

DARK FIBER LICENSE AGREEMENT

THIS DARK FIBER LICENSE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2015 between **Baltimore County, Maryland** (the “County” or the “Licensor”) a body corporate and politic, and _____ (the “Licensee”) (the County and the Licensee, individually a “Party” and collectively, the “Parties”).

RECITALS

1. The County owns and operates a fiber optic network in Baltimore County and uses the network in the County’s daily operations.
2. The Network (hereinafter defined) includes unlit or “dark” fiber optic facilities that constitute unused capacity in the network and the County intends to permit others to use a portion of this capacity in its discretion.
3. The Licensee desires to acquire the use certain dark fiber optic facilities within the Network.
4. The County is willing to license the Dark Fiber to the Licensee, under the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the benefits flowing to the respective Parties and the covenants set forth herein, it is mutually agreed as follows:

Section 1 - Intent

1.1 The intent of this Agreement is for the County to provide the Licensee the limited and exclusive use of warranty free point-to-point unlit dark fiber optic links consisting of the single-mode fiber optic strands assigned to the Licensee by the County (the “Dark Fiber”). The Dark Fiber will be located in overhead and underground installations, typically within public rights-of-way. The County shall perform only such maintenance of the Dark Fiber for the term of this Agreement as is expressly set forth in this Agreement. The Licensee will pay the County the fees set forth in Section 5 of this Agreement.

Section 2 - Definitions

As used in this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

2.1 *BTOP* - means the Broadband Technologies Opportunities Program (“BTOP”). BTOP includes the financial assistance award issued by the U.S. Department of Commerce’s National Telecommunications and Information Administration (“NTIA”) to the One Maryland Broadband Network, in support of the Inter-County Broadband Network consortium (of which the County is

a part) and relating to the fiber optic cable subject to this Agreement, designated Award # NT10BIX550135.

2.2 *Cable* — means a bundle of unlit single mode fiber optic filaments or strands, installed and owned by the County. A Cable is composed of several “dark” fiber filaments or strands.

2.3 *County* — means Baltimore County, Maryland.

2.4 *Dark Fiber* — means unlit fiber optic strands licensed hereunder to the Licensee and transiting over continuous segments of the Network as more specifically described and set forth in Exhibit A. Dark Fiber does not include the transmission of information using such fiber optic strands or access, license to use, or conveyance of other equipment that may be necessary to enable transmission of information or a warranty that the cable is suitable for such transmission purposes by the Licensee.

2.5 *Demarcation Point* — means the physical point at which the County provides end point (or as it is colloquially known the “termination point”) of the Dark Fiber segments, as further identified in Section 3 of this Agreement, and at which responsibilities for ownership and maintenance of facilities and equipment are allocated as between the County and the Licensee.

2.6 *Facilities or County Facilities*— means all County equipment, including: dark fiber, fiber cables, utility poles, conduit, bridge attachments, duct systems, pull boxes, splice closures, support hardware and any and all other ancillary material required for the Project Any electronic equipment required to transport signals on the Dark Fiber licensed to the Licensee, and any additional equipment or items of any kind, including data owned by the Licensee, are not included as Facilities, and are not the responsibility of the County.

2.7 *Force Majeure* — means any event or cause beyond the reasonable control of the County and/or the Licensee that cannot be prevented or eliminated by the exercise of prudent utility practices, including, but not limited to, acts of God, strike, lockout or other labor dispute, sabotage, fire, storm, lightning, flood, war, riot or insurrection, explosion, accident, vehicular collision, embargo, blockage, acts of civil disobedience, inability to secure supplies, governmental authorization or permit, or any other cause whether of the kind specifically enumerated, which prevents the County and/or the Licensee from performing all or any part of any material obligation under the terms of this Agreement.

2.8 *Maintenance* — means only the work which must be performed upon or to the County Facilities to reasonably provide the physical dark fiber required for the continuity of signal being transmitted through the fibers, or to ensure the safety of the County Facilities, all as determined by the County in its sole discretion. Maintenance shall be dependent upon the payment of a maintenance fee by the Licensee which must substantially assist in covering costs required for the continuity of the physical dark fiber of an acceptable signal. Maintenance shall not include any work associated with any equipment owned by the Licensee or equipment that sends, receives, interprets, or modifies a signal or signal data.

2.9 *Network* — means the Facilities and the dark fiber optic cable and support facilities, including any existing, newly installed, or future installed utility poles, conduit, duct system or fiber optic cable, owned by the County. Notwithstanding the foregoing, the County’s responsibilities to the Licensee hereunder are solely related to that portion of the Network being licensed pursuant to this Agreement.

2.10 *Outage* — means the interruption of Dark Fiber continuity or a material degradation in performance of the Dark Fiber when such interruption is the result of physical damage, severance, or other failure of the Dark Fiber.

2.11 *Premises Entry* — means a location within a building owned or controlled by the Licensee, at which the Dark Fiber is requested to transit or, in the case of a Demarcation Point, to connect to the Licensee-owned and -controlled equipment and facilities.

2.12 *Project* — means the work processes required for the County and the Licensee to complete all requirements of this Agreement.

2.13 *Project Completion* — occurs at such time as the County (a) has received all documentation they have required from the Licensee, including all required franchises, insurance, proof of bonding, permits, as built and stamped drawings of any construction impacting the Network from the Licensee, including the results of any Licensee testing on the Network, (b) provides notice to the Licensee that all of the connections have been completed in the County’s equipment and, (c) has issued to the Licensee a notice to proceed.

2.14. *Undue Emergency Repair Fee* – means any cost associated with repairs, caused by the Licensee in violation of Section 3.6.3, which are incurred by the County. These are costs that may arise outside of normal repair costs including but not limited to, emergency equipment rental, after hours response costs from vendors performing said repairs, or expedited shipping costs to acquire materials associated with the repair.

Section 3 - Scope of Agreement

3.1 *Installation.* The County has installed, or will cause to be installed, Facilities between the Demarcation Points described and set forth in Exhibit A sufficient to provide the Licensee access to and use of the Dark Fiber specifically set forth in Exhibit A during the Term hereof. The County disclaims any obligations regarding equipment or facilities owned by any third party.

3.2 *Ownership.*

3.2.1 The County shall own the entire Project and the Facilities including outer and inner jackets, all fiber tubes, and all of the fiber filaments contained therein on the County side of the Demarcation Point. The Licensee shall retain ownership of its data and shall bear all responsibility for any signal transmitted through the Dark Fiber. All equipment required on the Licensee’s side of the Demarcation Point to enable the Licensee to utilize the Dark Fiber shall be furnished, installed, owned and maintained by the Licensee at its sole expense and responsibility, as reasonably determined between the parties, consistent with

the County's Network requirements which shall be determined in the County's sole discretion. The Licensee will be responsible at its sole cost and risk for obtaining all necessary approvals and permits for the construction of last mile connections along County owned rights of way, even if the route is changed by the County or due to court order, including any requirements of the Baltimore County Code, as amended. No right is being granted to the Licensee to use the Network or related Facilities except as specifically provided herein. No right is being granted to use any other property of the County or of any other private or government entity. The Licensee shall not sub-license, rent or permit the direct use of the Dark Fiber by any entity, other than the Licensee, including, but not limited to affiliates of the Licensee, without the express written approval of the County.

3.2.2 *Rights in the Network.* The Licensee shall not acquire any interest in the Network or the County Facilities by virtue of this Agreement except the limited, exclusive right to use the specified licensed Dark Fibers pursuant to this Agreement. The Licensee shall not use this Agreement to challenge, contest or otherwise impair the County's ownership of the Network and/or the Facilities, underlying property rights, Federal Interest or the rights of the federal government pursuant to BTOP.

3.3 *Maintenance.*

3.3.1 *Routine Maintenance.* The County shall perform required maintenance, locates and repairs on the Network with respect to protection and functioning of the Dark Fiber as determined in its sole discretion, and subject to the availability and appropriation of funding. All maintenance on the Network shall be performed by the County. When conducting maintenance on the Network, the County shall exercise reasonable care to prevent an Outage. Except as otherwise provided in Section 3.3.2 below, the County shall not, however, be liable to the Licensee for an Outage caused by any third party, the Licensee, or unless such Outage arises from the gross negligence or willful misconduct of the County. County agrees to provide the Licensee not less than 48 hours' prior notice of any scheduled maintenance or repairs that may result in an Outage. Notification shall be made as set forth in Section 11 herein.

3.3.2 *Emergency Maintenance and Outages.* The Licensee shall promptly notify the County of the occurrence of any trouble condition with respect to the Dark Fiber. The Licensee shall make diligent and immediate efforts to establish if the trouble condition resides in the Dark Fiber and not with the Licensee's Network electronics and shall document such efforts as requested by the County. In the event the condition is determined to be an Outage, the County shall perform such emergency maintenance as is reasonable and practicable after the County learns or is notified by the Licensee that an Outage exists.

3.3.3 In the event an Outage lasts longer than three (3) days, the Licensee may, at its sole discretion exercise one or both of the following : (i) correct any damages and any other deficiencies related to the Outage, at the Licensee's sole cost and expense, with no right of set off, ownership, demand or reimbursement from the County and only as permitted by the County or (ii) , within the next thirty (30) days, terminate this Agreement with notice

to the County and be relieved of all further obligation under the Agreement. The parties hereby agree that the only remedy with respect to an Outage is a pro-rata refund of the rent amount paid during the time of the Outage. All other losses, claims, demands and warranties are hereby waived by the Licensee including, but not limited to loss of data or profit.

3.3.4 *Maintenance of Licensee Equipment.* Maintenance on equipment owned by the Licensee, including but not limited to electronic equipment required to activate the Dark Fiber, shall be performed by the Licensee at the Licensee's sole and exclusive expense.

3.4 *Premises Entries.*

3.4.1 In the course of its deployment of fiber optic cables serving the Licensee, the County reserves the right to install additional fibers and associated infrastructure beyond that required for use by the Licensee. In addition, the County reserves the right to relocate the Dark Fiber, provided such relocation shall not result in a loss of the Licensee's ability to the use thereof.

3.5 *Testing and Acceptance*

3.5.1 The County shall test the completed Dark Fiber at the time of initial Acceptance and at any time that the County deems that testing is required, during which time the Network shall not be operable. Testing is not deemed an Outage, and the Licensee shall have no claim for rent abatement during any testing period. Testing shall consist of end-to-end power meter measurements and bi-directional Optical Time Domain Reflectometer (OTDR) traces at 1550 nm and 1310 nm for each fiber strand comprising the Dark Fiber. Per the Telecommunications Industry Association (TIA) and the Electronic Industries Alliance (EIA) Optical Fiber Cabling Components Standard (EIA/TIA 568-B.3) for outside plant, the tests shall be deemed successfully completed if: (1) maximum fiber losses do not exceed 0.5 dB/km; (2) individual splice losses do not exceed 0.3 dB; and (3) maximum mated mechanical connector losses do not exceed 0.75 dB.

3.5.2 Upon delivery of test results by the County to the Licensee, the Licensee shall have ten (10) business days to conduct verification tests. The Licensee shall notify the County of any reasonable performance deficiencies found in the Dark Fiber and the County shall correct such deficiencies in a reasonable timeframe. In the event the County fails to correct said deficiencies within thirty (30) days of receipt of the Licensee's notice, the Licensee may terminate this Agreement. In the event of such termination, the Licensee shall have no further duties or obligations hereunder, and shall promptly receive a full refund of all fees paid to the County, if testing is being done at initial Acceptance, or a pro rata refund of all fees paid to the County, if testing is done at any other time. The Dark Fiber is deemed accepted if the Licensee (a) provides notice of acceptance, or (b) fails to reject the Dark Fiber or report deficiencies within the verification period. The date of acceptance, or the last day of the validation period, if the Licensee fails to act, shall be termed the "Acceptance Date".

3.6 *Use of and Access to Dark Fiber*

3.6.1 In the event a Demarcation Point or any portion of Dark Fiber is located within a building or on private property, the Licensee will be responsible for securing or granting access rights, distribution agreements, easements, letters of authorization, collocation rights, or such similar document(s) as may be required by the property owner and/or tenant/occupant authorizing the presence of the Dark Fiber, or the County Facilities, or any facilities owned by the Licensee.

3.6.2 The Licensee may interconnect its fiber optic cable network to the Dark Fiber at existing splice cases, or other locations as may be mutually agreed to between the Parties in writing. Any work required for said interconnections, excluding splicing of the Dark Fiber to the Network, shall be performed by the Licensee, its agents or representatives, at the Licensee's sole cost and expense. All splicing to the Network shall be performed solely by the County or its contractors. The Licensee shall provide at least fourteen (14) days' advanced notice to the County to allow scheduling of interconnection work tasks.

3.6.3 The Licensee shall at no time enter, and or modify, any Facilities on the Licensor side of the Demarcation Point. This includes accessing the Licensor side of the connection panels, hand holes, conduits, or cables. Any damage or service disruption, damages, expenses, claims, or suits that are found to be caused by the Licensee as a result of the afore-described actions will be corrected immediately without contest by the Licensee at the Licensee's sole expense. Additional costs may be incurred by the Licensee for an Undue Emergency Repair fee which shall be repaid to the County within thirty (30) days of receipt of invoice to cover such repair costs.

3.6.4 It is understood and agreed that the Licensee's ability to use the Network and is contingent upon the Licensee's obtaining all of the applicable certificates, permits, and other approvals that may be required by any federal, State, or local authorities. In the event that any such applications should be finally rejected, or any applicable certificate, permit, license, or approval issued to the Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by the County, the Licensee shall have the right to terminate this Agreement. Notice of the Licensee's exercise of its right to terminate under this subparagraph 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, the Licensee's rights hereunder shall become null and void and all the parties shall have no further obligations beyond those specified in this Agreement which survive termination.

3.7 No Warranty.

The Licensee shall be responsible, at its sole cost and expense, for determining if the Dark Fiber meets its needs at its own cost and expense. The County expressly disclaims any warranty that the Dark Fiber will meet any industry standard, except as otherwise expressly stated herein.

Section 4 - Term and Termination

4.1 *Term.* This Agreement shall be in full force and effective as of the date that all of the Parties have executed it, and unless sooner terminated in accordance with its terms, shall remain in effect for _____ () years, following the Acceptance Date, which shall occur within ninety (90) days of execution of this Agreement, unless otherwise agreed upon by the County (the “Initial Term”). If the Licensee is not in breach of any of its obligations under this Agreement which continue beyond any applicable cure period, the Licensee may renew this Agreement for _____ () additional periods of _____ () year(s) each (each a “Renewal Term”). The Licensee shall exercise its option to renew by providing written notice of renewal to the County not more than sixty (60) days and not less than thirty (30) days before the expiration date of the Initial Term or the then current Renewal Term. Each Renewal Term shall be subject to the terms and conditions of this Agreement. The Initial Term and the Renewal Terms shall be referred to collectively as the “Term”.

4.2 *Termination.*

4.2.1 Each Party shall have the right to terminate this Agreement upon thirty (30) days’ prior written notice if the other Party defaults in its material obligations and fails to cure such default identified in said notice within the thirty (30) day period, or, if the default is not capable of being cured within the thirty (30) day period, such additional period, not to exceed one hundred twenty (120) days from the date of the initial notice of default, provided the defaulting Party has commenced the cure within the thirty (30) day period and is diligently pursuing completion.

4.2.2 Either Party shall have the right to terminate this Agreement immediately, without cause, upon written notice to the other Party at least thirty (30) days in advance, or upon such shorter period as may be mutually agreed upon by the Parties. In such event, the County shall have and retain all rights and remedies existing at law or in equity against the Licensee.

4.2.3 Notwithstanding the provisions of Section 4.2.2, termination without cause by the Licensee shall not relieve the Licensee of its obligation to pay all License Fees specified in Section 5 herein due through the Initial Term, or the then current Renewal Term.

4.2.4 Notwithstanding anything to the contrary contained herein, the Licensee may terminate this Agreement without cause any time prior to the Acceptance Date, and except for the Connection Fee, shall have no further duties or obligations hereunder.

4.3 *Rights upon termination.* All rights to use of the Dark Fiber by the Licensee shall immediately revert to the County in the event this Agreement is terminated for any reason. Licensee shall retain all ownership and responsibility for any data. All materials and equipment on the County’s side of the Demarcation Point shall remain the property of the County at all times. The Licensee, upon termination of this Agreement and only if requested by the County, shall, within ninety (90) days, disconnect, remove its Facilities and other personal property and restore the Network to its approximate original condition to the reasonable satisfaction of the County, reasonable wear and tear excepted. Otherwise, the County shall have the right to disconnect, remove and dispose all Licensee property, facilities and equipment on County property or in the

Network within ninety (90) days of termination of the Agreement with no further obligation to Licensee. If such time for removal causes the Licensee to remain connected to the Network after termination of this Agreement with the consent of the County, the Licensee 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 the Licensee's personal property is completed. Any of the Licensee's property remaining connected to the Network without the consent of the County may be removed by the County at the Licensee's sole cost and expense. Notwithstanding the affixation of the Facilities, title to the Facilities shall remain with the County. Likewise, laterals, equipment and facilities owned by the Licensee shall continue to be titled to the Licensee. The County may assign, mortgage, and otherwise grant security interests in the Facilities to any party holding a mortgage or security interest in the same.

Section 5 - Payment and Billing

5.1 *Connection Fee.* The Licensee shall be responsible for the cost of all construction required to connect or otherwise extend the Network to the specified Demarcation Point(s) as set forth on Exhibit A.

5.2 *Dark Fiber License Fee.* Beginning on the Acceptance Date, the Licensee shall be assessed and shall pay the County a monthly license fee for use of the Dark Fiber, due in advance on [a monthly][a quarterly][a semi-annual] [an annual] basis, as previously quoted to the Licensee by the County and set forth in Exhibit A. The first installment of the license fee shall be paid in full, in advance on the date of execution of the Agreement.

5.3 *Undue Emergency Repair Fee.* The Licensee may be assessed Undue Emergency Repair Fees, in accordance with the provisions of Section 3.6.3.

5.4 *Invoice and Payment.* The Licensee shall remit payments required under this Agreement within thirty (30) days of receipt of an invoice for the applicable fee(s).

5.5 *Payment Address:* Unless the County provides written notice to the Licensee of a new payment address, the Licensee shall send all payments made under this Agreement to:

Baltimore County Office of Budget and Finance
Billing Division
400 Washington Avenue
Towson, Maryland 21204

5.6 *Payment Disputes.* If a portion of any invoice is disputed, the undisputed amount shall be payable when due. Upon resolution of any billing dispute and determination of the correct amount that is due, the remainder, if any, shall become due and payable within thirty (30) days. If within a reasonable period of time, not to exceed sixty (60) days from the date of the disputed invoice, the Parties cannot determine or agree upon the correct amount of the disputed charge, either Party may exercise all remedies available at law or equity.

5.7 Any required fees, including, but not limited to advertising, which may be required by the County are the sole responsibility of the Licensee. Failure to pay any fees required to be paid hereunder, when and as due, shall constitute an event of default.

Section 6 - Force Majeure

6.1 If, because of a Force Majeure event, either Party is unable in whole or in part to carry out any of its material obligations under this Agreement (the “Restricted Party”) and promptly gives notice to the other Party of such Force Majeure, then the material obligations of the Restricted Party shall be suspended to the extent and for the period made reasonably necessary by such Force Majeure; provided, however, that the Restricted Party proceeds with all reasonable dispatch and employs such diligence as is reasonably necessary to remedy the event causing such Force Majeure. If the circumstances of the Force Majeure prevent the Licensee from using the Dark Fiber for its intended purpose, a prorated credit for the License Fee and the Maintenance Fee shall be due the Licensee for the duration of the event. Should the condition of Force Majeure continue for a period of thirty (30) days following notice by the Restricted Party of the event, then the other Party, upon thirty (30) days’ written notice to the Restricted Party, may terminate this Agreement without liability to Restricted Party.

Section 7 – Liability, Insurance, Indemnification, Limitation of Remedies.

7.1 *Limitation of Liability.* Notwithstanding anything in this Agreement to the contrary, the County shall not have any liability, whether based on contract, warranty, tort, strict liability, contribution, indemnity or otherwise, for indirect, incidental, consequential, special, exemplary, or punitive damages of any other kind or nature whatsoever, resulting from the performance, nonperformance or breach of this Agreement. The County shall not be liable for damage to the Licensee’s facilities, equipment, property or data caused as a result of the normal or foreseeable operations of the County, excepting if caused by the gross negligence or willful malice of the County. The County makes no warranty, express or implied, regarding the quality of the signal transmitted by the Licensee over the Dark Fiber. The County provides the Dark Fiber on an AS-IS, WHERE-IS basis with no warranty of merchantability, warranty of fitness for a particular purpose, or implied warranties of any kind but for any specific express warranties set forth in this Agreement. Neither Party waives immunities or defenses available at law or in equity. The County’s liability under this Agreement is limited to the extent allowable under Section §10-5-102 of the Baltimore County Code, as amended, by the Local Government Tort Claims Act and the limitations set forth in the County’s Self Insurance Fund.

7.2. *Indemnification and Licensee’s Liability.* To the extent permitted by law, the Licensee shall indemnify and hold the County and its officials, employees and 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 Licensee, 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 Licensee shall not interfere with any other licensee or the County’s Network and shall pay for any costs, damages, claims or expenses caused to a third party by the Licensee’s actions. The County shall not, however, be liable to the Licensee for any interruption to its services or interference with the operation of the system, unless such interruption and/or

interference arises from the gross negligence or willful misconduct of the County or its employees, agents, or representatives.

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

a. In enforcing obligations of the Licensee under the terms and provisions of this Agreement;

b. In obtaining possession of the Facilities as the result of any default by the Licensee or otherwise;

c. In defending any suit or proceeding brought against the County for violation by the Licensee of any law, ordinance, rule or regulation, related in any way to this Agreement; and

d. In defending any action or suit against the County for damages because of any failure, neglect or default on the part of the Licensee.

7.3. *Insurance.* The Licensee 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 Licensee's use of the Network and the County Facilities in accordance with the performance of this Agreement. The Licensee shall maintain a comprehensive general liability insurance policy, which names the County as an additional insured, in the amount of at least Five Million Dollars (\$5,000,000.00) combined single limit for personal injury and property damage liability per occurrence in the aggregate. The County may require evidence of additional insurance including builder's risk and/or errors and omissions coverage for any construction or engineering work performed by the Licensee on County property, Facilities or the Network, naming the County as an additional insured and certificate holder. The County may also require proof of payment and performance bonds in an amount equaling 100% of any construction cost undertaken by the Licensee or its contractors pursuant to this Agreement on County property or connecting to the Network and/or Facilities, particularly at Demarcation Points.

Section 8 – Miscellaneous Provisions

8.1 *Binding Effect.* This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns. For these purposes, the term "successor" shall include, without limitation, any entity or other person to whom the County transfers its fiber communication operations.

8.2 *Assignment.* This Agreement shall be binding upon the parties hereto and their successors and assigns. The County reserves the right upon thirty (30) days' written notification to the Licensee to transfer this Agreement, and/or management thereof to a third-party vendor selected by the County to serve as the County's agent in the management of dark fiber strands available on the Network to be leased. The Licensee may assign or transfer its rights and obligations arising under this Agreement to any entity legally authorized to operate a communications system provided the Licensee is not in default, and only upon the written consent of the County with the

execution of an assignment agreement approved by the County, provided: (a) the use of the Network is not altered or modified, (b) the assignee shall ratify and affirm the terms of this Agreement in writing, and (c) the Licensee 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. This Agreement shall be incorporated by reference into any assignment. Any assignee shall comply with all of the provisions of this Agreement.

8.3 *Entire Agreement.* This Agreement contains a complete statement of all of the arrangements and understandings between the Parties with respect to the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. Any modifications to this Agreement shall be in writing and executed in the same manner as this Agreement.

8.5 *Headings.* The paragraph headings appearing in this Agreement are for convenience only and shall not affect the meaning or interpretation of the Agreement.

8.6 *Waiver.* The waiver by either Party of any default by the other Party hereunder, or the failure of either Party to, at any time, require strict compliance with any of the terms and conditions of this Agreement, shall not be deemed a waiver by such party of any default of the other or a waiver by any such Party of its right to strict compliance by the other Party.

8.7 *Severability.* If any provision of this Agreement is found contrary to law or unenforceable by any court, the remaining provisions shall be severable and enforceable in accordance with their terms, unless such unlawful or unenforceable provision is material to the transactions contemplated hereby, in which case the Parties agree to replace such unlawful or unenforceable provision with a valid and enforceable provision that will achieve, to the extent possible, the economic, business, and other purposes of the unlawful or unenforceable provision.

8.8 *Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland in Baltimore County, Maryland, without reference to that State's choice or law or conflict of laws rules. Should suit be filed for any reason arising out of this Agreement, the Parties agree that venue for such action shall lie in the State courts of competent jurisdiction sitting in Baltimore County, Maryland, or, only in the event of a claim involving a question of the interpretation or enforcement of rights or obligations, if any, arising under a federal statute or regulation, the US District Court for the District of Maryland. This subsection shall survive the termination of this Agreement for any reason.

8.9 *Attorneys' Fees.* The parties expressly agree that, except as provided in Section 7.2, each Party will bear its own attorneys' fees and court costs incurred in connection with this Agreement.

8.10 *Remove/Relocate Network.* The County shall have the power at any time to remove or relocate any portion of the Network, including any pole, conduit, wire, cable or structure, without incurring any liability for such removal or relocation. In the event such removal or relocation

becomes necessary, the County shall take all commercially reasonable efforts to minimize the impact on the Licensee.

8.11 *Emergency or Disaster.* If at any time, in case of emergency or disaster, it shall become necessary in the reasonable judgment of the County to cut or move any of the Network, the County shall have the right to do so without incurring any liability, provided, however, that the County shall restore any portion of the Network that has been cut or removed as soon as commercially practicable and provided that the Licensee shall be relieved of any duty to pay any fees otherwise required under this Agreement for any period during which the licensed Facilities are unusable. Additionally, the Licensee shall have the rights specified in Section 3.3.2 in the event such emergency or disaster results in an Outage.

8.12 *Network Abandonment.* If the County desires at any time to abandon any affected portion of the Network in the Project, and such abandonment shall make the licensed Facilities unusable, it shall give the Licensee notice in writing to that effect promptly after it has made a determination to abandon any such Facilities, but in no event less than one hundred and eighty (180) days prior to the date on which it intends to abandon such Facility. If agreed to by both Parties, and the Licensee has need for such Facilities to remain in place, the County may, at its sole discretion, transfer of ownership of the Facilities to the Licensee for a mutually agreed cost, and the Licensee shall save harmless the County from obligation, liability, damages, costs, expenses or charges incurred thereafter. It is not the intent of this provision to place an obligation upon the County to transfer/sell abandoned Facilities to the Licensee.

8.13 *Fair Market Value for Services.* The Parties acknowledge and agree that the fees and charges described in this Agreement represent the fair market value for the goods or services being licensed or rendered to the Licensee by the County hereunder and have been bargained for by arm's-length bargaining.

8.14 *No Common Carrier.* The Parties agree that the County is not a common carrier for the purposes of this Agreement.

8.15 *Political Disclosure.* The Licensee shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, licenses, 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 license 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 license 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.

8.16 *Compliance with Laws.*

The Licensee hereby represents and warrants that:

a. It is a local government entity of the State of Maryland and/or it is a [corporation][limited liability company][limited partnership][_____] 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 County, 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.

8.17 *Representations.* Each Party to this Agreement represents and warrants to the other that it has full rights, power, and authority to enter into this Agreement, and that the person executing this Agreement on behalf of such Party has the authority to do so.

8.18 *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.

8.19 *Relationship of the Parties.* The relationship between the County and the Licensee 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 the Licensee 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.

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

Section 9 – Further Limitations

9.1 *Sole Use.* The specified licensed Dark Fibers shall be for the sole use of the Licensee and may neither be resold, sub-licensed, nor otherwise conveyed by the Licensee to any unaffiliated third party or entity.

9.2 *Governmental Functions Not Affected.* Neither the County's entering into this Agreement, nor any provision hereof, shall be deemed to conflict with, limit or preclude the County's enforcement of its laws, regulations, and policies, or the County's exercise of its government functions.

Section 10 – Special Conditions

10.1 *Permitting.* The Licensee shall be responsible for securing and maintaining, at the Licensee's expense, all applicable permits and consents, including easements or other permissions from property owners, relating to its use of the Dark Fiber. The Licensee shall comply with all applicable laws, rules and regulations at all times during the term of this Agreement. Upon request, the Licensee shall provide the County evidence of its compliance with applicable legal requirements and its possession of any necessary consents or permissions.

10.2 *Federal Interest in County's Fiber Assets.* The Licensee acknowledges that portions of the Network were constructed as part of the BTOP grant award, which contains various stipulations and federal requirements. NTIA holds a federal security in certain assets including but not limited to fiber, conduit and electronics. The Licensee acknowledges that the federal government retains an undivided equitable reversionary Federal Interest in physical and intangible assets that are directly or indirectly acquired or improved with BTOP funds (the "Federal Interest"). This may include the Network. As a result, any rights granted by this Agreement are subject to such Federal Interest. Further information regarding the federal security interest can be provided upon request.

Section 11 – Limited Use Right of Way

In the event any of the Licensee's equipment or facilities needs to be located within a County right of way, the Licensee shall make application to the County for the purpose of installing, maintaining and operating such equipment or facilities therein and use incidental thereto. The County makes no assurances that rights-of-way belonging to other agencies or individuals will be available for this purpose.

All equipment or facilities to be installed in the County rights-of-way shall be installed in accordance with plans and specifications which have previously been submitted to and approved by the County Department of Public Works – Highways Division. All work under this Agreement shall be subject to the County's prior written approval prior to commencing installation, alteration or construction activities. The Licensee shall give the County reasonable prior written notice before beginning installation, alteration or construction activities. The County agrees to use good faith 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 Licensee as are reasonably necessary to protect the County's responsibility for the safe, smooth, continuous operation of County-owned roads.

At the end of the Term, or earlier termination of this Agreement, the Licensee shall remove its equipment or facilities from the County right of way, and shall restore the area to its original condition.

Section 12 - Notice

Any notices required to be given by the terms of this Agreement shall be deemed sufficiently given when in writing and (a) delivered by hand, (b) mailed, postage prepaid certified delivery, or (iii) e-mailed, to the addresses indicated below. E-mail notification will only be considered sufficient if the e-mail delivery is confirmed with a response from the receiver. Either Party may change the name of the person receiving notices and the address at which notices are received by so advising the other Party in writing.

A. If to the County:

For Contractual Notice:

Baltimore County Office of Information Technology
400 Washington Avenue, Room 33
Towson, MD 21204
Attn: Fiber Program Manager, Scott Stickline
410- 832-8570 (fax)
BCON@baltimorecountymd.gov

With a copy to:

Baltimore County Office of Law
400 Washington Avenue, 2nd Floor
Towson, MD 21204
Attn: County Attorney
(410) 296-0931 (fax)

For Emergency maintenance or restoration 24/7:

Network Operations Center Telephone Number, 410.887.8200

For Routine Maintenance and general inquiries:

Fiber Program Manager, Scott Stickline, 410-887-3443
BCON@baltimorecountymd.gov

B. If to the Licensee:

For Contractual Notice:

With a Copy To:

Section 13 – Liability for Loss of Data

In the event of loss of any data or records necessary for the performance of the Agreement, the Licensee shall be responsible, irrespective of cost to the Licensee, for recreating such lost data or records. In no event shall the County be liable for the Licensee’s loss of data.

Section 14 – Non-Discrimination in Employment

The Licensee agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, gender identity, 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; (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, and (d) to comply with Section 20-606(a) of the State Government Article of the Annotated Code of Maryland, as amended.

Section 15 – 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 Party’s rights under any termination clause in the Agreement. The effect of termination of the Agreement hereunder will be to discharge both the Licensee and the County from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The County or the Licensee shall notify the other Party as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

WITNESS:

WITNESS:

REVIEWED FOR APPROVAL:

Robert Stradling, Director
Office of Information Technology

REVIEWED FOR APPROVAL:

Amy Grossi
Office of Real Estate Compliance

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

*(Subject to execution by the duly authorized County
Administrative Official and County Council, if indicated)

Assistant County Attorney

*Approval of Form and Legal Sufficiency does not convey
approval or disapproval of the substantive nature of this
transaction. Approval is based upon typeset document.
All modifications require re-approval

LICENSEE:

By: _____

Name:
Title:

BALTIMORE COUNTY, MARYLAND

By: _____

Fred Homan
Administrative Officer

REVIEWED FOR APPROVAL:

Ed Adams, Director
Department of Public Works

REVIEWED FOR APPROVAL:

Keith Dorsey, Director
Office of Budget and Finance

EXHIBIT A

Dark Fiber Description

1. **Demarcation Points.** The following table describes the Demarcation Points between which the County is providing Dark Fiber to the Licensee. The Dark Fiber route shall provide fiber optic continuity between the Starting and Ending Demarcation Points.

Strand Qty	Assigned strands	Starting Demarcation Point	Ending Demarcation Point	Route Length (miles)
TBD	TBD	TBD	TBD	TBD

License Fee. During the Initial term, the License Fee shall be:

\$TBD per strand, per month, per mile.

In any Renewal Term, the County may change the License Fee by providing written notice of the change to the Licensee at least one hundred eighty (180) days prior to the expiration of the current term. The County reserves the right, but shall not be obligated, to obtain independent third party valuation of the dark fiber to assist in accurate determination of current market pricing. Such change in the License Fee shall become effective upon the first day of the subsequent Renewal Term.

2. **Connection Fee.** The County shall charge a connection fee, which is intended to cover any initial expense incurred by the County directly related to offering Dark Fiber for this License. Such expenses could include, but are not limited to, splicing, engineering, project coordination, and permitting.

One Time, non-recurring fee in the amount of: \$2,500.00

3. **Route.** The route(s) of the Dark Fiber described in the Demarcation Points table above shall follow the path(s) as generally depicted on the Route Map in Exhibit B attached hereto.
4. **Delivery Date.** The County shall deliver to the Licensee the Dark Fiber described in this Exhibit A, together with test results required under Section 3.5 of this Agreement, on or before thirty (30) days after the execution of the Agreement by the Parties hereto.

EXHIBIT B

The Dark Fiber route depicted below is intended solely for reference purposes. This depiction is not meant, in any way, to be considered an as-built, or technical drawing of the Dark Fiber route.