

**MASTER EXCESS FIBER LEASE AGREEMENT
BY AND BETWEEN
SOUTH CAROLINA PUBLIC SERVICE AUTHORITY
AND
XYZ ENTITY**

This MASTER EXCESS FIBER AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _____, 202__ ("Effective Date"), between **South Carolina Public Service Authority**, a body corporate and politic created by the laws of the State of South Carolina, with its principal place of business at 1 Riverwood Drive, Moncks Corner, South Carolina (hereinafter referred to as "Lessor" or "Authority") and **[COMMUNICATIONS SERVICE PROVIDER]**, a **[TYPE OF ENTITY]** duly organized and existing under the laws of the state of [INSERT STATE] with its principal place of business at **[ADDRESS]** (hereinafter referred to as "Lessee"). Authority and Lessee may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

WHEREAS Authority operates an electric transmission system in certain portions of South Carolina;

WHEREAS, Authority uses a fiber-optic network (the "Authority Network") for internal communications in support of the provision of electric services;

WHEREAS, the South Carolina General Assembly granted Authority the authority to, among other things, lease Excess Fiber to Unaffiliated Communications Service Providers for the provision of Broadband Services;

WHEREAS, Authority has Excess Fiber available for lease and is willing to lease that Excess Fiber to facilitate the delivery of widespread Broadband Services within South Carolina;

WHEREAS, Lessee is an Unaffiliated Communications Service provider;

WHEREAS, Lessee is acquainted with and trained in the conditions and work to be performed under this Agreement;

WHEREAS the Parties have undertaken certain studies and Make Ready Work for the lease of the Excess Fiber;

WHEREAS, Lessee desires to lease certain Excess Fiber from Authority to use in conjunction with Lessee's Equipment and Santee Coper desires to lease certain Excess Fiber to Lessee;

NOW THEREFORE, in consideration of the foregoing promises, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

AGREEMENT

ARTICLE 1 – DEFINITIONS

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a section of this Agreement or in the Technical Requirements. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory, and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning. Capitalized terms not listed in this Article 1 shall have the meaning given them in the Technical Requirements.

- 1.1. “Affiliate” means, when used in relation to Lessee, another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Lessee.
- 1.2. “Authority Network” means Authority’s fiber-optic network used for its internal communications in support of its provision of electric services and other installed Excess Fiber.
- 1.3. “Authority’s Transmission System” means all personal property and real property owned or controlled by Authority including Poles, conduit system, right of way and associated access, and related facilities.
- 1.4. “Bankruptcy Proceeding” means with respect to a Person, such Person (i) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors, (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and solely with respect to any such proceeding or petition that is instituted or presented by a party other than the Party with respect to which such petition or proceeding relates is not dismissed within fifteen (15) days after the filing thereof, (iv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger), (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets, (vi) causes or is subject to any event with respect to it, which, under Applicable Law, has an analogous effect to any of the events specified in clauses (i) through (v), or (vii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- 1.5. “Broadband Accessibility Act of 2020” (the “Broadband Act”)” means Act 175 of 2020 enacted on September 29, 2020 which includes but is not limited to South Carolina Code of Laws § 58-9-3000 et seq. and § 58-31-230.
- 1.6. “Broadband Services” has the meaning ascribed to it in the Broadband Act.
- 1.7. “Excess Fiber” means fiber optic capacity owned or controlled by Authority, constructed to

provide internal communications in support of the provision of electric services, that is unused, unlit, available, and in excess of the capacity needed by Authority, including its reserve margins, for its internal communications in furtherance of its provision of electric service. Excess Fiber may also be referred to as “Dark Fiber” and the two terms may be used interchangeably.

- 1.8. “Day(s)” means calendar days unless expressly provided for by otherwise.
- 1.9. “Demarcation Points” means the point of connection (PoC) that defines where ownership and maintenance obligations begin and end as and as specifically defined in the Technical Requirements.
- 1.10. “Equipment” means communications and networking electronics, facilities, and other equipment owned or leased from third parties by Lessee and used in connection with lighting the Excess Fiber and providing the Lessee Services. Equipment does not include the Excess Fiber or any equipment, facilities, or property owned or leased from third parties by Authority.
- 1.11. “Effective Date” has the meaning ascribed in the preamble.
- 1.12. “Escorted Access” means Lessee accompaniment by an Authority representative.
- 1.13. “Evaluation Period” means the period of ten (10) days after Lessee receives the Fiber Test Results Acceptance Package.
- 1.14. “Facilities” means conduit, innerduct, risers, collocation equipment and space, fiber termination equipment, splice cans, interconnection equipment, racks, or other equipment associated with Leased Fiber.
- 1.15. “Fiber Test Results” means the results of the acceptance tests conducted by Authority on the Leased Fiber.
- 1.16. “In Service Date” means the date Lessee Accepts delivery of the Leased Fiber.
- 1.17. “Law” means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction. For the avoidance of doubt the Broadband Act is a Law as defined herein.
- 1.18. “Lease” means the Lessee’s rights and privileges to use certain Excess Fiber(s) and Escorted Access to Demarcation Points, Facilities, and the associated ROW over, across, and on any properties legally utilized by Authority for ingress and egress to and from the ROW.
- 1.19. “Leased Fiber” means Excess Fiber delivered by Authority and accepted by Lessee in accordance with the terms of this Agreement and further described in the Technical Requirements and Product Order(s) along with the use of the Facilities and Demarcation Points which Lessee is entitled to use pursuant to this Agreement.
- 1.20. “Lessee Services” means Broadband Services, provided in accordance with the Broadband Act which Lessee may provide to third parties using the Leased Fiber and Equipment.

- 1.21. “Make Ready Work” means the modification or replacement of Authority’s Fiber or Facilities or of the lines or equipment on the Authority’s Fiber or Facilities to accommodate the Lease.
- 1.22. “Product Order” means an order for (i) Leased Fibers, (ii) Make Ready Work, or (iii) other services, executed from time to time by both Parties.
- 1.23. “Person” means any natural person, corporation, partnership, limited liability company, firm, association, trust, governmental authority, or any other entity, whether acting in an individual, fiduciary or other capacity.
- 1.24. “Scheduled Maintenance” means planned outages that may occur for the purpose of maintaining, repairing, or enhancing Authority’s Transmission System or Network or for Lessee defined maintenance work.
- 1.25. “Right of Way (ROW)” means electric easements and rights-of-way owned or utilized by Authority to access its facilities.
- 1.26. “Technical Requirements” means Authority’s Technical Requirements current as of the date of this agreement, and as amended from time to time. Among other things, the Technical Requirements include the process, design and technical specifications, maintenance, and construction and safety requirements for Leased Fiber.
- 1.27. “Unaffiliated Communications Service Provider” has the meaning ascribed to it under the Broadband Act.

ARTICLE 2 – LEASE

- 2.1. Grant of Lease. Authority hereby grants to Lessee for the Lease Term, and Lessee hereby accepts from Authority, the right and privilege (the “Lease”) to use certain Excess Fiber(s), Demarcation Points, Facilities, and the right of Escorted Access to any associated ROW and the right of Escorted Access, over, across, and on any properties legally utilized by Authority for ingress and egress to and from the ROW for the purposes agreed upon herein, on a specific portion of Authority’s Transmission System, as further described in one or more Product Orders. Nothing in this Agreement is intended to require Authority or Lessee to enter into any Product Order. Lessee shall not assign, transfer, sublet or otherwise alienate any of the rights or privileges herein granted without the written approval of the Authority.
- 2.2. Limitations. This Agreement is for the lease and use of the Leased Fiber and Facilities only, subject to the terms and conditions herein. Authority is not transferring or granting to Lessee any other interest or estate in the Leased Fiber, ROW, Authority Network, Authority Transmission System, attachment points, private property access, conduit or any other property interest, including any fee, easement, or any franchise rights, except as expressly set forth herein. This Agreement is not a contract for electric service. This is also not a franchise or retail agreement for providing cable, video, internet, broadband services, or telecommunication services. Nothing in this Agreement will be construed to require Authority to engage in any activity that would result in its becoming a Communications Service Provider, Broadband Service Provider, telecommunications service provider, cable

service provider, internet service provider, telephone company, communications carrier, or any other kind of common carrier, or any kind of utility other than a state owned electric and water utility.

- 2.3. Title. The Authority makes no warranty as to its title or rights to any of the property herein referred to and only grants the rights to set out in this instrument insofar as the Authority's rights and titles extend. Nothing herein contained shall be construed as a representation or guarantee by the Authority to the Lessee of permission from municipal or other public authorities or property owners for the exercise of any of the rights herein described or referred to.
- 2.4. No Exclusivity. Nothing in this Agreement is intended to limit Authority's right of use of, or right to lease or license to others Authority's utility poles, colocation structures, attachment points (other than the Demarcation Points), ROW, conduit, or the remaining Excess Fiber not leased in this Agreement.
- 2.5. Parties' Respective Ownership.
 - 2.5.1. Ownership of Excess Fiber. As between the Parties, Authority will remain the legal owner of the Leased Fiber. Nothing in this Agreement will be interpreted to give or convey to Lessee any ownership property right, or any title or interest of ownership in such Leased Fiber, even if it may be or become attached to or embedded in realty. Further, Lessee will not have any interest in, or the right to occupy or otherwise use, any of the Excess Fiber in the Authority Network other than the Leased Fiber.
 - 2.5.2. Ownership of Equipment. As between the Parties, Lessee is solely responsible for providing Equipment (if any) to light the Leased Fiber. As between the Parties, all ownership or other properly interest rights and titles in and to any Equipment remain in Lessee, even if it may be or become attached to or embedded in realty. Lessee is responsible for installing, maintaining, and replacing the Equipment. Authority will not access, use, copy, transfer, reverse-engineer modify, or dispose of any Equipment or any portion thereof except as expressly permitted by this Agreement.
 - 2.5.3. Ownership of Intellectual Property. All ownership rights title, and intellectual property rights in and to any Equipment or Lessee Services remain in Lessee or Lessee's licensors. All ownership rights, title, and intellectual property rights in and to the Authority Network, including without limitation the Excess Fiber, remain in Authority.

ARTICLE 3 – TERM

- 3.1. Effective Date of Agreement. This Agreement shall be binding on the Parties beginning on the Effective Date.
- 3.2. Term of Lease. The term of any Lease under this Agreement (the “Lease Term”) will begin on the In-Service Date of the applicable Leased Fiber and shall continue for a term of **[one (1) – twenty (20) years]** (the “Initial Term”), unless sooner terminated under this Agreement.
- 3.3. Extension. Provided that Lessee is not or has not been in default of any material terms of this

Agreement (including but not limited to payment of all fees and charges), and subject to Authority's approval, Lessee may have the option to extend the Lease Term for an additional two terms each to be no more than five (5) years (the "Renewal Term") on Authority's then current rates and terms and conditions (as of the date of the extension notice), by providing written notice to Authority of its intent to extend no later than sixty (60) days prior to the expiration of the Lease Term. Should Authority determine that the Leased Fiber is needed for the use of the electric system, Authority will provide Lessee with notice that the extension will not be granted within thirty (30) days of receipt of the extension notice. Authority may provide Lessee notice of its intent not to accept renewal prior to Lessee's renewal notice.

ARTICLE 4 – ACCESS AND USE OF LEASED FIBER

4.1. Lessee's Rights. During the Lease Term and subject to and in accordance with the terms and conditions of this Agreement:

4.1.1. Use. Lessee may use the Leased Fiber solely for providing Broadband Services to a third party(ies), in accordance with all applicable Laws. For the avoidance of doubt, such applicable laws shall include but not be limited to the Broadband Act.

4.1.2. Access. Lessee will have right of Escorted Access to the Leased Fiber and associated ROW at the Demarcation Points for the purpose of installing, testing, maintaining, replacing, or removing Equipment. Authority will interconnect the Leased Fiber to Lessee Equipment that is constructed to the Demarcation Points. If the Demarcation Points are physically situated such that appropriately trained personnel cannot reasonably and safely access the Demarcation Points to perform their tasks, Authority will, at Lessee's request, make commercially reasonable efforts promptly to relocate, at Lessee's sole expense, such Demarcation Points to enable such access by Lessee or Lessee's contractors. For avoidance of doubt, nothing in this Article 4 will be construed to grant any rights to Lessee to attach Equipment to Authority's utility poles, or to house Equipment in Authority's colocation structures. Lessee may have Escorted Access to the Leased Fiber and Facilities only at the Demarcation Points. Such access shall be subject to any encroachment requirements provided for by the Technical Requirements.

4.2. Nothing in this Agreement is intended to require the Authority to enhance or modify its Transmission System to meet the existing or future needs of the Lessee.

4.3. Authority's Use. Authority acknowledges that it has no right to use the Leased Fiber (except Demarcation Points) during the Lease Term except as provided for in Article 7.5 in emergency circumstances

4.4. No Interference.

4.4.1. Notwithstanding any provision of this Agreement, Authority reserves the right to act in the best interest of its primary function as an electrical utility provider. Authority has the right to use the Authority Network (other than the Leased Fiber) free from any interferences,

impairment, or disruption caused by Lessee's use of the Leased Fiber ("Lessee Interference"). Lessee will not use the Leased Fiber in a way that causes Lessee Interference with the use of the electric system or Authority Network (other than the Leased Fiber) by Authority. If Authority experiences Lessee Interference, Authority will notify Lessee and Lessee will promptly abate such Lessee Interference. In the event that Lessee Interference causes the Authority Network (other than the Leased Excess Fiber) to be unable to carry Authority's or other lessees' data traffic, and Lessee fails to abate such Lessee Interference within eight (8) hours of receiving notice from Authority, then Authority may immediately seek to enforce its rights under this Article through specific performance, preliminary injunction, or a temporary restraining order. To the extent the unabated interference is with the Authority's Network, Authority may cut out the Leased Fiber.

4.4.2. Notwithstanding any provision of this Agreement, Authority reserves the right to act in the best interest of its primary function as an electrical utility provider. As such, electrical utility events may dictate emergency Excess Fiber outages, interferences, impairments, or disruptions. Authority will work with Lessee to minimize any such interferences, but the best interest of the integrity of the Transmission and electric system and Authority Network will take precedence. Subject to the best interest of the electric system and Authority Network, Lessee has the right to use the Leased Fiber free from any interferences, impairment, or disruption caused by any other lessee's use of Excess Fiber ("Third Party Interference"). If Lessee experiences Third Party Interference, Lessee will notify Authority and Authority will work to promptly abate such Third-Party Interference. In the event that Third Party Interference causes an Outage and Authority fails to abate such Authority Interference within forty-eight (48) hours of receiving notice from Lessee, then Lessee may seek to enforce its rights under this Article through specific performance, preliminary injunction, or a temporary restraining order. For avoidance of doubt, any outage resulting from Authority's performance of maintenance and relocation activities pursuant to this Agreement and pursuant to the terms of the Technical Requirements will not constitute Authority Interference.

4.5. No Encumbrances. Lessee shall not create or grant any lien, encumbrance, security interest or other property interest against any of the Leased Fiber or Facilities. If a Party causes a mechanic's, materialman's, or vendor's lien, or any similar lien to become attached, in the case of Lessee to the Leased Fiber or Facilities, and in the case of Authority to the Equipment, then such Party will, upon becoming aware of such lien, promptly notify the other Party in writing, and promptly take all steps needed to cause such lien to be discharged and released of record without cost to the other Party. The responsible Party shall indemnify the other against all costs and expenses (including reasonable attorney fees) reasonably incurred in discharging and releasing such lien. If any such lien is not so discharged and released within ninety (90) days after notice thereof by the responsible Party, then one Party may pay or secure the release or discharge thereof at the expense of the responsible Party. Nothing in this Agreement shall preclude either Party from contesting any lien described above or the contract or action upon which the same arose after the same shall have been bonded or otherwise released of record, as provided above.

- 4.6. Limitation on Inspection of Traffic. Authority will not, either directly or indirectly, (a) access or use, for itself or on behalf of any other Person, any content or traffic transmitted over the Leased Fiber by Lessee or by end users of the Lessee Services, or (b) allow any Person, other than governmental authorities pursuant to a validly issued subpoena or similar order, to access, directly or indirectly, any content or traffic transmitted over Leased Fiber by Lessee or by End Users of the Lessee Services. Lessee will not, either directly or indirectly, (a) access or use, for itself or on behalf of any other Person, any content or traffic transmitted over the Authority Network (other than over the Leased Fiber) by Authority or any third party, or (b) allow any Person, other than governmental authorities pursuant to a validly issued subpoena or similar order, to access, directly or indirectly, any content or traffic transmitted over Authority Network (other than over the Leased Fiber) by Authority or any third party.
- 4.7. Improvements to Leased Fiber. At any point after Acceptance by Lessee of Leased Fiber, Lessee may request that Authority take additional actions to improve the quality or performance of the Leased Fibers. Authority will make commercially reasonable efforts to make personnel available to engage in good faith discussions with Lessee to explore ways of accommodating such requests in a timely fashion and without disrupting third-party Lessees' use of the Leased Fiber. If Authority agrees to take such additional actions, Authority will notify third-party lessees. Lessee will reimburse Authority for the costs it incurs to make the improvements to the Leased Fiber. For avoidance of doubt, no such additional actions contemplated by this Article 4.7 will change the amounts of Lease fees paid under Article 5.
- 4.8. As Built Drawings. Authority will not share detailed as-built drawings of its Network or Transmission System with its Lessees, however an as-built connectivity drawing(s) of Lessee's route will be provided by Lessee as outlined in the Technical Requirements.

ARTICLE 5 – FEES, CHARGES, & PAYMENT TERMS

- 5.1. Make Ready Costs. Lessee must be responsible for all costs associated with the Leased Fiber. Should Transmission System additions or modifications be necessary for Lessee's use of the Leased Fiber, Lessee must pay for all such additions or modifications. Nothing in this Agreement is intended to require the Authority to enhance or modify its Transmission System to meet the existing or future needs of the Lessee.
- 5.2. Rate. Lessee will pay to the Authority the charge specified in the Authority's Excess Fiber Lease Schedule in effect at the Effective Date (the "Lease Schedule") for each fiber strand per mile in addition to any other applicable fees set forth herein or the Lease Schedule. The Authority's Excess Fiber Lease Schedule EF-21 and any successor schedules are hereby incorporated by reference into this Agreement. Beginning in the second (2nd) year of the Initial Term, the price will be adjusted for operations and maintenance inflation (the "O&M Adjustment"). A schedule of the O&M Adjustment is attached hereto as Exhibit A. During the Initial Term and any Renewal Terms, the Lease Schedule may be adjusted every five (5) years to reflect prevailing costs of service and market conditions and such successor schedule will then become effective under this Agreement.
- 5.3. Lease Payment. The Authority will invoice Lessee for Leased Fiber beginning with the In-Service Date. Lessee may elect to be invoiced either, annually or monthly and Authority will invoice

Lessee for charges on that basis. Invoices are payable upon receipt and are past due after thirty (30) days.

5.4. Rate for Renewal Term(s). At the end of the Initial Term, Lessee may elect for a Renewal Term as set forth in Article 3.3. The Lease Schedule for each Renewal Term will be the Authority's Lease Schedule which is in effect at the beginning of each Renewal Term.

5.5. Authority will send invoices to Lessee at the following address:

5.6. When the Acceptance Date occurs on a day other than the first day of the billing increment, or the Lease terminates on a day other than the last day of the billing increment, Authority will prorate the rental fees to determine the Lease payment.

5.7. Late Payments. If Lessee does not pay the lease payment when due, Authority may assess a late fee of one percent (1%) per month (not to exceed the maximum rate allowed under applicable law) on all amounts payable pursuant to this Agreement. Lessee will reimburse Authority for any fees incurred by Authority in accommodating the late payment.

5.8. Taxes. Amounts for "payments in lieu of taxes," as prescribed by the Code of Laws of South Carolina §58-31-80, §58-31-90, and §58-31-100, as amended, have been included in the establishment of the Leased Fiber rates. The charges computed at the applicable rate also shall be subject to all other taxes, payments in lieu of taxes, franchise fees, assessments, and surcharges imposed by any governmental authority. In addition, South Carolina Sales Tax, if any, will be added to each bill unless the Customer has furnished the Authority evidence of specific exemption secured by the Customer from the South Carolina Tax Commission or its successor. Lessee shall be solely responsible for paying any and all taxes, franchise fee or assessments by any governmental entity related to the Leased Fiber or Facilities, if any, when due. Notice is hereby given that the property interest vested in Lessee may create a possessory interest which entities may deem subject to property taxation and Lessee may be subject to payment of property taxes therefore. Lessee shall be solely responsible for opposing, protesting, appealing or challenging any tax or franchise fee imposed or asserted by any entity.

5.9. Adequate Assurance.

5.9.1. Within seven (7) business days of the Effective Date and throughout the Lease Term, Lessee shall provide a cash deposit equal to one (1) year of Lease payments (the "Security").

5.9.2. After one (1) year of non-default by Lessee, the initial Security may be decreased by half and the amount equal to six (6) months of Lease payments may be returned to Lessee. Upon the termination of the Agreement, except as provided for herein, the remainder of the

deposit will be returned to Lessee.

- 5.9.3. The purpose of the Security is to ensure Lessee's performance of all of its obligations under this Agreement, cover unpredictable costs to serve, and for the payment by Lessee of any claims, liens, taxes, liquidated damages, penalties, and fees due to Authority that arise by reason of this Agreement. Within thirty (30) days after notice to Lessee that Authority has drawn any amount against the Security, Lessee shall take action to replenish the Security to its prior amount.
- 5.9.4. Cancellation or Replacement. Lessee shall provide Authority with thirty (30) days prior written notice of any cancellation or replacement of the Security. Failure to maintain the Security throughout the term of the Agreement shall constitute a material breach of the Agreement retroactive to the date of the notice of cancellation.

ARTICLE 6 – DELIVERY AND ACCEPTANCE

- 6.1. Notice of Excess Fiber for Delivery. Authority will make commercially reasonable efforts to provide written notice to Lessee no later than sixty (60) days prior to the date, on which Authority anticipates delivering Excess Fiber for Acceptance Testing.
- 6.2. Acceptance Testing. On or after the Delivery Date of the Excess Fiber to be leased the Parties will work together to coordinate timely Acceptance Testing to verify the Leased Fiber demonstrates compliance with the Technical Requirements. Authority will provide Lessee at least five (5) business days' prior notice of the date and time of Acceptance Testing and Lessee will work in conjunction with Authority to perform the Acceptance Testing.
- 6.3. Lessee's Determination. Lessee will not have use of the Excess Fiber until it's acceptance. If, with respect to any Excess Fiber delivered for Acceptance Testing, Lessee fails to notify Authority during the Evaluation Period that the Excess Fiber is not in accordance with the Technical Requirements, then the Excess Fiber will be deemed accepted. If Lessee determines that any such Excess Fiber delivered by Authority is not operational in accordance with the Product Order then during the Evaluation Period, Lessee will notify Authority that such results are unacceptable and specify in reasonable detail the portions of such Excess Fiber it believes are out of compliance with the specification. Authority will, at no additional cost to Lessee, take such action as is reasonably necessary to bring the operating standards of such Excess Fiber within the Technical Requirements. After taking corrective action, Authority will notify Lessee thereof and provide Lessee with prior notice of a new round of Acceptance Testing. The cycle described above of testing, taking corrective action, and re-testing will take place as necessary to ensure that the delivered Excess Fiber operates according to the Technical Requirements. During the Evaluation Period, Lessee may request by notice to Authority the opportunity to independently verify the Fiber Test Results, and Authority will provide Lessee with Escorted Access to any intermediate points on the Authority's Network for the purpose of independent verification, where such access is technically feasible and where an interface point can be made available for testing without adversely affecting the condition or operation of the Authority's Network.

- 6.4. Acceptance Date. Lessee will not have use of the Excess Fiber until it's acceptance. The "Acceptance Date" is the earlier of the date Lessee confirms its Acceptance or the last day of the Evaluation Period, provided that the Evaluation Period will be suspended for the duration of any corrective action or retesting pursuant to Article 6.3. However, no Acceptance or deemed Acceptance will constitute a waiver by Lessee of Authority's obligations of maintenance and repair of the Leased Fibers in accordance with the Technical Requirements.

ARTICLE 7 – MAINTENANCE, REPAIR AND OPERATIONS

- 7.1. General Maintenance and Repair of Leased Fiber. Authority will be responsible for maintenance and repair of Leased Fiber or Facilities in accordance with the Technical Requirements. Lessee acknowledges that due to electric safety concerns, only Authority can perform Make Ready Work, maintenance, and repair work on Leased Fiber. IN NO EVENT WILL LESSEE PERSONNEL, TECHNICIANS, OR CONTRACTORS HANDLE OR OTHERWISE COME INTO CONTACT WITH THE FIBER unless previously authorized by Authority in writing. It is specifically understood by Lessee that restoration of service which has been disrupted by any reason whatsoever shall be restored at the Authority's lowest priority level.
- 7.2. Installation and Maintenance of Equipment. Lessee will be responsible for all installation, maintenance, and repair of Equipment in accordance with the Authority's Technical Requirements. Authority will have the right to inspect Lessee's Equipment to ensure compliance with those requirements. Inspections performed under this Article 7 or the failure to do so, shall not operate to impose upon Authority any liability of any kind whatsoever or to relieve Lessee of any responsibility, obligations, or liability, whether assumed under this Agreement or otherwise existing.
- 7.3. Contact Persons or Representatives.
- 7.3.1. Lessee will provide to Authority's Representative, and update as changes occur, the current name, title, telephone number, and cellular telephone number, and paging device number of a representative of Lessee who shall be kept informed of the Authority's maintenance schedules ("Lessee's Representative") as further outlined in the Technical Requirements. If Lessee fails to keep the Authority informed of its current Representative, then the Authority shall not be held liable for any failure to meet any notification or response provisions, resulting directly therefrom.
- 7.3.2. Authority will provide to Lessee's Representative with telephone numbers Lessee may call to report any perceived damage to or failure, interruption or impairment of the Leased Fiber ("Authority's Representative").

7.4. Routine Monitoring.

7.4.1. The Authority shall monitor its Network in accordance with the Technical Requirements. The Authority shall not monitor the Leased Fibers.

7.4.2. Lessee may conduct independent diagnostic testing, fault isolation, repair verification, and end-to-end network testing, as it deems appropriate, on Lessee's side of the Demarcation Points. Lessee may notify the Authority's Representative in writing if it is determined as a result of its independent testing and surveillance programs, review of Authority-provided reports, or otherwise, that any part of the Leased Fiber or Facilities does not conform to the performance standards set forth in the Technical Requirements. The Parties shall confer to expedite trouble resolution and resolve possible differences in interpretation of trouble reports.

7.4.3. Scheduled Maintenance and Outages. Authority will be responsible for maintenance and repair of Leased Fiber and Facilities at its own cost and expense. Authority shall schedule and perform alterations, and routine operations, maintenance and repairs as described in the Technical Requirements. Authority shall identify the time, location, and nature of each planned alteration or maintenance and repair job potentially affecting the Leased Fiber and/or Facilities, and notify Lessee's Representative, via E-mail, at the earliest possible time but not less than five (5) business days' prior to the scheduled time. Lessee will cooperate with Authority to allow ingress and egress for repairs to Leased Fiber and Facilities. Lessee is responsible for all maintenance and repairs on Lessee's side of the Demarcation Points. Where routine monitoring reveals a potential maintenance issue, each Party shall, with regard to their respective Facilities, take reasonable and timely steps to address the issue prior to it affecting the operation or functionality of their respective Facilities. With regard to emergency repairs, see Article 7.5 below. Lessee acknowledges that for safety reasons, normal maintenance and electrical utility line work occurs during daylight and normal business hours.

7.5. Emergency Repairs. Notwithstanding any provision of this Agreement, Authority reserves the right to act in the best interest of its primary function as an electrical utility provider. As such, electrical utility events may dictate emergency Leased Fiber outages. Access to the Authority's Facilities and Transmission System will be controlled by the Authority. Authority will coordinate such maintenance and restoration work with Lessee and Lessee will cooperate with that work. Authority reserves the right to temporarily access and use the Leased Fiber or Facilities during an emergency for the use of the electrical system. Any requirements under the Technical Requirements, including but not limited to Service Credits, will not apply to emergency outages or repairs. If after an emergency outage, should Authority be unable to restore Leased Fiber service within thirty (30) days and it causes harm to Lessee's Services, Lessee may terminate this Agreement.

7.6. Restoration of Service Standards and Priority. Authority's Fiber is principally used for the management of Authority's electrical system, all Fiber used for control of electrical system communications will be restored as the highest priority. In the event of a fiber cut, any splicing of the Leased Fibers by Authority, or Authority's contractors will be done in a systematic manner with Leased Fibers having equal priority with other third-party fibers within the cable.

- 7.7. Emergency Relocations. In addition to any obligation to perform maintenance under the Technical Requirements, Authority shall have the power at any time to remove or relocate any pole, wire, cable, or structure that presents an imminent danger to life or property in Authority's sole discretion (“Danger Poles”) without incurring any liability for such removal or relocation, provided that Authority shall restore such pole, wire, cable or structure that has been cut or removed due to Danger Poles as soon as commercially reasonable and be responsible for such removal and/or relocation costs. Lessee shall cooperate with Authority to affect any such modifications. Relocations of Leased Fiber or Facilities shall not affect the price Lessee pays for use of that Fiber or Facilities.
- 7.8. Route Modifications. Authority may relocate all or any portion of the Leased Fiber as conditions and circumstances may warrant. These modifications may cause portions of the Leased Fiber to be relocated, permanently or temporarily, to one or more alternate locations as determined by the Authority in its sole discretion. Authority will give Lessee sixty (60) days' prior written notice of any relocation of any Leased Fiber, provided, however, that if Authority does not have notice of a relocation at least sixty (60) days prior to the date of the relocation, then Authority will notify Lessee as soon as practicable. Lessee will cooperate in good faith with Authority to facilitate any relocation. Authority will use its commercially reasonable efforts to ensure such action shall not directly or substantially interfere with the performance or operations of the Leased Fiber and/or Equipment.
- 7.9. Use of Subcontractors. Authority may outsource to third-party service providers or suppliers any Services it is obligated to provide under this Agreement.

Article 8 – Termination & Default

- 8.1. Default – Failure to Make Lease Payment. Failure to make any Lease payment when due and such failure continues for more than thirty (30) days after the due date shall be a material breach of this Agreement.
- 8.1.1. If Lessee fails to make any payment then Authority may elect to: (1) terminate this Agreement and any other agreements made with Lessee; (2) continue attempts to collect the past due Lease Payment(s); (3) disconnect Leased Fiber; and/or (4) draw the amount of the past due Lease Payment(s) from the required Security.
- 8.1.2. If the Authority elects to disconnect the Leased Fiber, prior to any reconnection Lessee must cure the default, replenish any amounts deducted from the required Security, and pre-pay any re-connection or splicing costs in order to continue this Agreement and use of the Leased Fiber.
- 8.2. Default - Other Grounds. This Agreement may be terminated by either Party (“Non-Defaulting Party”) upon the commission of a material breach of this Agreement by the other Party (“Defaulting Party”). Material breach includes, but is not limited to, the following:
- 8.2.1. Failure to perform any obligation requiring the payment of money under the provisions of this Agreement, other than failure to make a Lease Payment;

- 8.2.2. Assignment or transfer of Defaulting Party's interest in this Agreement, whether voluntary or involuntary, except as provided for herein;
 - 8.2.3. Lessee becomes subject to a Bankruptcy Proceeding;
 - 8.2.4. Unauthorized or misuse of the Leased Fiber, or ROW;
 - 8.2.5. Installation, maintenance, or operation of Leased Fiber or Facilities or Equipment by the Lessee, in any way impairing, endangering or otherwise adversely impacting the Authority's Transmission System or Network.
 - 8.2.6. Lessee ceases to be an Unaffiliated Communications Service Provider;
 - 8.2.7. Abandonment of Lessee's Fiber or Facilities or Equipment;
 - 8.2.8. In the event of any material representation, warranty, or statement made by Lessee or Agreement that shall prove to have been incorrect in any material respect when made.
- 8.3. Notice in Event of Default. In the event of a material breach of this Agreement, the Non-Defaulting Party shall give a notice to the Defaulting Party. The Defaulting Party shall have thirty (30) days from receipt of the notice to cure the material breach.
- 8.4. Right to Cure. When a cure of a material breach reasonably requires more than thirty (30) days, the Defaulting Party shall commence to cure within thirty (30) days of receipt of the notice, and the Defaulting Party shall be granted such additional time as is reasonably necessary to cure such default in the sole judgment of the Non-Defaulting Party so long as the Defaulting party diligently and continuously prosecutes such cure to completion. Unless excused by the Non-Defaulting Party in writing, no cure shall take more than sixty (60) days to complete before revocation or termination of this Agreement.
- 8.5. Other Termination Events. This Agreement may be terminated upon the occurrence of any of the following events:
- 8.5.1. State Entity Status. In the event of any change in Authority's legal status or the legal interpretation thereof, Authority, or its successors, may in its sole discretion terminate this Agreement and/or any or all Product Orders. Termination for State Entity Status will constitute a Conditional Release.
 - 8.5.2. Change in Law. In the event of any repeal or changes in Law which results in either Party no longer having the statutory authority to perform under this agreement. Termination for Change in Law will constitute a Conditional Release.
 - 8.5.3. Underlying Rights. In the event of any changes in underlying ROW, rights to use fiber optic cable and/or equipment or Facilities, resulting in Authority's loss of rights which it deems necessary to provide the Lease hereunder, Authority may in its sole discretion terminate this Agreement and/or any or all Product Orders. Termination for Underlying Rights will constitute a Conditional Release.

- 8.5.4. Electric System Communications. In the event the Authority's Network requires additional Fiber, and there is not Excess Fiber available, with sixty (60) days' notice, Authority may terminate or modify the Product Orders as needed for use of the electric system. In the event Authority terminates all (or a portion) of the Leased Fiber for System Communications needs, Authority will be subject to a payment equal to the sum of (the apportioned) Lease payments made in the current year plus the monthly lease fee multiplied by two (x2). Termination payments are to be based on current year prices.
- 8.5.5. Termination for Convenience. Upon sixty (60) days' notice, a Party may elect to terminate this Agreement for convenience for all (or a portion of) Leased Fibers. Termination under this subsection 8.5.6 will be subject to a Termination Payment.
- 8.6. Termination Payment. Except as provided herein, any termination of this Agreement will be subject to a termination payment equal to two (2) times the (apportioned) annual lease payment due within the subsequent four (4) quarters, or forty percent (40%) of remaining (apportioned) lease payments due under terms of the Agreement, whichever is less.
- 8.7. Conditional Release. In the event of termination under subsections 8.5.1, 8.5.2, and 8.5.3, Lessee will be released from any future obligations under this Agreement, if terminated, or under any Product Order if terminated, provided however, that Lessee shall remain obligated for all obligations that arose prior to such termination.
- 8.8. Cumulative Rights and Remedies. The rights and remedies provided by law and under this Agreement are cumulative and either Party may seek the specific performance of the terms of this Agreement, unless this Agreement provides otherwise.
- 8.9. Lessee acknowledges and agrees that, in the event of a material default by Lessee, Authority may, separately or in addition to termination, at Authority's option and without any additional notice requirements or cure periods, suspend Authority's performance or exclude Lessee from use of the Leased Fiber or Facilities under any or all of the Product Orders in Authority's sole discretion, and that Authority shall have no liability of any kind to Lessee or to any third parties for any claims, charges, fees, assessments, or penalties of any kind for any loss or damage suffered as a result of such action. Lessee agrees to indemnify and hold harmless Authority for, from, and against any claim of any kind by any Person, entity or governmental agency for damages, penalties, fees, assessments, levies, or other damages of any kind (including, without limitation, attorneys' fees) arising directly or indirectly out of Authority's exclusion of Lessee from the use of the Leased Fiber or Facilities.
- 8.10. REMOVAL OF EQUIPMENT. Upon expiration or termination of this Agreement, Lessee will within thirty (30) days disconnect and remove the Equipment from the Leased Fiber in a neat and orderly manner and repair all damage directly caused by such removal at Lessee's sole expense, excluding normal wear and tear. If not removed within thirty (30) days, Authority may remove or cause to be removed the Equipment or assume title to such Equipment. Should Authority remove or have the Equipment removed as provided herein, Lessee shall pay all costs and expenses of any such removal and the repair of all damage directly caused by such removal.

ARTICLE 9 – FORCE MAJEURE

- 9.1. Force Majeure shall mean any cause beyond the reasonable control of Authority or Lessee, as applicable, or beyond the reasonable control of and not resulting from the fault or negligence of, a Party and affecting either of the parties hereto, including but not limited to:
- 9.1.1. Acts of God, fires, floods, hurricanes, tornados, earthquakes, lightning, wind, unusually inclement weather, or other natural catastrophes;
 - 9.1.2. Labor disputes, labor troubles, lockouts or strikes;
 - 9.1.3. Acts of public enemy, acts of terrorism, civil commotions, sabotage, wars (either declared or non-declared), insurrections, riots, or pandemics; or
 - 9.1.4. Acts of government or regulatory agencies, orders and judgments of any federal, state or local court, administrative agency or governmental body.
- 9.2. In the event performance by a party is delayed by reason of Force Majeure, such Party shall promptly notify the other in writing describing the particulars of the occurrence. The affected party shall attempt diligently and in good faith to remove any Force Majeure to the extent possible except that each party shall have the right to resolve labor disputes and labor troubles as it deems in its best interests. Further, nothing contained in this paragraph shall be construed as requiring Authority or Lessee to enter into any contract or other undertaking on terms which the Party deems to be unduly burdensome or costly.
- 9.3. Notwithstanding the provisions of this Article, if a Force Majeure occurs which causes the obligations of the Parties to be suspended as provided above and remain suspended for thirty (30) days, and at the conclusion of said thirty (30) days, the Party not claiming Force Majeure, in the exercise of reasonable judgment, concludes that there is little likelihood of ending the Force Majeure condition(s) in the immediate future, then the Party not claiming Force Majeure may terminate this Agreement without liability to the other Party by giving thirty (30) days' written notice of its intention to terminate. In such event, neither Party shall have any further obligation or liability under this Agreement or at law except with respect to payment for performance rendered prior to termination or as otherwise provided.

ARTICLE 10 – INDEMNIFICATION

- 10.1. Indemnification. Lessee will indemnify, defend (at Authority's election), and hold Authority and its directors, officers, employees, successors, and assigns (each an "Indemnitee," and collectively, the "Indemnitees") harmless from all claims, demands, and damages including but not limited to injury or death of individuals or damage to property arising out of or connected with its performance of this Agreement, the operation, use, or maintenance of the Leased Fiber or Facilities, or any condition created in or about the ROW or ROW access including without limitation any accident, injury, or damage to Person or property whatsoever occurring on or in the ROW or ROW access. Lessee's indemnification obligations for indemnification will apply irrespective of any negligence or alleged negligence of Indemnitees, except to the extent that Indemnitees' gross negligence gives rise to such Covered Claims. This agreement whereby Lessee

agrees to hold Authority harmless shall include latent defects.

While not limiting any of the above, in addition Lessee shall indemnify, hold harmless, and defend (at Authority's election) Authority directors, officers, employees, and agents for, from, and against all claims, damages, losses, and expenses (including, but not limited to, attorneys' fees) arising out of or relating to the following:

10.1.1. The conduct of Lessee's or its affiliates' business, including without limitation the use or provision of Lessee Services or the content of any transmission;

10.1.2. A contractual or other relationship between a claiming party and either Lessee or its Affiliates, including any claim for interruption of service or in respect of service quality; or

10.1.3. Any claim by a property owner that the Parties do not have sufficient rights for the Leased Fiber or Facilities, the property has been taken, destroyed, utilized beyond the parameters of the ROW or physically damaged by the construction, installation, use, or enlargement of broadband networks within the ROW on the Property.

10.2. Procedure for Indemnification.

10.2.1. Indemnitee will give prompt notice to Lessee of any claim or threatened claim wherein Indemnitee is seeking indemnification, specifying the alleged factual basis for such claim and the amount of the claim, if known.

10.2.2. Indemnitee's failure to give the required notice will not relieve Lessee of its obligation to indemnify Indemnitee unless and to the extent Lessee is materially prejudiced by such failure.

10.2.3. Lessee shall, at its own expense, defend any and all claims or actions covered by this section and pay all attorneys' fees, costs, and expenses arising out of or connected with such claims or actions.

10.2.4. Prior to the taking of any action with respect to any claim for loss or damage covered by the provisions of this Agreement, the Authority or Lessee, as the case may be, shall immediately upon being notified of the existence of such claim, notify the other Party in writing of such claim and all particulars with respect thereto. The Parties agree to cooperate fully with the other in the defense of any claims provided for under this Agreement. In cases in which require Lessee to indemnify the Authority, no settlement or disposition of such claim will be made by the Lessee without written approval of the Authority, which consent shall not be unreasonably withheld.

10.3. No Limitation. No indemnification provision contained in this Agreement under which Lessee indemnifies Authority will be construed in any way to limit any other indemnification provision contained in this Agreement.

ARTICLE 11 - REPRESENTATIONS

11.1. Lessee Representations. Lessee hereby warrants, covenants, and represents to Authority that:

- 11.1.1. It is a [TYPE OF ENTITY] duly organized and validly existing in good standing under the laws of the State of [INSERT STATE] with full power and authority to conduct its business as now conducted, own its assets and enter into and perform its obligations under this Agreement.
 - 11.1.2. It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;
 - 11.1.3. This Agreement constitutes a legal, valid, and binding obligation of Lessee enforceable against Lessee in accordance with its terms;
 - 11.1.4. It will keep all parts of Authority's Transmission System clear from liens;
 - 11.1.5. It will not permit any damage to Authority's ROW or access thereto;
 - 11.1.6. It will comply with all applicable laws in connection with the its obligations under this Agreement;
 - 11.1.7. It is fully licensed by all governmental entities with jurisdiction over its activities, and has all permits or authorizing documentation required thereby;
 - 11.1.8. It is and shall remain at all times during the term of this Agreement, an Unaffiliated Communications Service Provider;
 - 11.1.9. Its use of the Leased Fiber or Facilities will only be used for providing any Broadband Service to third parties as provided for by the Broadband Act;
 - 11.1.10. Lessee is acquainted and trained with the conditions related to the work being done and will ensure the same for its contractors;
 - 11.1.11. All work performed under this Agreement will be done in accordance with good utility practice and the Technical Requirements;
 - 11.1.12. It will not use or store hazardous materials on Authority property or ROW;
 - 11.1.13. It will not interfere in any manner with the electric system;
 - 11.1.14. The signatory(ies) on behalf of such Lessee are fully authorized to execute this Agreement on behalf of Lessee for which such signatory(ies) sign.
- 11.2. Authority Representations. Authority hereby warrants, covenants, and represents to Lessee that:
- 11.2.1. It is a body corporate and politic created by the legislature of the State of South Carolina and is duly organized and validly existing under the laws of the State of South Carolina with full power and authority to conduct its business as now conducted, own its assets and property (including but not limited to the Authority Network) and enter into and perform

its obligations under this Agreement.

- 11.2.2. It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;
- 11.2.3. This Agreement constitutes a legal, valid, and binding obligation of Authority enforceable against Authority in accordance with its terms;
- 11.2.4. It will comply with all applicable laws in connection with the its obligations under this Agreement;
- 11.2.5. It is fully licensed by all governmental entities with jurisdiction over its activities, and has all permits or authorizing documentation required thereby;
- 11.2.6. The general form of this Master Fiber Agreement has been reviewed by the Office of Regulatory Staff;
- 11.2.7. It shall maintain the Leased Fiber or Facilities in good operating condition for normal use as contemplated by the manufacturers and in accordance with this Agreement. AUTHORITY OTHERWISE EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF ANY MATERIALS, EQUIPMENT OR ANY OTHER PART OR ALL OF THE AUTHORITY TRANSMISSION OR THE LEASED FIBER OR FACILITIES.
- 11.2.8. The signatory(ies) on behalf of Authority are fully authorized to execute this Agreement on behalf of Authority for which such signatory(ies) sign.

ARTICLE 12 – LIMITATIONS OF LIABILITY; WARRANTY DISCLAIMER

- 12.1. Limitation of Damages. In no event will Authority be liable to Lessee for any indirect, incidental, special, punitive or consequential damages whatsoever, arising out of, or in connection with, this Agreement, including but not limited to, lost profits, lost revenue, loss of goodwill, loss of anticipated savings, or loss of business opportunity incurred or suffered by Lessee, whether in an action in contract or tort, even if the Lessee or any other Person has been advised of the possibility of such damages.
- 12.2. Service Interruption. Except in respect of any service credits identified in the Technical Requirements against Lessee's lease payments, in no event will Authority be liable for damages for interruption of any service or transmission through the Leased Fiber or Facilities, or for failure or errors in signal transmission, lost data, files or software damage unless caused by Authority's willful conduct.
- 12.3. Content of Transmitted Data or Communications. Authority disclaims all liability or responsibility whatsoever for the content (including the nature of materials, opinions and views) of any and all data or communications transmitted, other than by Authority, in, across, on, through or over the Leased Fiber or Facilities after the Acceptance Date. Lessee agrees that it will make

no claim whatsoever against Authority relating to the content of any data or communications transmitted, other than by Authority, in, across, on, through or over the Leased Fiber or Facilities.

- 12.4. AUTHORITY EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 12.5. The warranties and remedies set forth above constitute the only warranties and remedies with respect to this Agreement and are in lieu of all other warranties, written or oral, statutory, express or implied, including, without limitation, the warranty of merchantability or fitness for a particular purpose or use.

ARTICLE 13 – INSURANCE & SAFETY

- 13.1. Lessee's Required Insurance Policies and Coverages. Lessee agrees that it, its agents, contractors, and their subcontractors doing work related to this Agreement shall comply with all of Authority's Technical Requirements and insurance requirements as set forth on Exhibit B, which is attached and made a part of this Agreement by reference.
- 13.2. Insurance Certificates. On the Effective Date, and thereafter from time to time at the request of Authority, Lessee shall cause its insurance carrier(s), each having a rating of A minus or better from the A.M. Best Company, to furnish certificates of insurance to Authority evidencing the existence of the required coverage. Such certificates shall provide that Authority be given thirty (30) days prior written notice by the insurer, or its authorized representative, of any cancellation, non-renewal, or adverse or material change of any policy and ten (10) days' prior written notice due to cancellation for non-payment of premiums for any required coverage provided by such insurer as evidenced by the certificates. Lessee shall provide renewal certificates to Authority no later than thirty (30) days prior to expiration of any required policy. At Authority's request, Lessee shall furnish copies of Lessee's insurance policies, forms, and endorsements. All documents should be submitted to Authority's Risk Management department.
- 13.3. Coverage for Full Term. All required coverage shall remain in full force and effect during the Lease Term. Lessee's liability under this Agreement shall not be limited to or by the insurance coverage required by this Agreement.
- 13.4. Application of Proceeds. Lessee shall apply any insurance proceeds to replace, repair, reconstruct, or restore the property to substantially the same condition as that which existed prior to such damage or destruction.
- 13.5. Contractors Insurance. Lessee is solely responsible for ensuring that such its contractors and their subcontractors maintain insurance coverage that is usual, reasonable and customary for the services provided by such contractors and subcontractors to ensure that such Lessee can meet its obligations under this Agreement.

ARTICLE 14 – CONFIDENTIALITY

- 14.1. Certain Public Information. The Parties acknowledge and accept that this Agreement is not subject

to any confidentiality requirements and may be disclosed by either party without notice. Specifically, Lessee acknowledges and accepts that the Broadband Act, requires the Authority to:

- 14.1.1. Upon request, disclose this Agreement to third parties in its entirety;
- 14.1.2. Within fifteen (15) business days of entering into this Agreement, post conspicuous notice of the Agreement on its public website; and
- 14.1.3. Post its broadband rates, fees, and other charges along with terms and conditions on its public website.

Authority reserves the right to post this Agreement, in its entirety, on its public website, without notice.

14.2. Non-Disclosure of Confidential Information. Confidential Information is information outside of what is required to be disclosed by the Broadband Act (as described above) that is expressly marked or identified as confidential or proprietary or that would normally be considered confidential under the circumstances, including without limitation information as it relates to design, maps, GIS type electronic files and specifications of or related to the Authority Network and Transmission System. To the extent the Parties exchange information outside of what is required to be publicly disclosable by the Broadband Act, neither Party will disclose the other Party's Confidential Information to a third party except to (a) any entity such Party directly or indirectly controls, is controlled by, or under common control with such Party; and (b) employees, agents or professional advisors of such Party but only to the extent needed to exercise its rights and fulfill its obligations under this Agreement. Confidential Information shall not include any information or portion of information which:

- 14.2.1. Information which a Party can demonstrate was rightfully in that Party's possession prior to the date of disclosure by the other Party;
- 14.2.2. Information which, at the time of disclosure or later, is or becomes published or otherwise available to the general public as part of the public domain through no act or failure to act on the part of the party receiving the disclosure;
- 14.2.3. Information which a party can demonstrate came into that party's possession from a third party who had a *bona fide* right to make such information available; or
- 14.2.4. Information which a party can demonstrate was independently developed by or on behalf of said party.

14.3. Disclosure Required FOIA and Other Laws. The Lessee further acknowledges that Authority is a public entity subject to the South Carolina Freedom of Information Act. In the event a Party is obliged or receives a request in either case to disclose Confidential Information as required by any statute or regulation, or under the terms of an order issued by a court of competent jurisdiction or by a governmental body or agency, or pursuant to an appropriate request for production of documents in any proceeding before a court of competent jurisdiction, the Party receiving such a

request shall give written notice of same to the other Party at least ten (10) days prior to the date of compliance with such request (unless that Party has less than ten (10) days within which to comply, in which case said Party shall give the other Party as much notice as is practicable under the circumstances) so that the disclosing Party has an opportunity to seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If (in the absence of a waiver by the disclosing Party) the disclosing Party has not secured a protective order or other appropriate remedy despite attempting to do so, and the receiving Party is nonetheless then legally obliged to disclose any Confidential Information, the receiving Party may without liability hereunder, disclose only that portion of the Confidential Information which is necessarily subject to disclosure.

ARTICLE 15 – MISCELLANEOUS

- 15.1 Limitations on Assignments. A Party may not assign any right under this Agreement, whether in whole or in part, without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned, or delayed.
- 15.2 Obligations of Assignee/Transferee. Notwithstanding any provision in this Agreement to the contrary, the Parties may assign this Agreement to any parent, subsidiary, Affiliate, or any Person, firm, or corporation that will control, be under the control of, or be under common control with the assigning Party, or to any entity into which the assigning Party may be merged or consolidated or which purchases all or substantially all of the assets of the assigning Party that are subject to this Agreement. No assignment or transfer under this Article 15.2 will be allowed, however, until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of the assigning Party arising under this Agreement. The assigning Party will furnish the non-assigning Party with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, the assigning Party will remain fully liable under this Agreement for claims that arose during the time period the assigning Party operated pursuant to the Agreement, and the assigning Party will not be released from those claims.
- 15.3 Change in Control. If at any point during the Lease Term there is a transfer of legal ownership or control of the Authority or the Leased Fiber, then Authority will provide written notice to Lessee and the Parties will comply with all constitutional, statutory, and regulatory requirements for the sale.
- 15.4 Audit Rights. Each Party shall have the right to designate its own employee representative(s) or its contracted representatives to audit and to examine at its own expense any cost, payment, settlement, or supporting documentation resulting from any items set forth in this Agreement. Any such audit(s) shall be undertaken by either Party or its representative(s) at reasonable times and appropriate locations and in conformance with generally accepted auditing standards. The Party being audited agrees to fully cooperate with any such audit(s). This right to audit shall extend for a period of three (3) years following the date of each payment under this Agreement. The Parties agree to retain all necessary records/documentation during this audit period or until any dispute in connection with an audit is resolved, whichever is longer.

The other Party shall be notified in writing of any exception taken as a result of an audit and shall

respond in writing to such notification within thirty (30) days. Upon resolution of any exception, the owing Party shall directly refund the amount of any exception to the other Party within (30) days.

- 15.5. Inconsistency. In the event of any inconsistency between any of the following documents, the relevant document first listed below shall govern: (1) this Lease Agreement; (2) the Technical Requirements; and (3) Exhibit(s) unless (a) the inconsistent document clearly identifies the specific provision of the governing document that the Parties intended to amend or modify, and (b) the inconsistent document sets forth the specific amendment or modification.
- 15.6. Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of South Carolina without giving effect to the principles of conflicts of law thereof. The Parties consent to the venue of the South Carolina Administrative Law Courts.
- 15.7. Agreement and Exhibits. This Agreement in its entirety consists of the recitals stated above, the body of this Lease Agreement, all executed Product Orders, the Technical Requirements, the attached exhibits, and the Excess Fiber Lease Schedule EF-21 as they may be amended from time to time. This Agreement supersedes all previous oral and written agreements between Authority and Lessee regarding the lease or use of Authority's Excess Fiber related to the provision of Broadband Services. All provisions, terms, and conditions to this Agreement are expressed herein. Notwithstanding any contrary provision, term, or condition herein, this Agreement will neither waive nor be interpreted to waive any claims of any nature, any amounts or credits owed, or any obligations or duties arising under a prior agreement between the Parties or the Parties' performance thereunder. Nor will this Agreement act as a waiver of any claims for the prior use of Authority's Excess Fiber without valid authorization.
- 15.8. Notice. Any notice required by this Agreement shall be in writing and shall be given either personally or by overnight or express mail courier. Notices shall be deemed sufficiently given if and when received by the party to be notified or the office of such party. Notices shall be addressed as follows:

In the case of the Lessee:

Telephone: _____

Attention: Name, Title Department & Email

In the case of Authority:

South Carolina Public Service Authority
One Riverwood Drive
Moncks Corner, SC 29461
Telephone: +1 843 761 8000

Attention: Sr. Manager of Broadband and Telecom Services;
broadband_SC@santecooper.com

Either party may, by giving notice, change (or add to) its address for receiving such notices. Either party may agree to accept notice by acknowledging receipt of an email transmittal.

- 15.9. No Third-Party Beneficiaries. With the exception of the parties to this Agreement and the Parties, there shall exist no right of any Person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.
- 16.1. Exemplary Nature of Lists. Any listing of items in this Agreement shall not be considered exclusive, have been listed by way of example only, and are not restricted by the canon ejusdem generis.
- 16.2. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, whether written, oral, express or implied, between the parties with respect to the subject matter of this Agreement.
- 16.3. Amendments. No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.
- 16.4. Headings and Expressions. Titles and headings used in this Agreement are for reference only and are not a part of this Agreement. Words and expressions used in this Agreement shall be applicable according to the context and without regard to the number or gender of such words or expressions (with the exception of numbers indicating price, quantity, or technical specifications).
- 16.5. No Joint Venture. No agency, employment agreement, joint venture, or partnership is created between the Parties to this Agreement, and neither Party shall be deemed to be an agent of the other, nor shall either Party have the right, power or authority to act for the other in any manner to create any obligations, contracts, or debt binding upon the other Party.
- 16.6. Attorneys' Fees. If it becomes necessary for either Authority or Lessee to employ an attorney to enforce compliance with any term or condition of this Agreement, the prevailing Party shall be entitled to reimbursement from the other Party for reasonable attorneys' fees, as determined by the court, and reasonable costs and expenses incurred in such enforcement.
- 16.7. Non-Waiver. Any failure by either party to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision of the Agreement.
- 16.8. Counterparts; Electronic Copies. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed on its behalf as of the date indicated on the first page hereof.

LESSEE

**SOUTH CAROLINA PUBLIC SERVICE
AUTHORITY**

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Authority- [ENTITY] Excess Fiber Lease Agreement

EXHIBIT A

O&M ADJUSTMENT

Schedule to be generated after the execution of the Agreement.

REQUIRED INSURANCE COVERAGE

During the Lease Term, Lessee shall procure, pay premiums for and maintain in full force and effect the insurance coverage described below. Lessee shall include an endorsement in the following policies to include a waiver of subrogation in favor of the Authority and, with respect to the policies described in Subsections 1(b) to 1(d) below, listing Authority as an additional insured. Lessee may combine primary and excess policies to satisfy the coverage and amount of insurance required herein at Lessee's discretion.

- (a) Worker's compensation insurance with statutory limits as required by the laws of the state in which the Facility is located, and employer's liability insurance with minimum limits of \$1,000,000 or as established by state or federal law, if applicable. This insurance shall include all applicable maritime coverage as required by law.
- (b) Commercial general and umbrella/excess liability insurance, including coverage for (i) premises/operations, (ii) independent contractor, (iii) products and completed operations, (iv) broad form contractual liability, (v) broad form property damage, (vi) explosion, collapse and underground damage exclusion deletion, and (vii) personal injury, all with limits of not less than \$10,000,000 each occurrence and in the aggregate.
- (c) Business auto liability insurance with minimum limits of \$1,000,000, covering all vehicles and automobiles whether owned, leased, or rented when used by Lessee in connection with performance of this Agreement and including commercially reasonable coverage for each accident of bodily injury and property damage.