

6/01/2007

**LICENSE AGREEMENT**  
**BETWEEN**  
**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**  
**AND**

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SCHEDULE 1

EXHIBIT A: STANDARD OPERATING PROCEDURE #19 (SOP #19)  
STANDARD OPERATING PROCEDURE #33 (SOP #33)

EXHIBIT B: REQUEST FOR CABLE PLACEMENT (RCP)

EXHIBIT C: CERTIFICATE OF COMPLETION

EXHIBIT D: WMATA SYSTEM MAP

ATTACHMENTS

SAMPLE 288 FIBER RATE

SAMPLE 432 FIBER RATE

SAMPLE 864 FIBER RATE

- PLUS SEPARATE 12-FIBER WMATA INSTALLED CABLE

# LICENSE AGREEMENT

THIS AGREEMENT (the "License Agreement") is made as of \_\_\_\_\_, 2007 by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a regional body corporate and politic, organized pursuant to Public Law 89-774, 80 Stat 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of DC Board of Commissioners adopted November 15, 1966; having its principal office and place of business at 600 Fifth Street, N.W., Washington, DC 20001 (hereinafter "WMATA"), and \_\_\_\_\_, a Delaware corporation, having its principal office and place of business at \_\_\_\_\_ (hereinafter "\_\_\_\_\_").

## RECITALS

**WHEREAS**, WMATA operates a public mass transit rail system in the Washington, D.C. metropolitan area as hereinafter defined (the "WMATA System"); and

**WHEREAS**, WMATA as part of its public mass transit rail system has constructed and maintains underground tunnels and surface transportation corridors (the "WMATA ROW"); and

**WHEREAS**, WMATA is willing to permit, on a non-exclusive license basis, to the extent it may lawfully do so, the installation and placement of \_\_\_\_\_'s telecommunications facilities within the WMATA System; and

**WHEREAS**, WMATA has an existing system of conduits, fiber optic cables and associated equipment throughout the WMATA ROW; and

**WHEREAS**, WMATA may have excess, dark optical fibers (the "WMATA Fibers") in the aforementioned cables and is willing to lease such dark optical fibers for the purpose of providing telecommunications service.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth in this License Agreement, the parties agree as follows:

## **ARTICLE 1. DEFINITIONS**

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

Conduit: A structure, usually underground or in a subway tunnel, containing one or more ducts.

WMATA Conduit Any combination of ducts, conduits, manholes, handholes and vaults, joined to form an integrated whole, and owned solely by WMATA excepting those ducts, etc. which, in WMATA's

reasonable judgment, should be kept free of fiber optic cable and associated equipment for reasons of safety or because of anticipated interference with actual or anticipated construction or development.

Duct: A single enclosed raceway for wire conductors or fiber optic cables.

Metrorail Station: Any passenger station on the WMATA transit rail system.

Non-Revenue Hours: WMATA Non-Revenue Hours are:

Mondays through Fridays	0045 to 0400
Saturdays	0345 to 0600
Sundays	0345 to 0600
Holidays	0045 to 0600

The above schedule for Non-Revenue Hours is subject to change by WMATA, at its sole discretion, to reflect future operating requirements of the Metrorail System.

Notice to Proceed: WMATA's written communication authorizing \_\_\_\_\_ to proceed with installation of the \_\_\_\_\_ System in accordance with the WMATA approved shop drawings and installation schedule.

Terminus Station: Any Metrorail Station where the \_\_\_\_\_ System enters or exits the WMATA ROW (as hereinafter defined).

Track Bed: The heavy rail track area comprising the WMATA System and any high-voltage and passenger areas in the immediate proximity of the track.

\_\_\_\_\_ System: The optical fiber cable, inner ducts, conduits and associated appurtenances thereto, to be constructed and installed by \_\_\_\_\_ under the terms of this License Agreement, as further described in Exhibits hereto and the associated rights to access such \_\_\_\_\_ System components at demarcation points within the WMATA system as specified in Exhibits hereto. All facilities, including, but not limited to fiber optic cables, equipment and associated appurtenances thereto, owned and/or utilized by \_\_\_\_\_ under the terms of this License Agreement which occupy the WMATA ROW (as hereinafter defined).

WMATA ROW: WMATA's surface transportation corridors and underground tunnels.

WMATA System: WMATA Conduits, Metrorail Stations and the WMATA ROW.

## **ARTICLE 2. LICENSE AGREEMENT TERM**

2.1 This License Agreement shall commence on the date of the execution hereof and shall remain in full force and effect for a period of ten (10) years (the "Initial Term"), unless terminated earlier as provided by this License Agreement.

2.2 This License Agreement shall renew automatically for an additional ten (10) year term ("Renewal Term"), under the conditions set forth in Section 2.4, Article 4 and Article 10, unless WMATA is given written notice by one hundred eighty (180) calendar days prior to the end of the Initial Term that \_\_\_ does not intend to renew.

2.3 Any renewal of this License Agreement is subject to Article 4. During the Renewal Term of this License Agreement, \_\_\_\_\_ shall have the right to expand the \_\_\_\_\_ System in WMATA's ROW in accordance with the provisions of this License Agreement at a cost to be determined as set forth in Section 10.4.

2.4 Upon expiration of the Renewal Term of this License Agreement or the Initial Term if \_\_\_\_\_ elects not to renew this License Agreement, or upon termination of this License Agreement in consequence of \_\_\_\_\_'s default under Article 20 hereof, and unless otherwise agreed by the parties, the \_\_\_\_\_ System shall, at the sole and unfettered discretion of WMATA, either (a) become the property of WMATA or (b) at the written election of WMATA, be removed within six (6) months. In the event that the \_\_\_\_\_ System becomes the property of WMATA pursuant to provisions of this Section, then \_\_\_\_\_ shall execute appropriate documents, drafted by WMATA, evidencing WMATA's ownership.

2.5 In the event that the \_\_\_\_\_ System is to be removed pursuant to provisions of this Section, then such removal shall be at the sole cost and expense of \_\_\_\_\_ but subject to such conditions concerning access, hours of operation and safety as may be reasonably imposed by WMATA.

2.6 For purposes of the maintenance and emergency repairs provisions of Article 9 of this Agreement, \_\_\_\_\_ shall be privileged to effect like/kind replacement of fiber optic cable only to the extent necessary to properly maintain or repair the \_\_\_\_\_ System. \_\_\_\_\_ shall not replace originally installed fiber optic cable (except pursuant to Article 9) without the written permission of WMATA. In the event that \_\_\_\_\_ desires to effect replacement of originally installed fiber optic cable with dissimilar equipment at any time during the term of this Agreement, then it shall notify WMATA of its intentions in writing, describing with particularity the replacement equipment. The parties shall then proceed to negotiate, in good faith, modifications to this License Agreement as may be appropriate in view of the capacities, uses and requirements of the replacement equipment.

### **ARTICLE 3. LICENSE**

3.1. WMATA grants to \_\_\_\_\_ a non-exclusive license (“License”) to construct, install, operate, maintain, upgrade and replace telecommunications facilities (the “\_\_\_\_\_ System”), in, over, under, upon, across and through the WMATA System, the Track Bed and the Terminus Stations pursuant to the specific terms and conditions of this License Agreement.

3.2. WMATA grants to \_\_\_\_\_ a non-exclusive license (“License”) to lease from WMATA, to the extent, if any, that WMATA has no present use of fiber capacity and for a period of time to be determined solely at WMATA’s discretion, existing fiber strands (the “WMATA Fibers”) that WMATA has right, title and/or interest in or to in, over, under, upon, across and through the WMATA System pursuant to the specific terms and conditions of this License Agreement.

3.3. No use or rights granted in this License Agreement or payment of any License Fees or other charges shall create or vest in \_\_\_\_\_ any easement or any other ownership or property rights of any nature whatsoever in the WMATA System or the WMATA Fibers or in any other property owned by WMATA.

3.4 WMATA shall be given at no charge \_\_\_\_ (\_\_\_) dark fibers in the \_\_\_\_\_ System in a separate cable for its use for each section or segment of fiber optic cable installed under this License Agreement. Such use shall include the right to lease or sublease the aforesaid \_\_\_\_\_ (\_\_\_) dark fibers to third parties. The \_\_\_\_\_ (\_\_\_) dark fibers shall become the property of WMATA at the date when service is initiated on or in the section or segment of fiber optic cable.

3.5. WMATA's rights to maintain the WMATA System, and the WMATA Fibers and to operate such facilities in a manner as will best enable it to fulfill its own service requirements are in no way limited by this License Agreement.

3.6. Nothing contained in this License Agreement shall be construed as a limitation, restriction or prohibition against WMATA with respect to any joint use agreement, agreement, license or other arrangement which WMATA has entered into, or may in the future enter into (so long as any such future WMATA agreements do not act to limit or materially affect \_\_\_\_\_’s rights, privileges and responsibilities under this License Agreement regarding the WMATA System).

### **ARTICLE 4. TITLE**

4.1. All right, title and interest in all the WMATA System, the WMATA ROW, the WMATA Conduit System, the WMATA Fibers, the Track Bed and the Terminus Station provided by WMATA hereunder shall at all times remain exclusively with WMATA.

4.2. Subject to the provisions of Article 2 and except for the fibers permanently given to WMATA in Section 3.4, all right, title and interest in the \_\_\_\_\_ System, constructed and installed at \_\_\_\_\_’s expense, shall at all

times during the Initial Term or Renewal Term of this License Agreement remain exclusively with \_\_\_\_\_

## ARTICLE 5. INSTALLATION SPECIFICATIONS

5.1. \_\_\_\_\_ shall at its own expense provide all labor, tools and equipment to effect installation of the \_\_\_\_\_ System. WMATA shall assist \_\_\_\_\_ with the provision of safety supervision, rail transportation and common temporary electrical power as required. \_\_\_\_\_ shall be responsible for all WMATA costs incurred in providing such assistance in accordance with Article 11.

5.2. Installation of the \_\_\_\_\_ System shall not physically conflict with or electrically interfere with WMATA's existing facilities or those of other WMATA licensees. **No PVC insulated cable is to be installed anywhere in the WMATA system. The \_\_\_\_\_ System must be of low smoke, zero halogen, and low toxicity fiber.**

5.3. The \_\_\_\_\_ System shall be installed in accordance with the requirements and Specifications of the National Electrical Code (NEC), the National Electrical Safety Code (NESC), the rules and regulations of the Occupational Safety and Health Act (OSHA), WMATA's safety rules and regulations and any governing authority having jurisdiction over the subject matter. If a difference in specifications exists, the more stringent shall apply.

5.4. The \_\_\_\_\_ System will be installed during WMATA's Non-Revenue Hours, as defined in Article 1.

5.5. At each Metrorail Station between any two terminus Metrorail Stations, \_\_\_\_\_ will leave a slack coil of at least fifty (50) feet of fiber optic cable for future service or emergency maintenance and splicing. The location of this slack coil will be in a non-track bed area as approved in writing by WMATA (either under the shop drawing procedure set forth in Section 7.5 or otherwise).

5.6 At each Metrorail Station, \_\_\_\_\_ (\_\_\_\_) dark fibers within a separate fiber optic cable for WMATA's use shall be cut back, cleaned and placed on a fiber optic splice tray within the WMATA communications room or as directed by WMATA. If there is no space on the existing splice tray, \_\_\_\_\_ shall provide and maintain, at its own expense one splice tray on which the fibers will be terminated.

5.7. \_\_\_\_\_ will make arrangements for use of Rights-of-Way beyond the WMATA System. Any construction on the WMATA System property to make the transition to other rights-of-way must be approved by WMATA in writing (either under the shop drawing procedure set forth in Section 7.5 or otherwise).

5.8. If any part of the \_\_\_\_\_ System is not installed in accordance with this Article, and \_\_\_\_\_ has not corrected the violation within sixty (60) calendar days after receipt of written notice from WMATA, WMATA may, at its option, correct said violation, and \_\_\_\_\_ shall be responsible for paying WMATA for any actual, reasonable and verifiable costs incurred by WMATA.



5.9. Notwithstanding Section 5.8, when, in the reasonable opinion of WMATA such violation poses an immediate threat to the safety of WMATA's employees or the public, interferes with the performance of WMATA's then existing and current service requirements, or poses an immediate threat to the physical integrity of WMATA's facilities, WMATA may perform such work and/or take such action as it deems necessary to correct the violation without first giving written notice to \_\_\_\_\_ and without subjecting itself to any liability. As soon as practicable thereafter, WMATA will advise \_\_\_\_\_ in writing of the work performed or the action taken and will endeavor to arrange for re-accommodation of the \_\_\_\_\_ System so affected. \_\_\_\_\_ will be responsible for paying WMATA for any actual, reasonable and verifiable costs incurred by WMATA.

## **ARTICLE 6. PRE-INSTALLATION PROCEDURES**

6.1. Within ten (10) calendar days of the execution of this License Agreement, \_\_\_\_\_ will designate and identify to WMATA:

- (a) An \_\_\_\_\_ administrative contact (authorized representative of \_\_\_\_\_);
- (b) An \_\_\_\_\_ contractor contact (authorized representative of \_\_\_\_\_'s contractor/s);
- (c) An \_\_\_\_\_ engineering contact;
- (d) An \_\_\_\_\_ financial contact; and
- (e) An \_\_\_\_\_ safety contact.

6.2. Within ten (10) calendar days of the execution of this License Agreement, WMATA will designate and identify to \_\_\_\_\_:

- (a) A WMATA administrative contact (authorized representative of WMATA);
- (b) A WMATA engineering contact;
- (c) A WMATA financial contact; and
- (d) WMATA emergency contacts (including a 24-hour call roster).

6.3. The designated contacts or representatives shall be authorized to act in the respective party's behalf on those matters delegated to such individual. Each party may designate an alternate representative with authority to act in the absence of the designated contact or representative. Each party shall have the right to change its designated contact or representative or alternate by written notice to the other.

6.4. The designated contacts or representatives shall act as liaison

between the parties in order to provide effective cooperation, exchange of information and consultation in a prompt and orderly manner concerning the various matters which may arise in connection with this License Agreement.

6.5. Prior to the installation of any cables, all \_\_\_\_\_ and \_\_\_\_\_ contractor personnel involved in such installation must attend a WMATA provided track safety course. The date and time of such course shall be mutually agreed to by the parties.

## **ARTICLE 7. PRE-INSTALLATION REQUIREMENTS**

7.1. Prior to the installation of any fiber optic cable, \_\_\_\_\_ shall submit to WMATA a Request for Cable Placement (RCP) on the form shown as Exhibit B, attached hereto and made a part hereof. The RCP shall identify at a minimum: (a) two Terminus Stations; (b) desired start and end dates of installation; and (c) approximate fiber optic cable footage and the number of fibers to be installed.

7.2. WMATA shall respond in writing within fifteen (15) business days with preliminary approval to commence engineering. At that time, WMATA may also request in writing that work be coordinated with other similar activity being performed by WMATA. \_\_\_\_\_ will make reasonable efforts to cooperate with WMATA's requests.

7.3. Upon WMATA's preliminary approval, \_\_\_\_\_ will conduct an escorted walk-through or visual inspection of the proposed route. To minimize WMATA's charges to \_\_\_\_\_, \_\_\_\_\_ will make all efforts to use paper records and shop drawings to assist in accomplishing this task, such records to be made available by WMATA with the understanding by both parties that such records may not be current, accurate or complete.

7.4. \_\_\_\_\_ shall provide WMATA with seven (7) sets of shop drawings on reproducible paper, indicating proposed attachments, conduit runs, trough installation, and direct burial or other placement methods. Such drawings will indicate where existing conveyance is in place as well as where new cable ladder, trough, or other hardware ("Hardware") is to be installed. \_\_\_\_\_ shall supply and install any necessary Hardware. Hardware shall remain the property of \_\_\_\_\_ throughout the duration of cable ownership, except that WMATA may request use of the Hardware for its internal communications needs at no charge, and \_\_\_\_\_ will not unreasonably withhold approval of such request.

7.5. Within twenty (20) business days of receipt of the shop drawings WMATA shall approve the shop drawings and the requested schedule or advise \_\_\_\_\_ of discrepancies or corrections required. \_\_\_\_\_ shall not commence work until it has received WMATA's written "Notice-To-Proceed". Upon completion of the \_\_\_\_\_ System, \_\_\_\_\_ shall provide WMATA with accurate "as built" drawings of the entire system. As built drawings must be submitted on 3½ inch microdisk in AUTOCAD 2000 with one (1) hard copy for review.

7.6. In each instance where \_\_\_\_\_ System facilities are proposed to be placed in the WMATA Conduit System, WMATA shall designate the particular Duct(s) to be occupied, the location and manner in which facilities will enter and exit the WMATA Conduit System and the specific location, manner of installation and type of Hardware which is permitted by WMATA to occupy the WMATA Conduit System. If, in its reasonable opinion, WMATA determines that certain types of telecommunications facilities could materially interfere with the efficient and safe conduct of WMATA's operations, WMATA may prohibit \_\_\_\_\_ from installing such types of facilities in the WMATA Conduit System, provided, however, that WMATA shall give \_\_\_\_\_ a written explanation for such prohibition.

7.7. WMATA accepts no liability and waives no rights solely by reason of its approval of any of \_\_\_\_\_'s drawings, plans, etc. or by conducting any inspections. WMATA's review and approval of drawings, plan, etc. shall not be construed as a warranty thereof.

## **ARTICLE 8. INSTALLATION PROCEDURES**

8.1. After \_\_\_\_\_ has received WMATA's written Notice-To-Proceed, \_\_\_\_\_ shall provide all labor, tools, hardware and test equipment necessary for the proper installation of the \_\_\_\_\_ System. WMATA shall provide track equipment to \_\_\_\_\_ for the transport of equipment, if necessary, during the installation effort. \_\_\_\_\_'s contractor's employees and sub-contractors will assemble at various staging areas to be designated by WMATA.

8.2. \_\_\_\_\_'s contractor will be allowed access to the staging areas between the hours of midnight and 6:00 AM in order to brief and debrief subcontractors, and set up equipment. Post work cleanup must be accomplished during Non-Revenue Hours, as defined in Article 1. Physical work on track bed and station areas will be conducted during WMATA's Non-Revenue Hours.

8.3. Routing path of fiber optic cable will first be prepared including cleaning and installation of pull cords.

8.4. \_\_\_\_\_ may request written permission from WMATA to perform installation work in non-track bed areas during Revenue Hours. Provided that such work does not interfere with Metrorail operations, and proper escort has been coordinated through General Orders/Track Rights (GOTRS), Standard Operating Procedure #19 (SOP #19) shown as Exhibit A, attached hereto and made a part hereof., WMATA shall approve \_\_\_\_\_'s request.

8.5. During installation and once fiber optic cable is placed, WMATA may inspect the installation for safety and craftsmanship. Any discrepancies will be communicated to \_\_\_\_\_ in writing, and \_\_\_\_\_ shall have fifteen (15) calendar days to make the required corrections.

## ARTICLE 9. MAINTENANCE/EMERGENCY REPAIRS

9.1. During the Initial Term or Renewal Term of this License Agreement, \_\_\_\_\_ shall, at its own expense, maintain the \_\_\_\_\_ System, including fiber optic cable installed in WMATA Conduit covered by this License Agreement and the \_\_\_\_\_ ( \_\_\_) dark fibers provided to WMATA pursuant to Section 3.4, in a safe condition and in a manner acceptable to WMATA, so as not to physically conflict or electrically interfere with the facilities attached thereon or placed therein by WMATA or any of WMATA's licensees.

9.2. Before \_\_\_\_\_ may access the \_\_\_\_\_ System in the WMATA Metrorail System, both non-track bed and track bed, \_\_\_\_\_ must obtain WMATA's prior permission. WMATA's permission shall not be unreasonably withheld, delayed or denied, and will be entirely in accord with SOP #19 dealing with GOTRS escort/support request access procedures.

9.3. \_\_\_\_\_ may request permission from WMATA to perform work in non-track bed areas during Revenue Hours. Provided that such work does not interfere with Metrorail operations, and proper escort has been coordinated through GOTRS, WMATA shall approve \_\_\_\_\_'s request.

9.4. Notwithstanding the other provisions of this License Agreement, the parties acknowledge that the requirement placed on \_\_\_\_\_ to receive prior permission from WMATA before entering the Metrorail System may cause undue hardship for \_\_\_\_\_ in the event of an emergency affecting the \_\_\_\_\_ System. In the event of an emergency, \_\_\_\_\_ shall be permitted access to the \_\_\_\_\_ System during Non-Revenue hours upon prior notice to WMATA, in keeping with standard WMATA emergency procedures as outlined in SOP's. Whenever possible, \_\_\_\_\_ shall give WMATA four (4) hours advance notice before requesting such access to the \_\_\_\_\_ System.

9.5. In consideration of the fact that WMATA is in the primary business of providing public transportation, \_\_\_\_\_ access to the track bed (high voltage, passenger areas, etc.) is limited to WMATA's Non-Revenue Hours as defined in Article 1. Only in an emergency situation which could have adverse impacts on the Metrorail System as determined by WMATA, shall WMATA consider giving \_\_\_\_\_ access to the track bed during Revenue Hours.

9.6. \_\_\_\_\_ maintenance and repairs shall be performed by \_\_\_\_\_ or its approved contractors who shall be qualified, bonded and WMATA safety trained to perform this type of maintenance and/or repair.

9.7. The \_\_\_\_\_ System shall be maintained In accordance with the requirements and specifications of the National Electrical Code (NEC), the National Electrical Safety Code (NESC), the rules and regulations of the Occupational Safety and Health Act (OSHA), WMATA's safety rules and regulations and any governing authority having jurisdiction over the subject matter. If a difference in specifications exists, the more consistent with physical reality shall apply.

9.8. If any part of the \_\_\_\_\_ System is not maintained in accordance

with this Article, and \_\_\_\_\_ has not corrected the violation within sixty (60) calendar days after receipt of written notice from WMATA, WMATA may, at its option, correct said violation, and \_\_\_\_\_ shall be responsible for paying WMATA for any actual, reasonable and verifiable costs incurred by WMATA.

9.9. Notwithstanding Section 9.8, where, in the reasonable opinion of WMATA, a maintenance violation poses an immediate threat to the safety of WMATA's employees or the public, interferes with the performance of WMATA's then existing and current service requirements, or poses an immediate threat to the physical integrity of WMATA's facilities, WMATA may perform such work and/or take such action as it deems necessary to correct the violation without first giving written notice to \_\_\_\_\_ and without subjecting itself to any liability. As soon as practicable thereafter, WMATA will advise \_\_\_\_\_ in writing of the work performed or the action taken and will endeavor to arrange for re-accommodation of the \_\_\_\_\_ System so affected. \_\_\_\_\_ will be responsible for paying WMATA for any actual, reasonable and verifiable costs incurred by WMATA.

9.10. WMATA's manholes shall be opened only as permitted by WMATA's authorized employees or agents. \_\_\_\_\_ shall be responsible for obtaining any necessary authorization to open manholes and to conduct work operations including the removal of any water. \_\_\_\_\_ employees, agents or contractors will be permitted to enter or work in WMATA's manholes and or handholes only when an authorized employee or agent of WMATA is present. In an emergency, \_\_\_\_\_ may request access to WMATA's manholes and/or handholes twenty-four (24) hours per day, seven (7) days per week by calling WMATA's Rail Operations Control Center at (202) 962-1652. WMATA's authorized employee or agent shall have the authority to suspend \_\_\_\_\_ work operations in and around WMATA's manholes and/or handholes if, in the sole discretion of said employee or agent, any hazardous conditions arise, any unsafe practices are being followed, or the work may adversely affect WMATA's facilities. \_\_\_\_\_ agrees to pay WMATA, as set out in Article 11, the charges for having WMATA's employee or agent present when \_\_\_\_\_ work is being done in and around WMATA's manholes and/or handholes. The presence of WMATA's authorized employee or agent is solely for the protection of WMATA's facilities and shall not relieve \_\_\_\_\_ of its responsibility to conduct all of its work operations in a safe and workmanlike manner, or to release \_\_\_\_\_ from any liability.

9.11. At all times when \_\_\_\_\_ has access to WMATA's track bed or non-track bed area, \_\_\_\_\_ employees, agents, and contractors shall be escorted by a WMATA employee in accordance with SOP#19, and WMATA shall be reimbursed for such escort services in accordance with Section 11.4.

## **ARTICLE 10. COMPENSATION**

10.1. Upon completion of construction, installation and testing of any portion, line or segment of the \_\_\_\_\_ System, and prior to use of such portion, line or segment in revenue service, \_\_\_\_\_ will forward to the WMATA administrative contact a "Certificate of Completion", shown as Exhibit C, attached hereto and made a part hereof, identifying (1) the certified date of such completion, (2) the total longitudinal footage of WMATA ROW utilized, (3) the length of slack

cable coils of fiber optic cable for maintenance purposes, and (4) the highest number of fibers in any portion of the cable so identified.

10.2. The parties agree that no segment or portion of \_\_\_\_\_ fiber optic cable installed in a WMATA ROW shall be used in revenue service prior to submission of the "Certificate of Completion" described in Section 10.1.

10.3. On each anniversary of the date of execution of this Agreement (the "Compensation Date"), \_\_\_\_\_ shall pay WMATA the compensation as determined according to this Section 10 and Schedule 1 of this Agreement. WMATA will calculate the compensation due and submit an invoice, accompanied by appropriate documentation and schedules, to \_\_\_\_\_ no later than one week prior to the Compensation Date. \_\_\_\_\_ shall remit the full amount of the invoice, without deduction, set-off or protest, to WMATA, at the following address, on or before the Compensation Date: Office of the Treasurer, Washington Metropolitan Area Transit Authority, 600 Fifth Street, NW, Washington, DC 20001. Nothing in this Section shall be deemed to constitute a waiver of, or similar limitation on, any future right of action or legal redress by either party. Time is of the essence.

- (a) The longitudinal footage shall be determined, for purposes of compensation calculations, to be the sum of (1) longitudinal footage described in all Certificates of Completion bearing dates prior to the current Compensation Date, and (2) the sum of longitudinal footage for all segments of \_\_\_\_\_ fiber optic cable which are not described in Certificates of Completion but which were, in WMATA's reasonable opinion, completed and capable of performing revenue service at least ninety (90) calendar days prior to the Compensation Date.
- (b) Compensation due for (1) segments of cable whose Certificates of Completion bear dates less than one year prior to the current Compensation Date and (2) for those segments described in 10.3(a)(2), above, shall be equitably prorated according to the portion of the year subsequent to the date on the Certificate of Completion. Compensation for segments of Cable with Certificates of Completion with dates less than one year prior to the current Completion Date shall be paid within ten (10) calendar days of the Completion Date on the Certificate. Compensation with respect to segments described in 10.3(a)(2), shall be paid within ten (10) calendar days of the first Compensation Date subsequent to ninety (90) calendar days after the date when the segment was capable of performing revenue service.
- (c) Compensation for each segment is due when the segment is completed and at the rate as determined by the CPI-U at the time of completion pro-rated for the period remaining until the Agreement anniversary date (Compensation

Date). On the Agreement anniversary date, Compensation is due for all completed segments or those within ninety (90) calendar days of completion as adjusted by the increase in the CPI-U, as below.

10.4. CPI Adjustment - The product of the compensation calculations performed according to Schedule 1 shall, for each annual payment subsequent to the first annual payment, be adjusted according to the provisions of this Section 10.4.

- (a) WMATA shall notify \_\_\_\_\_ no later than thirty (30) calendar days prior to the Compensation Date of (1) the Consumer Price Index for the Standard Metropolitan Statistical Area of Washington, D.C. (CPI-U) for the most recent whole year period (Current Year) as well as (2) the CPI-U from the date of execution (Base Year) of this Agreement. An increase in the Current Year CPI-U when compared to the Base Year CPI-U shall be computed by subtracting the Base Year CPI-U from the Current Year CPI-U and dividing the result by the Base Year CPI-U. Computation for the factor representing the increase in the CPI-U for each year shall be the CPI-U for that Year minus the CPI-U for the Base Year and that result divided by the Base Year CPI-U. In no event, shall Compensation be adjusted by a decrease in the CPI-U.
  - (1) Any payment made on the date of execution of the Agreement (also known as the "First Compensation Date") shall not be subject to a CPI-U adjustment.
- (b) \_\_\_\_\_ shall pay WMATA an amount equal to the Total Compensation determined according to Schedule 1 of this Agreement as adjusted pursuant to Section 10.4(a).
- (c) In the event that the CPI-U is converted to a different standard reference base or is otherwise revised, the determination of the amount of any adjustment shall be made by the use of such other factor, formula, or table for converting the CPI-U as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish same, then with the use of such conversion factor, formula or table as may be published by any reputable, nationally recognized publisher of statistical information. If the CPI-U ceases to be published, and there is no successor thereto, such other index as the parties may agree upon in writing will be substituted therefor. If WMATA and \_\_\_\_\_ are unable to agree as to such substituted index, then the matter will be resolved according to Article 27 of this Agreement.

## **ARTICLE 11. EXPENSES**

11.1. \_\_\_\_\_ shall be solely responsible for all costs associated with building the \_\_\_\_\_ System, including the cost for WMATA staff time in design review, coordination, engineering, inspection, administration, escort service and any other activities in connection with this License Agreement. Costs shall be those WMATA expenses directly attributable to the work performed and shall include cost of labor and supervision.

11.2. Within five (5) business days following execution of this License Agreement, \_\_\_\_\_ shall advance to WMATA funds in the amount of \$50,000 as the initial deposit. WMATA shall maintain a current record of all costs incurred and shall furnish such records to \_\_\_\_\_, if requested. Any funds not utilized by WMATA shall be returned to \_\_\_\_\_ at the completion of the \_\_\_\_\_ System.

11.3. WMATA may demand further advances from \_\_\_\_\_ if WMATA determines that costs associated with this project will exceed the initial deposit. \_\_\_\_\_ shall provide additional advance funds upon written notice from WMATA accompanied by a breakdown of the advance funds requested. If \_\_\_\_\_ does not provide the requested funds in a timely fashion, WMATA will cease all work on its part, and no further access to the WMATA system will be provided under this License Agreement, until such funds are provided.

11.4. \_\_\_\_\_ shall also reimburse WMATA for any escort services required to perform maintenance of \_\_\_\_\_ System during the term of this License Agreement.

11.5. The only situation in which \_\_\_\_\_ shall not reimburse WMATA is in the case of damage to the \_\_\_\_\_ System caused solely by WMATA.

11.6 To the extent WMATA or \_\_\_\_\_ (the Invoicing Party) is entitled to charge the other party based on the Invoicing Party's costs, time or materials, the Invoicing Party shall keep such books and records (which books and records shall be maintained on a consistent basis and substantially in accordance with generally accepted accounting principles) as shall readily disclose the basis for any charges or credits, ordinary or extraordinary, billed or due to the other party under this Agreement and shall make them available for examination, audit and reproduction for a period of three (3) years after the Invoicing Party issues any invoice including such charges or credits.

## **ARTICLE 12. TAXES/MECHANIC'S LIENS/ENCUMBRANCES**

12.1. \_\_\_\_\_ shall be obligated to pay all taxes, assessments and other impositions upon its use of WMATA's ROW for the \_\_\_\_\_ System. \_\_\_\_\_ acknowledges that WMATA is tax-exempt pursuant to Title III of the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended from time to time, and that such tax exemption does not inure to the benefit of \_\_\_\_\_

12.2. \_\_\_\_\_ shall pay, when due, all taxes, special assessments and



governmental fees of any kind whatsoever which may be levied or assessed upon the \_\_\_\_\_ System, or \_\_\_\_\_'s business or as a result of \_\_\_\_\_'s use of the WMATA ROW.

12.3. \_\_\_\_\_ shall keep the WMATA ROW free from all liens, including mechanic's liens, and encumbrances resulting from its use or occupancy. Failure to do so shall constitute an event of default under Article 20 hereof.

### **ARTICLE 13. NON-EXCLUSIVITY**

13.1. Nothing in this License Agreement shall be construed to require WMATA to be \_\_\_\_\_'s exclusive provider of or contractor with respect to rights-of-way or to limit in any way \_\_\_\_\_'s right in its own name to apply for and obtain municipal franchises, authorizations and permits, to construct, maintain and own fiber optic facilities, and to apply for and obtain pole attachment agreements, conduit licenses or other rights-of-way agreements from other rights-of-way providers.

### **ARTICLE 14. REPRESENTATIONS REGARDING AUTHORIZATIONS**

14.1. WMATA hereby represents that it has the power and authority to own and operate the WMATA System, and to lease conduit rights in the WMATA ROW to \_\_\_\_\_ for the operation and maintenance of the \_\_\_\_\_ System and to perform the obligations required of WMATA under this License Agreement.

14.2. Subject to the provisions of Section 22.2, WMATA represents that installation of \_\_\_\_\_ fiber optic cable, is not, in any section of the present WMATA System, precluded due to the existence or placement of other parties' cable or equipment in the system. \_\_\_\_\_ and WMATA understand that those portions of the WMATA system which are, or will be, subject to construction, major repair or substantial rehabilitation will not be suitable for installation of \_\_\_\_\_'s equipment until such projects are complete and that the provisions of this Section 14.2 do not apply in the instances of such construction, major repair or rehabilitation.

14.3. \_\_\_\_\_ hereby represents that it has the full right and authority under its authorizations to enter into this License Agreement and the execution and performance of its obligations under this License Agreement shall not conflict with, or constitute a default under, or constitute an event of termination under any of its authorizations.

14.4. Subject to the provisions of Section 22.2, \_\_\_\_\_ hereby represents that it will begin installation of the \_\_\_\_\_ System within one (1) year of execution of this License Agreement by WMATA.

### **ARTICLE 15. COMPLIANCE WITH LAW**

15.1. \_\_\_\_\_ shall perform its rights and obligations hereunder in accordance with the authorizations obtained by it and all applicable laws, rules and regulations imposed by any governmental authority.

15.2. \_\_\_\_\_, at its sole cost and expense, shall secure and maintain in effect all federal, state and local permits, licenses and other approvals required for the construction, operation and/or removal of the \_\_\_\_\_ System, including zoning, building, health, environmental or communication service, and shall indemnify WMATA against payment therefore and against any fines or penalties that may be levied for failure to obtain any such applicable permits, licenses and other approvals. Upon WMATA's request, \_\_\_\_\_ shall provide copies of all such permits, licenses and approvals.

## **ARTICLE 16. CONDEMNATION/RELOCATION OF \_\_\_\_\_ SYSTEM**

16.1. If at any time during the term of this License Agreement, all or a significant portion of the \_\_\_\_\_ System or the WMATA System that includes the \_\_\_\_\_ System shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, either party may elect to terminate this License Agreement upon giving the other party sixty (60) calendar days prior written notice. Both parties shall be entitled to participate in any condemnation proceedings to seek to obtain compensation via separate awards for the economic value of their respective interests. In the event \_\_\_\_\_'s interest in such proceeding cannot be severed from WMATA's interest, \_\_\_\_\_ shall be entitled to receive its pro-rata share of the award for its interest in the \_\_\_\_\_ System.

16.2. Upon receipt of a formal notice of condemnation or eminent domain, each party shall notify the other immediately of any condemnation proceeding filed against the portions of the WMATA System including the \_\_\_\_\_ System, or the \_\_\_\_\_ System alone. Each party shall also notify the other of any similar threatened condemnation proceeding and agrees not to sell the \_\_\_\_\_ System or the WMATA System to such acquiring agency or other party in lieu of condemnation without prior written notice to the other.

16.3. \_\_\_\_\_ recognizes that, from time to time, WMATA may elect and/or be required to relocate the WMATA System and/or the \_\_\_\_\_ System, or a portion thereof. All costs incurred in relocating the \_\_\_\_\_ System which are not paid by a third party shall be paid by WMATA. WMATA shall use its best efforts to have the relocation conducted in a manner that will not cause any interruption in \_\_\_\_\_'s use of the \_\_\_\_\_ System. WMATA agrees to give \_\_\_\_\_ at least six (6) months prior written notice of any relocation or of any governmental proceedings which might result in a relocation, or such lesser amount of notice as WMATA receives from such governmental authority, and \_\_\_\_\_ shall have the right to participate in any such proceedings. If WMATA cannot relocate the \_\_\_\_\_ System or the affected portion thereof, \_\_\_\_\_ may terminate this License Agreement upon giving at least thirty (30) calendar days written notice to WMATA. Upon the effective date of termination undertaken in accordance with the provisions of the preceding sentence, this License Agreement shall become null and void and neither party shall have any further obligation to the other with respect thereto, except that the ownership provisions as set forth in Article 4 shall apply.

## **ARTICLE 17. PROPRIETARY INFORMATION**

17.1. Each party acknowledges that, in the course of the performance of this License Agreement, it may have access to privileged and proprietary information claimed to be unique, secret and confidential, and which constitutes the exclusive property or trade secrets of the other, and the parties acknowledge that they are in a confidential relationship with each other. This information may be presented in documents marked with a restrictive notice or otherwise tangibly designated as proprietary or during oral discussions, at which time representatives of the disclosing party will specify that the information is proprietary. Each party agrees to maintain the confidentiality of the proprietary information and to use the same degree of care as it uses with regard to its own proprietary information to prevent the disclosure, publication or unauthorized use of the proprietary information. Neither party may duplicate or copy proprietary information of the other party other than to the extent necessary for legitimate business uses in connection with this License Agreement. A party shall be excused from these non-disclosure provisions in the event that (a) the proprietary information is required to be disclosed to a third party by virtue of an order of court or a government administrative commission, body or tribunal of competent jurisdiction, provided however, that the party from whom disclosure is sought shall use its best efforts to notify the other party of such order prior to effecting disclosure; (b) the proprietary information has been, or is subsequently, made public by the other party or is independently developed by such party, or (c) the other party gives its express, prior written consent to the disclosure of the proprietary information or if the disclosure is required by law or regulation. Notwithstanding anything to the contrary in this License Agreement, this provision shall survive the termination or expiration of this License Agreement.

## **ARTICLE 18. INDEMNIFICATION**

18.1. \_\_\_\_\_, its successors or assigns, shall indemnify and hold harmless WMATA, its directors, officers, employees, agents, licensees, and invitees from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or several, expenses of any nature (including reasonable attorney, accountant, and expert fees and disbursements), judgments, fines, settlements and other amounts (collectively "Damages") arising from any and all expenses, claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (collectively "claims") relating to or arising out of:

(a) Any acts, errors or omissions of \_\_\_\_\_, its agents, contractors or employees or any negligence or intentional misconduct by \_\_\_\_\_ in the installation, maintenance or operation of the \_\_\_\_\_ System or the conduct or management of \_\_\_\_\_'s business with regard to the \_\_\_\_\_ System or the connections thereto;

(b) Any breach by \_\_\_\_\_ of any obligation or covenant under this License Agreement;

(c) Any failure of any representation or warranty made by \_\_\_\_\_ herein to be true in any material respect as of the date made or deemed made;

(d) Any claim by any customer of \_\_\_\_\_ relating to the provision by \_\_\_\_\_ of telecommunications services to such customer over the \_\_\_\_\_

System; and

(e) Any personal injury to, or death of, any person or persons, including without limitation agents or employees of WMATA, and any loss, damage, defacement or destruction of property, including without limitation any rolling stock or equipment owned, leased, or in the possession of WMATA or any property owned, leased, or in the possession of any entity authorized to use the WMATA ROW, arising out of or incident to the activities, operations, or actions of \_\_\_\_\_, its agents, contractors or employees.

18.2. To the extent permitted by law, WMATA shall indemnify and hold harmless \_\_\_\_\_, its, employees, agents, licensees, and customers from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or several, expenses of any nature relating to or arising out of the gross negligence or willful and/or wanton misconduct of WMATA or its employees. Provided, however, that WMATA's total liability under this Section 18.2 shall, in no event, include consequential, special or punitive damages nor shall WMATA's liability exceed in cases of physical damage to \_\_\_\_\_ equipment, the reasonable cost(s) of repair or replacement of that equipment.

18.3. No claims for indemnification shall be made by either party against the other unless the aggregate amount of such claim, together with any other indemnifiable claims of such party, exceeds the amount of \$5,000. Any reasonable expenses incurred by any indemnified person pursuant to this Article in defending any civil or criminal action, suit or proceeding (or the threat thereof), other than a claim, action, suit or proceeding brought by the indemnifying party, shall be borne and paid by the indemnifying party in advance of the final disposition of such action, suit or proceeding (or the threat thereof) upon receipt of an undertaking by or on behalf of the indemnified person to repay to the indemnifying party the amount of such expenses if it shall ultimately be determined that such person is not entitled to the indemnification provided for under this Article. Any person asserting a right to indemnification under this Article shall so notify the indemnifying party in writing. If the facts giving rise to such indemnification involve any actual or threatened claim or demand by or against a third party, the indemnifying party shall be entitled to control the defense or prosecution of such claim or demand in the name of the indemnified person, if the indemnifying party notifies the indemnified person in writing of its intention to do so within twenty (20) calendar days of the receipt of such notice by the indemnified person. The indemnified person shall have the right, however, to participate in such proceeding through counsel of its own choosing, which participation shall be at its sole expense. Whether or not the indemnifying party chooses to defend or prosecute such claim, each indemnified person and WMATA or \_\_\_\_\_, whichever is not the indemnifying party, shall, to the extent requested by the indemnifying party and at the indemnifying party's expense, cooperate in the prosecution or defense of such claim and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may reasonably be requested in connection therewith.

18.4. The provisions of this Article shall survive the termination of this License Agreement.

## ARTICLE 19. INSURANCE

19.1. \_\_\_\_\_ shall maintain or cause to be maintained, during the Initial Term and any Renewal Term of this License Agreement, insurance of the following types, including coverage for maintenance and repair, with the limits set forth below:

(a) Commercial General Liability: A comprehensive Commercial General Liability policy including coverage for independent contractors, Completed Operations Liability and Contractual Liability, with a combined single limit of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage.

(b) Worker's Compensation: A policy complying with the requirements of the applicable Worker's Compensation law or similar laws of the state or other political division having jurisdiction over the employee, and Employer's Liability with a limit of liability of \$1,000,000 for each occurrence. Such policy shall also comply, if applicable with the U.S. Longshoremen's and Harbor Workers' Act, Jones Act or Admiralty Laws and the Federal Employers' Liability Act. Such policy shall further include coverage for occupational diseases with a limit of liability of \$500,000 for each employee.

(c) Automobile Liability Insurance: An insurance policy covering use of all owned, non-owned and hired vehicles with a combined single limit of not less than \$2,000,000 per occurrence for bodily injury and property damage.

(d) Railroad Protective Liability: An insurance policy issued to WMATA covering the liability of \_\_\_\_\_ for the work to be performed on or adjacent to WMATA's operating railroad property for any bodily injuries or deaths or any damage to the property, equipment and facilities of WMATA caused by the activities of \_\_\_\_\_ resulting from this work. Such insurance shall be written on the ISO form and with limits of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage with a \$10,000,000 annual aggregate.

19.2. Insurance companies providing the insurance coverages required by this Article must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance companies licensed and authorized to do business in the jurisdictions where \_\_\_\_\_ will be installing its fibers.

19.3. WMATA shall be named as an Additional Insured on all liability insurance policies required by this License Agreement, except Worker's Compensation.

19.4. Upon request, \_\_\_\_\_ shall provide WMATA with Certificates of Insurance evidencing that the above-required insurance policies are in force. Such certificates shall be provided prior to the commencement of work. The requisite insurance policies shall not be canceled, modified (except to increase the amount of coverage) or terminated without thirty (30) calendar days written notice to WMATA's Office of Risk Management.

19.5. \_\_\_\_\_ hereby waives subrogation against and releases WMATA from all liability covered by \_\_\_\_\_ (or its contractor's or subcontractor's) insurance for losses or claims arising out of \_\_\_\_\_'s (or its contractor's or subcontractor's) performance of this License Agreement.

## **ARTICLE 20. EVENTS OF DEFAULT**

20.1. Each of the following events shall constitute an event of default (whether any such event shall be voluntary or involuntary or occur by operation of law or pursuant to any judgment, decree, order, rule or regulation of any court or administrative or governmental body) if such event of default is not cured within thirty (30) calendar days of receipt of notice of such event of default to the defaulting party (except in the case of default in payment):

(a) the failure of \_\_\_\_\_ to make any payment hereunder within fifteen (15) calendar days after \_\_\_\_\_'s receipt of notice from WMATA of \_\_\_\_\_'s failure to make such payment when due;

(b) the failure of \_\_\_\_\_ to carry and maintain insurance in compliance with Article 19;

(c) the failure of either party to perform or observe any material covenant to be performed or observed by it pursuant to the License Agreement hereunder;

(d) a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by either party, a custodian, receiver, trustee, intervenor, or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up, or liquidation of either party, or if any such petition shall be filed against either party and shall not be dismissed within sixty (60) calendar days thereafter, or an order shall have been issued granting either party a suspension of payments under applicable law and any such order is not dismissed within sixty (60) calendar days thereafter;

(e) \_\_\_\_\_ shall cease to have any of the material franchises, licenses, License Agreements, certificates, concessions, permits, rights or privileges required for the conduct of its business and operations which loss is not remedied by the obtaining of a replacement franchise, license, License Agreement, certificate, concession, permit, right or privilege within sixty (60) calendar days of the loss thereof, if such loss would have a material adverse impact upon \_\_\_\_\_'s ability to perform its obligations hereunder; or

(f) the failure of \_\_\_\_\_ to begin installation of the \_\_\_\_\_ system within the WMATA ROW within one (1) year, subject to the provisions of Section 22.2, from the date of execution of this License Agreement.

## **ARTICLE 21. REMEDIES**

21.1. Upon the occurrence and during the continuance of any event of

default, the non-defaulting party may, at its option, declare this License Agreement to be in default and may, in addition to any other remedies provided herein, terminate this License Agreement. No remedy is intended to be exclusive, but each shall be cumulative and in addition to and may be exercised concurrently with any other remedy available to WMATA or \_\_\_\_\_ at law or in equity. In addition to all other remedies contained herein, WMATA and \_\_\_\_\_ agree that if any representation made in this License Agreement is untrue in any material respect when made and the non-defaulting party elects not to terminate this License Agreement, the parties shall negotiate in good faith an equitable adjustment to the payment terms with the intention of reasonably compensating the other party for any damages it may have sustained as a result of such representation being untrue when made.

21.2. Notwithstanding any other provision of this License Agreement, in no event shall WMATA be liable for special, consequential, exemplary or punitive damages as a result of the performance or nonperformance of its obligations under this License Agreement.

## **ARTICLE 22. FORCE MAJEURE**

22.1. Neither party shall be liable to the other for any failure of performance under this License Agreement due to causes beyond its control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over such party, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more of these federal, state or local governments, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots; wars; or strikes, lock-outs, work stoppages or other labor difficulties (collectively, "force majeure events").

22.2. Should \_\_\_\_\_ experience delays in the installation of the \_\_\_\_\_ system which arise from unforeseeable causes beyond the control and without fault or negligence of \_\_\_\_\_, including, but not restricted to, acts of God, acts of the public enemy, acts of WMATA, acts of another Contractor or Licensee in the performance of a contract or license with WMATA, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, the number of days of such delays shall be added to the time periods indicated in Sections 14.2, 14.4, and 20.1(f). \_\_\_\_\_, within ten (10) calendar days from the beginning of any such delay shall notify WMATA in writing of the causes of the delay. WMATA shall ascertain the facts and extent of the delay and extend the time periods indicated in Sections 14.2, 14.4, and 20.1(f) provided that WMATA finds that such delay warrants such an extension. WMATA shall grant such extensions as are, in its reasonable judgment, justified.

## **ARTICLE 23. ORDERLY TERMINATION**

23.1. Upon expiration or earlier termination of this License Agreement, WMATA and \_\_\_\_\_ agree to cooperate with each other in good faith to achieve an orderly termination.

## **ARTICLE 24. OBLIGATIONS OF \_\_\_\_\_**

24.1. In addition to the obligations of set forth elsewhere in this License Agreement, \_\_\_\_\_ shall:

(a) have full and complete control, responsibility and liability for the signals distributed over the fiber optic components of the \_\_\_\_\_ equipment located in the WMATA ROW by \_\_\_\_\_ or for its benefit;

(b) have full and complete control, responsibility and liability for the purchase, installation, construction and maintenance of the terminals and peripheral equipment connected to the fiber optic components of the \_\_\_\_\_ equipment located in the WMATA ROW pursuant to the License granted by WMATA;

(c) employ its own employees, agents and/or independent contractors in the handling, storage, retrieval, processing, transmitting, and/or receiving of any electronic signals distributed over the fiber optic components of the \_\_\_\_\_ equipment located in the WMATA ROW; and

(d) have full and complete control, responsibility and liability for operating and maintaining any operating authority from any federal, state or local governmental body or agency that relates to the activities of \_\_\_\_\_ under this License Agreement.

## **ARTICLE 25. INTEREST**

25.1. All payments due from \_\_\_\_\_ under the terms of this License Agreement which are not paid when due shall bear interest from the due date until paid at an interest rate equal to the lesser of 1.5% per month or the maximum rate permitted by law.

## **ARTICLE 26. ASSIGNMENTS**

26.1. Neither party shall assign, transfer, delegate or in any other manner dispose of, any of its rights, privileges or obligations under this License Agreement without the other party's prior written consent which shall not be unreasonably withheld or delayed; provided, however, that \_\_\_\_\_, in the normal course of its business, may sell, lease or otherwise transfer or assign any rights it possess in any individual optical fibers in the \_\_\_\_\_ System, and such transferees or assignees shall have the same rights of access to said transferred or assigned individual optical fibers as \_\_\_\_\_, except that said access to the transferred or assigned individual optical fibers shall occur only within \_\_\_\_\_ optical amplifier buildings, regenerators, junctions and points-of-presence.

26.2. Notwithstanding Section 26.1, \_\_\_\_\_ may assign this License Agreement in whole or in part without WMATA's consent to any subsidiary, affiliate, or parent company of \_\_\_\_\_ which shall control, be under the control of or be under common control with \_\_\_\_\_. Any attempt to make an assignment, transfer or disposition to an entity which does not meet the aforesaid requirements, without WMATA's prior written consent, shall be null and void.



26.3. Subject to the provisions of this Article, this License Agreement and each of the parties' respective rights and obligations shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors or permitted assigns.

## **ARTICLE 27. DISPUTE RESOLUTION**

27.1. It is the intent of \_\_\_\_\_ and WMATA that any disputes which may arise be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties agree to resolve such disputes in accordance with the provisions of this Article.

27.2. Any disputed issues arising under the terms of this License 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 fifteen (15) calendar days of such referral.

27.3. Any claims or disputes which parties' representatives are unable to resolve within the fifteen (15) calendar day period specified in Section 27.2, shall be presented by the claimant in writing to the other party within thirty (30) calendar days after the circumstances which gave rise to the claim or dispute took place or became known to the claimant, 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.

27.4. In the event of any such claim or dispute, the parties shall negotiate in good faith to resolve the claim or dispute or, upon the failure to resolve such claim or dispute through good faith negotiations, the parties may attempt to resolve such claim or dispute through alternative dispute resolution (ADR) techniques. If the parties agree to use a non-binding ADR technique, nothing shall prohibit either party from terminating its participation at any stage, or if ADR does not produce results satisfactory to the parties, and from proceeding in accordance with Section 27.5. The cost of the selected ADR technique shall be equally shared by the parties.

27.5. If any claim or dispute arising hereunder is not resolved in accordance with the provisions of this Article, either party may, upon giving the other party at least ten (10) calendar days prior written notice, initiate litigation to submit such claim or dispute for decision in the United States District Court for the District of Columbia or, but only if such court does not have subject matter jurisdiction, any court in the District of Columbia having such jurisdiction.

## **ARTICLE 28. MISCELLANEOUS**

28.1. Counterparts. This License Agreement may be executed in counterparts each of which shall be deemed an original and all of which together

shall constitute one and the same instrument, and in pleading or proving any provision of this License Agreement, it shall not be necessary to produce more than one complete set of such counterparts.

28.2. Captions/Gender. Article and Section headings contained in this License Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this License Agreement. Whenever used herein the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

28.3. Governing Law and Binding Effect. This License Agreement shall be governed by and construed and enforced in accordance with the WMATA Compact and the laws (other than the law governing conflicts of law questions) and decisions of the District of Columbia. Conflicts of real estate law principles shall be interpreted under the laws of the state in which such real property is located. This License Agreement shall bind and inure to the benefit of each of the parties and their successors and permitted assigns.

28.4. Waivers and Amendments. This License Agreement may not be amended nor shall any waiver, change, modification, consent or discharge be effected, except by a written instrument signed by the parties in the case of an amendment, and, in the case of a waiver, consent or discharge, by the party against whom enforcement of such instrument is sought. Any consent by either party to, or waiver of, a breach by the other party shall not constitute a waiver or consent to any subsequent or different breach. If either party shall fail to enforce a breach of this License 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.

28.5. Relationship Not a Partnership or an Agency. The relationship between \_\_\_\_\_ and WMATA shall not be that of partners or agents for one another and nothing contained in this License Agreement shall be deemed to constitute a partnership, joint venture or agency agreement between them.

28.6. Notices. All notices, requests, demands, statements, reports and other communications under this License Agreement shall be in writing and deemed to be duly delivered, if delivered in person, by overnight courier or by certified or registered mail:

(a) if to \_\_\_\_\_, to:

(b) If to WMATA, to:

Assistant General Manager  
Office of Property Development and Management  
WMATA  
600 Fifth Street, NW  
Washington, DC 20001

Either party may change its mailing address by giving written notice to the other party pursuant to the provisions of this Section.

28.7 Disclaimers. There are no agreements, warranties or representations, express or implied either in fact or by operation of law, statutory or otherwise, including warranties of merchantability and fitness for a particular purpose or use, except those expressly set forth herein.

28.8. Entire Agreement. This License Agreement, including the exhibits, schedules and annexes hereto, which are hereby incorporated by reference and made a part of this License Agreement as if they were set forth herein in their entirety, constitutes the entire agreement between WMATA and \_\_\_\_\_ with respect to the subject matter hereof and supersedes all prior agreements and understandings between them as to such subject matter, and there are no restrictions, agreements, arrangements or undertakings, oral or written, between WMATA and \_\_\_\_\_ relating to the transactions contemplated hereby which are not fully expressed or referred to herein.

28.9. Severability. If any term or other provision of this License Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this License Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this License Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

28.10. Further Assurances. Each party agrees to execute all such further instruments and documents and to take all such further actions as the other party may reasonably request in order to effectuate the terms and purposes of this License Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed by their duly authorized representatives as of the date first above written.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (WMATA)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name of Signer

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
**a Delaware Corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name of Signer

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Signature

## SCHEDULE 1

### I. Definitions

Certificate of Completion - shall mean that document referred to in Section 10.1 of this Agreement.

Greatest Number of Fibers - shall mean the greatest number of \_\_\_\_\_ optical fibers in any cross section of a single fiber optic cable in any portion of a WMATA ROW described in any Certificate of Completion.

Segment Compensation - shall mean the compensation as determined under Section II, below, for the longitudinal footage of fiber optic cable, excluding the fifty (50) feet of slack fiber optic cable under each platform, described in each Certificate of Completion. Segment Compensation for sections or segments of fiber optic cable described in Certificates of Completion bearing dates less than one year prior to the current Compensation Date shall be equitably prorated to reflect that portion of the year subsequent to the date of the Certificate of Completion.

Total Compensation - shall be the arithmetic sum of all Segment Compensation calculations for all Certificates of Completion dated on or before the Compensation Date.

### II. General Compensation Methodology

(A) Segment Compensation shall be determined by multiplying the longitudinal footage of fiber optic cable described in the Certificate of Completion by the Cost per Cable Foot described below. The Greatest Number of Fibers contained in a single fiber optic cable shall determine the appropriate multiplier. In cases where two or more fiber optic cables are located in any portion of a WMATA ROW, a segment compensation calculation shall be performed for each such cable. WMATA fibers shall not be considered in any of the calculations made pursuant to Article 10 of this Agreement.

(1) For any fiber optic cable with up to 132 fibers, the compensation per longitudinal foot per year shall be \$5.52.

(2) For any fiber optic cable with more than 132 but less than 217 fibers, the compensation per longitudinal foot per year shall be the amount equal to \$5.52 for the first 132 fibers plus an amount equal to \$0.0275769 times the number of fibers in excess of 132 fibers.

(3) For any fiber optic cable with 217 or more fibers, the compensation per longitudinal foot per year shall be the amount equal to \$5.52 for the first 132 fibers plus an amount equal to \$0.0275769 times the next 84 fibers plus an amount equal to \$0.0137885 times the number of fibers in excess of 216 fibers.

B) Notwithstanding the provisions of Section II(A) of this Schedule A, \_\_\_\_\_ shall pay WMATA no less than the sum of \$\_\_\_\_\_/longitudinal foot per year for all fiber optic cable, excluding exit or entrance cable, mentioned or described in Certificates of Completion which bear dates prior to the date when the aggregate longitudinal footage of the \_\_\_\_\_ System, as described in Certificates of Completion, equals twenty miles.

### III. Incentive Compensation Methodology

(A) The provisions of this Section III, Schedule 1 shall only apply if the longitudinal footage of fiber optic cable described in Certificates of Completion for which \_\_\_\_\_ paid compensation on a Compensation Date equaled or exceeded twenty miles in length (the "Milestone Year"). Under no circumstances shall the Incentive Compensation Methodology for any segment, as described in Sections III (B) 1, 2, and 3, Schedule 1, as follows, result in a Compensation per longitudinal foot per year of less than \$5.52.

(B) On the Compensation Date following the first Compensation Date in which the condition of Section III(A) is satisfied, and provided that the condition continues to be satisfied, WMATA shall effect the following adjustments to the Total Compensation:

(1) Compensation for the first twenty (20) miles of the \_\_\_\_\_ system shall be determined in accordance with Section II of this Schedule.

- (2) Compensation for system lengths in excess of twenty (20) miles but less than forty (40) miles shall be determined by adding the compensation due under Section III(B)(1) to an amount equal to 90% of the Total Compensation otherwise due for the increment in excess of twenty miles.
- (3) Compensation for system lengths in excess of forty (40) miles shall be determined by adding the compensation due under Section III(B)(2) to an amount equal to 85% of the Total Compensation otherwise due for the increment in excess of forty (40) miles.

**EXHIBIT B**

**REQUEST FOR CABLE PLACEMENT (RCP)**

**TO: WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

**FROM:**

In accordance with the terms of the License Agreement dated \_\_\_\_\_, 2007 between WMATA and \_\_\_\_\_ (\_\_\_\_\_), a request is hereby made for the installation and/or placement of Communication Facilities within the following portion of the WMATA ROW.

**LOCATION:** \_\_\_\_\_ (Include two Terminus Stations)

**DESIRED START AND END DATES OF INSTALLATION:** \_\_\_\_\_

**APPROXIMATE CABLE FOOTAGE TO BE INSTALLED:** \_\_\_\_\_

**NUMBER OF FIBERS:** \_\_\_\_\_ **Fibers**  
\_\_\_\_\_ ( for \_\_\_\_\_ / for WMATA)

**ADDITIONAL COMMENTS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

**Preliminary approval granted \_\_\_\_\_, 20\_\_**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name of Signer

\_\_\_\_\_  
Title of Signer



**EXHIBIT C**

**CERTIFICATE OF COMPLETION**

**TO: WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

**FROM:** \_\_\_\_\_

In accordance with the terms of the License Agreement dated \_\_\_\_\_ between WMATA and \_\_\_\_\_ (\_\_\_\_\_), an installation and/or placement of Communication Facilities within the following portion of the WMATA ROW was completed.

**LOCATION:** \_\_\_\_\_  
(Include two Terminus Stations)

**END DATE OF INSTALLATION AND TESTING:** \_\_\_\_\_

**CABLE FOOTAGE INSTALLED:** \_\_\_\_\_

**NUMBER OF FIBERS:** \_\_\_\_\_ **Fibers**  
( \_\_\_\_\_ for / \_\_\_\_\_ for WMATA)

**ADDITIONAL COMMENTS:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

\_\_\_\_\_  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print or Type Name of Signer  
\_\_\_\_\_  
Title of Signer  
\_\_\_\_\_  
Date

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name of Signer

\_\_\_\_\_  
Title of Signer

# 144 Fiber Cable

The annual rental is determined by the number of fibers, within each cable, and the length of installed cable. The annual rental for installed cable will be the Fiber Rental Rate, as shown in Table I, multiplied by the lineal footage installed and multiplied by the Distance Factor, as shown in Table II. The minimum annual rental for cable will be \$5.52 per foot regardless of cable length or number of fibers. Further, the first twenty (20) miles of cable will be not less than \$5.85 (144 fiber rate) per foot of cable, excluding exit or entrance cable, regardless of the number of fibers within the cable.

Remark: This is a ten (10) year contract with an automatic ten (10) year renewal option. Rental will be adjusted annually by the increase in the Consumer Price Index (CPI-u).

\*Not including WMATA twelve (12) fibers

**TABLE I**

<b>Number of Fibers*</b>	<b>Annual Rental</b>
0 to 132	\$5.52 per cable foot
133 to 144	\$.0275769 per fiber per cable foot

**TABLE II**

<b>Cable Mileage</b>	<b>Distance Factor</b>
00.00 to 20.00	100%
20.01 to 40.00	90%
40.01 and over	85%

## 288 Fiber Cable

The annual rental is determined by the number of fibers, within each cable, and the length of installed cable. The annual rental for installed cable will be the Fiber Rental Rate, as shown in Table I, multiplied by the lineal footage installed and multiplied by the Distance Factor, as shown in Table II. The minimum annual rental for cable will be \$5.52 per foot regardless of cable length or number of fibers. Further, the first twenty (20) miles of cable will be not less than \$8.82 (288 fiber rate) per foot of cable, excluding exit or entrance cable, regardless of the number of fibers within the cable.

Remark: This is a ten (10) year contract with an automatic ten (10) year renewal option. Rental will be adjusted annually by the increase in the Consumer Price Index (CPI-u).

**TABLE I**

<b>Number of Fibers*</b>	<b>Annual Rental</b>
0 to 132	\$5.52 per cable foot
133 to 216	\$.0275769 per fiber per cable foot
over 216	\$.0137855 per fiber per cable foot

\*Not including WMATA twelve (12) fibers

**TABLE II**

<b>Cable Mileage</b>	<b>Distance Factor</b>
00.00 to 20.00	100%
20.01 to 40.00	90%
40.01 and over	85%

## 432 Fiber Cable

The annual rental is determined by the number of fibers, within each cable, and the length of installed cable. The annual rental for installed cable will be the Fiber Rental Rate, as shown in Table I, multiplied by the lineal footage installed and multiplied by the Distance Factor, as shown in Table II. The minimum annual rental for cable will be \$5.52 per foot regardless of cable length or number of fibers. Further, the first twenty (20) miles of cable will be not less than \$10.81 (432 fiber rate) per foot of cable, excluding exit or entrance cable, regardless of the number of fibers within the cable.

Remark: This is a ten (10) year contract with an automatic ten (10) year renewal option. Rental will be adjusted annually by the increase in the Consumer Price Index (CPI-u).

**TABLE I**

<b>Number of Fibers*</b>	<b>Annual Rental</b>
0 to 132	\$5.52 per cable foot
133 to 216	\$.0275769 per fiber per cable foot
over 216	\$.0137855 per fiber per cable foot

\*Not including WMATA twelve (12) fibers

**TABLE II**

<b>Cable Mileage</b>	<b>Distance Factor</b>
00.00 to 20.00	100%
20.01 to 40.00	90%
40.01 and over	85%

## 864 Fiber Cable

The annual rental is determined by the number of fibers, within each cable, and the length of installed cable. The annual rental for installed cable will be the Fiber Rental Rate, as shown in Table I, multiplied by the lineal footage installed and multiplied by the Distance Factor, as shown in Table II. The minimum annual rental for cable will be \$5.52 per foot regardless of cable length or number of fibers. Further, the first twenty (20) miles of cable will be not less than \$16.77 (864 fiber rate) per foot of cable, excluding exit or entrance cable, regardless of the number of fibers within the cable.

Remark: This is a ten (10) year contract with an automatic ten (10) year renewal option. Rental will be adjusted annually by the increase in the Consumer Price Index (CPI-u).

**TABLE I**

<b>Number of Fibers*</b>	<b>Annual Rental</b>
0 to 132	\$5.52 per cable foot
133 to 216	\$.0275769 per fiber per cable foot
over 216	\$.0137855 per fiber per cable foot

\*Not including WMATA twelve (12) fibers

**TABLE II**

<b>Cable Mileage</b>	<b>Distance Factor</b>
00.00 to 20.00	100%
20.01 to 40.00	90%
40.01 and over	85%



# System Map Legend

- Red Line • Glenmont/Shady Grove
- Orange Line • New Carrollton/Vienna/Fairfax-GMU
- Blue Line • Addison Road-Seat Pleasant/Franconia-Springfield
- Green Line • Branch Avenue/Greenbelt
- Yellow Line • Huntington/Mt. Vernon Sq/7th St-Convention Center

Commuter Rail

Transfer Station

Parking

Station In Service

Future Station



