

MEMORANDUM OF AGREEMENT
Fiber Optic Resource Sharing Agreement between
Virginia Department of Transportation and Service Provider Full Name
[DRAFT]

This Memorandum of Agreement (MOA or Agreement) made this _____ day of _____ 2016 by and between Service Provided Full Name (Agreement Service Provider Abbreviated Name) with offices located at Street Address, City, Zip Code and the Virginia Department of Transportation (VDOT) with offices located at 1401 East Broad Street, Richmond, Virginia 23219.

WHEREAS, Service Provided Full Name (herein referred to as Agreement Service Provider Abbreviated Name) is a fiber optic network services provider; and

WHEREAS, Agreement Service Provider Abbreviated Name desires construction of a fiber optic network (“Network”) by utilizing, in part, limited and non-limited access Right-of-Way from VDOT (“VDOT ROW” or “ROW”); and

WHEREAS, VDOT has VDOT ROW assets which are available for Agreement Service Provider Abbreviated Name to utilize for the construction of the Network, which will require underground burial installation within VDOT infrastructure of fiber optic cable; and

WHEREAS, VDOT has indicated an interest in utilizing the Agreement Service Provider Abbreviated Name infrastructure to expand its Intelligent Transportation System network for internal VDOT uses.

THEREFORE, the parties have agreed as follows:

1. Agreement and Grant.

- A. Subject to subsection (1) B of this section, during the Term of this MOA, VDOT hereby agrees to grant to Agreement Service Provider Abbreviated Name access to the VDOT ROW shown on the map labeled Figure 1 attached hereto and described in Attachment A, as may be necessary for [Agreement Service Provider Abbreviated Name]’s Network for the purposes set forth in this Agreement. VDOT further grants to Agreement Service Provider Abbreviated Name the right to design, develop, construct, install, remove, upgrade, maintain and operate the Network in the VDOT ROW subject to the provisions of this Agreement. Except as otherwise provided in this Agreement, Agreement Service Provider Abbreviated Name shall bear the entire cost and expense related to the design, development, construction, installation, inspection, maintenance and operation of the Network. Notwithstanding anything to the contrary in this Agreement, Agreement Service Provider Abbreviated Name shall be exclusively responsible for the construction, installation, operation and maintenance of the Network installed in the VDOT ROW pursuant to this Agreement and VDOT hereby disclaims any liability or responsibility for the Network, including, but not limited to, construction, installation, maintenance, repair, damage, malfunction, and/or operation of the Network and/or any costs related thereto. Agreement Service Provider Abbreviated Name agrees that this Agreement does not

authorize Agreement Service Provider Abbreviated Name or its contractors to build or place any regeneration facilities within any VDOT limited access right-of-way.

- B. Agreement Service Provider Abbreviated Name shall request, and VDOT in its sole discretion will issue a VDOT Land Use Permit only upon submission by Agreement Service Provider Abbreviated Name of engineering plans that are acceptable to and approved by VDOT. The VDOT Land Use Permit shall govern all Agreement Service Provider Abbreviated Name activities relating to the Network, including but not limited to the construction, installation, management, maintenance and operation of the Network under the terms of this Agreement.
- C. This Agreement in no way creates a commercial establishment or business enterprise on the VDOT ROW. This Agreement and the work hereunder is not a public works project. This Agreement is not a joint venture nor does it provide for any third party benefits to any other entity.
- D. Agreement Service Provider Abbreviated Name shall grant to VDOT exclusive use of one conduit which reside in the Agreement Service Provider Abbreviated Name Network described in Section 1 of Attachment A.
- E. Agreement Service Provider Abbreviated Name will provide a separate Number of Fibers count fiber in Agreement Service Provider Abbreviated Name conduit in the Route at no cost to VDOT. In exchange, VDOT grants access to Agreement Service Provider Abbreviated Name the use of Resources VDOT to Exchange. At a minimum, VDOT shall have access to the Number of Fibers count fiber at the beginning and end of the Route to perform future splices.

All splice vaults shall have at least 100 feet of slack coiled cable on each side of the splice. All handholes shall have at least 50 feet of slack coiled cable.

Access to these locations will be performed through a 1-800 ticket system; for example, when VDOT calls in and opens a ticket Agreement Service Provider Abbreviated Name will schedule access and splicing as necessary in order to accommodate VDOT.

- F. All fiber provided to VDOT shall only be used for VDOT internal use, and shall not be leased or transferred to any third party or Agreement Service Provider Abbreviated Name, including, without limitation, any other state agency or business entity.
- G. VDOT will be responsible for all service laterals from the needed service point (e.g., sign or traffic controller) to the closest fiber access point. VDOT shall be responsible for all necessary electronic devices to provide these required services or service laterals.

- H. Agreement Service Provider Abbreviated Name will perform the splicing services from VDOT's laterals into Agreement Service Provider Abbreviated Name's Network (specifically the fiber(s) designated for VDOT's use). VDOT shall pay Agreement Service Provider Abbreviated Name all costs incurred by Agreement Service Provider Abbreviated Name for any work or services performed for, or materials furnished to, VDOT, including splice materials and technicians' hours for performing any of the work required pursuant to this Agreement.
 - I. The demarcation for maintenance responsibilities will reside at the Agreement Service Provider Abbreviated Name splice. Agreement Service Provider Abbreviated Name will be responsible for all operations and maintenance of the fiber optic cable and any splice enclosures where the cable is spliced with VDOT's cable.
 - J. Fibers provided to VDOT will be dark and spliced through end-to-end.
 - K. VDOT shall be responsible for all necessary electronic devices to light their fiber.
 - L. Fibers provided to VDOT shall be Enhanced Single-Mode Fiber (ESMF). Maximum attenuation of each fiber shall not exceed 0.35 dB/km at a wavelength of 1550nm.
 - M. Individual fiber splice losses on fibers provided to VDOT shall not exceed 0.15 dB at a wavelength of 1550nm. Splice losses shall be verified by bi-directional OTDR testing. Agreement Service Provider Abbreviated Name shall provide to VDOT electronic and hard copies of the OTDR traces for fibers provided to VDOT.
2. **Definitions.** For purposes of this MOA, the following terms shall have the meanings specified herein:

“Access” shall mean Agreement Service Provider Abbreviated Name 's right to construct, install, maintain, repair and operate the Network in the Limited and Non-Limited Access Rights-of-Way made available to Agreement Service Provider Abbreviated Name by VDOT pursuant to this Agreement, which rights VDOT shall treat as an exception approved by the Commonwealth Transportation Commissioner as otherwise provided for under the most current version of VDOT's Land Use Permit Guidance Manual, Land Use Permit Regulations.

“MOA” shall mean this Resource Sharing MOA, including any attachments, and any renewals or amendments thereof.

“Construction Costs” shall mean all of Agreement Service Provider Abbreviated Name's expenses relating to the development, design construction and installation of Network facilities at a Site. Construction Costs shall include but not be limited to, any and all administrative, labor, materials, permits/licenses and professional services necessary for obtaining the rights to use and develop, construct, install and operate the Network.

“CPM” shall mean a critical path model, as commonly accepted within the construction industry, which shall be the schedule by which Agreement Service Provider Abbreviated Name will conduct its work under the Agreement.

“Hazardous Condition” shall mean the release, or the threatened release, or the presence, use, treatment, storage or disposal of, any material or substance regulated as a hazardous, toxic or dangerous substance or pollutant under any Environmental Laws as that term is defined below. Hazardous Condition shall include, but not be limited to, any activity whatsoever involving the presence at, on, under or about (including in the soil, surface water or groundwater), of (i) any hazardous waste, extremely hazardous waste, restricted hazardous waste, toxic pollutant or hazardous pollutant, or words of similar import, as defined in the Resource Conservation & Recovery Act, as amended, and any regulations or guidelines promulgated hereunder; (ii) any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act as amended, and any regulations or guidelines promulgated hereunder; (iii) any toxic substance or hazardous chemical as defined in the Toxic Substances Control Act, as amended, and any regulations or guidelines promulgated hereunder; (iv) the discharge of any pollutant under the Federal Water Pollution Control Act, as amended, and any regulations or guidelines hereunder; (v) any petroleum or refined petroleum product, or other petroleum hydrocarbon; (vi) asbestos; (vii) polychlorinated biphenyls; (viii) any pollutant or hazardous air pollutant under the Clean Air Act, as amended, and any regulations or guidelines promulgated hereunder; and (ix) any substance or waste regulated under other applicable environmental law. “Environmental Laws” hereunder shall mean the statutes referenced in clauses (i), (ii), (iii), (iv), (viii) and (ix), above, the Occupational Safety & Health Act, the Hazardous Materials Transportation Act, any state analogues to any of them, and any regulations or rules promulgated under each of them, each as amended and in effect from time to time.

“Land Use Permit” shall mean the permit which shall be granted by VDOT to Agreement Service Provider Abbreviated Name for the Term of this Agreement and any Renewal Terms of this Agreement pursuant to VDOT’s Land Use Permit Regulation, giving Agreement Service Provider Abbreviated Name the authority to enter the Rights-of-Way to construct, operate and maintain its Network facilities.

“Limited Access Rights-of-Way” shall mean a highway especially designed for through traffic over which abutting property owners have no easement or right of light, air or access by reason of the fact that their property abuts upon such limited access highway. These Limited Access rights of way shall be made available to Agreement Service Provider Abbreviated Name in accordance with the Land Use Permit Regulation 24 VAC-30-151-310 as approved by the VDOT Chief Engineer.

“Network” shall mean any and all telecommunications infrastructure constructed or installed by Agreement Service Provider Abbreviated Name pursuant to this MOA, including, but not limited to, fiber electronics, fiber optic cable, equipment, handholds, manholes, and conduits.

“Project” shall mean distinct segments of telecommunications network pursuant to a

certain set of design documents for a specific location.

“Rights-of-Way” “ROW” shall mean, the property within the system of state highways that is open or may be open for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel. The property includes the travel way and associated boundary lines, parking and recreation areas and other permanent easements for a specific purpose. It is collectively, all of the limited and non-limited access rights-of-way under this Agreement in which Agreement Service Provider Abbreviated Name shall install, operate and maintain the Network.

“Site” shall mean those lands or Rights-of-Way made available by VDOT for the Network.

“VDOT Point of Contact” shall mean VDOT shall promptly appoint and maintain during the Term of this MOA a point of contact, (who may change from time to time), and who shall be authorized to act for VDOT.

“Work” shall mean the design, engineering, construction, installation, management, maintenance and operation of the Network under the terms of this Agreement.

“Working Days” shall mean business operating days, not to include weekend days or official Virginia state holidays.

3. Term of MOA.

The MOA shall commence upon execution of this Agreement by both parties and shall continue for twenty five (25) years thereafter (the “Term”). VDOT shall give Agreement Service Provider Abbreviated Name oral notice of their Execution within five (5) Working Days thereafter and shall follow up promptly with written notice confirming said Execution date. The date of execution by VDOT shall be the Effective Date of the MOA (“Effective Date”).

A. **Term.** The Term of this MOA shall be for twenty five (25) years commencing on the Effective Date.

B. **Renewal Term.** Provided that neither party is then in default of any of the provisions of this MOA beyond any applicable grace periods, either VDOT or Agreement Service Provider Abbreviated Name may request renewal of the MOA for one (1) additional twenty five (25) year period (the “Renewal Term”) by providing written notice of such request to the other party in accordance with the terms of Section 20, given not more than twelve (12) months nor less than six (6) months before the expiration of the Term, or Renewal Term, as appropriate. The party receiving notice of such request shall have forty-five (45) days from the receipt of the request in which to notify the other party whether it consents to the renewal. No Renewal Term shall commence without the mutual consent of both VDOT and Agreement Service Provider Abbreviated Name, which consent will not be unreasonably withheld. Any renewal term agreed to by the

parties shall also be subject to the requirements of the Virginia Administrative Code, 24VAC30-151-30 (G) (2) which provides that any shared resource agreement shall also provide for compensation as may be deemed proper by the Commissioner of Highways in any renewal term. Accordingly prior to any renewal the parties shall agree on the terms of compensation to VDOT for any renewal term or the Agreement shall end at the conclusion of the initial 25 year term.

4. Scope of Work Relating to the Network

- A. **Design Responsibilities.** Unless otherwise explicitly provided herein, Agreement Service Provider Abbreviated Name shall, at its sole cost and expense, perform all work related to the Network, including but not limited to design, construction, installation, management, operation, repair and all maintenance work for the Network pursuant to this Agreement. VDOT will not bear any costs related to the forgoing Work; however, VDOT will bear the costs of VDOT's own internal or external design reviews. VDOT shall review design, installation and construction documents and may disapprove such requests.

Following completion of construction for any single Project segment, Agreement Service Provider Abbreviated Name shall submit "as built" drawings. The "as built" drawings shall be submitted to VDOT in an electronic medium compatible with Microstation, Version 8 (VDOT's computer aided drafting software) or ESRI ArcGIS Version 10 software (or other computer aided drafting software which VDOT may from time to time update and give notice of). The Work shall be deemed in compliance with this Agreement and accepted by VDOT unless VDOT gives Agreement Service Provider Abbreviated Name notice of rejection of the Project within thirty (30) business days of receipt of the notice. The notice must specifically identify any noncompliance with this Agreement. Should Agreement Service Provider Abbreviated Name make any changes, Agreement Service Provider Abbreviated Name shall provide an updated "as built" drawing within (30) business days.

- B. **Schedule.** Agreement Service Provider Abbreviated Name shall provide a CPM schedule with all activities indicated and identification of all interdependent work. The CPM schedule shall be updated to keep current with the Project and the reporting periods established. This schedule will be used as a plan of action to allow VDOT to coordinate with and assist Agreement Service Provider Abbreviated Name with requirements that may impact traffic, coordinating with other construction projects, and general overall management of the Project. The schedule will also provide advanced notice to VDOT when it must meet deadlines to support Agreement Service Provider Abbreviated Name work effort under this Agreement.
- C. **Construction of the Network.** Agreement Service Provider Abbreviated Name shall not begin construction of Network until all necessary approvals and a VDOT Land Use Permit have been issued by VDOT, both of which shall be issued in VDOT's sole discretion under this Agreement.

D. Site Conditions

- (1) All access to VDOT critical infrastructure under this Agreement shall be in

accordance with VDOT Operations and Security Division Policies. Access requirements may vary based on federal, state policies and threat conditions. Agreement Service Provider Abbreviated Name and its subcontractors must complete non-disclosure agreements per Attachment B.

- (2) VDOT hereby represents and warrants to Agreement Service Provider Abbreviated Name that to the best of VDOT's knowledge and beliefs (i) VDOT has the authority and all requisite right, title and interest in the VDOT ROW to grant to Agreement Service Provider Abbreviated Name the rights pursuant to this Agreement for the full Term and any renewal Terms specified herein, (ii) to the knowledge of VDOT, the activities conducted by VDOT in each of the VDOT ROW are and have been in compliance with applicable Environmental Laws and (iii) VDOT will notify Agreement Service Provider Abbreviated Name of any known Hazardous Condition in the VDOT ROW.
- (3) Agreement Service Provider Abbreviated Name shall coordinate its activities with VDOT and VDOT contractors. Agreement Service Provider Abbreviated Name will use its reasonable and best efforts to notify the VDOT point of contact as soon as practicable of Agreement Service Provider Abbreviated Name's need to gain access to the site, providing seventy-two (72) hour notice in the case of routine construction work. Agreement Service Provider Abbreviated Name shall bear its own costs of review, inspection and assessment, and shall make no claim for costs, damages, or expenses arising from the condition of the Site, except as provided in this Section.
- (4) Agreement Service Provider Abbreviated Name shall notify VDOT in writing promptly after Agreement Service Provider Abbreviated Name learns of the following conditions and before such conditions are disturbed: (i) subsurface or latent physical conditions at the Site such that remediation, or relocation of the Network would be required or (ii) physical conditions at the Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized by Agreement Service Provider Abbreviated Name as inherent in work of the character provided for in this Agreement. VDOT shall investigate the conditions, and if it finds that such conditions exist and that they are likely to cause a significant increase or decrease in the time required for substantial completion of a Project, then VDOT shall approve relocation of the proposed alignment and/or an adjustment of the time, if any, scheduled for the substantial completion of the applicable Work under this Agreement.
- (5) If Agreement Service Provider Abbreviated Name or its affiliates, agents, or assigns introduces a Hazardous Condition to a Site directly or indirectly, Agreement Service Provider Abbreviated Name shall be solely liable for the investigation, removal or remediation of such introduced Hazardous Condition and for any resulting delays. Under such circumstances VDOT shall not be responsible or held liable for any such introduced Hazardous Condition, and Agreement Service Provider Abbreviated Name, shall protect, defend and hold harmless VDOT against any such introduced Hazardous Conditions,

- (6) VDOT makes no representation or warranty as to Site conditions, except as expressly set forth in this MOA.
- (7) Agreement Service Provider Abbreviated Name shall be responsible for protecting existing telecommunications or utility equipment from damage during any Work in the VDOT ROW, and for repairing any damage caused by such operations. VDOT shall be responsible for protecting the Network installed pursuant to this Agreement from damage by VDOT or its contractors working in the VDOT ROW, and shall notify Agreement Service Provider Abbreviated Name of any damage that occurs due to the activities of VDOT or any of VDOT's contractors.
- (8) Any Hazardous Condition remediation for which Agreement Service Provider Abbreviated Name is responsible under this Section shall be conducted in compliance with any rules, orders or guidelines promulgated or enforced by jurisdictional government authority, and applicable to the Site. For any remediation for which VDOT is responsible, Agreement Service Provider Abbreviated Name agrees to cooperate reasonably with VDOT's contractors, provided that Agreement Service Provider Abbreviated Name shall not bear any costs in relation to such remediation. For any remediation for which Agreement Service Provider Abbreviated Name is responsible, VDOT shall give Agreement Service Provider Abbreviated Name its contractors and agents such access as is reasonably necessary for the conduct of any investigation or remediation, provided that VDOT shall not bear any cost in relation to such remediation. Upon the request of the other party, either party conducting a remediation shall provide a copy of any final report submitted to any governmental authority with regard to an investigation or remediation of a Hazardous Condition.

5. Ownership of the System.

- A. **Ownership of Facilities.** VDOT is the legal and equitable owner of the VDOT ROW and VDOT Resource Being Provided. Agreement Service Provider Abbreviated Name shall be the legal and equitable owner of all Network facilities installed pursuant to this MOA.
- B. **Property Interest.** VDOT shall grant to Agreement Service Provider Abbreviated Name reasonable access to and the right to use the VDOT ROW for the Term and any Renewal Terms of this MOA and a VDOT Land Use Permit to construct, operate and maintain Agreement Service Provider Abbreviated Name's Network in the VDOT right of way for the Term and any Renewal Terms of this Agreement. Such a grant of access is limited for the purposes set forth in this Agreement and shall not unreasonably interfere with VDOT's operation and maintenance of its highway facilities within said right of way.

6. Compliance.

- A. Agreement Service Provider Abbreviated Name shall comply with all applicable local, state and federal laws pertaining to the Work and the Network. In the event of a substantial change in local, state and federal laws, codes, ordinances, statutes or regulations, which has a material adverse effect upon the economic benefits of this Agreement to either party, the parties shall negotiate in good faith to effect an equitable

reformation or termination of this Agreement. THE FOREGOING SHALL NOT DIMINISH THE PARTIES RESPONSIBILITIES UNDER THIS AGREEMENT WITH REGARD TO HAZARDOUS CONDITIONS.

- B. Agreement Service Provider Abbreviated Name or its subcontractors shall obtain all necessary permits, certificates and other approvals required to fulfill Agreement Service Provider Abbreviated Name's obligations under this Agreement.
- C. Error! Reference source not found. and its subcontractors shall comply with the current VDOT security procedures in performance of all Work under this Agreement. Agreement Service Provider Abbreviated Name shall use attached Critical Infrastructure Information forms (see Attachment B) to obtain proper clearance prior to start of any Work.

7. Maintenance and Repairs.

Agreement Service Provider Abbreviated Name will be responsible for maintenance, management, installation, operation and repair of the Network during the term of this Agreement. VDOT and Agreement Service Provider Abbreviated Name will enter into a maintenance agreement governing any access to and maintenance of the fibers provided to VDOT under this Agreement. [If applicable, a Maintenance Agreement can become Attachment C.]

Subject to the terms of any VDOT Land Use Permit for the Network, VDOT shall provide Access to Agreement Service Provider Abbreviated Name on a twenty-four (24) hour seven (7) day per week basis for repair and maintenance of its Network. All maintenance activities impacting the vehicular traffic flow shall be performed in accordance with the existing Virginia Work Area Protection Manual and Available Work Hours. A current copy of the Available Work Hours can be obtained from the VDOT District Land Use Permit Section.

Agreement Service Provider Abbreviated Name shall coordinate its construction, operations, installation, maintenance and repair activities with VDOT. Agreement Service Provider Abbreviated Name will use reasonable efforts to notify VDOT of Agreement Service Provider Abbreviated Name or its subcontractor's need to gain Access to the site, providing seventy-two (72) hour notice in the case of routine maintenance work and in the event of an emergency maintenance and repair, Agreement Service Provider Abbreviated Name shall contact the relevant VDOT Transportation Operations Center to request VDOT consent to Access which will not be unreasonably withheld but shall be granted within one (1) hour pursuant to standard VDOT procedures. VDOT reserves the right to deny Access to Agreement Service Provider Abbreviated Name at any time to facilitate vehicular traffic flow, incident management, infrastructure security, and other emergencies.

All Work related to the Network, including but not limited to construction, installation, maintenance and repair work shall be conducted in accordance with VDOT safety standards and guidelines, DLI requirements and OSHA requirements. These shall include but not be limited to, when applicable, Lock Out/Tag Out, Confined Space, Personal Protective Equipment Hazard Communications and Respirator safety. Agreement Service Provider Abbreviated Name is responsible for all costs associated with safety requirements.

Agreement Service Provider Abbreviated Name and its subcontractors shall perform all maintenance and repair activities in accordance with the current VDOT security procedures.

Upon the expiration or early termination of the Agreement, it is within VDOT's sole discretion as to whether the Agreement Service Provider Abbreviated Name may leave or remove all or portions of the Network within VDOT's right-of-way.

8. **Relocation.** If VDOT makes changes to the current or future highway construction plans that require relocation of the Network facilities, then Agreement Service Provider Abbreviated Name shall be responsible for the costs to relocate the Network facilities owned by Agreement Service Provider Abbreviated Name for the duration of the Term and any Renewal Terms of the Agreement. If Agreement Service Provider Abbreviated Name requests permission to relocate or remove its network facilities after installation, Agreement Service Provider Abbreviated Name shall be allowed to do so only after receipt of written approval from VDOT, which approval shall not be unreasonably withheld. Agreement Service Provider Abbreviated Name shall obtain any and all necessary permits prior to commencing such relocation or removal and shall be responsible for bearing all costs of such relocation or removal.
9. **Inspections.** Upon completion of work or any portion of work Agreement Service Provider Abbreviated Name shall notify VDOT. VDOT or its agents shall have the right to inspect the Network facilities at all stages of construction, installation, maintenance and operations and at all reasonable times.
10. **Environmental.** The parties acknowledge that the Work may require the preparation of environmental reports or consideration of potential environmental impacts, particularly as related to wetlands. Agreement Service Provider Abbreviated Name will be responsible, with the aid and participation of VDOT as necessary, for obtaining any environmental permits, waivers or approvals, including any studies and/or investigations of the VDOT right of way as may be required to identify Hazardous Conditions, cultural or historical sites, or to cross wetlands, railroad tracks or national forest lands.
11. **Traffic Control and Protection.** During construction, operation, management, installation, maintenance and repairs of the Network facilities, Agreement Service Provider Abbreviated Name agrees to comply with the most current edition of the VDOT Virginia Work Area Protection Manual and MUTCD. Agreement Service Provider Abbreviated Name shall perform all Work, including construction, operation, maintenance, installation, management and operation of the Network in a manner to avoid actions which could endanger the safety of the highway system and the traveling public. Agreement Service Provider Abbreviated Name shall not unreasonably interfere with VDOT construction, maintenance and operations in the VDOT right of way. Agreement Service Provider Abbreviated Name shall be responsible for all costs associated with traffic safety in the VDOT right of way associated with the Work.

12. **Insurance and Bond.** Agreement Service Provider Abbreviated Name and its subcontractors shall comply with all Liability Insurance and Bonding requirements set forth in the VDOT Land Use Permit Regulation.
13. **Taxes and Fees.** Agreement Service Provider Abbreviated Name or its subcontractors shall be responsible for payment of all taxes, assessments, levies and fees of any kind whatsoever incurred as a direct result of the Work under this Agreement; provided, however, that neither Agreement Service Provider Abbreviated Name, nor its subcontractors shall have responsibility for VDOT's income taxes, if any, or for real estate taxes on VDOT rights of way, if any, for the Sites or state owned VDOT right of way.
14. **Indemnification.** Agreement Service Provider Abbreviated Name shall defend and hold VDOT harmless from any and all loss, costs and expenses including, without limitation, attorney's fees and costs (1) associated with all mechanic's or supplier's liens and claims respecting any of the Network facilities and, except as set forth in Section 25, shall keep the VDOT right of way free and clear of all liens, claims and encumbrances arising from its performance of its obligations or any Work pursuant to this Agreement or any way related to the Network and (2) associated with any judgments for damages for bodily injury, death or damage to real property or tangible personal property attributable to, or arising out of the actions of Agreement Service Provider Abbreviated Name, its officers, employees, agents or subcontractors in connection with the performance of any Work or activities associated, directly or indirectly with this Agreement, or the performance or non-performance of any obligations or duties of Agreement Service Provider Abbreviated Name under this Agreement, or any subcontractor of Agreement Service Provider Abbreviated Name, or the exercise, by Agreement Service Provider Abbreviated Name or any subcontractor, of their rights, under this Agreement.

Agreement Service Provider Abbreviated Name hereby agrees to release and hold VDOT harmless from any liability directly or indirectly caused by or resulting from any and all activities related to the Work, and the Network, including but not limited to construction, maintenance, installation, repair and operation of the aforesaid Network performed by, or on behalf of Agreement Service Provider Abbreviated Name, within any VDOT right of way.

15. **Termination.** This Agreement may be terminated by either party upon the failure of the other party to cure an Event of Default within ninety (90) Working Days of written notice, or upon the written agreement of both parties.
16. **Default.** The following events shall constitute "Events of Default":
 - A. Failure of either VDOT, Agreement Service Provider Abbreviated Name or any assignees of either to observe or perform any material term, condition or provision of this Agreement or the VDOT Land Use Permit Regulation, or Land Use Permit issued pursuant to this Agreement, including the failure of Agreement Service Provider Abbreviated Name to complete construction of the Facilities described by this Agreement, provided such failure continues for thirty (30) days following written notice thereof or such longer period of time if VDOT, Agreement Service Provider Abbreviated

Name or any assignees of Agreement Service Provider Abbreviated Name is diligently endeavoring to cure the same.

B. If Agreement Service Provider Abbreviated Name (i) files a voluntary petition in bankruptcy, or has an involuntary petition filed against it and such petition is not dismissed within ninety (90) days, (ii) is adjudicated bankrupt or insolvent, (iii) files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian, liquidator, or (v) makes any general assignment for the benefit of creditors.

17. **Remedies.** If any Event of Default under this Agreement occurs, VDOT and Agreement Service Provider Abbreviated Name shall each have the right to (1) terminate this Agreement if they are the non-defaulting party, (2) cure any Event of Default to preserve either party's rights that may be prejudiced as a result of such default, and/or (3) exercise and pursue all other rights and remedies available to it under applicable law.

18. **Project Manager.** Agreement Service Provider Abbreviated Name shall promptly appoint and maintain a Project Manager for the term of the Agreement. The Project Manager shall be authorized to act on behalf of Agreement Service Provider Abbreviated Name.

19. **Notices.** Any notice or demand required or permitted to be given or made hereunder shall be in writing, and shall be deemed sufficiently given or made if sent by personal delivery, certified or registered U.S. Mail in a sealed envelope postage prepaid, or via Federal Express or other generally recognized commercial "overnight" courier service, addressed in the case of:

VDOT to: Virginia Department of Transportation
Operations Division
1401 East Broad Street
Richmond, VA 23219
Attn: Operations Communications Program Coordinator

Service Provider Full Name to:
Service Provider Full Name
Street Address
City,State,Zip
Attn: POC Name

Any such communication shall be deemed to have been given when delivered if delivered personally, the same day via electronic communication (or the first business day thereafter if electronically submitted on a Saturday, Sunday or legal holiday), on the first business day after dispatch if sent by overnight commercial air courier, or on the fifth business day after posting if sent by USPS mail.

20. **Assignment.** In addition to Agreement Service Provider Abbreviated Name's rights under Section 25, Agreement Service Provider Abbreviated Name may assign this Agreement or any of the rights herein granted with the consent of VDOT, which shall not be unreasonably withheld, to an Affiliate, or a merger, reorganization or sale of all or substantially all Agreement Service Provider Abbreviated Name's assets to a third party licensed and capable to provide the same communication services as Agreement Service Provider Abbreviated Name with written consent of VDOT, which won't be unreasonably withheld, provided that the assignee shall have the financial, operational and legal capabilities to perform all obligations of Agreement Service Provider Abbreviated Name under this Agreement, or that the assignee is an entity of which Agreement Service Provider Abbreviated Name remains a part. Agreement Service Provider Abbreviated Name shall send written notice to VDOT prior to any assignment.
21. **Amendment; Waiver.** No revision or alteration of this Agreement shall be valid unless made in writing and signed by an authorized agent or officer of Agreement Service Provider Abbreviated Name and of VDOT. No provision may be waived except in writing signed by the party to be charged with such waiver. A waiver of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of that provision or a breach of any other provision of this Agreement. Failure to enforce any provision of this MOA shall not constitute a waiver of that provision, unless such waiver is expressly stated in writing.
22. **Severability.** If any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision shall be held for naught as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

23. **No Joint Venture.** No joint venture or partnership is intended by this Agreement, nor shall Agreement Service Provider Abbreviated Name be deemed to be an agent of VDOT.
24. **Telecommunications Act of 1996.** Agreement Service Provider Abbreviated Name and VDOT shall comply with the Telecommunications Act of 1996 and in the event, any provision under this Agreement is determined by a court of competent jurisdiction to be in violation of the Act, then VDOT, in its sole discretion, may modify the Agreement to conform to the Act or terminate the Agreement.
25. **Compliance with Laws and Regulations.** Agreement Service Provider Abbreviated Name at all times shall observe and comply with all federal, state and local laws, regulations, ordinances, orders and decrees applicable to the Work and shall indemnify, defend and hold harmless the Commonwealth of Virginia, VDOT and all its officers, agents and employees against any and all claims of liability arising from or based on the violation of any such law, regulation, ordinance, order or decree, by Agreement Service Provider Abbreviated Name, its employees and agents in the performance of the Work performed under the terms of this Agreement. This clause shall be included in any subcontracts entered into by Agreement Service Provider Abbreviated Name with its subcontractors.
26. **Legal Proceedings.** Each party shall promptly notify the other party of any legal proceedings of which it becomes aware relating to any of the Sites and Network facilities associated with this Agreement.
27. **Applicable Laws and Court.** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia. The Parties agree that any litigation relating to interpretation, application, or enforceability of this Agreement shall be brought in a court of competent jurisdiction of the Commonwealth.
28. **Entire Agreement.** This Agreement and Attachments A and B, which are incorporated herein by reference, constitute the entire agreement between the Parties relating to this matter and all other agreements, written or verbal, if any, previously entered into by the Parties are hereby superseded by this MOA.

In WITNESS WHEREOF, the parties sign and cause this MOA to be executed on this the _____ day of _____, 2016.

Commissioner of Highways
Commonwealth of Virginia
Department of Transportation

Date

Signature of Witness

Date

Service Provider Full Name

Date

Signature of Witness

Date

DRAFT