

**DARK FIBER  
INDEFEASIBLE RIGHT OF USE ("IRU") AGREEMENT**

**Between**

**Bluegrass Network LLC**

**and**

**Commonwealth of Kentucky**

**Dated: April 20, 2017**

## **EXHIBITS**

- Exhibit A     Route Descriptions
  - Exhibit A-1    Map of Major Segments
  - Exhibit A-2    Description of Major Segments and Commonwealth Fibers
- Exhibit B     Maintenance Agreement
- Exhibit C     Interconnection Procedures
- Exhibit D     Fiber Splicing, Testing, and Acceptance Standards and Procedures
- Exhibit E     Cable Installation Specification
- Exhibit F     As-Built Drawing Specifications

## **DARK FIBER IRU AGREEMENT**

THIS DARK FIBER IRU AGREEMENT (this “**Agreement**”) is made as of the 20th day of April, 2017 (the “**Effective Date**”) by and between Bluegrass Network LLC (“**Bluegrass**”), a Kentucky limited liability company having its principal office at 2902 Ring Road, Elizabethtown, Kentucky 42702, and Commonwealth of Kentucky (“**Commonwealth**”), having its principal office at 702 Capital Avenue, Frankfort, Kentucky 40601. For purposes of this Agreement, Bluegrass and Commonwealth are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

### **BACKGROUND:**

#### **WHEREAS:**

- A. Pursuant to RFP 758 1500000003-5 issued July 11, 2014 (as amended from time to time, the “**RFP**”), the Commonwealth selected Macquarie Infrastructure Developments LLC (“**Macquarie**”) to design, build, finance, operate and maintain a statewide fiber optic network, known generally as the NG-KIH System, to provide broadband services to the citizens of the Commonwealth;
- B. On December 22, 2014, the Commonwealth and Macquarie entered into a master agreement (as amended from time to time, the “**Master Agreement**”) in respect of the Project;
- C. In 2015, Macquarie assigned its rights and obligations under the Master Agreement to KentuckyWired Infrastructure Company, Inc. (“**Project Co.**”). Project Co. then entered into a Project Implementation Agreement with KentuckyWired Operations Company, LLC (“**Operations Co.**”);
- D. On September 3, 2015, the Commonwealth and Project Co. entered into a project agreement (as amended from time to time, the “**Project Agreement**”) in respect of the Project and to facilitate the financing of the Project. As part of this Project Agreement, Operations Co. and its subcontractors have specifically designed and tailored the NG-KIH System to the geographic area of the Commonwealth in a series of “rings”;
- E. A component of the NG-KIH System is located in central Kentucky;
- F. Bluegrass can provide fiber facilities located in central Kentucky that fit the design of the NG-KIH System;
- G. Bluegrass, through ownership or other arrangements, has the rights to use the System;
- H. Commonwealth desires to acquire from Bluegrass, and Bluegrass desires to provide to Commonwealth, an indefeasible right to use certain optical fibers in the System upon the terms and conditions set forth below; and
- I. The parties intend that Commonwealth shall have substantially all benefits and risks associated with ownership of such optical fibers, subject to the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Capitalized terms and phrases used in this Agreement and not otherwise defined herein shall have the following meanings:

“**Acceptance Date**” shall have the definition set forth in **Exhibit D** (Fiber Splicing, Testing, and Acceptance Standards and Procedures) to this Agreement.

“**Acceptance Standards**” means the standards set forth in **Exhibit D** to this Agreement with respect to the testing and condition of the Commonwealth Fibers.

“**Affiliates**” means, with respect to any entity, an entity controlling, controlled by, or under common control with such entity by means of direct or indirect equity ownership.

“**Agreement**” shall have the definition set forth in the introductory paragraph.

“**Anchor Sites**” means those Sites identified in **Exhibit A-2** as “Anchor” under Segment Type.

“**Available**” means that the Commonwealth Fibers meet the standards set forth in **Sections 2, 3 and 4** of **Exhibit D** attached hereto.

“**Bluegrass**” shall have the definition as defined in the introductory paragraph of this Agreement.

“**CAI Sites**” means those Sites identified in **Exhibit A-2** as “CAI” under Segment Type.

“**Cable**” means the fiber optic cable included in the System and fibers contained therein that includes the Commonwealth Fibers and associated splicing connections, splice boxes and vaults, and conduit.

“**Change Order**” means an order setting forth a change to a fiber route or design specification that is mutually agreed to by the Parties in accordance with **Section 3.4**.

“**Claim**” means any claim, action, dispute, or proceeding of any kind between Commonwealth (or any of its Affiliates, successors or assigns) and Bluegrass (or any of its Affiliates, successors, or assigns) and any other claim, transaction, occurrence, loss, liability, expense or other matter arising out of, in connection with, or in any way related to, the Commonwealth IRU, the Cable, the System, this Agreement or any other instrument, arrangement or understanding related to the Commonwealth IRU.

“**Commonwealth**” shall have the definition set forth in the introductory paragraph of this Agreement.

“**Commonwealth Equipment**” means optronic (opto-electrical), electronic, or optical equipment or materials, facilities or other equipment owned, possessed or utilized (other than the System), by Commonwealth.

“**Commonwealth Fibers**” means those certain Fibers in which Commonwealth shall be granted an IRU pursuant to **Section 2.1(c)**.

“**Commonwealth IRU**” shall mean the IRU granted to Commonwealth pursuant to the terms and conditions set forth in this Agreement.

**“Connecting Point”** means a point where the network or facilities of Commonwealth will connect to the System as specified in **Exhibit C** (Interconnection Procedures) of this Agreement.

**“Consumer Price Index”** means the Consumer Price Index, All Urban Consumers, United States, All Items (1982-1984 = 100), as published by the Bureau of Labor Statistics of the United States Department of Labor, or if such index is not available, such other index as the parties may agree, while acting in good faith, most closely resembles such index.

**“Contract Price”** means (i) Eight Million Nine Hundred Fifty-One Thousand Eight Hundred (\$8,951,800.00), *plus* (ii) Three Thousand Five Hundred Dollars (\$3,500.00) *multiplied by* the number of Sites that Commonwealth authorizes Bluegrass to install, *plus* (iii) such additional amounts as described in **Section 3.4**.

**“Core Fiber”** means the fiber backbone which makes up part of the NG-KIH System.

**“Designated Parties”** means each and all of the following parties: KentuckyWired Operations Company, LLC; NG-KIH Design Build, LLC; LTS Kentucky Managed Technical Services, LLC; and OpenFiber Kentucky Company, LLC. One or more of the Designated Parties, as the context requires, may act as the Commonwealth’s agent during the Term.

**“Effective Date”** shall have the definition set forth in the introductory paragraph of this Agreement.

**“Electric Company Fibers”** has the meaning set forth in **Section 2.1**.

**“Facility Owners** means any entity (other than Bluegrass) owning any portion of the System, or any property or security interest therein, or leasing to Bluegrass, or providing an IRU to Bluegrass in, any portion of the System.

**“Fiber Acceptance Testing”** means the fiber acceptance testing described in **Exhibit D** to this Agreement.

**“Fibers”** means any optical fibers contained in the System, including the Commonwealth Fibers, the Electric Company Fibers, the fibers of Bluegrass and the fibers of any third party in the System, but excluding, however, any fibers granted (whether through ownership, IRU, lease, or otherwise) to Government Authorities in exchange for use of streets, rights of way, or other property under the jurisdiction of such entity.

**“Force Majeure Event”** shall have the definition set forth in **Section 21.1**.

**“Government Authority”** means any federal, state, regional, county, town, municipal, territorial, or tribal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, including, without limitation, any multinational body obtaining authority from any of the foregoing.

**“Indefeasible Right of Use”** or **“IRU”** is an exclusive, indefeasible right to use the specified property, but does not convey title, ownership, or rights of possession in any real or personal property.

**“Indemnitee”** shall have the definition set forth in **Section 14.1**.

**“Indemnitor”** shall have the definition set forth in **Section 14.1**.

**“Initial Term”** shall have the definition set forth in **Section 9.1**.

**“K-12 Site”** means each Site designated as K-12 in **Exhibit A-2**.

**“Legal Requirements”** means any law, ordinance, statute, regulation, guidance, decree, decision, order, or other authority of any governmental authority or quasi-governmental authority.

**“Lenders”** means one or more financial institutions, vendors, suppliers or other financing sources utilized by Bluegrass or Commonwealth, as the case may be.

**“Maintenance Agreement”** means that certain Maintenance Agreement attached and incorporated herein as **Exhibit B** between Bluegrass and Commonwealth whereby Bluegrass provides maintenance and repair services to Commonwealth in connection with the Commonwealth Fibers and the Electric Company Fibers.

**“Maintenance Fee”** shall mean the annual fee payable by Commonwealth to Bluegrass for maintaining the Commonwealth Fibers and Electric Company Fibers, which shall equal (i) Two Hundred Fifty Thousand Four Hundred Dollars (\$250,400), *plus* (ii) such additional amounts as described in **Sections 3.4 and 10.1**.

**“Make Ready Cycle”** means the submission of engineering packages by Bluegrass to Pole Owners, payment of approved make ready costs, and completion of make ready activities by the Pole Owners.

**“NG-KIH”** means the Next Generation Kentucky Information Highway Project (AKA KentuckyWired).

**“Off-Net Sites”** means publicly-owned Sites that are within the geographical area in which Bluegrass will provide managed services to Commonwealth which are not directly connected to the Commonwealth Fibers.

**“Open Access”** means that all providers, including the Wholesaler, seeking to gain access to bandwidth on either the spare Commonwealth Fibers or local loops extending from County POPs or Commonwealth Fibers to user endpoints will pay the same transport cost to provide the same service over the same time period on the same terms and that no reasonable party seeking access to such bandwidth can be denied access.

**“Outage”** means that the Commonwealth Fibers are not Available; *provided, however*, in the event that the Commonwealth Fibers that were subject to an Outage meet the requirements set forth in **Section 2(D)** of **Exhibit D** after the occurrence of such Outage up to the point of demarcation, regardless of whether Bluegrass’s repair of such Commonwealth Fibers is temporary or permanent, such Outage shall be deemed to have been corrected and the Commonwealth Fibers shall be deemed to be Available as of the date and time when the Commonwealth Fibers meet the requirements set forth in **Section 2(D)** of **Exhibit D** after the Outage occurred for purposes of calculating the Mean Time to Restore and any amounts due and payable by Bluegrass under **Exhibit B**. The duration of an Outage will be calculated in accordance with **Section 9** of **Exhibit B**.

**“Point of Presence”** or **“POP”** means a carrier neutral location identified by the Commonwealth in each county in Bluegrass’s operating territory.

**“Pole Owners”** means any entity that owns or manages poles to which Bluegrass must attach the Commonwealth Fibers.

**“Released Party”** means each of the following:

- (a) Any Affiliates of the other Party, Facility Owners, and any Lenders, except to the extent such Lender has assumed a Party's position under this Agreement by reason of default by such Party or foreclosure by the Lender;
- (b) Any employee, officer, director, stockholder, partner, member, or trustee of the other Party or its Affiliates or Lenders; or
- (c) Assignees of the entities included in the above subparagraphs (a) or (b) and any employee, officer, director, stockholder, partner, member, or trustee of such assignees.

**"Remaining Cost"** means (a) all costs or expenses incurred by Bluegrass in connection with any relocation *minus* (b) any compensation received by Bluegrass from a third party that requires a relocation.

**"Representatives"** shall have the definition set forth in **Section 19.1**.

**"Required Rights"** means the rights Bluegrass is required to obtain pursuant to **Sections 4.4(a) and 4.4(b)**.

**"Route"** means the route, including spurs, upon which the System is or will be constructed and installed consisting of the Major Segments.

**"ROFR"** means Bluegrass's right of first refusal described in **Article VIII** of this Agreement.

**"Segment"** means a discrete portion of the System and may refer to a Span, a portion between two points of presence or a point of presence and a System end point, or a portion of the System affected by a relocation or other circumstance.

**"Sites"** shall mean all of the sites listed in **Exhibit A-2**, collectively, including the Anchor Sites and CAI Sites.

**"Span"** means a portion of the System between two Transmission Sites or between a Transmission Site and a point of presence or System end point.

**"System"** means Bluegrass's rights to use a fiber optic communication system along the route depicted in **Exhibit A-1**.

**"Taking"** shall have the definition set forth in **Section 21.2**.

**"Term"** means the term as defined in **Section 9.1**.

**"Transmission Sites"** means the Bluegrass designated optical amplifier, regenerator, or junction sites along the System Route as specified in **Exhibit A-2**.

**"Wholesaler"** means OpenFiber Kentucky Company LLC.

## **ARTICLE II** **CONVEYANCE OF IRU**

**2.1. Conveyance upon Acceptance.** Effective as of the Acceptance Date for each Segment and upon Commonwealth's timely payment of the Contract Price as set forth in **Section 3.3**, Bluegrass hereby grants to Commonwealth the Commonwealth IRU for the purposes described herein, in the

Commonwealth Fibers as described in **Exhibit A-2**, which Commonwealth Fibers shall include, but shall not be limited to, the following items within Bluegrass's operating territory:

- (a) Sufficient fiber strands to meet the minimum strand requirements for the endpoints listed as Anchor Sites and/or CAI Sites in **Exhibit A-2**;
- (b) Sufficient fiber strands to meet the minimum strand requirements for the Commonwealth Fibers as noted in **Exhibit A-2**;
- (c) [REDACTED] Fibers attached to an Anchor Site designated as a County POP by the Commonwealth in each county in which Commonwealth Fibers exist; and

[REDACTED] Fibers in addition to those set forth in **Section 2.1(c)** shall be assigned in each county and such Fibers shall be extended to the end of each lateral and used exclusively by an electric utility in such county for non-commercial use (the "**Electric Company Fibers**").

Nothing in this Agreement, including the grant of the Commonwealth IRU, shall be construed to convey any legal title to any real or personal property, including the Fibers, the Cable, or the System, to the Commonwealth or any other party. The Commonwealth IRU does not include any equipment used to transmit capacity over or "light" the Fibers. Notwithstanding anything to the contrary contained herein, neither the Fibers leased nor Segments constructed by Bluegrass pursuant to this Agreement shall be construed as permanently integrated into, or otherwise as forming a permanent part of, the NG-KIH System's Core Fiber. At its own cost, Bluegrass may attach additional Fibers other than the Commonwealth Fibers and the Electric Company Fibers to each Site, and Commonwealth shall have no right to use or interest in such additional Fibers, and Bluegrass may lease, transfer, or otherwise dispose of any interest in such additional Fibers without notice to, or the consent of, Commonwealth or any third party. The additional Fibers which Bluegrass installs shall not interfere with the Commonwealth Fibers and the Electric Company Fibers. Nothing herein shall require that Bluegrass provide interconnection services with respect to the Electric Company Fibers without an agreement signed by Bluegrass to provide such services.

**2.2. Use of Commonwealth Fibers.** Commonwealth will use the Commonwealth Fibers solely for purposes of servicing the Sites. Subject to the ROFR, Commonwealth will have full discretion on the use of the Commonwealth Fibers, including the ability to lease capacity to commercial users that have requested such access and negotiated an access agreement with Commonwealth or the Designated Parties. In the event that Bluegrass desires to exercise its ROFR to expand its network footprint beyond the Commonwealth Fibers, the Wholesaler will provide Bluegrass access to bandwidth on the spare fibers in accordance with **Article VIII**.

**2.3. Substitution of Fibers.** Commonwealth acknowledges and agrees that notwithstanding the above conveyance, upon not less than one hundred twenty (120) days' written notice from Bluegrass to Commonwealth, Bluegrass may substitute for the Commonwealth Fibers, or any Segment or Segments comprising a portion of the Commonwealth IRU, an equal number of alternative fibers along the same Route; provided that in any such event, such substitution (a) shall be without unreasonable interruption of service and use by Commonwealth, (b) shall be effected at the sole cost of Bluegrass, (c) shall be constructed and tested in accordance with the specifications set forth in this Agreement, and (d) shall not adversely affect the use, operation or performance of Commonwealth's network or business or change any Connecting Points or endpoints of Commonwealth.



**ARTICLE III**  
**CONSIDERATION**

**3.1. Contract Price.** Commonwealth shall pay Bluegrass the Contract Price in accordance with Sections 3.2 and 3.3.

**3.2. Method of Payment.** Commonwealth shall pay the Contract Price and any other payments pursuant to this Agreement by wire transfer of United States currency to an account or accounts designated by Bluegrass in writing.

**3.3. Time of Payment.** The Contract Price shall be due and payable by Commonwealth to Bluegrass as follows:

- (a) 30% of the Contract Price within 30 days of execution of this Agreement;
- (b) 30% of the Contract Price within 30 days of satisfaction of the Acceptance Standards at 50% of the Sites;
- (c) 30% of the Contract Price upon satisfaction of the Acceptance Standards at 100% of the Sites; and
- (d) The Contract Price less prior payments by Commonwealth to Bluegrass pursuant to Section 3.3(a)-(c) upon the successful operation of fiber connections servicing the Sites, including confirmed interoperability with the NG-KIH System, for 90 days following satisfaction of the Acceptance Standards to 100% of the Sites. The 90 days of interoperability with the NG-KIH system will commence when Bluegrass has provided fiber characterization test results to Commonwealth which achieve the Acceptance Standards.

**3.4. Changes to the Route; Incremental Costs; K-12 Sites.**

- (a) The Contract Price is a fixed price for a fixed construction scope for the Commonwealth Fibers and Electric Company Fibers based on the fiber routes and design specifications mutually-agreed upon by Commonwealth and Bluegrass as of the Effective Date. In the event a fiber route or design specification is different from, or a new Site is to be added to or eliminated from Exhibit A-2, the mileage, routes or specifications mutually agreed upon by Commonwealth and Bluegrass, Commonwealth shall submit a Change Order to Bluegrass for such fiber route or design specification change or new Site or Site eliminated from Exhibit A-2. Upon Bluegrass's acceptance of the Change Order, the Contract Price shall be increased for, and Commonwealth shall promptly pay to Bluegrass, an additional amount as compensation for such changes calculated in accordance with the following:
  - (i) incremental mileage: \$28,600 for each additional mile; *provided*, that in the event that a Change Order requires incremental mileage that is not a whole mile, the increase to the Contract Price shall be determined by multiplying \$28,600 by the actual incremental mileage; *provided, however*, that in the event that the Change Order requires a change that provides for additional mileage that is less than one mile, the incremental mileage shall be rounded up to one (1) mile and the Contract Price shall be increased by \$28,600;

- (ii) In the event that there is any change in fiber routes or design specifications agreed to between Commonwealth and Bluegrass as of the Effective Date, Commonwealth will increase the Maintenance Fee by an additional annual cost of \$800 per each additional route mile in excess of the mileage agreed to by the Commonwealth and Bluegrass as of the Effective Date; *provided*, that if the additional route mile required is not a whole mile, the increase to the Contract Price shall be determined by \$800 by the actual incremental mileage; and
- (iii) incremental building entry cables: \$3,500 per Site, subject to the adjustments in the below paragraph.

Bluegrass shall not be bound by any change to a fiber route or design specification or to add a new Site unless and until each Party has signed a Change Order.

Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the incremental prices set forth above assume that a maximum of [REDACTED] fibers will be provided, and in the event that additional fibers are used or requested by Commonwealth, Bluegrass and Commonwealth shall negotiate the applicable incremental pricing in good faith.

- (b) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the building entry price of \$3,500 per Site includes a maximum of 200 feet of cable to connect the pole or pedestal to Commonwealth's designated termination point inside the building. In the event that the cable required to reach the Commonwealth's designated termination point inside the building for a Site is between 201 feet and 300 feet of cable, the building entry price for that Site shall be increased by \$10 for each additional foot of cable required in excess of 200 feet of cable, and the Contract Price shall be increased by such additional amount; *provided*, that if the additional cable required is not a whole foot, the increase to the Contract Price shall be determined by multiplying the actual amount of feet of additional cable by \$10. In the event that the cable required to reach the Commonwealth's designated termination point inside the building for a Site is in excess of 300 feet of cable or in the event the services required to reach the Commonwealth's designated termination point inside the building requires any uncommon alteration, modification, or construction to meet fire safety, building industry, or other Legal Requirement, the Parties shall negotiate the per Site building entry price in good faith, and the Contract Price shall be increased by such amount. Notwithstanding the foregoing, the incremental building entry cost of \$3,500 is only valid until twelve (12) months from the Effective Date (or the date on which construction is completed if the Parties agree in writing to extend the construction period beyond twelve (12) months from the Effective Date.
- (c) Notwithstanding anything to the contrary set forth in this Agreement, with respect to K-12 Sites, Bluegrass's obligations hereunder shall not include the installation of building entrance cables for K-12 Sites; *provided, however*, that Commonwealth may submit a Change Order requesting that Bluegrass complete the installation of building entrance cables for K-12 Sites in accordance with **Section 3.4(a)**.

**ARTICLE IV**  
**CONSTRUCTION**

**4.1. Construction Obligations.** Bluegrass will be responsible for all costs associated with construction of the Commonwealth Fibers, including, but not limited to, walkouts, staking, engineering, permitting, pole attachments, make ready, fiber and all required equipment and fiber installation, building entrance cables and termination on fiber panels within Sites.

**4.2. Fiber Acceptance Testing.** Exhibit D sets forth Fiber Acceptance Testing procedures and test deliverables that Bluegrass shall provide to Commonwealth and procedures for determining the Acceptance Date of the Commonwealth Fibers. Notwithstanding the foregoing, all Commonwealth Fibers shall, subject to Section 4.3, meet the Acceptance Standards as described in Exhibit D on or before that date that is twelve (12) months from the Effective Date.

**4.3. Make Ready Adjustments.** The Acceptance Dates are based on a 90 day Make Ready Cycle. Each day added to the Make Ready Cycle will extend the Acceptance Dates by one day.

**4.4. Acceptance Date Obligations.** As of the Acceptance Date of the Commonwealth Fibers in any Segment, Bluegrass hereby represents and warrants on an ongoing basis throughout the Term that:

- (a) Bluegrass shall have obtained all rights, licenses, authorizations, easements, leases, fee interests, or agreements necessary to provide for the occupancy by such Segments of real property or fixtures (such as conduit, bridges, river crossings, or transmission towers);
- (b) Bluegrass is the legal owner of the Commonwealth Fibers or shall have obtained by IRU agreement, lease, or otherwise the right to use any portion of the System along the Segment it does not own; and
- (c) such Segment and the Commonwealth Fiber in such Segment shall be free of defects in materials and workmanship and is designed, engineered, installed, and constructed, at a minimum, in accordance with prevailing industry standards and the specifications set forth in Exhibits D and E to this Agreement.

Subject to the terms of Section 8.2, Bluegrass shall renew or replace existing Required Rights through the Initial Term at a minimum.

**4.5. Point of Demarcation; Termination Location.** Notwithstanding anything to the contrary set forth in this Agreement, the point of demarcation for each Site shall be [REDACTED] the Site location and shall be readily and easily accessible by Bluegrass except as otherwise mutually agreed by Commonwealth and Bluegrass in writing. Within sixty (60) days of the Effective Date, Commonwealth and Bluegrass shall conduct a joint inspection of each particular Site, and Commonwealth shall identify the termination point location for the Site's building entrance cable in a writing signed by Commonwealth unless otherwise mutually agreed in writing by Commonwealth and Bluegrass. Commonwealth will be responsible for promptly providing any additional equipment or materials at the point of termination necessary to connect the cable to Commonwealth's fiber distribution panel or other equipment at the point of termination upon Bluegrass's request, and Bluegrass shall only be required to perform and meet the Acceptance Standards up to, but not including, the final point of termination. Notwithstanding the foregoing, Bluegrass agrees to provide installation services at any Site in accordance with the pricing set forth in Section 3.4 during the period that is twelve (12) months from the Effective Date.

**4.6. Provision of Revised As-Built Drawings.** Notwithstanding **Exhibit F**, if there is a material change in the Commonwealth Fibers as a result of maintenance or relocation, Bluegrass shall deliver updated as-built drawings to the Commonwealth with respect to the relevant Segment within the later of (1) one-hundred eighty (180) calendar days following the completion of such change or (ii) thirty (30) calendar days after receipt of the Commonwealth's request.

## ARTICLE V CONNECTION AND ACCESS TO THE SYSTEM

**5.1. Connections.** Subject to the provisions herein, Commonwealth shall pay for and arrange all connections of its facilities with the Commonwealth Fibers at the point of demarcation in accordance with **Exhibit C**. Commonwealth shall be solely responsible for ensuring that all Commonwealth Equipment is present and properly functioning for the connection with the Commonwealth Fibers at the point of termination.

**5.2. No Unauthorized Access to System.** Commonwealth shall not access any part of the System without the prior written consent of Bluegrass and shall only access any part of the System upon the terms and conditions specified by Bluegrass.

## ARTICLE VI CO-LOCATION SPACE

**6.1. Request for Co-Location Space.** Commonwealth shall have the right to request co-location space from Bluegrass. If requested and available, Bluegrass will provide Commonwealth the co-location space at Bluegrass's then-market rates, terms, and conditions.

## ARTICLE VII USE OF THE SYSTEM

**7.1. Notice of Damage.** Each Party shall notify the other Party in writing of any matters pertaining to any damage or impending damage to or loss of the Commonwealth Fibers that are known to it or that could reasonably be expected to adversely affect the Commonwealth Fibers as provided in the Maintenance Agreement.

**7.2. Preventing Interference with Other Fibers.** Neither Commonwealth nor Bluegrass shall use equipment, technologies, or methods of operation that interfere in any way with, or adversely affect, the System or the use of the System by the other Party or third parties or their respective fibers, equipment, or facilities associated therewith. Each Party shall take all reasonable precautions to prevent damage to the System or to fibers used or owned by the other Party or third parties. Notwithstanding the above, the provisions of this Section shall not prevent a Party from using commercially reasonable equipment, technologies, or methods of operation if the interference or adverse effect on the other Party or a third party results primarily from such other Party or third party's use of equipment, technologies, or methods of operation that are not commercially reasonable or that are not standard in the telecommunications industry.

**7.3. Liens.** Commonwealth shall not cause or permit any part of the System to become subject to any mechanic's, materialmen's, or vendor's lien, or any similar lien. Bluegrass shall not cause or permit any of Commonwealth's rights under this Agreement to become subject to any mechanic's, materialmen's, or vendor's lien, or any similar lien; *provided, however*, that nothing herein shall prohibit Bluegrass from granting any lien, encumbrance, or security interest to a Lender in connection with any financing. If a Party breaches its obligations under this Section, it shall immediately notify the other

Party in writing and shall promptly cause such lien to be discharged and released of record without cost to the other party.

## **ARTICLE VIII** **RIGHT OF FIRST REFUSAL**

**8.1. Right of First Refusal for Commercial Customers.** Commonwealth agrees that Bluegrass will have a right of first refusal to provide managed and dark fiber services and construction of middle mile lateral or last mile spurs to any commercial user seeking to use capacity of the spare fibers delivered to the County POP throughout the Term, subject to the provisions of **Section 8.2**.

**8.2. Right to Match Third Party Proposals.** In the event Commonwealth or one of the Designated Parties makes or receives a proposal to or from a third party for the Commonwealth or one of the Designated Parties to provide managed or dark fiber services or construct middle mile lateral or last mile spurs in any of the counties listed in **Exhibit A-1** from a County POP to a commercial user and Commonwealth desires or decides to accept such proposal, Bluegrass will have the right of first refusal to provide those services or construct those laterals and/or spurs, as applicable, on the same terms and conditions between the third party and Commonwealth or the relevant Designated Party. Commonwealth or the relevant Designated Party receiving or making such third party proposal must notify Bluegrass in writing of the commercial terms of such proposal within 5 business days of receiving such proposal completing the negotiation of said contract, and Bluegrass will have 15 business days after its receipt of all of such materials to exercise its right of first refusal pursuant to this **Article VIII**. If Bluegrass wishes to provide those services or construct those laterals and/or spurs on such terms and conditions, then Bluegrass shall provide Commonwealth with written notice confirming that it is exercising its right of first refusal pursuant to this **Article VIII**, and Commonwealth or the Designated Parties, as applicable, shall prepare a written agreement with Bluegrass containing the same terms and conditions set forth in the contract with such third party for the provision of such services or the construction of those laterals and/or spurs to be executed in fifteen (15) business days. If Bluegrass declines to exercise its right of first refusal, it will keep confidential the commercial terms disclosed to it for purposes of this Article.

**8.3. Open Access Provisions.** Any and all laterals and/or last mile spurs constructed by Bluegrass under this ROFR must be Open Access such that access to the spur is granted to any reasonable party seeking it, and Bluegrass pays the same cost as any other party to transport bandwidth along its spur. Commonwealth shall cause Wholesaler to offer Bluegrass transport services at the best rate offered by Wholesaler, whether related to dark, dim, or lit transport services.

## **ARTICLE IX** **TERM**

**9.1. Term.** Subject to Commonwealth's rights to terminate this Agreement for default or convenience in accordance with 200 KAR 5:312, the initial term shall end on the thirtieth (30<sup>th</sup>) anniversary of the Effective Date (the "**Term**"). Subject to the conditions set forth below, Commonwealth may, by written notice, request to extend the Term with respect to a Major Segment; *provided, however*, that the granting of such extension is in Bluegrass's sole discretion. In the event that Commonwealth desires to extend the Term, Commonwealth shall provide Bluegrass with written notice at least one (1) year in advance of the date the Term would expire specifying that Commonwealth wishes to negotiate an extension to the Term.

**9.2. Effect of Termination.** No termination of this Agreement shall affect the rights or obligations of any Party hereto:

- (a) with respect to any payment hereunder for services rendered prior to the date of termination;
- (b) pursuant to **Articles XI (Audit Rights), XIV (Indemnification), XV (Limitation of Liability), XVII (Taxes and Governmental Fees), XIX (Confidentiality), XX (Prohibition on Illegal Payments), XXII (Dispute Resolution), or XXIII (Rules of Construction)** or **Sections 12.2 (Exclusion of Warranties) or 12.3 (No Third-Party Warranties)**; or
- (c) pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement.

**9.3. Termination for Convenience**

- (a) In the event of a termination for convenience by Commonwealth pursuant to 200 KAR 5:312, Bluegrass shall submit to Commonwealth a claim for any amounts it may be due, including amounts due for an executed Change Order for which the Commonwealth has not made payment at the time of termination for convenience and for any other billable services provided under this Agreement for which it has not been paid as of the date of termination for convenience. Any undisputed outstanding performance deductions payable to the Commonwealth in accordance with **Exhibit B** will be offset against any and all amounts payable to Bluegrass.
- (b) In the event that Commonwealth terminates this Agreement prior to the expiration of the Initial Term or terminates that certain Contract for Last Mile Infrastructure Service Provider by and among Bluegrass, Commonwealth, and Kentucky Communications Network Authority dated the same as the Effective Date (the “**Managed Services Agreement**”) prior to the expiration of the Initial Term, Bluegrass may, at Bluegrass’s sole option, upon written notice to Commonwealth, terminate this Agreement and the Managed Services Agreement without any further liability or obligation to Commonwealth or its Affiliates.

**ARTICLE X**  
**MAINTENANCE AND RELOCATION**

**10.1. Maintenance Services; Maintenance Fee; Payment Schedule.**

- (a) Bluegrass will provide maintenance of the Commonwealth Fibers and Electric Company Fibers during the Term pursuant to the terms and conditions set forth in the Maintenance Agreement. Notwithstanding anything to the contrary contained in this Agreement, Bluegrass will only be required to provide maintenance services up to the point of demarcation with respect to such Fibers and will not be responsible for any issues, including, but not limited to, any Outage, caused by any matter beyond the point of demarcation.
- (b) Commonwealth will pay Bluegrass the Maintenance Fee for the maintenance of the Commonwealth Fibers and the Electric Company Fibers in accordance with the scope agreed to between Commonwealth and Bluegrass for the Sites as of the Effective Date.
- (c) The Maintenance Fee (including any additional fees incurred in accordance with this **Section 10.1 or Section 3.4**) shall be subject to an increase on each anniversary

of the Effective Date by any percentage rate increase in the Consumer Price Index for the immediately preceding 12-month period.

- (d) The Maintenance Fee shall be paid by Commonwealth to Bluegrass (i) on the Effective Date for the first twelve (12) months of the Term, and (ii) on or before the anniversary of the Effective Date for each twelve (12) month period thereafter for the duration of the Term. No less than thirty (30) days prior to each anniversary of the Effective Date, Bluegrass shall provide written notice to Commonwealth of any increase in the Maintenance Fee as a result of this **Section 10.1**.

**10.2. Bluegrass Relocation Procedures.** If Bluegrass is required, by a third party with legal authority to do so, to relocate all or any portion of the System or any of the facilities used or required in providing Commonwealth with the Commonwealth IRU, Bluegrass shall provide Commonwealth thirty (30) calendar days' prior notice of any such relocation, if possible, and shall proceed with such relocation. Bluegrass shall have the right to direct such relocation, including the right to determine the extent of, the timing of, and methods to be used for such relocation, provided that any such relocation:

- (a) shall be constructed and tested in accordance with the specifications and requirements set forth in this Agreement and applicable Exhibits;
- (b) shall not adversely affect in any material manner the use, operation or performance of Commonwealth's network or business, or change any Connecting Points or end points of the Major Segment; and
- (c) shall not unreasonably interrupt service to Commonwealth.

**10.3. Maintenance of Commonwealth Equipment Excluded.** Bluegrass shall have no obligation under this Agreement to maintain, repair, or replace Commonwealth Equipment. Commonwealth covenants that it will keep the Commonwealth Equipment in good repair and operating condition at all times and that Commonwealth will maintain, repair, and replace the Commonwealth Equipment in accordance with industry standards.

**10.4. Payment of Relocation Costs.** Commonwealth shall reimburse for all costs associated with the relocation of any fiber, cable, or equipment if the relocation is caused by Commonwealth or otherwise relates to any public right-of-way or any right-of-way controlled by Commonwealth or a Designated Party, or an Affiliate of Commonwealth or a Designated Party. Costs for which Commonwealth is responsible pursuant to this **Section 10.4** shall be invoiced to Commonwealth by Bluegrass and shall be payable by Commonwealth within sixty (60) days of Commonwealth's receipt of such invoice.

## **ARTICLE XI** **AUDIT RIGHTS**

**11.1.** Subject to the Commonwealth's obligations under the Kentucky Open Records Act, each Party shall keep such books and records (which shall be maintained on a consistent basis and which shall accurately reflect the operations of Bluegrass) and shall readily disclose the basis for any charges (except charges fixed in advance by this Agreement or by separate agreement of the parties) 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 by the other Party and its duly authorized agents or representatives for a period of one (1) year after such charge or credit is billed or due; *provided, however*, that the auditing Party shall (i) only have access to such books and records as it reasonably needs access to pursuant to this provision, (ii) provide no less than five (5) business days prior written notice to the Party being audited

that it wishes to have access to such books and records for purposes of auditing the Party pursuant to this Section, (iii) only have access to books and records and conduct such audit during the ordinary course of business hours of the Party being audited, and (iv) not unreasonably interfere with the business of the Party being audited.

## ARTICLE XII WARRANTIES

**12.1. Warranties Relating to Agreement Validity.** In addition to any other representations and warranties contained in this Agreement, each Party hereto represents and warrants to the other that:

- (a) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (b) it has taken all requisite corporate action to approve the execution, delivery, and performance of this Agreement;
- (c) this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms; and
- (d) 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.

**12.2. EXCLUSION OF WARRANTIES.** EXCEPT FOR THE LIMITED EXPRESS WARRANTIES SET FORTH IN SECTION 12.1, BLUEGRASS MAKES NO WARRANTY TO COMMONWEALTH OR ANY OF ITS REPRESENTATIVES, AFFILIATES, OR LENDERS, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY FIBERS, THE SYSTEM, OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

**12.3. No Third-Party Warranties.** No Facility Owners or Lenders have made any representation or warranty of any kind, express or implied, to Commonwealth concerning Bluegrass, the Commonwealth Fibers, the Electric Company Fibers, the Cable, or the System or as to any of the matters set forth in Section 12.1. No Commonwealth Lenders have made any representation or warranty of any kind, express or implied, to Bluegrass concerning Commonwealth, the Commonwealth Fibers, the Electric Company Fibers, the Cable, or the System or as to any of the matters set forth in Section 12.1.

## ARTICLE XIII DEFAULT

**13.1. Default and Cure.** Commonwealth may terminate this Agreement for either default or convenience in accordance with 200 KAR 5:312. Except as set forth in Section 13.2, a Party shall not be in default under this Agreement until one of the following events occurs: (i) either Party fails to make a payment of any undisputed amount required under this Agreement, and such failure continues for more than thirty (30) days after such Party receives written notice of such failure from the other Party; *provided, however,* that any disputed amount must be submitted to the other Party pursuant to Section 13.2; (ii) either Party fails to perform or comply with any other material obligation, agreement, term, or provision of this Agreement applicable to it, and such failure continues for more than thirty (30) days after such



Party receives written notice of such failure from the other Party; *provided, however*, that if such default cannot be reasonably cured within such thirty (30) day period, and if the defaulting Party is proceeding promptly and with due diligence in curing the same, the time for curing such default shall be extended for a period of time as may be reasonably necessary to complete such curing. Upon the failure of a defaulting Party to timely cure any such default pursuant to this **Section 13.1**, then the other Party may, subject to the terms of **Articles XIV (Limitation of Liability) and XXII (Dispute Resolution)**, pursue any legal remedies it may have under applicable law or principles of equity relating to such breach.

**13.2. Disputed Amounts.** Notwithstanding any provision to the contrary in **Sections 13.1 or 13.3**, either Party shall have the right to dispute any amount due under this Agreement, provided that (i) the disputing Party provides written notice of such dispute to the other Party by the date that any such amount is due; (ii) such dispute is submitted in good faith by the disputing party; (iii) the disputing Party presents a written statement of any billing discrepancies to the other Party in reasonable detail together with supporting documentation and evidence within thirty (30) days after the date that any such amount is due; and (iv) the disputing Party negotiates in good faith with the other Party to resolve any such dispute within sixty (60) calendar days of the date any such amount is due. Commonwealth shall pay disputed amounts mutually agreed upon in favor of Bluegrass within thirty (30) days of the resolution of such dispute. Bluegrass shall credit disputed amounts mutually agreed upon in favor of Commonwealth on Commonwealth's next invoice. In the event the parties fail to mutually resolve or settle the dispute within sixty (60) days of the date any such disputed amount is due, the parties will pursue resolution of the dispute in accordance with **Article XXII** of this Agreement.

**13.3. Failure to Pay.** If Commonwealth fails to pay any undisputed amounts owed under this Agreement as required by KRS 45.453, and fails to pay all of such amount within thirty (30) days of Bluegrass's notice that it will disconnect the Commonwealth Fibers and the Electric Company Fibers, Bluegrass may, in addition to the remedies set forth in **Section 13.1**, disconnect the Electric Company Fibers and the Commonwealth Fibers from all Connecting Points and from all Commonwealth Equipment on Bluegrass's premises. Bluegrass shall restore such Connecting Points and Commonwealth Equipment connections and resume providing services only if Commonwealth (a) pays Bluegrass's bona fide estimate of the Costs incurred or to be incurred pursuant to this **Section 13.3** and (b) pays all amounts due and owing to Bluegrass with applicable interest pursuant to KRS 45.454. In the event that Commonwealth does not take the actions described in clauses (a) and (b) above in this **Section 13.3** within thirty (30) days after Bluegrass's disconnection of the Commonwealth Fibers or cessation of services as described in this Section, then, in addition to all other remedies described in this **Section 13.3**, this **Article XIII** or otherwise in this Agreement, Bluegrass shall have the right to terminate this Agreement and shall have no further obligation with respect to this Agreement.

**13.4. Interest.** If Commonwealth fails to make any payment under this Agreement when due, such amounts shall accrue interest, from the date such payment is due until paid, including accrued interest, at a rate (unless specifically described elsewhere in this Agreement) equal to one percent (1.0%) per month or, if lower, the highest percentage allowed by law.

#### **ARTICLE XIV** **INDEMNIFICATION**

**14.1. Indemnification.** To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, the Commonwealth and Bluegrass (each Party known individually as the "**Indemnitor**") each hereby agrees to indemnify, defend, protect and hold harmless the other Party and its Representatives, Facility Owners (with respect to Bluegrass), Lenders and Affiliates (the "**Indemnitee**"), from and against, and assumes liability for: (i) claims made by a third party for any injury, loss or damage to any person, tangible property or facilities of any person to the extent arising out of, or

resulting from, the grossly negligent acts or omissions or willful misconduct of the Indemnitor or its Representatives, Affiliates, licensees, invitees and vendors, or any entity for whom it is in law responsible, arising out of, or in connection with, the performance by Indemnitor of its obligations under this Agreement; (ii) any claims, liabilities or damages arising out of any violation by Indemnitor of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by Indemnitor of its obligations under this Agreement; and (iii) any liability to a third party arising directly or through one or more intermediaries from an action or claim brought by the Indemnitor against such third party, but only to the extent such third party has a right of indemnification, impleader, cross claim, contribution or other right of recovery against the Indemnitee for any indirect, special or consequential damages awarded against such third party in favor of the Indemnitor.

**14.2. Material and Continuing Obligation.** Each Party's obligation to indemnify, defend, protect, and save the other Party harmless is a material obligation to the continuing performance of the other Party's obligations hereunder.

## **ARTICLE XV** **LIMITATION OF LIABILITY**

**15.1. EXCLUSION OF INDIRECT DAMAGES.** SUBJECT TO THE COMMONWEALTH'S AUTHORITY TO SEEK ALL APPLICABLE DAMAGES FOR BLUEGRASS'S DEFAULT AS PROVIDED FOR IN 200 KAR 5:312, AND NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR ANY APPLICABLE LAW OR REGULATION OTHER THAN 200 KAR 5:312 TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, FACILITY OWNERS, LENDERS AND AFFILIATES FOR ANY SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OR FAILURE TO PERFORM ITS RESPECTIVE OBLIGATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE (WHETHER ARISING OUT OF (I) TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE; (II) CLAIMS OF COMMONWEALTH, WHETHER OCCASIONED BY ANY OBLIGATIONS PERFORMED BY, OR FAILED TO BE PERFORMED BY, THE OTHER PARTY; OR (III) ANY OTHER CAUSE WHATSOEVER, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, ALL CLAIMS FOR WHICH INDIRECT DAMAGES ARE HEREBY SPECIFICALLY WAIVED. NOTHING CONTAINED IN SECTION 15.1 SHALL BE DEEMED TO LIMIT AN INDEMNITOR'S OBLIGATIONS UNDER SECTION 14.1. FOR PURPOSES OF CLARITY, COMMONWEALTH SHALL ONLY BE ENTITLED TO SEEK DAMAGES THAT WOULD OTHERWISE BE EXCLUDED PURSUANT TO THIS SECTION 15.1 TO THE EXTENT THAT COMMONWEALTH IS PROHIBITED FROM WAIVING THE DAMAGES DESCRIBED IN SECTION 15.1 PURSUANT TO 200 KAR 5:312.

**15.2. No Recourse Against Released Parties.** Neither Party shall have any recourse of any kind against any Released Party or any assets of a Released Party in respect of any Claim except in the case of such Released Party's gross negligence or willful misconduct, it being expressly agreed and understood that no liability whatsoever shall attach to, or be incurred by, any Released Party in respect of any other claims under, or by reason of, this Agreement or any other instrument, arrangement or understanding related to the Commonwealth IRU. Each Party waives all such recourse to the extent set forth in this Section on behalf of its successors, assigns, and any entity claiming by, through, or under such Party.

**15.3. Pursuit of Actions Against Facility Owners.** Notwithstanding the foregoing provisions of this Article, and only to the extent Bluegrass is required under the terms and provisions of any Required Right to indemnify a Facility Owner from and against any and all claims arising out of service interruption, cessation, unreliability of or damage to the System, regardless of whether any such claim arises from the sole or partial negligence, willful misconduct or other action or inaction of such Facility Owner, Commonwealth hereby releases such Facility Owner, and hereby waives, all claims arising out of service interruption, cessation, unreliability of or damage to the Commonwealth Fibers and the Electric Company Fibers regardless of whether such claims arise from the sole or partial negligence, willful misconduct or other action or inaction of such Facility Owner. Commonwealth shall notify Bluegrass in writing before pursuing any such Claim against a Facility Owner, and such notification shall make specific reference to this provision of the Agreement. Nothing in this Section 15.3 shall be construed as a release or waiver by Commonwealth of any Claim against Bluegrass.

**15.4. Pursuit of Actions Against Third Parties.** Except as provided in Sections 15.2 and 15.3, nothing contained in this Agreement shall operate as a limitation on the right of either Bluegrass or Commonwealth to bring an action or claim for damages against any third party. Each of Bluegrass and Commonwealth shall reasonably cooperate with the other Party to the extent necessary to enable the other Party (at such other Party's sole expense) to pursue any such action or claim related to the terms and conditions of this Agreement against such third party.

**15.5. Commonwealth Contracts.** To the extent Commonwealth is permitted to allow other parties to use the Commonwealth Fibers for any purpose, Commonwealth, in any contract or offering of service, capacity, or rights of use that involves use of the System, shall include in such contract or offering a written limitation of liability that is binding on Commonwealth's customers and is at least as restrictive in all material respects as the limitations set forth in Sections 15.1, 15.2 and 15.3.

**ARTICLE XVI**  
**PURPOSELY LEFT BLANK**

**ARTICLE XVII**  
**TAXES AND GOVERNMENTAL FEES**

**17.1. Taxation of Commonwealth.** Bluegrass understands that, as of the Effective Date, Commonwealth is a tax-exempt entity. Accordingly, and notwithstanding the remainder of this Article, Bluegrass shall not, directly or indirectly, request or receive reimbursement or contribution from Commonwealth for any tax from which Commonwealth is exempt. For any taxes or fees, including, but not limited to, universal service funding, that may be assessed against Bluegrass for which Commonwealth is not exempt, or if the Commonwealth Fibers are assigned to a non-tax exempt entity, Bluegrass will collect and remit such taxes and fees to the appropriate Government Authority.

**17.2. Bluegrass Obligations.** Subject to Section 17.1 above, Bluegrass shall timely report and pay any and all sales, use, income, gross receipts, excise, transfer, ad valorem or other taxes, and any and all franchise fees or similar fees properly assessed against it due to its construction, ownership, physical location or use of the System.

**ARTICLE XVIII**  
**NOTICE**

**18.1. Notice Addresses.** Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

**If to Commonwealth:** Commonwealth of Kentucky  
Attention: Secretary  
Finance and Administration Cabinet  
702 Capital Avenue  
Room 383  
Frankfort, KY 40601  
Facsimile No. (502) 564-6785

**With copy to KCNA:** KCNA  
General Government Cabinet  
209 St. Clair Street  
4<sup>th</sup> Floor  
Frankfort, KY 40601  
Facsimile No. (502) 564-0883

**If to Bluegrass:** Bluegrass Network, LLC  
Attention: Bryan Bell  
2902 Ring Road  
Elizabethtown, KY 42702

**With copy to:** Dinsmore & Shohl LLP  
Attention: John E. Selent  
101 South Fifth Street, Suite 2500  
Louisville, Kentucky 40202

or at such other address as may be designated in writing to the other Party in accordance with this **Article XVIII**.

**18.2. Notice and Invoice Delivery.** Unless otherwise provided herein, notices and invoices shall be hand delivered; sent by registered or certified U.S. Mail, postage prepaid; or by commercial overnight delivery service, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified above when hand delivered, on the day after being sent when sent by overnight delivery service, or three (3) United States Postal Service business days after deposit in the mail when sent by U.S. mail.

## **ARTICLE XIX** **CONFIDENTIALITY**

**19.1. Confidentiality Obligation.** To the extent permitted by the Kentucky Open Records Act, if either Party provides confidential information to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns confidential information regarding the facilities or plans of the other, the receiving Party shall (a) protect the confidential information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, but in any case with at least reasonable care and (b) refrain from using such confidential information except in negotiating or performing under this Agreement. Notwithstanding the above, a Party may provide such confidential information to its directors, officers, members, managers, employees, agents, attorneys, contractors, and consultants (collectively, the “**Representatives**”) and its Affiliates, financial institutions, underlying facility owners, potential assignees (who are bound by a written agreement restricting use and disclosure of confidential information), and Representatives of Affiliates, in each case whose access is reasonably necessary. Each such recipient of confidential information shall be informed by the Party disclosing confidential information of its confidential nature

in writing, shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other party) for any breach of this provision by any entity to which that Party discloses confidential information. In the event that Commonwealth receives a Kentucky Open Records Act request pursuant to which any information related to this Agreement will be disclosed, Commonwealth shall give Bluegrass notice of such request before disclosing any information with respect to such request; *provided*, however, that Commonwealth shall use best efforts to ensure that any and all information that is exempt from disclosure pursuant to the Kentucky Open Records Act is redacted and not disclosed to any Party requesting such information pursuant to the Kentucky Open Records Act. The terms of this Agreement (but not its execution or existence) shall be considered confidential information for purposes of this Article, except as set forth in **Section 19.3**. The obligations set forth in this Section shall survive expiration or termination of this Agreement for a period of two (2) years, except that, with respect to any confidential information designated by the disclosing Party as a trade secret, and entitled to protection as such, the obligations set forth in this Section shall survive such expiration or termination indefinitely. Notwithstanding anything to the contrary in this Agreement, Commonwealth acknowledges and agrees that Bluegrass may disclose, share, and discuss this Agreement and all matters related to the transactions contemplated herein with each of the following:

- (a) Brandenburg Telephone Company, Inc. and its Affiliates;
- (b) Duo County Telephone Cooperative Corporation, Inc.;
- (c) Foothills Rural Telephone Cooperative Corporation, Inc.;
- (d) Gearheart Communications Company, Inc.;
- (e) Logan Telephone Cooperative, Inc. and its Affiliates;
- (f) Mountain Rural Telephone Cooperative Corporation, Inc.;
- (g) North Central Telephone Cooperative Corporation;
- (h) Peoples Rural Telephone Cooperative Corporation, Inc.;
- (i) South Central Rural Telephone Cooperative Corporation, Inc.;
- (j) Thacker-Grigsby Telephone Company, Inc.;
- (k) Cumberland Cellular Inc.;
- (l) East Kentucky Network, LLC; and
- (m) Bluegrass's Affiliates.

**19.2. Permitted Disclosures.** Notwithstanding any other provision herein, neither Bluegrass nor Commonwealth shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party's violation of this Agreement;
- (b) is required to be disclosed by a governmental, regulatory authority, or judicial order, rule, or regulation or proceedings with respect to this Agreement or a Party's

obligations as a publicly held company, provided that a receiving Party subject to such requirement shall promptly notify the disclosing Party of such requirement;

- (c) is independently developed by the receiving Party without use of, or reference to, the disclosing Party's Confidential Information;
- (d) becomes available to the receiving Party without restriction from a third party who is not otherwise restricted from disclosing such information;
- (e) is required by its lender and is given to such lender on a confidential basis; or
- (f) to the extent disclosure by the receiving party is required by applicable law or regulation.

**19.3. Goodwill and Publicity.** Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of the other party. The parties shall coordinate and cooperate with each other when making public announcements related to the terms of this Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Notwithstanding the above, either Party may, without the other Party's approval but after allowing the other Party a reasonable opportunity to comment on a proposed press release, issue a press release announcing the execution of this Agreement.

## **ARTICLE XX** **PROHIBITION ON ILLEGAL PAYMENTS**

**20.1.** Neither Party shall use any funds received under this Agreement for purposes that violate any applicable laws, regulations, decrees, or judgments of any Governmental Authority applicable to that party. Neither Party shall pay any commission, fees or rebates to any employee of the other party. If either Party has reasonable cause to believe that one of the provisions in this Article has been violated, it or its representative may audit the books and records of the other Party for the sole purpose of establishing compliance with such provisions; *provided, however*, that the auditing Party shall (i) only have access to such books and records as it reasonably needs access to pursuant to this provision, (ii) provide no less than five (5) business days prior written notice to the Party being audited that it wishes to have access to such books and records for purposes of auditing the Party pursuant to this Section, (iii) only have access to books and records and conduct such audit during the ordinary course of business hours of the Party being audited, and (iv) not unreasonably interfere with the business of the Party being audited.

## **ARTICLE XXI** **FORCE MAJEURE; EMINENT DOMAIN**

**21.1. Excused Performance.** Neither Bluegrass nor Commonwealth shall be in default under this Agreement with respect to any delay in its performance caused by any of the following conditions (each a "Force Majeure Event"): (a) act of God; (b) fire; (c) flood; (d) material shortage or unavailability, including, but not limited to, any shortage of fiber optic cable (each Party hereby acknowledges and agrees that ten (10) weeks is the customary period of time necessary for delivery of fiber optic cable), not resulting from the responsible Party's failure to timely place orders or take other necessary and commercially reasonable actions therefor; (e) codes, laws, rules, regulations, decrees, judgments, or restrictions of a Governmental Authority; (f) war, acts of terrorism or civil disorder; (g) power outages and cable cuts not due to Bluegrass's gross negligence; (h) any increase in the Make Ready Cycle beyond the ninety (90) day cycle described in Section 4.3; or (i) any other cause beyond the

reasonable control of such party. The Party claiming relief under this Article shall promptly notify the other in writing of the existence of the Force Majeure Event relied on and the expected duration of the Force Majeure Event (if known) and upon the cessation or termination of the Force Majeure Event. The Party claiming relief under this Article shall exercise commercially reasonable efforts to minimize the time for any such delay. Notwithstanding the foregoing, such Force Majeure Event shall not excuse Bluegrass's timely performance pursuant to the Maintenance Agreement in any area not affected by the Force Majeure, except to the extent timely performance is beyond the reasonable control of Bluegrass.

**21.2. Eminent Domain.** Should any portion of the Commonwealth Fibers or the Electric Company Fibers belonging to Bluegrass or the underlying Facility Owner be acquired by eminent domain, nationalization, or expropriation (each of which, a "Taking") by any authority or entity possessing such power, then, in that event, each Party shall be excused from performance of its obligations to the extent provided in Section 21.1. In the event Commonwealth wishes to restore the affected Route that was subject to a Taking during the Term, Bluegrass shall relocate all or any portion of the Commonwealth Fibers or Electric Company Fibers which is the subject of the Taking in accordance with the Sections 10.2 and 10.4.

## **ARTICLE XXII** **DISPUTE RESOLUTION**

**22.1.** It is the intent of Bluegrass and Commonwealth that any disputes which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' representatives. When such resolution is not possible, the parties hereto agree to resolve such disputes in accordance with the provisions of this Article.

**22.2.** Any claims or disputes arising under the terms and provisions of this Agreement, or any claims or disputes which the parties are unable to resolve within the seventy-two (72) hour time period, shall be resolved pursuant to KRS 45A.230 - 245.

## **ARTICLE XXIII** **RULES OF CONSTRUCTION**

**23.1. Interpretation.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. References to "person" or "entity" each include natural persons and legal entities, including corporations, limited liability companies, partnerships, sole proprietorships, business divisions, unincorporated associations, governmental entities, and any entities entitled to bring an action in, or that are subject to suit in an action before, any state or federal court of the United States. The word "including" means "including, but not limited to." "Days" refers to calendar days and references to "business days" exclude Saturdays, Sundays and federal holidays and holidays in the Commonwealth of Kentucky. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

**23.2. Cumulative Remedies.** Except as set forth to the contrary herein, any right or remedy of Bluegrass or Commonwealth shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

**23.3. No Third-Party Rights.** Nothing in this Agreement is intended to provide any legal rights to any other person or entity other than the Parties except under the indemnification provisions and

except that (a) the Released Parties shall have the benefit of **Section 15.2**; and (b) the Facility Owners or Lenders shall be entitled to rely on, and have the benefit of, **Sections 12.3, 14.1, 15.2, and 15.3**.

**23.4. Agreement Fully Negotiated.** This Agreement has been fully negotiated between and jointly drafted by Bluegrass and Commonwealth.

**23.5. Industry Standards.** Except as otherwise set forth herein, for the purpose of this Agreement, the generally accepted standards of performance within the telecommunications industry in the relevant market engaging in an undertaking of similar scope and size shall be the measure of whether a Party's performance is reasonable and timely.

**23.6. Cross References.** Except as the context otherwise indicates, all references to Exhibits, Articles, Sections, Subsections, Clauses, and Paragraphs refer to provisions of this Agreement.

**23.7. Limited Effect of Waiver.** The failure of either Bluegrass or Commonwealth to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

**23.8. Severability.** If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**23.9. No Partnership Created.** The relationship between Bluegrass and Commonwealth 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 federal income tax purposes. Bluegrass and Commonwealth, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

#### **ARTICLE XXIV** **ASSIGNMENT**

**24.1. Conditions to Effective Assignment.** Subject to the other terms and conditions set forth in this **Article XXIV**, an assignment or other transfer of this Agreement or a Party's rights or obligations hereunder, in whole or in part, to any other Party shall not be effective without (a) the non-assigning Party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; (b) the written agreement of the assignee to be bound by all terms and conditions of this Agreement; and (c) such assignee's agreement to promptly cure all prior defaults of the assigning Party under this Agreement. If assignment is permitted under this Article without the non-assigning Party's consent, then the assignor shall give prior written notice of the assignment to the non-assigning Party.

**24.2. Consent Not to be Unreasonably Withheld.** The non-assigning Party shall not unreasonably withhold, delay, or condition its consent required hereunder to an assignment if neither the assigning Party nor the proposed assignee is in material default under this Agreement or any other agreement with the non-assigning party. For purposes of this Section, Bluegrass's consent to a requested assignment or transfer shall not be considered unreasonably withheld if such requested assignment or transfer is to a party which Bluegrass determines does not have the technical ability or financial capability to perform Commonwealth's obligations under this Agreement. It is the express understanding of the Parties that Commonwealth may sublicense the use of the Commonwealth Fibers to third parties,



including the Designated Parties, for commercial use or economic development reasons, which shall not be considered an assignment of this Agreement.

**24.3. Assignments to Particular Classes of Entities.** The provisions of Section 24.1 notwithstanding:

- (a) Bluegrass may grant a security interest in some or all of its rights and obligations under this Agreement or in the System to any Lender to Bluegrass. If Commonwealth so requests, Bluegrass shall use commercially reasonable efforts to obtain from any such Lender a written non-disturbance agreement, containing such terms and conditions as are customary, pursuant to which such Lender acknowledges Commonwealth's rights and interests under this Agreement and agrees not to disturb such rights and interests so long as Commonwealth is in compliance with the terms and provisions of this Agreement, including, without limitation, the payment in full when due of all amounts payable by Commonwealth hereunder.
- (b) Commonwealth may grant a security interest in some or all of its rights and obligations under this Agreement in all or any part of the Commonwealth Fibers to a Lender of Commonwealth. If Bluegrass so requests, Commonwealth shall use commercially reasonable efforts to obtain from any such Lender a written agreement pursuant to which such Lender acknowledges that (i) such Lender is subject to all of the terms and conditions of this Agreement that are binding on Commonwealth, and (ii) to the extent such Lender exercises its rights as a secured party, (A) it does not acquire any greater rights or assume any lesser obligations than were available to, or imposed upon, Commonwealth prior to such exercise and (B) it would be subject to any rights and remedies available to Bluegrass under this Agreement at such time.
- (c) Bluegrass may assign all of its rights and obligations to the underlying Facility Owners with respect to portions of the System with the prior written consent of Commonwealth, which consent shall not be unreasonably withheld, conditioned, or delayed if, at the time of Bluegrass's request, (a) neither Bluegrass nor the proposed assignee is in material default under this Agreement or any other agreement with the Commonwealth and (b) the assignee agrees in writing to be bound by all the terms and conditions of this Agreement and the exhibits hereto.
- (d) Either Party may assign its interest in this Agreement without the prior consent of the other Party (i) to any corporation or other entity which is a successor to such Party either by merger, consolidation, or sale of stock or equity; (ii) to a purchaser of all or substantially all of such Party's assets; (iii) to any entity that acquires all of the System containing the Major Segments; or (iv) to a corporation or other entity which is an Affiliate of such Party, so long as, in the case of an assignment to an Affiliate, the assignor remains fully and jointly and severally liable for all its obligations hereunder.

**24.4. Agreement Binds Successors.** This Agreement and the rights and obligations under this Agreement (including the limitations on liability and recourse set forth in this Agreement benefiting the other Party and the Released Parties) shall be binding upon, and shall inure to the benefit of, Bluegrass and Commonwealth and their respective permitted successors and assigns.

**24.5. Change in Control Not an Assignment.** Notwithstanding any presumptions under applicable state law that a change in control of a Party constitutes an assignment of an agreement, a change in control of a Party shall not be deemed an assignment for purposes of this Agreement.

**24.6. Right to Subcontract.** Bluegrass may subcontract with any third party for construction, testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder or may have the underlying Facility Owner or its contractor perform such obligations, but Bluegrass in any event shall remain fully and directly responsible to Commonwealth for the performance of such services and obligations.

**24.7. Designated Parties as Agents.** The Parties acknowledge and agree that the Designated Parties may operate as agents of Commonwealth and shall have authority to make decisions for and bind Commonwealth. Commonwealth agrees and acknowledges that Bluegrass may follow the instructions and take such actions or not take such actions as the Designated Parties may instruct Bluegrass, and the actions and instructions of the Designated Parties shall be binding on Commonwealth. In no event will Bluegrass be obligated to confirm that a Designated Party is duly-authorized by Commonwealth or otherwise has the authority to make such determination or otherwise bind Commonwealth with respect to this Agreement or the actions to be taken or actions not to be taken, and Commonwealth shall have no claim or defense against Bluegrass that such Designated Party was not authorized to act as the agent of and bind Commonwealth pursuant to this Agreement and any action taken or action not taken pursuant to this Agreement.

**ARTICLE XXV**  
**ENTIRE AGREEMENT; AMENDMENT; EXECUTION**

**25.1. Integration; Exhibits.** This Agreement constitutes the entire and final agreement and understanding between Bluegrass and Commonwealth 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 made a part of this Agreement by reference. Where the terms of the Agreement and an Exhibit conflict, the Exhibit will control.

**25.2. No Amendment.** This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Bluegrass and Commonwealth.

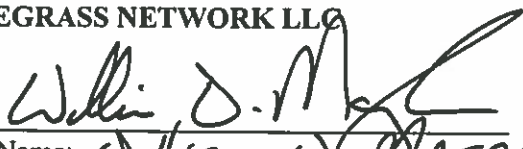
**25.3. Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

**25.4. Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and delivery of the signature page of a counterpart to the other Party by electronic mail in "portable document format" (".pdf") form, or by any other electronic means; *provided* that, if delivery is made by electronic mail in .pdf form, or by any other electronic means, the executing Party shall promptly deliver a complete counterpart that it has executed to the other Party.

*[Remainder of Page Left Blank Intentionally – Signature Page Follows]*


IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Bluegrass and Commonwealth have executed this Agreement as of the dates set forth below.

**BLUEGRASS NETWORK LLC**

By:   
Print Name: William D. Macrura  
Title: EXEC. DIRECTOR

Date: 4/20/17

**COMMONWEALTH OF KENTUCKY**

By:   
Print Name: William M. Landrum III  
Title: Secretary, Finance and Administration Cabinet

Date: 20 Apr 2017

**APPROVED AS TO  
FORM & LEGALITY**

  
**APPROVED  
FINANCE & ADMINISTRATION CABINET**

**EXHIBIT A**  
**Route Descriptions**

**EXHIBIT A-1**  
**MAP OF MAJOR SEGMENTS**

**EXHIBIT A-2**  
**DESCRIPTION OF MAJOR SEGMENT AND GRANTEE FIBERS**

Site ID	Total Miles	Site Name	Address	City	County	Site Category	Fiber Needed	County Site with Spares for Wholesale	Backbone Termination Handoff Coordinates
160	1.423	Technology BLDG	302 Gen John Adair Dr Columbia, KY 42728	Columbia	Adair	K-12	4		37.091460, - 85.304800
628	0.984	DJJ-AdairCo-YDC	401 Appleby Rd	Columbia	Adair	Government Site	2		37.091460, - 85.304800
992	0.083	JUS KSP/Post 15 Adair Co	1118 Jamestown St & Hwy 55 S	Columbia	Adair	Government Site	2		37.091460, - 85.304800
1755	0.047	Linsey Wilson College	210 Lindsey Wilson Street	Columbia	Adair	Government Site	4	8	37.091460, - 85.304800
3	23.797	Allen Co. Board Office	570 Oliver St. Scottsville, KY 42164	Scottsville	Allen	K-12	4		36 5547 45N 86 2448.33W
257	0.176	Allen Co Health Department	207 E Locust St	Scottsville	Allen	Government Site	2	8	36 5547 45N 86 2448.33W
258	0.086	Allen County Circuit Clerk - DATA ONLY	200 West Main Street	Scottsville	Allen	Government Site	2		36 5547 45N 86 2448.33W
259	0.506	Allen County WFD / REV PVA	201 W Main St	Scottsville	Allen	Government Site	2		36 5547 45N 86 2448.33W
433	0.064	CHFS Allen County	100 South Court Street	Scottsville	Allen	Government Site	2		36 5547 45N 86 2448.33W
492	1.970	CHFS Warren Co Child Based Services	29 Hillview Drive	Scottsville	Allen	Government Site	2		36 5547 45N 86 2448.33W
1589	0.062	Allen County Public Library	106 West Public Square, Scottsville, KY 42164	Scottsville	Allen	Library	2		36 5547 45N 86 2448.33W
268	0.057	Barren County Clerk	117 N Public Sq	Glasgow	Barren	Government Site	2		37 00 05 94N 85 54 34.10W
398	0.070	CFC DCBS/DJJ-Community-Branch-Glasgow	746 E MAIN ST	Glasgow	Barren	Government Site	2		37 00 05 94N 85 54 34.10W
567	0.082	DDL BARREN CO	102 COURTHOUSE SQ	Glasgow	Barren	Government Site	2		36 59 54 96N 85 55 09.19W
11	0.418	Barren Co. High	507 Trojan Tr. Glasgow, Ky 42141	Glasgow	Barren	K-12	4		36 59 54 96N 85 55 09.19W
236	1.894	Western Kentucky University - Glasgow Regional Camp	500 Hilltopper Way, Glasgow, KY 42141	Glasgow	Barren	CPE	4	8	36 59 54 96N 85 55 09.19W
1660	0.964	Mary Wood Weldon Memorial Public Library	1530 South Green Street, Glasgow, KY 42141	Glasgow	Barren	Library	2		36 59 54 96N 85 55 09.19W
35	0.058	Caverna Ind. Board	1102 N Dixie Hwy Cave City, KY 42127	Cave City	Barren	K-12	4		37 08 50.00N 85 56 28.76W
67	0.165	Glasgow Independent Board	1108 Cleveland Av Glasgow, KY 42142	Glasgow	Barren	K-12	4		37 00 31.16N 85 53 11.63W
269	0.070	Barren County MH MR / Glasgow State Nursing Facility.	302 Lexington Drive	Glasgow	Barren	Government Site	2		37 00 35.16N 85 54 35.36W

542	0.126	COR/Probation & Parole	100 B Reynolds Road	Glasgow	Barren	Government Site	2		37 00 58.17N 85 55 42.02W
1198	0.538	OPA Barren County	312 Samson St	Glasgow	Barren	Government Site	2		36 59 54.96N 85 55 09.19W
1384	0.141	WFD ONE STOP/GLASGOW	445 N GREEN ST	Glasgow	Barren	Government Site	2		37 00 05.94N 85 54 34.10W
23	0.252	Breckinridge County Board of Education Annex	135 Bank St, Hardinsburg, KY 40143	Hardinsburg	Breckinridge	K-12	4		37°45'38.20"N 86°26'23.63"W
40	0.387	Cloverport Schools	101 Fourth St Cloverport, KY 40111	Cloverport	Breckinridge	K-12	4		37°45'38.20"N 86°26'23.63"W
292	0.076	Breckinridge Co Health Department	220 S Hardin St	Hardinsburg	Breckinridge	Government Site	2	8	37°45'38.20"N 86°26'23.63"W
293	0.106	Breckinridge County Clerk	208 South Main Street	Hardinsburg	Breckinridge	Government Site	2		37°45'38.20"N 86°26'23.63"W
294	0.076	Breckinridge County Circuit Clerk - DATA ONLY	111 W 2nd St	Hardinsburg	Breckinridge	Government Site	2		37°45'38.20"N 86°26'23.63"W
295	0.462	Breckinridge County Clerk	109 West Caroline Street	Irvington	Breckinridge	Government Site	2		37°45'38.20"N 86°26'23.63"W
436	0.066	CHFS Breckinridge Co Child Base Services	110 Old Highway 60 East	Hardinsburg	Breckinridge	Government Site	2		37°45'38.20"N 86°26'23.63"W
1598	0.090	Breckinridge County Public Library	308 Old Highway 60, Hardinsburg, KY 40143	Hardinsburg	Breckinridge	Library	2		37°45'38.20"N 86°26'23.63"W
34	1.706	K-12	1841 E. KY Hwy 70 Liberty, KY 42539	Liberty	Casey	K-12	4		37.060662, - 85.079361
229	19.355	KCTCS	3609 N. US 127 Liberty, Kentucky 42539	Liberty	Casey	KCTCS	4		37.060662, - 85.079361
312	0.150	Government Site	614 Campbellsville St	Liberty	Casey	Government Site	2		37.060662, - 85.079361
573	0.058	Government Site	231 Courthouse Sq	Liberty	Casey	Government Site	2		37.060662, - 85.079361
1007	0.062	Government Site	169 Courthouse Square	Liberty	Casey	Government Site	2		37.060662, - 85.079361
1367	0.047	Government Site	3609 N US 127	Liberty	Casey	Government Site	2	8	37.060662, - 85.079361
1604	0.070	Library	238 Middleburg Street, Liberty, KY 42539	Liberty	Casey	Library	2		37.060662, - 85.079361
1761	0.047		1000 Hustonville Street, Liberty, KY 42539	Liberty	Casey	Government Site	2		37.060662, - 85.079361
39	57.372	Clinton City High school	65 Highschool Dr. Albany, KY 42602	Albany	Clinton	K-12	4		37.091460, - 85.304800
230	2.645	Somerset Community College - Clinton Campus	1273 KY Highway 90, Albany, KY 42602	Burkesville	Clinton	KCTCS	4		37.091460, - 85.304800
330	1.540	CFC DCBS CLINTON CO	801 TENNESSEE RD	Albany	Clinton	Government Site	2	8	37.091460, - 85.304800
535	0.067	Clinton County Clerk / Circuit Clerk / PVA	100 S Cross St	Albany	Clinton	Government Site	2		37.091460, - 85.304800
1607	0.294	Clinton County Public Library	302 King Drive, Albany, KY 42602	Albany	Clinton	Library	2		37.091460, - 85.304800

44	0.701	Cumberland County High School	912 N. Main St. Burkesville, KY 42717	Burkesville	Cumberland	K-12	4	37.091460, -85.304800
331	0.461	CFC DCBS Cumberland Co	232 KEEN ST	Burkesville	Cumberland	Government Site	2	37.091460, -85.304800
558	0.059	Cumberland County Clerk / PVA	601 COURTHOUSE SQ	Burkesville	Cumberland	Government Site	2	37.091460, -85.304800
662	0.083	DOT-DDL Burkesville	112 COURTHOUSE SQUARE	Burkesville	Cumberland	Government Site	2	37.091460, -85.304800
1608	0.145	Cumberland County Public Library	114 Hill Street, Burkesville, KY 42717	Burkesville	Cumberland	Library	2	37.091460, -85.304800
51	14.777	Edmonson Co. Board	100 High School Rd Brownsville, KY 42210	Brownsville	Edmonson	K-12	4	37.02.00.77N 86 12.05.85W
472	0.079	CHFS Edmonson Co Child Based Services	1122 S Main St	Brownsville	Edmonson	Government Site	2	37.02.00.77N 86 12.05.85W
1276	0.050	REV PVA / AVIS EDMONSON CO	108 Main St	Brownsville	Edmonson	Government Site	2	37.02.00.77N 86 12.05.85W
1611	0.286	Edmonson County Public Library	280 Ferguson Street, Brownsville, KY 42210	Brownsville	Edmonson	Library	2	37.02.00.77N 86 12.05.85W
70	35.019	Grayson Co High School	340 Schoolhouse Rd, Leitchfield, Ky 42754	Leitchfield	Grayson	K-12	4	37°45'38.20"N 86°26'23.63"W
191	0.935	Elizabethtown Community & Technical College - Leitchf	101 E. Carroll Gibson Blvd., Leitchfield, KY	Leitchfield	Grayson	KCTCS	4	37°45'38.20"N 86°26'23.63"W
337	0.069	CFC DCBS GRAYSON CO	10 Public Square	Leitchfield	Grayson	Government Site	2	37°45'38.20"N 86°26'23.63"W
338	0.065	CFC DCBS GRAYSON CO	100 McCubbins Blvd	Leitchfield	Grayson	Government Site	2	37°45'38.20"N 86°26'23.63"W
670	0.273	DOT-DDL Grayson Co	500 Carroll Gibson Blvd	Leitchfield	Grayson	Government Site	2	37°45'38.20"N 86°26'23.63"W
732	0.133	Grayson Co Health Center (PSR)	124 E White Oak St	Leitchfield	Grayson	Government Site	2	37°45'38.20"N 86°26'23.63"W
1369	0.068	WFD DES Leitchfield	125 E MARKET ST	Leitchfield	Grayson	Government Site	2	37°45'38.20"N 86°26'23.63"W
71	2.389	Green Co. High school	302 Brummel Av Greensburg, KY 42743	Greensburg	Green	K-12	4	37 40 28.52N 85 50 45.41W
340	0.067	CFC DCBS GREEN CO	605 COLUMBIA HWY	Greensburg	Green	Government Site	2	37 40 28.52N 85 50 45.41W
733	0.084	Green Co Circuit Clerk	200 W Court St	Greensburg	Green	Government Site	2	37 40 28.52N 85 50 45.41W
734	0.135	Green County Clerk / PVA	203 W COURT ST	Greensburg	Green	Government Site	2	37 40 28.52N 85 50 45.41W
1623	0.059	Green County Public Library	112 West Court Street, Greensburg, KY 42743	Greensburg	Green	Library	2	37 40 28.52N 85 50 45.41W
74	0.222	Hardin Co. Technology Center	209 Corporate Drive, Suite 130 Elizabethtown, KY 4270	Elizabethtown	Hardin	K-12	4	37°42'33.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W
687	1.198	DT/KY ONLINE/CDL DRIVER INFO	220 FREEDOMS WAY	Radcliff	Hardin	Government Site	2	37°52'56.01"N 86°6'0.08"W
1057	0.393	KY Veterans Cemetery Central (KYC-C)	2501 N Dixie Hwy	Radcliff	Hardin	Government	2	37°52'56.01"N



56	0.295	E-town High school	620 N Mulberry St Elizabethtown, KY 42701	Elizabethtown	Hardin	Site	86°6'0.08"W 37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	4		
171	0.968	West Point Ind. Board	209 N 13th St West Point, KY 40177	West Point	Hardin	K-12	37°52'56.01"N 86°6'0.08"W	4		
429	0.905	CFC-DCS-CA HARDIN CO	2819 Ring Road	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		
441	0.223	CHFS CCSHCN Hardin Co	580 Westport Rd	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		
446	0.109	CHFS Child Care Hardin Co	924 N Mulberry St, Suite 118	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		
473	0.053	CHFS Hardin Co	916 N Mulberry St	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		
620	0.124	District 4 WAN Circuit	634 E. Dixie (P.O. Box 309)	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		
638	1.351	DJJ-Lincoln-Village-E-Town-YDC	820 NEW GLENDALE RD	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		
743	0.078	Hardin Co Clerk (Radcliff)	210 Freedom's Way	Radcliff	Hardin	Government Site	37°52'56.01"N 86°6'0.08"W	2		
746	0.073	Hardin County Circuit Clerk - DATA ONLY	120 East Dixie Avenue	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		
773	0.063	JUS COR/ADMIN SERV P&P	207 S MULBERRY ST	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		
996	0.172	JUS KSP/Post 4 Hardin Co	1055 N MULBERRY	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		
1121	0.084	Lincoln Trail District Health Department	520 Hillcrest Drive (520 Fairway Drive)	Elizabethtown	Hardin	Government Site	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W	2		

1122	0.049	Lincoln Trail District Health Department	108 New Glendale Rd	Elizabethtown	Hardin	Government Site	2	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W
1208	0.066	OPA Hardin County	226 S Mulberry St	Elizabethtown	Hardin	Government Site	2	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W
1452	0.563	Elizabethtown	308 Steele Drive, Elizabethtown, KY 42701	Elizabethtown	Hardin	KET	2	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W
1627	0.341	Hardin County Public Library	100 Jim Owen Drive, Elizabethtown, KY 42701	Elizabethtown	Hardin	Library	2	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W
1762	0.047	CHFS – Child Support – Hardin County	100 Public Square, Suite 200, Elizabethtown, KY 42701	Elizabethtown	Hardin	Government Site	2	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W
1765	0.047	WFD – Kentucky Career Center – Lebanon	233 Ring Road	Elizabethtown	Hardin	Government Site	2	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W
1767	0.047	CHFS – Child Support – Nelson County	150 N Provident Way, Elizabethtown, KY	Elizabethtown	Hardin	Government Site	2	37°42'3.36"N 85°52'3.64"W & 37°42'31.94"N 85°50'23.14"W
78	0.218	Hart County Schools 31-W Annex	940 S. Dixie Hwy. Munfordville, KY 42765	Munfordville	Hart	K-12	4	37°15'41.68N 85 52 56.92W
418	0.118	CFC-DCBS/DJJ – Community Branch Munfordville	50 Quality St	Munfordville	Hart	Government Site	2	37°17'41.27N 85 54 22.87W
752	0.151	Hart Co Circuit Clerk DDL	117 E South St	Munfordville	Hart	Government Site	2	37°16'17.48N 85 53 28.67W
753	0.075	Hart Co Clerk	200 Main St Courthouse	Munfordville	Hart	Government Site	2	37°16'17.48N 85 53 28.67W
1273	0.062	REV PT PVA Hart Co	118 E Union St	Munfordville	Hart	Government Site	2	37°16'17.48N 85 53 28.67W
1630	0.395	Hart County Public Library	500 East Union Street, Munfordville, KY 42765	Munfordville	Hart	Library	2	37°16'17.48N 85 53 28.67W
93	11.060	Larue Co. High school	925 S. Lincoln Blvd. Hodgenville, KY 42748	Hodgenville	Larue	K-12	4	37°40'28.52N 85 50 45.41W
357	0.136	CFC DCBS LARUE CO	105 Howard St	Hodgenville	Larue	Government Site	2	37°40'28.52N 85 50 45.41W
1107	0.259	Larue Co Health Center	215 E Main St	Hodgenville	Larue	Government Site	2	37°40'28.52N 85 50 45.41W
1108	0.195	Larue County Clerk / Circuit Clerk	209 W High Street, Hodgenville, KY 42748	Hodgenville	Larue	Government Site	2	37°40'28.52N 85 50 45.41W

1643	0.060	LaRue County Public Library	201 South Lincoln Boulevard, Hodgenville, KY 42748	Hodgenville	Lanue	Library				2			37 40 28.52N 85 50 45.41W
107	12.303	Marion Co. High	735 E Main St Lebanon, KY 40033	Lebanon	Marion	K-12				4			-37.788332, -85.675302
364	0.056	CFC DCBS MARION CO	634 W Main St	Lebanon	Marion	Government Site				2			-37.788332, -85.675302
477	0.069	CHFS Marion Co Attorney	19 Court Square	Lebanon	Marion	Government Site				2	8		-37.788332, -85.675302
678	0.069	DOT-DDL MARION Co Circuit Clerk	121 N Spaulding Avenue	Lebanon	Marion	Government Site				2			-37.788332, -85.675302
1137	0.069	Marion Co Health Center PSR	516 N Spalding Ave	Lebanon	Marion	Government Site				2			-37.788332, -85.675302
1138	0.082	Marion County Clerk / PVA / County Judge Executive	233 N Spalding Avenue	Lebanon	Marion	Government Site				2			-37.788332, -85.675302
1657	0.237	Marion County Public Library	201 East Main Street, Lebanon, KY 40033	Lebanon	Marion	Library				2			-37.788332, -85.675302
1763	0.047	WDF - KY Career Center - District 6	516 Workshop Lane	Lebanon	Marion	Government Site				2			-37.788332, -85.675302
115	8.784	Meade Co. Board	1155 Old Ekron Rd. Brandenburg, Ky 40108	Brandenburg	Meade	K-12				4			37°52'56.01"N 86°6'0.08"W
479	0.208	CHFS Meade Co Child Base Services	516 Bypass Rd	Brandenburg	Meade	Government Site				2	8		37°52'56.01"N 86°6'0.08"W
565	1.602	DDL AVIS Meade Co	516 Fairway Dr	Brandenburg	Meade	Government Site				2			37°52'56.01"N 86°6'0.08"W
1665	0.136	Meade County Public Library	996 Old Ekron Road, Brandenburg, KY 40108	Brandenburg	Meade	Library				2			37°52'56.01"N 86°6'0.08"W
118	0.139	Metcalfe Co Technology Dept	101 Hornet Av Edmonton, KY 42129	Edmonton	Metcalfe	K-12				4			36 58 52.99N 85 37 20.15W
463	0.201	CHFS DCBS Metcalfe Co	100 Thompson Lane	Edmonton	Metcalfe	Government Site				2			36 58 46.94N 85 36 44.53W
600	0.141	DDL Metcalfe Co	201 E Stockton St Justice Center	Edmonton	Metcalfe	Government Site				2			36 58 46.94N 85 36 44.53W
1277	0.053	REV PVA / Metcalf County Clerk	100 E Stockton	Edmonton	Metcalfe	Government Site				2	8		36 58 46.94N 85 36 44.53W
1668	0.051	Metcalfe County Public Library	200 South Main Street, Edmonton, KY 42129	Edmonton	Metcalfe	Library				2			36 58 46.94N 85 36 44.53W
120	13.325	Monroe Co. Board	309 Emberton St Tompkinsville, KY 42167	Tompkinsville	Monroe	K-12				4			36 58 46.94N 85 36 44.53W
483	0.152	CHFS Monroe Co Child Based Services	201 W Paige St	Tompkinsville	Monroe	Government Site				2			36 58 46.94N 85 36 44.53W
1157	0.363	Monroe Co Health Dept	452 E 4th Street, Tompkinsville, KY 42167	Tompkinsville	Monroe	Government Site				2	8		36 58 46.94N 85 36 44.53W
1158	0.068	Monroe County Circuit Clerk - DATA ONLY	300 N Main Street	Tompkinsville	Monroe	Government Site				2			36 58 46.94N 85 36 44.53W
1159	0.174	Monroe County Clerk	200 N Main St	Tompkinsville	Monroe	Government Site				2			36 58 46.94N 85 36 44.53W
1703	0.098	William B. Harlan Memorial Library	500 West Fourth Street,	Tompkinsville	Monroe	Library				2			36 58 46.94N 85 36 44.53W

10	0.397	Bardstown Middle	Tompkinsville, KY 42167 410 N. 5th Bardstown, KY 40004	Bardstown	Nelson	K-12	4		36 44.53W -37.788332, - 85.675302
125	2.743	Nelson Co. Board	288 Wildcat Lane Bardstown, KY 40004	Bardstown	Nelson	K-12	4		-37.788332, - 85.675302
434	0.247	CHFS Bardstown Child Base Services	901 Atkinson Hill Avenue	Bardstown	Nelson	Government Site	2		-37.788332, - 85.675302
602	0.170	DDL NELSON CO	200 NELSON COUNTY PLZ	Bardstown	Nelson	Government Site	2	8	-37.788332, - 85.675302
1120	0.314	Lincoln Trail District Health Department	325 S 3d St	Bardstown	Nelson	Government Site	2		-37.788332, - 85.675302
1166	0.064	Nelson County Clerk	113 East Stephen Foster Avenue	Bardstown	Nelson	Government Site	2		-37.788332, - 85.675302
1407	0.073	WFD VOC REHAB/BARDSTOWN	866 W STEPHEN FOSTER Ave	Bardstown	Nelson	Government Site	2		-37.788332, - 85.675302
1672	0.238	Nelson County Public Library	201 Cathedral Manor, Bardstown, KY 40004	Bardstown	Nelson	Library	2		-37.788332, - 85.675302
1764	0.047	KYTC & Hardin County Clerk	602 Bloomfield Rd	Bardstown	Nelson	Government Site	2		-37.788332, - 85.675302
147	2.363	Russell Co	2166 S. Hwy 127 Russell Springs, KY 42624	Russell Springs	Russell	K-12	4		37.060662, - 85.079361
1299	0.173	Russell Co Resident Engineers Office	867 Voils Road Russell Springs Ky	Russell Springs	Russell	Government Site	2	8	37.060662, - 85.079361
232	0.173	Somerset Community College – Russell Campus	848 West Steve Warner Drive, Russell Springs, KY 4264	Russell Springs	Russell	KCTCS	4		37.060662, - 85.079361
1393	0.217	WFD Russell Co	2384 Lakeway Dr	Russell Springs	Russell	Government Site	2		37.060662, - 85.079361
30	0.288	Campbellsville Ind. Board	136 S Columbia Campbellsville, KY 42718	Campbellsville	Taylor	K-12	4		37.091460, - 85.304800
159	38.426	Taylor Co. High school	300 Ingram Ave. Campbellsville, Ky 42718	Campbellsville	Taylor	K-12	4		37.091460, - 85.304800
387	0.248	CFC DCBS TAYLOR CO	1327 E Broadway, Suite A, Elmhurst Plaza	Campbellsville	Taylor	Government Site	2		37.091460, - 85.304800
651	0.229	DOT DDL Taylor Co	300 E Main St	Campbellsville	Taylor	Government Site	2		37.091460, - 85.304800
1314	0.074	Taylor County Clerk / PVA	203 N COURT ST	Campbellsville	Taylor	Government Site	2	8	37.091460, - 85.304800
1380	0.646	WFD ONE STOP CAMPBELLSVILLE	1311 Broadway Suite E (ELMHURST PLAZA)	Campbellsville	Taylor	Government Site	2		37.091460, - 85.304800
1694	0.099	Taylor County Public Library	1316 East Broadway Street, Campbellsville, KY 42718	Campbellsville	Taylor	Library	2		37.091460, - 85.304800
493	0.083	CHFS Washington Co Child Base Services	803 Bel Vista Drive	Springfield	Washington	Government Site	2		-37.788332, - 85.675302
524	0.054	CHS Washington County Attorney	108 W Main St	Springfield	Washington	Government Site	2		-37.788332, - 85.675302
1352	0.095	Washington Co Circuit Clerk	100 E Main St	Springfield	Washington	Government Site	2		-37.788332, - 85.675302

1353	0.970	Washington Co Health Center PSR	302 E Main St	Springfield	Washington	Government Site				-37.788332, -85.675302
1354	0.050	Washington County Clerk / WFD-OET	117 Cross Main St	Springfield	Washington	Government Site				-37.788332, -85.675302
1699	0.064	Washington County Public Library	210 East Main Street, Springfield, KY 40069	Springfield	Washington	Library				-37.788332, -85.675302
168	0.201	Washington Co. High	601 Lincoln Park Rd Springfield, KY 40069	Springfield	Washington	K-12				-37.788332, -85.675302
192	30.633	Elizabethtown Community & Technical College - Springf	160 Corporate Drive, Springfield, KY	Springfield	Washington	KCTCS		8		-37.788332, -85.675302

**EXHIBIT B**  
**Maintenance Agreement**

Throughout the Term, Bluegrass shall have the obligation to maintain and repair the System, including the Commonwealth Fibers and the Electric Company Fibers, at its cost, in accordance with the following requirements and procedures:

1. **Maintenance.**

(a) **Scheduled Maintenance.** Routine maintenance and repair of the System (“**Scheduled Maintenance**”) shall be performed by, or under the direction of, Bluegrass and shall include, at a minimum, the following activities:

(i) Patrol of the System on a regularly scheduled basis, in accordance with Bluegrass’s then-current procedures for maintenance; and

(ii) Bluegrass will subscribe to each and all One-Call Agencies that affect one or more of the Routes.

For purposes of this **Exhibit B**, “**One-Call Agencies**” includes the following, which may be updated from time to time: Kentucky811.

(b) **Unscheduled Maintenance.** Non-routine maintenance and repair of the System, which is not included as **Scheduled Maintenance** (“**Unscheduled Maintenance**”), shall be performed by, or under the direction of, Bluegrass and shall consist of:

(i) “**Emergency Unscheduled Maintenance**” in response to (A) the identification of a failure, interruption or impairment in the operation of Commonwealth Fibers or the Electric Company Fibers by Bluegrass’s OC (as defined below); (B) notification of Bluegrass’s OC by any third party of any failure, interruption or impairment in the operation of Commonwealth's Fibers; or (C) any event imminently likely to cause the failure, interruption or impairment in the operation of Commonwealth Fibers or the Electric Company Fibers of which Bluegrass’s OC has actual knowledge.

(ii) “**Non-Emergency Unscheduled Maintenance**” in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of Commonwealth Fibers or the Electric Company Fibers of which Bluegrass’s OC has actual knowledge.

Bluegrass shall report the need for Emergency Unscheduled Maintenance to Commonwealth within thirty (30) minutes of Bluegrass learning of same and shall report the need for Non-Emergency Unscheduled Maintenance to Commonwealth within twenty-four (24) hours of Bluegrass learning of same. Bluegrass will log the time of the report to Commonwealth, verify the problem, and dispatch personnel to assess and commence corrective action within four (4) hours of notification to Bluegrass of the service-affecting situation or any potential service-affecting situation.

2. **Operations Center.**

Bluegrass shall operate and maintain, or shall enter into an agreement with an Affiliate or third party for the operation and maintenance of, an Operations Center (“**OC**”) which is staffed twenty-four (24) hours a day, seven (7) days a week by trained and qualified personnel whose responsibility it is to

receive notification of, and assess and respond to, service-affecting or potential service-affecting situations. The OC shall be able to dispatch maintenance personnel twenty-four (24) hours a day, seven (7) days a week, and at least one maintenance personnel will be dispatched to the site requiring Emergency or Non-Emergency Unscheduled Maintenance activity within four (4) hours after the time Bluegrass becomes aware of an event requiring Unscheduled Maintenance, unless delayed by circumstances beyond the reasonable control of Bluegrass. Bluegrass shall maintain a toll-free telephone number to contact personnel at the OC. Bluegrass's OC personnel shall dispatch maintenance personnel along the System to handle and repair problems detected in the System (i) through Bluegrass's remote surveillance equipment or (ii) upon notification of Bluegrass by Commonwealth or its employees.

3. Cooperation and Coordination.

(a) In performing its services hereunder, Bluegrass shall take workmanlike care to ensure signal continuity and performance of the Commonwealth Fibers and the Electric Company Fibers, at a minimum, in accordance with prevailing industry standards.

(b) Bluegrass shall notify Commonwealth at least ten (10) business days prior to the commencement date of any Scheduled Maintenance. Commonwealth shall have the right to be present during the performance of any Maintenance so long as Commonwealth's presence does not interfere with Bluegrass's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for any reason, Bluegrass shall notify Commonwealth within 24 hours of the cancellation of such Scheduled Maintenance. Bluegrass will comply with the provisions of this subsection in rescheduling any cancelled Scheduled Maintenance.

4. Facilities.

(a) Bluegrass shall maintain the System in a manner which will permit Commonwealth's full use of the Commonwealth Fibers and in accordance with the terms and conditions of the Agreement.

(b) Except to the extent otherwise expressly provided in the Agreement, Commonwealth will be solely responsible for providing and paying for any and all maintenance of all Commonwealth Equipment used by Commonwealth in connection with the operation of Commonwealth Fibers, none of which is included in the maintenance services to be provided hereunder.

5. Cable/Fibers.

(a) Bluegrass shall perform appropriate Scheduled Maintenance on the Cable in accordance with Bluegrass's then-current preventative maintenance procedures, which procedures shall meet or exceed standard industry practice.

(b) Bluegrass shall use commercially reasonable efforts to have qualified representatives on site at any time it has advance notice that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of the Cable.

(c) Bluegrass shall maintain sufficient capability to teleconference with Commonwealth during Emergency and Non-Emergency Unscheduled Maintenance during the repair process. When correcting or repairing discontinuity or damage to the Cable, including in the event of Emergency and Non-Emergency Unscheduled Maintenance, Bluegrass shall repair traffic-affecting

discontinuity within twelve (12) hours of notification to Bluegrass of the service-affecting situation or the potential service-affecting situation. The repairs so affected may be temporary in nature, and in such event, within twenty-four (24) hours after completion of any such temporary repair for Emergency and Non-Emergency Unscheduled Maintenance, Bluegrass shall commence its permanent repair and shall notify Commonwealth of such plans. Notwithstanding the foregoing, restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule.

(d) Bluegrass's maintenance employees shall carry the appropriate equipment and testing devices on their vehicles that are customary for its industry and that would enable a temporary splice to restore a cut Cable.

6. Planned Service Work Period (PSWP).

Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the Parties. Generally, this work should be scheduled after midnight and before 6:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for weekends. A calendar showing approved Scheduled Maintenance will be agreed upon by Bluegrass and Commonwealth in the last quarter of every year for the following year and shall be scheduled to avoid work on the first and last weekends of the month and high-traffic holidays.

7. Restoration.

When restoring a cut Cable in the System, Bluegrass, promptly upon arriving on the Site of the cut, shall determine the course of action to be taken to restore the cable and shall begin restoration efforts. Bluegrass shall splice fibers tube by tube or ribbon by ribbon or fiber bundle by fiber bundle, first splicing fibers for first responders and medical and emergency services, second splicing fibers for the Commonwealth Fibers or the Electric Company Fibers, and then splicing the fibers of other interest holders in the System; *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 Bluegrass will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced and all traffic restored. After the restoration of service for first responders and medical and emergency services, Commonwealth shall be given priority among all other interest holders affected by a cut; *provided, however*, Bluegrass may not rely on this section to seek relief from its maintenance and/or performance obligations under this Agreement.

8. Contracting.

Bluegrass may subcontract any of the maintenance services hereunder; *provided* that Bluegrass shall require the subcontractor(s) to perform in accordance with the requirements, standards and procedures set forth herein.

9. Performance Reporting.

During the Term, the Commonwealth Fibers and the Electric Company Fibers shall continue to meet the prevailing industry standards and the Acceptance Standards as described in **Exhibit D**. Bluegrass will, on or before the fifteenth of each month during the Term, provide Commonwealth with a written report of each Commonwealth Fiber Outage or maintenance request by Commonwealth for the previous calendar month, which report shall include at a minimum (i) Bluegrass's response and restoration times, rounded up to the nearest minute; (ii) the location of the Commonwealth Fiber or the Electric Company Fiber outage



by Major Segment; and (iii) the mean response and restoration times for the subject month.

The Parties acknowledge that Bluegrass's failure to respond and restore Outages will cause Commonwealth substantial damages and losses of a type and degree which is impossible to compute and ascertain with any certainty as a basis for recovery by Commonwealth of actual damages, and that the following liquidated damages represent a fair, reasonable and appropriate estimate thereof:

Mean Time to First Maintenance Responder to Site

Up to 4 hours 15 minutes:	-\$0-
4 hours 16 minutes to 4 hours 30 minutes	\$500 for each event
4 hours 31 minutes to 5 hours:	\$750 for each event
Over 5 hours	\$1,000 for each event

For the avoidance of doubt, the Mean Time to First Maintenance Responder to Site standard will apply to each Outage that occurs during a calendar month. For example, if a unique Site is impacted by two separate Outages in a given month, and the respective response times for said Outages are 4 hours 16 minutes and 6 hours, the Mean Time to First Maintenance Responder to Site penalty would be equal to  $\$500 + \$1,000 = \$1,500$ .

Mean Time to Restore (Per Average Number of Sites Impacted)

Up to 12 hours:	-\$0-
12 hours 1 minute to 16 hours:	\$232
16 hours 1 minute to 20 hours	\$579
20 hours 1 minute to 24 hours	\$1,159
24 hours 1 minute to 36 hours	\$1,738
Over 36 hours	\$2,317

The Mean Time to Restore penalties pursuant to this **Exhibit B** will be calculated as follows: (x) Average Number of Sites impacted, *multiplied by* (xi) the Mean Time To Restore.

For purposes of this **Exhibit B**, the following definitions shall apply:

- (i) "Average Number of Sites" is calculated as follows: (a) the number of unique Outages in a calendar month *multiplied by* the number of Sites impacted by such Outages, *divided by* (b) the total number of unique Outages.
- (ii) "Mean Time to Restore" is calculated as follows: (x) the sum of the duration of each Outage, calculated in minutes, *divided by* (y) the total number of unique Outages in each calendar month, where the duration of an Outage will be calculated as the number of minutes from the point at which Bluegrass's Operating Center is notified of Sites not being Available until all Sites impacted by such Outage are Available; *provided, however*, that in the event that Bluegrass requires access to a Site that is under the control of Commonwealth or a third party in order to correct an Outage, the duration of such Outage shall only include the period of time after Bluegrass actually receives access to such Site and Bluegrass was able to begin corrective measures with respect to such Outage; *provided, further*, that in the event that correction of the Outage requires a joint effort between Bluegrass and either Commonwealth or any third party, any period of time during which

Commonwealth or third party delayed such joint effort shall not be included in the duration of such Outage.

*For example purposes only, if there are 10 Outages in a given month, 5 of which each impact 5 Sites and 5 of which each impact 3 Sites, the Average Number of Sites is calculated as follows: (i) (a) 5 Outages multiplied by 5 Sites plus (b) 5 Outages multiplied by 3 Sites, divided by (ii) 10 Outages, which equals 4. If the Mean Time to Restore the Outages is 14 hours, the total penalty for the relevant monthly billing period is calculated as follows: \$232 x 4, which equals \$928.*

Notwithstanding anything to the contrary contained in this **Exhibit B** or the Agreement, in no event may the penalties assessed pursuant to this **Exhibit B** during any calendar month exceed Twenty Thousand Eight Hundred Sixty Seven Dollars (\$20,867.00).

10. Restoration Activities with Respect to Commonwealth Equipment. In the event that Commonwealth or any other person or entity requests that Bluegrass provide restoration or maintenance services with respect to any Commonwealth Equipment and Bluegrass agrees to provide such services, those services shall be billed to Commonwealth at Bluegrass's standard terms and conditions and shall be paid within thirty (30) days of Commonwealth's receipt of Bluegrass's invoice.

11. Erroneous Callout. In the event that more than three (3) Erroneous Callouts occur during any Calendar Quarter, Commonwealth shall promptly pay to Bluegrass \$250.00 per Erroneous Callout occurring during such Calendar Quarter. For purposes of this Agreement, the term "**Erroneous Callout**" means those instances where Commonwealth or any other person or entity requests that Bluegrass provide restoration or maintenance services and, upon Bluegrass's inspection with respect to such request, Bluegrass determines in good faith that no Outage exists. For purposes of clarity, a "**Calendar Quarter**" shall mean the three (3) calendar month period ending on (and including) each of the following dates: March 31, June 30, September 30, and December 31.

**EXHIBIT C**  
**Interconnection Procedures**

**1. Interconnection Points**

A. **Permitted Connecting Points.** Commonwealth may request that Bluegrass establish Connecting Points with other telecommunications facilities (“**Interconnect Facilities**”) at Commonwealth’s sole expense, which shall be equal to Bluegrass’s cost, at (i) points where the Cable is spliced along the System, (ii) fiber distribution panels at the Cable end points, or (iii) fiber distribution panels at Transmission Sites ((i) (ii) and (iii) collectively, “**Connecting Points**”). Commonwealth shall have no right to establish any connection to the System other than at such locations. Commonwealth may request the right to establish connections to the System at other locations. Subject to any underlying agreements, Bluegrass shall not unreasonably withhold permission for such additional connections. A determination by Bluegrass of the existence of any of the conditions described in **Subsection 2.B** of this **Exhibit C** shall not be deemed an unreasonable denial of permission for additional connections.

B. **No Commonwealth Access to Cable.** Commonwealth shall have no right to access any Fibers within the Cable or to enter any splice or Bluegrass vault.

**2. Requests for Interconnections**

A. **Connection Requests.** Commonwealth shall provide Bluegrass at least sixty (60) days’ prior written notice (the “**Interconnect Notice**”) of the date it requests that a connection be completed or sixty (60) days’ prior written notice if the connection requires installation of Commonwealth Equipment at a Transmission Site. The Interconnect Notice shall set forth a description of the work required to be performed including:

- (i) the connection location (which shall be at a permitted Connecting Point as set forth in **Subsection 1.A** of this Exhibit);
- (ii) a copy of Commonwealth's construction design drawings including a diagram of the desired location of the Interconnect Facilities and Commonwealth Equipment;
- (iii) identification of all Interconnect Facilities and Commonwealth Equipment to be installed;
- (iv) Commonwealth's requested installation schedule;
- (v) any excess cable storage requirements;
- (vi) the space, power, environmental and other requirements for the Interconnect Facilities and Commonwealth Equipment;
- (vii) the estimated in-service and termination dates for the interconnection; and
- (viii) all other information reasonably required by Bluegrass.

B. **Response to Requests.** Within twenty-one (21) days of receiving the Interconnect Notice, Bluegrass shall respond with its acceptance or objections to the proposed interconnection. Bluegrass shall

use commercially reasonable efforts to accommodate the request, but may restrict such work to the planned system work periods set forth in **Exhibit B**. Bluegrass may decline to make a requested connection if Bluegrass determines, in its reasonable discretion, that there is a significant likelihood that (i) Commonwealth's use of a proposed connection would cause a material and adverse effect on the System or the use thereof; (ii) use of a particular location will cause a significant technical impediment; (iii) the making or existence of the connection presents a risk of creating an interruption of transmission; (iv) Bluegrass has no rights to interconnect to the Cable at such point due to restrictions existing in the underlying rights or an inability to obtain other required permits, authorizations or approvals; or (v) there are unreasonable costs and/or logistics required to make such interconnection.

### **3. Demarcation and Ownership**

A. **Demarcation Points**. Bluegrass shall designate an installation demarcation point and a maintenance demarcation point (which may be a different point) for each interconnection in order to safeguard and maintain sole control over the System. Bluegrass shall perform all installation work on facilities on its side of the installation demarcation point and shall perform all post-installation work on facilities on its side of the maintenance demarcation point. Commonwealth shall pay the costs of such installation and post-installation work as set forth in this Exhibit. Installation by Bluegrass of the Interconnect Facility shall extend no further than the boundary of Bluegrass's right of way or other property unless otherwise mutually agreed to by the parties. The point of demarcation shall be on the external wall of each building where the Site is located unless otherwise agreed in a signed writing by the Parties.

B. **Ownership**. Commonwealth shall retain ownership of Interconnect Facilities during the Term. At the end of the Term, title to any portion of an Interconnect Facility located on Transmission Sites or other Bluegrass premises or right of way not removed by Commonwealth within ninety (90) days shall pass to Bluegrass.

### **4. Installation of Interconnect Facilities**

A. **Spur Cable**. Commonwealth or its contractors shall, prior to the requested connection date, provide a spur cable adequate to reach the Connecting Point with an additional length (minimum 100 feet) sufficient for Bluegrass to perform splicing.

B. **Rights of Way and Equipment**. Commonwealth shall provide, at its sole cost and expense, any and all necessary rights of way, permits, access rights and/or any required consents or authorizations, and Bluegrass-approved materials and equipment (including cables and conduit) necessary for the construction, use, operation, maintenance and repair of each Interconnect Facility. At Commonwealth's request, to the extent permitted under Bluegrass's lease or other agreements relating to a co-location facility, and if space is available, Bluegrass shall at its sole discretion provide to Commonwealth access to building entrances, conduits and risers at the co-location facility or use of Bluegrass's rights to install such building entrances, conduits or risers necessary in connection with constructing an Interconnect Facility. Such access or use of rights shall be at such additional charges to which Bluegrass and Commonwealth may agree. Commonwealth shall be subject to all limitations and restrictions for conduits, risers and building entrances imposed by the applicable underlying owner. Commonwealth shall be solely responsible for placement, construction and installation of all Commonwealth facilities required to interconnect at the Connecting Point designated by Bluegrass.

If necessary, and where applicable, Bluegrass shall assist Commonwealth, at Commonwealth's sole expense, in obtaining from any third-party building owner or Bluegrass lessor access to existing building

entrance facilities, if available, to access and exit Transmission Sites. Otherwise, Commonwealth shall be solely responsible for obtaining all necessary rights for the Interconnect Facility, as described in the first sentence of this Subsection, and Bluegrass does not make and hereby disclaims any warranties or representations that such rights are available at any particular location or regarding the cost or availability of such rights.

## **5. Maintenance of Interconnect Facilities**

A. Maintenance and Changes. Commonwealth shall provide all maintenance and repair of the Interconnect Facility on Commonwealth's side of the maintenance demarcation point. Any improvement, modification, addition to, relocation, or removal of, the Interconnect Facility by Commonwealth at Transmission Sites or other Bluegrass premises shall be subject to Bluegrass's prior review and written approval. Commonwealth shall pay the cost of such improvement, modification, addition to, relocation, or removal of, the Interconnect Facility and of the cost of repairing any damage due to Commonwealth's actions. Bluegrass's maintenance responsibility shall be limited to the Interconnect Facilities on its side of the maintenance demarcation point and the associated cross connect or other connection at that point.

B. Unusual Costs. Bluegrass may submit a request to Commonwealth to pay additional costs incurred in maintaining any connection that requires Bluegrass to obtain additional Required Rights, and Commonwealth shall pay such costs.

C. Standards. Commonwealth shall (except to the extent Bluegrass has installation or maintenance responsibility) ensure that any Interconnect Facilities are installed, operated, and maintained to meet or exceed any reasonable requirements of Bluegrass, any requirements of Bluegrass's building management or insurance underwriters, and any applicable local, state and federal codes and public health and safety laws and regulations (including fire regulations and the National Electric Code).

## **6. Additional Provisions Applicable to Transmission Sites**

A. Limitations on Transmission Site Interconnections. Transmission Sites are established and designed to support network transmission equipment and, therefore, no interconnections may be made at such sites for other purposes, such as directly or indirectly connecting to local exchange carrier facilities or other local access facilities or for purposes of providing local exchange carrier or local access services.

B. Prohibition on Dark Fiber Cross-Connects with Other Co-location. Unless otherwise agreed, Commonwealth shall not establish dark fiber cross-connects between Commonwealth's co-located facilities or the Commonwealth Equipment and the co-located facilities of other parties who are using a Transmission Site. Unless otherwise agreed, Commonwealth shall not use any Interconnect Facility to allow third parties co-located in any Transmission Site to interconnect with each other at that Transmission Site.

C. Additional Co-location Requirements. If any Interconnect Facility requires installation or storage of Commonwealth Equipment (other than the spur cable) at Bluegrass premises, Commonwealth must arrange for co-location of such Commonwealth Equipment through a separate written agreement.

## **7. Additional Requirements for Connections at Splice Points**

A. At any time there is cable activity (including initial installation of the splice, repair of cable cuts or other cable damage, and relocation of the cable) on the Span where the splice is located (the "Spliced

**Span**”), Commonwealth or its Contractors shall (a) at Bluegrass’s request (written, oral or electronic), promptly provide a trained and qualified technician with an optical time-domain reflectometer (“**OTDR**”) at its fiber distribution panel (“**FDP**”) to aid in the cable activity, or (b) if Commonwealth cannot provide the technician and an OTDR, then Commonwealth shall provide Bluegrass access to Commonwealth’s FDP for the duration of the cable activity.

B. Bluegrass’s Network Control Center (“**NCC**”) shall remain the central point of contact and shall control all Cable activity. Bluegrass’s NCC will maintain an open line to Commonwealth’s Network Control Center during Cable activity.

C. The restoral times stated in **Exhibit B** of this Agreement, for the services Bluegrass is providing, do not apply to the mid-span interconnection splice(s).

D. During a cable emergency situation, Bluegrass shall proceed with “blind” fiber splicing of the Commonwealth Fibers along the Spliced Span (i.e. splicing without the ability to test the Spliced Span) in order to make initial temporary repairs. Bluegrass may defer blind splicing until all other fibers in the damaged cable are spliced. Commonwealth shall make reasonable efforts to coordinate with an Bluegrass technician in the performance of permanent repairs to the Commonwealth Fibers along the Spliced Span.

E. The operation and maintenance specifications set forth in the Maintenance Agreement do not provide for fiber rolls to dark fiber to restore Commonwealth’s service. However, if Bluegrass does elect to provide fiber rolls, it may elect not to allow fiber rolls on the Spliced Span.

F. If Commonwealth reports a damaged fiber on the Spliced Span and Bluegrass is not aware of any continuity problems on its System, Commonwealth shall have the burden of demonstrating that the problem is a result of damage to a Commonwealth Fiber. Commonwealth must use an OTDR to demonstrate that the problem is not a result of conditions off the System and beyond the Splice.

G. The provisions of **Paragraphs 7(C), 7(D), 7(E) and 7(F)** of this **Exhibit C** shall apply (a) only to the Commonwealth Fibers having a mid-span interconnection splice and (b) only to the extent such Commonwealth Fibers are on a Spliced Span.

H. Commonwealth may only have Bluegrass perform a mid-span interconnection splice at existing Bluegrass splice points and then only with Bluegrass’s prior written consent.

I. Bluegrass is not obligated to perform any maintenance, repair, or restoration on the Commonwealth interconnection beyond the splice point.

**EXHIBIT D**  
**Fiber Splicing, Testing, and Acceptance Standards and Procedures**

**1. Installation Testing**

A. During installation, Bluegrass shall use an OTDR to test splices and a 1-km launch cable to test pigtail connectors. Such installation tests shall be uni-directional and performed at 1550 nm.

B. If the combined front-end connectors and pigtail splice loss value exceeds 0.8 dB, Bluegrass shall break the splice and re-splice until the loss value is 0.8 dB or less. If Bluegrass is unable to achieve a loss value of 0.8 dB or less after five total splicing attempts, the splice shall be marked as Out-of-Spec (“OOS”). The .8 dB spec does not apply to fibers that are being spliced that have different mode-fields. Splice loss may be higher due to the mode-field mismatch.

C. If the loss value for a splice, when measured in one direction with an OTDR, exceeds 0.3 dB, Bluegrass shall break the splice and re-splice until the loss value is 0.3 dB or less; provided that, if Bluegrass is not able to achieve a loss value of 0.3 dB after three total splicing attempts, then Bluegrass shall mark the splice as OOS. The .3 dB loss spec does not apply to fibers that are being spliced that have different mode-fields. Splice loss may be higher due to the mode-field mismatch.

**2. End-to-End Testing**

A. After Bluegrass has established end-to-end connectivity on the fibers during installation, it shall:

- perform bi-directional OTDR end-to-end tests to record splice loss measurements,
- test continuity to confirm that no fibers have been “frogged” or crossed at any splice points, and
- record loss measurements using a light source and a power meter.

B. At Fiber termination points, the pigtail splice loss shall be no greater than .80 dB, and the reflection level at such termination points shall be equal to or greater than –50dB.

C. When a Fiber has been spliced, the splice loss shall not be greater than .3 dB in any one direction.

D. Bluegrass shall perform the bi-directional OTDR end-to-end testing at both 1310 nm and 1550 nm, provided that 1310 nm OTDR tests are not required (i) for Spans longer than 64 kilometers or (ii) where the fiber being tested is not manufactured to support 1310 nm optical signals. The results of such tests for any given Span shall not be deemed within specification unless showing loss measurements between fiber distribution panels at each end of such Span in accordance with the loss specifications set forth by the cable manufacturer’s specifications for dB per kilometer loss as shown in **Exhibit D**. Bluegrass shall measure and verify losses for each splice point in both directions and average the loss values. Bluegrass shall mark any splice points as OOS that have a loss value, based on uni-directional OTDR testing, in excess of 0.3 dB. Bluegrass shall mark any Span as OOS that has an average splice loss on that Span in excess of .15dB. Any such splice points or Span shall be subject to **Section 4**, below.

### 3. Post-Installation Testing

After performing permanent splicing (in conjunction with repair of a cable cut, replacement of a segment of cable, or other work after initial installation and splicing of the cable), the test procedures set forth in **Section 2** (End-to-End Testing) of this Exhibit shall apply to the relevant fibers and cable segments. The provisions in **Sections 5** (OTDR Equipment and Settings) and **6** (Acceptance Test Deliverables) of this Exhibit, that are relevant to such testing shall also apply. Bluegrass may adopt any alternative methods of testing that are generally accepted in the industry and that provide sufficient data to fulfill the objectives of the tests set forth in this Exhibit.

### 4. Out-of-Spec Splices

Out-of-Spec splices or Spans shall be noted, but shall not preclude Acceptance of a fiber if the Out-of-Spec condition does not affect transmission capability (based on use of then-prevailing telecommunications industry standards applicable to equipment generally used with the relevant type of fiber) or create a significant possibility of an outage. In the event the Commonwealth is later able to reasonably establish that the OOS splice or Span affects service, Bluegrass shall take necessary action to bring the splice or Span into compliance with the applicable specifications under **Section 1** of this Exhibit.

### 5. OTDR Equipment and Settings

Bluegrass shall use OTDR equipment and settings that are, in its reasonable opinion, suitable for performing accurate measurements of the fiber installed. Such equipment and settings shall include, without limitation, equipment models compatible for testing and able to support the following settings:

#### A. Index of refraction settings:

	1310 nm	1550 nm	1625nm
Corning SMF-28	1.4675	1.4681	1.4681

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

4 km Range  
50ns Pulse

1. m Resolution

### 6. Acceptance Test Deliverables

Bluegrass shall provide a file containing the following information for the relevant fibers and cable segments:

A. Verification of end-to-end fiber continuity with power level readings for each fiber taken with a stable light source and power meter.

B. Verification that the loss at each splice point is either (i) in accordance with 2.C. above or (ii) in accordance with the requirements of **Section 4** of this Exhibit.



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

D. Cable manufacturer, cable type (buffer/ribbon), fiber type, number of fibers, number of fibers per tube, and distance of each section of cable between splice points.

Bluegrass will provide required documentation for new fiber that meets G.652D specification E. In the event Commonwealth notifies Bluegrass of its purchase or bona fide intent to install electronics operating at 1625 nm on a Segment, Bluegrass shall provide documentation from Chromatic Dispersion and PMD measurements for such Segment within 90 days and if necessary provide Fibers that meets the specification.

## 7. General Testing Procedures and Acceptance

A. As soon as Bluegrass determines that the Commonwealth Fibers in a given Span meet the Acceptance Standards such that there is Fiber connectivity between all fiber distribution panels along such Span or connectivity to Commonwealth requested spliced off-net location, it shall provide the deliverables set forth in **Section 6** of this Exhibit. Commonwealth shall have fourteen (14) calendar days after receipt of test deliverables for any Span to provide Bluegrass written notice of any bona fide determination that the Commonwealth Fibers on such Span do not meet the Acceptance Standards. Such notice shall identify the specific data that indicate a failure to meet the Acceptance Standards.

B. Upon receiving written notice pursuant to **Subsection 7.A** of this Exhibit, Bluegrass shall either:

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

After taking corrective actions and re-testing the Commonwealth Fibers, Bluegrass shall provide Commonwealth with a copy of the new test deliverables and Commonwealth shall again have all rights provided in this **Subsection 7.B** of this Exhibit with respect to such new test deliverables. The cycle described above of testing, taking corrective action and re-testing shall take place until the Commonwealth Fibers meet the Acceptance Standards.

C. If Bluegrass provides notice to Commonwealth pursuant to **Subsection 7.B.ii** of this Exhibit, Commonwealth shall, within five (5) calendar days of such notice, designate by written notice to Bluegrass the names and addresses of three reputable and independent fiber optic testing companies. Bluegrass shall designate one of such companies to conduct an independent re-test of the Commonwealth Fibers for the relevant Span. If, after such re-testing, the testing company determines that the Commonwealth Fibers

- (i) meet the Acceptance Standards, then Commonwealth shall pay the testing company's charges for performing the testing and the acceptance date for the relevant Span shall be fourteen (14) days after Bluegrass provided its test deliverables.

- (ii) do not meet the Acceptance Standards, then Bluegrass shall pay the testing company's charges for performing the testing and shall perform the corrective action and re-testing set forth in **Subsection 7.B.i** of this Exhibit.

D. Unless Commonwealth provides a written objection pursuant to **Subsection 7.A** of this Exhibit, the acceptance date of a Span shall occur on the fourteenth (14<sup>th</sup>) day after Bluegrass provides the test deliverables for that Span, or, if earlier, the date Commonwealth provides written acceptance of such Span. Commonwealth's acceptance (pursuant to this subsection or of **Subsection 7.C** of this Exhibit) of the last Span within a Major Segment shall constitute "**Acceptance**" of the Commonwealth Fibers for such Major Segment. The date of Acceptance for each Major Segment shall constitute the "**Acceptance Date**" of such Major Segment.

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

**EXHIBIT E**  
**Cable Installation Specifications**

Construction and installation of the conduits, cables, and other facilities will comply with the USDA Rural Utility Service Construction Specifications, which are attached hereto and incorporated into this **Exhibit E** by this reference.

**EXHIBIT F**  
**As-Built Drawing Specifications**

**1. Alignment Sheets**

**A. As-Built Alignment Sheets shall include:**

- cable and conduit information
- splice locations
- assist point locations with permanent structures
- Transmission Site locations
- optical distances to the nearest Transmission Sites from each splice location.

**B. As-Built Alignment Sheets shall be updated with actual construction field data.**

**C. The scale of As-Built Alignment Sheets shall not exceed 1" = 200' in metropolitan areas (areas where there is either extensive development and improvement or rapid growth (new building construction)) or 1" = 500' in non-metropolitan areas.**

**2. Format**

Drawings shall be "blue lines" as such term is understood in the industry. Bluegrass may, after the Acceptance Date, adopt any replacement method of creating or providing drawings that is generally accepted in the industry and that provides equivalent information.

**3. Transmission Site Floor Plans**

Floor plans for Transmission Sites shall show rack placement and assignment for Commonwealth's equipment. Bluegrass shall provide hard copies of such floor plans one time free of charge. Soft copies of such floor plans are available for Two hundred and no/100 dollars (\$200.00) per site.