Service Credit.

5.5 Events Excepted From Service Credit. Notwithstanding the foregoing, Customer shall not receive any Service Credit for any Service Outage, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Customer’s (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Customer Equipment, Customer provided optical fiber, end user equipment or Customer’s vendor’s equipment;
- c. Failure of electrical power not provided by Provider;
- d. Election by Customer, after requested by Provider, not to release the Service for testing and repair;
- e. Provider’s inability to obtain access required to remedy a defect in Service;
- f. Scheduled maintenance periods;
- g. Scheduled upgrade of Service at the request of Customer;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Service by Provider pursuant to a right provided under this Agreement; and/or
- j. Provider’s inability to repair due to utility safety restrictions.

PART IV--TERMS APPLICABLE TO INTERNET SERVICES

1. The terms in this Part IV apply only to Internet Services.

2. ADDITIONAL TERMS

The following additional defined terms shall apply to the provision of h Internet Services.

“Access Port”: The port on Provider’s handoff utilizing IP Core Network equipment which is the point of attachment and entry into the IP Core Network service.

“Bandwidth” or “BW” means the amount of data (quantified as “Mbps” or “Gbps”) made available to Customer.

“Internet Services” or “Service”: The Internet connectivity and Bandwidth provisioned by Provider to Customer pursuant to a Service Order.

“IP Core Network”: Any Layer-3 equipment owned and operated by Provider that is managed in strict accordance with defined Provider Network Operations’ parameters.

“Latency”: The round-trip time it takes for a packet to travel between the IP Core Network and Access Port.

“Network Availability”: A period of time during which Customer port(s) are able to transmit and receive IP Packets to/from the On-Net IP Core Network.

“Network Unavailability”: A period of time during which (i) the Access Port(s) cannot exchange packets with the IP Core Network, and (ii) periods referred to in Sections 5.2.4 and 5.4.4 below.

“On-Net”: For purposes of this Supplement and any Internet Service, On-Net is defined as residing within Provider’s IP Core Network only.

“Packet Delivery”: The successful bi-directional delivery of packets between the IP Core Network and Access Port.

“Throughput”: The maximum transmission rate at which packets, inclusive of calculated protocol overhead, can be successfully delivered between the IP Core Network and the Access Port.

3. SPECIFICATIONS

Provider’s target Network Availability and performance objectives for the duration of each calendar month in a year shall be as follows:

Metric	Goal (Monthly Average)	Description
IP Core Network Network Availability	99.99%	Less than 4.5 minutes total Network Unavailability per calendar month
IP Core Network Latency	< 30ms	Less than 30 milliseconds round-trip latency
IP Core Network Packet Delivery	≥ 99.9%	Less than 0.1% packet loss
IP Core Network Throughput	≥ 95%	Greater than or equal to 95% of Bandwidth as defined in the Service Order

4. USE OF SERVICE

4.1 The Internet Service provides IP transit service via Provider’s ASN (autonomous systems number) 46887 and 21687 Network to the public Internet. The Provider’s ASN 46877 and 21687 Network is comprised of equipment and wiring located in the Provider’s IP Core Network.

4.2 The Service is configured at designated speeds on a port(s) on the Provider’s handoff utilizing IP Core Network equipment. This Access Port(s) shall be the point of demarcation for purposes of the applicable Service and for purposes of measurements in connection with said Service. The selected speed of service, physical handoff type on the Customer Premise Equipment (“CPE”) to the Customer, pricing and length of the initial Service Term shall be set out in the individual Service Order.

4.3 Customer shall utilize the Service(s) in compliance with all applicable international, federal, state and local laws and regulations, as well as abide by Provider’s Acceptable Use Policy, which is posted on Provider’s website at <http://fiber.crowncastle.com/> and incorporated herein by reference.

- 4.4 To the extent applicable, Customer acknowledges that Provider has no ability to determine whether the communications traffic carried via the Service is jurisdictionally interstate or intrastate. Unless otherwise stated in the applicable Service Order, Customer acknowledges and agrees that the communications traffic to be carried via the Provider Network shall be jurisdictionally interstate, pursuant to the Federal Communications Commission’s mixed-use “10% Rule” (47 CFR 36.154, 4 FCC Rcd. 1352).
- 4.5 Upon expiration or termination of a Service for any reason, Customer agrees to return to Provider any IP addresses or address blocks assigned to Customer by Provider

5. SERVICE LEVEL AGREEMENT

5.1 **Network Unavailability.** Subject to this Section 5, in the event of Network Unavailability to any Internet Service, Customer may be entitled to a credit (a “Service Credit”) in accordance with the applicable Service Level Objective set forth below in this Section 5.1. Network Unavailability shall be deemed to begin upon the earlier of Provider’s actual knowledge of the Network Unavailability or Provider’s receipt of notice from Customer of the Network Unavailability, and end when the Service is operational such that the Service is again able to transmit and receive packets to/from the IP Core Network and Access Port or Ports, as documented by Provider’s records. Where Customer provides its own local access circuits, any periods of Network Unavailability caused by failure of such local access circuits shall be excluded from any calculation of Network Unavailability. Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Service Order, in no event shall any Network Unavailability or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Provider of this Supplement, the Agreement or any Service Order.

Duration of Network Unavailability	Service Credit
Up to 45 Minutes	No credit
> 45 Minutes to Four Hours	10% of applicable MRC
> Four Hours to Eight Hours	20% of applicable MRC
> Eight Hours to Twelve Hours	40% of applicable MRC
> Twelve Hours to Twenty-Four Hours	50% of applicable MRC
> Twenty-Four Hours	100% of applicable MRC

5.2 Latency

5.2.1 **Parameter.** Provider shall use commercially reasonable efforts to maintain a monthly average Latency less than 30 milliseconds measured within the IP Core Network to the Access Port. Traffic traversing the public Internet is not subject or applicable to this Section 5 or this Supplement.

5.2.2 **Measurement.** Latency is measured between the IP Core Network and Access Port and does not apply to local access circuits. Latency is measured using Provider’s network management systems or testing hardware. Provider’s network management systems or testing hardware shall be the sole and conclusive source of measurements for the purposes of measuring Latency. Performance measurements will be accomplished using Y.1731, its logical equivalent, and/or through the use of industry standard dedicated test sets, as elected by the Provider at its sole discretion. Specifically, the Provider places severe limitations on response packets sent using the ICMP Echo protocol, such as ping and traceroute; times returned by those two programs while traversing core network equipment are known to be misleading and will not be used for performance measurements. Upon request, Provider will provide copies of measurements and tests performed for the purposes of determining credits to Customer hereunder.

5.2.3 **Service Credit.** If monthly average Latency exceeds the parameters set forth in Section 5.2.1, Customer shall be entitled to a Service Credit of ten percent (10%) of the applicable MRC.

5.2.4 **Excessive Service Degradation.** If, at any time, the Service experiences Latency greater than 35 milliseconds for a sustained period of two hours or more, the time for which that Latency is experienced shall be considered a period of Network Unavailability, entitling Customer to the applicable Service Credit under Section 5.1, in lieu of a Service Credit under Section 5.2.3.

5.3 Packet Delivery

5.3.1 **Parameter.** Provider shall use commercially reasonable efforts to maintain a monthly average Packet Delivery of no less than ninety-nine point nine percent (99.9%).

5.3.2 **Rate Shaping:** Services delivered over fixed rate interfaces as defined in the applicable specifications and in the situation where the contracted Service level is lower than the physical interface speed, rate enforcement will be done by the application of ‘rate shaping’ which involves random packet discard. Packets discarded in this fashion are not subject to this Section 5 or this Supplement.

5.3.3 **Service Credit.** If monthly average Packet Delivery fails to meet the parameters set forth in Section 5.3.1, Customer shall be entitled to a Service Credit of ten percent (10%) of the applicable MRC.

5.4 Throughput

5.4.1 **Parameter.** Provider shall use commercially reasonable efforts to maintain a monthly average Throughput at no less than ninety-five percent (95%) of Bandwidth set forth in the Service Order.

5.4.2 Measurement. Throughput is measured at Provider's demarcation device at the Customer's premises using industry standard tests and Provider network based throughput beacons. Only measurements by dedicated test sets are used for measuring the parameters set forth in this Section 5.4 and this Supplement.

5.4.3 Service Credit. If, at any time, the Service experiences Throughput below the ninety-five percent (95%) monthly average set forth in Section 5.4.1, Customer shall be entitled to a Service Credit of ten percent (10%) of the applicable MRC.

5.4.4 Excessive Service Degradation: If, at any time, the Service experiences Throughput below ninety-five percent (95%) for a sustained period of two hours or more, the period for which such reduced Throughput is experienced shall be considered a period of Network Unavailability, entitling Customer to the applicable Service Credit under Section 5.1, in lieu of a Service Credit under Section 5.4.3.

5.5 Service Credits. Service Credits hereunder are calculated as a percentage of the MRC set forth in the Service Order, and may not be applied to usage charges, government fees, taxes, or surcharges, or any third party charges passed through to Customer by Provider. Service Credits hereunder may be paid only once per any given billing cycle. Service Credits issued to Customer hereunder shall be Customer's sole and exclusive remedy at law or in equity on account of any Network Unavailability and/or failure to meet any objectives or parameters set forth in this Supplement. Service Credits will not be issued to Customer if Customer's account with Provider is in arrears. Notwithstanding anything to the contrary herein, the above-stated Service Credits shall not apply to Off-Net Services, and in the event of any Network Unavailability or failure to meet any objectives or parameters of any Off-Net Service provided by Provider to Customer, Provider agrees to pass through a credit equal to the credit received by Provider from its underlying provider(s) for such Network Unavailability, in lieu of the above-stated Service Credits. In no event shall Provider's total liability for any and all interruptions, disruptions, failures, and/or degradations in Service (including, without limitation, any Network Unavailability or failure to meet any objectives or parameters set forth in this Supplement) exceed one hundred percent (100%) of the MRC for the affected Service.

5.6 Service Credit Request. Customer must submit a written request to claim a Service Credit no later than thirty (30) days following the event which gives rise to Customer's right to request the Service Credit. Failure to request an allowance within such period shall constitute a waiver of any claim for a Service Credit.

5.7 Multiple Applicable Service Standards. If an incident affects the performance of the Service and results in a period or periods of interruption, disruption, failure or degradation in Service, entitling Customer to one or more credits under multiple service level standards, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to credits under multiple service level standards for the same incident.

5.8 Events Excepted From Service Credit. Notwithstanding the foregoing, Customer shall not receive any Service Credit for any Network Unavailability, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Customer's (including its agents, contractors and vendors) negligence, intentional act, omission, default and/or failure to cooperate with Provider in addressing any reported Service problems, including failing to take any remedial action in relation to a Service as recommended by Provider, or otherwise preventing Provider from doing so;
- b. Failure on the part of Customer Equipment, Customer provided optical fiber, End User equipment or Customer's vendor's equipment;
- c. Failure of electrical power not provided by Provider;
- d. Election by Customer, after requested by Provider, not to release the Service for testing and repair;
- e. Provider's inability to obtain access required to remedy a defect in Service;
- f. Scheduled maintenance and emergency maintenance periods;
- g. Scheduled upgrade of Service at the request of Customer;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Service by Provider pursuant to a right provided under this Agreement; and/or
- j. Provider's inability to repair due to utility safety restrictions.

5.9 Disclaimer of Third Party Actions. At times, actions or inactions caused by third parties (e.g. denial of service attacks) can produce situations in which Customer connections to the Internet (or portions thereof) may be impaired or disrupted. Provider cannot guarantee that such situations will not occur, and accordingly Provider disclaims any and all liability resulting from or related to such events. In the event that Customer's use of the Service or such third parties is causing harm to the Network or its operations, Provider shall have the right to suspend the Service. Provider shall restore the Service at such time as it reasonably deems that there is no further harm or threat to the Provider network or its operations. This Section 5 shall apply only to Service that is provisioned on the IP Core Network.

PART V--TERMS APPLICABLE TO WAVELENGTH SERVICES

The terms in this Part V apply only to Wavelength Services.

1. SCOPE OF SUPPLEMENT

This Supplement applies to Wavelength Service as further defined in this Section.

1.1 “Wavelength Service” or “Service” means a telecommunications circuit enabled by wavelength division multiplexing (WDM) equipment. Wavelength Service may be ordered and provisioned either as On-Net Service or Off-Net Service. Wavelength Service includes, without limitation, the following types of Services:

- (a) **Point to Point; DC to DC Connectivity-Inter Market; and DC to DC Connectivity-Intra Market:** Dedicated circuit between two (2) Locations over a shared optical fiber infrastructure; or
- (b) **Managed Private Optical Network (“MPON”):** Dedicated circuit(s) between two (2) or more Locations over dedicated optical fiber infrastructure and dedicated Provider Equipment at each Location.

1.2 Protection Options.

Protecti on Option	Description	Minimum Location Requirements			
		Space	Power	Environmental Control	Back Up Power
Unprotected (Level A)					
1	Level A Service means the Service is provided over a single fiber path without protection. Level A Service consists of the following minimum requirements at each Location: (i) a single point of entry into the Location; (ii) one (1) Provider Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to the Customer from the Provider Equipment.	(1)	(2)	(4)	Not applicable
Protection (Level AA)					
2	Level AA Service means the Service is provided over two (2) separate fiber paths, one of which is the working (primary) path and the other the protect (secondary) path. Provider is responsible for managing the Failover Switching between the working and protect paths. Level AA Service consists of the following minimum requirements at each Location: (i) a single point of entry into the Location; (ii) one (1) Provider Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to the Customer from the Provider Equipment.	(1)	(2)	(4)	(6)
Protection (Level AAA)					
3	Level AAA Service means the Service is provided over two (2) wavelengths utilizing separate fiber paths, one of which is the working (primary) path and the other the protect (secondary) path. Failover Switching at each Location will be provided by Customer or by Provider as specified in the Service Order. Level AAA Service consist of the following minimum requirements at each Location: (i) two (2) separate points of entry into the Location; (ii) two (2) Provider Equipment chassis; (iii) one (1) line card per chassis; (iv) a 4-fiber handoff to the Customer from the Provider Equipment, with two fibers handed off from one of the Provider Equipment chassis and two fibers handed off from the other Provider Equipment chassis.	(1)	(3)	(5)	(7)

(1) Secure space for Provider Equipment at each Location with 24x7x365 access.

(2) Dedicated electrical circuit for Provider Equipment from the public utility. (i.e., the circuit has no other load from the Provider Equipment to a circuit breaker) at each Location.

(3) Redundant, dedicated electrical circuit at each Location from the public utility (i.e. each power circuit is fed from a different circuit breaker panel and has its own circuit breaker)

(4) Substantially dust free with temperature control that maintains temperature between 50 and 80-deg F and humidity control that maintains relative humidity below 80%.

(5) Substantially dust free with temperature control that maintains temperature between 60 and 80-deg F and humidity control that maintains relative humidity between 40% and 60%

(6) Provider (or Customer if the Parties agree) to install and maintain a minimum of four (4) hours of standby power

(7) Provider (or Customer if the Parties agree) to install and maintain a minimum of eight (8) hours of standby power and Customer shall provide emergency power generation

- 1.3 **Encryption Option.** If a Wavelength Service is ordered with Layer 1 encryption the following additional terms shall apply:
- Provider is not responsible for encryption beyond the port on the Provider Equipment (in which the encryption card resides), at the Location(s);
 - Service Outages resulting from Customer's administration of encryption including, but not limited to, encryption keys and certifications, shall not be eligible for Service Credits;
 - Customer assumes all responsibility for administration of encryption, including, but not limited to, encryption policies.
 - Subject to the foregoing, a failure of the encryption function on Wavelength Services ordered with encryption will be deemed a Service Outage and eligible for Service Credits to the extent and subject to the limitations provided in Section 5 below.
 - Provider will procure in its name any cross connections between Provider's optical fiber distribution point at each Location and the Customer hand-off site at the Location (at which Provider Equipment with encryption capability will reside) ("Encryption Cross-Connections") and Customer will pay the cost of such Encryption Cross-Connections on a pass-through basis; provided that in the event Provider is unable to procure the Encryption Cross-Connection due to restrictions at the applicable facility, then Customer will procure such Encryption Cross-Connection in Customer's name and at Customer's expense. Service Outages resulting from failure of or defect in the Encryption Cross-Connections shall not be eligible for Service Credits.

2. ADDITIONAL DEFINITIONS

"Failover Switching" means the automatic restore and reroute of the Service to an alternate transmission path;

"Location" is an address where Provider will hand off Service to Customer;

"Service Credit" means a credit that Customer is eligible to receive if Provider fails to meet the Service levels set forth in Section 5.2 below;

"Service Outage" means a complete interruption of communications between any two (2) or more Locations;

3. SPECIFICATIONS

3.1 The Specifications applicable to Wavelength Services are as follows:

- ITU-T G.709, Interfaces for the Optical Transport Network (OTN)
- ITU-T G.693, Optical interfaces for intra-office systems
- ITU-T G.959.1, Optical transport network physical layer interfaces
- IEEE 802.3

4. USE OF SERVICE; INCREMENTALLY DELIVERED SERVICES

4.1 Interstate Services. Customer acknowledges that Provider has no ability to determine whether the communications traffic carried via the Service is jurisdictionally interstate or intrastate. Unless otherwise stated in the applicable Service Order, Customer acknowledges and agrees that the communications traffic to be carried via the Provider Network shall be jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed-use "10% Rule" (47 CFR 36.154, 4 FCC Rcd. 1352).

4.2 Incrementally Delivered Services. Unless otherwise specified in a Service Order, if a Service consists of more than one segment, Provider may incrementally deliver individual segments, and billing for each segment shall commence upon delivery and acceptance of that segment. The Service Term for a multi-segment Service shall begin upon delivery of the first segment and end after the number of months specified in the Service Order have elapsed from delivery and acceptance of the final segment.

4.3 Acceptable Use. Customer may use the Service(s) for its own use. Customer acknowledges that Provider does not monitor the content of the Service(s) traffic unless required by law and Customer shall be solely liable and responsible for the content of any communications transmitted via the Service(s).

4.4 Inter-Carrier Agreement. Provider and Customer agree that where Customer is a licensed carrier, this Agreement, to the extent it is subject to FCC regulation, is an inter-carrier agreement which is not subject to the filing requirements of section 211(a) of the Communications Act of 1934 (47 U.S.C. 211[a]) as implemented in 47 C.F.R. 43.51.

5. SERVICE LEVEL AGREEMENT

5.1 Service Outage. Subject to this Section 5, in the event of a Service Outage to any Service, Customer may be entitled to a Service Credit in accordance with the applicable Service Level Objective set forth in Section 5.2 below. A Service Outage shall be deemed to begin upon the earlier of Provider's actual knowledge of the Service Outage or Provider's receipt of notice from Customer of the Service Outage, and end when the Service is operational and in material conformance with the applicable Specifications. Notwithstanding anything to the contrary in this Supplement, the Agreement or any Service Order, in no event shall a Service Outage, defect or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Provider of this Supplement, the Agreement or any Service Order.

5.2 Service Level Objectives.

"Service Availability" means the percentage of time during a calendar month that a Service is available for use by Customer.

Available for use is defined as the time during which there is no Service Outage.

Service Availability is calculated as follows:
$$\frac{43,200 - (\text{number of minutes of Service Outage during the calendar month})}{43,200} \text{ (number of minutes in a month)}$$

If the total minutes or hours of Service Outages in any month exceed the number of minutes or hours set forth in the table below, Customer shall be entitled to a Service Credit equal to the percentage of the Service MRC set forth in the following table:

Service Availability Objective	Measurement Timeframe	Service Credit		
		Cumulative Duration of Service Outage(s)	% of MRC	
Level A				
1	99.9%	One Month	0 to 43.2 min.	0%
			>43.2 min. to 10 hrs.	5%
			>10 hrs. to 16 hrs.	10%
			>16 hrs. to 24 hrs.	20%
			>24 hrs. to 36hrs.	40%
			> 36 hrs.	50%
Level AA				
2	99.99%	One Month	0 to 4.32 mins.	0%
			>4.32 min. to 30 min.	5%
			>30 min. to 1 hr.	10%
			>1hrs. to 8 hrs.	20%
			>8 hrs. to 16 hrs.	30%
			>16 hrs. to 24 hrs.	40%
		>24 hrs.	50%	
Level AAA				
3	99.999%	One Month	0 to 43 secs.	0%
			> 43secs. to 4 min.	5%
			>4 min. to 10 min.	10%
			>10 min. to 2 hrs.	20%
			>2 hrs to 8 hrs.	40%
			>8 hrs	50%

5.3 Service Credits. Service Credits hereunder are calculated as a percentage of the MRC set forth in the Service Order. If a Service consists of more than two (2) Locations, and hence more than one segment, and the segments experience different levels of Service Availability, then Service Credits shall be calculated separately with respect to each segment and shall be based on the MRC applicable to the particular segment. Service Credits shall be Customer's sole and exclusive remedy at law or in equity on account of any Service Outage and/or any other defect in Service. If an incident affects the performance of the Service and results in a period or periods of interruption, disruption, failure or degradation in Service, entitling Customer to one or more credits under multiple service level standards, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to credits under multiple service level standards for the same incident. Service Credits will not be issued to Customer if Customer's account with Provider is in arrears. Notwithstanding anything to the contrary herein, the above-stated Service Credits shall not apply to Off-Net Services, and in the event of a Service Outage or other failure of any Off-Net Service provided by Provider to Customer, Provider agrees to pass through a credit equal to the credit received by Provider from its underlying provider(s) for such Service Outage, in lieu of the above-stated Service Credits. In no event shall Service Credits in any month for any and all interruptions, disruptions, failures, and/or degradations in Service (including, without limitation, any Service Outage or failure to meet any objectives or parameters set forth in this Supplement) exceed fifty percent (50%) of the MRC for the affected Service for that month.

5.4 Service Credit Request. Customer must submit a written request to claim a Service Credit no later than thirty (30) days following the event which gives rise to Customer's right to the Service Credit. Failure to request a Service Credit within such period shall constitute a waiver of any claim for a Service Credit.

5.5 Events Excepted From Service Credit. Notwithstanding the foregoing, Customer shall not receive any Service Credit for any Service Outage, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Customer's (including its agents, contractors and vendors) acts or omissions;

- b. Failure on the part of Customer Equipment, Customer provided optical fiber, end user equipment or Customer's vendor's equipment;
- c. Failure of electrical power not provided by Provider;
- d. Election by Customer, after requested by Provider, not to release the Service for testing and repair;
- e. Provider's inability to obtain access required to remedy a defect in Service;
- f. Scheduled maintenance periods;
- g. Scheduled upgrade of Service at the request of Customer;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Service by Provider pursuant to a right provided under this Agreement; and/or
- j. Provider's inability to repair due to utility safety restrictions.

PART VI--TERMS APPLICABLE TO COLOCATION SERVICES

1. The terms in this Part VI apply only to Colocation Services.

2. DEFINED TERMS

The following defined terms shall apply to the provision of colocation Services.

“Colocation Services” or “Services”: The provision of Site Space and any other services (e.g. power or cross-connections) provided by Provider to Customer in the Site Space.

“Colocation Service Outage”: The period when UPS power licensed by Customer from Provider under a Service Order in the applicable Site Space is unavailable to Customer (provided that the primary and redundant feeds are both unavailable at the time in question), as measured at the point where Provider delivers the UPS power to Customer.

“Site”: The specified premises listed in the applicable Service Order at which Provider provides floor space or rack arrangements dedicated to Customer Equipment.

“Site Landlord”: The landlord or lessor of a particular Site.

“Site Lease”: The applicable underlying lease agreement for a particular Site.

“Site Space”: The floor, cabinet, cage or rack space dedicated to Customer Equipment at a specific Site.

3. SERVICE TERMS

3.1 License. Subject to the terms and conditions set forth in the Agreement, pursuant to a Service Order for colocation Services Provider will grant to Customer a license to occupy and use the Site Space, and any power, cabling and connectivity (if any) identified in the applicable Service Order. Customer acknowledges that the licensing of a given Site Space under the Agreement does not grant any real property interest in such Site Space or in the building in which such Site Space is located. Customer's occupancy of the Site Space located within a Site shall be subject and subordinate to the terms and conditions of the Site Lease applicable to such Site, including provisions regarding condemnation, damage to premises, and termination of such Site Lease.

3.2 Use of Site Space. Except as otherwise provided in this Supplement, each Site Space is delivered in its current condition (“as is” and “where is”), and Customer acknowledges that it has inspected the same and found each to be satisfactory. Provider makes no warranty with respect to title, condition, safety or fitness of the Site Space, and Customer shall use the Site Space at its sole risk. Customer shall use the Site Space only for the purpose of placing, operating and maintaining Customer Equipment. Customer shall exercise its rights hereunder in accordance with the terms set forth herein and applicable international, federal, state and local laws and regulations. Nothing herein shall be construed as limiting or restricting Provider in any manner from using the Site, Provider’s cages, cabinets, racks, cables, power and/or other facilities and equipment for any purpose. Customer agrees that it will not permit any Site Space to be used by anyone other than Customer or its authorized agents without the prior written consent of Provider. Provider agrees that it will not permit the applicable Site Space to be used by anyone other than Customer or its authorized agents without the prior written consent of Customer; provided, however, Provider shall not be restricted in sub-leasing or licensing other portions of the applicable Site to other third parties without the prior written consent of Customer. Customer shall not make any alterations to the Site Space except for the installation, operation and maintenance of Customer Equipment. Customer shall properly maintain the Site Space and keep the Site free of any debris, waste or other obstructions.

3.3 Access to Site Space. Customer shall be permitted access to the Site Space at all times subject to (i) Provider’s rules and policies concerning authorized access to the Site and the presentation of appropriate identification, (ii) the Site Landlord’s rules and regulations, (iii) such other restrictions on access as may be set forth in the applicable Service Order. Provider shall have no liability for Customer’s inability to gain access to the Site Space.

3.4 Installation. Customer is responsible for all aspects of installation and removal of Customer Equipment, unless otherwise agreed in writing by the Parties. Customer will install Customer’s Equipment in the Site Space only after obtaining authorization from Provider. Customer shall give Provider at least ten (10) days’ notice prior to commencing installation, and installation and testing shall at all times be under the direct supervision of an authorized employee or agent of Provider (“Escort”). If Customer uses an agent or other third party to deliver, install, or remove Customer’s Equipment, then Customer will be solely responsible for the acts of such agent/third party. Customer shall engineer, furnish, install, and test, at its sole cost and expense, all of Customer Equipment in accordance with the plans and specifications approved in advance by Provider. All Customer Equipment shall be clearly labeled as such, and Customer shall be responsible for removal of all installation material, for daily clean-up of the Site Space during installation, and for a final clean up after completion of installation.

3.5 Rules and Regulations. Colocation Services shall be in accordance with the terms specified in an applicable Service Order and shall be governed by Provider’s Colocation Rules and Regulations, which is attached hereto as **Exhibit A** and is incorporated herein by reference,

and which may be amended by Provider. Moreover, Customer agrees to be subject to, and comply with, all building rules, regulations, and similar requirements imposed by the Site Landlord, and not to take any action to cause a breach of the terms of such Site Lease.

3.6 Power. Provider will provide DC power and/or AC power to the Site Space as per the allotment specified in the applicable Service Order at the rates and charges set forth in the applicable Service Order. Notwithstanding anything to the contrary in this Agreement, Customer agrees that, in no event shall the load for the Site Space connected to any power circuit, or the draw on any power circuit, exceed eighty percent (80%) of the power circuit's breakered capacity ("**Power Limitation**"). If Provider discovers that Customer has violated Power Limitation, Provider may, in its sole discretion, provide Customer written notice of such violation requiring Customer to pay Provider a monthly excess power charge of one-hundred percent (100%) of the then-applicable power charge and/or discontinue Customer's right to use the power circuit that exceeds the Power Limitation. Unless specified otherwise in the applicable Service Order, Provider shall not have any obligation to provide the applicable Site Space with, and it shall be Customer's responsibility to provide or install, to the extent that it determines necessary, surge protection devices, power performance monitoring devices or other electrical safety devices to protect Customer Equipment.

3.7 Customer Equipment. Customer shall, at its own cost and expense, maintain all Customer Equipment at such Site Space in good repair, condition and working order, and shall provide or arrange for all parts, mechanisms, devices and servicing required therefor. Customer shall be responsible for any repairs to or servicing of such Customer Equipment, and for any maintenance/service agreement that may cover such Customer Equipment. Except in the case of an emergency, Provider shall not relocate, move, alter, or disturb any Customer Equipment at any Site Space without the prior written consent of Customer, such consent not to be unreasonably withheld, denied, conditioned, or delayed. Any Customer Equipment not removed from the Site Space within two business (2) days of the expiration or termination of the applicable Service Order shall be assumed abandoned and Provider, or, if applicable, such Site Landlord, may dispose of such Customer Equipment as Provider or Site Landlord deems appropriate, in its sole discretion, and Customer shall be responsible for any expenses associated with such disposal.

3.8 Relocation. Provider may require Customer to move any Customer Equipment located in a Site Space. In such event, Provider shall, to the extent reasonably possible (with consideration, if applicable, to what notice Provider may have received from the applicable Site Landlord), provide Customer with sufficient prior written notice to permit Customer to take any actions necessary to plan for any potential service interruptions and will provide the location of the new floor space/rack arrangement to be dedicated to Customer Equipment. Customer shall reimburse Provider for any and all reasonable costs and expenses incurred as a result of Customer Equipment relocation.

3.9 Interference. Customer agrees that its use of any applicable Site Space shall not interfere with Provider's use of the Site. Provider may suspend the provision of Service to Customer in the event that Customer or Customer Equipment interferes with Provider's operation or maintenance of the Site or with one or more of Provider's other customers' use thereof, and within a reasonable time, not to exceed one (1) hour after being notified by e-mail or phone, Customer fails to cease such interference. In the event that Provider suspends Service hereunder, Provider will resume the discontinued Service as soon as reasonably practicable after it is reasonably satisfied that Customer has cured the interference. Further, Provider may terminate the applicable Service Order if Customer's Service is suspended more than twice during the applicable Service Term. Except as otherwise provided, Provider agrees to use commercially reasonable efforts to ensure that Customer's use of such Site Space is not unreasonably interfered with by Provider, its employees, agents or other customers, and/or the Site Landlord of any Site.

3.10 Cross Connections. Customer may not run cables or wires of any kind from the Site Space to any other location in the Site without the prior written approval of Provider pursuant to a Service Order describing the cross-connect and the charges applicable thereto. Customer may not allow any carriers or other person to gain access to the Site or the Site Space. Provider shall have sole control of access to the Site by carriers, contractors, service providers or others. Customer shall not engage in or provide at the Site any meet-me-room services, or any services either directly or indirectly related to the trading of bandwidth.

3.11 Inspections. Provider may make periodic inspections of any part of the Customer Equipment, and Customer shall have the right to be represented during such inspections; provided however, that if in the sole judgment of Provider safety considerations require an inspection without providing such notice, Provider may make such inspection immediately, but shall thereafter promptly provide notice to Customer of such inspection. The making of periodic inspections or the failure to do so shall not operate to impose upon Provider any liability and shall not relieve Customer of any responsibility, obligations or liability under this Supplement or the Agreement.

4. COLOCATION TECHNICAL SERVICES

4.1 Colocation Technical Service(s). If set forth on the applicable Service Order for Colocation Services, Provider will may provide Customer certain technical support services at the Site Space. Such technical support services will consist of either or both of the following types of services, as designated on the Service Order: (1) Remote Hands Services ("Remote Hands") and/or (2) Smart Hands Services ("Smart Hands"). Such services shall be subject to the Agreement and the terms and conditions set forth in this Section 4 and such further terms and conditions as may be set forth in the applicable Service Order.

Remote Hands is designed to provide Customers with basic services requested by Customer such as re-booting Customer Equipment, checking indicators on Customer Equipment, basic troubleshooting of Customer Equipment, and similar services that do not require the use of any tools or specialized equipment by the Provider technician. With respect to the Remote Hands service, Provider's sole obligation shall be to carry out



the express instructions of Customer, and Provider reserves the right to reject a Customer's request if Provider in its discretion deemed the request outside the scope of the Remote Hands service

Smart Hands is designed to provide Customers with onsite technical assistance of a more complex or technical nature than Remote Hands, and includes Provider complying with Customer's instructions relating to the installation of Customer Equipment, more advanced troubleshooting services, the installation or change of certain physical components within the Customer Site Space environment (e.g., relocating equipment, cable management, Customer Equipment installation or replacement, or other mutually agreed to work set forth within a Service Order). Smart Hands services generally do require the use of tools and or certain types of specialized equipment by the Provider technician. With respect to the Smart Hands service offered by Provider, Provider's sole obligation shall be to carry out the express instructions of Customer, and Provider reserves the right to reject a Customer's request if Provider in its discretion deems the request outside the scope of the Smart Hands service.

4.2 Service Submission. Remote Hands and Smart Hands services will be provided upon submission by Customer of a request for service. For Smart Hands, the Service Order must contain a method and procedure for work to be performed.

4.3 On-Demand Pricing:

Remote Hands:

Regular Service:

Normal Business Hours: 8 AM – 5 PM, Monday through Friday, excluding holidays based on the time zone applicable to the facility

Response Objective: Within 4 hours of notice

Per Incident Service Price: \$125/hour (billed in 15 min increments)

Emergency Service:

After Normal Business Hours

Response Objective: Within 4 hours of notice

Per Incident Service Price: \$250/hour (billed in 15 min increments after a 2 hour minimum charge)

Smart Hands:

Regular Service:

Normal Business Hours: 8 AM – 5 PM, Monday through Friday, excluding holidays based on the time zone applicable to the facility

Response Objective: Within 4 hours of notice

Per Incident Service Price: \$135/hour (billed in 15 min increments)

Emergency Service:

After Normal Business Hours

Response Objective: Within 4 hours of notice

Per Incident Service Price: \$270/hour (billed in 15 min increments after a 2 hour minimum charge)

Pricing is subject to change upon notice by Provider. If the Service Order specifies pricing different from the foregoing, the pricing in the Service Order shall apply.

4.3 Conduct. Provider warrants that it will use commercially reasonable efforts to cause Remote Hands and Smart Hands services to be performed in a workmanlike manner. If Customer claims a breach of the foregoing warranty, Customer must: (a) immediately report the issue to the Provider Network Operations Center (at 888-LT-FIBER) and open a trouble ticket; and (b) make a written request for a re-performance of the Remote Hands within seven (7) days following the end of the month in which the breach occurred. Upon receipt of Customer's request, Provider will investigate the claim under the terms described in this Article. If Provider fails to satisfy the foregoing warranty, Provider will promptly correct any errors or deficiencies in the Remote Hands and/or Smart Hands services performed hereunder. Customer shall afford Provider full and free access to the Site Space for all work necessary to remedy any breach of Provider's warranty. The foregoing represents Provider's sole obligation and Customer's sole remedy for any defect or deficiency in a Remote Hands and/or Smart Hands services. Provider has no liability whatsoever to Customer or anyone claiming through Customer for any issues or equipment outages resulting from Remote Hands and/or Smart Hands service unless directly caused by Provider's willful misconduct

4.4 Billing and Expenses. Provider will render invoices monthly in arrears for Remote Hands or Smart Hands that are billed on a variable basis and monthly in advance for those Remote Hands or Smart Hands that are billed on a fixed basis. Customer shall, upon receipt of appropriate supporting documentation, reimburse Provider for any and all reasonable out-of-pocket expenses incurred by Provider in connection with rendering the Remote Hands or Smart Hands as applicable. Provider will include all applicable expenses in its invoices to Customer for the Remote Hands or Smart Hands.

5. RISK OF LOSS; INDEMNIFICATION; AND INSURANCE

5.1 Risk of Loss. The risk of any loss of or damage to Customer Equipment at any Site Space shall be borne solely by Customer. Provider shall not be liable to Customer for, and Customer shall not be relieved of its obligations hereunder due to, any interruption or termination of any Service or utilities due to any repair, installation or improvement, or any cause beyond Provider's reasonable control, except

that if Customer is unable to operate its business as a result of such interruption caused by the gross negligence or willful misconduct of Provider, there shall be an abatement of the applicable MRC during the period of such interruption.

5.2 Indemnification. Customer shall indemnify, defend, release, and hold harmless Provider, its Affiliates, directors, members, officers, employees, managers, agents, representatives, and contractors, as well as the Site Landlord and Provider's other customers, from and against any and all claims, demands, actions, judgments, costs, expenses (including reasonable attorneys' fees), damages and/or liabilities arising out of or in connection with Customer's (including its agents, contractors, employees and representatives) use of the Site Space and/or exercise of its rights hereunder.

5.3 Insurance. Customer shall procure, and thereafter shall maintain through the Service Term, the following insurance from carriers having a Best Rating Service rating of A- or better:

- Commercial General Insurance with a limit of not less than \$2,000,000 each occurrence, written on ISO occurrence form CG 00 01 12 07 (or a substitute form providing equivalent coverage) and covering liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. Such insurance amount may be satisfied through a combination of primary and umbrella insurance.
- Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident, covering liability arising out of any auto (including owned, hired and non-owned autos). Such insurance amount may be satisfied through a combination of primary and umbrella insurance.
- Workers Compensation and Employers Liability Insurance, as required by the laws and regulations applicable to the employees who are engaged in the performance hereunder.
- Commercial Property Insurance covering Customer's property and equipment at Provider's location, in an amount equal to the full replacement cost of Customer's property and equipment.

Customer shall deliver to Provider standard form insurance certificates evidencing the coverage required herein and stating that the insurer will provide at least thirty (30) days' written notice to Provider if such coverage is to be cancelled, non-renewed or materially and adversely modified. Provider shall be included as an insured on the associated policies and this insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded Provider (there shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured). Customer waives all rights against Provider and its agents, officers, managers, directors and employees for recovery of damages to the extent these damages are covered by the insurance maintained pursuant to this Agreement.

If any insurance coverage is not secured and maintained or is canceled, Provider reserves the right to procure such insurance and to add the cost thereof to any sum due Provider from Customer under the applicable Service Order(s). Nothing contained in these insurance requirements is to be construed as limiting Customer's responsibility or liability for damages resulting from Customer's use of the Site Space or Customer's indemnification obligations.

6. EMINENT DOMAIN AND CASUALTY

Should a substantial portion of the Site Space, or of the Site, be damaged by fire or other casualty, or be taken by eminent domain, Provider may elect to terminate the license for any Site Space hereunder. When such fire, casualty, or taking renders the Site Space substantially unsuitable for its intended use, a just and proportionate abatement of the applicable monthly recurring charge shall be made, and Customer may elect to terminate the license for the affected Site Space hereunder if: (a) Provider fails to give written notice within forty-five (45) days after such fire, other casualty or taking, of Provider's intention to restore the Site Space, or (b) Provider fails to restore the Site Space to a condition substantially suitable for its intended use within one hundred and eighty (180) days after said fire, casualty or taking. Provider reserves, and Customer grants to Provider, all rights which Customer may have for damages or injury to the Site Space for any taking by eminent domain, except for damage to the Customer Equipment.

7. LIENS

Customer may not cause or permit any liens to be placed on the Site or any Site Space for labor, services or materials performed or delivered by or on behalf of Customer (including, without limitation, any party that may make any claim or seek any lien by or through Customer), and shall cause any such liens to be removed within ten (10) days of Customer's knowledge thereof.

8. FEES

Customer shall pay the fees set forth in Service Orders executed hereunder. On January 1 of each year, the MRCs shall be escalated by the increase in the Consumer Price Index – All Urban Consumers (CPI-U) issued in December of the previous year (any such adjustment will reflect any increase, but not any decrease, in the Consumer Price Index for the previous 12 months). In the event that the CPI is no longer available, such MRCs shall be escalated by three (3) percent annually. In addition, in the event that amounts charged to Provider under any Underlying Rights are increased or Provider's costs or expenses are increased due to any Underlying Rights, Provider shall have the right to charge Customer for its pro rata share of such increases, which shall be added to the MRCs to be paid by Customer for the applicable term. In the event that a Service Order includes electrical power or HVAC service, fees for such electrical power and HVAC service may be increased

by Provider from time to time during the Service Term or any renewal thereof, as necessary to reflect Provider's costs, upon prior written notice to Customer.

9. SERVICE LEVEL AGREEMENT

9.1 Service Outage. Subject to this Section 8, in the event of a Colocation Service Outage, Customer may be entitled to a credit ("Service Credit") of 1/720 of the MRC applicable to the affected Service, for each hour in duration of any such Colocation Service Outage beyond three (3) hours. A Colocation Service Outage shall be deemed to begin upon the earlier of Provider's actual knowledge of the Colocation Service Outage or Provider's receipt of notice from Customer of the Colocation Service Outage, and end when power is available, as documented by Provider's records. Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Service Order, in no event shall a Colocation Service Outage or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Provider of this Supplement, the Agreement or any Service Order.

9.2 Service Credits. The number of minutes of separate and discrete Colocation Service Outages will not be accumulated to determine the percentage of Service Credit. Service Credits hereunder are calculated as a percentage of the MRC set forth in the Service Order, and may not be applied to usage charges, government fees, taxes, or surcharges, or any third party charges passed through to Customer by Provider. Service Credits issued to Customer hereunder shall be Customer's sole and exclusive remedy at law or in equity on account of any Colocation Service Outage or any other defect in Service provided to Customer. Service Credits will not be issued to Customer if Customer's account with Provider is in arrears. In no event shall Provider's total liability for any and all interruptions, disruptions, failures, and/or degradations in Service (including, without limitation, any Colocation Service Outage or failure to meet any objectives or parameters set forth in this Supplement) exceed fifty percent (50%) of the MRC for the affected Service.

9.3 Service Credit Request. Customer must submit a written request to claim a Service Credit no later than thirty (30) days following the event which gives rise to Customer's right to request the Service Credit. Failure to request an allowance within such period shall constitute a waiver of any claim for a Service Credit.

9.4 Multiple Applicable Service Standards. If an incident affects the performance of the Service and results in a period or periods of interruption, disruption, failure or degradation in Service, entitling Customer to one or more credits under multiple service level standards, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to credits under multiple service level standards for the same incident.

9.5 Events Excepted From Service Credit. Notwithstanding the foregoing, Customer shall not receive any Service Credit for any Colocation Service Outage, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by the following events:

- a. Customer's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Customer Equipment, Customer provided optical fiber, End User equipment or Customer's vendor's equipment;
- c. Failure of electrical power not provided by Provider;
- d. Election by Customer, after requested by Provider, not to release the Service for testing and repair;
- e. Provider's inability to obtain access required to remedy a defect in Service;
- f. Scheduled maintenance and emergency maintenance periods;
- g. Scheduled upgrade of Service at the request of Customer;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Service by Provider pursuant to a right provided under this Agreement; and/or
- j. Provider's inability to repair due to utility safety restrictions.

COLLOCATION RULES AND REGULATIONS

The following constitute rules and regulations (“Rules and Regulations”) governing the use and operation of collocation facilities (“Facility” or “Facilities” or “Building” or “Buildings”) owned or operated by Provider and licensed or leased for use by Provider’s telecommunications and ISP customers and carriers (“Customer” or “Customers”). The individual cabinet, rack or cage space licensed to Customer within the Facility shall be referred to as the “Space.” By entering into this Agreement, Customer agrees to abide by the Rules and Regulations, as they may be amended from time to time. In the event of any conflict between the Rules and Regulations and the Agreement, the terms and provisions of the Agreement shall control. Whenever, under the Rules and Regulations, or an Agreement, Provider’s approval is required, such approval will be given or withheld in Provider’s sole discretion.

INTRODUCTION

Standard operating procedures and protocols have been established to further safe and reliable operation of Customer owned and operated equipment within the Facilities. Specific Facilities may be subject to special considerations based, among other things, on local jurisdiction and a Facility’s design and configuration. Customers are encouraged to contact Provider’s Facilities Manager with any questions or concerns regarding a particular work operation or installation procedure.

STANDARDS OF OPERATION

The following standards of operation are required to be observed by all customers. Provider may change or augment these standards from time to time to better serve the customer base.

OCCUPANCY AND SPACE UTILIZATION

Customer may use the Space only for the purposes of installing, maintaining and operating telecommunications equipment.

NETWORK INTERCONNECTIONS AND INTERFACE TO THIRD PARTIES

Customer interconnections with telecommunications services provided by third parties will only be permitted with the prior written approval of Provider, subject to the applicable Agreement. **It is imperative that customers understand that only Provider personnel, or its subcontractors, are allowed to perform work on the common ladder rack and in common wireways.**

Provider will also install all fiber optic connections connecting customers to outside plant fiber optic cables entering the Provider Facility. Provider will provide Customer with fiber jumpers or fiber cable from the Building interface bay to the “demarcation” point, if Customer is licensing fiber from Provider. The Customer demarcation point is always in the Customer Space.

Customers with multiple racks, cage space, or “raw” space that have made provision for customer cable racks are required to use the best, most effective and economic resources to provision their own cross-connections relevant to interconnecting their own equipment within their Space or cabinet line-ups. The higher of Provider, Telcordia GR-1275-CORE, or Customer standards shall be strictly maintained, provided that Customer shall not perform any work on the common ladder rack or in common wireways.

CUSTOMER RESPONSIBILITIES

Customer technicians must be certified by industry and Provider standards and approved by Provider in order to perform any work in Provider Facilities that directly affects common systems elements. Customer contractors must be familiar with and adhere to the Provider methods and procedures for operating and conducting business within Provider Facilities. Customer shall be responsible for any failure of Customer’s contractors to do so.

Customer or its representative shall coordinate major equipment deliveries with the Facilities Manager. Major deliveries shall be scheduled and executed so as not to interfere with the operations of Provider or other Provider customers within the Facility. Doors shall not be propped open or left unattended.

Local telephone company connections shall be ordered directly by Customer, and Customer will become the customer of record. The Facility is configured to accommodate services from the local exchange carrier demarcation to Customer’s Space. The telephone or terminal block shall be located within the Customer Space. Interface wiring on common ladder racking shall be performed by Provider and billed to Customer as provided in the applicable Agreement.

Connections to other carriers and or customers within Provider facilities shall be subject to the applicable Agreement and payment by Customer of the applicable cross-connect charges.

Provider, on a regular basis or at its sole discretion, shall perform inspections of Customer connections and/or general space conditions. If such Customer connections and/or general Space conditions are deemed to be non-compliant, Customer shall be notified of the specific nature of the non-compliance which shall be rectified immediately. Provider reserves the right, in all cases, to remedy the non-compliance at Customer’s expense.

Specifications for the provisioning of other services such as, but not limited to, power, overhead racking, mounting and overall Space allocation, conditioning and operations will be provided to the customer by the Facilities Manager.



In all cases Customer shall provide and keep current a single point of contact for interface with the Facilities Manager for all Space matters including emergency call-out or service restoration issues.

Customer shall pay for any damage to Provider facilities or equipment, or to its customers' facilities and equipment caused by Customer's equipment failure, or other acts or omissions of Customer, or its representatives. This shall include the cost of all labor and materials associated with the restoration or repair of building common systems equipment or services, plus the applicable administrative and overhead costs associated therewith.

PROVIDER INTENDS TO ALLOW OTHER CUSTOMERS TO INSTALL EQUIPMENT AROUND AND ABOUT THE FACILITIES, SO LONG AS NOT DIRECTLY INCONSISTENT WITH THE RIGHTS EXPRESSLY GRANTED TO CUSTOMER. BY USING THE SPACE, CUSTOMER EXPRESSLY AGREES THAT PROVIDER WILL HAVE NO LIABILITY FOR ANY DAMAGES, COSTS OR LOSSES INCURRED BY CUSTOMER OR ANY THIRD PARTIES CAUSED BY THE EQUIPMENT, ACTS OR FAILURE TO ACT OF SUCH OTHER CUSTOMERS OR THEIR RESPECTIVE AFFILIATES, EMPLOYEES, CONTRACTORS OR AGENTS.

IMPROVEMENTS TO SPACE

Customer shall not alter the structural integrity of the Facility, affect any power, HVAC or other systems within the Facility, physically alter the Facility or the Customer space in any way, or affect the normal functioning of the Facility or another customer in any way.

All work performed within the Facility will comply with all state, federal, municipal, and regional codes, laws, ordinances, rules, regulations or directives.

EMERGENCY CONTACT NUMBERS

Customer shall post contact telephone numbers conspicuously at the entrance to its Space. Customer shall provide Provider with means of access to the Space in case of emergency. Provider reserves the right to enter the Space at any time in cases of emergency to assess possible ramifications to the Facility. Provider shall provide Customer with 72 hours advance notice of planned inspections of the Customer's Space, in non-emergency situations.

COLLOCATION RAW SPACE AND CAGE SPACE WORK REQUIREMENTS

All work within Customer's raw Space and/or cage Space shall be performed by Customer in a manner to ensure no interference with the normal functioning of the facility and other customers and be approved by the Crown Castle Facilities Manager as previously set forth herein above. The following applies to all work performed by or on behalf of Customer:

Initial Customer design requirements must be reviewed and approved by the Facilities Manager prior to commencement of any work. Provider reserves the right to audit all work and shall inspect equipment and/or systems prior to connection to common systems power or fiber. All work shall be confined to the area within the Space. If staging area is required it must be pre-approved by the Facilities Manager.

BUILDING COMMON AREA

The building common areas are established primarily for access and egress to Customer equipment. Customer and/or Customer's vendors must keep all driveways, entrances and passageways serving the Facility clear and available for use by Provider and other customers or vendors.

Customer shall provide and maintain all necessary guards, rails, fences, and protective coverings to preserve building integrity and appearance during any work operation. Any and all work operations that adversely impact normal access or egress from the Facility shall be performed outside of normal business hours. Customer will take special care to protect adjoining property and equipment from damage or injury.

Customer's materials and equipment shall be confined to the area in which the work is actively being performed. Customer shall provide adequate lockers or locked sheds for the storage of equipment or materials. All tools and equipment shall be stored neatly in approved storage lockers and the space shall be cleaned before the end of each work day. Trash and debris shall be removed from the facility before the end of each workday.

Customer or Customer's vendor(s) are required to protect all finished surfaces from dirt and damage, including walls, ceilings, jambs, and soffits of openings used as passageways through which materials are handled. Based on the type of work operation, temporary partitions or curtains between the work area and other spaces may be required by Provider. Partitions shall be constructed, maintained, and sealed in a complete and tight condition at all times. Polyethylene shall not be used for dust partitions or curtains. Fire resistant Servico vinyl shall be used. Prior to removal of any dust partition the customer or its vendor shall vacuum clean the area using an approved HEPA vacuum.

PROTECTION OF PROVIDER SERVICES

No work shall be started, walls or partitions removed or built, heat, water or plumbing or electric services temporarily disconnected, nor shall construction work be carried on near the telephone wires or equipment, without first discussing the procedures and protection to be provided with Provider and receiving Provider's prior approval. The contractor must notify Provider at the first indication of an electrical interruption or switchover to the temporary generator which occurs during any work activity whether caused directly by a work activity, or incidental to any work activity during construction.

Any work activity which may cause or require a temporary power shut down of AC or DC power or reliance on the standby power system shall be pre-approved and scheduled by Provider. The request shall be accompanied by a detailed method of procedure for the work activity. Notice

of the work activity shall require a minimum of 30 days' lead time for notification to other customers that may also be affected. This class of work shall require supervision by Provider or its representative. Scheduling of Customer required power shutdowns shall be coordinated by the Facilities Manager, at Customer's expense.

PROVIDER POWER WORK - AC & DC

Provider operates and maintains both the AC and the DC power systems for 24x7 operations. Provider reserves the right to maintain and augment these systems at its sole discretion. Routine maintenance and testing may be conducted during normal work hours under a method of procedure specific to the work operation.

Provider will provide Customer with telephone or e-mail notice of all non-emergency planned Facility maintenance prior to performing maintenance that, in its reasonable opinion, has a substantial likelihood of affecting Customer's collocation facilities.

1. Provider will undertake repair efforts on all environment equipment or interconnecting fiber or copper circuits when Provider first becomes aware of it, or when notified by Customer and Customer has released all or part of the service for testing.
2. Contact Information:
Provider Network Operations Center – 1-888-LT-FIBER

PROTECTION OF FLOORS

Non-flammable tight wood sheathing shall be placed under materials that are stored on finished surfaces. Non-flammable tight wood sheathing installed over reinforced Kraft building paper must be placed over finished floor surfaces before moving materials over finished floors, especially in the building common entrance and foyer areas.

PRESERVATION OF ENVIRONMENTAL CONDITIONS FOR TELECOMMUNICATIONS EQUIPMENT

At no time shall the interior of the building be directly exposed to the outside environment without the prior written approval of Provider. Existing exterior walls, doors, or windows shall not be removed until construction of any associated addition or interlock facility has been completed.

AC POWER SERVICES AND REQUIREMENTS

Provider provides dedicated AC power circuits for customer operating equipment. Determination of the proper AC power requirement to be provisioned for operation of Customer provided equipment is the responsibility of Customer and shall be identified with the Service Order request. AC circuits shall be provided and fused according to the applicable Service Order. All AC service to customer is protected by a standby engine generator. Momentary interruption of power will occur during a power failure due to the transition interval to the standby power system. All Customer provided AC powered equipment shall be UL listed. Conditions that cause AC power interruption such as faults, shorts or overload of Customer circuits due to Customer equipment shall be cleared and tested prior to restoration of the AC service by Provider.

DC POWER SERVICES

Provider provides dedicated DC power circuits for Customer operating equipment. Determination of the proper power requirement (total load amps draw) of DC power for operation of Customer provided Equipment is the responsibility of the Customer and shall be identified with the Service Order request. DC circuits shall be provided and fused according to Customer provided load data and in accordance with the applicable Service Order. All DC service to Customer equipment is protected by battery backup to provide uninterrupted service. All Customer provided DC powered equipment shall be NEBS compliant and approved by type for use by Provider prior to installation. Conditions that cause DC power interruption such as faults, shorts or overload of customer circuits due to Customer equipment shall be cleared, tested and verified "safe for operation" by (a) the Customer representative and b) the Facilities Manager prior to restoration of the DC service by Provider.

SAFETY

Provider requires all customers and their vendors to practice good workplace safety. All electrical equipment and tools must be properly grounded before becoming operational.

Customer shall ensure that its equipment and surrounding areas do not pose safety hazards to any person. OSHA and local laws, rules, regulations, ordinances and codes shall be complied with at all times.

FIRE SAFETY

Fire safety is critical. If there is a fire alarm in a customer Space, Provider Building control center will dispatch the fire department. Customer shall monitor its own alarms in fully compartmentalized and separately alarmed spaces and shall dispatch a company representative upon a fire alarm indication, at Customer's expense. All fire alarms shall require investigation as to the cause and resolution. Fire alarm systems shall not be reset to normal without a full and thorough survey of the facility.

Any and all work in Customer fire alarm panels shall be pre-scheduled with Provider prior to the performance of the work.

PROVIDER PROVIDED STANDBY ENGINE GENERATORS

Provider provides standby engine generator power systems for its buildings. These systems are tested under load conditions monthly. A schedule of test dates is available from the Facilities Manager. All scheduled load transfers are conducted under the supervision of on-site technical personnel. During a load test, power will be briefly interrupted for all non-UPS loads including, in many cases, cabinet fans.

SECURITY AND PERSONNEL IDENTIFICATION

Customer shall complete and submit to Provider Provider's application form for all employees, agents and vendors seeking access to the Facility on Customer's behalf. No one, other than employees, agents and vendors of Customer who have been approved by Provider, may access the Facility. Provider will provide to Customer up to 10 building access cards at no charge. Additional cards may be purchased for \$50.00 each (minimum of two per request). Individual card access administration is the responsibility of Customer for card assignments to individual employees, agents and vendors, provided that only those employees, agents and vendors approved by Provider may be given an access card. Access cards may only be used by the individual to whom the access card is assigned. Failure to adhere to the Provider security protocol may result in card deactivation. Reissuance of a card for breach of security shall be made only after a \$50.00 charge. All employees, agents and vendors entering Provider Facilities shall wear, prominently displayed, a picture identification card which provides the person's name and company name. Building keys shall not be issued to customers; customer access shall be card key only.

MISCELLANEOUS

Customer's employees, agents and vendors shall take all necessary precautions for the safety of Customer's employees, agents and vendors when accessing the Facility and using the Space and shall comply with all applicable provisions of federal, state and municipal laws, codes, regulations and ordinances and any successor laws, codes, regulations and ordinances thereto, in order to prevent accidents or injury to persons and property on, about or adjacent to the Space or the Facility, including, without limitation, the National Electric Safety Code and the OSHA requirements for working clearances from energized lines.

Customer shall otherwise comply with all applicable federal, state or municipal laws, regulations, codes and ordinances affecting the Space and its occupancy, operation and the use thereof pursuant to the terms hereof and Customer shall not use the Space in any unlawful, improper, noisy or offensive manner.

Customer shall provide all equipment needed to conduct its business at the Space which is capable of confinement within the Space without adversely affecting its function. Customer shall be solely responsible for the installation, modification and maintenance of Customer's equipment. Customer shall also insure that neither vehicles nor equipment are parked or stored at the Facilities, except as approved by Provider.

Customer shall not place a load upon any floor in the Space that exceeds the load bearing capacity of such floor, as determined by Provider, in its sole discretion. Provider reserves the right to determine the location and weight of any of Customer's equipment.

No signage shall be permitted by Customer on the interior or exterior of the Space or the Building, except for identification tags or nameplates on the outside of the cabinets which have been approved by Provider in its sole discretion.

HAZARDOUS MATERIALS

Neither Customer nor any person claiming under customer, nor the employees, agents, or vendors of Customer or any such person shall bring onto, store, generate, or permit to be stored or generated on the Facility, including but not limited to the space, any oil, Hazardous Material, as defined in any applicable federal, state or municipal law, regulation, code, or ordinances including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.*, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. c. 21E, as amended, and the Massachusetts Hazardous Waste Management Act, as amended, M.G.L. c. 21C.