

MASTER FIBER SWAP AND USE AGREEMENT BETWEEN
THE VILLAGE OF NEW ALBANY AND
THE CITY OF GAHANNA

THIS MASTER FIBER SWAP AND USE AGREEMENT ("Agreement") made and entered into as of this ____ day of _____, 2008, between the VILLAGE OF NEW ALBANY, OHIO, an Ohio municipal corporation (the "Village"), having an office at 99 West Main Street, P.O. Box 188, New Albany, Ohio, 43054, and the CITY OF GAHANNA, an Ohio municipal corporation (the "City"), having an office at 200 S. Hamilton Road, Gahanna, Ohio 43230, and which are sometimes referred to individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, this Agreement is being entered into between the Village and the City for the purpose of, and benefit to, the Parties in obtaining access to the fiber loop networks in the Parties respective jurisdictions; and

WHEREAS, access to the fiber loop networks will provide the Parties with greater connectivity and stronger internet capabilities for the betterment of the employees and citizens of both the Village and City; and

WHEREAS, providing the Parties with access to each others fiber loop networks will allow the Parties to work together in developing a more robust internet system; and

WHEREAS, in connection with the above, the Village shall grant the City with an Indefeasible Right to Use ("IRU") fibers in the Village fiber loop network in and to certain fibers for the purpose of providing telecommunications, video, data, and/or information services; and

WHEREAS, the Village will facilitate a grant of an IRU from Columbus Southern Power Company ("CSPC") to the City in the Village fiber loop network in and to certain fibers for the purpose of providing telecommunications, video, data, and/or information services; and

WHEREAS, in exchange for the above, the City shall grant the Village with an IRU for fibers in the City fiber loop network in and to certain fibers for the purpose of providing telecommunications, video, data, and/or information services; and

WHEREAS, the Parties have agreed to enter into this Agreement which embodies the mutual covenants and agreements for the relationship between the Parties hereto in connection with the use of the fiber loop networks; and

WHEREAS, the Parties may in the future agree to enter into additional separate agreement(s) for additional and/or separate optical fiber uses which will incorporate the covenants and agreements of this Agreement and which will also set forth the terms and provisions unique to each additional or different specific project.

NOW, THEREFORE, in consideration of the mutual benefits hereunder and the benefits conferred upon the Parties, the Parties hereto do hereby agree as follows:

1. **Village Owned Fiber.** The Village will assign the use and ownership rights of 16 (sixteen) strands of fiber optic cables pursuant to the Dark Fiber IRU Agreement between Village and the City, attached hereto as Exhibit A and incorporated herein.

2. **CSPC Owned Fiber.** In addition, the Village will cause CSPC to transfer to the City the use and ownership rights to sixteen (16) strands of fiber optic cables pursuant to the Dark Fiber IRU Agreement between CSPC and the City, attached hereto as Exhibit B and incorporated herein.

3. **City Owned Fiber.** The City will assign the use and ownership rights of sixteen (16) strands of fiber optic cables pursuant to the Dark Fiber IRU Agreement between City and the Village, attached hereto as Exhibit C and incorporated herein.

4. **Connectivity.** The Village and the City agree to cooperate to facilitate a reliable interface and satisfactory operational connectivity between their respective fiber backbones and the fibers granted to the Parties through the IRUs attached to this Agreement as Exhibits A, B and C.

5. **Term and Termination.** The term of this Agreement shall commence as of the date of execution set forth below, and shall end eighteen (18) years thereafter. If the Village, the City or CSPC fails to execute the attached Exhibits A, B and/or C, then the respective remaining parties shall have the right to terminate this Agreement upon forty-five (45) days' written notice to the non-signing party, provided that the non-signing party does not cure the breach within forty-five (45) day period.

6. **Mutual Agreement.** Should the Village of New Albany Administrator and the City of Gahanna Mayor determine that it is in the best interests of their respective jurisdictions to exchange up to an additional sixteen (16) fibers not addressed within this Agreement, the Village Administrator and the Mayor may execute additional IRUs pursuant to the mutual understanding that the additional IRUs are incorporated herein and subject to the terms of this Agreement.

7. **Contingency Plan for Fiber Loop Network Failure.** The Parties shall work cooperatively in the creation of contingency plan should the Village's or the City's internet connection fail at any time during the term of this Agreement.

8. **Point of Presence.** The Parties shall mutually cooperate to develop a location where a "meet point" or "point of presence" can be established, if necessary.

9. **Amendments.** Any amendments to this Agreement shall be in writing, signed and approved by The Village and signed and approved by the City.

10. **Force Majeure.** Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood,

earthquake or other catastrophes; adverse weather conditions; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefore; lack of transportation; national emergencies; insurrections; riots, wars; or strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events").

11. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns; provided, however, that no assignment hereof or sublease, assignment or licensing (hereinafter collectively referred to as a "Transfer") of any rights or obligations hereunder, except for those contained herein, shall be valid for any purpose without the prior written consent of each Party hereto.

12. **Self-Insurance.** Both the Village and the City are either self-insured or possess reasonably adequate insurance coverage, and damage to the system shall be repaired pursuant to the terms of the IRU.

13. **Effect of Section Headings.** Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

14. **Notices.** Any written notice under this Agreement shall be deemed properly given if sent by registered or certified mail, postage prepaid, or by nationally recognized overnight delivery service or by facsimile to the address specified below, unless otherwise provided for in this Agreement:

If to the Village to:

Village Administrator
Village of New Albany, Ohio
99 West Main Street P.O. Box 188
New Albany, OH 43054

With a Copy to:

Law Director
Village of New Albany, Ohio
250 West Street
Columbus, OH 43215

If to the City to:

Mayor
City of Gahanna
200 S. Hamilton Road
Gahanna, Ohio 43230

With a Copy to:

Law Director
City of Gahanna
200 S. Hamilton Road
Gahanna, Ohio 43230

Either Party may, by written notice to the other Party, change the name or address of the person to receive notices pursuant to this Agreement.

15. **Relationship of Parties.** Nothing in this Agreement shall be construed to create a partnership, association, master/servant or joint venture relationship between the Parties.

16. **Severability.** In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this

Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Agreement.

17. **Compliance with Law.** Each Party hereto agrees that it will perform its respective rights and obligations hereunder in accordance with all applicable laws, rules and regulations.

18. **Governing Law and Venue.** This Agreement shall be interpreted in accordance with the Charter and Codified Ordinances of the Village of New Albany and the City of Gahanna, as amended, the laws of the State of Ohio, and all applicable federal laws, rules and regulations as if this Agreement were executed and performed wholly within the State of Ohio. No conflict of law provisions shall be invoked so as to use the laws of any other jurisdiction. The exclusive venue for all cases or disputes related to or arising out of this Agreement shall be the state and federal courts in Franklin County, Ohio.

19. **Entire Agreement.** This Agreement, including any Exhibits attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter. This Agreement cannot be modified except in writing signed by both Parties.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement effective the day and year first above written:

VILLAGE
Village of New Albany

CITY
City of Gahanna

By: Joseph Stefanov

By: Rebecca Stinchcomb

Its: Village Administrator

Its: Mayor

Approved As To Form:

Law Director, Village of New Albany, Ohio.

Law Director, City of Gahanna, Ohio

EXHIBIT A

DARK FIBER IRU AGREEMENT

This DARK FIBER IRU AGREEMENT (the "Agreement") is made as of this ___ day of _____, 2008, between the Village of New Albany ("FIBER OWNER"), an Ohio municipal corporation, having an office at 99 West Main Street, P.O. Box 188, New Albany, Ohio, 43054, and the City of Gahanna, an Ohio municipal corporation, with an office located at 200 S. Hamilton Road, Gahanna, Ohio 43230 ("CUSTOMER") and which are sometimes referred to individually as "Party" and collectively as "Parties."

WHEREAS, FIBER OWNER operates a communication system in Ohio and has Dark Fiber on a route described in Exhibit A, attached hereto and incorporated herein, and

WHEREAS, the Parties have executed a certain Master Fiber Swap and Use Agreement providing CUSTOMER with the opportunity to utilize certain Dark Fiber of FIBER OWNER; and

WHEREAS, upon the terms and conditions set forth below, CUSTOMER desires to acquire from FIBER OWNER and FIBER OWNER desires to provide to CUSTOMER an Indefeasible Right of Use in the Strands of Dark Fiber as set forth in Exhibit A.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

1. DEFINITIONS

As used in this Agreement:

1.1 Authorized Use means a business purpose of CUSTOMER's optical fiber telecommunications network for telecommunication traffic of CUSTOMER.

1.2 Fiber Optic Facilities means a certain fiber optic cable composed of at least sixteen (16) strands of optical fiber, per the specifications set forth in attached Exhibit B ("Standard Construction and Fiber Specifications"), which cable is owned or leased by FIBER OWNER and installed in a conduit system along the right-of-way.

1.3 Strands means individual fiber optic Strands within the Fiber Optic Facilities.

1.4 Dark Fiber means one or more Strands subject to this Agreement through which an associated light, signal or light communication transmission must be provided to furnish service.

1.5 CUSTOMER's Strands means the strands as set forth in Exhibit A, as designated by FIBER OWNER, of Dark Fiber in the Fiber Optic Facilities.

1.6 Indefeasible Right of Use means an exclusive right to use CUSTOMER's Strands.

1.7 Fiber Useful Life means the period from the Acceptance Date of CUSTOMER's Strands until the date they become commercially unusable along the route due to normal usage over an extended period of time.

1.8 Environmental, Health and Safety Laws means any federal, state, or local statute, regulation, rule, ordinance or applicable governmental order, decree, or settlement agreement, or principle or requirement of common law, regulating or protecting the environment or human health or safety, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601 et seq.), as amended, the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), as amended, and the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), as amended, and regulations promulgated thereunder.

1.9 Hazardous Discharge means any release, spill, leak, pumping, emission, discharge, injection, leaching, pouring, disposing or dumping of a Hazardous Substance.

1.10 Hazardous Substance means any pollutant or contaminant or any hazardous or toxic chemical waste, material, or substance, including without limitation any defined as such under Environmental, Health and Safety Laws, and including without limitation asbestos, petroleum products and wastes, polychlorinated biphenyl's, and radon gas.

1.11 Environmental, Health, or Safety Complaint means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, proceeding, judgment, letter or communication from any federal, state, or municipal authority or any other private party involving a Hazardous Discharge from, in or at FIBER OWNER's Conduit System or any violation related to Conduit System of any order, permit, or Environmental, Health and Safety Law.

1.12 Segment shall mean one of the segments set forth in Exhibit A.

1.13 Span shall mean one of the parts of the fiber Segments set forth in Exhibit A.

1.14 Access Point shall mean one of the sites at the end of the Spans set forth in Exhibit A.

2. GRANT

2.1 Upon the terms, covenants and conditions contained in this Agreement, FIBER OWNER grants to CUSTOMER and CUSTOMER accepts from FIBER OWNER an Indefeasible Right of Use of CUSTOMER's Strands solely for Authorized Use (the "IRU") during the term of the IRU as provided in this Agreement. CUSTOMER shall have no further right, title or other interest in the Conduit System, Fiber Optic Facilities or CUSTOMER's Strands. FIBER OWNER shall have the right to grant and renew rights to any entity to use the Conduit System, the Fiber Optic Facilities or any other property of FIBER OWNER (exclusive of CUSTOMER's Strands during the term of the IRU).

2.2 Notwithstanding the foregoing, it is understood and agreed as between the Parties that the grant of the IRUs shall be treated for federal and all applicable state and local tax

purposes as the sale and purchase of the IRU Fibers and the associated property subject thereto, and that on or after the exercise of its IRU, CUSTOMER shall for tax purposes be treated as the owner of the IRU Fibers and the associated property for such purposes. The parties agree to file their respective income tax returns, property tax returns and other returns and reports for their respective Assessments on such basis and, except as otherwise required by law, not to take any positions inconsistent therewith.

3. CONSTRUCTION AND START-UP

3.1 FIBER OWNER or its agent shall provide and install the Fiber Optic Facilities contained in Exhibit A. FIBER OWNER covenants that the Fiber Optic Facilities along the Right of Way that it constructs or provides pursuant hereto shall be constructed substantially and in all material respects in accordance with the specifications set forth in Exhibit B. Work shall include the labor and material.

3.2 FIBER OWNER or its agent shall test all CUSTOMER's Strands in accordance with the procedures specified in Exhibit C, attached hereto and incorporated herein, ("Fiber Cable Splicing, Testing, and Acceptance Procedures") to verify that CUSTOMER's Strands are installed and operational in accordance with the specifications described in Exhibits B and C. Fiber Acceptance Testing shall progress Span by Span along each Segment, so that test results may be reviewed in a timely manner. Unless otherwise noted in Exhibit A, Fiber Acceptance Testing shall occur at the fiber termination panels to which CUSTOMER may connect its fibers in the Access Points at the ends of each Span. FIBER OWNER shall provide CUSTOMER reasonable advance notice of the date and time of each Fiber Acceptance Testing such that CUSTOMER shall have the opportunity to have a person or persons present to observe FIBER OWNER's Fiber Acceptance Testing. When FIBER OWNER has determined that the results of the Fiber Acceptance Testing with respect to a particular Span show that the CUSTOMER's Strands so tested are installed and operating in conformity with the applicable specifications as set forth in Exhibits B and C, FIBER OWNER shall promptly provide CUSTOMER with a copy of such test result. Within sixty (60) days of the execution of this Agreement, CUSTOMER or CUSTOMER's equipment vendor will be permitted to undertake such additional tests ("CUSTOMER Testing") of the CUSTOMER's Strands as CUSTOMER deems appropriate. If the results of such CUSTOMER TESTING will not support CUSTOMER's use of the CUSTOMER Strands, CUSTOMER may terminate this Agreement with respect to such Segment and receive a full refund of any payments for such Segment made to FIBER OWNER hereunder within such sixty (60) day period.

3.3 If and when FIBER OWNER or its agent gives written notice to CUSTOMER that the test results of the Fiber Acceptance Testing are within parameters of the specifications in Exhibits B and C with respect to an entire Segment, CUSTOMER shall provide FIBER OWNER with written notice accepting (or rejecting by specifying the defect or failure in the Fiber Acceptance Testing that is the basis for such rejection) CUSTOMER's Strands. If CUSTOMER fails to notify FIBER OWNER of its acceptance or rejection of the final test results with respect to CUSTOMER's Strands comprising a Segment within ten (10) days after CUSTOMER'S receipt of notice of such test results, CUSTOMER shall be deemed to have accepted such segment. If, during the course of such construction, installation and testing, any material deviation from the specifications set forth in Exhibits B and C is discovered, the construction or

installation of the affected portion of the Segment shall be repaired to such specification by FIBER OWNER at FIBER OWNER's sole cost and expense. The date of such notice of acceptance (or deemed acceptance) of CUSTOMER's Strands for all Segments along the Route shall be the "Acceptance Date" for the Route.

3.4 If, at any time prior to the date that is twelve (12) months after the Acceptance Date, CUSTOMER shall notify FIBER OWNER in writing of its discovery of a material deviation from the specifications set forth in Exhibits B and C with respect to any such Segment (which notice shall be given within thirty (30) days of such discovery), the construction or installation of the affected portion of such Segment shall be repaired to such specification by FIBER OWNER at FIBER OWNER's sole cost and expense. For purposes hereof, "material deviation" means a deviation which is reasonably likely to have a material adverse effect on the operation or performance of the CUSTOMER's Strands affected thereby.

3.5 For informational purposes only and not as a part of the specifications or procedures set forth in Exhibit B or C, FIBER OWNER knows that the CUSTOMER Strands, at the time of purchase, but prior to installation, conformed with the then existing manufacturer specifications for SMF-28. There are no existing manufacturer's warranties still in effect on the Customer Strands and FIBER OWNER is not making any such warranties or assurances in this regard. If available, FIBER OWNER will provide CUSTOMER with prior test data on other fibers contained within the Cable (not the CUSTOMER Strands) for CUSTOMER to review, but CUSTOMER is entitled to perform its own CUSTOMER Testing in accordance with Section 3.3.

4. CONSIDERATION

4.1 CUSTOMER shall pay to FIBER OWNER a fee for each year during the term of this Agreement for maintenance of CUSTOMER's Strands based on the rates set forth in Exhibit A and the final Optical Time Domain Reflectometer ("OTDR") mileages for the various Routes. A pro-rated amount of the initial payment shall be made within thirty (30) days after the Acceptance Date of CUSTOMER's Strands, as provided in Section 3. Thereafter, CUSTOMER shall pay the maintenance fee on a quarterly basis.

4.2 Except as otherwise specifically provided, CUSTOMER shall pay all applicable fees and charges provided for in this Agreement, within thirty (30) days after receipt of Invoice.

4.3 All payments not made when due shall bear a late payment charge of one and one-half (1½%) percent per month of the unpaid balance or the highest lawful rate, whichever is less.

5. IRU TERM

This IRU shall have an effective date when fully executed and shall be terminable at either the option of the CUSTOMER or the FIBER OWNER with thirty (30) days written notice or on September 30, 2027, whichever shall occur first.

6. MAINTENANCE AND OPERATION

6.1 FIBER OWNER or its agent shall maintain CUSTOMER's Strands in accordance with the requirements and procedures set forth in Exhibit D ("Maintenance Specifications and Procedures"). CUSTOMER shall cooperate with and assist, as may be reasonably required, FIBER OWNER in performing said maintenance.

6.2 In the event of service outages, FIBER OWNER or its agent agree to use reasonable efforts to respond promptly and restore CUSTOMER's Strands within the parameters of the specifications in Exhibit B; provided, however, that CUSTOMER shall solely be responsible, at its own expense, for restoring an outage caused by a failure of light, signal or light communication transmission. In the event of an emergency maintenance situation, CUSTOMER will notify FIBER OWNER, and FIBER OWNER or its agent will use reasonable commercial efforts to dispatch personnel to be on-site within four (4) hours (allowing for delays caused by circumstances beyond the reasonable control of FIBER OWNER). The goal of emergency restoration splicing shall be to restore service promptly. This may require the use of some type of mechanical splice, such as the "3M Fiber Lock" to complete the temporary restoration. Permanent restorations will take place after the temporary splice is complete. CUSTOMER shall also be solely responsible, at its own expense, for the operation, maintenance and repair of all terminal equipment and facilities required in connection with the use of CUSTOMER's Strands.

6.3 FIBER OWNER or its agent shall provide CUSTOMER access to CUSTOMER's Strands by cable stub taken by FIBER OWNER from the Fiber Optic Facilities and delivered to CUSTOMER at FIBER OWNER designated splice points or by connecting such fiber to other fibers leased by CUSTOMER from an American Electric Power company or, as mutually agreed to by the parties, in selected FIBER OWNER points or presence at the fiber distribution panel. If a splice point is not located at a FIBER OWNER manhole/handhole, FIBER OWNER, at its option, may construct a manhole/handhole for CUSTOMER. All other splice points shall be located at a FIBER OWNER manhole/handhole. Splice points will be identified on the as-built drawings.

6.4 FIBER OWNER or its agent shall accomplish sheath opening and stub out of CUSTOMER's Strands at the splice points in CUSTOMER's and FIBER OWNER's manholes/handholes. CUSTOMER may splice its own fiber optic cable to CUSTOMER's Strands only in CUSTOMER's manholes/handholes. FIBER OWNER or its agent shall splice CUSTOMER's fiber optic cable to CUSTOMER's Strands in FIBER OWNER's manhole/handholes.

6.5 For routes that are already constructed, within twenty (20) days after the Acceptance Date, FIBER OWNER or its agent shall provide to CUSTOMER as-built drawings for the Route. All other as-built drawings will be provided one hundred twenty (120) days after the Acceptance Date. The drawings shall contain splice locations, manhole/handhole locations.

6.6 In exercising its rights under this Agreement, each party shall at its own expense comply with the most stringent of: Environmental, Health and Safety Laws; applicable FIBER OWNER EH&S Practices or applicable CUSTOMER EH&S practices; the requirements and specifications of the National Electrical Code and the National Electrical Safety Code (all of the

foregoing collectively referred to as "EHS Requirements"); other applicable governmental laws, regulations, ordinances, rules, codes, orders, guidance, permits, and approvals; and applicable easement or license conditions. FIBER OWNER EH&S Practices shall be those written policies prepared by FIBER OWNER to govern its own EH&S management that FIBER OWNER provides to CUSTOMER at the time both parties have executed this Agreement. Any notice, report, correspondence, or submissions made by CUSTOMER to federal, state, or municipal environmental, safety, or health authorities related to the Conduit System shall be provided by CUSTOMER to FIBER OWNER promptly, and in no case later than twenty-four (24) hours. CUSTOMER also shall promptly provide to FIBER OWNER a copy of any Environmental, Health or Safety Complaint received by CUSTOMER, and in no case later than three (3) business days after CUSTOMER'S receipt of same. CUSTOMER's communications facilities and other equipment shall not physically, electronically or inductively interfere with those of FIBER OWNER. Where permitted by FIBER OWNER, CUSTOMER shall ensure that its employees are trained in the proper procedures for entering and operating in the Conduit System. CUSTOMER shall provide FIBER OWNER copies of all relevant certificates of training for its employees or those of its contractors before beginning any work at the licensed Conduit System. FIBER OWNER shall, at its option, have the right to refuse entry to the Conduit System to any or all of CUSTOMER's employees or contractor's employees.

6.7 In the event that CUSTOMER requests FIBER OWNER to perform any of the following, CUSTOMER agrees to reimburse FIBER OWNER the reasonable cost of FIBER OWNER (i) constructing manholes/handholes for CUSTOMER; (ii) accomplishing all sheath openings and stub out of CUSTOMER's Strands; and (iii) splicing CUSTOMER's fiber optic cable to CUSTOMER's Strands. Such charges shall be at FIBER OWNER's fully loaded labor rates then in effect and FIBER OWNER's cost of material plus eighteen (18%) per cent.

6.8 Should CUSTOMER's splices or other work not be placed and maintained in accordance with the provisions of this Agreement, FIBER OWNER may at its option correct said condition. FIBER OWNER shall notify CUSTOMER in writing prior to performing such work whenever practicable. However, when such conditions pose an immediate safety threat, interfere with the performance of FIBER OWNER's service obligations, or pose an immediate threat to the physical integrity of FIBER OWNER's facilities, FIBER OWNER or its agent may perform such work and take such action that it deems necessary without first giving notice to CUSTOMER. As soon as practicable thereafter, FIBER OWNER shall advise CUSTOMER of the work performed and the action taken and shall endeavor to arrange for re-accommodation of CUSTOMER's Strands so affected. CUSTOMER shall promptly reimburse FIBER OWNER for all reasonable costs incurred by FIBER OWNER for all such work, action, and re-accommodation performed by FIBER OWNER.

6.9 In the event a Hazardous Discharge or other conditions are discovered or created at or near work being performed by CUSTOMER at the Conduit System that may require i) investigation or remediation or ii) unforeseen measures to protect the environment, health or safety (collectively "Adverse EH&S Conditions"), the party discovering the condition shall immediately notify the other party. The party in the best position to do so (or, if the parties are equally situated, CUSTOMER) shall then immediately take reasonable measures to temporarily contain or otherwise avoid exacerbation of or exposure to the Adverse EH&S Conditions. Unless

FIBER OWNER affirmatively notifies CUSTOMER otherwise, CUSTOMER shall also take such other actions as applicable EH&S Requirements prescribe.

6.10 CUSTOMER shall be responsible for obtaining and maintaining, at its sole expense, from the appropriate public or private authority any franchises, licenses, permits or other authorizations required to enter upon the property where the Conduit System is located.

6.11 CUSTOMER, at its sole cost and expense, shall (i) use CUSTOMER's Strands and (ii) conduct all work in or around the Conduit System in a safe condition and in a manner reasonably acceptable to FIBER OWNER, so as not to physically, electronically or inductively conflict or interfere or otherwise adversely affect the Conduit System or the facilities placed therein by FIBER OWNER, joint users, or other authorized customers.

6.12 CUSTOMER must obtain prior written authorization from FIBER OWNER approving any future work and the party performing such work before CUSTOMER shall perform any work in or around the Conduit System.

6.13 In the event CUSTOMER receives information that the Conduit System or the Fiber Optic Facilities are damaged, it shall notify FIBER OWNER of said damage by phone at: 1-888-8AEPNMC.

This is a 24 hour, 7 day per week notification number. In the event FIBER OWNER receives information that CUSTOMER's Strands are damaged, FIBER OWNER will notify CUSTOMER of said damage by phone at CUSTOMER's emergency telephone number. The call shall be directed to the Supervisor on Duty, and the caller shall provide the following information.

1. Name of Company making report.
2. Location reporting problem.
3. Name of contact person reporting problem.
4. Telephone number to call back with progress report.
5. Description of the problem in as much detail as possible.
6. Time and date the problem occurred or began.
7. State whether or not the problem presents a jeopardy situation to the Conduit System, the Fiber Optic Facilities or CUSTOMER's Strands.

6.14 FIBER OWNER shall designate the particular Strands of Dark Fiber that will constitute CUSTOMER's Strands and the location and manner in which they will enter and exit the Conduit System.

6.15 If FIBER OWNER moves, replaces or changes the location, alignment or grade of the Conduit System ("Relocation"), FIBER OWNER shall concurrently relocate CUSTOMER's

Strands. FIBER OWNER shall provide CUSTOMER thirty (30) calendar days prior notice of any such relocation, if possible. FIBER OWNER shall have the right to direct such relocation, including the right to determine the extent of, the timing of, and methods to be used for such relocation, provided that any such relocation:

- (a) shall be constructed and tested in accordance with the specifications and requirements set forth in this Agreement and applicable Exhibits;
- (b) will not result in a materially adverse change to the end points of the Segments; and
- (c) FIBER OWNER will use reasonable efforts to perform such work at a time that will not unreasonably interrupt service on the System.

If the relocation is because of an event of force majeure, pursuant to Section 26.2, or of any governmental or third party authority, including a Taking by right of eminent domain, CUSTOMER shall reimburse FIBER OWNER for CUSTOMER's proportionate share of the costs of the relocation of FIBER OWNER's Conduit System. To the extent FIBER OWNER receives reimbursement from a third party which is allocable to a relocation of FIBER OWNER's Conduit System, it will credit or reimburse CUSTOMER for its proportionate share of the reimbursement. If FIBER OWNER relocates FIBER OWNER's Conduit System solely for its own benefit, CUSTOMER shall not be required to reimburse FIBER OWNER for the costs of the relocation of FIBER OWNER's Conduit System. CUSTOMER's proportionate share shall be a fraction the numerator of which shall be the number of CUSTOMER's Strands and the denominator of which shall be the total number of Strands in FIBER OWNER's Conduit System.

6.16 CUSTOMER shall be deemed the generator of all waste associated with its work related to FIBER OWNER's Conduit System and shall both remove that waste from the area and dispose of or otherwise manage it at its own expense in compliance with all applicable laws. "Waste" shall include without limitation, any manmade materials (including asbestos) and any soil or other environmental media that may be removed or excavated by CUSTOMER, and all hazardous and non-hazardous substances and materials associated with the work that are intended to be discarded, scrapped, or recycled. It shall be presumed that all the substances and material brought to the area of that work that are not incorporated into the work (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues, or byproducts), except for substances and materials that CUSTOMER intends to use in their original form in connection with similar work, are waste to which the above CUSTOMER obligations apply.

6.17 In the event that CUSTOMER desires to obtain an additional Strands of Dark Fiber on the same or different Routes, CUSTOMER may submit such a request to FIBER OWNER and FIBER OWNER may make such additional Strands available to CUSTOMER at mutually acceptable rates and terms. Other than the fees or charges or the length of the IRU term, the terms and conditions of the purchase of an additional IRU by CUSTOMER will generally be as set forth in this Agreement.

6.18 During the term of this IRU, CUSTOMER may desire other services and products that FIBER OWNER may provide. CUSTOMER shall request said services from FIBER OWNER and FIBER OWNER shall reply, based on an individual case basis and availability of

product or service at the time of the request. These services shall include, but not be limited to: network or POP design, NOC services, construction, equipment installation, test and turn up.

7. OWNERSHIP

7.1 Legal title to Customer's Strands shall at all times be vested in FIBER OWNER. Neither the provision of the use of CUSTOMER's Strands by FIBER OWNER to CUSTOMER hereunder, nor the payments by CUSTOMER contemplated hereby, shall create or vest in CUSTOMER any easement, interest, or any other ownership or property right of any nature in CUSTOMER's Strands, except as granted in Section 2 hereof. CUSTOMER shall not grant any security interest in the CUSTOMER's Strands or any part or component thereof, without obtaining the prior written consent of FIBER OWNER, which consent will not be unreasonably withheld, conditioned or delayed.

7.2 FIBER OWNER may use or permit the use of the Conduit System, the Fiber Optic Facilities and the telecommunications capacity thereof for any lawful purpose. Nothing in this Agreement shall be construed or interpreted to prohibit FIBER OWNER from leasing or licensing the Fiber Optic Facilities or otherwise providing capacity to others or from installing additional fibers or capacity, including without limitation, fiber optic capacity, within the Conduit System (other than CUSTOMER's Strands during the term of the IRU) or to prohibit FIBER OWNER from operating such Fiber Optic Facilities (alone or in combination with others) in competition with CUSTOMER.

8. EMINENT DOMAIN

If there is a Taking of CUSTOMER's Strands by right or threat of eminent domain (a Taking") which, as agreed by the parties, or in the absence of such agreement as determined pursuant to the provisions of the DISPUTE RESOLUTION clause of this Agreement, results in the remainder of CUSTOMER's Strands being unable to be restored to a condition suitable for CUSTOMER's business needs within ninety (90) days from the date of the Taking ("Substantial Taking"), this Agreement shall terminate. In such event any periodic IRU fee and/or maintenance fee shall abate from the data of Taking and any previously paid IRU fee and/or maintenance fee attributable for any period beyond such date minus fifty percent (50%) shall be returned to CUSTOMER. If there shall be a Taking which does not constitute a Substantial Taking, this Agreement shall not terminate but FIBER OWNER shall, with due diligence, restore CUSTOMER's Strands as speedily as practical to its condition before the Taking in accordance with the provisions of Section 6.11.

9. INDEMNIFICATION

9.1 Only to the extent permitted by Ohio law, including without limitation the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, CUSTOMER will indemnify, defend, and hold harmless FIBER OWNER and FIBER OWNER's agents officers and employees, from any and all losses, damages, costs, expenses (Including reasonable attorneys fees), statutory fines or penalties, actions, or claims for personal injury (including death), damage to property, or other damage or financial loss of whatever nature in any way arising from CUSTOMER's activities undertaken pursuant to this Agreement

(Including, without limitation, the Installation, construction, operation or maintenance of CUSTOMER's Strands), except to the extent caused by the negligence or willful misconduct on the part of FIBER OWNER or FIBER OWNER's agents, officers or employees.

9.2 Without limiting the foregoing, to the extent permitted by Ohio law, including without limitation the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, CUSTOMER specifically will indemnify, defend, and hold harmless FIBER OWNER and FIBER OWNER's agents, officers and employees from any and all claims asserted by customers of CUSTOMER in any way arising out of or in connection with this Agreement or CUSTOMER's Fiber Optics Facilities, except to the extent caused by the negligence or willful misconduct on the part of FIBER OWNER or FIBER OWNER's agents, officers or employees.

9.3 Only to the extent permitted by Ohio law, including without limitation the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, CUSTOMER further shall indemnify and hold harmless FIBER OWNER, its officers, directors, employees and agents, and its successors and assigns from and against any claims, liabilities, losses, damages, fines, penalties, and costs (including reasonable attorneys fees), whether foreseen or unforeseen, which the indemnified parties suffer or incur because of (i) any Hazardous Discharge resulting from acts or omissions of CUSTOMER; (ii) any exacerbation of a pre-existing Hazardous Discharge resulting from acts or omissions of CUSTOMER; or (iii) any failure of CUSTOMER to comply with Environmental, Health and Safety requirements or other requirements of this Agreement.

9.4 Except for personal injury and property damage as provided above, in no event shall either party be liable to the other party for any special, consequential or indirect damages (including by way of illustration, lost revenues and lost profits) arising out of this Agreement or any obligation arising thereunder, whether in an action for or arising out of breach of contract, tort or otherwise.

9.5 With respect to claims against a party by another party's employees, each party agrees to expressly waive its immunity, if any, as a complying employer under the applicable workers compensation law, but only to the extent that such immunity would bar or affect recovery under or enforcement of this indemnification obligation. With respect to the State of Ohio, this waiver applies to Section 35, Article II of the Ohio Constitution and Ohio Rev. Code Section 4123.74.

9.6 In the event that CUSTOMER loses its status as a governmental agency or this Agreement is assigned to a non-governmental agency, all qualifications of indemnification clauses contained in this Agreement, including without limitation, the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, will not apply.

10. INSURANCE

10.1 During the term of this Agreement, CUSTOMER shall obtain and maintain and shall require any of its permitted contractors to obtain and maintain not less than the following insurance:

Type of Coverage	Amount of Coverage
Worker's Compensation Insurance	Statutory Amount
Employer's Liability Occupational Disease and Bodily Injury Insurance	\$1 million each accident \$1 million disease each employee \$1 million disease-policy limit
Commercial General Liability Insurance, including Premises-operations, products/completed operations, independent contractors, contractual (blanket), broad form property damage, with umbrella excess liability (collectively, "Comprehensive Coverage")	Combined single limit personal injury and property damage on an occurrence policy form with policy amounts of (i) not less than \$5 million per occurrence (without a limitation on aggregate amount); or (ii) not less than \$5 million per occurrence with an aggregate annual amount of not less than \$5 million
Automobile Liability Insurance for owned, hired and non-owned autos ("Automobile Liability Coverage")	\$2 million combined single limit bodily injury/property damage

The limits set forth above are minimum limits and will not be construed to limit CUSTOMER's liability.

10.2 This insurance shall cover the amounts and types of liability listed above with respect to CUSTOMER's obligations under this Agreement.

10.3 Each policy evidencing the insurance described in this Section 10 must contain a provision that the insurance policy, and the coverage it provides, shall be primary and noncontributing with respect to any policies carried by the CUSTOMER and its affiliates, and that any policies carried by the party and its affiliates shall be excess insurance.

10.4 At the time this Agreement is signed, CUSTOMER must furnish to FIBER OWNER certificates of insurance stating that the insurer will notify the other part at least thirty (30) days prior to cancellation of, or any adverse material change in, the coverage provided.

11. COMPLIANCE WITH LAWS

Notwithstanding anything to the contrary in this Agreement, each Party shall ensure that any and all activities it performs pursuant to this Agreement shall comply with all applicable laws. Without limiting the generality of the foregoing, each Party shall comply with all applicable provisions of i) workmen's compensation laws, ii) unemployment compensation laws, iii) the Federal Social Security Law, iv) the Fair Labor Standards Act, and v) Environmental, Health and Safety Laws.

12. DISCLAIMER OF WARRANTIES

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, FIBER OWNER MAKES NO WARRANTIES REGARDING THE SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT AND MAKES NO WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY,

INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. FIBER OWNER ABANDONMENTS, SALES OR DISPOSITIONS

Nothing in this Agreement shall prevent or be construed to prevent FIBER OWNER from abandoning, selling or otherwise disposing of any portion of the Conduit System or other property of FIBER OWNER used for CUSTOMER's Strands, provided, however, that in the event of a sale or other disposition, FIBER OWNER shall condition such sale or other disposition subject to the rights of CUSTOMER under this Agreement. FIBER OWNER shall promptly notify CUSTOMER of the proposed abandonment or other intended disposition of the Conduit System or other property used by CUSTOMER.

14. LIENS

Both parties shall keep the Conduit System and other property of FIBER OWNER relating to CUSTOMER's rights under this Agreement, free from all mechanic's, artisan's, material-man's, architect's, or similar services liens which arise in any way from or as a result of its activities and cause any such liens which may arise to be discharged or released.

15. DEFAULT PROVISIONS AND REMEDIES

15.1 Each of the following shall be deemed an Event of Default by CUSTOMER under this Agreement:

15.1.1 Failure of CUSTOMER to pay the maintenance fee or any other sum required to be paid under the terms of this Agreement and such default continues for a period of fourteen (14) days after written notice thereof to CUSTOMER;

15.1.2 Failure by CUSTOMER to perform or observe any other terms, covenant, agreement or condition of this Agreement on the part of CUSTOMER to be performed and such default continues for a period of forty-five (45) days after written notice thereof from FIBER OWNER (provided that if such default cannot be cured within such forty-five (45) day period, this period will be extended if CUSTOMER commences to cure such default within such forty-five (45) day period and proceeds diligently thereafter to effect such cure);

15.1.3 The filing of a tax or mechanic's lien against the Conduit System or other property of FIBER OWNER which is not bonded or discharged within thirty (30) days of the date CUSTOMER receives notice that such lien is filed;

15.1.4 An event of CUSTOMER's Bankruptcy;

15.1.5 If CUSTOMER knowingly uses CUSTOMER's Strands in violation of any law or in aid of any unlawful act or undertaking;

15.1.6 If CUSTOMER occupies any portion of the Conduit System without having first been issued a license therefore; or

15.1.7 If any authorization which lawfully may be required of the CUSTOMER by any governmental or private authority for the operation (including splicing or other activities by CUSTOMER), of CUSTOMER's Strands within the Conduit System is denied or revoked.

15.2 Upon the occurrence of an Event of Default, FIBER OWNER, without further notice to CUSTOMER in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

15.2.1 Perform, on behalf and at the expense of CUSTOMER, any obligation of CUSTOMER under this Agreement which CUSTOMER has failed to perform and of which FIBER OWNER shall have given CUSTOMER notice, the cost of which performance by FIBER OWNER shall be payable by CUSTOMER to FIBER OWNER upon demand;

15.2.2 Exercise any other legal or equitable right or remedy which it may have. Any costs and expenses incurred by FIBER OWNER (including, without limitation, reasonable attorneys' fees) in enforcing any of its rights or remedies under this Agreement shall be repaid to FIBER OWNER by CUSTOMER upon demand.

15.3 All rights and remedies of FIBER OWNER set forth in this Agreement shall be cumulative, and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

15.4 The following events or occurrences shall constitute a default by FIBER OWNER under this Agreement:

15.4.1 Any material noncompliance by FIBER OWNER with the terms of this Agreement;

15.4.2 Any material breach by FIBER OWNER of a representation or warranty under this Agreement.

A Party shall give prompt written notice to the other Party of the occurrence of any default under this Agreement. If such default continues for forty-five (45) days after receipt of such notice (provided that if such default cannot be cured within such forty-five (45) day period, this period will be extended if the defaulting Party continues to cure such default within such forty-five (45) day period and proceeds diligently thereafter to effect such cure), the non-defaulting Party may at its option, terminate the IRU or pursue any remedies it may have at law or equity.

16. DISPUTE RESOLUTION

16.1 It is the intent of FIBER OWNER and CUSTOMER that any disputes which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' authorized representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties hereto agree to resolve such disputes in accordance with the provisions of this Article. The obligation herein to arbitrate shall not be binding upon any party with respect to request for preliminary injunctions, temporary restraining orders, specific

performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.

16.2 CUSTOMER and FIBER OWNER shall each designate, by separate letter, representatives as points of contact and decision making with respect to the obligations and rights of the parties, said letters to be furnished by each party to the other within thirty (30) days from the date of this Agreement. Any disputed issues arising during the term of this Agreement shall in all instances be initially referred to the parties' designated representatives. The parties' designated representatives shall render a mutually agreeable resolution of the disputed issue, in writing, within seventy-two (72) hours of such referral. Either party may modify the designated representative upon written notice to the other party.

16.3 Any claims or disputes arising under the terms and provisions of this Agreement, or any claims or disputes which the parties' representatives are unable to resolve within the seventy-two (72) hour time period, shall continue to be resolved between the parties' representatives if mutually agreeable, or may be presented by the claimant in writing to the other party within thirty (30) days after the circumstances which gave rise to the claim or dispute took place or become known to the claimant, or within thirty (30) days after the parties' representatives fail to achieve resolution, whichever is later. The written notice shall contain a concise statement of the claim or issue in dispute, together with relevant facts and data to support the claim.

16.4 Any controversies or disputes arising out of or relating to this Agreement that are not resolved in accordance with the preceding procedure may be referred to nonbinding arbitration under the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitrator(s) shall not have the authority, power or right to alter, change, amend, modify, add or subtract from any provision of this Agreement or to award punitive damages.

16.5 During the continuance of any arbitration proceeding, each party shall continue to perform their respective obligations under this Agreement.

17. FORCE MAJEURE

Neither FIBER OWNER nor CUSTOMER shall be In default under this Agreement with respect to any delay in its performance caused by any of the following conditions (each a "Force Majeure Event"): (1) act of God; (2) fire; (3) flood; (4) material shortage or unavailability not resulting from the responsible party's failure to timely place orders or take other necessary actions therefor; (5) government codes, ordinances, laws, rules, regulations or restrictions (collectively, "Regulations") (but not to the extent the delay caused by such Regulations could be avoided by rerouting the Cable if such a reroute was commercially reasonable); (6) war or civil disorder; (7) failure of a third party to grant or recognize a FIBER OWNER Required Right (provided that FIBER OWNER has made timely and reasonable commercial efforts to obtain the

same and such failure is not the result of FIBER OWNER's default or its negligence act or failure to act with respect thereto) or (8) any other cause beyond the reasonable control of such party; provided, however, that this Section 17 shall not apply to the payment of money. The party claiming relief under this Section 17 shall promptly notify the other in writing of the existence of the Force Majeure Event relied on, the expected duration of the Force Majeure Event, and the cessation or termination of the Force Majeure Event. The party claiming relief under this Section 17 shall exercise commercially reasonable efforts to minimize the time for any such delay.

18. TAXES AND USE OF PUBLIC RIGHTS-OF-WAY, LICENSE AND PERMIT FEES

18.1 FIBER OWNER shall not, directly or indirectly, seek reimbursement or contribution from CUSTOMER for any "Assessments (as defined below) that may be assessed against FIBER OWNER, except for any instances outlined in 18.4.

18.2 Subject to Section 18.1, CUSTOMER shall be responsible for any and all Federal or Ohio sales, use, gross receipts, excise, transfer, ad valorem, real property, personal property or other Federal or Ohio taxes, and any and all franchise fees or similar fees (collectively "Assessments") assessed against it due to its ownership of an IRU, its use of the Customer's Strands, including the providing of services over the Customer's Strands, or its ownership or use of facilities connected to the Customer's Strands. Notwithstanding the above, "Assessments shall not include any taxes based on the income, capital, net worth or similar measure of Fiber Owner. For clarification purposes, FIBER OWNER will not be responsible for any income taxes imposed upon CUSTOMER.

18.3 Subject to Section 18.1, FIBER OWNER shall be responsible for any and all Assessments assessed against it due to its construction, ownership or use of the Conduit System, including providing of services over the Conduit System, or its ownership or use of facilities connected to the Conduit System.

18.4 Notwithstanding Sections 18.1 and 18.2 above, if FIBER OWNER is assessed annual fees for use of public rights-of-way, CUSTOMER shall pay its proportionate share of such fees, its proportionate share being determined as provide in Section in Section 8.11. In the event that FIBER OWNER Is assessed for any Assessments related to CUSTOMER's ownership of an IRU or CUSTOMER's use of the Customer's Strands which may not feasibly be separately assessed and for which CUSTOMER's tax-exempt status is not recognized by a taxing authority, FIBER OWNER within thirty (30) days of receipt of an invoice therefor, shall provide information and documentation to CUSTOMER sufficient to demonstrate the basis for the Assessments and the amount and due date for payment of the Assessments. In addition, FIBER OWNER shall provide CUSTOMER with all information reasonably requested by CUSTOMER with respect to any such Assessments. Within this thirty (30) day period, CUSTOMER will notify FIBER OWNER of its intent to challenge the Assessment. After such thirty (30) day period, FIBER OWNER, in it sole discretion, may pay such Assessment and invoice CUSTOMER for reimbursement. CUSTOMER shall reimburse FIBER OWNER for such payment within ten (10) days of receipt of FIBER OWNER's invoice. In the event that CUSTOMER is subsequently able to assert and establish its tax exempt status, FIBER OWNER will reimburse CUSTOMER for Assessments that CUSTOMER has paid once FIBER OWNER has received a refund from the applicable taxing authority. Notwithstanding such payment by

FIBER OWNER, CUSTOMER, at its option, shall have the right at its sole cost to contest any such Assessments and FIBER OWNER will reasonably cooperate with CUSTOMER in pursuing any such contest; provided that CUSTOMER shall have reimbursed FIBER OWNER for such Assessments. In the event FIBER OWNER, in its sole discretion, elects to not pay such tax or fee, it shall so notify CUSTOMER. CUSTOMER, at its option, may pay the Assessments, or contest the payment; provided that CUSTOMER shall, to the extent permitted by Ohio law, including without limitation the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, indemnify and hold harmless FIBER OWNER for the payment of such Assessments and all interest and penalties related thereto; and provided further, that such contest shall be resolved or such Assessments shall be paid so as to prevent any forfeiture of rights or property or the imposition of any lien on the FIBER OWNER Conduit System.

19. SUCCESSION; ASSIGNABILITY

19.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors or assigns.

19.2 Except as provided in this Section 19, a party ("Transferring Party") shall not assign, encumber or otherwise transfer this Agreement or all or any portion of its rights or obligations hereunder to any party without the prior written consent of the other party ("Other Party"). Notwithstanding the foregoing, Transferring Party shall have the right, without Other Party's consent, to (i) subcontract any of its construction or maintenance obligations hereunder; or (ii) assign or otherwise transfer this Agreement in whole or in part (a) to any parent, subsidiary or affiliate of Transferring Party, or (b) any corporation or other entity which Transferring Party may be merged or consolidated or which purchases all or substantially all of the stock or assets of Transferring Party; provided that the assignee or transferee in any such circumstance shall be subject to all of the provisions of this Agreement, including without limitation, this Section 19 and provided further that promptly following any such assignment or transfer, Transferring Party shall give Other Party written notice identifying the assignee or transferee. In the event of any permitted partial assignment of any rights hereunder, Transferring Party shall remain the sole point of contact with Other Party. When Other Party's consent to assign is required, Other Party will have the right to withhold consent if, in its judgment reasonably exercised, the proposed assignee cannot adequately assume the obligations of this Agreement or such an assignment will result in additional liabilities to the Other Party. In no event will any assignment by a Party be permitted without the delivery to Other Party of a binding agreement in writing from the proposed assignee that (i) states that the proposed assignee will assume all current, future and outstanding past obligations under this Agreement as if such assignee had originally executed this Agreement and (ii) evidence proof satisfactory to Other Party that he proposed assignee has insurance coverage comparable to the described in Section 10 or other assurances that the proposed assignee can adequately perform the obligations it will assume under this Agreement.

19.3 Neither party shall attempt to circumvent any of its obligations under this Agreement, or deprive the Other Party of any anticipated benefit under this Agreement, through the use of ownership changes, reorganizations, creation of new entities, or other artificial devices.

19.4 Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

20. NOTICES

Any demand, notice or other communication to be given to a party in connection with this Agreement shall be given In writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, by Tele-copy or commercial over night delivery service addressed to the recipient as set forth as follows or to such other address, individual or Tele copy number as may be designated by notice given by the party to the other:

	FIBER OWNER: Village Administrator Village of New Albany, Ohio 99 West Main Street P.O. Box 188 New Albany, OH 43054
With a copy to:	Law Director Village of New Albany, Ohio 250 West Street Columbus, OH 43215
	CUSTOMER: Mayor City of Gahanna 200 S. Hamilton Road Gahanna, Ohio 43230
With a copy to:	Mr. Gregory Dunn Schottenstein, Zox & Dunn, Co. LPA 250 West Street Columbus, Ohio 43215

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered or certified mail, return receipt requested on the date of receipt thereof and, if given by telecopy, on the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day if not given during normal business hours.

21. NON-WAIVER

No course of dealing, course of performance or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right or condition.

22. CHOICE OF LAW

The construction, interpretation and performance of this Agreement shall be governed by the law of the State of Ohio without regard to its conflicts of laws provisions. Any action or claim based in whole or in part on this Agreement must be brought in an Ohio state or federal court of competent jurisdiction.

23. HEADINGS

All headings contained in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement or any clause.

24. CONFIDENTIALITY AND PROPRIETARY INFORMATION

24.1 In connection with this Agreement, either party may furnish to the other certain information that is marked or otherwise specifically identified as proprietary or confidential ("Confidential Information"). This Confidential information may include, among other things, private easements, licenses, utility agreements, permits, other right-of-way granting documents, specifications, designs, plans, drawings, data, prototypes, and other technical and/or business information. For purposes of this Section 24, the party that discloses Confidential Information is referred to as the "Disclosing Party", and the party that receives information is referred to as the "Receiving Party".

24.2 With respect to Confidential Information disclosed under this Agreement, the Receiving Party and its employees shall, to the extent permitted by Ohio law, including without limitation Ohio Revised Code Section 149.43:

- (a) hold the Confidential Information in confidence;
- (b) use reasonable efforts to restrict disclosure of the Confidential Information to those of its employees who have a need to know in connection with the performance of this Agreement, and not disclose the Confidential Information to any other person or entity without the prior written consent of the Disclosing Party; and
- (c) use the Confidential Information only in connection with the performance of this Agreement, except as the Disclosing Party may otherwise agree in writing.

24.3 Confidential Information shall be deemed the property of the Disclosing Party. Upon written request of the Disclosing Party, the Receiving Party shall, to the extent permitted by Ohio law, including without limitation Ohio Revised Code Section 149.43, return all Confidential Information received in tangible form, except that each party's legal counsel may retain one copy in its files solely to provide a record of such Confidential Information for archival purposes. If the Receiving Party loses or makes an unauthorized disclosure of Confidential Information, it shall notify the Disclosing Party and use reasonable efforts to retrieve the Confidential Information.

24.4 The Receiving Party shall have no obligation to preserve the proprietary nature of Confidential Information which:

- (a) was previously known to the Receiving Party free of any obligation to keep it confidential; or
- (b) is or becomes publicly available by means other than unauthorized disclosure; or
- (c) is developed by or on behalf of the Receiving Party independently of any Confidential Information furnished under this Agreement; or
- (d) is received from a third party whose disclosure does not violate any confidentiality obligation.

24.5 If the Receiving Party is required to disclose the Disclosing Party's Confidential Information by an order or a lawful process of a court or governmental body, the Receiving Party shall promptly notify the Disclosing Party so that the Disclosing Party may seek appropriate protective relief.

25. PUBLICITY AND ADVERTISING

25.1 Neither party shall publish or use any advertising, sales promotions, or other publicity materials that use the other party's logo, trademarks, or service marks without the prior written approval of the other party.

25.2 Each party shall have the right to review and approve any publicity material, press releases, or other public statements by the other that refer to such party or that describe any aspect of this Agreement. Each party agrees not to issue any such publicity materials, press releases, or public statements without the prior written approval of the other party.

25.3 Nothing in this Agreement establishes a license for either party to use any of the other party's brands, marks, or logos without prior written approval of the other party.

26. REQUIRED RIGHTS

26.1 FIBER OWNER covenants that it shall have obtained by the time the CUSTOMER's Strands are made available to CUSTOMER (and will use commercially reasonable efforts to cause to remain in effect during the term of the IRU) easements, leases, licenses, fee interests, rights-of-way, permits, authorizations and other rights necessary and requisite to enable FIBER OWNER to grant the IRU to CUSTOMER ("Required Rights").

26.2 If FIBER OWNER fails to obtain and/or cause to remain effective throughout the term of this IRU all Required Rights for CUSTOMER's Strands, Fiber Owner will use commercially reasonable efforts to relocate the portion of the Conduit System so affected. If, despite commercially reasonable efforts, the Fiber Owner fails to relocate such affected portion of the Conduit System, (i) FIBER OWNER may terminate such affected portion of the IRU upon written notice and (ii) CUSTOMER, as its sole remedy, may also terminate either such affected section of the IRU, the affected city pair Segment or the entire IRU upon not less than sixty (60) days prior written notice. In either event of termination, any periodic IRU and/or maintenance fee with respect to the terminated portion of or entire IRU, as the case may be, shall abate from the date of termination and any previously paid maintenance fee and/or IRU fee attributable to the terminated portion or entire IRU, as the case may be, for any period beyond such date shall be returned to CUSTOMER. FIBER OWNER's failure to cause to remain effective Required

Rights does not constitute a breach of any warranty, representation or covenant of FIBER OWNER.

27. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants that:

- (i) it has full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (ii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and
- (iii) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court, or body.

28. ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral and written communications, understandings and agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

29. NO THIRD PARTY BENEFICIARIES

Except as set forth in Section 30, this Agreement does not provide and is not intended to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

30. RELATIONSHIP OF THE PARTIES

The relationship between the parties shall not be that of partners, agents or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. The parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

31. SUCCESSORS AND ASSIGNS

This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the parties and each of their respective permitted successors and assigns.

32. UNENFORCEABLE PROVISIONS

No provision of this Agreement shall be interpreted to require any unlawful action by either party. If any section or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such a section or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

33. COUNTERPARTS

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

34. RECORD KEEPING REQUIREMENTS

34.1 FIBER OWNER shall keep all financial records in a manner consistent with generally accepted accounting principals and procedures. Documentation to support each action shall be filed in a manner allowing it to be readily located.

34.2 FIBER OWNER shall keep separate business records for this program, including records of disbursements made and obligations incurred in performance of this Agreement which records shall be supported by contracts, invoices, vouchers and other data as appropriate.

34.3 During the period of this Agreement and until the expiration of three years following the termination of this Agreement, FIBER OWNER agrees to provide CUSTOMER, Its duly authorized representatives and any person, agency or instrumentality providing financial support to the work undertaken hereunder with access to and the right to examine any books, documents, papers and records of FIBER OWNER involving transactions related to this Agreement.

In confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the parties have executed this Agreement as of the date first above written

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives.

	VILLAGE OF NEW ALBANY	
	By:	_____
	Name:	_____
	Title	_____
	CITY OF GAHANNA	
	By:	_____
	Name:	_____
	Title:	_____

EXHIBIT A

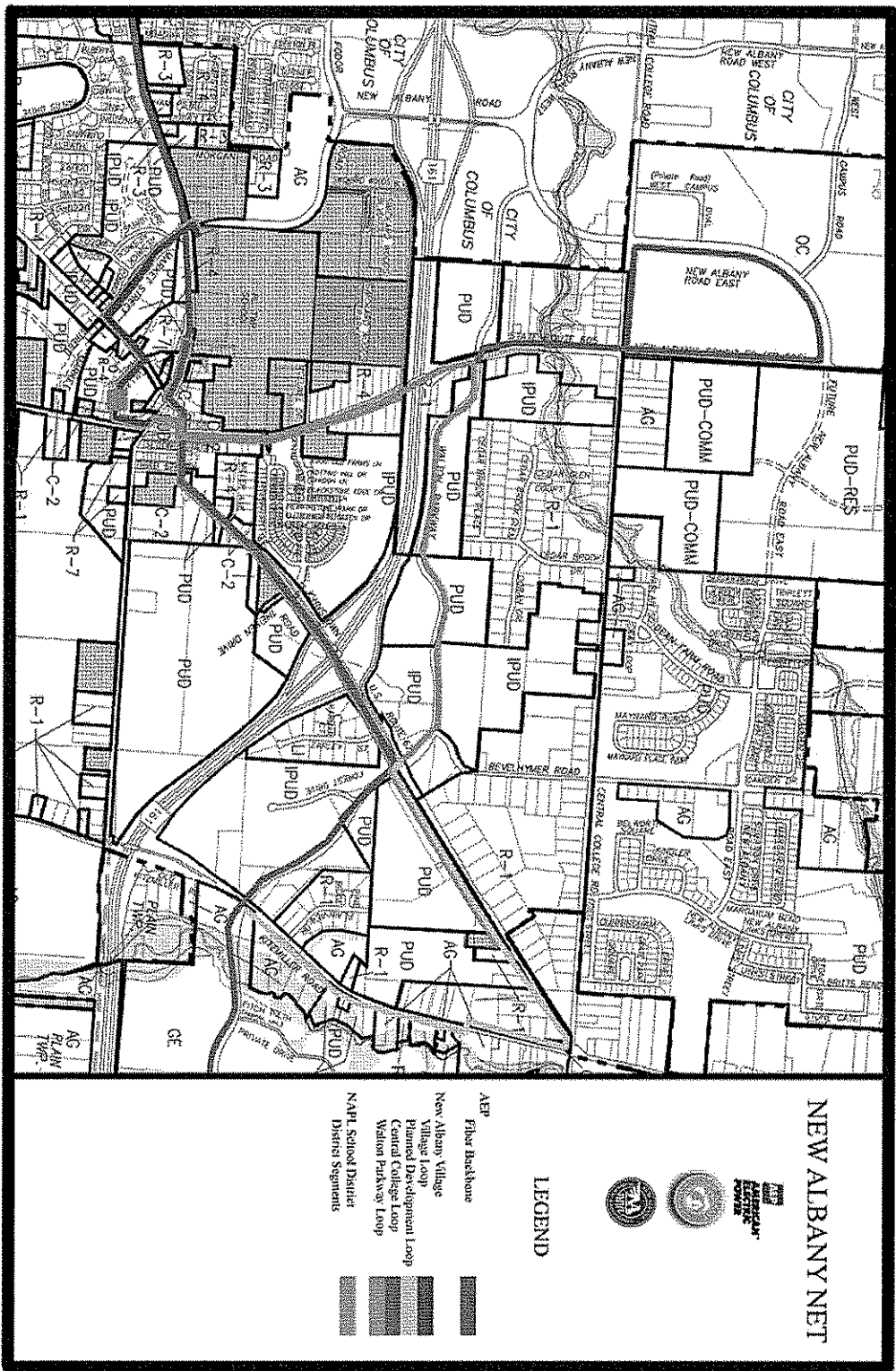


EXHIBIT A-1

Maintenance Fees

(To Be Determined)

EXHIBIT B

Standard Construction & Fiber Specifications **As-Built Drawing Specifications**

Fiber Specifications

Fiber Type varies and is dependent upon route, as generally shown in Exhibit A, but all fiber was manufactured by either Alcoa, Corning or other comparable manufacturer.

Maximum Splice Losses (measured on an individual basis, not averaged)

The maximum splice loss for any individual splice measured "bi-directional" shall not exceed 0.15 db.

The maximum splice loss for any individual transition splice (standard single mode fiber spliced to a non zero dispersion shifted fiber) measured bi-directional" shall not exceed 0.25 db.

The maximum loss for "through" office loss including connectors and jumpers shall not exceed 1db.

Average Splice Loss

The average splice loss shall not exceed 0.10 db. (used for total Span loss calculation only)

Cable Requirements

0.3 db/Km attenuation at 1550nm.

0.4 db/Km attenuation at 1310nm.

Drawings:

Detailed As-Built drawings will be supplied within 20 business days after the execution of this contract. As-Built drawings provided to the Customer by the Fiber Owner will contain the following information presented in the format described below.

1. Route Description The As-Built drawings will contain a geographical depiction of the Segment containing the Customer Strands, provided in the form of a hard copy map. The depiction will identify each POP.
2. Fiber Level Details: The As-Built drawings will provide details on fiber assignment numbers within the cable between each POP and the next contiguous POP, fiber distribution bay, individual fiber assignments, and Fiber Owner circuit ID's to aid in identifying Segments within the cable system.
3. Mileage: Mileage will be the fiber distances via OTDR traces between a POP and the next contiguous POP.

4. Site Names: POPs will be identified using the Fiber Owner's names for such sites, whether or not the Customer uses the same names.

EXHIBIT C

Fiber Cable Splicing, Testing and Acceptance Procedures

1. End-to-End Testing

A. After FIBER OWNER has established completed construction of the fibers, it shall:

- perform bi-directional OTDR end-to-end tests to record splice loss measurements,
- test continuity to confirm that no fibers have been "frogged" or crossed at any splice points, and

B. At Fiber termination points, the pigtail splice loss shall be at least .80 dB, and the reflection level at such termination points shall be less than —50dB.

C. When a Fiber has been spliced, the splice loss shall not be greater than .15 dB in any one direction with a .30 dB bi-directional averaged loss.

D. FIBER OWNER shall perform the bi-directional OTDR end-to-end testing at both 1310 nm and 1550 nm, provided that 1310 nm OTDR tests are not required (i) for Segments longer than 64 kilometers or (ii) where the fiber being tested is not manufactured to support 1310 nm optical signals. The results of such tests for any given Segment shall not be deemed within specification unless showing loss measurements between each end of such Segment in accordance with the loss specifications set forth by the fiber specifications for dB per kilometer loss as specified in Exhibit B. FIBER OWNER shall measure and verify losses for each splice point in both directions and average the loss values. FIBER OWNER shall mark any splice points as OOS that have an average loss value, based on bi-directional OTDR testing, in excess of 0.3 dB. Any such splice points shall be subject to Section 4, below.

2. Post-Construction Testing

When performing permanent splicing (in conjunction with repair of a cable cut, replacement of a Segment of cable, or other work after initial installation and splicing of the cable), OWNER shall perform splicing to meet the specifications within Exhibits B and C. OWNER may, after the Acceptance Date, adopt any alternative methods of testing that are generally accepted in the industry and that provide sufficient data to fulfill the objectives of the tests set forth in this Exhibit.

3. Out-of-Spec Splices

Out-of-Spec splices shall be noted, but shall not preclude Acceptance of a fiber if the Out-of-Spec condition does not affect transmission capability (based on use of then-prevailing telecommunications Industry standards applicable to equipment generally used with the relevant type of fiber) or create a significant possibility of an outage. In the event the CUSTOMER is later able to reasonably establish that the 008 splice affects service, FIBER OWNER shall take

reasonable commercial efforts to bring the splice into compliance with the applicable specifications under Section 1 of this Exhibit and Exhibit B.

4. OTDR Equipment and Settings

FIBER OWNER shall use OTDR equipment and settings that are, in its reasonable opinion, suitable for performing accurate measurements of the fiber installed. Such equipment and settings shall include, without limitation, the Laser Precision CMA4000 models and compatible models for OTDR testing, and the following settings:

A. Index of refraction settings:

		1310 nm	1550 nm	
	Lucent Truwave			
	(Classic and RS)	1.4707	1.4701	
	Corning SMF-28	1.4675	1.4681	
	Corning SMF-LS	1.471	1.470	
	Corning LEAF	N/A	1.469	
	Corning MetroCore	N/A	1.469	
	Sumitomo Fiber	1.467	1.467	

B. Tests of a pigtail connector and its associated splice:

	CMA4000	
	4 km Range	
	50ns Pulse	
	1.m Resolution	

5. Acceptance Test Deliverables

FIBER OWNER shall provide computer media (CD-ROM) or hard copies containing the following information for the relevant fibers and cable Segments:

A. Verification that the loss at each splice point is either (i) in accordance with Exhibits B and C of this Agreement.

B. The final bi-directional OTDR test data, with distances.

6. General Testing Procedures and Acceptance

A. As soon as FIBER OWNER determines that the Customer Fibers in a given Segment meet the Acceptance Standards, it shall provide the deliverables set forth in Section 5 of this Exhibit. Customer shall have ten (10) calendar days after receipt of test deliverables for any Segment to provide FIBER OWNER written notice of any bona fide determination that the Customer Fibers on such Segment do not meet the Acceptance Standards. Such notice shall identify the specific data that indicate a failure to meet the Acceptance Standards.

B. Upon receiving written notice pursuant to Subsection 6.A of this Exhibit, AEP shall either:

- (i) expeditiously take such action as shall be reasonably necessary to cause such portion of the CUSTOMER Fibers to meet the Acceptance Standards and then re-test the CUSTOMER Fibers in accordance with the provisions of this Exhibit; or
- (ii) provide CUSTOMER written notice that FIBER OWNER disputes CUSTOMER's determination that the CUSTOMER Fibers do not meet the Acceptance Standards.

After taking corrective actions and re-testing the CUSTOMER Fibers, FIBER OWNER shall provide CUSTOMER with a copy of the new test deliverables and CUSTOMER shall again have all rights provided in this Article with respect to such new test deliverables. The cycle described above of testing, taking corrective action and re-testing shall take place until the CUSTOMER Fibers meet the Acceptance Standards.

C. If FIBER OWNER provides notice to CUSTOMER pursuant to Clause B(ii), CUSTOMER shall within five (5) calendar days of such notice designate by written notice to FIBER OWNER the names and addresses of three reputable and independent fiber optic testing companies. FIBER OWNER shall designate one of such companies to conduct an independent re-test of the CUSTOMER Fibers for the relevant Segment. If, after such re-testing, the testing company determines that the CUSTOMER Fibers

- (i) meet the Acceptance Standards, then CUSTOMER shall pay the testing company's charges for performing the testing and the acceptance date for the relevant Segment shall be fourteen (14) days after OWNER provided its test deliverables.
- (ii) do not meet the Acceptance Standards, then OWNER shall pay the testing company's charges for performing the testing and shall perform the corrective action and re-testing set forth in Subsection 8(i).

D. Unless CUSTOMER provides a written objection pursuant to Subsection A, the acceptance date of a Segment shall occur on the tenth (10th) day after FIBER OWNER provides the test deliverables for that Segment, or, if earlier, the date CUSTOMER provides written acceptance of such Segment. CUSTOMER's acceptance (pursuant to this subsection or of Subsection C) of the last Segment within a Major Segment shall constitute Acceptance of the

Customer Fibers for such Major Segment. The date of Acceptance for each Major Segment shall constitute the Acceptance Date of such Major Segment.

E. Acceptance testing shall progress Segment by Segment along the System as Cable splicing progresses, so that test deliverables may be reviewed In a timely manner. The CUSTOMER shall have the right, but not the obligation, to have an individual present to observe such testing and FIBER OWNER shall provide the CUSTOMER at least seven (7) days' prior notice of its testing schedule. Within thirty (30) calendar days after FIBER OWNER conclusion of the Fiber Acceptance Testing In any given Segment, FIBER OWNER shall provide the CUSTOMER with a copy of the test deliverables.

EXHIBIT D

Maintenance Specifications and Procedures

FIBER OWNER or its agent shall perform routine maintenance and repair of the Customer Fibers ("Routine Maintenance"). Routine Maintenance shall consist of only the following activities

- of the route on an annual basis: maintenance of a "Call-Before-You-Dig" program and all required and related cable locates; and

- Maintenance of sign posts along the rights-of way along the Segments with the number of the local "Call-Before-You-Dig" organization and the "800" number for FIBER OWNER's "Call Before-You-Dig" program.

EXHIBIT E

Contact/Escalation List

1. Columbus Southern Power Company

1-886-8AEPNMC

[HTTP://www.aepnmc.com](http://www.aepnmc.com)

FIBER OWNER operates and maintains a Network Operations Center (staffed twenty- four (24) hours a day, seven (7) days a week by trained and qualified personnel.

2. Director - Operations

Patrick Collins	Office: 614-716-3598
	Home: 614-476-4022
	Cell: 614-582-4022

EXHIBIT B

DARK FIBER IRU AGREEMENT

This DARK FIBER IRU AGREEMENT (the "Agreement") is made as of this ___ day of _____, 2008, between Columbus Southern Power Company ("FIBER OWNER"), an Ohio corporation, which has a place of business at 1 Riverside Plaza, Columbus, Ohio 43215 and the City of Gahanna, an Ohio municipal corporation, with an office located at 200 S. Hamilton Road, Gahanna, Ohio 43230 ("CUSTOMER") and which are sometimes referred to individually as "Party" and collectively as "Parties."

WHEREAS, FIBER OWNER operates a communication system in Ohio and has some Dark Fiber on a route described in Exhibit A, attached hereto and incorporated herein, and

WHEREAS, CUSTOMER has executed a certain Master Fiber Swap and Use Agreement with the Village of New Albany, providing CUSTOMER with the opportunity to utilize certain Dark Fiber of FIBER OWNER; and

WHEREAS, upon the terms and conditions set forth below, CUSTOMER desires to acquire from FIBER OWNER and FIBER OWNER desires to provide to CUSTOMER an Indefeasible Right of Use in the Strands of Dark Fiber as set forth in Exhibit A.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

1. DEFINITIONS

As used in this Agreement:

1.1 Authorized Use means a business purpose of CUSTOMER's optical fiber telecommunications network for telecommunication traffic of CUSTOMER.

1.2 Fiber Optic Facilities means a certain fiber optic cable composed of at least sixteen (16) strands of optical fiber, per the specifications set forth in attached Exhibit B ("Standard Construction and Fiber Specifications"), which cable is owned or leased by FIBER OWNER and installed in a conduit system along the right-of-way.

1.3 Strands means individual fiber optic Strands within the Fiber Optic Facilities.

1.4 Dark Fiber means one or more Strands subject to this Agreement through which an associated light, signal or light communication transmission must be provided to furnish service.

1.5 CUSTOMER's Strands means the strands as set forth in Exhibit A, as designated by FIBER OWNER, of Dark Fiber in the Fiber Optic Facilities.

1.6 Indefeasible Right of Use means an exclusive right to use CUSTOMER's Strands.

1.7 Fiber Useful Life means the period from the Acceptance Date of CUSTOMER's Strands until the date they become commercially unusable along the route due to normal usage over an extended period of time.

1.8 Environmental, Health and Safety Laws means any federal, state, or local statute, regulation, rule, ordinance or applicable governmental order, decree, or settlement agreement, or principle or requirement of common law, regulating or protecting the environment or human health or safety, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601 et seq.), as amended, the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), as amended, and the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), as amended, and regulations promulgated thereunder.

1.9 Hazardous Discharge means any release, spill, leak, pumping, emission, discharge, injection, leaching, pouring, disposing or dumping of a Hazardous Substance.

1.10 Hazardous Substance means any pollutant or contaminant or any hazardous or toxic chemical waste, material, or substance, including without limitation any defined as such under Environmental, Health and Safety Laws, and including without limitation asbestos, petroleum products and wastes, polychlorinated biphenyls, and radon gas.

1.11 Environmental, Health, or Safety Complaint means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, proceeding, judgment, letter or communication from any federal, state, or municipal authority or any other private party involving a Hazardous Discharge from, in or at FIBER OWNER's Conduit System or any violation related to Conduit System of any order, permit, or Environmental, Health and Safety Law.

1.12 Segment shall mean one of the segments set forth in Exhibit A.

1.13 Span shall mean one of the parts of the fiber Segments set forth in Exhibit A.

1.14 Access Point shall mean one of the sites at the end of the Spans set forth in Exhibit A.

2. GRANT

2.1 Upon the terms, covenants and conditions contained in this Agreement, FIBER OWNER grants to CUSTOMER and CUSTOMER accepts from FIBER OWNER an Indefeasible Right of Use of CUSTOMER's Strands solely for Authorized Use (the "IRU") during the term of the IRU as provided in this Agreement. CUSTOMER shall have no further right, title or other interest in the Conduit System, Fiber Optic Facilities or CUSTOMER's Strands. FIBER OWNER shall have the right to grant and renew rights to any entity to use the Conduit System, the Fiber Optic Facilities or any other property of FIBER OWNER (exclusive of CUSTOMER's Strands during the term of the IRU).

2.2 Notwithstanding the foregoing, it is understood and agreed as between the Parties that the grant of the IRUs shall be treated for federal and all applicable state and local tax

purposes as the sale and purchase of the IRU Fibers and the associated property subject thereto, and that on or after the exercise of its IRU, CUSTOMER shall for tax purposes be treated as the owner of the IRU Fibers and the associated property for such purposes. The parties agree to file their respective income tax returns, property tax returns and other returns and reports for their respective Assessments on such basis and, except as otherwise required by law, not to take any positions Inconsistent therewith.

3. CONSTRUCTION AND START-UP

3.1 FIBER OWNER shall provide and install the Fiber Optic Facilities contained in Exhibit A. FIBER OWNER covenants that the Fiber Optic Facilities along the Right of Way that it constructs or provides pursuant hereto shall be constructed substantially and in all material respects in accordance with the specifications set forth in Exhibit B. Work shall include the labor and material.

3.2 FIBER OWNER shall test all CUSTOMER's Strands in accordance with the procedures specified in Exhibit C, attached hereto and incorporated herein, ("Fiber Cable Splicing, Testing, and Acceptance Procedures") to verify that CUSTOMER's Strands are installed and operational in accordance with the specifications described in Exhibits B and C. Fiber Acceptance Testing shall progress Span by Span along each Segment, so that test results may be reviewed in a timely manner. Unless otherwise noted in Exhibit A, Fiber Acceptance Testing shall occur at the fiber termination panels to which CUSTOMER may connect its fibers in the Access Points at the ends of each Span. FIBER OWNER shall provide CUSTOMER reasonable advance notice of the date and time of each Fiber Acceptance Testing such that CUSTOMER shall have the opportunity to have a person or persons present to observe FIBER OWNER's Fiber Acceptance Testing. When FIBER OWNER has determined that the results of the Fiber Acceptance Testing with respect to a particular Span show that the CUSTOMER's Strands so tested are installed and operating in conformity with the applicable specifications as set forth in Exhibits B and C, FIBER OWNER shall promptly provide CUSTOMER with a copy of such test result. Within sixty (60) days of the execution of this Agreement, CUSTOMER or CUSTOMER's equipment vendor will be permitted to undertake such additional tests ("CUSTOMER Testing") of the CUSTOMER's Strands as CUSTOMER deems appropriate. If the results of such CUSTOMER TESTING will not support CUSTOMER's use of the CUSTOMER Strands, CUSTOMER may terminate this Agreement with respect to such Segment and receive a full refund of any payments for such Segment made to FIBER OWNER hereunder within such sixty (60) day period.

3.3 If and when FIBER OWNER gives written notice to CUSTOMER that the test results of the Fiber Acceptance Testing are within parameters of the specifications in Exhibits B and C with respect to an entire Segment, CUSTOMER shall provide FIBER OWNER with written notice accepting (or rejecting by specifying the defect or failure in the Fiber Acceptance Testing that is the basis for such rejection) CUSTOMER's Strands. If CUSTOMER fails to notify FIBER OWNER of its acceptance or rejection of the final test results with respect to CUSTOMER's Strands comprising a Segment within ten (10) days after CUSTOMER'S receipt of notice of such test results, CUSTOMER shall be deemed to have accepted such segment. If, during the course of such construction, installation and testing, any material deviation from the specifications set forth in Exhibits B and C is discovered, the construction or installation of the

affected portion of the Segment shall be repaired to such specification by FIBER OWNER at FIBER OWNER's sole cost and expense. The date of such notice of acceptance (or deemed acceptance) of CUSTOMER's Strands for all Segments along the Route shall be the "Acceptance Date" for the Route.

3.4 If, at any time prior to the date that is twelve (12) months after the Acceptance Date, CUSTOMER shall notify FIBER OWNER in writing of its discovery of a material deviation from the specifications set forth in Exhibits B and C with respect to any such Segment (which notice shall be given within thirty (30) days of such discovery), the construction or installation of the affected portion of such Segment shall be repaired to such specification by FIBER OWNER at FIBER OWNER's sole cost and expense. For purposes hereof, "material deviation" means a deviation which is reasonably likely to have a material adverse affect on the operation or performance of the CUSTOMER's Strands affected thereby.

3.5 For informational purposes only and not as a part of the specifications or procedures set forth in Exhibit B or C, FIBER OWNER knows that the CUSTOMER Strands, at the time of purchase, but prior to installation, conformed with the then existing manufacturer specifications for SMF-28. There are no existing manufacturer's warranties still in effect on the Customer Strands and FIBER OWNER is not making any such warranties or assurances in this regard. If available, FIBER OWNER will provide CUSTOMER with prior test data on other fibers contained within the Cable (not the CUSTOMER Strands) for CUSTOMER to review, but CUSTOMER is entitled to perform its own CUSTOMER Testing in accordance with Section 3.3.

4. CONSIDERATION

4.1 CUSTOMER shall pay to FIBER OWNER a fee for each year during the term of this Agreement for maintenance of CUSTOMER's Strands based on the rates set forth in Exhibit A and the final OTOR mileages for the various Routes. A pro-rated amount of the initial payment shall be made within thirty (30) days after the Acceptance Date of CUSTOMER's Strands, as provided in Section 3. Thereafter, CUSTOMER shall pay the maintenance fee on a quarterly basis.

4.2 Except as otherwise specifically provided, CUSTOMER shall pay all applicable fees and charges provided for in this Agreement, within thirty (30) days after receipt of Invoice.

4.3 All payments not made when due shall bear a late payment charge of one and one-half (1½%) percent per month of the unpaid balance or the highest lawful rate, whichever is less.

5. IRU TERM

This IRU shall have an effective date when fully executed and shall be terminable at either the option of the User or the Owner with thirty (30) days written notice or on September 30, 2027, whichever shall occur first.

6. MAINTENANCE AND OPERATION

6.1 FIBER OWNER shall maintain CUSTOMER's Strands in accordance with the requirements and procedures set forth in Exhibit D ("Maintenance Specifications and Procedures"). CUSTOMER shall cooperate with and assist, as may be reasonably required, FIBER OWNER in performing said maintenance.

6.2 In the event of service outages, FIBER OWNER agrees to use reasonable efforts to respond promptly and restore CUSTOMER's Strands within the parameters of the specifications in Exhibit B; provided, however, that CUSTOMER shall solely be responsible, at its own expense, for restoring an outage caused by a failure of light, signal or light communication transmission. In the event of an emergency maintenance situation, CUSTOMER will notify FIBER OWNER, and FIBER OWNER will use reasonable commercial efforts to dispatch personnel to be on-site within four (4) hours (allowing for delays caused by circumstances beyond the reasonable control of FIBER OWNER). The goal of emergency restoration splicing shall be to restore service promptly. This may require the use of some type of mechanical splice, such as the "3M Fiber Lock" to complete the temporary restoration. Permanent restorations will take place after the temporary splice is complete. CUSTOMER shall also be solely responsible, at its own expense, for the operation, maintenance and repair of all terminal equipment and facilities required in connection with the use of CUSTOMER's Strands.

6.3 FIBER OWNER shall provide CUSTOMER access to CUSTOMER's Strands by cable stub taken by FIBER OWNER from the Fiber Optic Facilities and delivered to CUSTOMER at FIBER OWNER designated splice points or by connecting such fiber to other fibers leased by CUSTOMER from an American Electric Power company or, as mutually agreed to by the parties, in selected FIBER OWNER points or presence at the fiber distribution panel. If a splice point is not located at a FIBER OWNER manhole/handhole, FIBER OWNER, at its option, may construct a manhole/handhole for CUSTOMER. All other splice points shall be located at a FIBER OWNER manhole/handhole. Splice points will be identified on the as-built drawings.

6.4 FIBER OWNER shall accomplish sheath opening and stub out of CUSTOMER's Strands at the splice points in CUSTOMER's and FIBER OWNER's manholes/handholes. CUSTOMER may splice its own fiber optic cable to CUSTOMER's Strands only in CUSTOMER's manholes/handholes. FIBER OWNER shall splice CUSTOMER's fiber optic cable to CUSTOMER's Strands in FIBER OWNER's manhole/handholes.

6.5 For routes that are already constructed, within twenty (20) days after the Acceptance Date, FIBER OWNER shall provide to CUSTOMER as-built drawings for the Route. All other as-built drawings will be provided one hundred twenty (120) days after the Acceptance Date. The drawings shall contain splice locations, manhole/handhole locations.

6.6 In exercising its rights under this Agreement, each party shall at its own expense comply with the most stringent of: Environmental, Health and Safety Laws; applicable FIBER OWNER EH&S Practices or applicable CUSTOMER EH&S practices; the requirements and specifications of the National Electrical Code and the National Electrical Safety Code (all of the foregoing collectively referred to as "EHS Requirements"); other applicable governmental laws,

regulations, ordinances, rules, codes, orders, guidance, permits, and approvals; and applicable easement or license conditions. FIBER OWNER EH&S Practices shall be those written policies prepared by FIBER OWNER to govern its own EH&S management that FIBER OWNER provides to CUSTOMER at the time both parties have executed this Agreement. Any notice, report, correspondence, or submissions made by CUSTOMER to federal, state, or municipal environmental, safety, or health authorities related to the Conduit System shall be provided by CUSTOMER to FIBER OWNER promptly, and in no case later than twenty-four (24) hours. CUSTOMER also shall promptly provide to FIBER OWNER a copy of any Environmental, Health or Safety Complaint received by CUSTOMER, and in no case later than three (3) business days after CUSTOMER'S receipt of same. CUSTOMER's communications facilities and other equipment shall not physically, electronically or inductively interfere with those of FIBER OWNER. Where permitted by FIBER OWNER, CUSTOMER shall ensure that its employees are trained in the proper procedures for entering and operating in the Conduit System. CUSTOMER shall provide FIBER OWNER copies of all relevant certificates of training for its employees or those of its contractors before beginning any work at the licensed Conduit System. FIBER OWNER shall, at its option, have the right to refuse entry to the Conduit System to any or all of CUSTOMER's employees or contractor's employees.

6.7 In the event that CUSTOMER requests FIBER OWNER to perform any of the following, CUSTOMER agrees to reimburse FIBER OWNER the reasonable cost of FIBER OWNER (i) constructing manholes/handholes for CUSTOMER; (ii) accomplishing all sheath openings and stub out of CUSTOMER's Strands; and (iii) splicing CUSTOMER's fiber optic cable to CUSTOMER's Strands. Such charges shall be at FIBER OWNER's fully loaded labor rates then in effect and FIBER OWNER's cost of material plus eighteen (18%) per cent.

6.8 Should CUSTOMER's splices or other work not be placed and maintained in accordance with the provisions of this Agreement, FIBER OWNER may at its option correct said condition. FIBER OWNER shall notify CUSTOMER in writing prior to performing such work whenever practicable. However, when such conditions pose an immediate safety threat, interfere with the performance of FIBER OWNER's service obligations, or pose an immediate threat to the physical integrity of FIBER OWNER's facilities, FIBER OWNER may perform such work and take such action that it deems necessary without first giving notice to CUSTOMER. As soon as practicable thereafter, FIBER OWNER shall advise CUSTOMER of the work performed and the action taken and shall endeavor to arrange for re-accommodation of CUSTOMER's Strands so affected. CUSTOMER shall promptly reimburse FIBER OWNER for all reasonable costs incurred by FIBER OWNER for all such work, action, and re-accommodation performed by FIBER OWNER.

6.9 In the event a Hazardous Discharge or other conditions are discovered or created at or near work being performed by CUSTOMER at the Conduit System that may require i) investigation or remediation or ii) unforeseen measures to protect the environment, health or safety (collectively "Adverse EH&S Conditions"), the party discovering the condition shall immediately notify the other party. The party in the best position to do so (or, if the parties are equally situated, CUSTOMER) shall then immediately take reasonable measures to temporarily contain or otherwise avoid exacerbation of or exposure to the Adverse EH&S Conditions. Unless FIBER OWNER affirmatively notifies CUSTOMER otherwise, CUSTOMER shall also take such other actions as applicable EH&S Requirements prescribe.

6.10 CUSTOMER shall be responsible for obtaining and maintaining, at its sole expense, from the appropriate public or private authority any franchises, licenses, permits or other authorizations required to enter upon the property where the Conduit System is located.

6.11 CUSTOMER, at its sole cost and expense, shall (i) use CUSTOMER's Strands and (ii) conduct all work in or around the Conduit System in a safe condition and in a manner reasonably acceptable to FIBER OWNER, so as not to physically, electronically or inductively conflict or interfere or otherwise adversely affect the Conduit System or the facilities placed therein by FIBER OWNER, joint users, or other authorized customers.

6.12 CUSTOMER must obtain prior written authorization from FIBER OWNER approving any future work and the party performing such work before CUSTOMER shall perform any work in or around the Conduit System.

6.13 In the event CUSTOMER receives information that the Conduit System or the Fiber Optic Facilities are damaged, it shall notify FIBER OWNER of said damage by phone at: 1-888-8AEPNMC.

This is a 24 hour, 7 day per week notification number. In the event FIBER OWNER receives Information that CUSTOMER's Strands are damaged, FIBER OWNER will notify CUSTOMER of said damage by phone at CUSTOMER's emergency telephone number. The call shall be directed to the Supervisor on Duty, and the caller shall provide the following information.

1. Name of Company making report.
2. Location reporting problem.
3. Name of contact person reporting problem.
4. Telephone number to call back with progress report.
5. Description of the problem in as much detail as possible.
6. Time and date the problem occurred or began.
7. State whether or not the problem presents a jeopardy situation to the Conduit System, the Fiber Optic Facilities or CUSTOMER's Strands.

6.14 FIBER OWNER shall designate the particular Strands of Dark Fiber that will constitute CUSTOMER's Strands and the location and manner in which they will enter and exit the Conduit System.

6.15 If FIBER OWNER moves, replaces or changes the location, alignment or grade of the Conduit System ("Relocation"), FIBER OWNER shall concurrently relocate CUSTOMER's Strands. FIBER OWNER shall provide CUSTOMER thirty (30) calendar days prior notice of any such relocation, if possible. FIBER OWNER shall have the right to direct such relocation,

including the right to determine the extent of, the timing of, and methods to be used for such relocation, provided that any such relocation:

- (a) shall be constructed and tested in accordance with the specifications and requirements set forth in this Agreement and applicable Exhibits;
- (b) will not result in a materially adverse change to the end points of the Segments; and
- (c) FIBER OWNER will use reasonable efforts to perform such work at a time that will not unreasonably interrupt service on the System.

If the relocation is because of an event of force majeure, pursuant to Section 26.2, or of any governmental or third party authority, including a Taking by right of eminent domain, CUSTOMER shall reimburse FIBER OWNER for CUSTOMER's proportionate share of the costs of the relocation of FIBER OWNER's Conduit System. To the extent FIBER OWNER receives reimbursement from a third party which is allocable to a relocation of FIBER OWNER's Conduit System, it will credit or reimburse CUSTOMER for its proportionate share of the reimbursement. If FIBER OWNER relocates FIBER OWNER's Conduit System solely for its own benefit, CUSTOMER shall not be required to reimburse FIBER OWNER for the costs of the relocation of FIBER OWNER's Conduit System. CUSTOMER's proportionate share shall be a fraction the numerator of which shall be the number of CUSTOMER's Strands and the denominator of which shall be the total number of Strands in FIBER OWNER's Conduit System.

6.16 CUSTOMER shall be deemed the generator of all waste associated with its work related to FIBER OWNER's Conduit System and shall both remove that waste from the area and dispose of or otherwise manage it at its own expense in compliance with all applicable laws. "Waste" shall include without limitation, any manmade materials (including asbestos) and any soil or other environmental media that may be removed or excavated by CUSTOMER, and all hazardous and non-hazardous substances and materials associated with the work that are intended to be discarded, scrapped, or recycled. It shall be presumed that all the substances and material brought to the area of that work that are not incorporated into the work (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues, or byproducts), except for substances and materials that CUSTOMER intends to use in their original form in connection with similar work, are waste to which the above CUSTOMER obligations apply.

6.17 In the event that CUSTOMER desires to obtain an additional Strands of Dark Fiber on the same or different Routes, CUSTOMER may submit such a request to FIBER OWNER and FIBER OWNER may make such additional Strands available to CUSTOMER at mutually acceptable rates and terms. Other than the fees or charges or the length of the IRU term, the terms and conditions of the purchase of an additional IRU by CUSTOMER will generally be as set forth in this Agreement.

6.18 During the term of this IRU, CUSTOMER may desire other services and products that FIBER OWNER may provide. CUSTOMER shall request said services from FIBER OWNER and FIBER OWNER shall reply, based on an individual case basis and availability of product or service at the time of the request. These services shall include, but not be limited to: network or POP design, NOC services, construction, equipment installation, test and turn up.

7. OWNERSHIP

7.1 Legal title to Customer's Strands shall at all times be vested in FIBER OWNER. Neither the provision of the use of CUSTOMER's Strands by FIBER OWNER to CUSTOMER hereunder, nor the payments by CUSTOMER contemplated hereby, shall create or vest in CUSTOMER any easement, interest, or any other ownership or property right of any nature in CUSTOMER's Strands, except as granted in Section 2 hereof. CUSTOMER shall not grant any security interest in the CUSTOMER's Strands or any part or component thereof, without obtaining the prior written consent of FIBER OWNER, which consent will not be unreasonably withheld, conditioned or delayed.

7.2 FIBER OWNER may use or permit the use of the Conduit System, the Fiber Optic Facilities and the telecommunications capacity thereof for any lawful purpose. Nothing in this Agreement shall be construed or interpreted to prohibit FIBER OWNER from leasing or licensing the Fiber Optic Facilities or otherwise providing capacity to others or from installing additional fibers or capacity, including without limitation, fiber optic capacity, within the Conduit System (other than CUSTOMER's Strands during the term of the IRU) or to prohibit FIBER OWNER from operating such Fiber Optic Facilities (alone or in combination with others) in competition with CUSTOMER.

8. EMINENT DOMAIN

If there is a Taking of CUSTOMER's Strands by right or threat of eminent domain (a Taking") which, as agreed by the parties, or in the absence of such agreement as determined pursuant to the provisions of the DISPUTE RESOLUTION clause of this Agreement, results in the remainder of CUSTOMER's Strands being unable to be restored to a condition suitable for CUSTOMER's business needs within ninety (90) days from the date of the Taking ("Substantial Taking"), this Agreement shall terminate. In such event any periodic IRU fee and/or maintenance fee shall abate from the date of Taking and any previously paid IRU fee and/or maintenance fee attributable for any period beyond such date minus fifty percent (50%) shall be returned to CUSTOMER. If there shall be a Taking which does not constitute a Substantial Taking, this Agreement shall not terminate but FIBER OWNER shall, with due diligence, restore CUSTOMER's Strands as speedily as practical to its condition before the Taking in accordance with the provisions of Section 6.11.

9. INDEMNIFICATION

9.1 Only to the extent permitted by Ohio law, including without limitation the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, CUSTOMER will indemnify, defend, and hold harmless FIBER OWNER and FIBER OWNER's agents officers and employees, from any and all losses, damages, costs, expenses (Including reasonable attorneys fees), statutory fines or penalties, actions, or claims for personal injury (including death), damage to property, or other damage or financial loss of whatever nature in any way arising from CUSTOMER's activities undertaken pursuant to this Agreement (Including, without limitation, the Installation, construction, operation or maintenance of CUSTOMER's Strands), except to the extent caused by the negligence or willful misconduct on the part of FIBER OWNER or FIBER OWNER's agents, officers or employees.

9.2 Without limiting the foregoing, to the extent permitted by Ohio law, including without limitation the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, CUSTOMER specifically will indemnify, defend, and hold harmless FIBER OWNER and FIBER OWNER's agents, officers and employees from any and all claims asserted by customers of CUSTOMER in any way arising out of or in connection with this Agreement or CUSTOMER's Fiber Optics Facilities, except to the extent caused by the negligence or willful misconduct on the part of FIBER OWNER or FIBER OWNER's agents, officers or employees.

9.3 Only to the extent permitted by Ohio law, including without limitation the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, CUSTOMER further shall indemnify and hold harmless FIBER OWNER, its officers, directors, employees and agents, and its successors and assigns from and against any claims, liabilities, losses, damages, fines, penalties, and costs (including reasonable attorneys fees), whether foreseen or unforeseen, which the indemnified parties suffer or incur because of (i) any Hazardous Discharge resulting from acts or omissions of CUSTOMER; (ii) any exacerbation of a pre-existing Hazardous Discharge resulting from acts or omissions of CUSTOMER; or (iii) any failure of CUSTOMER to comply with Environmental, Health and Safety requirements or other requirements of this Agreement.

9.4 FIBER OWNER agrees to be responsible for any commission payments due to Spectrum Network Solutions, LLC related to this Agreement. FIBER OWNER agrees to indemnify and hold harmless CUSTOMER against any claims, liabilities, losses, damages, costs and expenses (including reasonable attorney's fees) related to commission fees due to Spectrum Network Solutions, LLC acting as a sales agent under this Agreement.

9.5 Except for personal injury and property damage as provided above, in no event shall either party be liable to the other party for any special, consequential or indirect damages (including by way of illustration, lost revenues and lost profits) arising out of this Agreement or any obligation arising thereunder, whether in an action for or arising out of breach of contract, tort or otherwise.

9.6 With respect to claims against a party by another party's employees, each party agrees to expressly waive its immunity, if any, as a complying employer under the applicable workers compensation law, but only to the extent that such immunity would bar or affect recovery under or enforcement of this indemnification obligation. With respect to the State of Ohio, this waiver applies to Section 35, Article II of the Ohio Constitution and Ohio Rev. Code Section 4123.74.

9.7 In the event that CUSTOMER loses its status as a governmental agency or this Agreement is assigned to a non-governmental agency, all qualifications of indemnification clauses contained in this Agreement, including without limitation, the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, will not apply.

10. INSURANCE

10.1 During the term of this Agreement, CUSTOMER shall obtain and maintain and shall require any of its permitted contractors to obtain and maintain not less than the following insurance:

Type of Coverage	Amount of Coverage
Worker's Compensation Insurance	Statutory Amount
Employer's Liability Occupational Disease and Bodily Injury Insurance	\$1 million each accident \$1 million disease each employee \$1 million disease-policy limit
Commercial General Liability Insurance, including Premises-operations, products/completed operations, independent contractors, contractual (blanket), broad form property damage, with umbrella excess liability (collectively, "Comprehensive Coverage")	Combined single limit personal injury and property damage on an occurrence policy form with policy amounts of (i) not less than \$5 million per occurrence (without a limitation on aggregate amount); or (ii) not less than \$5 million per occurrence with an aggregate annual amount of not less than \$5 million
Automobile Liability Insurance for owned, hired and non-owned autos ("Automobile Liability Coverage")	\$2 million combined single limit bodily injury/property damage

The limits set forth above are minimum limits and will not be construed to limit CUSTOMER's liability.

10.2 This insurance shall cover the amounts and types of liability listed above with respect to CUSTOMER's obligations under this Agreement.

10.3 Each policy evidencing the insurance described in this Section 10 must contain a provision that the insurance policy, and the coverage it provides, shall be primary and noncontributing with respect to any policies carried by the CUSTOMER and its affiliates, and that any policies carried by the party and its affiliates shall be excess insurance.

10.4 At the time this Agreement is signed, CUSTOMER must furnish to FIBER OWNER certificates of insurance stating that the insurer will use best efforts to notify the other party at least thirty (30) days prior to cancellation of, or any adverse material change in, the coverage provided.

11. COMPLIANCE WITH LAWS

Notwithstanding anything to the contrary in this Agreement, each Party shall ensure that any and all activities it performs pursuant to this Agreement shall comply with all applicable laws. Without limiting the generality of the foregoing, each Party shall comply with all applicable provisions of i) workmen's compensation laws, ii) unemployment compensation laws, iii) the Federal Social Security Law, iv) the Fair Labor Standards Act, and v) Environmental, Health and Safety Laws.

12. DISCLAIMER OF WARRANTIES

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, FIBER OWNER MAKES NO WARRANTIES REGARDING THE SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT AND MAKES NO WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. FIBER OWNER ABANDONMENTS, SALES OR DISPOSITIONS

Nothing in this Agreement shall prevent or be construed to prevent FIBER OWNER from abandoning, selling or otherwise disposing of any portion of the Conduit System or other property of FIBER OWNER used for CUSTOMER's Strands, provided, however, that in the event of a sale or other disposition, FIBER OWNER shall condition such sale or other disposition subject to the rights of CUSTOMER under this Agreement. FIBER OWNER shall promptly notify CUSTOMER of the proposed abandonment or other intended disposition of the Conduit System or other property used by CUSTOMER.

14. LIENS

Both parties shall keep the Conduit System and other property of FIBER OWNER relating to CUSTOMER's rights under this Agreement, free from all mechanic's, artisan's, material-man's, architect's, or similar services liens which arise in any way from or as a result of its activities and cause any such liens which may arise to be discharged or released.

15. DEFAULT PROVISIONS AND REMEDIES

15.1 Each of the following shall be deemed an Event of Default by CUSTOMER under this Agreement:

15.1.1 Failure of CUSTOMER to pay the maintenance fee or any other sum required to be paid under the terms of this Agreement and such default continues for a period of fourteen (14) days after written notice thereof to CUSTOMER;

15.1.2 Failure by CUSTOMER to perform or observe any other terms, covenant, agreement or condition of this Agreement on the part of CUSTOMER to be performed and such default continues for a period of forty-five (45) days after written notice thereof from FIBER OWNER (provided that if such default cannot be cured within such forty-five (45) day period, this period will be extended if CUSTOMER commences to cure such default within such forty-five (45) day period and proceeds diligently thereafter to effect such cure);

15.1.3 The filing of a tax or mechanic's lien against the Conduit System or other property of FIBER OWNER which is not bonded or discharged within thirty (30) days of the date CUSTOMER receives notice that such lien is filed;

15.1.4 An event of CUSTOMER's Bankruptcy;

15.1.5 If CUSTOMER knowingly uses CUSTOMER's Strands in violation of any law or in aid of any unlawful act or undertaking;

15.1.6 If CUSTOMER occupies any portion of the Conduit System without having first been issued a license therefore; or

15.1.7 If any authorization which lawfully may be required of the CUSTOMER by any governmental or private authority for the operation (including splicing or other activities by CUSTOMER), of CUSTOMER's Strands within the Conduit System is denied or revoked.

15.2 Upon the occurrence of an Event of Default, FIBER OWNER, without further notice to CUSTOMER in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

15.2.1 Perform, on behalf and at the expense of CUSTOMER, any obligation of CUSTOMER under this Agreement which CUSTOMER has failed to perform and of which FIBER OWNER shall have given CUSTOMER notice, the cost of which performance by FIBER OWNER shall be payable by CUSTOMER to FIBER OWNER upon demand;

15.2.2 Exercise any other legal or equitable right or remedy which it may have. Any costs and expenses incurred by FIBER OWNER (including, without limitation, reasonable attorneys' fees) in enforcing any of its rights or remedies under this Agreement shall be repaid to FIBER OWNER by CUSTOMER upon demand.

15.3 All rights and remedies of FIBER OWNER set forth in this Agreement shall be cumulative, and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

15.4 The following events or occurrences shall constitute a default by FIBER OWNER under this Agreement:

15.4.1 Any material noncompliance by FIBER OWNER with the terms of this Agreement;

15.4.2 Any material breach by FIBER OWNER of a representation or warranty under this Agreement.

CUSTOMER shall give prompt written notice to FIBER OWNER of the occurrence of any default under this Agreement. If such default continues for forty-five (45) days after receipt of such notice (provided that if such default cannot be cured within such forty-five (45) day period, this period will be extended if FIBER OWNER continues to cure such default within such forty-five (45) day period and proceeds diligently thereafter to effect such cure), CUSTOMER may at its option, terminate the IRU or pursue any remedies it may have at law or equity.

16. DISPUTE RESOLUTION

16.1 It is the intent of FIBER OWNER and CUSTOMER that any disputes which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' authorized representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties hereto agree to resolve such disputes in accordance with the provisions of this Article. The obligation herein to arbitrate shall not be binding upon any party with respect to request for preliminary injunctions, temporary restraining orders, specific performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.

16.2 CUSTOMER and FIBER OWNER shall each designate, by separate letter, representatives as points of contact and decision making with respect to the obligations and rights of the parties, said letters to be furnished by each party to the other within thirty (30) days from the date of this Agreement. Any disputed issues arising during the term of this Agreement shall in all instances be initially referred to the parties' designated representatives. The parties' designated representatives shall render a mutually agreeable resolution of the disputed issue, in writing, within seventy-two (72) hours of such referral. Either party may modify the designated representative upon written notice to the other party.

16.3 Any claims or disputes arising under the terms and provisions of this Agreement, or any claims or disputes which the parties' representatives are unable to resolve within the seventy-two (72) hour time period, shall continue to be resolved between the parties' representatives if mutually agreeable, or may be presented by the claimant in writing to the other party within thirty (30) days after the circumstances which gave rise to the claim or dispute took place or become known to the claimant, or within thirty (30) days after the parties' representatives fail to achieve resolution, whichever is later. The written notice shall contain a concise statement of the claim or issue in dispute, together with relevant facts and data to support the claim.

16.4 Any controversies or disputes arising out of or relating to this Agreement that are not resolved in accordance with the preceding procedure may be referred to nonbinding arbitration under the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitrator(s) shall not have the authority, power or right to alter, change, amend, modify, add or subtract from any provision of this Agreement or to award punitive damages.

16.5 During the continuance of any arbitration proceeding, each party shall continue to perform their respective obligations under this Agreement.

17. FORCE MAJEURE

Neither FIBER OWNER nor CUSTOMER shall be In default under this Agreement with respect to any delay in its performance caused by any of the following conditions (each a "Force Majeure Event"): (1) act of God; (2) fire; (3) flood; (4) material shortage or unavailability not resulting from the responsible party's failure to timely place orders or take other necessary actions therefor; (5) government codes, ordinances, laws, rules, regulations or restrictions (collectively, "Regulations") (but not to the extent the delay caused by such Regulations could be avoided by rerouting the Cable if such a reroute was commercially reasonable); (6) war or civil disorder; (7) failure of a third party to grant or recognize a FIBER OWNER Required Right (provided that FIBER OWNER has made timely and reasonable commercial efforts to obtain the same and such failure is not the result of FIBER OWNER's default or its negligence act or failure to act with respect thereto) or (8) any other cause beyond the reasonable control of such party; provided, however, that this Section 17 shall not apply to the payment of money. The party claiming relief under this Section 17 shall promptly notify the other in writing of the existence of the Force Majeure Event relied on, the expected duration of the Force Majeure Event, and the cessation or termination of the Force Majeure Event. The party claiming relief under this Section 17 shall exercise commercially reasonable efforts to minimize the time for any such delay.

18. TAXES ANP USE OF PUBLIC RIGHTS-OF-WAY, LICENSE AND PERMIT FEES

18.1 FIBER OWNER shall not, directly or indirectly, seek reimbursement or contribution from CUSTOMER for any "Assessments (as defined below) that may be assessed against FIBER OWNER, except for any instances outlined in 18.4.

18.2 Subject to Section 18.1, CUSTOMER shall be responsible for any and all Federal or Ohio sales, use, gross receipts, excise, transfer, ad valorem, real property, personal property or other Federal or Ohio taxes, and any and all franchise fees or similar fees (collectively "Assessments") assessed against it due to its ownership of an IRU, its use of the Customer's Strands, including the providing of services over the Customer's Strands, or its ownership or use of facilities connected to the Customer's Strands. Notwithstanding the above, "Assessments shall not include any taxes based on the income, capital, net worth or similar measure of Fiber Owner. For clarification purposes, FIBER OWNER will not be responsible for any income taxes imposed upon CUSTOMER.

18.3 Subject to Section 18.1, FIBER OWNER shall be responsible for any and all Assessments assessed against it due to its construction, ownership or use of the Conduit System, including providing of services over the Conduit System, or its ownership or use of facilities connected to the Conduit System.

18.4 Notwithstanding Sections 18.1 and 18.2 above, if FIBER OWNER is assessed annual fees for use of public rights-or-way, CUSTOMER shall pay its proportionate share of such fees, its proportionate share being determined as provide in Section in Section 8.11. In the event that FIBER OWNER Is assessed for any Assessments related to CUSTOMER's ownership of an IRU or CUSTOMER's use of the Customer's Strands which may not feasibly be separately assessed and for which CUSTOMER's tax-exempt status is not recognized by a taxing authority, FIBER OWNER within thirty (30) days of receipt of an invoice therefor, shall provide

information and documentation to CUSTOMER sufficient to demonstrate the basis for the Assessments and the amount and due date for payment of the Assessments. In addition, FIBER OWNER shall provide CUSTOMER with all information reasonably requested by CUSTOMER with respect to any such Assessments. Within this thirty (30) day period, CUSTOMER will notify FIBER OWNER of its intent to challenge the Assessment. After such thirty (30) day period, FIBER OWNER, in its sole discretion, may pay such Assessment and invoice CUSTOMER for reimbursement. CUSTOMER shall reimburse FIBER OWNER for such payment within ten (10) days of receipt of FIBER OWNER's invoice. In the event that CUSTOMER is subsequently able to assert and establish its tax exempt status, FIBER OWNER will reimburse CUSTOMER for Assessments that CUSTOMER has paid once FIBER OWNER has received a refund from the applicable taxing authority. Notwithstanding such payment by FIBER OWNER, CUSTOMER, at its option, shall have the right at its sole cost to contest any such Assessments and FIBER OWNER will reasonably cooperate with CUSTOMER in pursuing any such contest; provided that CUSTOMER shall have reimbursed FIBER OWNER for such Assessments. In the event FIBER OWNER, in its sole discretion, elects to not pay such tax or fee, it shall so notify CUSTOMER. CUSTOMER, at its option, may pay the Assessments, or contest the payment; provided that CUSTOMER shall, to the extent permitted by Ohio law, including without limitation the Ohio Constitution, Ohio Revised Code Sections 2743 and Ohio Revised Code Section 3345.40, indemnify and hold harmless FIBER OWNER for the payment of such Assessments and all interest and penalties related thereto; and provided further, that such contest shall be resolved or such Assessments shall be paid so as to prevent any forfeiture of rights or property or the imposition of any lien on the FIBER OWNER Conduit System.

19. SUCCESSION; ASSIGNABILITY

19.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors or assigns.

19.2 Except as provided in this Section 19, a party ("Transferring Party") shall not assign, encumber or otherwise transfer this Agreement or all or any portion of its rights or obligations hereunder to any party without the prior written consent of the other party ("Other Party"), which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Transferring Party shall have the right, without Other Party's consent, to (i) subcontract any of its construction or maintenance obligations hereunder; or (ii) assign or otherwise transfer this Agreement in whole or in part (a) to any parent, subsidiary or affiliate of Transferring Party, or (b) any corporation or other entity which Transferring Party may be merged or consolidated or which purchases all or substantially all of the stock or assets of Transferring Party; provided that the assignee or transferee in any such circumstance shall be subject to all of the provisions of this Agreement, including without limitation, this Section 19 and provided further that promptly following any such assignment or transfer, Transferring Party shall give Other Party written notice identifying the assignee or transferee. In the event of any permitted partial assignment of any rights hereunder, Transferring Party shall remain the sole point of contact with Other Party. When Other Party's consent to assign is required, Other Party will have the right to withhold consent if, in its judgment reasonably exercised, the proposed assignee cannot adequately assume the obligations of this Agreement or such an assignment will result in additional liabilities to the Other Party. In no event will any assignment by a Party be permitted without the delivery to Other Party of a binding agreement in writing from the

proposed assignee that (i) states that the proposed assignee will assume all current, future and outstanding past obligations under this Agreement as if such assignee had originally executed this Agreement and (ii) evidence proof satisfactory to Other Party that he proposed assignee has insurance coverage comparable to the described in Section 10 or other assurances that the proposed assignee can adequately perform the obligations it will assume under this Agreement.

19.3 Neither party shall attempt to circumvent any of its obligations under this Agreement, or deprive the Other Party of any anticipated benefit under this Agreement, through the use of ownership changes, reorganizations, creation of new entities, or other artificial devices.

19.4 Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

20. NOTICES

Any demand, notice or other communication to be given to a party in connection with this Agreement shall be given In writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, by Tele-copy or commercial over night delivery service addressed to the recipient as set forth as follows or to such other address, individual or Tele copy number as may be designated by notice given by the party to the other:

FIBER OWNER:

Columbus Southern Power Company
1 Riverside Plaza
Columbus, Ohio 43215

Attention: Jason Griffith
Telephone Number: 614-716-1909

With a copy to:

Columbus Southern Power Company
155 W. Nationwide Blvd, 5th Floor
Columbus, Ohio 43215

Attention: Jay E. Jadwin
Telephone Number: 614-583-7634
Emergency Telephone Number: 614-583-7634
FAX Number: 614-716-2014

CUSTOMER:

Mayor
City of Gahanna
200 S. Hamilton Road
Gahanna, Ohio 43230

With a copy to: Mr. Gregory Dunn
Schottenstein, Zox & Dunn, Co. LPA
250 West Street
Columbus, Ohio 43215

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered or certified mail, return receipt requested on the date of receipt thereof and, if given by telecopy, on the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day if not given during normal business hours.

21. NON-WAIVER

No course of dealing, course of performance or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right or condition.

22. CHOICE OF LAW

The construction, interpretation and performance of this Agreement shall be governed by the law of the State of Ohio without regard to its conflicts of laws provisions. Any action or claim based in whole or in part on this Agreement must be brought in an Ohio state or federal court of competent jurisdiction.

23. HEADINGS

All headings contained in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement or any clause.

24. CONFIDENTIALITY AND PROPRIETARY INFORMATION

24.1 In connection with this Agreement, either party may furnish to the other certain information that is marked or otherwise specifically identified as proprietary or confidential ("Confidential Information"). This Confidential information may include, among other things, private easements, licenses, utility agreements, permits, other right-of-way granting documents, specifications, designs, plans, drawings, data, prototypes, and other technical and/or business information. For purposes of this Section 24, the party that discloses Confidential Information is referred to as the "Disclosing Party", and the party that receives information is referred to as the "Receiving Party".

24.2 When Confidential Information is furnished in tangible form, the Disclosing Party shall mark it as proprietary or confidential. When Confidential Information is provided orally, the Disclosing Party shall, at the time of disclosure or promptly thereafter, identify the Confidential Information as being proprietary or confidential.

24.3 With respect to Confidential Information disclosed under this Agreement, the Receiving Party and its employees shall, to the extent permitted by Ohio law, including without limitation Ohio Revised Code Section 149.43:

- (a) hold the Confidential Information in confidence, exercising a degree of care not less than the care used by the Receiving Party to protect its own proprietary or confidential information that it does not wish to disclose;
- (b) use reasonable efforts to restrict disclosure of the Confidential Information to those of its employees who have a need to know in connection with the performance of this Agreement, and not disclose the Confidential Information to any other person or entity without the prior written consent of the Disclosing Party;
- (c) advise those employees of their obligations with respect to the Confidential Information; and
- (d) use the Confidential Information only in connection with the performance of this Agreement, except as the Disclosing Party may otherwise agree in writing.

24.4 Confidential Information shall be deemed the property of the Disclosing Party. Upon written request of the Disclosing Party, the Receiving Party shall, to the extent permitted by Ohio law, including without limitation Ohio Revised Code Section 149.43, return all Confidential Information received in tangible form, except that each party's legal counsel may retain one copy in its files solely to provide a record of such Confidential Information for archival purposes. If the Receiving Party loses or makes an unauthorized disclosure of Confidential Information, it shall notify the Disclosing Party and use reasonable efforts to retrieve the Confidential Information.

24.5 The Receiving Party shall have no obligation to preserve the proprietary nature of Confidential Information which:

- (a) was previously known to the Receiving Party free of any obligation to keep it confidential; or
- (b) is or becomes publicly available by means other than unauthorized disclosure; or
- (c) is developed by or on behalf of the Receiving Party independently of any Confidential Information furnished under this Agreement; or
- (d) is received from a third party whose disclosure does not violate any confidentiality obligation.

24.6 The existence of this Agreement, and all information that may be disclosed to Receiving Party pertaining to the identities, locations, and requirements of the Disclosing Party's Customers, is Confidential Information of Disclosing Party.

24.7 To the extent permitted by Ohio law, including without limitation Ohio Revised Code Section 149.43, neither party shall disclose the other party's Customer, Confidential Information to any third party (even if under contract to that party) or to any personnel of the party responsible for publicity or for end user sales or marketing.

24.8 If the Receiving Party is required to disclose the Disclosing Party's Confidential Information by an order or a lawful process of a court or governmental body, the Receiving Party shall promptly notify the Disclosing Party so that the Disclosing Party may seek appropriate protective relief.

24.9 Each party agrees that a breach of this Section 24 by the Receiving Party or its representatives will result in irreparable harm for which there is no adequate remedy at law, and in the event of any such breach the Disclosing Party may, notwithstanding the dispute resolution provisions in Section 16 and the default provisions in Section 15, seek a preliminary or permanent injunction and/or specific performance which shall be granted upon a finding of a breach (or substantial likelihood of a breach in the case of a preliminary injunction). Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 24 but shall be in addition to all other remedies available at law or in equity.

25. PUBLICITY AND ADVERTISING

25.1 Neither party shall publish or use any advertising, sales promotions, or other publicity materials that use the other party's logo, trademarks, or service marks without the prior written approval of the other party.

25.2 Each party shall have the right to review and approve any publicity material, press releases, or other public statements by the other that refer to such party or that describe any aspect of this Agreement. Each party agrees not to issue any such publicity materials, press releases, or public statements without the prior written approval of the other party.

25.3 Nothing in this Agreement establishes a license for either party to use any of the other party's brands, marks, or logos without prior written approval of the other party.

26. REQUIRED RIGHTS

26.1 FIBER OWNER covenants that it shall have obtained by the time the CUSTOMER's Strands are made available to CUSTOMER (and will use commercially reasonable efforts to cause to remain in effect during the term of the IRU) easements, leases, licenses, fee interests, rights of-way, permits, authorizations and other rights necessary and requisite to enable FIBER OWNER to grant the IRU to CUSTOMER ("Required Rights").

26.2 If FIBER OWNER fails to obtain and/or cause to remain effective throughout the term of this IRU all Required Rights for CUSTOMER's Strands, Fiber Owner will use commercially reasonable efforts to relocate the portion of the Conduit System so affected. If, despite commercially reasonable efforts, the Fiber Owner fails to relocate such affected portion of the Conduit System, (i) FIBER OWNER may terminate such affected portion of the IRU upon written notice and (ii) CUSTOMER, as its sole remedy, may also terminate either such affected section of the IRU, the affected city pair Segment or the entire IRU upon not less than sixty (60) days prior written notice. In either event of termination, any periodic IRU and/or maintenance fee with respect to the terminated portion of or entire IRU, as the case may be, shall abate from the date of termination and any previously paid maintenance fee and/or IRU fee attributable to the terminated portion or entire IRU, as the case may be, for any period beyond such date shall be returned to CUSTOMER. FIBER OWNER's failure to cause to remain effective Required

Rights does not constitute a breach of any warranty, representation or covenant of FIBER OWNER.

27. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants that:

- (ii) it has full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (ii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and
- (iii) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court, or body.

28. ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral and written communications, understandings and agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

29. NO THIRD PARTY BENEFICIARIES

Except as set forth in Section 30, this Agreement does not provide and is not intended to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

30. NO PERSONAL LIABILITY

Each action or claim against any party arising under or relating to this Agreement shall be made only against such party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section 30 and shall be entitled to enforce the obligations of this Section 30.

31. RELATIONSHIP OF THE PARTIES

The relationship between the parties shall not be that of partners, agents or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to

federal income tax purposes. The parties, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

32. SUCCESSORS AND ASSIGNS

This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the parties and each of their respective permitted successors and assigns.

33. UNENFORCEABLE PROVISIONS

No provision of this Agreement shall be interpreted to require any unlawful action by either party. If any section or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such a section or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

34. COUNTERPARTS

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

35. RECORD KEEPING REQUIREMENTS

35.1 FIBER OWNER shall keep all financial records in a manner consistent with generally accepted accounting principals and procedures. Documentation to support each action shall be filed in a manner allowing it to be readily located.

35.2 FIBER OWNER shall keep separate business records for this program, including records of disbursements made and obligations incurred in performance of this Agreement which records shall be supported by contracts, invoices, vouchers and other data as appropriate.

35.3 During the period of this Agreement and until the expiration of three years following the termination of this Agreement, FIBER OWNER agrees to provide CUSTOMER, Its duly authorized representatives and any person, agency or instrumentality providing financial support to the work undertaken hereunder with access to and the right to examine any books, documents, papers and records of FIBER OWNER involving transactions related to this Agreement.

In confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the parties have executed this Agreement as of the date first above written

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives.

	COLUMBUS SOUTHERN POWER COMPANY
By:	_____
Name:	_____
Title	_____
	CITY OF GAHANNA
By:	_____
Name:	_____
Its:	_____

EXHIBIT A

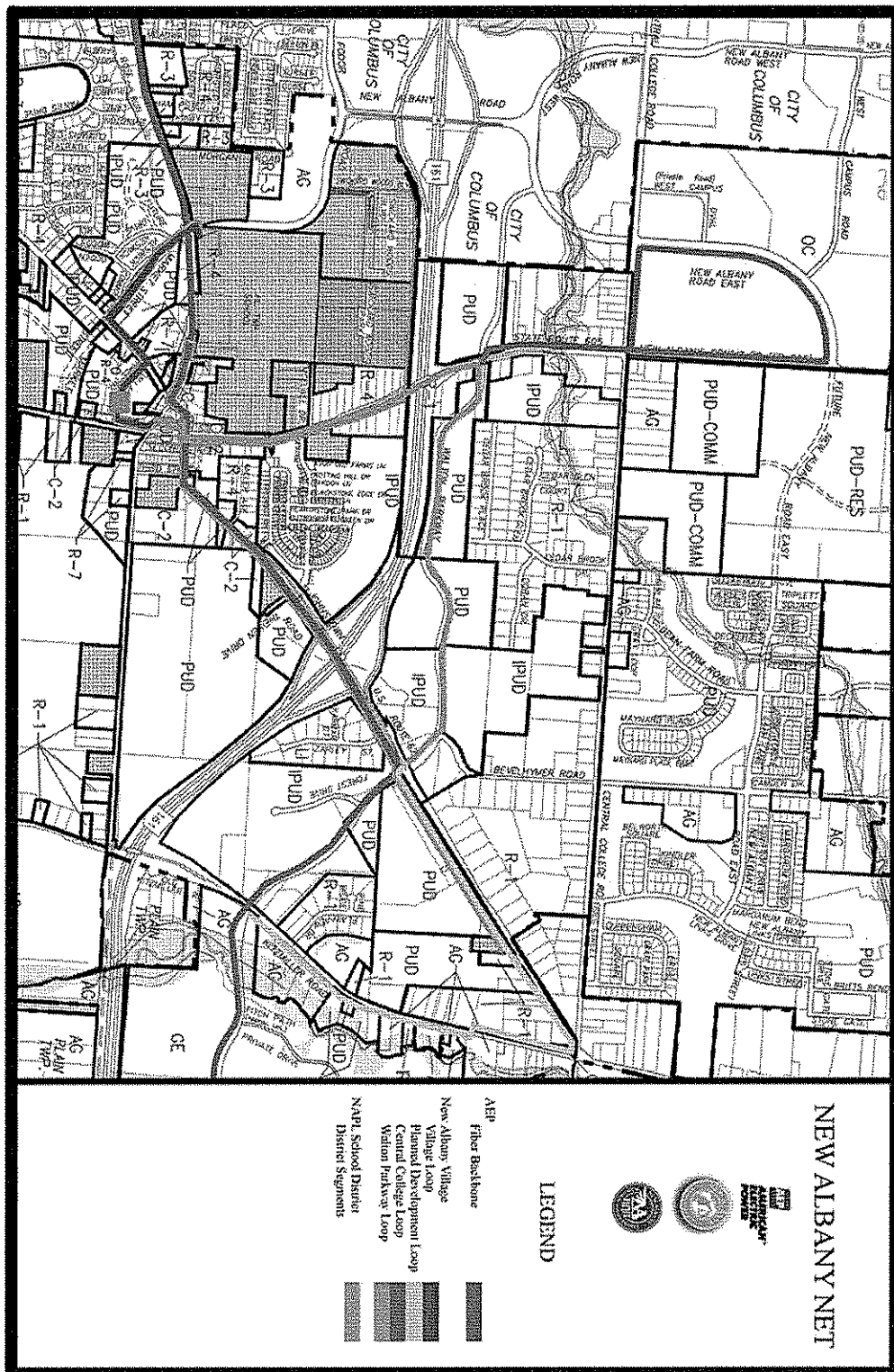


EXHIBIT A-1

Maintenance Fees

(To Be Determined)

EXHIBIT B

Standard Construction & Fiber Specifications **As-Built Drawing Specifications**

Fiber Specifications

Fiber Type varies and is dependent upon route, as generally shown in Exhibit A, but all fiber was manufactured by either Alcoa, Corning or other comparable manufacturer.

Maximum Splice Losses (measured on an individual basis, not averaged)

The maximum splice loss for any individual splice measured "bi-directional" shall not exceed 0.15 db.

The maximum splice loss for any individual transition splice (standard single mode fiber spliced to a non zero dispersion shifted fiber) measured bi-directional" shall not exceed 0.25 db.

The maximum loss for "through" office loss including connectors and jumpers shall not exceed 1db.

Average Splice Loss

The average splice loss shall not exceed 0.10 db. (used for total Span loss calculation only)

Cable Requirements

0.3 db/Km attenuation at 1550nm.

0.4 db/Km attenuation at 1310nm.

Drawings:

Detailed As-Built drawings will be supplied within 20 business days after the execution of this contract. As-Built drawings provided to the Customer by the Fiber Owner will contain the following information presented in the format described below.

1. Route Description The As-Built drawings will contain a geographical depiction of the Segment containing the Customer Strands, provided in the form of a hard copy map. The depiction will identify each POP.
2. Fiber Level Details: The As-Built drawings will provide details on fiber assignment numbers within the cable between each POP and the next contiguous POP, fiber distribution bay, individual fiber assignments, and Fiber Owner circuit ID's to aid in identifying Segments within the cable system.
3. Mileage: Mileage will be the fiber distances via OTDR traces between a POP and the next contiguous POP.

4. Site Names: POPs will be identified using the Fiber Owner's names for such sites, whether or not the Customer uses the same names.

EXHIBIT C

Fiber Cable Splicing, Testing and Acceptance Procedures

1. End-to-End Testing

A. After FIBER OWNER has established completed construction of the fibers, it shall:

- perform bi-directional OTDR end-to-end tests to record splice loss measurements,
- test continuity to confirm that no fibers have been "frogged" or crossed at any splice points, and

B. At Fiber termination points, the pigtail splice loss shall be at least .80 dB, and the reflection level at such termination points shall be less than —50dB.

C. When a Fiber has been spliced, the splice loss shall not be greater than .15 dB in any one direction with a .30 dB bi-directional averaged loss.

D. FIBER OWNER shall perform the bi-directional OTDR end-to-end testing at both 1310 nm and 1550 nm, provided that 1310 nm OTDR tests are not required (i) for Segments longer than 64 kilometers or (ii) where the fiber being tested is not manufactured to support 1310 nm optical signals. The results of such tests for any given Segment shall not be deemed within specification unless showing loss measurements between each end of such Segment in accordance with the loss specifications set forth by the fiber specifications for dB per kilometer loss as specified in Exhibit B. FIBER OWNER shall measure and verify losses for each splice point in both directions and average the loss values. FIBER OWNER shall mark any splice points as OOS that have an average loss value, based on bi-directional OTDR testing, in excess of 0.3 dB. Any such splice points shall be subject to Section 4, below.

2. Post-Construction Testing

When performing permanent splicing (in conjunction with repair of a cable cut, replacement of a Segment of cable, or other work after initial installation and splicing of the cable), OWNER shall perform splicing to meet the specifications within Exhibits B and C. OWNER may, after the Acceptance Date, adopt any alternative methods of testing that are generally accepted in the industry and that provide sufficient data to fulfill the objectives of the tests set forth in this Exhibit.

3. Out-of-Spec Splices

Out-of-Spec splices shall be noted, but shall not preclude Acceptance of a fiber if the Out-of-Spec condition does not affect transmission capability (based on use of then-prevailing telecommunications Industry standards applicable to equipment generally used with the relevant type of fiber) or create a significant possibility of an outage. In the event the CUSTOMER is later able to reasonably establish that the OOS splice affects service, FIBER OWNER shall take

reasonable commercial efforts to bring the splice into compliance with the applicable specifications under Section 1 of this Exhibit and Exhibit B.

4. OTDR Equipment and Settings

FIBER OWNER shall use OTDR equipment and settings that are, in its reasonable opinion, suitable for performing accurate measurements of the fiber installed. Such equipment and settings shall include, without limitation, the Laser Precision CMA4000 models and compatible models for OTDR testing, and the following settings:

A. Index of refraction settings:

		1310 nm	1550 nm	
	Lucent Truwave			
	(Classic and RS)	1.4707	1.4701	
	Corning SMF-28	1.4675	1.4681	
	Corning SMF-LS	1.471	1.470	
	Corning LEAF	N/A	1.469	
	Corning MetroCore	N/A	1.469	
	Summitomo Fiber	1.467	1.467	

B. Tests of a pigtail connector and its associated splice:

	CMA4000	
	4 km Range	
	50ns Pulse	
	1.m Resolution	

5. Acceptance Test Deliverables

FIBER OWNER shall provide computer media (CD-ROM) or hard copies containing the following information for the relevant fibers and cable Segments:

A. Verification that the loss at each splice point is either (i) in accordance with Exhibits B and C of this Agreement.

B. The final bi-directional OTDR test data, with distances.

6. General Testing Procedures and Acceptance

A. As soon as FIBER OWNER determines that the Customer Fibers in a given Segment meet the Acceptance Standards, it shall provide the deliverables set forth in Section 5 of this Exhibit. Customer shall have ten (10) calendar days after receipt of test deliverables for any Segment to provide FIBER OWNER written notice of any bona fide determination that the Customer Fibers on such Segment do not meet the Acceptance Standards. Such notice shall identify the specific data that indicate a failure to meet the Acceptance Standards.

B. Upon receiving written notice pursuant to Subsection 6.A of this Exhibit, FIBER OWNER shall either:

- (i) expeditiously take such action as shall be reasonably necessary to cause such portion of the CUSTOMER Fibers to meet the Acceptance Standards and then re-test the CUSTOMER Fibers in accordance with the provisions of this Exhibit; or
- (ii) provide CUSTOMER written notice that FIBER OWNER disputes CUSTOMER's determination that the CUSTOMER Fibers do not meet the Acceptance Standards.

After taking corrective actions and re-testing the CUSTOMER Fibers, FIBER OWNER shall provide CUSTOMER with a copy of the new test deliverables and CUSTOMER shall again have all rights provided in this Article with respect to such new test deliverables. The cycle described above of testing, taking corrective action and re-testing shall take place until the CUSTOMER Fibers meet the Acceptance Standards.

C. If FIBER OWNER provides notice to CUSTOMER pursuant to Clause B(ii), CUSTOMER shall within five (5) calendar days of such notice designate by written notice to FIBER OWNER the names and addresses of three reputable and independent fiber optic testing companies. FIBER OWNER shall designate one of such companies to conduct an independent re-test of the CUSTOMER Fibers for the relevant Segment. If, after such re-testing, the testing company determines that the CUSTOMER Fibers

- (i) meet the Acceptance Standards, then CUSTOMER shall pay the testing company's charges for performing the testing and the acceptance date for the relevant Segment shall be fourteen (14) days after OWNER provided its test deliverables.
- (ii) do not meet the Acceptance Standards, then OWNER shall pay the testing company's charges for performing the testing and shall perform the corrective action and re-testing set forth in Subsection 8(i).

D. Unless CUSTOMER provides a written objection pursuant to Subsection A, the acceptance date of a Segment shall occur on the tenth (10th) day after FIBER OWNER provides the test deliverables for that Segment, or, if earlier, the date CUSTOMER provides written acceptance of such Segment. CUSTOMER's acceptance (pursuant to this subsection or of Subsection C) of the last Segment within a Major Segment shall constitute Acceptance of the

Customer Fibers for such Major Segment. The date of Acceptance for each Major Segment shall constitute the Acceptance Date of such Major Segment.

E. Acceptance testing shall progress Segment by Segment along the System as Cable splicing progresses, so that test deliverables may be reviewed In a timely manner. The CUSTOMER shall have the right, but not the obligation, to have an individual present to observe such testing and FIBER OWNER shall provide the CUSTOMER at least seven (7) days' prior notice of its testing schedule. Within thirty (30) calendar days after FIBER OWNER conclusion of the Fiber Acceptance Testing In any given Segment, FIBER OWNER shall provide the CUSTOMER with a copy of the test deliverables.

EXHIBIT D

Maintenance Specifications and Procedures

FIBER OWNER shall perform routine maintenance and repair of the Customer Fibers ("Routine Maintenance"). Routine Maintenance shall consist of only the following activities

- of the route on an annual basis: maintenance of a "Call-Before-You-Dig" program and all required and related cable locates; and

- Maintenance of sign posts along the rights-of way along the Segments with the number of the local "Call-Before-You-Dig" organization and the "800" number for FIBER OWNER's "Call Before-You-Dig" program.

EXHIBIT E

Contact/Escalation List

1. Columbus Southern Power Company

1-886-8AEPNMC

[HTTP://www.aepnmc.com](http://www.aepnmc.com)

FIBER OWNER operates and maintains a Network Operations Center (staffed twenty- four (24) hours a day, seven (7) days a week by trained and qualified personnel.

2. Director - Operations

Patrick Collins	Office: 614-716-3598
	Home: 614-476-4022
	Cell: 614-582-4022

EXHIBIT C

CITY OF GAHANNA, OHIO OPTICAL FIBER USE AGREEMENT

THIS OPTICAL FIBER USE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into as of this ___ day of _____, 2008, between the City of Gahanna, an Ohio municipal corporation (hereinafter referred to as the "Owner"), having an office at 200 S. Hamilton Road, Gahanna, Ohio 43230, and the Village of New Albany, an Ohio municipal corporation (hereinafter referred to as "User"), having an office at 99 West Main Street, P.O. Box 188, New Albany, Ohio 43054 , and which are sometimes referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, the Owner has an existing optical fiber system (hereinafter referred to as the "Fiber System") throughout the City of Gahanna, Ohio; and

WHEREAS, the Owner has excess fibers in the Fiber System and is willing, from time to time, to provide such fibers to User and to grant User an Indefeasible Right of Use or IRU (hereinafter referred to as "IRU") in and to such fibers for the purpose of providing telecommunications, video, data, and/or information services; and

WHEREAS, in connection with the grant to User of an IRU in and to such fibers, the Owner is willing to allow User to use certain other property owned by the Owner, including, but not limited to, innerduct, conduit, building entrance facilities and associated appurtenances; and

WHEREAS, in conjunction with this Agreement, the Parties have entered into a Master Fiber Swap and Use Agreement; and

WHEREAS, User has obtained any and all permits or approvals required to engage in its intended purpose and for the use and occupancy of space in the Rights of Way and further agrees to adhere to any and all requirements of federal, state and local laws, rules or regulations (specifically inclusive of, but not limited to, Chapter 931 of the Codified Ordinances of the City of Gahanna, Ohio); and

WHEREAS, in connection with undertaking one or more projects for which the Owner will provide fibers in the Fiber System to User, the parties have agreed to enter into this Agreement which embodies the mutual covenants and agreements between the Parties hereto and for each such project; and

WHEREAS, the Parties may in the future agree to enter into additional separate agreement(s) for additional and/or separate optical fiber uses which will incorporate the covenants and agreements of this Agreement and which will also set forth the terms and provisions unique to each additional or different specific project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties hereto do hereby agree as follows:

1. DEFINITIONS.

1.1 The following terms, whether in the singular or in the plural, when used in this Agreement and initially capitalized, shall have the meaning specified:

- a. Agreement: This Optical Fiber Use Agreement between the Owner and User which identify the specific optical fiber strands and facilities to be as provided to User by Owner and which set forth the associated fees/compensation, terms and conditions for User's use of such optical fiber strands and facilities.
- b. Fiber System: The optical fiber strands, innerduct, conduit, building entrance facilities, associated appurtenances, and capacity owned by the Owner and located throughout the Rights of Way of the City of Gahanna, Ohio.
- c. User System: The optical fiber strands, innerduct, conduit, building entrance facilities, and associated appurtenances in the Fiber System, to be provided to User under the terms of this Agreement and the associated rights to access such fiber strands at demarcation points as specified herein.

2. GRANT.

2.1 The Owner hereby grants to User an Indefeasible Right of Use (IRU) of the following Owner Fiber System components:

- a. Sixteen (16) strands of fiber optic cable in Owner's Fiber System as detailed herein and in Exhibit A attached hereto.

3. TERM.

3.1 This IRU shall have an effective date when fully executed and shall be terminable at either the option of the User or the Owner with thirty (30) days written notice or on September 30, 2027, whichever shall occur first.

4. CONSIDERATION.

4.1 As consideration for, as inducement to, and as a required condition of Owner granting User the specific rights to use portions of Owner's Fiber System as described herein, the User hereby agrees:

- a. To all the terms and conditions set forth in the Master Fiber Swap and Use Agreement.
- b. That any failure of User to satisfy the terms and conditions of this Agreement or the Master Fiber Swap and Use Agreement shall be considered a material breach of this Agreement and Owner may then terminate this Agreement upon giving sixty (60) days written notice to User.

5. OWNER'S OBLIGATIONS.

5.1 Owner shall:

- a. Owner will provide the User System for User's use in accordance with the terms of this Agreement.
- b. Provide and/or control maintenance and repair functions on the User System and all facilities in the Fiber System through which the User System passes, including, but not limited to, conduit, innerduct, poles and equipment, shall be performed under the direction of the Owner.
- c. Maintain the User System to the User's specifications.

6. USER OBLIGATIONS.

6.1 User shall:

- a. Provide and pay for all lateral connectivity from all necessary termination points of User's proprietary fiber and equipment to all the necessary demarcation points of Owner's Fiber System if such connectivity is necessary.
- b. Pay for any building or external network service connection and disconnection charges for each building service added or deleted before, during or after the initial establishment and cutover of a User System fiber segment. User shall be responsible for any and all costs associated with lateral connectivity to the Fiber System and shall pay for the costs of all splicing, distribution segment, service connections, and any ring or concentrator operations.
- c. Pay all necessary costs if the User requires installation of a new distribution ring or concentrator in an already established Fiber System or User System distribution segment, rearrangement of existing service connections, and rearrangement of a ring or concentrator operation.
- d. Agree not to use the User System provided in this Agreement to provide services to any non-related party without the prior written consent of the Owner. User agrees not to use the User System provided in this Agreement to provide services to non-related parties in conjunction with a third party without the prior written consent of the Owner. User also agrees that it shall not provide for or allow any non-related party to use the User System or in any way sublease or subdivide the User System and provide services to non-related or third parties without the prior written consent of the Owner. User further agrees to continually meet the requirements of this Agreement. In the event of any breach of the provisions contained in this Section, the Owner has the right to terminate this Agreement upon giving thirty (30) days written notice to User.

- f. Agree to pay its pro rata share of any and all maintenance costs as may be required to be paid by User pursuant to the requirements of Section 8.1(a-c) below.

7. JOINT OBLIGATIONS.

7.1 The Owner and User jointly:

- a. Agree that within thirty (30) days of final execution of this Agreement the Parties will agree upon an Acceptance Plan for User's initial activation and the "go-live" of User's System.
- b. Shall provide each other a twenty-four (24) hour a day, three hundred sixty-five (365) days per year, coordination telephone number.

8. MAINTENANCE.

8.1 All maintenance and repair functions on the User System and all facilities through which the User System passes, including, but not limited to, conduit, innerduct, poles, and equipment, but specifically excluding all User owned and controlled opto-electronics located at Lateral terminus points, shall be performed by or at the direction of the Owner or Owner's appointed agent with reasonable notice to User. Except as otherwise may be agreed to by the parties, User is prohibited from performing any maintenance or repair on the Fiber System or User System. User shall have the right to have an employee or representative available to assist the Owner in any maintenance or repair of the User System. The Owner shall maintain the User System in accordance with the technical specifications (hereinafter referred to as the "Specifications") attached hereto in Exhibit B.

- a. Regular Maintenance: Owner may from time to time undertake and provide for Regular Maintenance activities in an attempt to keep the Fiber System and/or User System in good working order and repair so that it performs to a standard equal to that which is then commonly believed to be acceptable for systems of similar construction, location, use and type. User agrees to pay the reasonable pro rata share of the regular maintenance costs.
- b. Scheduled Maintenance: The Owner from time to time may schedule and perform specific periodic maintenance to protect the integrity of the Fiber System and/or User System and perform changes or modifications to the Fiber System and/or User System (including but not limited to fiber slicing, etc.) at the User's request. Such User requested Scheduled Maintenance shall be performed at the User's sole cost and expense. User may request such Scheduled Maintenance by delivering to the Owner a Statement of Work detailing the service User desires to be performed, including the time schedule for such services. Upon receipt of such a Statement of Work, the Owner will provide an estimate of the price and timing of such Scheduled Maintenance. Following User's acceptance of such estimate, the Owner will schedule and have such Scheduled Maintenance performed. The

Owner will have such Scheduled Maintenance performed on a time-and-materials basis at the standard rates then in effect at the time services are performed.

- c. **Emergency Maintenance:** The Owner may undertake and provide for Emergency Maintenance and repair activities for the Fiber System and/or User System. Where necessary, the Owner shall attempt to respond to any failure, interruption or impairment in the operation of the User System within Twenty-Four (24) hours after receiving a report of any such failure, interruption or impairment. The Owner shall use its best efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of the User System when reported by User in accordance with the procedures set forth in this Agreement. The costs and expenses associated with such Emergency Maintenance shall be apportioned between Owner and User in percentages equal to their respective interests of control (based on the terms of this Agreement) over the portions of the User System and/or Fiber System requiring such Emergency Maintenance. The Owner will have such Emergency Maintenance performed on a time-and-materials basis at the emergency maintenance rates then in effect at the time services are performed.

- 8.2 In the event the Owner, or others acting on the Owner's behalf, at any time during the Term of this Agreement, discontinues maintenance and/or repair of the User Systems, User, or others acting in User's behalf, shall have the right, but not the obligation, to thereafter provide for the previously Owner provided maintenance and repair of the User System, at the User's sole cost and expense. Any such discontinuance shall be upon not less than six (6) months prior written notice to User. In the event of such discontinuance, the Owner shall obtain for User, or others acting on User's behalf, approval for adequate access to the Rights of Way in, on, across, along or through which the User System is located, for the purpose of permitting User, or others acting in User's behalf, to undertake such maintenance and repair of the User System.
- 8.3 In the event any failure, interruption or impairment adversely affects both the Owner's Fiber System and the User System, restoration of the User System shall at all times be subordinate to restoration of the Owner's Fiber System with special priority for Owner's public safety and municipal infrastructure functions carried over the Fiber System, unless otherwise agreed to in advance by the parties hereto. In such event or in the event the Owner is unable to provide timely repair service to the User System, the Owner may, following written request, permit User to make repairs to restore the User System as long as such restoration efforts do not interfere with the Owner's restoration activities.
- 8.4 Any User subcontractors or employees who undertake repair or maintenance work on the User System shall first be approved by the Owner to work on the Owner's Fiber System. Prior to User's undertaking Emergency Maintenance or entering a Owner's facility for repair, User shall first notify the Owner of the contemplated action and receive the Owner's concurrence decision, a decision that the Owner shall provide to User no later than twelve (12) hours from User's notification to Owner of contemplated action. When User undertakes Emergency Maintenance of the User System, User shall have an Owner employee or representative available to assist the User in any repair of the User System.

9. USE OF THE USER SYSTEM.

- 9.1 User shall have exclusive control over its provision of telecommunications, video, data, and/or information services.
- 9.2 User hereby certifies that it is authorized or will be authorized, where required, on the effective date this Agreement to provide telecommunications, video, data, and/or information services within the State of Ohio, the City of Gahanna, Ohio and in such other jurisdictions as the User System may exist, and that such services can be provided on the Fiber optic cable systems such as the Fiber System owned and operated by the Owner.
- 9.3 User understands and acknowledges that its use of the Fiber System and User System are subject to all applicable local, state and federal laws, rules and regulations, as enacted, either currently or in the future, in the jurisdictions in which the Fiber System and User System are located. User represents and warrants that it shall operate on the Fiber System and User System subject to, and in accordance with, all laws, rules and regulations and shall secure all permits, approvals, and authorizations from all such jurisdictional entities as may be necessary.

10. INDEMNIFICATION.

- 10.1 The User undertakes and agrees to protect, indemnify, defend, and hold harmless the Owner and all of its elected officials, officers and employees, agents and volunteers from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines, penalties, costs, attorneys fees and costs, expenses or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including User's employees and agents, or damage or destruction to any property of either party hereto, or third persons in any manner arising by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement or use of the Fiber System on the part of the User, or the User's officers, agents, employees, or subcontractors, except for the active negligence or willful misconduct of the Owner, and its elected officials, officers, employees, agents and volunteers. Users indemnity requirements herein shall also specifically include all claims of intellectual property, copyright or trademark infringement made by third parties against Owner.

11. INSURANCE.

- 11.1 During the Term of this Agreement, unless otherwise agreed to in writing by the authorized representatives, User shall at its own expense, maintain in effect, insurance coverage with limits not less than those set forth herein.
- 11.2 The User shall furnish the Owner's authorized representative within thirty (30) days after the Commencement Date of the Agreement with insurance endorsements acceptable to Owner's Director of Law. The endorsements shall be evidence that the policies providing coverage and limits of insurance are in full force and effect. Such insurance shall be maintained by the User at the User's sole cost and expense.

- 11.3 The User endorsements shall name the Owner and all of its elected officials, officers and employees, agents and volunteers as additional insureds. The endorsements shall also contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) calendar days written notice thereof by registered mail to the Owner at the following address:

City of Gahanna
Law Director
200 S. Hamilton Road
Gahanna, Ohio 43230

- 11.4 Such insurance shall not limit or qualify the obligations the User assumed under the Agreement. The Owner shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of the premium for these policies.
- 11.5 Any insurance or other liability protection carried or possessed by the Owner, which may be applicable, shall be deemed to be excess insurance and the User's insurance is primary for all purposes despite any conflicting provision in the User's policies to the contrary.
- 11.6 User shall be responsible for all User contractors' or subcontractors' compliance with the insurance requirements.
- 11.7 Failure of the User to maintain such insurance, or to provide such endorsements to the Owner when due, shall be an event of default under the provisions of this Agreement.
- 11.8 The User shall obtain and maintain Commercial General Liability Insurance, including the following coverages: Product liability hazard of User's premises/operations (including explosion, collapse and underground coverages); independent contractors; products and completed operations (extending for one (1) year after the termination of this Agreement); blanket contractual liability (covering the liability assumed in this Agreement); personal injury (including death); and broad form property damage. Such coverage shall provide coverage for total limits actually arranged by the User but not less than Two Million Dollars and No Cents (US\$2,000,000.00) combined single limit. Should the policy have an aggregate limit, such aggregate limits should not be less than double the combined single limit and be specific for this Agreement. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be in a form acceptable to the Owner's Director of Law.
- 11.9 The User shall provide Workers' Compensation insurance covering all of the User's employees in accordance with the laws of the state of Ohio.
- 11.10 The User may use an Umbrella or Excess Liability coverage to net coverage limits specified in the Agreement. Evidence of Excess Liability shall be in a form acceptable to Owner's Director of Law.
- 11.11 The foregoing insurance requirements are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the User under this Agreement.

12. DEFAULT.

- 12.1 Unless otherwise specified in this Agreement, User shall not be in default under this Agreement, or in breach of any provision hereof unless and until the Owner shall have given User written notice of a breach and User shall have failed to cure the same within thirty (30) days after receipt of a notice; provided, however, that where such breach cannot reasonably be cured within such thirty (30) day period, if User shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by User to timely cure any such breach after notice thereof from the Owner, the Owner shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue such other remedies as may be provided at law or in equity.
- 12.2 Unless otherwise specified in this Agreement, the Owner shall not be in default under this Agreement or in breach of any provision hereof unless and until User shall have given the Owner written notice of such breach and the Owner shall have failed to cure the same within thirty (30) days after receipt of such notice; provided, however, that where such breach cannot reasonably be cured within such thirty (30) day period, if the Owner shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by the Owner to timely cure any such breach after notice thereof from User, User shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue other remedies as may be provided at law or in equity.
- 12.3 If User, shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent, or shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of User, as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee or liquidator of all or substantially all of the assets of User shall be appointed then the Owner may, at its sole option, immediately terminate this Agreement.

13. FORCE MAJEURE.

- 13.1 Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood, earthquake or other catastrophes; adverse weather conditions; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefor; lack of transportation; national emergencies; insurrections; riots, wars; or

strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events").

14. ASSIGNMENT.

- 14.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns; provided, however, that no assignment hereof or sublease, assignment or licensing (hereinafter collectively referred to as a "Transfer") of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of each Party hereto.

15. WAIVER OF TERMS OR CONSENT TO BREACH.

- 15.1 No term or provision of this Agreement shall be waived and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the Party claimed to have waived or consented to such breach. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute a waiver of or consent to any subsequent or different breach of this Agreement by the other Party, such failure to enforce shall not be considered a consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

16. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY.

- 16.1 The relationship between User and the Owner shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency Agreement between the Parties hereto.

17. NO THIRD-PARTY BENEFICIARIES.

- 17.1 This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and except for the requirements of Section 10.2 herein, shall not be construed as granting rights to any person or entity other than the Parties or imposing on either Party obligations to any person or entity other than a Party.

18. EFFECT OF SECTION HEADINGS.

- 18.1 Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

19. NOTICES.

- 19.1 Any written notice under this Agreement shall be deemed properly given if sent by registered or certified mail, postage prepaid, or by nationally recognized overnight delivery service or by facsimile to the address specified below, unless otherwise provided for in this Agreement:

If to User to:
Village Administrator

If to Owner to:
Mayor

Village of New Albany
P.O. Box 188
New Albany, Ohio 43054

City of Gahanna
200 S. Hamilton Road
Gahanna, Ohio 43230

With a Copy to:
Law Director
Village of New Albany
P.O. Box 188
New Albany, Ohio 43054

With a Copy to:
Law Director
City of Gahanna
200 S. Hamilton Road
Gahanna, Ohio 43230

19.2 Either Party may, by written notice to the other Party, change the name or address of the person to receive notices pursuant to this Agreement.

20. SEVERABILITY.

20.1 In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Agreement.

21. COMPLIANCE WITH LAW.

21.1 Each Party hereto agrees that it will perform its respective rights and obligations hereunder in accordance with all applicable laws, rules and regulations.

22. GOVERNING LAW AND VENUE.

22.1 This Agreement shall be interpreted in accordance with the Charter and Codified Ordinances of the City of Gahanna and the Village of New Albany, as amended, the laws of the State of Ohio, and all applicable federal laws, rules and regulations as if this Agreement were executed and performed wholly within the State of Ohio. No conflict of law provisions shall be invoked so as to use the laws of any other jurisdiction. The exclusive venue for all cases or disputes related to or arising out of this Agreement shall be the state and federal courts in Franklin County, Ohio

23. ENTIRE AGREEMENT.

This Agreement, including any Exhibit attached hereto, all constitute the entire agreement between the parties with respect to the subject matter. This Agreement cannot be modified except in writing and signed by both parties.

IN WITNESS HEREOF the parties have executed and delivered this Agreement effective the day and year first above written:

USER:

The Village of New Albany, an Ohio municipal corporation

By: Jospheh Stefanov
Its: Village Administrator

OWNER:

City of Gahanna, an Ohio municipal corporation

By: Rebecca Stinchcomb
Its: Mayor

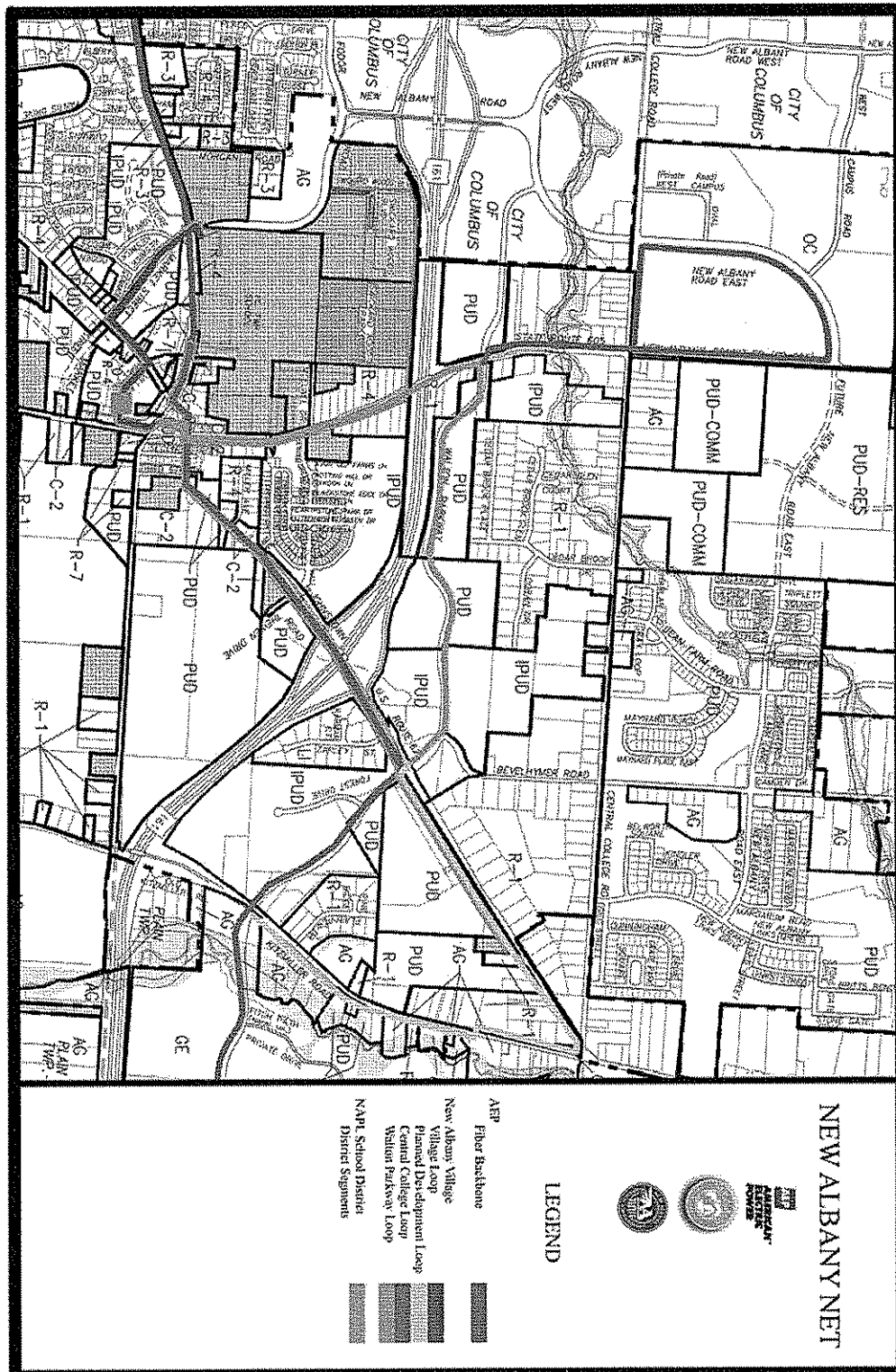
Approved As To Form:

Law Director, City of Gahanna, Ohio.

Law Director, Village of New Albany, Ohio

REST OF PAGE LEFT INTENTIONALLY BLANK

EXHIBIT A



ALTOS® Gel-Free, All-Dielectric Cables

12-288 Fibers

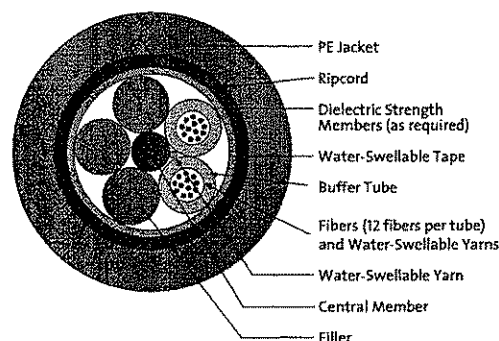
An Evolant® Solutions Product

Description

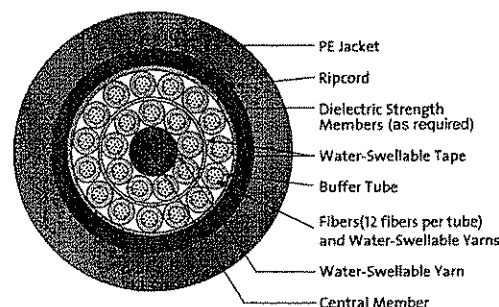
ALTOS® All-Dielectric Gel-Free Cables are lightweight cables designed for duct and aerial (lashed) installation. The loose tube design provides stable performance over a wide temperature range and is compatible with any telecommunications-grade optical fiber.

Features / Benefits

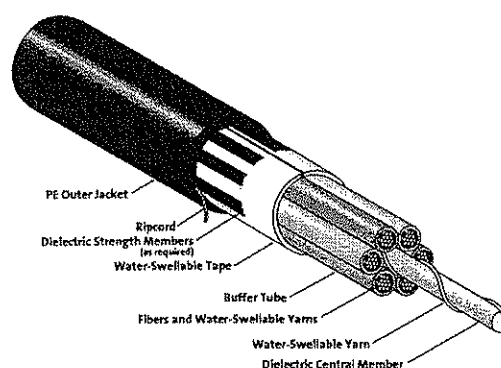
- Gel-free design is fully waterblocked using craft-friendly water-swellaable yarns and tapes, making cable access simple and requiring no clean up
- Flexible, craft-friendly buffer tubes are easy to route in closures
- Standard buffer tube size reduces the number of access tools required by craft personnel
- S-Z stranded, loose tube design isolates fibers from installation and environmental rigors and facilitates midspan access
- Dielectric strength members have no preferential bend and require no bonding or grounding
- Medium-density PE jacket is rugged, durable and easy to strip
- Meets industry standards and specifications including ICEA-640 and Telcordia GR-20
- RDUP (formerly RUS) listed, 7 CFR 1755.900



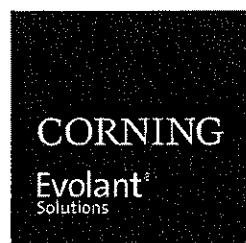
ALTOS Gel-Free, All-Dielectric Cable, 24-Fiber | Drawing ZA-2747



ALTOS Gel-Free, All-Dielectric Cable, 288-Fiber | Drawing ZA-2749



ALTOS All-Dielectric Cable | Drawing ZA-2750



Product Specifications

EVO-495-EN | Page 1

ALTOS® Gel-Free, All-Dielectric Cables

12-288 Fibers

An Evolant® Solutions Product

Specifications

Maximum Tensile Loads	Short-Term: 2700 N (600 lbf) Long-Term: 890 N (200 lbf)
Storage Temperature	-40° to +70°C (-40° to +158°F)
Installation Temperature	-30° to +70°C (-22° to +158°F)
Operating Temperature	-40° to +70°C (-40° to +158°F)

Fiber Count	Maximum Fibers per Tube	Number of Tube Positions	Number of Active Tubes	Central Member	Nominal Weight kg/km (lb/1000 ft)	Nominal Outer Diameter mm (in) ¹	Minimum Bend Radius Loaded cm (in)	Minimum Bend Radius Installed cm (in)
12-60	12	5	3-5	Dielectric	78 (52)	11.3 (0.44)	17.0 (6.7)	11.3 (4.4)
72	12	6	6	Dielectric	91 (61)	12.0 (0.47)	18.0 (7.1)	12.0 (4.7)
84-96	12	8	7-8	Dielectric	120 (80)	13.9 (0.55)	20.9 (8.2)	13.9 (5.5)
108-120	12	10	9-10	Dielectric	157 (105)	15.9 (0.63)	23.9 (9.4)	15.9 (6.3)
132-192	12	16	11-16	Dielectric	159 (107)	17.4 (0.69)	26.1 (10.3)	17.4 (6.9)
204-216	12	18	17-18	Dielectric	178 (119)	18.2 (0.72)	27.3 (10.7)	18.2 (7.2)
228-240	12	20	19-20	Dielectric	197 (132)	19.1 (0.75)	28.7 (11.3)	19.1 (7.5)
252-288	12	24	21-24	Dielectric	246 (165)	21.3 (0.84)	32.0 (12.6)	21.3 (8.4)

ALTOS® Gel-Free, All-Dielectric Cables

12-288 Fibers

An Evolant® Solutions Product

Transmission Performance Table

Fiber Code	K	C	E	E
Performance Option Code	30	31	01	00
Fiber Type	62.5/125 μ m (850/1300 nm)	50/125 μ m (850/1300 nm)	Single-mode (1310/1383/1550 nm)	Single-mode (1310/1383/1550 nm)
Maximum Attenuation (dB/km)	3.5/1.0	3.5/1.5	0.4/0.4/0.3	0.35/0.35/0.25
Minimum LED Bandwidth (MHz•km)	200/500	500/500	- / - / -	- / - / -
Minimum Effective Modal Bandwidth (MHz•km)	220/ -*	510/ -*	- / - / -	- / - / -
Serial Gigabit Ethernet Distance (m)	300/550	600/600	5000/ - / -	5000/ - / -
Serial 10 Gigabit Ethernet Distance (m)	33/ -	82/ -	10000/ - /40000	10000/ - /40000

* EMB when deployed with 850 nm, 1 Gb/s VCSELs as predicted by RML Bandwidth using FOTP-204.

Ordering Information

Contact Customer Service for other options.

□ □ □ □ W 4 - T □ 1 □ □ D 2 0
 1 2 3 4 5 6 7 8 9 10 11 12 13 14

1 - 3 Select fiber count (012 to 288, increments of 12).

4 Select fiber code (see Transmission Performance Table).

5 / 12 Defines cable type.

W/D = ALTOS® Gel-Free Cable

6 Defines jacket.

4 = Dielectric

7 Defines fiber placement.

T = 12 fiber/buffer tube (standard)

8 Select length markings.

4 = Markings in feet (standard)

3 = Markings in meters

9 Defines tensile strength.

1 = 2700 N/600 lb (standard)

10 - 11 Select performance option code.
(see Transmission Performance Table).

13 - 14 Defines special requirements.

20 = No special requirements

ALTOS® Gel-Free, All-Dielectric Cables

12-288 Fibers

An Evolant® Solutions Product

CORNING
Evolant®
Solutions

Corning Cable Systems LLC • PO Box 489 • Hickory, NC 28603-0489 USA
800-743-2675 • FAX: 828-901-5973 • International: +1-828-901-5000 • www.corning.com/cablesystems

Corning Cable Systems reserves the right to improve, enhance and modify the features and specifications of Corning Cable Systems products without prior notification. ALTOS and Evolant are registered trademarks of Corning Cable Systems Brands, Inc. All other trademarks are the properties of their respective owners. Corning Cable Systems is ISO 9001 certified. © 2004, 2007 Corning Cable Systems. All rights reserved.
Published in the USA. EVO-495-EN / May 2007