

## OPTICAL FIBER IRU AGREEMENT

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THIS OPTICAL FIBER IRU AGREEMENT ("Agreement") is made and entered into as of the 1st day of August, 2007, by and between the Baldwin County Commission, a political subdivision of the State of Alabama ("Grantor") and SOUTHERN LIGHT, LLC, an Alabama limited liability company ("Grantee").

### RECITALS

A. Grantor has constructed and/or is currently constructing a fiber optic communications system (the "Grantor System") as generally depicted on Exhibit "H" attached hereto.

B. Grantee desires to be granted the right to use certain optical fibers and other rights in the Grantor System upon the terms and conditions set forth below.

C. Grantor desires to grant to Grantee an indefeasible right to use the Grantee Fibers, all upon and subject to the terms and conditions set forth below.

### ARTICLE 1

#### Definitions

- 1.01 "Acceptance Date" shall mean the date when Grantee delivers (or is deemed to have delivered) notice of acceptance of a Completion Notice with respect to a Segment in accordance with Article 8.
- 1.02 "Acceptance Testing" shall have the meaning set forth in Article 7.
- 1.03 "Affiliate" shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person ("control," "controlled by" and "under common control with" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise).
- 1.04 "Associated Property" shall mean the tangible and intangible property needed for the use of the Grantee Conduit as permitted by this Agreement, including manholes and handholds, but excluding in any and all events any electronic and/or optronic equipment.
- 1.05 "Completion Notice" shall have the meaning set forth in Article 8.

- 1.06 "Connecting Points" shall have the meaning set forth in Section 9.01.
- 1.07 "Costs" shall mean the actual direct costs paid or payable in accordance with the generally accepted accounting principles and other established procedures uniformly used by Grantor in billing third parties for reimbursable projects on a consistent basis, including the following: (i) internal labor costs, including wages, salaries, benefits and overhead (provided that overhead shall equal thirty percent (30%) of wages, salaries and benefits), and (ii) out of pocket expenses directly related to the construction of the Conduits and other direct costs on a direct pass-through basis without any mark-up.
- 1.08 "Dark Fiber" means fiber provided without electronics or optronics, and which is not "lit" or activated; provided that such fiber may be used in any manner and for any purpose permitted herein.
- 1.09 "Effective Date" shall have the meaning set forth in Section 4.01.
- 1.10 "Force Majeure Event" shall have the meaning set forth in Article 16.
- 1.11 "Governmental Authority" shall mean any federal, state, regional, county, city, municipal, local, territorial, or tribal government, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and sewer authorities.
- 1.12 "Grantee Delay Event" shall mean the failure of Grantee to timely observe and perform its obligations and agreements hereunder, which failure delays the construction and installation of the Grantor System with respect to one or more Segments.
- 1.13 "Grantee Fibers" shall mean the fibers installed in the Grantor System for use pursuant to this Agreement.
- 1.14 "Grantee Fiber Materials" shall mean the Grantee Fiber and any other collateral material provided for use under this Agreement.
- 1.15 "Grantor System" shall have the meaning set forth in the Recitals.
- 1.16 "Hotel" shall mean a building in which a point or points of presence of interexchange carrier(s) is/are located.
- 1.17 "Impositions" shall mean all taxes, fees, levies, imposed duties charges or withholdings of any nature (including without limitation ad valorem, real property, gross receipts, taxes and franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement and/or imposed upon the Grantor System, Grantee Conduits, Grantee Fibers, or any part thereof, by any Governmental Authority.

- 1.18 "Indefeasible Right of Use" or "IRU" means (1) an exclusive, indefeasible right of use, for the purposes described herein, in the Fibers subject to this Agreement, as granted in Article 2, and (2) an associated non-exclusive, indefeasible right of use, for the purposes described herein, in the Associated Property; provided that the IRU granted hereunder does not provide Grantee with any ownership interest in or other rights to physical access to, control of, modification of, encumbrance in any manner of, or other use of the granting party's System except as expressly set forth herein. "IRU" shall have the meaning set forth further in Article 2.
- 1.19 "Interest Rate" shall mean, as of any relevant date, the interest rate most recently published in the Money Rates Section of *The Wall Street Journal* as the prime rate, plus two percent (2%).
- 1.20 "IRU Fee" shall have the meaning set forth in Exhibit "B".
- 1.21 "IRU Term" shall mean the period that commences on the Effective Date for the first Segment completed within the Grantor System, and ends ten (10) years after the Effective Date for the last Segment to be completed within the Grantor System.
- 1.22 "Person" shall mean any natural person, corporation, partnership, limited liability company, business trust, joint venture, association, company or Governmental Authority.
- 1.23 "POP" means the point of presence at locations along the Grantor System route.
- 1.24 "Regeneration Sites" are as defined on Exhibit F "Regeneration Facilities" are Regeneration Sites to be shared by either party.
- 1.25 "Proprietary Information" shall have the meaning set forth in Section 20.01.
- 1.26 "Recurring Fee" shall have the meaning set forth in Exhibit B.
- 1.27 "Relocating Authority" shall have the meaning set forth in Section 5.03.
- 1.28 "Required Rights" shall have the meaning set forth in Section 5.01.
- 1.29 "Required Right Payment" shall mean any payment that Grantor is required to make to the grantor or provider of a Required Right.
- 1.30 "Route Miles" shall mean, for each Segment, the actual number of route miles, or portion thereof, for such Segment as constructed.
- 1.31 "Scheduled Completion Date" shall mean, with respect to each Segment and subject to Force Majeure Events, the dates set forth on Exhibit "A".
- 1.32 "Segments" and "Segment End Points" shall have the meaning set forth in Section 2.02.

1.33 "Taxes" shall have the meaning set forth in Article 11.

## ARTICLE 2

### Grant of IRU

2.01 Grantor hereby agrees to grant, effective as of the Acceptance Date and Grantee does hereby agree to acquire from Grantor:

(a) an Indefeasible Right of Use in, for the purposes described herein, multiple "Dark Fibers," to be specifically identified in Exhibit A, in the Grantor System and,

(b) an associated and nonexclusive Indefeasible Right of Use, for the purposes described herein, in the tangible and intangible property needed for the use of the Dark Fibers as dark fibers,

(c) if and only to the extent provided herein, associated Regeneration Facilities, but in any event excluding any electronic or optronic equipment (all of the above collectively, the "Associated Property"), for the Term respecting such Segment (see below), and all of the terms and subject to the covenants and conditions set forth herein (collectively, the "IRUs"). The Dark Fibers subject to the IRUs are referred to collectively as the "Grantee Fibers."

2.02 The exact location of the Grantor System and the Grantee Fibers is set forth on Exhibits A & H attached hereto. The Grantor System will connect the points identified on Exhibit "A" attached hereto (each point identified on Exhibit "A", is herein called a "Segment End Point", the route between the applicable Segment End Points is herein called a "Segment", and all of the Segments together are herein referred to as the "Grantor System" or the "System Route").

2.03 The specific location of the System Route between Segment End Points is subject to Grantor obtaining the Required Rights; however, the System Route will connect the Segment End Points for each Segment.

## ARTICLE 3

### Fees

3.01 Grantee agrees to pay, as compensation for the grant of this IRU, the IRU fee set forth in Exhibit "B" for each Segment, the first monthly payment of which shall be due and payable within thirty (30) days after the applicable Acceptance Date.

3.02 In addition to the foregoing amounts, Grantee shall pay directly or reimburse Grantor for all other sums, costs, fees and expenses, which are expressly provided to be paid by Grantee under this Agreement.

3.03 Grantor will send Grantee invoices for payments of all sums, costs, fees and expenses owed by Grantee to Grantor hereunder, describing in reasonable detail the items covered by each such invoice, and Grantee shall pay such invoiced amounts (unless such amounts are the subject of a good faith dispute) within thirty (30) days after receipt of such invoice by Grantee (unless an alternative payment date or mechanism is provided herein). Any sums not paid by Grantee when due shall bear interest at the Interest Rate.

3.04

## **ARTICLE 4**

### **IRU Term**

4.01 The IRU with respect to the Grantee Fibers within each Segment shall become effective on the first day when both (i) the Acceptance Date with respect to the Grantee Fibers within such Segment has occurred and (ii) Grantor has received first payment of the IRU Fee with respect to such Segment then due to Grantor hereunder (the "Effective Date"). Subject to the provisions of this Article 4 and of Article 17, the IRU with respect to the Grantee Fibers shall terminate at the expiration of the IRU Term.

4.02 Upon the expiration of the IRU Term, all rights to the use of the Grantee Fibers shall revert to Grantor without reimbursement of any of the IRU Fee or other sums, costs, fees or expenses previously made with respect thereto, and from and after such time Grantee shall have no further rights or obligations hereunder with respect thereto unless such rights or obligations are specifically provided herein to survive the IRU Term.

4.03 Subject to Article 17, this Agreement shall become effective on the date hereof, and shall terminate on the date when all of the applicable IRU Term(s) of the Segment(s) shall have expired or terminated, except for those provisions of this Agreement which are expressly provided herein to survive such termination shall remain binding on the parties hereto.

## **ARTICLE 5**

### **Required Rights**

5.01 Grantor agrees to obtain and maintain in full force and effect for and during the IRU Term all rights, licenses, permits, authorizations, rights-of-way, easements and other agreements which are necessary in order to permit Grantor to construct, install and keep installed, and maintain the Grantee Fibers in accordance with this Agreement and to provide Grantee with the right of use of the Grantee Fibers and all other rights under this Agreement pursuant to the IRU (collectively, the "Required Rights").

5.02 In the event Grantor shall receive notice from any grantee or provider of a Required Right that Grantor has failed to observe or perform its obligations under such Required Right,

Grantor shall use commercially reasonable efforts to cure or correct such failure. If Grantor is unable to correct such failure and Grantor is not contesting the validity of such claimed or alleged failure, in good faith, Grantor shall give written notice to Grantee of such failure, and Grantee may, at its option (subject to the terms and provisions of the Required Right and the ability of third parties to cure defaults of Grantor thereunder), cure or correct such failure and Grantor shall reimburse Grantee for the costs and expenses incurred by Grantee in connection therewith.

5.03 If, after the Acceptance Date with respect to a Segment, Grantor is required (i) by any Governmental Authority under the power of eminent domain or otherwise, (ii) by the grantor or provider of any Required Right, (iii) by any other Person having the authority to so require (each a "Relocating Authority"), or (iv) by the occurrence of any Force Majeure Event, to relocate the Grantor System within such Segment or any portion thereof, Grantor shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. Grantee shall be kept fully informed of all determinations made by Grantor in connection with such relocation, and any such relocation shall be constructed substantially in accordance with the construction specifications set forth in Exhibit "C and be subject to Acceptance Testing. Grantor shall pay for all costs related to such relocation.

## **ARTICLE 6**

### **Construction and Delivery of the Fibers and Associated Rights**

6.01 Grantor will design, engineer, install and construct the Grantor System, to the extent not already constructed, in accordance with the construction specifications set forth in Exhibit "C," in a workmanlike manner and in accordance with industry standards and all applicable laws. Such responsibilities shall include, without limitation, preparation of construction drawings, materials specifications and materials requisitions. The Grantee Fiber shall meet or exceed the specifications set forth in Exhibit "D." Nothing contained herein shall prohibit Grantor from commencing construction of a portion of a Segment before Grantor has obtained all Required Rights necessary for all of such Segment.

6.02 Grantor will undertake the Acceptance Testing of the Grantee Fiber within each of the Segments.

6.03 Grantor and Grantee will mutually consult with each other from time to time upon request to attempt to coordinate construction of the Grantor System with other network construction which may be undertaken by Grantee.

6.04 Subject to the terms and provisions of any applicable Required Right, Grantee shall have the right, but not the obligation, at Grantee's cost and expense on at least five (5) days prior written notice to Grantor, to inspect the construction of the Grantee System; provided that no

inspection or failure to inspect by Grantee shall impair, modify or amend any of the representations, warranties, covenants and agreements of Grantor under this Agreement.

6.05 Notwithstanding anything to the contrary contained herein, Grantor may elect, at its option, to acquire any portion of the Grantor System from third parties (whether under a lease, sublease, indefeasible right of use, or otherwise) in lieu of constructing and installing the Grantor System respecting such portion; provided, any such acquired portion shall have been constructed substantially in accordance with the specifications and procedures required by this Agreement except for such deviations which do not, in the reasonable discretion of Grantor, materially diminish the value, utility, reliability or expected useful life of the Grantor System; and provided further, that Grantee shall have no lesser rights with respect to the acquired portion of the Grantor System as it has with respect to the portion of the Grantor System being constructed by or on behalf of Grantor.

## **ARTICLE 7**

### **Acceptance Testing**

Grantor shall test the Grantee Fibers in accordance with the procedures and standards specified in Exhibit "E" ("Acceptance Testing"). Acceptance Testing shall progress span by span along each Segment or Lateral Segment, if any, so that test results may be reviewed in a timely manner. Grantee shall be responsible for the timely completion of any work or installation required in order for it to place the Grantee Fibers into operation (and Grantee's failure to complete such work shall not be grounds for rejection of a Completion Notice). Grantor shall provide Grantee with a copy of such test results.

## **ARTICLE 8**

### **Completion**

Upon the successful completion of Acceptance Testing respecting the Grantee Fibers within an entire Segment, Grantor shall provide written notice of the same to Grantee (a "Completion Notice") and an invoice for the applicable IRU Fee for such Segment. Grantor shall contemporaneously deliver a copy of the results of the Acceptance Testing for the entire Segment (if and to the extent that Grantor has not previously delivered same) and Grantee shall, within fifteen (15) days of receipt of the Completion Notice, either accept or reject the Completion Notice (Grantee shall be permitted to reject only if Grantee specifies a material failure of the Grantee Fiber to satisfy the requirements of this Agreement) by delivery of written notice to Grantor. In the event Grantee rejects the Completion Notice, Grantor shall promptly, and at no cost of Grantee, commence to remedy the defect or failure specified in Grantee's notice. Thereafter Grantor shall again conduct Acceptance Testing and (if successfully completed) provide Grantee a Completion Notice with respect to such Segment. The foregoing procedure shall apply again and successively thereafter until Grantor has remedied all defects or failures specified by Grantee. Any failure by Grantee to timely accept or reject a Completion

Notice, or any use of the Grantee Fiber by Grantee for any purpose other than testing, shall be deemed to constitute acceptance for purposes of this Agreement and Grantee shall be deemed to have delivered a notice of acceptance upon such use or on the fifteenth day after delivery of the Completion Notice unless Grantee has delivered a notice rejecting the Completion Notice within such period.

## **ARTICLE 9**

### **Operations**

9.01 Subject to the provisions of the Agreement, Grantee shall have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of that party's Dark Fiber.

9.02 Grantee acknowledges and agrees that Grantor is not supplying nor is such other party obligated to supply to it any optronics or electronics or optical or electrical equipment or for providing other facilities, including without limitation, generators, batteries, air conditioners, fire protection and monitoring and testing equipment, unless specified herein, and except those power and environmental control equipment that would normally be supplied and utilized as part of the Grantor's regeneration facilities.

9.03 Upon not less than thirty (30) days written notice to Grantee, Grantor may, subject to Grantee's prior written approval (which approval shall not be unreasonably delayed or withheld) substitute for the Fibers granted to the other party on its System, an equal number of alternative fibers along the same or an alternative route; in any such event, such substitution (a) shall be without unreasonable interruption of service provided that and use by the other party, (b) shall be effected at the sole cost of the party making the change, including, without limitation, all disconnect and reconnect costs, fees and expenses, (c) shall be constructed and tested in accordance with the specifications and drawings set forth herein for the original Fibers, and (d) shall not adversely affect the use, operation or performance of Grantee's network or business, or change any Connecting Points or endpoints.

## **ARTICLE 10**

### **Maintenance and Repair of the Grantor System**

From and after the Effective Date with respect to each Segment, the maintenance of the Grantor System, including the Grantee Fibers, shall be provided in accordance with the maintenance requirements and procedures set forth in Exhibit "G" attached hereto. The costs of all Scheduled and Unscheduled Maintenance (as defined in Exhibit "G") of the Grantee Fibers shall be borne by Grantor.

## ARTICLE 11

### Taxes, Fees and Other Impositions

11.01 Grantor and Grantee acknowledge and agree that it is their mutual objective and intent to (i) minimize, to the extent feasible, the administrative expenses associated with and the aggregate Impositions payable with respect to the Grantor System and Grantee Fibers and (ii) share such Impositions according to their respective interests in the Grantor System and Grantee Fibers, and that they will cooperate with each other and coordinate their mutual efforts to achieve such objectives in accordance with the provisions of this Article.

11.02 Grantor shall be responsible for and shall timely pay any and all Impositions with respect to the construction or operation of the Grantor System which Impositions are imposed or assessed prior to the Acceptance Date of a Segment. Notwithstanding the foregoing obligations, Grantor shall have the right to challenge any such Impositions so long as the challenge of such Impositions does not materially adversely affect the rights to be delivered to Grantee pursuant hereto.

11.03 Following the Acceptance Date for each Grantor System and except with respect to Impositions constituting ad valorem property taxes levied against the Grantee Fibers (which are addressed in Section 11.04 below), Grantor shall timely pay any and all Impositions imposed upon or with respect to the Grantor System to the extent such Impositions have not been or may not feasibly be separately assessed or imposed upon or against the respective interests of Grantor and Grantee in such Grantor System. Upon receipt of a notice of any such Imposition, Grantor shall promptly notify Grantee of such Imposition and Grantee shall pay or reimburse Grantor for its proportionate share of such Imposition, which share shall be determined (i) to the extent possible, based upon the manner and methodology used by the particular Governmental Authority imposing such Imposition (e.g., on the cost of the relative property interests, historic or projected revenue derived therefrom, or any combination thereof); or (ii) if the same cannot be so determined, then based upon Grantee's proportionate share of the Fiber count in the affected portion of the Grantor System.

11.04 Following the Acceptance Date for each Grantor System and except to the extent prohibited by applicable laws or regulations, Grantee shall separately file returns for and pay any and all ad valorem property taxes imposed on or assessed against the Grantee Fibers.

11.05 Notwithstanding any provision herein to the contrary, Grantor shall have the right to contest any Imposition assessed against it, (including by nonpayment of such Imposition provided such nonpayment does not materially adversely affect the rights to be delivered to Grantee pursuant hereto). The out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Grantor in any such contest shall be borne by Grantor.

11.06 Grantor and Grantee agree to cooperate in the preparation of any returns or reports relating to the Impositions. Grantor and Grantee further acknowledge and agree that the provisions of this Article are intended to allocate the Impositions expected to be assessed against or imposed upon the parties with respect to the Grantor System based upon the procedures and methods of computation by which Impositions generally have been assessed and imposed to

date, and that material changes in the procedures and methods of computation by which such assessments are assessed and imposed could significantly alter the fundamental economic assumptions underlying the transactions hereunder to the parties. Accordingly, Grantor and Grantee agree that, if in the future the procedures or methods of computation by which Impositions are assessed or imposed against the parties change materially from the procedures or methods of computation by which they are imposed as of the date hereof, the parties will negotiate in good faith an amendment to the provisions of this Article in order to preserve, to the extent reasonably possible, the economic intent and effect of this Article as of the date hereof.

## **ARTICLE 12**

### **Use of the Grantee Fibers**

12.01 Grantee represents and warrants that it will use the Grantee Fibers and the IRU hereunder in compliance with all applicable government codes, ordinances, laws, rules and regulations.

12.02 Subject to the provisions of this Agreement, Grantee may use the Grantee Fibers and the IRU for any lawful purpose. Grantee acknowledges and agrees that it has no right to use any Fibers, other than the Grantee Fibers, included or incorporated in the Grantor System, and that Grantee shall keep any and all of the Grantor System, free from any liens, rights or claims of any third party attributable to Grantee.

12.03 Subject to Section 19.01, Grantee covenants and agrees that Grantee shall not, that Grantee shall have no right to, and that Grantor may enjoin Grantee from any attempt to, assign, sell, lease, sublease, transfer, grant an indefeasible right of use or other similar right or interest in the IRU or the Grantee Fibers to anyone.

12.04 Grantee shall not use the Grantee Fibers in a way which physically interferes in any way with or otherwise adversely affects the use of the fibers, cable or conduit of any other Person using the Grantor System, provided that all other Persons using the Grantor System shall be similarly bound and shall not interfere with the use by Grantee of the Grantee Fibers.

12.05 Grantee and Grantor shall promptly notify each other of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to or loss of the Grantor System.

12.06 Grantee and Grantor agree to cooperate with and support each other in complying with any requirements applicable to their respective rights and obligations hereunder by any Governmental Authority.

## **ARTICLE 13**

### **Indemnification**

13.01 Subject to the provisions of Article 14, Grantor hereby agrees to indemnify, defend, protect and hold harmless Grantee and its employees, officers and directors, from and against, and assumes liability for: (i) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorney fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of Grantor, its officers, employees, servants, Affiliates, agents, contractors, licensees, invitees and vendors arising out of or in connection with the performance by Grantor of its obligations under this Agreement; and (ii) any claims, liabilities or damages arising out of any violation by Grantor of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by Grantor of its obligations under this Agreement.

13.02 Subject to the provisions of Article 14, Grantee hereby agrees to indemnify, defend, protect and hold harmless Grantor, and its employees, officers and directors, from and against, and assumes liability for: (i) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorney fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of Grantee, its officers, employees, servants, Affiliates, agents, contractors, licensees, invitees and vendors arising out of or in connection with the exercise by Grantee of its rights under this Agreement; and (ii) any claims, liabilities or damages arising out of any violation by Grantee of any regulation, rule, statute or court order of any Governmental Authority in connection with the exercise by Grantee of its rights under this Agreement.

13.03 Grantor and Grantee agree to promptly provide each other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified party, which consent shall not be unreasonably withheld, delayed, or denied.

13.04 Grantor and Grantee each expressly recognize and agree that its obligation to indemnify, defend, protect and save the other harmless is not a material obligation to the continuing performance of its other obligations, if any, hereunder. In the event that a party shall fail for any reason to so indemnify, defend, protect and save the other harmless, the injured party hereby expressly recognizes that its sole remedy in such event shall be the right to bring legal proceedings against the other party for its damages as a result of the other party's said failure to indemnify, defend, protect and save harmless. These obligations shall survive the expiration or termination of this Agreement.

13.05 Notwithstanding the foregoing provisions of this Article 13, to the extent Grantor is required under the terms and provisions of any Required Right to indemnify the grantor or provider thereof from and against any and all claims, suits, judgments, liabilities, losses and expenses arising out of service interruption, cessation, unreliability of or damage to the Grantor System, regardless of whether such claims, suits, judgments, liabilities, losses or expenses arise from the sole or partial negligence, willful misconduct or other action or inaction of such grantor or provider and its employees, servants, agents, contractors, subcontractors or other Persons using the property covered by such Required Right, Grantee hereby releases such grantor or provider from, and hereby waives, all claims, suits, judgments, liabilities, losses and expenses

arising out of service interruption, cessation, unreliability of or damage to the Grantor System regardless of whether such claims, suits, judgments, liabilities, losses or expenses arise from the sole or partial negligence, willful misconduct or other action or inaction, of such grantor or provider or its employees, servants, agents, contractors, subcontractors or other Persons using the property covered by such Required Right.

## **ARTICLE 14**

### **Limitation of Liability**

Notwithstanding any provision of this Agreement to the contrary, neither party shall be liable to the other party for any special, incidental, indirect, punitive or consequential damages, whether foreseeable or not, arising out of, or in connection with such party's failure to perform its respective obligations hereunder, including, but not limited to, loss of profits or revenue (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), or claims of customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other party or any other cause whatsoever, including breach of contract, breach of warranty, negligence, or strict liability, all claims for which damages are hereby specifically waived. Except as set forth in Article 13.05, nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party. In no event shall Grantor be liable to Grantee for any direct injury, loss or damages arising out of or resulting from any cause whatsoever to the extent such damages are in excess of the total amount of fees received from Grantee pursuant to this Agreement.

## **ARTICLE 15**

### **Insurance**

15.01 During the term of this Agreement, each party shall obtain and maintain the following insurance: (i) Commercial General Liability including coverage for (a) premises/operations, (b) independent contractors, (c) products/completed operations, (d) personal and advertising injury, (e) contractual liability, and (f) explosion, collapse and underground hazards, with combined single limit of not less than \$1,000,000.00 each occurrence or its equivalent; (ii) Worker's Compensation in amounts required by applicable law and Employer's Liability with a limit of at least \$1,000,000.00 each accident; (iii) Automobile Liability including coverage for owned/leased, non-owned or hired automobiles with combined single limit of not less than \$1,000,000.00 each accident; and (iv) any other insurance coverage required under or pursuant to the Required Rights.

15.03 Both parties expressly acknowledge that a party shall be deemed to be in compliance with the provisions of this Article if it maintains an approved self-insurance program providing for a retention of up to \$1,000,000.00. If either party provides any of the foregoing coverage on a

claims made basis, such policy or policies shall be for at least a three (3) year extended reporting or discovery period.

15.04 Unless otherwise agreed, all insurance policies shall be obtained and maintained with companies rated A or better by Best's Key Rating Guide and each party shall, upon request, provide the other party with an insurance certificate confirming compliance with the requirements of this Article 15.

15.05 Grantee and Grantor shall each waive their respective rights of subrogation and shall each obtain from the insurance companies providing the coverage required by this Agreement, the permission of such insurers to allow such party to waive all rights of subrogation and such party does hereby waive all rights of said insurance companies to subrogation against the other party, its affiliates, subsidiaries, assignees, officers, directors and employees. To the extent of each party's respective indemnification obligation, each party shall name the other party as an additional insured on their respective Commercial General Liability and Automobile Liability policies.

15.06 In the event either party fails to maintain the required insurance coverage and a claim is made or suffered, such party shall indemnify and hold harmless the other party from any and all claims for which the required insurance would have provided coverage.

15.07 Until the Effective Date, Grantor shall bear all risk of loss of and damage or destruction to the Grantor System with such Segment. Commencing as of the Effective Date, any loss, damage or destruction of or to the Grantor System not otherwise required to be insured hereunder shall be treated for all purposes as Unscheduled Maintenance (as defined in Exhibit "G").

## **ARTICLE 16**

### **Force Majeure**

Except as may be otherwise specifically provided in this Agreement, neither party shall be in default under this Agreement if and to the extent that any failure or delay in such party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; flood; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; failure of a third party to recognize a Required Right; any other cause beyond the reasonable control of such party and, in the case of Grantor, a Grantee Delay Event (each a "Force Majeure Event"). The party claiming relief under this Article shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event.

## ARTICLE 17

### Default

17.01 If (i) Grantee makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy, other insolvency protection against Grantee as filed and not dismissed with 120 days; or (iii) Grantee fails to observe and perform any of the material terms and provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice from Grantor (or to such failure as not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantor may (A) terminate this Agreement and the IRU Term, in whole or in part, in which event Grantor shall have no further duties or obligations hereunder, and (B) subject to Article 13, pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctive relief.

17.02 If (i) Grantor makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy, other insolvency protection against Grantor as filed and not dismissed with 120 days; (iii) Grantor fails to observe and perform any of the material terms and provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice from Grantee (or to such failure as not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantee may, subject to Section 17.03 below, (A) terminate this Agreement and the IRU Term, in whole or in part, in which event Grantee shall have no further duties or obligations 7/17/2007 hereunder, and (B) subject to Article 13, pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctive relief.

17.03 If, other than as caused by a Force Majeure Event, Grantor has not delivered a Completion Notice (in good faith) respecting a Segment within one hundred eighty (180) days after the Scheduled Completion Date with respect thereto, then, from and after such date and until the installation is completed, Grantee shall receive a credit of one half percent (0.5%) off of the IRU Fee for such Segment (as liquidated damages and not as a penalty) for each month or partial month (prorated based on a thirty-day month) of delay thereafter; provided, however, that in no event shall the amount of the credit provided to Grantee hereunder be greater than three percent (3%). In the event Grantor fails to deliver the Grantee Fiber in a Segment within twelve (12) months after the Scheduled Completion Date and otherwise in accordance with this Agreement, then either party shall have the right to terminate this Agreement and Grantor shall, upon such termination, pay Grantee a termination charge in the amount of one-third (1/3<sup>rd</sup>) of the IRU Fee that would otherwise be due and payable respecting such Segment, together with interest thereon. This Section sets forth the sole and exclusive remedies of Grantee respecting a failure of Grantor to complete installation of the Grantee Fiber within any Segment on or before the Scheduled Completion Date.

## **ARTICLE 18**

### **Assignment**

18.01 Grantee may not assign, encumber or otherwise transfer this Agreement to any other Person without the prior written consent of Grantor

18.02

18.03 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 hereto and each of their respective permitted successors and assigns.

18.04 Nothing contained herein shall be deemed or construed to prohibit Grantor from selling, transferring, leasing, licensing, granting indefeasible rights of use or entering into similar agreements or arrangements with other Persons respecting any fibers and conduit constituting a part of the Grantor System as long as such action does not unreasonably interfere with Grantee's use or quiet enjoyment of the Grantee Fiber.

## **ARTICLE 19**

### **Representations and Warranties**

19.01 Each party represents and warrants that: (i) it has the full right and authority to enter into, execute and deliver this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) 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 (iv) 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.

19.02 Grantor represents and warrants that the Grantor System will be designed, engineered, installed, and constructed substantially in accordance with the terms and provisions of this Agreement, any and all applicable building, construction and safety codes, as well as any and all other applicable governmental laws, codes, ordinances, statutes and regulations; provided Grantee's sole rights and remedies with respect to any breach of such representations or warranties shall be (i) to inspect the construction and installation of the Grantee Fiber and Associated Property and to participate in the Acceptance Testing, during the course and at the time of the relevant construction, installation and testing periods for the Grantee Fiber and Associated Property, as provided herein; (ii) if, during the course of such construction, installation and testing any deviation from the specifications set forth in Exhibits "C", "D" or "E" is discovered which is reasonably likely to materially adversely affect the operation or

performance of the Grantee Fiber or Associated Property, then the construction or installation of the affected portion of the Grantor System shall be repaired to such specification by Grantor at Grantor's sole cost and expense; and (iii) if, at any time prior to the date that is twelve (12) months after the Acceptance Date of a Segment, Grantee shall notify Grantor in writing of its discovery of a deviation from the specifications set forth in Exhibits "C", "D" or "E" which is reasonably likely to materially adversely affect the operation or performance of the Grantee Fiber or Associated Property (which notice shall be given within thirty (30) days of such discovery), then the construction or installation of the affected portion of the Grantee Fiber or Associated Property shall be repaired to such specification by Grantor at Grantor's sole cost and expense.

19.03 Grantee acknowledges and agrees that Grantee's sole rights and remedies with respect to any defect in or failure of the Grantee Fiber to perform in accordance with the applicable vendor's or manufacturer's specifications with respect to the Grantee Fiber shall be limited to the particular vendor's or manufacturer's warranty and such warranties, if any, with respect to the Grantee Fiber shall be assigned to Grantee upon its request. In the event any maintenance or repairs to the Grantor System are required as a result of a breach of any warranty made by any manufacturers, contractors or vendors, unless Grantee shall elect to pursue such remedies itself, Grantor shall pursue all remedies against such manufacturers, contractors or vendors on behalf of Grantee, and Grantor shall reimburse Grantee's costs for any maintenance Grantee has incurred as a result of any such breach of warranty to the extent the manufacturer, contractor or vendor pays such costs.

19.04 EXCEPT AS SET FORTH IN THE FOREGOING SECTIONS, GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GRANTEE FIBERS OR THE GRANTOR SYSTEM, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

## **ARTICLE 20**

### **Confidentiality**

20.01 Grantor and Grantee hereby agree that if either party provides confidential or proprietary information to the other party ("Proprietary Information"), such Proprietary Information shall be held in confidence, and the receiving party shall afford such Proprietary Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) in order to avoid disclosure to or unauthorized use by any third party. The parties acknowledge and agree that all information disclosed by either party to the other in connection with or pursuant to this Agreement shall be deemed to be Proprietary Information, provided that oral information is indicated as being confidential or proprietary when given and promptly confirmed in writing as such thereafter. All Proprietary Information, unless otherwise specified in writing, shall remain the property of the disclosing party, shall be used by the receiving party only for the intended purpose, and such written Proprietary Information, including all copies thereof, shall be returned to the disclosing party or destroyed after the receiving party's need for it has expired or upon the request of the disclosing party. Proprietary Information shall not be reproduced except to the extent necessary to accomplish the purpose and intent of this Agreement, or as otherwise may be permitted in writing by the disclosing party.

20.02 The foregoing provisions of Section 20.01 shall not apply to any Proprietary Information which (i) becomes publicly available other than through the disclosing party; (ii) is required to be disclosed by a governmental or judicial law, order, rule or regulation; (iii) is independently developed by the receiving party; or (iv) becomes available to the receiving party without restriction from a third party.

20.03 Notwithstanding Sections 20.01 and 20.02 either party may disclose Proprietary Information to its employees, agents, lenders, funding partners and legal and financial advisors and providers to the extent necessary or appropriate in connection with the negotiation and/or performance of this Agreement or in obtaining financing, provided that each such party is notified of the confidential and proprietary nature of such Proprietary Information and is subject to or agrees to be bound by similar restrictions on its use and disclosure.

20.04 Except as required by law, neither party shall issue any public announcement or press release relating to the execution of this Agreement without the prior approval of the other party.

20.05 In the event either party shall be required to disclose all or any part of this Agreement in, or attach all or any part of this Agreement to, any regulatory filing or statement, each party agrees to discuss and work cooperatively, in good faith, with the other party, to protect, to the extent possible, those items or matters which the other party deems confidential and which may, in accordance with applicable laws, be deleted therefrom.

20.06 Grantee acknowledges that Grantor may be required to disclose all or any part of this Agreement to a grantor or provider of a Required Right and, in such event, Grantor shall redact, to the extent possible, any commercial terms and other provisions that are deemed confidential; provided that such grantor or provider of a Required Right is notified of the confidential and proprietary nature of such Agreement and is subject to or agrees to be bound by similar restrictions on its use and disclosure.

20.07 The provisions of this Article 20 shall survive expiration or termination of this Agreement.

## **ARTICLE 21**

### **Dispute Resolution**

If the parties are unable to resolve any dispute arising under or relating to this Agreement, then either party may initiate legal proceedings or pursue any other remedy to resolve their dispute.

## **ARTICLE 22**

### **Notice**

All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by facsimile transmission followed by another form of written notification which is capable of providing proof of delivery, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

#### **IF TO GRANTEE:**

Southern Light, LLC  
Attn: Chief Financial Officer  
P.O. Box 91127  
Mobile, AL 36691  
Voice: (251) 662-1170  
Facsimile: (251) 662-1297

with a copy to:

H. William Wasden  
Bowron, Latta & Wasden, P.C.  
P.O. Box 16046  
Mobile, AL 36616  
Voice: (251) 344-5151  
Facsimile: (251) 344-9696

#### **IF TO GRANTOR:**

Baldwin County Commission  
Attn: Commission Chairman  
312 Courthouse Square, Suite 12  
Bay Minette, AL 36507  
Voice: (251) 937-0264

Facsimile: (251) 580-2500

With a copy to:  
Baldwin County Commission  
Attention: CIS Director  
312 Courthouse Square, Suite 13  
Bay Minette, AL 36507  
Voice: (251) 937-0351  
Facsimile: (251) 580-2538

or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday), on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

## **ARTICLE 23**

### **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 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.

## **ARTICLE 24**

### **Relationship of the Parties**

The relationship between Grantee and Grantor 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.

## **ARTICLE 25**

### **Counterparts**

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

**ARTICLE 26**

**Construction and Interpretation of Agreement**

The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

**ARTICLE 27**

**Enforcement**

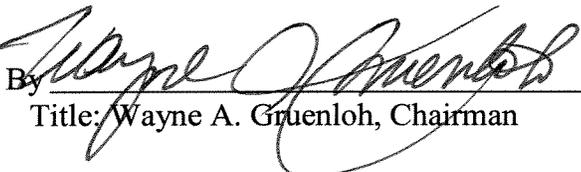
If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written.

**SOUTHERN LIGHT, LLC, an  
Alabama limited liability company**

By   
Title: Paul E. Bullington, Chief Financial Officer

**BALDWIN COUNTY COMMISSION, a  
political subdivision of the State of Alabama**

By   
Title: Wayne A. Gruenloh, Chairman

**EXHIBIT "A"**  
**Segments, Segment End Points and Route Maps**

<b>Segment</b>	<b>From Segment End Point</b>	<b>To Segment End Point</b>	<b>Fiber</b>	<b>Route Distance</b>	<b>Date</b>
<b>Baldwin County, AL: Downtown Bay Minette Courthouse meet me handhole to Bay Minette Board of Education</b>	<b>Bay Minette Meet me Handhole, drawings "BCFN Existing Conduit Downtown Bay Minette"; H7 - H2</b>	<b>Bay Minette Board of Education meet me handhole, inclusive of drawings "BCFN Phase1 TCC-001" (Page 2 - 19); From H2 Handhole to BOE</b>	6	11,442 ft	August 1, 2007
<b>Baldwin County, AL: Downtown Bay Minette Courthouse meet me handhole to Stapleton meet me handhole on West side of Hwy 31/59</b>	<b>Bay Minette Meet me Handhole, drawings "BCFN Existing Conduit Downtown Bay Minette"; H7 - H14</b>	<b>Stapleton meet me handhole on West side of Hwy 31/59, inclusive of drawings " BCFN Phase1 TCC-002" (Page 2 - 26) ; From H14 Handhole to Old Daphne/Hwy31 to "BCFN Phase1 TCC-003" (Page 2 - 38) ; From Old Daphne/Hwy 31 to Stapleton Handhole on West side of Hwy31/Hwy59</b>	6	66,143 ft	August 1, 2007
<b>Baldwin County, AL: Robertsdale EOC meet me handhole to Fairhope Courthouse meet me handhole</b>	<b>Robertsdale EOC Meet me Handhole, drawings " BCFN Phase1 TCC-004 (Page 19 - 23); On CR54 from McAuliffe Dr to CR55"</b>	<b>Fairhope Courthouse meet me handhole, inclusive of drawings "BCFN Phase2 CR55" (Page 1 - 22);On CR55 from CR54 to CR48 to "BCFN Phase2 CR48" (Page 1 - 30) ; On CR48 to CR9 to CR48 ending at meet handhole on CR48 near Fairhope Courthouse</b>	6	68,343 ft	August 1, 2007
<b>Baldwin County, AL: Robertsdale EOC meet me handhole to Foley Courthouse meet me handhole</b>	<b>Robertsdale EOC Meet me Handhole, drawings " BCFN Phase1 TCC-004" (Page 19 - 23); On CR54 from McAuliffe Dr to CR55"</b>	<b>Foley Courthouse meet me handhole, inclusive of drawings " BCFN Phase2 CR55" (Page 1 - 59);On CR55 from CR54 to CR24 (Includes 2695 feet on CR32) to "BCFN Phase2 CR49_CR24" (Page 10 - 33); On CR24 to N Juniper to E Section ending at Foley Courthouse</b>	6	89,226 ft	August 1, 2007
<b>Baldwin County, AL: Fairhope Courthouse meet me handhole to to Foley Courthouse meet me handhole</b>	<b>Fairhope Courthouse meet me handhole, drawing " BCFN Phase2 CR48" (Page 1 - 30); On CR48 to CR9 to CR48 to CR55</b>	<b>Foley Courthouse meet me handhole, inclusive of drawings " BCFN Phase2 CR55" (Page 22 - 59);On CR55 from CR48 to CR24 (Includes 2695 feet on CR32) to "BCFN Phase2 CR49_CR24" (Page 10 - 33); On CR24 to N Juniper to E Section ending at Foley Courthouse</b>	6	106,643 ft	August 1, 2007

**EXHIBIT "B"**  
**Fees**

The one time IRU Fee for the Optical Fiber (Dark) IRU granted herein is \$0. In lieu of monetary compensation for the Fiber System described in Exhibit A, Grantee will provide an in-kind swap of a comparable Fiber System on Grantee's Baldwin County, Alabama Network as outlined in a second Optical Fiber IRU Agreement executed on this same date between Baldwin County Commission and Southern Light, LLC.

The above IRU fee is based on a route that was designed according to the engineering standards, available infrastructure, and the surrounding environment. If the IRU Fee is inclusive of a fiber system which has yet to be constructed, in whole or in part, and requires new fiber construction to be performed by Baldwin County Commission, the final IRU Fee may be adjusted if in Grantor's sole judgment construction costs materially vary from the original construction estimate due to route changes for reasons such as inability to obtain Rights of Way or any other changes in the construction design that materially affect construction costs. If the revised IRU fee is then unacceptable to the Grantee, the Grantee has the option to terminate this agreement prior to any construction.

The total recurring fee is \$0/month as a result of the in-kind infrastructure swap with Grantee. The total maintenance fee is \$0/year as a result of the in-kind infrastructure swap with Grantee.

For Scheduled Maintenance services, Grantee agrees to pay to Grantor an annual fee of \$0 (the "Scheduled Maintenance Fee") payable in quarterly installments of \$ 0. The first Scheduled Maintenance Fee shall be due on or before the Effective Date and all subsequent payments shall be due on the first day of each subsequent calendar quarter during the Term of this Agreement. The Scheduled Maintenance Fee for any partial period shall be prorated based on the number of days in that period.

The term of the agreement per Article 1.21 is Ten (10) years.

**Contract Buyout Terms**

For any reason other than physical relocation, Grantee may terminate Agreement by thirty (30) day written notice to Grantor and payment of forty (40) percent of remaining lease payments calculated from date of notice. The buyout fee shall be due at the end of thirty (30) day notice.

**EXHIBIT "C"**  
**Construction Specifications**

1. The intent of this Exhibit is to delineate the general specifications and standards for construction of the Grantor System. In the event any federal, state, local or private agency having jurisdiction shall impose higher standards, Grantor will comply and conform with such higher standards. Grantor may deviate from the specifications and standards described below in those instances where either (i) strict compliance is impractical due to physical (including environmental) conditions, right-of-way issues or code restrictions, or (ii) Grantor has acquired a portion of the Grantor System from a third party.

2. Material

- Steel casings shall be minimum 35,000 PSI.
- Any exposed steel conduit, brackets or hardware (i.e., bridge attachments) shall be stainless steel.
- Hand holes shall have a minimum 10,000 pound loading rating for all systems constructed prior to October 2006, and 20,000 pound loading rating for all systems constructed after October 2006.
- Manholes shall have a minimum H-10 loading rating.
- Underground Fiber optic cable shall generally be single armored (unless conditions warrant otherwise at the discretion of Grantor). Aerial fiber optic cable shall be dielectric.
- HDPE SDR 13.5 conduits shall be used for plowing and HDPE SDR 11 conduits shall be installed in rock areas.
- All round steel covers/frames will be designed for H20 loading rating.

3. Minimum Depths

- Minimum cover required in the placement of conduit shall be 42 inches, except in the following instances:
- The minimum cover in borrow ditches adjacent to roads, highways, railroads, and interstate shall be 48 inches below the clean-out line or existing grade, whichever is greater.
- The minimum cover across streams, river washes and other waterways shall be 48 inches below the clean-out line or existing grade, whichever is greater.
- At locations where conduit crosses other subsurface utilities or other structures, the conduit shall be installed to provide a minimum of 12 inches of vertical clearance; otherwise the conduit will be installed under the existing utility or other structure.
- In rock, the conduit shall be placed to provide a minimum of 8 inches below the surface of the solid rock with a concrete cap, or 18 inches below the surface of the rock or provide a minimum of 42 inches of total cover, whichever requires the least rock excavation. HDPE conduit will be back-filled with 2 inches of select materials (bedding) and 4 inches of select cover in rock areas.
- In the case of the use/conversion of existing steel pipelines or salvaged conduit systems, the existing depths shall be considered adequate.

4. Conduit Construction

- Conduits may be placed by means of trenching, plowing, jack and bore, or directional bore. Conduit will generally be placed on a level grade parallel to the surface, with only gradual changes in grade elevation.
- Steel conduit will be joined with threaded collars, Zap-Lok or welding.
- Railroad crossings will be encased in steel conduit where required.
- All underground crossings of major streams, rivers, bays and navigable waterways will be placed in either HDPE or steel conduit at a minimum depth of 20 feet below the bottom of the waterway.
- All conduits placed on DOT bridges will be bullet-proof fiberglass where allowed by the authority and all other bridges stainless steel conduit shall be installed.
- All conduits placed on bridges shall have expansion joint placed at each structural (bridge) expansion joint or at least every 100 feet, whichever is the shorter distance.

5. Aerial Installation

- All of Baldwin County Commission's facilities will be firmly secured and supported in accordance with Bellcore and Industry standards.
- New construction splices in Baldwin County Commission's fiber optic cable shall be located in manholes, pull boxes, or handholes.
- Fiber Optic cable shall be plainly identified with Baldwin County Commission's name in each manhole with a firmly affixed permanent tag.

6. Innerduct Installation

- Innerducts, where utilized, shall be 1-1/4 inches.
- Innerducts, where utilized, shall be encased by a HDPE or steel conduit.

7. Cable Installation

- The fiber optic cable shall be installed using a powered pulling winch and hydraulic powered assist pulling wheels or blown into conduit using a fiber optic cable blower. The maximum pulling force to be applied to the fiber optic cable shall be 600 pounds.
- Bends of small radii (less than 20 times the outside diameter of the cable) and twists that may damage the cable shall be avoided during cable placement.
- The cable shall be lubricated and placed in accordance with the cable manufacturer specifications.
- A pulling swivel break-away rated at 600 pounds shall be used in conjunction with a powered pulling winch.
- All splices will be contained in a hand hole or manhole.
- A minimum of 100 feet of slack cable will be left in all intermediate hand holes or manholes.
- A minimum of 70 feet of slack cable from each cable end will be left in all splice locations.

8. Manholes and Hand holes

- Hand holes and Manholes placed in traveled surface streets be HS-20 loading rated and shall have locking lids.
- Hand holes shall be placed in all other areas and be installed with locking lids.

9. Cable Markers (Warning Signs)

Cable markers (with the same information as buried cable warning tape) shall be installed at all changes in cable running line directions, waterways, subsurface utilities, hand holes and at both sides of street, highway, bridge or railroad crossings. At no time shall any markers be spaced more than 1000 feet apart. Markers shall be positioned so that they can be seen from the location of the cable and generally set facing perpendicular to the cable running line.

10. Compliance

All work will be done in strict accordance with federal, state, local and applicable private rules and laws regarding safety and environmental issues, including those set forth by OSHA and the EPA. In addition, all work and the resulting fiber system will comply with the current requirements of all governing entities (FCC, NEC, DEC, and other national, state, and local codes, and Bellcore System Practices).

11. As Built Drawings

As-built drawings will contain a minimum of the following:

- Information showing the location of running line, relative to permanent land marks, including but not limited to, railroad mileposts, boundary crossings and utility crossings.
- Manhole and hand hole locations
- Conduit information (type, length, expansion joints, etc.)
- Notation of all deviations from specifications (depth, etc.)
- ROW detail (type, centerline distances, boundaries, waterways, road crossings, known utilities and obstacles)
- Cable marker locations and stationing
- Drawings will be updated with actual field data during and after construction.
- Metro area scale shall not exceed 1 inch = 200 feet
- Rural area scale shall not exceed 1 inch = 500 feet
- As-built will be provided within ninety (90) days after the Acceptance Date, in both hard copy and electronic format. Updates to the as-built will be provided within sixty (60) days of completion of change for additional work for End User Buildings.

**EXHIBIT "D"**  
**Conduit and Grantee Fiber Specifications**

The intent of this Exhibit is to delineate the manufacturer specifications for the Grantee Conduit and to identify the Grantee Fiber Materials. Deviations from these specifications may occur if Grantor acquires a portion of the Grantor System from a third party pursuant to Section 6.05 of the Agreement.

**Conduit**

- OSP Conduit SDR 13.5
- 1-1/4" (inside diameter)
- High density polyethylene (HDPE) duct
- Tensile yield 3200 psi
- Flexural modulus 110,000 psi
- Smoothwall inside & outer
- Empty (no rope or tape)
- Unlubricated
- Plugs

**Fiber**

**Fiber optic cable:** Corning, Alcatel, Pirelli/Prysmian, Samsung, or Draka cable with Corning MetroCor (ITU G.655) or SMF-28 (ITU G.652) glass

**Splice enclosures and related materials (typical):** Coyote, 3M, or Alcatel closures and splice trays, TVC Handholes (30" X 48" X 18"), heat shrinks (if required), ACT 4400-150 or Norscan isolator/protection systems, ground rods, ground wires, and clamps.

**EXHIBIT "E"**  
**Acceptance Testing Procedures and Standards**

1. The intent of this Exhibit is to delineate the general specifications and standards for testing of the Grantor System in order to fulfill testing for acceptance by Grantee. In the event any federal, state, local or private agency having jurisdiction shall impose higher standards, Grantor will comply and conform with such higher standards.
2. The Optical Time Domain Reflectometer (OTDR) will be used to test splice loss and to conduct span analysis. The approved OTDRs are the GN Nettest CMA4000 series, or an OTDR with equivalent or better precision. Each of these models must have a floppy disk drive for storing all test files.
3. An Optical Power Meter and Laser Light Source will be used to measure power loss on each completed span and verify continuity between fibers (no fibers incorrectly spliced together). No specific vendor is required for the Power Meter and Laser Light Source, but it must be able to operate at both 1310nm and 1550 nm wavelengths. Both units must have a dynamic range suitable for long-haul applications (spans greater than 120 km). The contractor must calibrate their power meters before testing a span and provide the unit's calibrated reference for that span. (Power Meter calibration is performed by using a Laser Light Source connected to the Power Meter and recording the measured light level on the Power Meter).
4. When conducting pigtail tests, a 1 km launch reel (sometimes referred to as a load coil) will be used in conjunction with the OTDR. This provides the tester with the ability to accurately measure the connector loss, connector back reflectance and the adjacent splice loss on a short span (15-30 meters from terminating distribution panel). Pigtail tests taken with long patchcords or any other "adaptation" will not be accepted.
5. During initial construction, all splices will be tested as they are spliced. The loss of each splice will be recorded on the "Fiber Splice Report" and the Grantor field inspector will review and accept all splices to assure the Baldwin County Commission standard is achieved. These initial splices are to be tested bidirectionally with an OTDR at 1550nm. If the measured average bi-directional loss of a splice is greater than 0.15 dB, the splice must be broken and respliced until the measured loss of 0.15 dB is achieved. If the measured loss of 0.15 dB or less cannot be achieved after three attempts, the maximum measured loss should not exceed 0.30 dB. If, after two additional resplicing attempts a measured loss of 0.30 dB cannot be achieved, the splice will be marked out of specification (OOS) by the inspector. If more than 10% of the fibers are not within specification, the fiber will be cut back 10 feet and re-spliced. The Fiber Splice Report will be submitted to Grantee as part of as-built drawings.
6. Pigtail splices will be tested using unidirectional testing standards, with no greater than a 0.8 dB loss accepted. Any loss higher than 0.8 dB after 5 repeated attempts results in the replacement and resplicing of that pigtail. A reflectance measurement of no less than -50 dB (-55, -60, etc.) is required for acceptance. Any deviation from this standard cannot be accepted. Measurements for pigtail splice loss and reflectance will be taken using the OTDR's "two-point loss" measurement tool.

7. Once a complete span between facilities has been completed and installed, Grantor will perform end to end testing of each fiber. If the span is 64 km (40 miles) or less in optical distance, it will be tested at both wavelengths (1550 nm and 1310 nm). If the span is greater than 64 km, 1310 nm testing will not be conducted. End to end tests are accepted on a per-span basis and are bi-directional, meaning each span will be tested and averaged from both ends. All traces will be saved on disk media and presented to Grantee with as-built drawings.

8. Power meter testing will be conducted on all completed spans and interconnections. This allows proper system power configuration and management and verifies continuity (no "frogged" or transposed fibers). Power meter testing will be conducted at both wavelengths (if under 64 km) and only at 1550 nm for spans greater than 64 km. Each power meter test must include the reference of the calibration as taken from a stable light source. The "Power Meter Test Sheet" will also be submitted to Grantee with as-built drawings.

9. Final acceptance will not be given for any spans or interconnections until all spans have been tested bidirectionally with the OTDR and power meter, pigtail tests conducted on terminations, labels correctly placed and all paperwork submitted. Once Grantor has verified the splices are within specification as analyzed from the received trace data, and that all the necessary files are present, Grantee will announce acceptance for that particular span or interconnect. Any faults or splices found out of specification during this final analysis must be corrected and retested in order to gain final acceptance.

**EXHIBIT "F"**  
**Regeneration Facilities Specifications**

Intentionally left blank; no regeneration facilities are present or needed along this segment of the network.

**EXHIBIT "G"**  
**Maintenance Requirements and Procedures**

**Maintenance**

**Scheduled Maintenance.** Routine maintenance and repair of the Grantor System described in this section ("Scheduled Maintenance") shall be performed by or under the direction of Grantor, at Grantor's reasonable discretion. Scheduled Maintenance shall commence with respect to each Segment upon the Effective Date. Scheduled Maintenance shall only include the following activities:

- patrol of Grantor System route on a regularly scheduled basis, which will not be less than monthly, unless hi-rail access is necessary, in which case, it will be quarterly;
- maintenance of a "Call-Before-You-Dig" program and all required and related cable locates; and
- maintenance of sign posts along the Grantor System right-of-way with the number of the local "Call-Before-You-Dig" organization and the telephone number for Grantor's "Call-Before-You-Dig" program.

**Unscheduled Maintenance.** Non-routine maintenance and repair of the Grantor System which is not included as Scheduled Maintenance ("Unscheduled Maintenance"), shall be performed by or under the direction of Grantor. Unscheduled Maintenance shall commence with respect to each Segment upon the Effective Date. Unscheduled Maintenance shall consist of:

- "Emergency Unscheduled Maintenance" in response to an alarm identification by Grantor's Operations Center, notification by Grantee or notification by any third party of any failure, interruption or impairment in the operation of the Grantor System, or any event imminently likely to cause the failure, interruption or impairment in the operation of the Grantor System.
- "Non-Emergency Unscheduled Maintenance" in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the Grantor System not covered by Scheduled Maintenance. Grantee shall immediately report the need for Unscheduled Maintenance to Grantor in accordance with reasonable procedures promulgated by Grantor from time to time. Grantor will log the time of Grantee's report, verify the problem and dispatch personnel immediately to take corrective action.

**Cooperation and Coordination**

- In performing its services hereunder, Grantor shall take workmanlike care to prevent impairment to the signal continuity and performance of the Grantor System. The precautions to be taken by Grantor shall include notifications to Grantee. In addition, Grantor shall reasonably cooperate with Grantee in sharing information and analyzing the disturbances regarding the cable and/or fibers. In the event that any Scheduled or Unscheduled

Maintenance hereunder requires a traffic roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of the Grantee, then Grantee shall, at Grantor's reasonable request, make such personnel of Grantee available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Grantor in performing such maintenance as required of Grantor hereunder.

- Grantor shall notify Grantee at least ten (10) business days prior to the date in connection with any Planned Service Work Period ("PSWP") of any Scheduled Maintenance and as soon as possible after becoming aware of the need for Unscheduled Maintenance. Grantee shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with Grantor's ability to perform its obligations under the Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Grantor shall notify Grantee at Grantor's earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.

### **Facilities**

- Grantor shall maintain the Grantor System in a manner which will permit Grantee's use, in accordance with the terms and conditions of the Agreement.
- Grantee will be solely responsible for providing and paying for any and all maintenance of all electronic, optronic and other equipment, materials and facilities used by Grantee in connection with the operation of the Grantee Fibers, none of which is included in the maintenance services to be provided hereunder.

### **Cable/Fibers**

- Grantee will be solely responsible for providing and paying for any and all maintenance of the Grantee Fibers which is not included in the maintenance services to be provided hereunder, provided, however, Grantee shall have the ability to engage Grantor or a Grantor-approved contractor to perform such work in accordance with criteria set forth in Section 10.

### **Restoration**

- When restoring a cut cable in the Grantor System or the Grantee Fibers, the parties agree to work together to restore all traffic as quickly as possible. Grantor, promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the cable. If Grantee engages Grantor to maintain and restore the Grantee Fibers, then Grantor shall splice fibers tube by tube or ribbon by ribbon or fiber bundle by fiber bundle, rotating between tubes or ribbons operated by the parties having an interest in the cable, including Grantee, Grantor and all future fiber users of the system (collectively, the "Interest Holders"), in accordance with the following described priority and rotation mechanics; provided that, lit fibers in all buffer tubes or ribbons or fiber bundles shall have priority over any dark fibers in order to allow transmission systems to come back on line; and provided further that, Grantor will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are

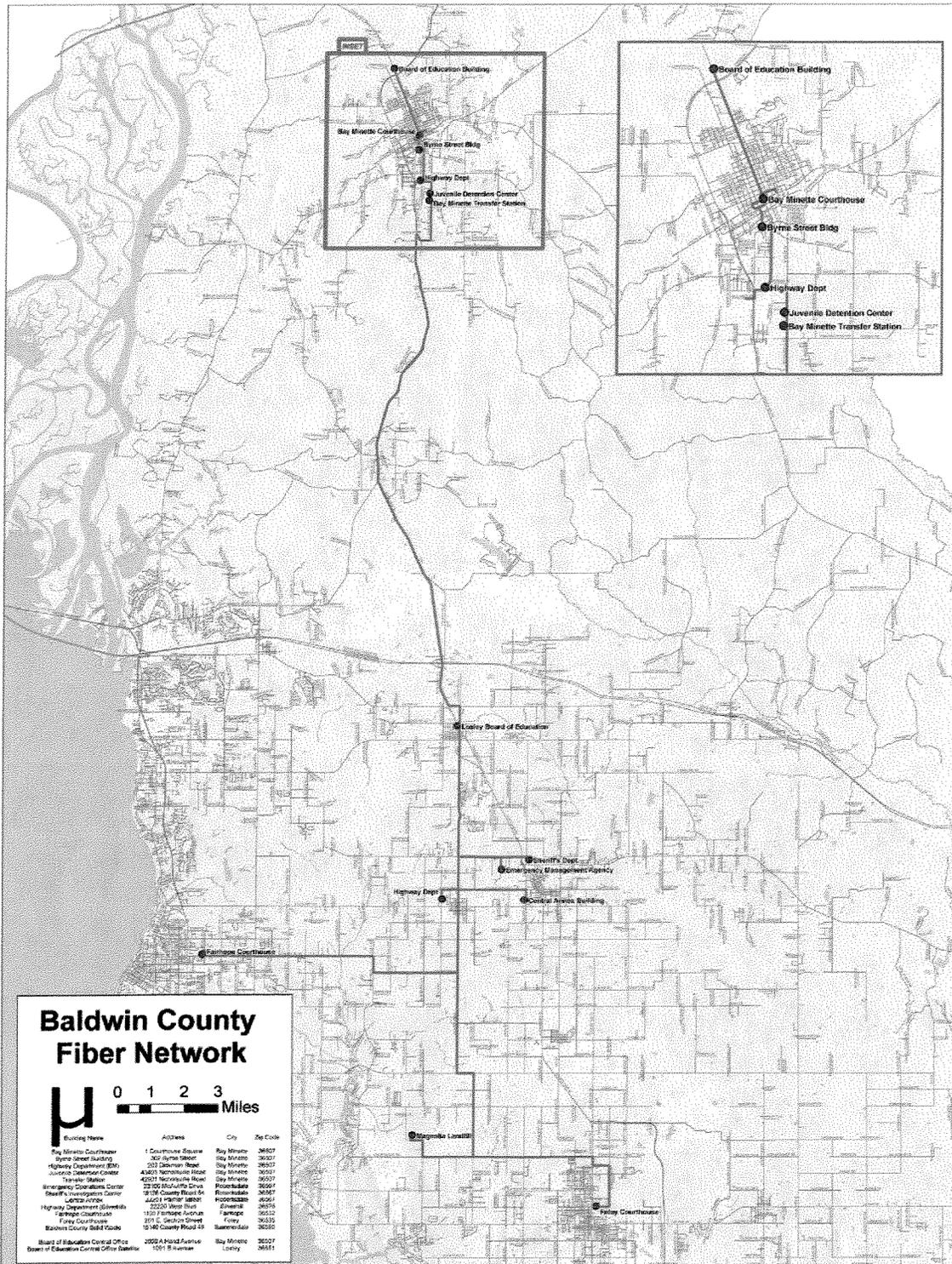
spliced and all traffic restored. In general, priority among Interest Holders affected by a cut shall be determined on a rotating restoration-by-restoration and Segment-by-Segment basis, to provide fair and equitable restoration priority to all Interest Holders. Grantor will provide upon Segment completion a System-wide rotation mechanism on a Segment-by-Segment basis so that the initial rotation order of the Interest Holders in each Segment is varied (from earlier to later in the order), such that as restorations occur, each Interest Holder has approximately equivalent rotation order positions across the Grantor System. Additional participants in the Grantor System that become Interest Holders after the date hereof shall be added to the restoration rotation mechanism.

- The goal of emergency restoration splicing shall be to restore service as quickly as possible. This may require the use of some type of mechanical splice, such as the "3M FiberLock" to complete the temporary restoration. Permanent restorations will take place as soon as possible after the temporary splice is complete.
- In the event Grantee engages a Grantor-approved contractor to maintain and restore the Grantee Fibers, Grantor shall control in a reasonable manner such contractor's access to the Grantor System and such work shall be performed in accordance with Section 10.

### **Subcontracting**

Grantor may subcontract any of the maintenance services hereunder; provided that Grantor shall require the subcontractor(s) to perform in accordance with the requirement and procedures set forth herein. The use of any such subcontractor shall not relieve Grantor of any of its obligations hereunder.

## EXHIBIT "H" Fiber System Route Map



\*\*\* Note this image has been reduced to fit within this document so the scale may not be accurate. A digital version of this map will also be furnished to the Grantee that is to scale and that can be printed in a larger format.