



## TELECOMMUNICATIONS LICENSE TERMS AND CONDITIONS

The following terms apply to fiber and related products licensed by Crown Castle Fiber LLC or any Affiliate thereof, where incorporated by reference in a contract or order form executed by any of those provider entities and by the customer or licensee. For purposes of this Agreement, the term “Company” shall mean the entity identified as the “Company” or “Provider” on the Order Form, or the Affiliate of Company actually licensing the Product pursuant to Section 1.3 below.

### PART I-GENERAL TERMS APPLICABLE TO ALL FIBER PRODUCTS

The following terms apply to all products licensed by Company:

#### 1. PRODUCTS, ORDER FORMS, AND SUPPLEMENTS.

**1.1 Products and Order Forms.** This Agreement applies to each telecommunications facility, or product, provided or licensed by Company to Licensee (each a “Product”). Each Product will be specified in an order form executed by the Parties (each an “Order Form”). Purchase orders issued by Licensee shall not be deemed to amend, modify or supplement this Agreement or any Order Form issued hereunder and shall not be legally binding on Company unless otherwise agreed in writing by Company. The term “Customer” or “Licensee” shall mean the entity identified on the Order Form. Company and Licensee 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 Company Affiliates.** Licensee acknowledges and agrees that at Company’s option, Products may be provided or licensed by Company, or by an Affiliate of Company, and that any charges or other amounts received by the Company under this Agreement, to the extent attributable to Products provided or licensed by an Affiliate of the Company, shall be received by the Company in its capacity as an agent on behalf of such Affiliate. In addition, Order Forms may be executed by an Affiliate of Company, and in such event, any and all references to “Company” herein shall be deemed to be a reference to the applicable Affiliate of Company that executed such Order Form. 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, Products licensed in the states below will be provided by either Company or by the Affiliate of Company 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
Lighttower Fiber Networks II, LLC:	CT, DE, DC, IL, ME, MD, MA, NH NJ, NY, NC, PA, RI, VT, VA

#### 2. TERM.

**2.1 Product Term.** The term (each a “Product Term”) for each Product begins on the Acceptance Date (as defined below) applicable to such Product, and remains in effect until the expiration of the initial Product Term specified in the applicable Order Form unless earlier terminated as provided herein. The Product 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 Product Term.

**2.2 Acceptance Date.** The “Acceptance Date” for each Product shall be the earliest of (a) the date on which Licensee delivers written notice of acceptance, (b) the date on which Licensee begins to use the Product, other than for testing purposes, or (c) the second (2<sup>nd</sup>) business day following Company’s delivery of notice of the installation of the Product (such notice, a “Connection Notice”), unless Licensee notifies Company in writing within said two-day period of a Defect in the Product, specifying in detail the nature of such Defect. A “Defect” exists if the Product 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, Company and Licensee shall work cooperatively to promptly remedy such Defect, and Company 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 Licensee, Company will give Licensee written notice to cure such failure within five (5) calendar days. If Licensee 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.** Company will invoice Licensee for any non-recurring charge (“NRC”) associated with the Product upon or after execution of the applicable Order Form. The monthly-recurring charge (“MRC”) associated with the Product shall begin to accrue on the Acceptance Date of such Product. Company will invoice Licensee the MRC associated with the Product in advance, except Company will invoice Licensee usage based charges (if any) associated with the Product in arrears. An MRC for a partial month will be pro-rated. Licensee shall be responsible for payment of the MRC for the entire Product Term specified in the applicable Order Form.

**3.2. Payments; Late Payments.** Licensee shall pay each invoice within thirty (30) days of the date of the invoice (the “Due Date”), without setoff or deduction. In the event Licensee fails to make any payment by the Due Date, Licensee 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, Company shall be entitled to recover from Licensee all collection costs, including attorney fees.

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

claim. If the dispute is resolved in favor of Licensee and Licensee previously paid the disputed amount to Company, Company will apply a credit to Licensee's account in the amount of the dispute in the next billing cycle. If the dispute is resolved in Company's favor and Licensee has withheld the disputed amount, Licensee 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.**

**4.1 Taxes and Fees.** All charges set forth in an Order Form(s) are exclusive of, and Licensee 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 Product or facility furnished to Licensee (collectively referred to as "Taxes"). Licensee shall not be responsible for, and Taxes will not include, taxes on Company's net income. If Licensee believes it is exempt from Taxes, Licensee shall provide Company with a valid and duly executed exemption certificate and any other information with respect to such exemption as Company may require; such certificate will be honored from the date that Company receives such certificate and additional information from Licensee. If any such exemption is ruled invalid by the tax or governmental authority for any reason, Licensee shall reimburse Company for any Taxes, including without limitation any penalties and interest, arising from or in connection with such invalid claim of exemption.

**4.2 REIT Status.** Licensee acknowledges that: (i) Company is directly or indirectly owned in whole or in part by an entity ("REIT Owner") that qualifies or intends to qualify as a "real estate investment trust" ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"); and (ii) Company and REIT Owner are therefore subject to operating and other restrictions under the Code. The Parties intend that this Agreement shall constitute a lease of the Products for purposes of Section 856 of the Code and that the license of Products and receipt of charges in exchange therefor shall be treated in a manner consistent with Section 1.3 of this Agreement, and the Parties shall not take any position on any tax return inconsistent therewith except as required by law.

#### **5. COMPANY EQUIPMENT AND NETWORK; LICENSEE EQUIPMENT.**

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

to the Company Equipment or Company Network caused by Licensee or Licensee's employees, contractors, agents or end users. Nothing herein shall prevent Company from using the Company Network and Company Equipment to provide products to other customers.

**5.2 Extension of Network.** To the extent an Order Form requires Company to complete construction, extend the Company Network and/or obtain additional Underlying Rights, Licensee shall use commercially reasonable efforts to assist Company in obtaining such Underlying Rights as necessary to provide the Product. Company may, without liability to either Party, terminate a Product prior to delivery, if Company encounters unexpected construction costs, or unavailability of or excess costs for Underlying Rights, that make the construction economically or legally unfeasible. Following the Acceptance Date of the Product, in the event that Company is unable to maintain any necessary Underlying Rights without incurring additional costs, unless Licensee bears the costs of obtaining such Underlying Rights, Company may cancel the applicable Order Form and shall incur no liability to Licensee hereunder. Without limiting the foregoing, Company shall not be deemed to be in breach of this Agreement for its failure to meet any anticipated Product 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 Company. "Underlying Rights" means any and all agreements, licenses, conduit use agreements, pole attachment agreements, leases, easements, 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 Company Network and/or for Company to provide a Product other than building access rights described in Section 7.1. Without limiting the foregoing, Underlying Rights include agreements for Off-Net Products that are necessary for Company to provide a Product. "Off-Net Products" shall mean any products provided by a third-party. "On-Net Products" shall mean Products that use transmission and related facilities owned and controlled by Company.

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

#### **6. MAINTENANCE.**

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

**6.2 Emergency Maintenance.** Company may perform emergency maintenance in its reasonable discretion, with or without prior notice to Licensee, to preserve the overall integrity of the Company Network. Company will notify Licensee as soon as

reasonably practicable of any such emergency maintenance activity that materially and adversely impacts a Product.

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

## 7. IMPLEMENTATION REQUIREMENTS.

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

**7.2 Space and Power.** Licensee shall procure and make available to Company, at Licensee's locations and at end user locations where a Product is provided or licensed, at Licensee's sole cost and expense, adequate space, AC power and HVAC for Company Equipment.

**7.3 Property Owner Not Liable.** Neither Licensee nor any of Licensee's end-users shall have any recourse against any property owner or property manager of any premises to which any Product is delivered and/or at which Company 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 Company, nor shall Company have any liability, for or on behalf of such property owner or property manager.

## 8. DEFAULT & REMEDIES

**8.1 Default By Licensee; Suspension.** In the event (i) Licensee 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) Licensee breaches any other provision of this Agreement and such breach is not cured within thirty (30) days after

receipt of written notice thereof, then Company may, at its sole option, either (a) terminate any and all Products, (b) suspend the affected Product to which the breach is related without further notice to Licensee, and/or (c) pursue any other remedies available to Company at law, or in equity.

**8.2 Default By Company.** Licensee may terminate a Product in the event Company breaches this Agreement with respect to such Product and such breach is not cured within thirty (30) days after Company'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 Licensee may not terminate the Product if Company commences to cure within said thirty (30) days and thereafter diligently and continuously pursues such cure to completion, or Company provides Licensee reasonable assurance that the same breach to the same Product will not subsequently occur.

## 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. Each Party shall name the other Party as an additional insured to provide coverage for the additional insured on a primary and non-contributory basis. The coverage provided to the additional insured shall apply to the extent of the indemnification obligation identified in paragraphs 10.2.
- 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 an Order Form.

**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 Product 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 PRODUCT OR ANY ORDER FORM, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S TOTAL LIABILITY TO LICENSEE 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, MISREPRE-



SENTATION AND OTHER TORTS, SHALL BE LIMITED TO THE LESSER OF: (A) PROVEN DIRECT DAMAGES OR (B) THE AGGREGATE AMOUNT OF PAYMENTS MADE BY LICENSEE TO COMPANY FOR THE AFFECTED PRODUCT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CIRCUMSTANCES GIVING RISE TO THE CLAIM OCCURRED. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE ACTS OR OMISSIONS OF THIRD PARTIES, INCLUDING UNDERLYING PRODUCT PROVIDERS, OR ANY THIRD-PARTY EQUIPMENT OR PRODUCTS NOT PROVIDED OR LICENSED BY COMPANY.

**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 willful misconduct or negligent act or omission on the part of the indemnifying Party in connection with the performance of this Agreement. In addition to the foregoing, Licensee shall indemnify, defend, release, and hold harmless Company and its Indemnitees from and against any third-party Claims brought against such Company and its Indemnitees arising from or in connection with Licensee's (or its end users') unlawful use of a Product.

**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 without the Indemnified Party's written consent, 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, which would otherwise adversely affect the Indemnified Party, or which results in less than a full release of all claims.

## **11. REPRESENTATIONS AND WARRANTIES.**

**11.1** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, COMPANY MAKES NO REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT, EITHER EXPRESS, IMPLIED OR STATUTORY, AND COMPANY 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 PRODUCT WITH ANY LICENSEE OR END-USER

EQUIPMENT. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY PRODUCTS OR 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 Products, 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.** If the Parties have executed a non-disclosure or confidentiality agreement and such agreement remains in force, the terms of that agreement shall apply in lieu of this Section. If the Parties have not executed a non-disclosure or confidentiality agreement or such agreement lapses, terminates or expires, each Party agrees to limit use and prevent disclosure of the other Party's "Proprietary Information" in accordance with this Section. 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 Order Form 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 nor 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 Products 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 or any license or Order Form hereunder 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 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, Company may freely delegate its obligations hereunder, and 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 Order Forms 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.** Any request to terminate this Agreement, or any claim for breach thereof, shall be in writing and transmitted either via (i) overnight courier or hand delivery, or (ii) certified or registered mail, postage prepaid and return receipt requested. Notices shall be deemed delivered upon receipt. Notices to Licensee shall be sent to the address specified in the Service Order. Notices to Company shall be sent to the following address:

Crown Castle Fiber  
55 Broad Street  
New York, NY 10004  
Att'n: Deputy General Counsel – Fiber

A Party may change the address for notices by notice to the other Party provided pursuant to this Section 15. All other notices, requests, or communications may be transmitted by email as specified in the invoice or Order Form, at <http://fiber.crowncastle.com/support>, or as otherwise directed by Company.

## **16. MISCELLANEOUS**

**16.1 Governing Law.** This Agreement shall be governed by the laws of the State of Delaware 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 an Order Form, the terms of the Order Form will control. If any conflict or contradiction exists between these general terms and conditions and the terms of an Order Form, the terms of the Order Form will control.

**16.5 Non-Exclusivity.** This Agreement is non-exclusive. Both Parties may enter into similar arrangements with others, and Company may, as part of its normal business undertakings, actively market its products to any person or entity anywhere in the world, including but not limited to in competition with Licensee and/or Licensee'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 Order Form, 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 an Order Form 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 Order Form. 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, Order Forms, 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 Order Forms are legally binding and shall act as originals for the purpose thereof.

**16.12 Disconnection Notice Requirement.** Licensee shall submit all requests for disconnection of Products in writing to Company. Such disconnection effective date will be the later of (i) thirty (30) days from Company's receipt of such disconnection request, or (ii) the date requested by Licensee in the disconnection request. Each disconnection request must specify the Licensee name and address, email address and telephone number of the person authorizing the disconnect, the circuit ID for the Product to which the disconnect request applies, the product type, and requested disconnection date. Upon termination of a Product, Company shall have the right (but not the obligation) to act on behalf of and as agent for Licensee to

terminate all cross-connects relating to such Product, including cross-connects ordered by Licensee. Upon request Licensee shall confirm to the applicable supplier of the cross-connect(s) that Company is authorized to terminate such cross-connects on Licensee's behalf. Disconnections shall not affect Licensee's obligation to make payments as agreed in each Order Form.

## PART II—TERMS APPLICABLE TO DARK FIBER

1. The terms in this Part II apply only to dark fiber licensed to Licensee under an Order Form that specifies Dark Fiber. This Part shall not apply to other products, including Ethernet, wavelength, Internet, or colocation.

### 2. ADDITIONAL TERMS

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

“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 Company has or will have access by ownership, lease, right to use, or otherwise.

“Dark Fiber” or “Fibers” means one or more specified strands of dedicated optical fiber within a Cable without optronics or electricity, subject to the terms of the Agreement.

“Licensee Fibers” or “Product” means the Fibers that are licensed to Licensee under an Order Form.

“Location” is an address wherein Company will hand off Licensee Fibers to Licensee.

“Product Credit” means a credit that Licensee may be eligible to receive pursuant to Section 7 below.

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

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

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

### 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

### 3.2. Fiber Optic Specification

- (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).

### 3.4 Fiber Optic Test Results

#### (a) Bi-directional OTDR

- (i) span traces will be captured at 1310nm and 1550nm. Traces will be provided in native format and / or PDF.

#### (b) Bi-Directional Power Meter.

- (i) Bi-Directional power meter results will be furnished with light source data at 1550nm. Data will be supplied in a excel format with all locations clearly identified including demarcation details.

#### (c) Optical Return Loss / Reflectance

- (i) The ORL value measures the total light reflected back to the transmitter caused by the system components of the fiber under test and can degrade the performance by affecting the stability of the laser; this in turn can create bit errors.
- (ii) Specifications – ORL

**Vendor and Telcordia specifications regarding Optical Return Loss are as follows:**

Parameter	Telcordia	Manufacturer Minimum	Optimum (desired)
Optical Return Loss	>27 dB	>27 dB	>30 dB

The maximum reflectance per event as measured by an OTDR, shall not exceed (-30db).

#### (d) Polarization Mode Dispersion.

- (i) PMD is caused by different polarizations of the light pulse traveling along the fiber at slightly different speeds due to imperfections of size and material properties along the length of the fiber. This causes the light pulses or waveforms to spread out or broaden causing possible bit error rate of the transmission signal. The higher the bandwidth, the shorter the pulse and the increase of importance of testing prior network turn up.
- (ii) Polarization-Mode Dispersion Measurement for Single-Mode Optical Fibers by Interferometry Method.
- (iii) Specifications – PMD

**PMD coefficient of the tested fiber should not exceed:**

Value	Typical	Range	Notes
PMD	<0.1 ps/km	<0.2 ps/km	Identify fiber as High PMD if <0.2 ps/km is exceeded

#### (e) Chromatic Dispersion

- (i) Chromatic Dispersion is the broadening or spreading of a pulse of light due to the nonzero spectral width of a transmission signal. The effects of chromatic dispersion can limit the network transmission rate or the length of fiber a signal can be transmitted before requiring re-generation.
- (ii) Specifications – Chromatic Dispersion
- (iii) Record the total Chromatic dispersion for the tested span, the value per kilometer should be within the range specified below.

Type	Dispersion @ 1550nm	Range ps/(nm/km)	Dispersion Slope (ps/km/nm^2)
SMF	17 ps/(nm/km)	14-19	0.06
ELEAF	4 ps/(nm/km)	2-6	0.083
TrueWave RS	4.5 ps/(nm/km)	2-6	0.045
TrueWave Classic	2 ps/(nm/km)	1-3	0.07
DSF	0 ps/(nm/km)	See Note 1	See Note 1
SMF-LS	-1 ps/(nm/km)	-3.5-0	0.075

**Note 1:** DSF not recommended for DWDM



#### 4. USE OF AND ACCESS TO LICENSEE FIBERS; RELOCATION

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

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

**4.2.2 Use by Company.** Nothing herein shall be construed as limiting or restricting Company 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.** Licensee understands and agrees that Company's ability to grant Licensee the license to use the Licensee Fibers pursuant to this Agreement, and to attach, install, construct, operate, and maintain the Company Network and the Licensee 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, Licensee shall only have a license to use the Licensee 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 Licensee Fibers. Company shall not be liable for any acts or omissions by Company, its employees or affiliates that interfere with or otherwise affect Licensee's use of the Licensee 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.** Licensee shall not assign, sell, transfer, lease, sublease, license, sub-license, or otherwise grant a right to use the Licensee Fibers to any third party without the prior written consent of Company.

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

#### 4.3 Relocation.

**4.3.1 Relocation Required By Company.** In the event that Company is required by any underlying service Company, public authorities, or lawful order or decree of a regulatory agency or court or any other reason beyond Company's reasonable control, to relocate or modify any or all Cable on the Route upon which the Licensee Fibers are located, Company's costs for any such work shall be shared on a pro rata basis with Licensee. Company shall not be responsible for the costs of, nor shall it be liable for, the removal, relocation or replacement of any Licensee Equipment or other Licensee property on the Licensee's side of the Demarcation Point. If the relocation or replacement of the Cable is requested or caused by a third party, Company shall attempt to obtain reimbursement of Company's costs from said third party. Notice to Licensee will be provided as soon as reasonably practicable. Neither Company nor any of its affiliates or agents shall incur liability for any Product Outage, disruption, degradation, interference, or interruption of any Product in connection with any such removal or relocation. Company and Licensee shall cooperate in performing such relocation or modifications so as to minimize any interference with the use of the Licensee 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 Licensee.** Licensee may request relocation of the Licensee Fibers. Any such relocation shall be subject to Company's approval (which shall be in Company's sole discretion), the execution of an Order Form, and Licensee's payment to Company of such additional charges as Company may require. No relocation or replacement of the Cable or related facilities shall be performed without the prior written agreement of Company, which shall be in Company'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 may be terminated by Company without liability (unless due to a default by Company under any applicable Underlying Rights agreement), upon reasonable notice to Licensee, to the extent Company 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 this Section, Company shall make reasonable efforts to find alternate capacity or facilities owned or controlled by Company to meet Licensee's needs, but under no circumstances shall Company be obligated to contract for or to construct new facilities, or otherwise incur any additional cost or expenses, to replace the Cable or Licensee Fibers on the Route Segments terminated under this Section 5.1.

**5.2 Condemnation Proceedings/Termination Rights.** If at any time during the Product 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 Licensee Fibers upon giving the other thirty (30) days prior written notice. If Licensee Fibers are terminated in accordance with this Section, the applicable license 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**

Licensee shall pay the fees set forth in Order Forms 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 Company under any Underlying Rights are increased or Company's costs or expenses are increased due to any Underlying Rights, Company shall have the right to charge Licensee for its pro rata share of such increases, which shall be added to the MRCs to be paid by Licensee for the applicable Product 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 Company to begin troubleshooting a reported failure. The Mean Time to Respond objective is two (2) hours from Company'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 the Licensee Fibers to an operational condition as defined herein. The Mean Time to Repair objective is eight (8) hours from Company's receipt of notice of such failure.

**7.2 Product Outage.** Subject to this Section 7, in the event of an Product Outage, Licensee may be entitled to an Product Credit as provided in Section 7.3 below. An Product Outage shall be deemed to begin upon the earlier of Company's actual knowledge of the Product Outage or Company's receipt of notice from Licensee of the Product Outage, and end when the Licensee Fibers are operational and in material conformance with the applicable Specifications. Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Order Form, in no event shall an Product Outage or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Company of this Supplement, the Agreement or any Order Form.

**7.3 Service Level Objective.** If Company fails to repair an Product Outage within eight (8) hours of notice from Licensee of such Product Outage ("Repair Window"), Licensee may be entitled to an Product Outage Credit as follows:

Measurement Timeframe	Product Credit for Affected Product
Per Incident	1/30 <sup>th</sup> of the MRC of the affected Product 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 Product Credits.** The number of minutes of separate and discrete Product Outages will not be cumulated to determine the applicable Product Credit. Product Credits hereunder may not be applied to usage charges, government fees, taxes, or surcharges, or any third party charges passed through to Licensee by Company. Product Credits issued to Licensee hereunder shall be Licensee's sole and exclusive remedy at law or in equity on account of any Product Outage. Product Credits will not be issued to Licensee if Licensee's account with Company is in arrears. Notwithstanding anything to the contrary herein, the above-stated Product Credits shall not apply to Off-Net Products, and in the event of an Product Outage or other failure of any Off-Net Product provided by Company to Licensee, Company agrees to pass through a credit equal to the credit received by Company from its underlying Company(s) for such Product Outage, in lieu of the above-stated Product Credits. In no event shall Company's total liability for all Product 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 Product for such month.

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

**7.6 Events Excepted From Product Credit.** Notwithstanding the foregoing, Licensee shall not receive any Product Credit for any Product 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. Licensee's (including its agents, contractors and vendors) acts or omissions;

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



**PART III-TERMS APPLICABLE TO ETHERNET**

1.0 The terms in this Part III apply only to Ethernet licensed to Licensee under an Order Form that specifies Ethernet. This Part shall not apply to other products, including dark fiber, wavelength, Internet, or colocation.

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

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

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

1.3 **Protection Options.**

Protection Option	Description	Minimum Location Requirements			
		Space	Power	Environmental Control	Back Up Power
<b>Unprotected (Level A Access)</b>					
1	Level A Access means the access portion of the Ethernet (i.e. the segments from the last Company Network switching hub (or for Metro-E Advanced Private Line the lateral segments from the Company 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) Company Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to the Licensee from the Company Equipment.	(1)	(2)	(4)	Not applicable
<b>Optical Protection (Level AA Access)</b>					
2	Level AA Access means the access portion of the Ethernet (i.e. the segments from the last Company 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. Company is responsible for managing the Failover Switching at each Location. Level AA Protection consists of the following minimum requirements at each Location: (i) a single point of entry into the Location; (ii) one (1) Company Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to the Licensee from the Company Equipment.	(1)	(2)	(4)	(6)

Dual Path Protection (Level AAA)					
3	<p>Level AAA Access means the access portion of the Ethernet (i.e. the segments from the last Company 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 Licensee or by Company Equipment as specified in the Order Form. Level AAA Protection consist of the following minimum requirements at each Location: (i) two (2) separate points of entry into the Location; (ii) two (2) Company Equipment chassis; (iii) one (1) line card per chassis; (iv) 4-fiber handoff to the Licensee from the Company Equipment, with two fibers handed off from one of the Company Equipment chassis and two fibers handed off from the other Company Equipment chassis; and (v) Licensee 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).</p>	(1)	(3)	(5)	(7)

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

(2) Dedicated electrical circuit for Company Equipment (i.e. the circuit has no other load from the Company 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) Company(or Licensee if the Parties agree) to install and maintain a minimum of four (4) hours of standby power

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

## 2. ADDITIONAL DEFINITIONS

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

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

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

“Location” is an address wherein Company will hand off Ethernet to Licensee.

“Product Credit” means a credit that Licensee is eligible to receive if Company fails to meet the parameters set forth in Section 5.2 below,

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

“User Network Interface” or “UNI” means the interface used to interconnect Licensee to the Company Network which provides a reference point for demarcation between the Licensee’s network and the Company 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 are as follows:

Technical Specifications:

- IEEE 802.3





**4. USE BY LICENSEE**

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

**4.2 Permitted Use.** Licensee may use the Ethernet for its own use. Licensee acknowledges that Company does not monitor the content of the Ethernet traffic unless required by law and Licensee shall be solely liable and responsible for the content of any communications transmitted via the Ethernet.

**5. SERVICE LEVEL AGREEMENT**

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

**5.2 Service Level Objectives.**

**A. Availability**

"Availability" refers to the percentage of time during a calendar month that the licensed Ethernet is available for use by Licensee. Available for use is defined as the time during which there is no Product Failure.

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

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

Quality Level	Availability Objective	Measurement Timeframe	Product Credit		
			Cumulative Duration of Product Failure(s)	% of MRC	
<b>On-Net - Level A Access</b>					
1	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%
<b>On-Net - Level AA Access</b>					
2	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%				
<b>On-Net - Level AAA Access</b>					
3	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 Company Network (including, but not limited to, link insertion delays, propagation delays and queuing delays in the Company Network). Network Latency is determined by Company by averaging sample measurements taken each calendar month between Company’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 quality-impacting, Licensee shall be entitled to a Product Credit equal to the percentage of the applicable MRC set forth in the following table:

<b>NETWORK LATENCY</b>				
	<b>CoS Designation - % of MRC</b>			
<b>Domestic US</b>	<b>Standard</b>	<b>Business Priority</b>	<b>Business Critical</b>	<b>Mission Critical</b>
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 the Company Network relative to the number of performance test frames offered to the Company Network. Frame Delivery Rate is determined by Company by averaging sample measurements taken each calendar month between Company’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 quality-impacting, Licensee shall be entitled to a Product Credit equal to the percentage of the applicable MRC set forth in the following table:

<b>FRAME DELIVERY RATE</b>				
	<b>CoS Designation - % of MRC</b>			
<b>Domestic US</b>	<b>Standard</b>	<b>Business Priority</b>	<b>Business Critical</b>	<b>Mission Critical</b>
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%

**A. 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 Company 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 quality-impacting, Licensee shall be entitled to a Product Credit equal to the percentage of the applicable MRC set forth in the following table:

<b>FRAME DELAY VARIATION</b>				
	<b>CoS Designation - % of MRC</b>			
<b>Domestic US</b>	<b>Standard</b>	<b>Business Priority</b>	<b>Business Critical</b>	<b>Mission Critical</b>
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 Product Credits.** Product Credits hereunder are calculated as a percentage of the MRC set forth in the Order Form. Product Credits issued to Licensee hereunder shall be Licensee's sole and exclusive remedy at law or in equity on account of any 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 Ethernet and results in a period or periods of interruption, disruption, failure or degradation in quality, entitling Licensee to one or more credits under multiple quality level standards, only the single highest credit with respect to that incident will be applied, and Licensee shall not be entitled to credits under multiple quality level standards for the same incident. Notwithstanding anything to the contrary herein, the above-stated Product Credits shall not apply to Off-Net Products; in the event of a Product Failure or other failure of any Off-Net Product provided by Company to Licensee, Company agrees to pass through a credit equal to the credit received by Company from its underlying Company(s) for such Product Failure, in lieu of the above-stated Product Credits. In no event shall Product Credits in any month for any and all interruptions, disruptions, failures, and/or degradations in quality (including, without limitation, any Product Failures 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 Product for that month.

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

**5.5 Events Excepted From Product Credit.** Notwithstanding the foregoing, Licensee shall not receive any Product Credit for any Product Failure, 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. Licensee's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Licensee Equipment, end user equipment or Licensee's vendor's equipment;
- c. Failure of electrical power not provided by Company;
- d. Election by Licensee, after requested by Company, not to release the Product for testing and repair;
- e. Company's inability to obtain access required to remedy a defect;
- f. Scheduled maintenance periods;
- g. Scheduled upgrade of Product at the request of Licensee;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Product by Company pursuant to a right provided under this Agreement; and/or
- j. Company'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 access provided under an Order Form that specifies Internet. This Part shall not apply to other products, including Ethernet, wavelength, dark fiber, or colocation..

### **2. ADDITIONAL TERMS**

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

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

“Internet Service” or “Product”: The Internet connectivity and Bandwidth provisioned by Company to Licensee pursuant to a Order Form.

“IP Core Network”: Any Layer-3 equipment owned and operated by Company that is managed in strict accordance with defined Company 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 Licensee 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 Company’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**

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

<b>Metric</b>	<b>Goal (Monthly Average)</b>	<b>Description</b>
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 Order Form

### **4. USE BY LICENSEE**

4.1 The Internet Service provides IP transit service via the Company Network to the public Internet. The Company Network is comprised of equipment and wiring located in the Company’s IP Core Network.

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

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

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

## 5. SERVICE LEVEL AGREEMENT

5.1 **Network Unavailability.** Subject to this Section 5, in the event of Network Unavailability to any Internet Service, Licensee may be entitled to a credit (a “Product 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 Company’s actual knowledge of the Network Unavailability or Company’s receipt of notice from Licensee of the Network Unavailability, and end when the Product is operational such that the Product is again able to transmit and receive packets to/from the IP Core Network and Access Port or Ports, as documented by Company’s records. Where Licensee 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 Order Form, 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 Company of this Supplement, the Agreement or any Order Form.

Duration of Network Unavailability	Product 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.** Company 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 Company’s network management systems or testing hardware. Company’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 Company at its sole discretion. Specifically, the Company 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, Company will provide copies of measurements and tests performed for the purposes of determining credits to Licensee hereunder.

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

5.2.4 **Excessive Degradation.** If, at any time, the Product 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 Licensee to the applicable Product Credit under Section 5.1, in lieu of a Product Credit under Section 5.2.3.

### 5.3 Packet Delivery

5.3.1 **Parameter.** Company 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:** Products delivered over fixed rate interfaces as defined in the applicable specifications and in the situation where the contracted Product 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 **Product Credit.** If monthly average Packet Delivery fails to meet the parameters set forth in Section 5.3.1, Licensee shall be entitled to a Product Credit of ten percent (10%) of the applicable MRC.

### 5.4 Throughput

5.4.1 **Parameter.** Company 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 Order Form.



**5.4.2 Measurement.** Throughput is measured at Company's demarcation device at the Licensee's premises using industry standard tests and Company 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 Product Credit.** If, at any time, the Product experiences Throughput below the ninety-five percent (95%) monthly average set forth in Section 5.4.1, Licensee shall be entitled to a Product Credit of ten percent (10%) of the applicable MRC.

**5.4.4 Excessive Degradation:** If, at any time, the Product 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 Licensee to the applicable Product Credit under Section 5.1, in lieu of a Product 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 Product Credit.** Notwithstanding the foregoing, Licensee shall not receive any Product 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. Licensee's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Licensee Equipment, Licensee provided optical fiber, End User equipment or Licensee's vendor's equipment;
- c. Failure of electrical power not provided by Company;
- d. Election by Licensee, after requested by Company, not to release the Product for testing and repair;
- e. Company's inability to obtain access required to remedy a defect in Product;
- f. Scheduled maintenance and emergency maintenance periods;
- g. Scheduled upgrade of Product at the request of Licensee;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Product by Company pursuant to a right provided under this Agreement; and/or
- j. Company'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 Licensee connections to the Internet (or portions thereof) may be impaired or disrupted. Company cannot guarantee that such situations will not occur, and accordingly Company disclaims any and all liability resulting from or related to such events. In the event that Licensee's use of the Product or such third parties is causing harm to the Network or its operations, Company shall have the right to suspend the Product. Company shall restore the Product at such time as it reasonably deems that there is no further harm or threat to the Company network or its operations. This Section 5 shall apply only to Products that are provisioned on the IP Core Network.

## PART V--TERMS APPLICABLE TO WAVELENGTH SERVICES

The terms in this Part V apply only to Wavelength licensed to Licensee under an Order Form that specifies Wavelength. This Part shall not apply to other products, including dark fiber, Internet, Ethernet, or colocation.

### 1. PRODUCT DEFINITION; PROTECTION AND ENCRYPTION OPTIONS

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

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

- (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 Company Equipment at each Location.

### 1.2 Protection Options.

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

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

(2) Dedicated electrical circuit for Company Equipment from the public utility. (i.e., the circuit has no other load from the Company 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) Company (or Licensee if the Parties agree) to install and maintain a minimum of four (4) hours of standby power

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

1.3 **Encryption Option.** If a Wavelength Product is ordered with Layer 1 encryption, the following additional terms shall apply:

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

## 2. ADDITIONAL DEFINITIONS

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

"Location" is an address where Company will hand off the Product to Licensee;

"Product Credit" means a credit that Licensee is eligible to receive if Company fails to meet the Availability levels set forth in Section 5.2 below;

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

## 3. SPECIFICATIONS

3.1 The Specifications applicable to Wavelength 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 BY LICENSEE; INCREMENTALLY DELIVERED SEGMENTS

**4.1 Interstate Traffic.** Licensee acknowledges that Company has no ability to determine whether the communications traffic carried via the Product is jurisdictionally interstate or intrastate. Unless otherwise stated in the applicable Order Form, Licensee acknowledges and agrees that the communications traffic to be carried via the Company Network shall be treated as 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 Segments.** Unless otherwise specified in an Order Form, if a Product consists of more than one segment, Company may incrementally deliver individual segments, and billing for each segment shall commence upon delivery and acceptance of that segment. The Product Term for a multi-segment Product shall begin upon delivery of the first segment and end after the number of months specified in the Order Form have elapsed from delivery and acceptance of the final segment.

**4.3 Permitted Use.** Licensee may use the Product(s) for its own use. Licensee acknowledges that Company does not monitor the content of Licensee's traffic unless required by law and Licensee shall be solely liable and responsible for the content of any communications transmitted via the Product(s).

## 5. SERVICE LEVEL AGREEMENT

**5.1 Product Outage.** Subject to this Section 5, in the event of a Product Outage to any Product, Licensee may be entitled to a Product Outage Credit in accordance with the applicable Availability Level Objective set forth in Section 5.2 below. An Product Outage shall be deemed to begin upon the earlier of Company's actual knowledge of the Product Outage or Company's receipt of notice from Licensee of the Product Outage, and end when the Product is operational and in material conformance with the applicable Specifications. Notwithstanding anything to the contrary in this Supplement, the Agreement or any Order Form, in no event shall an Product Outage, defect or failure to meet



any objectives or parameters under this Supplement be deemed to be or constitute a breach by Company of this Supplement, the Agreement or any Order Form.

**5.2 Service Level Objectives.**

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

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

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

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

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

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

**5.5 Events Excepted From Product Credit.** Notwithstanding the foregoing, Licensee shall not receive any Product Credit for any Product 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. Licensee's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Licensee Equipment, Licensee provided optical fiber, end user equipment or Licensee's vendor's equipment;
- c. Failure of electrical power not provided by Company;
- d. Election by Licensee, after requested by Company, not to release the Product for testing and repair;
- e. Company's inability to obtain access required to remedy a defect;
- f. Scheduled maintenance periods;
- g. Scheduled upgrade of the Product at the request of Licensee;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Product by Company pursuant to a right provided under this Agreement; and/or
- j. Company'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 licensed to Licensee under an Order Form that specifies Colocation. This Part shall not apply to other products, including Ethernet, wavelength, Internet, or dark fiber..

### **2. ADDITIONAL TERMS**

The following additional terms and conditions shall apply to the provision of such Colocation.

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

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

“Licensee Equipment”: Any equipment that Licensee places in the Site Space.

“Site”: The specified premises listed in the applicable Order Form at which Company provides floor space or rack arrangements dedicated to Licensee 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 Licensee Equipment at a specific Site.

### **3. LICENSE TERMS**

**3.1 License.** Subject to the terms and conditions set forth in the Agreement, pursuant to a Order Form for Colocation Company will grant to Licensee a license to occupy and use the Site Space, and any power, cabling and connectivity (if any) identified in the applicable Order Form. Licensee 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. Licensee'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 Licensee acknowledges that it has inspected the same and found each to be satisfactory. Company makes no warranty with respect to title, condition, safety or fitness of the Site Space, and Licensee shall use the Site Space at its sole risk. Licensee shall use the Site Space only for the purpose of placing, operating and maintaining Licensee Equipment. Licensee 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 Company in any manner from using the Site, Company's cages, cabinets, racks, cables, power and/or other facilities and equipment for any purpose. Licensee agrees that it will not permit any Site Space to be used by anyone other than Licensee or its authorized agents without the prior written consent of Company. Company agrees that it will not permit the applicable Site Space to be used by anyone other than Licensee or its authorized agents without the prior written consent of Licensee; provided, however, Company 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 Licensee. Licensee shall not make any alterations to the Site Space except for the installation, operation and maintenance of Licensee Equipment. Licensee shall properly maintain the Site Space and keep the Site free of any debris, waste or other obstructions.

**3.3 Access to Site Space.** Licensee shall be permitted access to the Site Space at all times subject to (i) Company'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 Order Form. Company shall have no liability for Licensee's inability to gain access to the Site Space.

**3.4 Installation.** Licensee is responsible for all aspects of installation and removal of Licensee Equipment, unless otherwise agreed in writing by the Parties. Licensee will install Licensee Equipment in the Site Space only after obtaining authorization from Company. Licensee shall give Company 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 Company ("Escort"). If Licensee uses an agent or other third party to deliver, install, or remove Licensee's Equipment, then Licensee will be solely responsible for the acts of such agent/third party. Licensee shall engineer, furnish, install, and test, at its sole cost and expense, all of Licensee Equipment in accordance with the plans and specifications approved in advance by Company. All Licensee Equipment shall be clearly labeled as such, and Licensee 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 shall be in accordance with the terms specified in an applicable Order Form and shall be governed by Company's Colocation Rules and Regulations (set forth below), which may be amended from time to time by Company. Moreover, Licensee 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.** Company will provide DC power and/or AC power to the Site Space as per the allotment specified in the applicable Order Form at the rates and charges set forth in the applicable Order Form. Notwithstanding anything to the contrary in this Agreement, Licensee 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 Company discovers that Licensee has violated Power Limitation, Company may, in its sole discretion, provide Licensee written notice of such violation requiring Licensee to pay Company a monthly excess power charge of one-hundred percent (100%) of the then-applicable power charge and/or discontinue Licensee's right to use the power circuit that exceeds the Power Limitation. Unless specified otherwise in the applicable Order Form, Company shall not have any obligation to provide the applicable Site Space with, and it shall be Licensee'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 Licensee Equipment.

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

**3.8 Relocation.** Company may require Licensee to move any Licensee Equipment located in a Site Space. In such event, Company shall, to the extent reasonably possible (with consideration, if applicable, to what notice Company may have received from the applicable Site Landlord), provide Licensee with sufficient prior written notice to permit Licensee 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 Licensee Equipment. Licensee shall reimburse Company for any and all reasonable costs and expenses incurred as a result of Licensee Equipment relocation.

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

**3.10 Cross Connections.** Licensee 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 Company pursuant to a Order Form describing the cross-connect and the charges applicable thereto. Licensee may not allow any carriers or other person to gain access to the Site or the Site Space. Company shall have sole control of access to the Site by carriers, contractors, service providers or others. Licensee 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.** Company may make periodic inspections of any part of the Licensee Equipment, and Licensee shall have the right to be represented during such inspections; provided however, that if in the sole judgment of Company safety considerations require an inspection without providing such notice, Company may make such inspection immediately, but shall thereafter promptly provide notice to Licensee of such inspection. The making of periodic inspections or the failure to do so shall not operate to impose upon Company any liability and shall not relieve Licensee of any responsibility, obligations or liability under this Supplement or the Agreement.

## **4. COLOCATION TECHNICAL ASSISTANCE**

### **4.1 Colocation Technical Assistance.**

**4.1.1** If set forth on the applicable Order Form for Colocation, Company will provide Licensee certain technical support at the Site Space. Such technical support will consist of either or both of the following types of assistance, as designated on the Order Form: (1) Remote Hands Assistance ("Remote Hands") and/or (2) Smart Hands Assistance ("Smart Hands"). Such assistance 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 Order Form.

**4.1.2 Remote Hands.** Remote Hands is designed to provide Licensees with basic assistance requested by Licensee such as re-booting Licensee Equipment, checking indicators on Licensee Equipment, basic troubleshooting of Licensee Equipment, and similar activities that do not require the use of any tools or specialized equipment by the Company technician. With respect to Remote Hands

assistance, Company's sole obligation shall be to carry out the express instructions of Licensee, and Company reserves the right to reject Licensee's request if Company in its discretion deems the request outside the scope of the Remote Hands assistance.

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

**4.2 Technical Assistance Request.** Remote Hands and Smart Hands assistance will be provided upon submission by Licensee of a request for assistance. For Smart Hands, the Order Form must contain a method and procedure for work to be performed.

**4.3 On-Demand Pricing:**

**4.3.1 Remote Hands or Smart Hands 24/7 manned Sites:**

Regular Assistance:

Response Objective: Within 2 hours of notice

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

**4.3.2 Remote Hands or Smart Hands unmanned Sites:**

Regular Assistance:

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

Emergency Assistance:

After Normal Business Hours

Response Objective: Within 4 hours of notice

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

**4.3.3** Pricing is subject to change upon notice by Company. If the Order Form specifies pricing different from the foregoing, the pricing in the Order Form shall apply.

**4.4 Conduct.** Company warrants that it will use commercially reasonable efforts to cause Remote Hands and Smart Hands assistance to be performed in a workmanlike manner. If Licensee claims a breach of the foregoing warranty, Licensee must: (a) immediately report the issue to the Company 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 alleged breach occurred. Upon receipt of Licensee's request, Company will investigate the claim under the terms described in this Article. If Company finds that it failed to satisfy the foregoing warranty, Company will promptly correct any errors or deficiencies in the Remote Hands and/or Smart Hands assistance performed hereunder. Licensee shall afford Company full and free access to the Site Space for all work necessary to remedy any breach of Company's warranty. The foregoing represents Company's sole obligation and Licensee's sole remedy for any defect or deficiency in a Remote Hands and/or Smart Hands assistance. Company shall have no liability whatsoever to Licensee or anyone claiming through Licensee for any issues or equipment outages resulting from Remote Hands and/or Smart Hands assistance unless directly caused by Company's willful misconduct.

**4.5 Billing and Expenses.** Company 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. Licensee shall, upon receipt of appropriate supporting documentation, reimburse Company for any and all reasonable out-of-pocket expenses incurred by Company in connection with rendering the Remote Hands or Smart Hands as applicable. Company will include all applicable expenses in its invoices to Licensee 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 Licensee Equipment at any Site Space shall be borne solely by Licensee. Company shall not be liable to Licensee for, and Licensee 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 Company's reasonable control, except that if Licensee is unable to operate its business as a result of such interruption caused by the gross negligence or willful misconduct of Company, there shall be an abatement of the applicable MRC during the period of such interruption.

**5.2 Indemnification.** Licensee shall indemnify, defend, release, and hold harmless Company, its Affiliates, directors, members, officers, employees, managers, agents, representatives, and contractors, as well as the Site Landlord and Company's other Licensees, 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 Licensee's (including its agents, contractors, employees and representatives) use of the Site Space and/or exercise of its rights hereunder.

**5.3 Insurance.** Licensee shall procure, and thereafter shall maintain through the Product 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 \$5,000,000 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 Licensee's property and equipment at Company's location, in an amount equal the full replacement cost of Licensee's property and equipment.

Licensee shall deliver to Company standard form insurance certificates evidencing the coverage required herein and stating that the insurer will provide at least thirty (30) days' written notice to Company if such coverage is to be cancelled, non-renewed or materially and adversely modified. Company 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 Company (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). Licensee waives all rights against Company 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, Company reserves the right to procure such insurance and to add the cost thereof to any sum due Company from Licensee under the applicable Order Form(s). Nothing contained in these insurance requirements is to be construed as limiting Licensee's responsibility or liability for damages resulting from Licensee's use of the Site Space or Licensee'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, Company 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 Licensee may elect to terminate the license for the affected Site Space hereunder if: (a) Company fails to give written notice within forty-five (45) days after such fire, other casualty or taking, of Company's intention to restore the Site Space, or (b) Company 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. Company reserves, and Licensee grants to Company, all rights which Licensee may have for damages or injury to the Site Space for any taking by eminent domain, except for damage to the Licensee Equipment.

## **7. LIENS**

Licensee 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 Licensee (including, without limitation, any party that may make any claim or seek any lien by or through Licensee), and shall cause any such liens to be removed within ten (10) days of Licensee's knowledge thereof.

## **8. FEES**

Licensee shall pay the fees set forth in Order Forms 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 Company under any Underlying Rights are increased or Company's costs or expenses are increased due to any Underlying Rights, Company shall have the right to charge Licensee for its pro rata share of such increases, which shall be added to the MRCs to be paid by Licensee for the applicable term. In the event that a Order Form includes electrical power or HVAC, fees for such electrical power and HVAC may be increased by Company from time to time during the Product Term or any renewal thereof, as necessary to reflect Company's costs, upon prior written notice to Licensee.

## **9. LIMITATION**



Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Order Form, in no event shall a Colocation Outage or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Company of this Supplement, the Agreement or any Order Form.

### **COLOCATION RULES AND REGULATIONS**

The following constitute rules and regulations (“Rules and Regulations”) governing the use and operation of colocation facilities (“Facility” or “Facilities” or “Building” or “Buildings”) owned or operated by Company and licensed or leased for use by Company’s telecommunications licensees and ISP customers and carriers (“Licensee” or “Licensees”). The individual cabinet, rack or cage space licensed to Licensee within the Facility shall be referred to as the “Space.” By entering into this Agreement, Licensee 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, Company’s approval is required, such approval will be given or withheld in Company’s sole discretion.

### **INTRODUCTION**

Standard operating procedures and protocols have been established to further safe and reliable operation of Licensee 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. Licensees are encouraged to contact Company’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 Licensees. Company may change or augment these standards from time to time to better serve the Licensee base.

### **OCCUPANCY AND SPACE UTILIZATION**

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

### **OCCUPANCY AND SPACE UTILIZATION**

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

### **NETWORK INTERCONNECTIONS AND INTERFACE TO THIRD PARTIES**

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

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

Licensees with multiple racks, cage space, or “raw” space that have made provision for Licensee 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 Company, Telcordia GR-1275-CORE, or Licensee standards shall be strictly maintained, provided that Licensee shall not perform any work on the common ladder rack or in common wireways.

### **LICENSEE RESPONSIBILITIES**

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

Licensee 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 Company or other Company Licensees within the Facility. Doors shall not be propped open or left unattended.

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

Connections to other carriers and or Licensees within Company facilities shall be subject to the applicable Agreement and payment by Licensee of the applicable cross-connect charges.

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

In all cases Licensee 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.

Licensee shall pay for any damage to Company facilities or equipment, or to its other licensees' facilities and equipment caused by Licensee's equipment failure, or other acts or omissions of Licensee, 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.

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

### **IMPROVEMENTS TO SPACE**

Licensee 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 Licensee space in any way, or affect the normal functioning of the Facility or another Licensee 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**

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

### **COLOCATION RAW SPACE AND CAGE SPACE WORK REQUIREMENTS**

All work within Licensee's raw Space and/or cage Space shall be performed by Licensee in a manner to ensure no interference with the normal functioning of the facility and other Licensees 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 Licensee:

Initial Licensee design requirements must be reviewed and approved by the Facilities Manager prior to commencement of any work. Company 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 Licensee equipment. Licensee and/or Licensee's vendors must keep all driveways, entrances and passageways serving the Facility clear and available for use by Company and other Licensees or vendors.

Licensee 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. Licensee will take special care to protect adjoining property and equipment from damage or injury.

Licensee's materials and equipment shall be confined to the area in which the work is actively being performed. Licensee 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.

Licensee or Licensee'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 Company. 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 Licensee or its vendor shall vacuum clean the area using an approved HEPA vacuum.

### **PROTECTION OF COMPANY 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 Company and receiving Company's prior approval. The contractor must notify Company 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 Company. 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 Licensees that may also be affected. This class of work shall require supervision by Company or its representative. Scheduling of Licensee required power shutdowns shall be coordinated by the Facilities Manager, at Licensee's expense.

#### **COMPANY POWER WORK - AC & DC**

Company operates and maintains both the AC and the DC power systems for 24x7 operations. Company 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.

Company will provide Licensee 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 Licensee's colocation facilities.

1. Company will undertake repair efforts on all environment equipment or interconnecting fiber or copper circuits when Company first becomes aware of it, or when notified by Licensee and Licensee has released all or part of the service for testing.
2. Contact Information:  
Company 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 Company. 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**

Company provides dedicated AC power circuits for Licensee operating equipment. Determination of the proper AC power requirement to be provisioned for operation of Licensee provided equipment is the responsibility of Licensee and shall be identified with the Order Form request. AC circuits shall be provided and fused according to the applicable Order Form. All AC service to Licensee 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 Licensee provided AC powered equipment shall be UL listed. Conditions that cause AC power interruption such as faults, shorts or overload of Licensee circuits due to Licensee equipment shall be cleared and tested prior to restoration of the AC service by Company.

#### **DC POWER SERVICES**

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

#### **SAFETY**

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

Licensee 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 Licensee Space, Company Building control center will dispatch the fire department. Licensee shall monitor its own alarms in fully compartmentalized and separately alarmed spaces and shall dispatch a company representative upon a fire alarm indication, at Licensee'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 Licensee fire alarm panels shall be pre-scheduled with Company prior to the performance of the work.

#### **SECURITY AND PERSONNEL IDENTIFICATION**

Licensee shall complete and submit to Company Company's application form for all employees, agents and vendors seeking access to the Facility on Licensee's behalf. No one, other than employees, agents and vendors of Licensee who have been approved by Company, may access the Facility. Company will provide to Licensee 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 Licensee for card assignments to individual employees, agents and vendors, provided that only those employees, agents and vendors approved by Company 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 Company 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 Company 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 Licensees; Licensee access shall be card key only.

#### **MISCELLANEOUS**

Licensee's employees, agents and vendors shall take all necessary precautions for the safety of Licensee'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.

Licensee 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 Licensee shall not use the Space in any unlawful, improper, noisy or offensive manner.

Licensee 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. Licensee shall be solely responsible for the installation, modification and maintenance of Licensee's equipment. Licensee shall also insure that neither vehicles nor equipment are parked or stored at the Facilities, except as approved by Company.

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

No signage shall be permitted by Licensee 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 Company in its sole discretion.

#### **HAZARDOUS MATERIALS**

Neither Licensee nor any person claiming under Licensee, nor the employees, agents, or vendors of Licensee 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.