

**MASTER SHARED RESOURCE AND INDEFEASIBLE RIGHT OF USE  
AGREEMENT BETWEEN  
THE IDAHO TRANSPORTATION DEPARTMENT AND  
COMPANY NAME**

This Master Shared Resource and Indefeasible Right of Use Agreement, including its attached Exhibits, (hereinafter "Master Agreement") is entered into this \_\_\_\_ day of November, 2016 by and between the Idaho Transportation Department (hereinafter "ITD"), an agency of the State of Idaho, whose principal office is located at 113311 W. Chinden Blvd, Building 8, Boise, Idaho 83714 and (*Company Name*), an Idaho limited liability company (hereinafter "Company"), whose principal office is located at (*Company Address*). Throughout this Master Agreement, ITD and the Company may also be collectively referred to as "the Parties."

**RECITALS**

**WHEREAS**, ITD is the owner of several rights of way which it has acquired for the development and expansion of its highway and roadway system and the preservation of transportation corridors which Company believes could be useful to its own purposes;

**WHEREAS**, the Parties own and operate separate fiber optic systems and conduit infrastructures in Idaho; and,

**WHEREAS**, the Parties have both determined that the interest and welfare of the public will best be served by the Parties' cooperation and to share each other's fiber optic system and conduit infrastructure where reasonably possible, as identified in the Balance Sheet attached hereto as Exhibit A;

**WHEREAS**, the Parties agree that for each specified project as memorialized in the Balance Sheet to this Master Agreement, the Company shall submit and comply with form ITD- 2110, "Right of Way Encroachment Application and Permit for Utilities;"

**WHEREAS**, the Parties agree that in exchange and consideration for the use of portions of ITD's right of way, the Company shall grant an indefeasible right of use to a number of specified Dark Fiber to ITD in accordance with the provisions contained herein;

**WHEREAS**, the Parties agree that the aforementioned indefeasible right of use granted to ITD, shall be exclusive and that it shall be binding on each of the Parties, and that it shall survive the expiration and/or termination of this Master Agreement and inure to the benefit of the Parties hereto and their respective successors and assigns so long as the aforementioned cable remains in the right of way;

**WHEREAS**, the Parties have entered this Master Agreement to define a comprehensive process where each Party can identify Infrastructure of the other Party and utilize that capacity:

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and to the mutual consideration and benefits to the Parties derived here from, the

Parties hereby acknowledge, it is hereby agreed as follows:

## 1.0 DEFINITIONS.

1.1 "Dark Fiber." Fiber between two specified locations that has no active optical electronics or network electronics attached to it.

1.2 "Fiber." A glass strand or strands which is/are protected by a color coded buffer tube and which is/are used to transmit a signal along the glass strand in the form of pulses of light.

1.3 "Fiber Optic Cable" or "Cable." A collection of Fibers contained in color coded buffer tubes with a protective outer covering, which covering includes stiffening rods and filler installed or caused to be installed by the Company.

1.4 "Indefeasible Right of Use" or "IRU." An exclusive and irrevocable right granted from the Company to ITD to use certain Dark Fibers, to be used for the public good, in the Company's Cable, subject to the terms and conditions of this Master Agreement and which shall remain in force so long as the Cable remains in the right of way.

1.5 "Infrastructure." Dedicated fiber optic cables, or individual strands of fiber optic cables. Infrastructure also includes rights of way owned by ITD, conduits, innerducts, hand-holes, junction boxes, hubs, other improvements constructed as part of each Party's fiber optic system, and any communication transport service that may be useful to either Party.

1.6 "Reasonable effort." Efforts commercially and reasonably designed to achieve the desired results.

1.7 "Right of way." A strip of land used as a roadbed, set aside as an easement or in fee, either by agreement or condemnation for ITD's use in developing, expanding, or preserving transportation corridors. It may also be used to describe ITD's right to pass over the land of another.

1.8 "Term." The term of this Master Agreement, which shall commence upon acceptance of the execution of this Master Agreement by both Parties and shall continue as provided in this Master Agreement.

1.9 It is understood and agreed by the Parties that the Company is receiving a **permissive use only, with absolutely no property rights whatsoever**, to install its fiber optic equipment within the Idaho Transportation Department's right of way and shall, upon the sole

discretion of the District, remove and/or relocate the fiber optic equipment at the Company's own expense without any compensation, offset, and/or contribution from ITD or the State of Idaho, in a timely and workmanlike manner. The Company also agrees that it shall be liable for any damage, injury, or harm to any person acting on behalf of, or real property belonging to, the State of Idaho and/or any private person or personal property arising out of the Company's actions or inactions from any claim, suit, or action for damages arising out of the Company's actions or failures to act. Additionally, the Company shall agree to file the necessary paperwork and pay the requisite fees to obtain a utility encroachment permit as is required by ITD.

## **2. GENERAL PURPOSE.**

2.1 Establish and Expedite Shared Resource Agreements. This Master Agreement is to establish a cooperative and equitable process where capacity in parallel corridors is utilized to avoid duplicative Infrastructure. The Parties' mutual goal is to reduce the overall cost of operation for both Parties. The Parties desire to create a process that will encourage and expedite the shared use of Infrastructure.

2.2 Parties Shall Cooperate in Good Faith. Prior to the execution of this Master Agreement, the Parties identified certain ITD-owned Infrastructure which Company desires to use and certain Company owned Infrastructure which ITD desires to use. Where the Infrastructure has capacity, the owning Party shall cooperate in good faith with the requesting Party to allow the requesting Party to utilize the capacity to meet the requesting Party's communications needs. The specified Infrastructure is shown on the Balance Sheet attached hereto as Exhibit "A" and incorporated herein by this reference.

2.3 Limitation on Each Party's Commitment under Master Agreement. ITD shall not be required to make its Infrastructure available to Company where ITD determines, in its sole discretion, that:

- (a) existing capacity is needed to meet ITD's projected future needs with respect to the Infrastructure;
- (b) the Company's proposed use will have a material, adverse effect upon the ownership, use or maintenance of ITD's Infrastructure;
- (c) the Company's proposed use will violate any law, administrative rule, policy, restriction, restrictive covenant or other legal requirement applicable to ITD, the Infrastructure or the real property underlying the Infrastructure; or
- (d) not be in the interest and/or welfare of the public.

2.4 Grant of Indefeasible Right of Use. In exchange for Company's use of ITD's specified rights of way, and subject to the terms and conditions of this Master Agreement, the Company grants to ITD an indefeasible right of use of certain Dark Fibers as specifically

described and shown in Exhibit A, the Balance Sheet, attached hereto. The Parties agree that the indefeasible right of use granted to ITD by the Company, shall be exclusive and that it shall be binding on each of the Parties, and that it shall survive the expiration and/or termination of this Master Agreement and inure to the benefit of the Parties hereto and their respective successors and assigns so long as the cable remains in the right of way. Additionally, the Company agrees to install, splice, maintain, and repair specified Dark Fiber on behalf of ITD, at no cost to ITD. Notwithstanding the foregoing, ITD shall reimburse Company for repairs required as a result of damage caused by ITD which is approved by ITD in writing. This indefeasible right of use includes, but is not limited to, the Infrastructure necessary to allow ITD full access to and enjoyment of the aforementioned Dark Fibers.

2.5 Exchange of Value to Remain Equal. The Parties shall strive to ensure that the benefits provided under this Master Agreement, as identified in the Balance Sheet, remain approximately equal in value to each other over time.

2.6 Nature of Rights Granted. This Master Agreement does not contemplate the sale or transfer of any real or personal property associated with the Infrastructure. Subject to the limitations identified herein, each Party has the right to use the Infrastructure capacity for any purpose, consistent with the Party's respective mission(s), provided that such use does not violate any law, administrative rule, policy, restriction, restrictive covenant or other legal requirement applicable to the owner or operational integrity of the Infrastructure as a whole or the other Party's Infrastructure capacity.

2.7 ITD's Activities Not Limited. The Parties agree that this Master Agreement shall not be construed as limiting or interfering with ITD's right to manage, control, construct, locate, maintain and/or use ITD's Infrastructure in accordance with Federal or State laws, ordinances, regulations, ordinances, policies or rules.

Also, the Parties agree that nothing in this Master Agreement shall be construed as to limit, restrict, or prohibit ITD from entering into any agreement with other parties regarding the use of ITD's Infrastructure.

2.8 Modification of Master Agreement. During the term of this Master Agreement, the Parties may continue to cooperate to identify capacity within additional existing and future Infrastructure, and to make that capacity available to each other on a mutually beneficial basis where reasonable. The Parties agree to timely execute updates to the Balance Sheet as necessary to identify additional Infrastructure for which use rights are granted under this Master Agreement. Each update to the Balance Sheet shall:

- (a) describe with reasonable specificity the Infrastructure that is subject to this Master Agreement and the corresponding use rights granted with respect to such Infrastructure;
- (b) identify the effective date of the use rights granted; and

- (c) be subject to the indefeasible right of use granted from the Company to ITD which shall survive the expiration or termination of this Master Agreement and shall be binding upon and shall inure to the benefit of the Parties hereto and to each of their respective successors and assigns.

Updates to the Balance Sheet shall be executed by the designated representatives of the Parties. Upon the execution of an updated Balance Sheet, each Party shall append and attach the Updated Balance Sheet to this Master Agreement and such Updated Balance Sheet shall be automatically incorporated into this Master Agreement by this reference and replace and supersede any and all previous Balance Sheets and amendments previously executed by the Parties unless otherwise specifically noted in the updated Balance Sheet.

### **3.0 TERM.**

3.1 Term of Master Agreement. Unless a shorter duration is specifically provided for herein, the use rights granted from the Parties with respect to any Infrastructure shall be effective on the date first set forth in the Balance Sheet and shall thereafter continue for an initial period of TWENTY (20) YEARS. At the conclusion of the initial TWENTY (20) year period, the use rights shall renew automatically for up to TWO (2) successive, consecutive FIVE (5) year renewal terms unless and until terminated by written notice delivered by either party at least NINETY (90) days prior to the expiration of the initial term or any subsequent five-year renewal term. Should this Master Agreement expire or be terminated, neither Party shall be permitted to remove any Infrastructure added by such Party without the written consent of the other Party or as allowed by law.

3.2 The Term Shall Not Affect the Indefeasible Right of Use. The term of this Master Agreement shall not affect any right including, but not limited to, ITD's indefeasible right of use granted hereunder or prior to this Master Agreement's expiration or termination so long as the Company's Cable remains in the right of way.

### **4.0 DUTIES OF THE PARTIES.**

4.1 Construction and Maintenance Performed Under Master Agreement. The Infrastructure use rights granted pursuant to this Master Agreement will likely require the Parties to coordinate construction and maintenance issues that are unique to each portion of the Infrastructure identified in the Balance Sheet. The Parties agree to cooperate with respect to such issues in good faith, in a manner consistent with the intent of this Master Agreement and according to the following general principles:

4.1.1 ITD Shall Approve Design. With respect to each portion of Infrastructure for which use rights are granted, ITD shall have reviewed and approved design, construction and work plans for all construction, reconstruction, installation, connection, splicing or other work to be performed by the Company, its contractors, subcontractors, and/or its agents.

4.1.2 Parties to Grant Prior Approval. The Parties each agree to not perform any construction, reconstruction, fiber installation, connection, splicing, or other work with respect to the fiber optic system of the other Party, including the Dark Fiber for which the Company has granted an indefeasible right of use to ITD under this Master Agreement, without providing written notice to, and receiving prior written approval from, the other Party except in cases of emergencies, in which case, written notice will be provided to the other party as soon as practicable. Access that requires a permit shall follow standard permit procedures and standard permit fees.

4.1.3 The Company Is Responsible for Cost. The Company shall be responsible for the routine costs of operating and maintaining the Infrastructure, including any conduit, cables, fiber, boxes or other facilities used by the other Party pursuant to this Master Agreement unless otherwise specifically provided for in the Balance Sheet attached hereto as Exhibit A.

4.1.4 Operation of the Infrastructure. Each Party shall operate and maintain its Infrastructure in a reasonable and workmanlike manner that avoids unreasonable disruptions to the service of the other Party. Except as otherwise provided in this Master Agreement, in the event of a disruption to service to any Infrastructure for which use rights have been granted to the other Party, each Party agrees to cooperate with the other Party in good faith and to use commercially reasonable efforts to reinstate the other Party's communication connection as quickly as practicable.

4.2 Right to Enter. Each Party reserves the right to enter the buildings or other structures of the other Party (at reasonable times and with written notice to the other Party and prior written approval thereto) as necessary to inspect and operate any communications systems and equipment that are used pursuant to the use rights granted under this Master Agreement.

## 5.0 TERMINATION.

5.1 Termination. ITD may terminate this Master Agreement in whole or in part upon 90 days' prior written notice if ITD determines it to be reasonably necessary to do so.

Since this Master Agreement is for the Trade of the Company to use specified portions of ITD's rights of way for ITD's exclusive right to use specified Dark Fiber pursuant to the indefeasible right of use granted to it by Company, the Parties agree that Company shall not be able to recover damages against ITD arising out of a termination for reasonable necessity order.

5.2 Termination of Use Rights for Default. ITD may terminate, for default, the use rights it has granted to Company with respect to any specific portion of the Infrastructure. ITD may terminate specified use rights for default in the event that the Company continues in material breach of any provisions of this Master Agreement for a period of **THIRTY (30) days** following the delivery of written notice from ITD, which notice identifies the breach with

specificity and demands the cure thereof. However, with respect to any breach that is not reasonably capable of cure within THIRTY (30) days, the Company shall not be deemed in default if it commences commercially reasonable efforts to cure the breach within THIRTY (30) days and thereafter diligently and continually pursues such efforts to completion in a commercially reasonable manner.

5.3 Termination for Material Breach. ITD may terminate this Master Agreement immediately upon written notice if at any time the Company is in material breach of any warranty, term, condition, covenant, or obligation under this Agreement and fails to cure that breach within **TEN (10) days** written notice thereof.

5.4 Termination for Safety. ITD shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if it, in ITD's sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate the Company's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

5.5 Effect of Termination. Upon termination by ITD, the Company shall:

- (a) promptly discontinue all work, unless the termination notice directs otherwise;
- (b) promptly return to ITD any property provided by ITD pursuant to this Master Agreement;
- (c) deliver or otherwise make available to ITD all data, reports, estimates, summaries and such other information and materials as may have been accumulated by the Company in performing this Master Agreement, whether completed or in process; and
- (d) settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; and
- (e) upon termination by ITD, ITD may take over the work and may award another party a contract to complete the work contemplated herein.

5.6 Termination of Use Rights for Force Majeure Events. Either Party may terminate the use rights it has granted to the other Party with respect to Infrastructure that is destroyed or rendered unusable by a Force Majeure Event.

The obligations of the parties are subject to *force majeure* and neither party shall be in default under this Master Agreement if any failure or delay in performance is caused by

strike or other labor dispute; acts of God; fire; flood; earthquake; lightening; unavailability of material or product not resulting from such party's failure to timely place orders therefor; legal inability to access property; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either party hereto ("Force Majeure Event"). The excused Party shall use its best efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. Notification of any such event or cause shall in all cases be given by the excused Party to the other and, when possible, of the estimated duration. Matters of the Company's finances shall not be *a force majeure*.

5.7 Effect of Termination of Status of Cable. Upon termination of this Agreement, the Company shall have the right to remove the Cable provided that prior to its removal, the Company provides written notice to ITD at least twenty-one (21) business days prior.

## **6.0 RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR STATUS.**

6.1 The Parties are Not Partners. The relationship between the Parties herein shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Master Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose, including federal income tax purposes. The Parties, in performing any of their obligations hereunder, do so as independent Parties and shall discharge their contractual obligations at their own risk.

6.2 The Company is an Independent Contractor. The Company's status under this Master Agreement shall be that of an independent contractor and not that of an agent or employee of ITD or the state of Idaho. The Company shall be responsible for paying all applicable employment-related taxes and benefits, such as federal and state income tax withholding, social security contributions, worker's compensation and unemployment insurance premiums, health and life insurance premiums, pension contributions and similar items. The Company shall indemnify ITD and the state of Idaho and hold them harmless from any and all claims for applicable taxes (including but not limited to social security taxes), penalties, attorneys' fees and costs that may be made or assessed against ITD or the state of Idaho arising out of the Company's failure to pay such taxes, fees or contributions.

## **7.0 NO THIRD PARTY BENEFICIARIES.**

7.1 No Third Party Beneficiaries. This Master Agreement creates rights and obligations only between the Parties hereto. There are no third party beneficiaries.

## **8.0 ASSIGNMENT AND DELEGATION.**

8.1 Assignments of Rights. Company shall not have the right to assign, sublet, or otherwise transfer this Master Agreement or any rights or interests (including via license or other non-possessory transfer or permission) hereunder, whether in whole or in part, to any other party without the prior written consent of the State, provided that consent is not unreasonably withheld when assigning to another governmental entity. In the event of any



permitted assignment or sub-let or sub-license hereunder at any time during the term of this Master Agreement, it shall be a condition of any such assignment that assignee or transferee shall be bound by each and every term and condition herein.

## **9.0 SURVIVABILITY.**

9.1 Binding on Successors and Assigns. Subject to the provisions of this Section, each of the Parties' respective rights and obligations hereunder shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective successors and assigns.

## **10. LIMITATIONS ON REPRESENTATIONS AND WARRANTIES.**

10.1 No Granting of Rights to Third Parties. Each Party agrees that, subsequent to the grant of use rights pursuant to this Master Agreement and its Exhibits, such Party will not grant any additional rights to third parties, or take other affirmative actions, which materially impair the exercise of the use rights granted to the other Party.

10.2 Parties Have Authority to Execute this Master Agreement. Each Party represents and warrants to the other that: (i) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Master Agreement; (ii) all corporate actions necessary to enter into this Master Agreement and to perform all of the transactions contemplated herein have been taken; (iii) this Master Agreement constitutes a legal, valid, and binding obligation enforceable against such Party in accordance with its terms; (iv) its execution of and performance under this Master Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body; and (v) no consents of any third party are required for the execution or performance of this Master Agreement.

10.3 Company Will Not Encumber ITD's Infrastructure. The Company warrants and assures ITD and the state of Idaho that it shall not directly or indirectly, create or impose any lien on the property of ITD and/or the state of Idaho, or on the rights or title relating thereto, or any interests therein, or in this Master Agreement. This includes the indefeasible right of use granted from Company to ITD.

10.4 Disclaimer of Warranties. ITD and the state of Idaho specifically disclaims any warranties of merchantability and fitness for a particular purpose or use and that the Company undertakes this Master Agreement with the understanding that access to ITD's specified rights-of-way are provided "AS IS" and "WHERE IS" and agrees to comply with any relevant law, regulation, directive and/or guideline relating thereto.

## **11.1 INSURANCE.**

11.1 Company Must Obtain Insurance. The Company shall obtain and maintain insurance at its own expense as required herein for the duration of this Master Agreement and

comply with all limits, terms and conditions stipulated. Policies shall provide, or be endorsed to provide, all required coverage. The Company shall provide certificates of insurance or certified endorsements as applicable for the insurance required. The Company shall not commence work under this Master Agreement until satisfactory evidence of all required insurance is provided to ITD. All such policies of insurance shall provide that the additional insured shall be notified in writing at least THIRTY (30) days prior to any cancellation of, or any material change or new exclusions in the policy.

11.2 ITD and Idaho to be Named as Additional Insured. All insurance, except for Workers Compensation, and Professional Liability/Errors and Omissions shall name ITD and the State of Idaho as additional insured.

All insurance shall be with insurers rated A-VII, or better in the latest Bests Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due to ITD or the state of Idaho.

If any of the liability insurance required for this Master Agreement is arranged on a "claims-made" basis, "tail coverage" will be required at the completion or termination of this Master Agreement for a duration of THIRTY-SIX (36) months thereafter. Continuous "claim-made" coverage will be acceptable in lieu of "tail-coverage" provided the retroactive date is on or before the effective date of this Master Agreement, or THIRTY-SIX (36) months "prior acts" coverage is provided. The Company will be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage.

By requiring insurance herein, ITD or the state of Idaho does not represent that coverage and limits will necessarily be adequate to protect the Company and such coverage and limits shall not be deemed as a limitation on the Company's liability under the indemnities granted to ITD and the state of Idaho.

The Company shall maintain insurance in amounts not less than the following in accordance with the ITD Standard Specifications for Highway Construction, 2018:

11.3 Commercial General Liability (CGL). A CGL policy with a limit of not less than \$2,000,000.00 each occurrence, and \$4,000,000.00 annual aggregate, if defense is outside the limits. If defense is inside the limits, the limit must be \$2,000,000.00 each occurrence, and \$4,000,000.00 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the CGL is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

11.4 Automobile Liability. Automobile Liability including, owned, non-owned, and hired liability with a limit of not less than \$2,000,000.00 each occurrence, and \$2,000,000.00 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the Auto is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

11.5 Workers Compensation. Workers Compensation Insurance in amounts as required by statute in all states and Idaho Code so as to cover the Contractor and subcontractor work forces.

## **12.0 DISPUTE RESOLUTION.**

12.1 Mediation. In the event of any action, controversy or claim between the Parties arising out of or relating to this Master Agreement, or the breach thereof, the Parties shall first engage in mediation to attempt to resolve the controversy, claim, or breach or they may select a mutually acceptable mediator to do so. Parties shall bear their respective costs incurred in mediation. The location of the mediation shall be located within the state of Idaho as specified by ITD. Should mediation prove unsuccessful, the Parties shall follow the dispute resolution process identified in IDAPA 4.11.01, et.al.

12.2 Costs of Enforcement. If either Party files an action to enforce any covenant or condition of this Master Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, and costs associated with enforcement of this Master Agreement.

## **13.0 INDEMNIFICATION AND LIABILITY.**

13.1 Limitations of Liability. It is expressly agreed between the Parties that nothing in this Master Agreement shall be construed as limiting or expanding the statutory or regulatory responsibilities of any involved individual in performing functions granted to them by law; or as requiring ITD to expend any sum in excess of its respective appropriation.

13.2 Company to Indemnify ITD. Subject to the other provisions of this Section, the Company agrees to indemnify and save harmless ITD for damages, claims, suits and actions arising out of its own actions or omissions or the acts or omissions of its officers, agents, or employees in connection with this Master Agreement. Additionally, nothing in this Master Agreement shall be construed as expanding the liability of either Party, unless otherwise specified. Nothing in this Master Agreement shall be interpreted or construed as a waiver of the Idaho Tort Claims Act, Idaho Code §9-901, *et seq.*

13.3 No Personal Liability. The Company specifically understands and agrees that in no event shall any official, officer, employee or agent of ITD and/or the State of Idaho be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Master Agreement, express or implied.

13.4 Method of Notice. Any notice given in connection with this Master Agreement shall be in writing and shall be delivered either by hand to the other party, by certified mail, postage prepaid, return receipt requested, to the addressee provided below or by facsimile transmission to the other party at the facsimile number below. Notice by facsimile transmission must be followed by written notice. Notice shall be deemed delivered immediately upon personal service or facsimile transmission or **FORTY-EIGHT (48) hours** after depositing notice or demand in the United States mail unless evidenced otherwise. Either Party

may change its address by giving written notice of the change to the other Party as prescribed herein.

**If to ITD:**

Idaho Transportation Department  
Robert Beachler  
Division of Highways, Planning Services  
Broadband Program Manager  
600 W. Prairie Avenue  
Coeur d'Alene, ID 83815

with a copy to:  
Idaho Transportation Department  
Legal Section  
P.O. Box 7129  
Boise, Idaho 83707-1129

And to:

District Engineer  
District HQ's Address

**If to Company:**

12345 Street Drive  
xxxxxx, ID xxxxx  
Attn: CEO

Either Party may change its designated representative or the address for the receipt of notices by delivering written notice of such change to the other Party according to the provisions of this Section.

**14.0 GOVERNING LAW.**

14.1 Idaho Law Governs. This Master Agreement will be governed by the laws regulations, rules, policies and standards of the State of Idaho, both as to interpretation and performance and without regard to conflict of interest principles. It will be enforced only in Idaho District Court, located in Ada County, Idaho.

14.2 The Parties Shall Comply with Laws and Regulations. All aspect of the Parties' performance under this Master Agreement shall comply to all pertinent state and federal statutes, regulations, rules, policies, and standards amended from time to time, including but not limited to, the following:

- AASHTO Policy on Geometric Design of Highways and Streets
- AASHTO Roadside Design Guide
- AASHTO Guide to Highway Vulnerability for Critical Asset Identification and Protection;
- Manual on Uniform Traffic Control Devices;
- The Highway Beautification Act (23 USC 131);

- The Telecommunications Act of 1996;
- The Idaho Standard Specifications for Highway Construction; and
- Idaho Guide for Company Management and accompanying appendices

**The Company warrants that in the performance of this Master Agreement it has complied and will comply with all applicable federal, state and local laws, ordinances, regulations, directives and guidelines.**

## 15. MISCELLANEOUS.

15.1 Severability. If any provision of this Master Agreement will be held or deemed to be or will, in fact, be illegal, inoperative or unenforceable, the same will not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever.

15.2 Waiver. No waiver of any provision or breach of this Master Agreement shall be effective unless such waiver is in writing and signed by the waiving Party and any such waiver shall not be deemed a waiver of any other provision of this Master Agreement or any other breach of this Master Agreement.

15.2.1 Waiver not to be Implied. The failure of either party hereto to give notice of default or breach of any provision of this Master Agreement or to enforce any of the provisions of this Agreement, or exercise any right, power or privilege hereunder, shall not be construed as a waiver or relinquishment of any such default or breach of its right to enforce any such provision at the later date, but the same shall nevertheless be and remain in full force and effect.

15.2.2 Waiver to be Obtained by Third Parties. The Company shall include in any agreement with any third party relating to the use of the Dark Fiber, a waiver by such third party of any claim for indirect, incidental, special, punitive or consequential damages arising out of or as a result of an act or omission by the Parties hereto, its directors, officers, employees, servants, contractors, and/or agents. Notwithstanding any other provisions of this Master Agreement, ITD shall not be liable for any damages claimed by the Company's relationship with any other third party. Nothing herein shall constitute nor shall it be construed as a waiver by ITD of any applicable insurance coverage, and to the extent that any provision would impair such coverage, it shall be deemed null and void.

15.3 Entire Agreement; Amendment. This Master Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either party or agents of either party that are not contained in this Master Agreement will be binding or valid. This Master Agreement may not be amended, enlarged, modified or altered except through a written instrument, signed by both Parties and attached hereto, and as provided herein.

This Master Agreement sets forth the entire agreement between the Parties related to the subject matter of this Master Agreement and may not be modified without the written consent of both parties.

15.4 Assignment. Neither Party may assign or delegate the rights or obligations of this Master Agreement without the prior written consent of the other Party, provided that consent shall not be unreasonably withheld for assignment to other Governmental entities.

15.5 Binding Effect. This Master Agreement shall bind the Parties, their successors and assigns.

15.6 Captions. All headings in this Master Agreement are for convenience only and shall not affect the meaning of any provision hereof.

15.7 Confidentiality. Any and all reports, analyses and data, whether statistical or otherwise related to the infrastructure under this master agreement shall remain confidential, and shall not be disclosed to any person without prior written consent of ITD and the Company. In addition, except as may be required by applicable law or in any governmental or judicial proceeding or inquiry, and then only upon timely notice to ITD, the parties shall maintain strict confidence with respect to ITD and all of its services under this Master Agreement. The parties may require that the Company's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. This obligation shall survive expirations and/or termination of this Master Agreement.

15.8 Time. Time is of the essence of each term, provision, and covenant of this Master Agreement.

15.9 Multiple Counterparts. This Master Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same Master Agreement.

**IN WITNESS WHEREOF**, the parties have each executed this Master Agreement as of the date first set forth above.

Idaho Transportation Department

*Company Name*

By: \_\_\_\_\_  
ITD District \_\_ Engineer

By: \_\_\_\_\_  
XXXX XXXXX, CEO

DRAFT

**EXHIBIT "A"**  
**Balance Sheet**

**DESCRIPTION OF USE RIGHTS GRANTED UNDER MASTER AGREEMENT  
REGARDING SHARED FIBER FACILITIES**

AMENDMENT #1 (coincident with execution of the original agreement): COMPANY

NAME shall provide to the IDAHO TRANSPORTATION DEPARTMENT the following:

- 1) At no cost to ITD, X strands of dark fiber on Interstate/US Route/State Highway (description of the route including beginning and ending mileposts noting changes in direction or road bounds).
- 2) *Company Name* shall re-splice any existing fiber splices that will be damaged or un-spliced during construction of this project.
- 3) *Company Name* shall be responsible for all maintenance of the fiber optic line, conduit, vaults, and associated network infrastructure, during the life of this agreement.

THE IDAHO TRANSPORTATION DEPARTMENT shall provide to *Company Name* the following:

- 1) No cost use of the ITD owned conduit on Interstate/US Route/State Highway (description of route).
- 2) No cost use of the ITD Right of Way along Interstate/US Route/State Highway at location of above mentioned conduit.



Idaho Transportation Department

*Company Name*

By: \_\_\_\_\_  
ITD District \_\_ Engineer

By: \_\_\_\_\_  
XXXX XXXXXX, CEO

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

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

DRAFT