

**MASTER LEASING AGREEMENT
FOR THE LEASING OF COUNTY OWNED FIBER OPTIC INFRASTRUCTURE**

THIS MASTER LEASING AGREEMENT, (hereinafter referred to as the “Agreement”) is made as of this ____ day of _____, 2018 by and between **CUSTOMER**, a _____ corporation with its principal offices located at _____, herein referred to as “Customer” and **The Board of County Commissioners of Carroll County**, Maryland, a body corporate and politic of the State of Maryland, hereinafter referred to as “County”;

WHEREAS, the County owns and operates a fiber optic infrastructure located in Carroll County, State of Maryland, hereafter referred to as the “CCBN”; and

WHEREAS, the Customer is a _____ that will utilize fiber optic infrastructure to provide required services for its’ own business purposes or an end user; and

WHEREAS, the Customer desires to lease fiber optic strands from the County, as described in **EXHIBIT 1**, which is attached and hereby made a part of this Agreement; and

WHEREAS, the County will provide maintenance for the fiber optic infrastructure owned by the County including the CCBN backbone and its’ connected sites; and

WHEREAS, the Customer may be interested in providing lit services to its end user.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth in this Agreement, the parties agree as follows:

1. LEASING OF DARK FIBER OPTIC INFRASTRUCTURE

The County hereby provides the Customer a lease of dark fiber optic pairs within the existing CCBN to meet their business needs or the needs of their end user. Service is offered and furnished subject to the availability of all necessary facilities. The County may limit or allocate dark fibers, if necessary, due to facilities availability, taking into account the County's then current and projected capacity and the reasonable expectations of its existing and future customers. The County will also grant permits for the construction of last mile connections along County owned rights of way.

Customers will be permitted to lease dark fiber optic pairs for the lawful purpose of lighting them to provide service to themselves or an end user. No Customer shall be permitted to lease more than 50% of the available dark fiber optic pairs without written justification and documented proof that all fiber optic pairs already leased or to be leased are already in use providing a service. The County has no intent to limit the use of the fiber optic infrastructure but must ensure that no one Customer creates an unfair market by leasing all available capacity.

2. ADVERSE DISRUPTION OF OPERATIONS

All installations shall be made in accordance with the procedures set forth herein and the County expressly reserves the right, upon written notice to the Customer, to terminate the Agreement in the event that (A) Customer's actions or operations are not in material compliance with such procedures; (B) Customer's actions pose a materially unacceptable risk to the users of the CCBN; or (C) Customer's actions or operations are materially interfering with or otherwise materially adversely disrupting the operations of the County. Notwithstanding the foregoing, upon written notice to Customer, Customer shall have a right to cure any such infractions and, providing Customer diligently pursues corrective action and cures said infractions within thirty (30) days after its receipt of such written notice from the County, the Agreement shall remain in full force and effect.

3. MAINTENANCE PROCEDURES

The County maintains a twenty four (24) hour help desk (“Managed Service Center”) to service requests made under this Agreement. When a Customer has a service request that falls under the scope of this Agreement, it will call the Managed Service Center. The Managed Service Center will open a service ticket for the work to be performed or trouble experienced. The Managed Service Center will track the service ticket until the service request has been satisfactorily completed.

The County will notify the Customer in advance of any maintenance work that has the potential to impact the service provided to the Customer. Any potentially impacting service will be performed during non-peak hours of 6PM – 6AM, but the County reserves the right to perform planned maintenance activities at any time with forty eight (48) hours prior notice if commercially necessary. Emergency repairs are not planned maintenance activities and are not subject to the terms of this paragraph.

The County subscribes as required by law to the local utility One Call services for the Fiber Infrastructure. The County utilizes a combination of in-house and contractor resources to respond to a request for facility locates and provides them in accordance with Maryland State law.

Upon notification by Customer, detection by the County or notification by a Utility contractor that the Customer or County’s Fiber Optic Infrastructure is damaged, impaired or not functioning, the County will make commercially reasonable efforts to respond to requests for emergency restoration within two (2) hours. However, response times are affected by conditions outside the control of the County, including, but not limited to Force Majeure events. The County will ensure that specific preparations are made to maintain the readiness and accessibility of the personnel, materials, and equipment required for response to emergency restoration conditions. The County has the right to install a Temporary or Permanent restoration depending on the type and location of the damage and priority of Customer restoration. The County

reserves the right to repair critical County services prior to Customer connections. Upon the completion of all repair work, the Managed Service Center will contact the Customer to ensure their service has been satisfactorily restored.

4. REMEDY OF INTERFERENCE

The Customer guarantees that in the event any of its operations or Facilities interferes in any way with the operation of the County, it shall remedy the interference to the reasonable satisfaction of the County. The Customer shall provide the County with an emergency telephone number(s) by which the County can contact a responsible employee, agent, or representative of the Customer twenty-four (24) hours a day, seven (7) days a week. EXCEPT AS SET FORTH IN THE FOREGOING SENTENCE, COUNTY MAKES NO WARRANTY, EXPRESS OR IMPLIED, HEREUNDER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

5. INITIAL TERM AND EXTENDED TERM

The initial term of this Agreement shall be for five (5) years ("Initial Term") commencing on the date that this agreement is fully executed ("Commencement Date") and expiring on the day before the fifth anniversary of the Commencement Date. The Customer shall have the ability to extend this Agreement for one (1) additional five (5) year term (an "Extended Term") by providing the County a written request to do so at least one hundred eighty (180) days prior to the end of the then-current term ("Exercise Date"). The County reserves the right, at any point prior to any Extended Term under this Agreement, not to extend this Agreement, following the Initial Term. Notice of such non-extension shall be given to the Customer in writing at least one hundred eighty (180) days prior to the end of the then-current term. The parties may renegotiate the term of the Agreement at any point. The County may renegotiate the fee amount at the end of the First Term. As set forth in Paragraph 11, any changes shall be mutually satisfactory, in writing, and incorporated into this Agreement.

6. Service Delivery

The County will provide a projected service delivery date upon acceptance of this Agreement and a Project Coordinator to ensure all installation steps are implemented in a mutually agreeable schedule. Prior to the delivery of the Fiber Optic Infrastructure to the

Customer, the County will perform testing procedures to ensure end to end connectivity is available with agreed to testing values. The customer shall have ten (10) business days to accept the Fiber Optic Infrastructure prior to the commencement of billing for the service. The service will automatically start billing if the customer does not accept the service within the ten (10) business days.

7. Billing

During the Initial Term and the Extended Term of this Agreement, the Customer shall be responsible for all non-recurring and recurring charges (“Charges”) as set forth in **EXHIBIT 2**. Monthly recurring Charges are billed one (1) month in advance; and non-reoccurring Charges are billed in advance. If Service is made available on a day other than the first day of a monthly billing period or if Service is discontinued on a day other than the last day of the monthly billing period, monthly recurring charges will be prorated for the monthly billing period. All invoices to Customer shall be at the address provided to the County on the customer profile, unless directed otherwise by the Customer.

The County shall send Customer all invoices related to this MLA to the address listed below. Customer may change the billing address upon providing written notice to the County of the new address:

| Customer’s Billing Contact Information | |
|---|--|
| Name: | |
| Address: | |
| Phone Number: | |
| Fax Number: | |
| Email Address: | |

Customer must pay all invoiced charges for Service without deduction or setoff within thirty (30) days of the date of the invoice. Payment may be made by cash or check or money order made

payable to the Carroll County Commissioners. If Customer's check is returned for non-payment, Customer shall be assessed a return check fee.

8. LIMITED USE OF RIGHT-OF-WAY

The Customer shall have the right to use the County rights-of-way for the purpose of installing, maintaining and operating the Facilities and uses incidental thereto.

All Facilities to be installed in the County right of way shall be installed in accordance with plans and specifications which have previously been submitted to and approved by the County. All work under this Agreement shall be subject to the County's prior written approval prior to commencing installation, alteration or construction activities. The Customer shall give the County reasonable prior written notice before beginning installation, alteration or construction activities. The County agrees to use its best efforts to review and approve or otherwise respond to any plan submission within thirty (30) days from the date such plans are received by the County. The County agrees not to unreasonably delay or deny its approval of any plans, and shall only impose those conditions on the method or course of performance proposed by the Customer as are reasonably necessary to protect the County's responsibility for the safe, smooth, continuous operation of County owned roads.

It is understood and agreed that the Customer's ability to use the CCBN and operate the Facilities is contingent upon the Customer's obtaining all of the applicable certificates, permits, and other approvals that may be required by any federal, State, or local authorities, as well as satisfactory construction analyses which will permit the Customer to use the Premises, as set forth herein. The County shall cooperate with the Customer in its effort to obtain such approvals to the extent that is consistent with the County's responsibilities. In the event that any such applications should be finally rejected, or any applicable certificate, permit, license, or approval issued to the Customer is canceled, expires, lapses, or is otherwise withdrawn or terminated by the County; or if the right of way is no longer suitable for the Facilities so that the Customer in its sole discretion determines that it will be unable to use the CCBN for the intended purposes; or

if Customer in its sole discretion determines that the Facilities are no longer necessary for its operations, the Customer shall have the right to terminate this Agreement. Notice of the Customer's exercise of its right to terminate under this Paragraph shall be given to the County in writing by certified mail, return receipt requested, and shall be effective thirty (30) days from the receipt of such notice by the County as evidenced by the return receipt. Upon such termination under this Paragraph, the Customer's right to use the Premises shall become null and void and all the parties shall have no further obligations beyond those specified in Paragraph 10 of this Agreement for removal of the Facilities and the restoration of right of way.

9. LIABILITY

A. The Customer shall indemnify and hold the County and its employees or agents harmless against any claim or liability for loss from personal injury or property damage resulting from or arising out of the use of the fiber optic infrastructure by the Customer, its servants or agents, excepting, however, such claims for damages that may be caused by the acts or omissions of the County or its employees or agents. The County shall not be liable for damage to the Customer's Facilities caused as a result of the normal or foreseeable operations of the County, excepting if caused by the negligence of the County.

Customer shall be liable for and agrees to pay any and all reasonable costs and expenses, including reasonable attorney and/or professional fees which may be incurred by the County, as well as any judgments or decrees in favor of the County:

1. In enforcing obligations of Customer under the terms and provisions of this Agreement;
2. In obtaining possession of the facilities as the result of any default by Customer or otherwise;
3. In defending any suit or proceeding brought against the County for violation by Customer of any law, ordinance, rule or regulation, related in any way to this Agreement; and
4. In defending any action or suit against the County for damages because of any failure, neglect or default on the part of Customer.

10. INSURANCE

The Customer agrees to assume full responsibility for any and all damage to the property of the County, both real and personal, which results from the performance of, or which arises in connection with, the Customer's use of the CCBN in accordance with the performance of this Agreement. The Customer shall maintain a comprehensive general liability insurance policy, which names the County as additional insured's, in the amount of at least three million dollars (\$3,000,000.00) combined single limit for personal injury and property damage liability per occurrence in the aggregate.

11. RESTORATION OF FACILITIES UPON TERMINATION

The Customer, upon termination of this Agreement, shall, within ninety (90) days, remove its Facilities and other personal property and restore the CCBN to its approximate original condition to the reasonable satisfaction of the County, reasonable wear and tear excepted. If such time for removal causes the Customer to remain connected to the CCBN after termination of this Agreement with the consent of the County, the Customer shall pay the County a fee at the then-existing rate, such fee to be paid monthly on a pro-rata basis until such time as the removal of Customer's personal property is completed. Any of Customer's property remaining connected to the CCBN without the consent of the County may be removed by the County at the Customer's sole cost and expense. Notwithstanding the affixation of the Facilities, title to the Facilities shall remain with the Customer. The Customer may assign, mortgage, and otherwise grant security interests in the Facilities to any party holding a mortgage or security interest in the same.

12. COMPREHENSIVE EXCLUSIVITY OF ALL AGREEMENTS

It is agreed and understood that this Agreement contains all agreements, promises, and understandings between the County and the Customer, and that no verbal or oral agreements, promises, understandings, or warranties of any kind shall be binding upon either party in any dispute, controversy, or proceeding at law, and any addition, variation, or modification to the Agreement shall be void and ineffective unless made in writing and signed by the authorized

representatives of both parties. Amendments may not significantly change the scope of the Agreement but may include updates to **EXHIBIT 2** as the amount of the fiber network use increases. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Agreement, the terms of this Agreement shall prevail.

13. GOVERNING LAWS

This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Maryland.

14. TRANSFER OF RIGHTS AND OBLIGATIONS

A. The Customer may assign or transfer its rights and obligations arising under this Agreement to any entity legally authorized to operate a communications system, to any of its parents, subsidiaries or affiliates; to the successor by consolidation or merger; to a purchaser of all or substantially all of the Customer's assets; to any entity which purchases either a majority or controlling interest in the Customer; and to any partnership in which the Customer, or any of its parents, subsidiaries or affiliates is a general partner, upon the consent of the County, which consent shall not be unreasonably withheld, and shall be presumptively granted subject to the conditions that: (1) the use of the CCBN is not altered or modified, (2) that the assignee shall ratify and affirm the terms of this Agreement in writing, and (3) that the Customer shall remain liable for the performance of its obligations hereunder. Any other assignment, conveyance, or transfer of all of the rights granted hereunder shall be null and void unless expressly consented to by the County.

15. NOTICES

All notices hereunder must be in writing and shall be deemed validly given if sent by overnight mail, hand delivered, and/or certified mail, return receipt requested. If sent by certified mail, notices shall be deemed delivered three (3) days after mailing if addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

CUSTOMER:

Customer Name

Authorized Signature

Print Name

Print Title

Date

COUNTY:

CARROLL COUNTY GOVERNMENT
225 N. Center Street,
Westminster, Maryland 21157
Attention: Steven Powell, Chief of Staff

With a copy to: Mark Ripper, Director of Information Technology

16. MODIFICATION OF FACILITIES

If the County shall deem it necessary or advisable, at any time or from time to time, to alter, reconstruct, maintain, relocate or construct additional Facilities, which rights the County hereby expressly reserves to itself, or in the case of termination of this Agreement, the Customer shall, at its own risk and expense, within one (1) year following receipt of written notice from the County to do so, remove, relocate, raise, lower, alter or otherwise change its Facilities in a manner and in conformity with such specifications as, in the County's sole judgment, will enable the County to make any of the above mentioned changes. If the Customer fails to comply with such notice to remove or relocate its Facilities within the one (1) year period, or sooner in the case of emergency, the County shall have the right to remove, relocate or change the locations of the Customer's Facilities without further notice to the Customer and the Customer shall reimburse the County for the County's costs and expenses in doing so, and further, the Customer releases the County, its employees, agents or contractors from any claim for damages of any kind

or nature resulting from the County's removal or relocation of the Customer's Facilities, excepting due to the negligence of the County, its employees, agents or contractors.

17. WAIVER OF TRIAL BY JURY

To the extent that a court of law would have jurisdiction over this Agreement, the parties hereby waive trial by jury.

18. NON-HIRING OF EMPLOYEES

No employee of the County or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of the Agreement shall, while so employed, become or be an employee of the party or parties hereby contracting with the County or any unit thereof.

19. NONDISCRIMINATION IN EMPLOYMENT

The Customer agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

20. NON-AVAILABILITY OF FUNDING

If the Maryland General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of the Agreement succeeding the first fiscal period, the Agreement shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the County's rights or the Customer's rights under any termination clause in the Agreement. The effect of termination of the Agreement hereunder will be to discharge both the Customer and the County from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The County shall notify the Customer as soon as the County has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

21. TERMINATION FOR DEFAULT

If the Customer fails to materially fulfill its obligations under this Agreement properly and on time, or otherwise violates any material provision of the Agreement, the County may terminate the Agreement by written notice to the Customer. Notwithstanding the forgoing, upon written notice to Customer, Customer shall have a right to cure any such infractions and, providing Customer diligently pursues corrective action and cures said infractions within thirty (30) days after its receipt of such written notice from the County, the Agreement shall remain in full force and effect. In the event of such a termination by the County, the notice shall specify the acts or omissions relied upon as cause for termination.

22. TERMINATION FOR CONVENIENCE

The performance of work under the Agreement may be terminated by the County in accordance with this clause in whole, or from time to time in part, whenever the County shall determine that such termination is in the best interest of the County. The County will pay all reasonable costs associated with the Agreement that the Customer has incurred up to the date of termination, and all reasonable costs associated with termination of the Agreement; provided, however, that the Customer shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

23. DELAYS AND EXTENSIONS OF TIME

The Customer agrees to perform the Agreement continuously and diligently. No charges or claims for damages shall be made by the Customer for any delays or hindrance, regardless of cause, in the performance of services under the Agreement. Time extensions shall be granted only for excusable delays that arise from unforeseeable causes beyond the reasonable control and without the fault or negligence of the Customer, including but not restricted to, acts of God, acts of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of another contractor in the performance of a County contract, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or the delay of a subcontractor or supplier arising from unforeseeable causes beyond the reasonable control and without the fault or negligence of either the Customer or the subcontractor or supplier.

24. VARIATIONS IN ESTIMATED QUANTITIES

No equitable adjustment shall be permitted in favor of either the County or the Customer in the event that the quantity of any pay item in the Agreement is an estimated quantity and the actual quantity of such pay item varies from the estimated quantity stated in the Contract.

25. POLITICAL CONTRIBUTION DISCLOSURE

The Customer shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

26. COMPLIANCE WITH LAWS

The Customer hereby represents and warrants that:

A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Agreement;

C. It shall comply with all federal, State and local laws applicable to its activities and obligations under the Agreement; and,

D. It shall obtain, at its expense, all applicable licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under the Agreement.

27. LIABILITY FOR LOSS OF DATA

In the event of loss of any data or records necessary for the performance of the Agreement where such loss is due to the negligence of the Customer, the Customer shall be responsible, irrespective of cost to the Customer, for recreating such lost data or records.

28. REPRESENTATIONS

Each party to this Agreement represents and warrants to the other that it has full rights, power, and authority to execute this Agreement.

29. WAIVER

The failure of either party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be, and remain in full force and effect.

30. RULES OF CONSTRUCTION

The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

31. RELATIONSHIP OF THE PARTIES

The relationship between the County and Customer shall not be that of partners or joint ventures, and nothing contained in this Agreement shall be deemed to constitute a partnership between them for any purposes. The County and Customer in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

32. SEVERABILITY

If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

33. COUNTERPARTS

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

WITNESS:

**BOARD OF COUNTY COMMISSIONERS OF
CARROLL COUNTY, MARYLAND**

BY: _____
, President

WITNESS:

CUSTOMER

BY: _____
Name of Authorized Signature

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

County Attorney

Draft - Not for Actual Use

EXHBIT 1

Fiber Optic Infrastructure Documentation

Provided as an attachment.

Draft - Not for Actual Use

EXHIBIT 2

Charges

Provided as an attachment.

Draft - Not for Actual Use