

Conduit and Fiber Maintenance and Repair Services Agreement
(Cover Page)

This Conduit and Fiber Maintenance and Repair Services Agreement (including this Cover Page, the General Terms, and all Service Schedules and Orders, collectively, this "Agreement") is signed by duly authorized representatives of the parties and effective as of the last date signed below on this Cover Page ("Effective Date"). As of the Effective Date, this Agreement consists of (1) this Cover Page, (2) the General Terms, (3) the Conduit and Fiber Maintenance and Repair Service Schedule (Schedule 1 hereto), and (4) any subsequently executed Service Order for Conduit and Fiber Maintenance and Repair Services (in substantially similar form to Schedule 1, Exhibit A) :

<hr/> <p>Buyer Name ("Buyer")</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p><u>Notice Address:</u></p> <p>Street _____</p> <p>City, State, Zip _____</p> <p>Attention: General Counsel</p> <p>Facsimile: _____</p> <p>Email: _____</p>	<hr/> <p>Contractor Name ("<u>Contractor</u>")</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p><u>Notice Address:</u></p> <p>_____</p> <p>_____</p> <p>Attention: _____</p> <p>Facsimile: _____</p> <p>Email: _____</p>
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General Terms

Contractor will provide Services to Buyer under these General Terms, terms set forth in a Service Schedule and associated Order.

1. Definitions

For purposes of this Agreement, the following terms have the following definitions:

"Affiliate" means, with respect to a party, any firm, corporation, partnership, association, trust or other person or entity, whether now or hereafter existing, that directly or indirectly is Controlled by that party.

"Best Practices" means the best then-current standards, practices and technologies generally recognized in the information technology or telecommunications industry, as applicable, for services substantially similar to those under the respective Service Schedule.

"Change of Control" means: (1) Control of a party is acquired by a single transaction or a series of related transactions by an entity which is not an Affiliate of that party (a "Non-Affiliated Entity"); or (2) all or a substantial part of the business or assets of a party are sold or transferred to any Non-Affiliated Entity by way of a single transaction or series of related transactions.

"Control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of a corporation, firm, business trust, joint venture, association, organization, company, partnership or other business entity, whether through the ownership of more than 25% of the voting rights or securities (or other ownership interest), by contract or otherwise.

"Exclusions" means the circumstances under which Contractor's failure to provide the Services in accordance with the Service Levels will not constitute a Service Level Default, as described in Section 4.2.

"Insolvency Event" means (1) a receiver, administrator or similar officer is appointed over any assets or business of Contractor; (2) Contractor makes an arrangement for the benefit of its creditors; or (3) Contractor goes into liquidation except for the purpose of a genuine amalgamation or reconstruction, or anything similar happens under national, state or local laws of any country.

"Month" means a calendar month, unless otherwise specified.

"Order Term" means the term of an Order, as described in Section 6.2.

"Order" means a written order (such as purchase order, service order or work order) issued or signed by Buyer.

"Performance Standards" means all quantitative and qualitative performance standards and commitments for the Services set forth in this Agreement, including Best Practices and the Service Levels.

"Personnel" means, with respect to a party, that party's employees, agents, Affiliates, independent contractors, subcontractors and suppliers of any tier.

"Scheduled Delivery Date" means the date specified in the Order by which Contractor must commence delivering the specified Services, which shall be the date that Buyer accepts delivery of fibers associated with a Fiber Order in accordance with Section 4(b) of the IRU (as defined in Schedule 1).

"Service Credits" means credits against the charges for the Services affected by a Service Level Default, in the amounts specified in the applicable Service Schedules or Orders.

"Service Level Default" means Contractor's failure to provide the Services in accordance with the Service Levels.

"Service Levels" means the service levels set forth in the applicable Service Schedules or Orders.

"Service Schedule" means schedule(s) attached to these General Terms and containing additional terms and conditions specific to particular types of Services.

"Services" mean the products and services that Contractor provides to Buyer under this Agreement.

"Specifications" means all descriptions and specifications for the Services set forth in this Agreement, together with such additional written descriptions and specifications that Contractor may furnish to Buyer.

2. Services

2.1. General. Contractor itself or through one or more of its Affiliates will provide Services to Buyer as the parties agree and specify in Orders. Buyer makes no promises or representations about the amount of business Contractor can expect from Buyer under this Agreement. An Order is binding only when signed by both parties, but a purchase order issued or signed by Buyer is binding on both parties if Contractor begins performance or acknowledges it by email, facsimile or other written means. If Contractor begins Services in the absence of an Order and Buyer accepts those Services, this Agreement will nevertheless apply.

2.2. Order of Precedence. These General Terms govern each Service Schedule and Order. Any conflicts will be resolved in the following order of precedence: (1) these General Terms, (2) the Service Schedule, and (3) the Order, unless the Service Schedule or Order explicitly cites the conflicting terms of these General Terms or the Service Schedule (e.g., by Section reference) and explicitly states that it is intended to modify those conflicting terms (in which case the conflicting terms of the Service Schedule or Order will take precedence, but only for that Service Schedule or Order).

2.3. Contractor Provides all Necessary Resources; Scope of Services. Except to the extent the parties otherwise expressly agree in writing, Contractor will provide all resources (including equipment, software, materials, facilities, systems, supplies and Personnel), obtain all rights (including applicable governmental and non-governmental licenses, easements, rights of way, conduit, pole attachments and any other access or property rights, contracts, franchises, approvals, permits, orders and consents), and do anything else that is required to perform the Services in a timely fashion and in accordance with the terms of this Agreement, including the Specifications and Performance Standards.

2.4. On-Site Services. If Contractor provides Services on Buyer's premises, Contractor will (1) abide by Buyer's rules, policies, and procedures regarding such matters as safety, security, health, environmental and hazardous material management, misconduct, physical aggression harassment, and theft (collectively, "**Rules**"); and (2) at Buyer's request, promptly remove and replace any Contractor Personnel who behaves unlawfully or inconsistently with any Rule.

2.5. No Lien. Neither Contractor nor any of its Personnel will have any lien, claim or encumbrance upon any Buyer property, and Contractor waives, and will cause each of its suppliers and subcontractors to waive, any lien, claim or encumbrance upon any Buyer property.

2.6. Step-In Rights. If Contractor fails to provide any Services in accordance with the terms of this Agreement (the "**Disrupted Services**"), including any installation delays and Service Level Defaults, Buyer may, upon written notice to Contractor, perform the Disrupted Services itself, have the Disrupted Services performed by a third party, or obtain from a third party substitute services for the Disrupted Services ("**Substitute Services**"). Contractor will use commercially reasonable efforts to cooperate with Buyer and the third party, as applicable, in order to allow the performance of the Disrupted Services or Substitute Services by Buyer or that third party, as applicable, and will use commercially reasonable efforts to recommence performance of the Disrupted Services as quickly as commercially possible and in full conformance with the Performance Standards and the other applicable terms of this Agreement. If Buyer approves in writing, Contractor may resume performing the Disrupted Services after showing to Buyer's reasonable satisfaction that it is prepared to perform the Disrupted Services in accordance with the Performance Standards and the other applicable terms of this Agreement. Buyer will not owe any charges to Contractor for the Disrupted Services during the time that the Disrupted Services or Substituted Services are performed by Buyer or a third party. Contractor will reimburse Buyer for (1) the difference between (a) the costs to Buyer for performing the Disrupted Services itself or retaining a substitute provider to provide the Substitute Services; and (b) the charges that otherwise would have been payable to Contractor for the Disrupted Services, plus (2) all costs that Buyer incurs to transition the Disrupted Services to the substitute provider.

3. Services Delivery Commencement. Contractor will commence delivering the Services on the Scheduled Delivery Date set forth in a fully-executed Order.

4. Service Levels

4.1. General. Contractor will provide the Services in accordance with the Service Levels. Contractor will provide Buyer with Service Credits for Service Level Defaults. Contractor will immediately remedy any Service Level Default and take all steps necessary to ensure that the Service Level Default does not reoccur. Contractor will apply Service Credits to the invoice for the month in which the Service Level Default occurred. If Contractor is not entitled to invoice Buyer under the applicable Order, Contractor will refund Buyer the amount of the Service Credit within 30 days after the end of the month in which the Service Level Default occurred.

4.2. Exclusions. Contractor's failure to provide the Services in accordance with the Service Levels will not constitute a Service Level Default to the extent that the failure is caused by the following, as demonstrated to Buyer's reasonable satisfaction by a written root cause analysis:

- (a) Buyer's material failure to perform any of its obligations under this Agreement, but only if Contractor promptly (but no later than 3 business days following the occurrence) provides Buyer with written notice of the failure and a description of how the occurrence prevents Contractor's achievement of the applicable Service Level;
- (b) Contractor is denied access to any location owned or controlled by Buyer, but only if Contractor notified Buyer of the requirement for access reasonably in advance; or
- (c) a Force Majeure Event, but only if Contractor complies with its obligations under Section 11.1.

4.3. Service Credits are a Price Adjustment. Service Credits are a price adjustment reflecting the reduced level and value of the Services to Buyer, and are not an estimate of the loss or damage that Buyer may suffer from a Service Level Default. Accordingly, Buyer's receipt of Service Credits will not be deemed or construed as liquidated damages nor as a sole or exclusive remedy. Service Credits will be without prejudice and will not limit any right Buyer may have to: (1) receive damages or non-monetary remedies at law or in equity regarding a Service Level Default; or (2) terminate this Agreement or any Order for cause because of a Service Level Default. If any part of this Section 4.3 is determined to be unenforceable, then Buyer will not be entitled to any Service Credits to the extent that Buyer's entitlement would limit Buyer from exercising its rights as described in clauses (1) or (2) above.

5. Payments

5.1. Payment; Records. Buyer will pay the charges expressly set forth in the applicable Service Schedule or Order. Contractor will not be entitled to any other compensation or reimbursement for the Services. Contractor will invoice all charges and Taxes in arrears, prorated to reflect any partial billing periods. Each invoice provided by Contractor must specify the applicable Order number (if any). Buyer will pay all amounts due and owing under each of Contractor's properly submitted, valid and undisputed invoices within 60 days after receipt. Neither party has any obligation to pay any charges invoiced more than 12 months after they accrue. Contractor will, in accordance with generally accepted accounting principles, keep copies of all books and records relating to the Services during the term of this Agreement and for 10 years thereafter. If Buyer disputes any invoice, Contractor will provide a written clarification within 10 business days, and Buyer may, upon prior written notice and during normal business hours, examine Contractor's books and records relating to the disputed charges. Buyer's obligation to pay a disputed invoice accrues from the date the parties resolve the dispute. During the pendency of any dispute, Contractor will continue to perform its obligations under this Agreement. Buyer may set off any amount payable by Buyer under an Order by any amount that Contractor is obligated to pay Buyer or any of its Affiliates under this Agreement.

5.2. Taxes. Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. Contractor may charge and Buyer will pay applicable national, state or local sales or use taxes or value added taxes that Contractor is legally obligated to charge ("Taxes"), but only if those Taxes are stated on the original invoice that Contractor provides to Buyer and Contractor's invoice states those Taxes separately and meets the requirements for a valid tax invoice. Buyer may provide Contractor with an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case, Contractor will not charge or collect the Taxes covered by that certificate. Buyer may deduct or withhold any taxes that Buyer may be legally obligated to deduct or withhold from any amounts payable to Contractor under this Agreement, and payment to Contractor as reduced by those deductions or withholdings will constitute full payment and settlement to Contractor of amounts payable under this Agreement. During the term of this Agreement, Contractor will provide Buyer with any forms, documents, or certifications as may be required for Buyer to satisfy any information reporting or withholding tax obligations with respect to any payments under this Agreement.

6. Term; Termination

6.1. Term of General Terms and Service Schedules. These General Terms and the Service Schedules are effective on the Effective Date and continue in effect until terminated in accordance with the terms of this Agreement. After the termination or expiration of the last Order in effect under this Agreement, either party may terminate this Agreement with 180 days' prior written notice.

6.2. Term of Orders. Unless earlier terminated in accordance with the terms of this Agreement, the initial term of each Order begins on its effective date and continues for the term stated in that Order (together with any options to extend the term of the Order exercised by Buyer, the "Order Initial Term"). When the Order Initial Term expires, the term of each Order will continue until either (1) Buyer gives Contractor at least 30 days' prior written notice of termination or (2) Contractor gives Buyer at least 180 days' prior written notice of termination (the "Order Term").

6.3. Termination by Contractor for Payment Default. Contractor may terminate an Order if Buyer fails to cure nonpayment of undisputed amounts due and owing under that Order within 60 days after Contractor delivers written notice of the nonpayment to Buyer.

6.4. Termination of Agreement by Buyer for Breach or Insecurity. Buyer may terminate this Agreement (including all Orders) or all or any part of any Order if:

- (a) Contractor breaches any material obligation, other than its confidentiality obligations, under this Agreement and the breach remains uncured for 5 business days after Buyer delivers written notice of the breach to Contractor (or any longer cure period that Buyer approves in writing, but only if Contractor diligently proceeds to cure the breach);
- (b) Contractor breaches its confidentiality obligations under this Agreement, or invades privacy or collects, uses, or discloses personal information in violation of applicable law;
- (c) there is a Change of Control of Contractor, but Buyer will not exercise its termination right under this clause (c) more than 6 months following Contractor's provision of written notice to Buyer of facts establishing the Change of Control; or
- (d) an Insolvency Event occurs.

6.5. Termination of Order by Buyer for Breach. Buyer may terminate all or part of any Order (and all or part of any other affected Orders) if:

- (a) a Chronic Service Level Default (as defined in the applicable Service Schedule) occurs; or
- (b) Contractor breaches any other material term or condition of an Order, or any other terms or conditions of this Agreement, but only if the breach remains uncured for 5 business days after Buyer delivers written notice of the breach to Contractor (or such longer cure period as Buyer and Contractor may mutually agree in writing, but only if Contractor diligently proceeds to cure the breach during the longer period).

6.6. Termination by Buyer for Convenience. Buyer may terminate all or part of any Order upon at least 90 days' prior written notice to Contractor. Buyer will pay the reasonable and proper fee for any Services to the extent the Services have been performed before the termination.

6.7. No other Termination. Neither party may terminate this Agreement (including any Order) other than in accordance with the provisions of this Agreement.

6.8. Removal of Contractor Equipment Following Termination. If any Contractor equipment is installed on premises owned or controlled by Buyer or any of its Affiliates in connection with Contractor's provision of Services to Buyer, Buyer will give Contractor access during Buyer's normal business hours for 30 days after the termination or expiration of the Services so Contractor can retrieve its equipment. After the 30 day period, Buyer may dispose of any Contractor equipment without liability.

6.9. Termination Assistance. After this Agreement or an Order expires or is terminated, Contractor will, at Buyer's request, provide the affected Services at the then-current pricing and terms on a month-to-month basis for up to 12 months from the date of termination or expiration ("Termination Assistance Period"). During the Termination Assistance Period, Contractor will also facilitate the transfer of the affected Services to Buyer or its new provider at no additional charge in an orderly manner that does not disrupt the affected Services. Buyer may terminate the Termination Assistance Period upon 30 days' advance written notice to Contractor.

7. Representation, Warranties and Certain Covenants

7.1. By Contractor. Contractor represents and warrants to, and covenants with, Buyer that: (1) Contractor will perform the Services in a competent, professional and workmanlike manner, free from defects in materials, workmanship and design, and in conformance with the Performance Standards and Specifications; (2) Contractor will promptly and satisfactorily correct any Services that are defective or do not conform with the Performance Standards, Specifications or other requirements of this Agreement; (3) none of the Services will violate, misappropriate or infringe any third party's rights (including intellectual property rights) or confidential information; (4) Contractor will comply with all applicable law, will not cause Buyer to be in violation of any applicable law, and will hold and fully comply with all licenses, permits, authorizations and approvals necessary for the performance of its obligations under this Agreement; (5) Contractor is duly incorporated, validly existing, and in good standing as a company under the laws of the jurisdiction of its formation; (6) Contractor has all rights necessary for (and is not subject to any restriction, penalty, agreement, commitment, law, rule, regulation or order which is violated by) its execution and delivery of this Agreement and performance of its obligations under this Agreement; (7) when providing the Services, Contractor will not interfere with the activities and obligations of Buyer, its employees, agents or customers; and (8) Contractor will promptly notify Buyer of any matters pertaining to, or the occurrence or impending occurrence of, any event of which it is reasonably aware that could give rise to any Service Level Default or any damage (or impending damage) to or loss of all or any part of the Services.

7.2. By Buyer. Buyer represents and warrants to, and covenants with, Contractor that: (1) Buyer is duly formed and validly existing under the laws of the State of Oregon; (2) Buyer has all rights necessary for (and is not subject to any restriction, penalty,

agreement, commitment, law, rule, regulation or order which is violated by) its execution and delivery of this Agreement and performance of its obligations under this Agreement; and (3) Buyer will use the Services in compliance with all applicable law.

Defense, Indemnity and Limitation of Liability

8.

8.1. Indemnification by Contractor. Contractor will defend, indemnify and hold harmless Buyer, its Affiliates, and its and their respective directors, officers, employees, successors, assigns and agents, from and against all claims, allegations, demands and proceedings by a third party, and all resulting losses, judgments, liabilities, damages, settlements, costs and expenses (including reasonable attorneys' fees and expenses) (each, a "Third Party Claim"), to the extent arising out of or relating to: (1) Contractor's breach of any of its warranties, representations or covenants under Section 7.1 (including invasion of privacy or collection, use, or disclosure of personal information by Contractor in violation of applicable law or this Agreement); (2) Contractor's fraud, negligence or willful misconduct in the performance of its obligations under this Agreement; (3) any bodily injury (including illness or death) or property damage caused or alleged to be caused by Contractor; (4) infringement or misappropriation of any copyright, patent, trademark, trade secret or other proprietary right of any third party by the provision or use of the Services; (5) employment-related matters (including employment benefits) for Contractor's Personnel; or (6) any breach by Contractor of its confidentiality obligations under this Agreement.

8.2. Indemnification by Buyer. To the extent allowed by law, and subject to the limitations of the Oregon Tort Claims Act, Buyer will defend, indemnify and hold harmless Contractor, its Affiliates, and its and their respective directors, officers, employees, successors, assigns and agents, from and against all Third Party Claims to the extent arising out of or relating to: (1) Buyer's breach of any of its warranties, representations or covenants under clause (3) of Section 7.2; (2) the fraud, negligence or willful misconduct of Buyer in the performance of its obligations under this Agreement; or (3) any bodily injury (including illness or death) or property damage caused by Buyer in the performance of its obligations under this Agreement.

8.3. Indemnification Procedures. The indemnifying party will use counsel reasonably satisfactory to the indemnified parties to defend each Third Party Claim and will keep the indemnified parties informed of the status of each Third Party Claim. The indemnified parties will cooperate with the indemnifying party in the defense at the indemnifying party's expense. Any indemnified party may participate in the defense at its own expense. In addition, any indemnified party may, at its own expense and without limiting the indemnifying party's indemnification obligations, take control of its own defense of the Third Party Claim. After taking control of its defense, that indemnified party and its counsel will proceed diligently and in good faith with its defense. Neither party will consent to the entry of any judgment or enter into any settlement without the other party's prior written consent, which consent will not be unreasonably withheld. Each party's obligation to defend is independent of its obligation to indemnify.

8.4. Waiver of Consequential Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY UNDER ANY CIRCUMSTANCES FOR CONSEQUENTIAL DAMAGES (INCLUDING LOST OPPORTUNITIES OR PROFITS) OR PUNITIVE DAMAGES, EXCEPT FOR ANY LIABILITY ARISING OUT OF (1) ITS NON-DISCLOSURE AND PRIVACY OBLIGATIONS UNDER THIS AGREEMENT, (2) ITS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, (3) ITS FRAUD, OR (4) ITS RECKLESS OR WILLFUL MISCONDUCT, INCLUDING WILLFUL BREACH OF THIS AGREEMENT.

9. Confidentiality

9.1. Confidentiality Obligations. Contractor will: (1) protect and keep confidential the existence of this Agreement, its terms and conditions, and any other information obtained from Buyer in connection with this Agreement or related to the Services that is identified as confidential or proprietary or that, given the nature of the information or the manner of its disclosure, reasonably should be considered confidential or proprietary (including all information relating to Buyer's technology, customers, business plans, marketing activities and finances and all personal information about identifiable individuals); (2) use that information only for the purpose(s) for which it was originally disclosed and in any case only for the purpose of fulfilling its obligations under this Agreement; and (3) return all that information to Buyer promptly upon the termination of this Agreement. All that information will remain Buyer's exclusive property, and Contractor will have no rights to use that information except as expressly provided in this paragraph.

9.2. No Publicity. Contractor will not use any trade name, trademark, service mark, logo or commercial symbol, or any other proprietary rights of Buyer in any way without prior written authorization of that use by Buyer's most senior administrator. Unless Contractor first obtains Buyer's written authorization, which Buyer shall have sole discretion to provide or deny, Contractor will not issue press releases or publicity relating to Buyer or this Agreement or reference Buyer in any brochures, advertisements, client lists or other promotional materials.

9.3. No Access to Buyer Data. Contractor will not record, store, inspect, monitor, read, intercept or otherwise access any data transmitted using the Services. All that data is Buyer's confidential information under this Agreement. If a governmental entity that

has jurisdiction over Contractor requires recording, storage, inspection, monitoring, reading, interception of, or any other access to any of that data, Contractor will (1) notify Buyer of that requirement as soon as possible (to the extent permitted by applicable law) and (2) reasonably cooperate with Buyer to object to that requirement or take such other actions as Buyer reasonably deems appropriate, consistent with applicable law, to ensure the confidential treatment of that data.

9.4. Injunctive Relief. Each party acknowledges that any material breach of this Section 9 by it would cause the other party (the “Non-breaching Party”) irreparable harm for which the Non-breaching Party has no adequate remedies at law. Accordingly, the Non-breaching Party will be entitled to obtain specific performance or immediate injunctive or other equitable relief for that breach without the necessity of posting any bond or guarantee.

10. Insurance

10.1. Worker’s Compensation and General Commercial Liability Insurance. Contractor will maintain, at its expense, during the entire term of each Order and for ten years after termination thereof (1) “Workers’ Compensation” insurance, including coverage for all costs, benefits and liabilities under workers’ compensation and similar laws that may accrue in favor of any person employed by Contractor in all geographic areas where Contractor performs Services, and “Employer’s Liability” insurance with limits of liability of not less than US\$1,000,000, with a waiver of subrogation in each case in favor of Buyer (where permitted by law); (2) “Commercial General Liability” insurance including public liability and product liability insurance with limits of not less than US\$5,000,000 per occurrence and US\$5,000,000 general aggregate to cover loss and damage incurred by Buyer and its Affiliates in connection with this Agreement; and (3) “Professional Indemnity” or “Errors and Omissions” insurance with limits of not less than US\$2,000,000 per claim and with a retroactive date no later than the date Services commenced.

10.2. General. All insurance maintained by Contractor under this Agreement must be with an A.M. Best rating of “A-VII” or greater (or standard equivalent). Promptly after the effective date of the first Order under this Agreement, and at each policy renewal or at other times on request from Buyer, Contractor will furnish Buyer with certificates of insurance that show the minimum levels of insurance Contractor must maintain under this Agreement. Contractor will send these certificates electronically to Buyer at the address designated for notices. Contractor will name Buyer and its Affiliates and their respective officers, directors, employees, successors, assigns and agents” as additional insureds for the Commercial General Liability policy and will cause each of its policies of insurance (and the underlying property owner’s policies, as applicable) to contain a waiver of any right of subrogation on the part of the insurer against the Buyer where permitted by law. Contractor will notify Buyer of any non-renewal, cancellation or change of its coverage at least 30 days before non-renewal, cancellation or change in coverage. The insurance maintained by Contractor under this Agreement must be primary to, and without any right of contribution from, any other insurance that may be available to Buyer. Buyer’s approval of any of Contractor’s insurance policies does not relieve or limit any of Contractor’s obligations under this Agreement, including liability under Section 8.

11. Miscellaneous

11.1. Force Majeure. Neither party will be responsible for any delay or failure in performance of any part of this Agreement to the extent that the delay or failure in performance is caused by any of the following conditions, and such party’s performance shall be excused and extended for and during the period of any such delay: act of God; fire; flood; other adverse weather events; failures, shortages or unavailability or other delay in delivery not resulting from the responsible party’s failure to timely place orders therefor; war or civil disorder; strikes or other labor disputes; fiber cut; inability of Contractor to access the Buyer Fibers; or any other cause beyond the reasonable control of the party whose performance is affected (the “Affected Party”) and which could not have been avoided or corrected through the exercise of reasonable diligence (a “Force Majeure Event”). The Affected Party will promptly notify the other party in writing of the Force Majeure Event, giving details of the Force Majeure Event circumstances, its anticipated effect upon the Affected Party’s performance under this Agreement, and the steps that the Affected Party is taking to remedy the delay. If Contractor’s performance is delayed or otherwise affected by any Force Majeure Event for more than 48 hours, Buyer may terminate the affected Order or Services upon written notice to the Contractor and will be responsible only for charges accrued up to the date of termination. Buyer will not be liable to pay any charges for Services to the extent that the Services do not meet the required Service Levels due to a Force Majeure Event (prorated as applicable to reflect any partial months).

11.2. Assignment. This Agreement is binding on the parties and their respective successors and assigns. Except as approved by Buyer in writing, Contractor will not assign any part or all of this Agreement or subcontract or delegate any of Contractor’s rights or obligations under this Agreement. Contractor will remain responsible for the full performance of any obligations it subcontracts or delegates to its Personnel, and for all acts and omissions of its Personnel under this Agreement. Any attempt by the Contractor to assign, subcontract or delegate in violation of this paragraph is void in each instance. Buyer may, without notice to or consent from Contractor, assign this Agreement or any Order (or any of its rights and obligations under this Agreement or any Order) to its Affiliates.

11.3. Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, excluding any conflicts of law rules or principles. Contractor irrevocably submits to venue and exclusive personal jurisdiction in the federal court located in Pendleton, Oregon and state courts located in Gilliam County, Oregon for any dispute arising out of this Agreement, and waives all objections to jurisdiction and venue of such courts.

11.4. Notices. Except as otherwise provided in this Agreement, any notice, invoice or other document to be given by either party under this Agreement must be given in writing to the other party at the address below its signature line above. If no address is listed for Contractor, notice must be given to Contractor's last known address. Notice may be delivered by personal delivery, registered or certified mail (return receipt requested), nationally recognized overnight courier service, facsimile (with electronic confirmation to the sender), or email, and will be deemed delivered (1) if by overnight courier service, 1 business day after deposit with a reputable overnight courier with all charges prepaid; (2) if by registered or certified mail, 3 business days after deposit with the mail carrier; and (3) if by personal delivery, facsimile, or email, on the day of delivery, facsimile transmission (with electronic confirmation to the sender), or email transmission if it is a business day, or the next following business day otherwise. A party may change its notice address by giving notice in accordance with this paragraph.

11.5. Independent Contractors. Contractor and Buyer are independent contractors. Contractor has exclusive control over its Personnel, its labor and employee relations and its policies relating to wages, hours, working conditions and other employment conditions. Contractor has the exclusive right to hire, transfer, suspend, lay off, recall, promote, discipline, discharge and adjust grievances with its Personnel. Contractor is solely responsible for all salaries and other compensation of its Personnel who provide Services. Contractor is solely responsible for making all deductions and withholdings from its employees' salaries and other compensation and paying all related contributions, taxes and assessments. Contractor's Personnel are not eligible to participate in any employment benefit plans or other benefits available to Buyer employees. Neither party has any authority to bind the other party to any agreement or obligation.

11.6. Severability. If any provision of this Agreement is determined to be unenforceable, this Agreement will be enforced as if the unenforceable provisions were not present, and any partially valid and enforceable provisions will be enforced to the extent that they are enforceable.

11.7. No Waiver. Neither party waives any right under this Agreement by failing to exercise any rights under this Agreement. Any waiver granted under this Agreement will be effective only if stated in a writing signed by the party granting the waiver.

11.8. Cumulative Rights. The parties' rights and remedies under this Agreement are cumulative, and either party may enforce any of its rights or remedies under this Agreement or other rights and remedies available to it at law or in equity.

11.9. Construction. The section headings in this Agreement are for convenience of reference only and will not be given effect to interpret or construe any provisions of this Agreement. Each party has sought the advice of legal counsel and has participated to a significant degree in the drafting and preparation of this Agreement. Accordingly, no provision of this Agreement will be construed against any party on the basis of that party being the drafter. Wherever used in this Agreement, the singular includes the plural, and the plural includes the singular; the use of any gender, tense or conjugation includes all genders, tenses and conjugations; and the word "including" means "including, without limitation."

11.10. Counterparts. This Agreement may be executed by facsimile or other electronic means and in any number of counterparts, each of which when executed and delivered shall be an original, which together will constitute one and the same agreement.

11.11. Survival. Any provisions of this Agreement which, by their nature, should survive or may reasonably be interpreted as surviving the termination or expiration of this Agreement, including provisions relating to payment obligations arising before termination or expiration, defense and indemnity obligations, limitations of liability, and confidentiality obligations, will survive the termination or expiration of this Agreement and continue in full force and effect.

11.12. Entire Agreement. This Agreement (including the Service Schedules and Orders), together with all associated exhibits and other attachments, all of which are incorporated into this Agreement, constitute the complete and final agreement of the parties relating to the Services and supersede the parties' prior or contemporaneous agreements, understandings and discussions relating to the Services. No modification of this Agreement will be binding unless in writing and signed by Buyer and Contractor. Any standard documents or terms or conditions maintained by Contractor, whether or not filed with a government agency, including those published from time to time on a Contractor web site, are effective only for the purpose of providing a technical description of Contractor's standard service offerings; any such standard documents or terms or conditions (including service levels, service credits, charges, conditions of usage, monitoring or filtering of traffic, disclosure of customer information, indemnification, limits on liability and exclusive remedies, ownership and intellectual property rights, or suspension and termination rights) will have no effect on, and will not supersede, cancel, modify or supplement the terms and conditions of this Agreement. **NEITHER PARTY WILL BE BOUND BY, AND EACH SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THIS AGREEMENT (WHETHER PROFFERED VERBALLY OR IN ANY QUOTATION, INVOICE, SHIPPING DOCUMENT, ACCEPTANCE, PURCHASE ORDER**

CONFIRMATION, CORRESPONDENCE, WEBSITE, DOCUMENTATION, CLICK THROUGH AGREEMENT, SHRINK WRAP AGREEMENT OR OTHERWISE), UNLESS THAT PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY BOTH PARTIES.

11.13. Tariffs. If there is an inconsistency between this Agreement and Contractor's tariffs or other regulatory filings which precludes Buyer from receiving any or all of the rights and benefits provided by this Agreement, Contractor will notify Buyer and promptly amend the tariff or otherwise resolve the inconsistency to provide such rights or benefits to Buyer. If that is not legally possible, Contractor will promptly inform Buyer, and Buyer may terminate any or all of the affected Orders or Services upon 30 days' prior notice (to be given any time within 90 days of Buyer's receipt of Contractor's notification that it is not legally possible to provide Buyer such rights and benefits) with no liability other than paying for Services properly provided before the effective date of termination.

11.14. Rights of Third Parties. This Agreement does not create or confer any rights or benefits enforceable by any person not a party to it.

11.15. Time of the Essence. Time is of the essence for Contractor's performance of its obligations under this Agreement.

Schedule 1:

Conduit and Fiber Maintenance and Repair Service

This Service Schedule (including any exhibits) sets forth additional terms applicable to O&M Services. This Service Schedule does not apply to any other Services, except to the extent that the terms of this Service Schedule are expressly incorporated in other parts of this Agreement.

1. Definitions

Initially capitalized terms shall have the meanings set forth in this Schedule 1, Section 1, or Section 1 of the General Terms of this Agreement:

“Buyer Facilities” means the fiber, conduit, and/or all relevant appurtenances thereto described in the Order.

“Chronic Service Level Default” means, with respect to any Service Levels set forth in this Service Schedule or any Order: (1) Contractor fails to perform in accordance with any single Service Level and such failure continues for more than 7 consecutive days, (2) Contractor fails to perform in accordance with the Service Levels 2 or more times in any month irrespective of the number of failures to perform any one of such Service Levels; or (3) in any period of 180 days during the term of the Order, Contractor fails to perform in accordance with: (A) any single Service Level 3 or more times, or (B) the Service Levels 5 or more times irrespective of the number of failures to perform any one of such Service Levels.

“Emergency Restoration Services” means all necessary work to repair Buyer conduit and fiber and return it to operating condition.

“Indefeasible Right of Use” or **“IRU”** means Buyer’s right and interest in certain Buyer Facilities pursuant to an Indefeasible Right of Use Agreement between the parties dated _____, 2017, and any IRU Order thereunder.

“Manhole Maintenance” means all maintenance necessary to maintain manholes in good repair, including but not limited to pumping, venting, air-quality testing and mitigation, and cleaning.

“Network” means the fiber optic cable networks and related facilities owned, controlled or operated by Contractor or its Affiliates.

“O&M Services” means the ongoing maintenance of the Buyer Facilities described in the Order including Utility Locating, Route Surveillance, Contractor Coordination, marker post repair, Manhole Maintenance, Emergency Restoration Services and Relocation Services.

“Outage” means that the Buyer Facilities do not perform in accordance with the requirements set forth in this Agreement, including (A) the Specifications set forth in Exhibit C and (B) any inability of Buyer to send or receive communications between any two End Points (as defined in the IRU Agreement). An Outage begins upon the earlier of (1) Buyer’s notification to Contractor and (2) when indicated by Network control information available to Contractor. An Outage ends upon restoration of the affected Buyer Facility.

“Relocation Services” means all necessary services required to engineer and physically relocate or alter the Buyer Facilities as a result of changes in the Underlying Rights (as defined in the applicable IRU Agreement) or as required by Contractor or any third party. This includes, but is not limited to, the coordination of all project management, engineering, and construction work necessary to ensure the Buyer Facilities meet the specifications set forth in the IRU Order pursuant to the IRU Agreement to the greatest extent possible given the changes in the Underlying Rights (unless otherwise agreed upon with Buyer).

“Route Surveillance” means the regular visual surveillance of all relevant routes on no less than a daily basis and repair/replacement of any marker posts along the relevant routes.

“Utility Locating” includes (1) locating all pathways in which the Buyer Facilities will reside; (2) membership in all necessary utility protection services required to minimize interruptions; (3) maintaining mapping with ticket system; (4) responding to inquiries within mandated time from 3rd parties and relevant government agencies relating to excavation work near Buyer Facilities and coordinating with contractors working in the vicinity of Buyer Facilities to ensure awareness of their location and reducing potential for damage to the Buyer Facilities; and (5) conducting relocation conflict analysis including engineering review of all public projects that may impact the system and advocating on behalf of Buyer to minimize the disturbance of Buyer Facilities by any public works projects (or other projects planned or approved by a governmental authority).

2. Form of Order. Orders will be in the form of Exhibit A to this Schedule. Each span upon which Services are provided will be deemed a separate Order, even if submitted as a single document.

3. O&M Services.

- (a) **O&M Services Generally.** Contractor will provide O&M Services in accordance with the terms of this Agreement and as specified in any relevant Orders. All O&M Services will be provided in a manner consistent with Best Practices. All costs

associated with the O&M Services will be included in the monthly O&M Fee unless expressly excluded in the relevant Order.

- (b) **Utility Locations.** Contractor will respond to all Utility Locating requests within the time required by law.
- (c) **Route Surveillance.** Upon Buyer’s request, Contractor will make available to Buyer GPS data reflecting the date, time, and location of Contractor personnel sufficient to demonstrate Contractor has met its Route Surveillance obligations.
- (d) **Maintenance Restrictions.** Contractor must perform all non-emergency Services affecting the Buyer Facilities between 1:00 am and 3:00 am local time, Saturday and Sunday, or at other times Buyer approves in writing.
- (e) **Maintenance Notification.** Contractor will notify Buyer of any Service affecting the availability of the Buyer Facilities in accordance with the table below. If Buyer objects to the maintenance, Contractor will use its best efforts to conduct the maintenance on another date and time acceptable to Buyer.

Type	Notice
Scheduled maintenance	At least 5 days advance notice by email to: _____.
Unscheduled, emergency maintenance	As soon as commercially practicable under the circumstances, but in no event less than 24 hours advance notice by email to: and by telephone to: (541) xxx-xxxx

- 4. Emergency Restoration Services.** Contractor will provide the Emergency Restoration Services in accordance with the Terms of this Agreement and as specified in any relevant Order. As part of the monthly recurring charge for the Emergency Restoration Services, Contractor will maintain sufficient capacity to meet the Response Times specified in Exhibit B at two separate points located not more than 30 miles from each other.
- 5. Relocation Services.** Contractor will provide Relocation Services in accordance with the terms of this Agreement and as specified in any relevant Orders. If a third party requires Contractor to relocate any Buyer Facilities covered by this Schedule, Contractor will notify Buyer as soon as commercially practicable, using best efforts to provide at least 90 days’ advance notice.
- 6. Operations Contact.** Contractor will maintain telephone and email support 24-hours per day, 7 days a week (with no holidays) for Buyer to contact Contractor if Buyer experiences an outage or other problem with the Buyer Facilities (the “Operations POC”).
- 7. Contractor Access Rights.** Subject to all required third party approvals, Contractor may use conduit and building access at the End Points, but only if it does not interfere with Buyer’s intended use and only as needed to provide the O&M Services.
- 8. Ownership of Contractor Equipment.** Contractor Equipment installed at Service Locations remains the property of Contractor (or its suppliers) and will never be deemed a fixture to any real property owned by Buyer or any third party. Nothing in this Agreement gives or conveys to Buyer any right, title or interest in the Contractor Equipment. Buyer will not remove or relocate the Contractor Equipment without Contractor’s prior written consent. Buyer may not allow any liens to be placed on the Contractor Equipment or Network.
- 9. Force Majeure.** Notwithstanding anything to the contrary, during any period longer than 48 hours where Contractor is unable to perform as a result of a Force Majeure event, Buyer may, at its own expense, perform the Services. During such Force Majeure event, Contractor assigns to Buyer all rights and authorization required to perform the Emergency Restoration Services itself or to retain a third party to provide those Services on Buyer’s behalf. Buyer (or any third party contractor performing on Buyer’s behalf) will use commercially reasonable efforts to perform any such work in a manner consistent with Best Practices.

Exhibit A
Conduit and Fiber Maintenance and Repair Service Schedule
Conduit and Fiber Maintenance and Repair Services Agreement
Service Order for Conduit and Fiber Maintenance and Repair Service Schedule

This Service Order is effective as of the last date signed below (the “Effective Date”) and entered into under and made a part of the Conduit and Fiber Maintenance and Repair Services Agreement between the Buyer and the Contractor , with an effective date of _____ (the “Agreement”). Buyer and Contractor have received and read a copy of the Agreement, which governs this Service Order.

General Terms	
Billing Address	All invoices must include the purchase order number specified by Buyer.
Initial Term	_____ years (measured from Scheduled Delivery Date)
Service	Conduit and Fiber Maintenance and Repair (O&M Services, Emergency Restoration Services, and Relocation Services as specified below)
Scheduled Delivery Date	
Routing Specifications	<input type="checkbox"/> None <input type="checkbox"/> Route diagram attached <input type="checkbox"/> Route diagram provided in electronic file Filename: Date provided to Buyer: If route diagrams apply, Contractor will route the Dark Fiber as depicted in the applicable route diagrams. Any text set forth in the Route Diagrams will have no legal meaning or effect for purposes of this Service Order, other than to depict the physical routes of the Dark Fiber.

Service Locations	
Site Code	Physical Address

No. Fiber Pairs	Service Type	Additional Specifications	A-End		Z-End		Additional Requirements ¹			Charges per Pair/Circuit		No. of Pairs/Circuits	Total	
			Site Code	Demarcation Point	Site Code	Demarcation Point	Max Distance	Max db Loss	Max Round-Trip Latency	Non-Recurring Charges ("NRC")	Monthly Recurring Charges ("MRC")		NRC	MRC
1)	<input checked="" type="checkbox"/> O&M Services <input checked="" type="checkbox"/> Em. Rest. <input checked="" type="checkbox"/> Relocation													
2)	<input checked="" type="checkbox"/> O&M Services <input checked="" type="checkbox"/> Em. Rest. <input checked="" type="checkbox"/> Relocation													
Additional Terms														
1. All charges in USD .														

This Service Order is signed by duly authorized representatives of the parties.

Contractor:

[_____]

By: _____

Name: _____

Title: _____

Date: _____

Buyer:

[_____]

By: _____

Name: _____

Title: _____

Date: _____

¹ The distance, end-to-end db loss, and round-trip latency for each Dark Fiber pair and each Lit Fiber circuit, as applicable, between Demarcation Points, including all splices and patches, must not exceed any specified maximum values. An Outage is deemed to exist for any Service that does not satisfy these additional requirements.

Exhibit B

Service Levels

1. Relocation Services Delivery. If Contractor fails to complete installation and testing of conduit and/or fiber as part of the Relocation Services as required under this Agreement or within the time frame mandated by a governmental authority, Buyer will be entitled to Service Credits equal to the percentage of the non-recurring charges (or if no non-recurring charges apply, the percentage of the first month's charges) for the affected Services, as set out in the following table:

Days Beyond Which Installation and Testing Is Due	Applicable Percentage
1 - 7	10%
8 - 14	30%
14 - 25	50%
25+	100%

Notwithstanding anything to the contrary, to the extent Contractor's failure to complete the relocation within the time frame required results in the loss of Buyer's access to the fiber routes, Contractor will be subject to the maximum Service Level penalty applicable under this Section 2.

2. Response Times. Contractor will immediately respond to any notification by Buyer of an Outage or other problem with the Buyer Facilities and commence working to resolve the Outage or other problem no later than response time set forth in the table below.

Nature of Incident	Response Time (per incident)	Applicable Percentage of the Monthly Recurring Charge for Emergency Services
Outage / Loss of Service	15 minutes	10%
Other Problem	1 hour	10%

3. Emergency Repair Services – Maximum Repair Time

(a) Contractor will meet the Maximum Repair Time specified below for repairing the Buyer Facilities. The Maximum Repair Time will vary based on the number of fibers in a span affected by an Outage. Contractor will conduct appropriate network tests to verify restoration prior to completing the work and will provide copies of the test results to Buyer upon request.

Number of fibers affected by the Outage	Maximum Repair Time
Less than 24 (12 pairs)	12 hours

For Emergency Repairs that last beyond the Maximum Repair Time, Buyer shall be entitled to a Service Credit equal to 10% of the otherwise applicable Emergency Repair Services charges for each hour beyond the Maximum Repair Time until the Buyer Facilities are repaired (e.g., 10% for 1 hour delay, 20% for 2 hour delay, etc.). This Service Credit will not exceed 100% of the charges associated with the relevant repair.

Exhibit C

Buyer Facility Specifications

1. General. Contractor will perform fiber testing as described in this Exhibit on each span of fiber in the Buyer Facilities (“Buyer Fiber”) and will provide Buyer with results documentation (in electronic format reasonably requested by Buyer).

2. Power Testing. Contractor will conduct end-to-end loss measurements for each Buyer Fiber in the span and from both directions using an industry-accepted laser source and power meter, using the bi-directional average to determine the end-to-end loss at each appropriate wavelength. Contractor will conduct this testing at both 1310 nm and 1550 nm for Standard Single Mode Fiber, and at 1550 nm for Dispersion Shifted Fiber (True Wave™, LEAF™, etc.) or for spans that include both Standard Single Mode Fiber and Dispersion Shifted Fiber. Testing must ensure fiber continuity and the absence of crossed fibers in the span. Testing must be conducted where the Buyer Fiber is terminated by Contractor in fiber distribution panels at both ends of the span.

3. OTDR Testing.

(a) Contractor will conduct optical time-domain reflectometer (“OTDR”) testing at both 1310 nm and 1550 nm wavelengths when the fiber consists of Standard Single Mode Fiber, and at 1550 nm if the Buyer Fiber consists of either Dispersion Shifted Fiber (TrueWave™, LEAF™, etc.) or a combination of Single Mode and Dispersion Shifted fiber types. Contractor will conduct OTDR testing on a bi-directional basis for each Buyer Fiber in each span. However, if due to length or attenuation reasons the Buyer Fiber span exceeds the OTDR dynamic range, a portion or the entire span may be tested on a unidirectional basis. Alternatively, the Buyer Fiber span may be divided into shorter testing spans, to the extent reasonably possible, in order to obtain bi-directional analysis. Also, in instances where Buyer intends to accept Buyer Fiber that is not terminated at one end by Contractor in a fiber distribution panel (such as in a manhole or handhole), only unidirectional testing will be performed. Based on the foregoing OTDR testing methodology, each Buyer Fiber span must meet the following minimum performance requirements, excluding loss associated with splices and connectors:

Fiber Type and Wavelength	Maximum Attenuation Coefficient (dB/km)
Singlemode at 1310 nm	0.35
Singlemode at 1550 nm	0.25

(b) Contractor will provide a turnover documentation package containing the actual traces detailing the testing parameters (including pulse width, averaging and range). The average bi-directional splice loss for all splices within each span must be 0.10 dB or less. The average bidirectional connector loss for all connectors within each span must be 0.50 dB or less.

(c) Contractor will provide all traces in electronic format reasonably requested by Buyer using GR 196 format. If the average bi-directional splice loss of each span exceeds 0.10 dB, Contractor will provide upon Buyer’s request documentation of at least three attempts to reduce this value to below 0.10 dB.