



**INTELLIFIBER NETWORKS
MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT consists of this Cover Sheet, the attached General Terms and Conditions, the Service Attachment(s) listed below, the Non-Disclosure Agreement, any Exhibits and any Services Orders entered into by the parties (collectively the "**Agreement**") as of the Effective Date listed below between **Intellifiber Networks Inc.**, a Virginia Corporation, having offices at 2112 W Laburnum Avenue, Suite 109, Richmond, VA 23227 ("**Intellifiber**"), and the undersigned Customer.

<u>Service Attachment(s):</u>	<u>Document ID and Date:</u>

NOTICE INFORMATION: All written notices required under the Agreement shall be sent to the following, unless otherwise specified in the Agreement:

To Intellifiber:

Intellifiber Networks
2112 W Laburnum Avenue, Suite 109
Richmond, Virginia 23227
Attn.: President

With a copy to:

Intellifiber Networks
2112 W Laburnum Avenue, Suite 109
Richmond, Virginia 23227
Attn.: Legal

To Customer:

Attn.: _____
Fax: _____

Attn.: _____
Fax: _____

The undersigned parties have read and agree to the terms and conditions of this Agreement.

INTELLIFIBER NETWORKS

"CUSTOMER"

a _____ corporation

Authorized Signature

Authorized Signature

Printed Name and Title

Printed Name and Title

Effective Date

Date



INTELLIFIBER GENERAL TERMS AND CONDITIONS

1. **SCOPE OF AGREEMENT:** In accordance with the terms and conditions of this Agreement, Intellifiber shall provide certain telecommunications Services to Customer as specified in any Service Order executed by the parties. Orders for different types of Service shall be placed on separate Service Orders such that this Agreement may have one or more Service Orders that may be in effect at any one time.

2. **DEFINITIONS:** Capitalized terms used herein are defined in Exhibit 1.

3. **TERM OF AGREEMENT:** The Term of this Agreement commences on the Effective Date and continues for a period of ____ (___) months. Upon the expiration of the Term, the Agreement shall continue in effect on a month-to-month basis until terminated by either party upon thirty (30) days' prior written notice. Customer shall provide notice of termination to solutions@intellifiber.com. Should the parties have in effect any Service Orders at the expiration or termination of this Agreement, the rights and obligations of the parties with regard to any such Service Orders shall continue to be governed by the terms of this Agreement.

4. **ORDERS FOR SERVICE:** Any Services ordered by Customer under this Agreement shall be ordered in accordance with the terms and conditions of the applicable current Service Attachment. Upon the parties' mutual agreement, the parties shall execute a Service Order identifying at a minimum: (i) the specific Service to be provided; (ii) an Initial Term for the Service Order; (iii) a Requested Service Date; and (iv) the applicable Service Charges for the Service. At the expiration of the Initial Term specified in each Service Order, the Service Order shall renew for successive one year terms until terminated pursuant to the terms of the Agreement. Either party may prevent renewal of a Service Order by providing written notice to the other party prior to expiration of the term. Customer must provide notice of non-renewal to solutions@intellifiber.com at least ninety (90) days prior to the expiration of the term in order to prevent renewal.

5. CUSTOMER RESPONSIBILITIES:

5.1 Use of Service by Customer. Customer shall not, nor permit others to, use any Service for any unlawful purpose or in any unlawful manner and all use of service by and through Customer and any Content will at all times comply with all applicable laws, regulations and Intellifiber's written and electronic instructions for use. Customer shall be solely responsible for, and accordingly be solely liable for, obtaining and maintaining in Customer's own name and at its own expense, throughout the Term, all licenses, permits, consents, authorizations or other rights required for the use of Service and for ensuring compliance with any regulatory or other requirements whether at law or otherwise. Intellifiber may, at its option, terminate or suspend Service if Intellifiber receives notice from any appropriate governmental authority or has reason to believe that use of Service by Customer, its agents,

employees or end users, may or does violate any laws or regulations.

5.2 Content of Communications. Intellifiber does not monitor Content and shall have no liability or responsibility for Content whatsoever. Customer shall hold Intellifiber harmless from any and all Liabilities related to such Content attributable to Customer or its agents, employees or end users, including, without limitation, any Liabilities arising from libel, slander, invasion of privacy or infringement of any third party's proprietary rights.

5.3 Customer Equipment; Interference.

(a) Customer shall, at its own expense, procure any Customer Equipment necessary to implement or receive Service, unless Intellifiber specifies otherwise in writing. Customer shall ensure that all such Customer Equipment shall perform according to published technical specifications for such Customer Equipment and Intellifiber's interface specifications and otherwise complies with Intellifiber's specifications for Service. Customer further warrants and agrees that Customer Equipment used by Customer or Customer's agents, employees or end users in connection with any Service shall not: (i) interfere with or impair service over any such facilities and equipment of Intellifiber; (ii) impair the privacy of any communications carried over Intellifiber's facilities; or (iii) create hazards to the employees of Intellifiber or the public.

(b) Promptly upon notice from Intellifiber, Customer shall eliminate any hazard, interference or Service obstruction that any such Customer Equipment is causing or reasonably may cause. If Customer requests Intellifiber to assist in removing any hazard, interference or Service obstruction that Customer Equipment is causing, or reasonably may cause, Intellifiber may, but is not required to, assist in such removal. Customer agrees that additional charges may apply for Intellifiber's services in connection with such assistance. Customer shall also be responsible for any reconnection charges or other fees due for any suspension of Service.

(c) Intellifiber further reserves the right, at its option, to suspend Service if such any such Customer Equipment does not comply with the foregoing provisions of this Section. In such event Intellifiber will, to the extent practicable, notify Customer of such suspension in advance; provided, however, where prior notice is not practicable, nothing contained in this Agreement shall be deemed to preclude Intellifiber from suspending use of Service by Customer. During any such suspension, no Service Interruption shall be deemed to have occurred for purposes of this Agreement.

5.4 Intellifiber Equipment.

(a) Intellifiber shall be solely responsible for the maintenance of equipment and facilities owned or otherwise controlled by it and shall use reasonable efforts to maintain facilities and equipment that it provides to Customer. Customer shall not, nor permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities or



equipment installed by Intellifiber, except upon the written consent of Intellifiber. Customer shall not use any such equipment or facilities for any purpose other than that for which Intellifiber provided it. Intellifiber may choose the equipment or facilities to be used in providing Service and may substitute, change or rearrange any such equipment or facilities at any time or from time to time as long as the quality of Service or type of Service is not materially impaired or changed.

(b) Customer shall furnish or arrange to have furnished to Intellifiber, at no charge, any space and/or electrical power required by Intellifiber to provide any Service under this Agreement at the points of termination of such Service, as specified in a Service Order, should those points be located on premises of Customer or of its end user(s). The selection of AC or DC power shall be as specified by Intellifiber. Customer shall make all necessary arrangements in order that Intellifiber will have timely access to such space at reasonable times and to the extent reasonably required by Intellifiber for installing, inspecting, repairing and/or removing equipment and facilities of Intellifiber. Intellifiber shall have no right to place equipment or facilities in space owned or controlled by Customer or its end user(s) without the prior consent of Customer, which consent shall not be unreasonably withheld, conditioned or delayed. Intellifiber shall not incur any liability of any kind for any delays or inability to install a Service based on acts or omissions of Customer or of its end user(s). Customer shall also be responsible for the payment of any charges imposed by Intellifiber for visits to Customer's premises when any Service difficulty or trouble report results from the use of any equipment or facility by Customer provided by any entity other than Intellifiber.

(c) Customer agrees to allow Intellifiber to remove all Intellifiber equipment and facilities from Customer's premises: (i) upon termination or expiration of this Agreement (or after termination of Service in connection with which the facilities were used in the case of Service Orders that continue beyond the Term); and (ii) for repair, replacement or otherwise as Intellifiber may determine is necessary, but Intellifiber shall use reasonable efforts to minimize disruptions to Service caused thereby. At the time of such removal, such equipment and facilities shall be in the same condition as when installed, reasonable wear and tear excepted. Customer shall promptly and equitably reimburse Intellifiber for any damage to, or the cost of repair of, any equipment or facilities not in such condition.

(d) As between Intellifiber and Customer, all equipment and facilities provided by Intellifiber shall be and remain its personal property at all times during the Term. At Intellifiber's request, Customer shall prominently affix identifying plates, tags, or labels on any such equipment and facilities showing the ownership interest of Intellifiber and shall not tamper with, remove or conceal such identifying plates, tags or labels. In addition, Customer shall, from time to time, take additional actions and execute and deliver such further documents as Intellifiber may reasonably request in order to confirm and protect Intellifiber's title to and ownership of any such equipment or facilities. Customer shall reimburse Intellifiber for any damages to Intellifiber's equipment or facilities caused by:

(i) any improper use of, or breach of this Agreement with respect to, any such equipment or facilities by Customer, its employees, agents or end users; (ii) improper use of Service by Customer, its employees, agents or end users; (iii) malfunction of any equipment or facilities not provided by Intellifiber and used by Customer or Customer's employees, agents, or end users, in connection with any Service provided hereunder; or (iv) fire, theft or other casualty on the premise of Customer (or of its agents or end users). Upon reimbursement for any such damages and at Customer's expense, Intellifiber will cooperate with Customer in prosecuting a claim against the person or entity causing such damage, and Customer shall be subrogated to the right of recovery of Intellifiber for such damages to the extent of Customer's payment. In the event Customer causes damage to facilities or equipment other than that owned by Intellifiber, and such facilities or equipment are physically, optically and/or electrically associated with those of Intellifiber, Customer shall reimburse the owner for, and indemnify and hold Intellifiber harmless from any and all claims arising from, damage to any such facilities or equipment.

5.5 Protective Apparatuses. Customer shall, at its sole cost (if any), install additional facilities or protective apparatuses which, according to accepted telecommunications industry standards, are required to be installed because of the particular use or hazardous location of any Service provided under this Agreement. Customer shall allow Intellifiber to inspect at reasonable times any facilities or apparatuses required in accordance with this Section, which are associated with Service provided under this Agreement, to determine if such facilities or apparatuses comply with Intellifiber's requirements.

6. PAYMENT TERMS:

6.1 Service Charges. All Service Charges shall be billed monthly in advance, commencing on the Service Date and on the first day of each month thereafter (provided, however, that the first such payment under each Service Order shall be for the period from the Service Date through the end of the next full month) (Example: for a Service Order with a Service Date of March 12, the period from March 12 through March 31 will be invoiced on the April invoice). Non-recurring charges included under the Service Charges on any Service Order (e.g., installation charges, construction fees, extended demarcation fees, facility entrance fees, cross-connect fees and/or expedite fees) are due with the first such payment. Customer agrees to pay all Service Charges on or before the Due Date. If payment is not received by Intellifiber on the next business day after the Due Date, the balance due shall be subject to an interest charge on delinquent amounts at the lower of one and one-half percent (1½%) per month, or the highest rate permissible at law, until paid. The amounts due to Intellifiber hereunder are due and payable without set off.

6.2 Credit, Advance Payments and Deposits. Customer shall provide Intellifiber with credit information as requested, and delivery of Service is subject to Intellifiber's credit approval in its sole discretion. If Customer's financial statements are not public information, then, upon Intellifiber's request, Customer shall provide its most current audited and unaudited financial statements and complete a credit application. Intellifiber may



require Customer to make an advance payment before Service or facilities are provided. Intellifiber may, at any time during the Term as a condition to Intellifiber's acceptance of any Service Order or as a condition to Intellifiber's continuation of Service, also require Customer to a Deposit/Payment Assurance. At such time as the provision of Service to Customer is terminated, the balance of any cash Deposit (not otherwise credited against any amounts owed to Intellifiber) will be refunded, together with any interest on such cash Deposit at the prevailing rate required by law.

6.3 Additional Charges. Any applicable Taxes and Additional Charges shall be charged to and payable by Customer in addition to the Service Charges; provided, however, if Customer believes it is exempt from any such Taxes and Additional Charges, Customer will provide Intellifiber with an exemption certificate acceptable to Intellifiber evidencing such claimed exemption with or prior to Customer's submission of its initial Service Order and thereafter within thirty (30) days of the Customer's filing of an exemption filing made with the appropriate federal or other regulatory agency. Customer shall indemnify, defend and hold harmless Intellifiber against any damages, losses, claims or judgments arising out of any exemption claimed by Customer, including, without limitation, any liens, attachments, fines or penalties.

6.4 Third Party Charges. Unless otherwise set forth in a Service Attachment executed by the parties and a Service Order accepted by Intellifiber, Customer is solely responsible for coordination of all Third Party Services. If Intellifiber coordinates Third Party Services for Customer under a separate Service Attachment and Service Order, charges for the Third Party Services will be payable by Customer in accordance with the Service Attachment and Service Order; provided, however, Customer acknowledges and agrees that Customer is solely responsible for the payment of all charges and expenses associated with any Third Party Services used by Customer in connection with Intellifiber's Services (whether ordered by Intellifiber or not), including, without limitation, any applicable monthly charges, usage charges, installation charges, non-recurring charges, cross-connection charges, and/or applicable termination/cancellation charges.

6.5 Extraordinary Charges. Customer shall incur charges in those circumstances in which extraordinary costs and expenses are generated by Customer and reasonably incurred by Intellifiber beyond those normally associated with Intellifiber's Services, including but not limited to, the following: (i) Customer's request to expedite Service availability to a date earlier than Intellifiber's published installation interval or a previously accepted Requested Service Date; (ii) Service redesign or other activity occasioned by receipt of inaccurate information from Customer; (iii) reinstallation charges following any suspension of Service for cause by Intellifiber; and (iv) Customer's request for Intellifiber's on-site assistance with respect to Customer Equipment problems or Service Outage if Intellifiber determines that the Outage was not a result of Intellifiber's network or facilities.

6.6 Disputed Bills. In the event that Customer Disputes any portion of an Intellifiber invoice, the parties agree to comply

with the Dispute resolution procedures set forth in Section 13 below.

7. DEFAULT AND REMEDIES:

7.1 Intellifiber Default. Upon a Default by Intellifiber affecting any Service Order(s), Customer may terminate the affected Service Order(s) by providing written notice of termination to Intellifiber, via email to solutions@intellifiber.com, not less than ten (10) business days following the event of Default.

7.2 Customer Default.

(a) Upon any Default by Customer of this Agreement not cured after expiration of any applicable notice and/or cure period set forth herein, Intellifiber may, in its sole discretion and without waiving any other rights or remedies available to it, do any or all of the following: (i) suspend Service to Customer (either completely or only with respect to any affected Service Order) or the processing Service Orders until such time as Customer has corrected such noncompliance, including paying any amounts owed hereunder; (ii) terminate Service (either completely or only with respect to any affected Service Order) or this Agreement; and/or (iii) apply or enforce any Deposit/Payment Assurance and/or enforce any security interest provided by Customer. If Intellifiber suspends Service pursuant to this Section, in addition to any other charges due hereunder, Customer shall pay Intellifiber any reconnection fees or other costs imposed on or incurred by Intellifiber to reconnect Service.

(b) If Customer fails to cure any Customer Default within any applicable cure period provided herein, Customer shall be deemed to have cancelled Service for its convenience and shall remain liable for all early cancellation charges applicable to the Service and any and all charges and/or expenses associated with any Service provided by an entity other than Intellifiber (including, without limitation, monthly charges, usage charges, installation charges, non-recurring charges, cross-connection charges, and/or applicable termination/cancellation charges).

(c) During any temporary suspension, and upon any termination of Service in accordance with this Section, no Service Interruption shall be deemed to have occurred for the purposes of this Agreement.

8. WARRANTIES; LIMITATION OF LIABILITY:

8.1 Exclusion of Warranties. THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THIS AGREEMENT AND SERVICE PROVIDED HEREUNDER. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY OR CONTRACTUAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR FOR A PARTICULAR USE OR NON-INFRINGEMENT. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY SERVICES.

8.2 Limitation of Liability. Notwithstanding any contrary provision herein, Intellifiber's total aggregate liability arising out



of this Agreement, including, without limitation, any delays in installation, commencement or restoration of Service, mistakes, accidents, omissions, Service Interruptions, errors or defects in transmission in the provision of Service, shall not exceed the amount of the credit allowance, if any, available under THIS AGREEMENT (INCLUDING ANY SERVICE ATTACHMENT). Without limiting the foregoing, Intellifiber shall have no obligation to provide alternative routing with respect to any Service provided pursuant to this Agreement. In no event shall Intellifiber be liable for any Liabilities arising out of: (I) the fault of facilities or equipment utilized by A THIRD PARTY PROVIDER, OR Customer (INCLUDING ANY OF CUSTOMER'S agents, subcontractors, independent contractors or END USERS); (II) any act or omission of A THIRD PARTY PROVIDER OR Customer (INCLUDING ANY OF CUSTOMER'S agents, subcontractors, independent contractors or END USERS); OR (III) ANY services PROVIDED BY CUSTOMER OR A THIRD PARTY PROVIDER. NO CAUSE OF ACTION UNDER ANY THEORY WHICH ACCRUED MORE THAN ONE (1) YEAR PRIOR TO THE INSTITUTION OF A LEGAL PROCEEDING ANY ALLEGING SUCH CAUSE OF ACTION MAY BE ASSERTED BY EITHER PARTY AGAINST THE OTHER.

8.3 No Consequential Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTIES FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUES, PROFITS, BUSINESS INTERRUPTIONS OR BUSINESS OPPORTUNITIES, OR GOODWILL) RELATING TO OR ARISING FROM THE PROVISION OF SERVICES UNDER THIS AGREEMENT, OR OTHERWISE RELATING TO THE PERFORMANCE OR NONPERFORMANCE BY EITHER PARTY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, WHETHER OR NOT EITHER PARTY HAD OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, THAT SUCH DAMAGES MIGHT BE INCURRED. NOTWITHSTANDING THE FOREGOING, THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER SECTION 9 TO THE EXTENT ANY LIABILITIES THAT ARE SUBJECT TO INDEMNIFICATION INCLUDING ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES.

9. INDEMNIFICATION:

9.1 Mutual Indemnification. Subject to the terms and conditions of this Agreement, each party ("**Indemnitor**") agrees to defend, hold harmless, and indemnify the other party, its employees, directors, officers and agents ("**Indemnitee(s)**") from and against all claims, actions, damages, and/or liabilities, together with any and all losses, fines, penalties, costs, and expenses, including, without limitation, attorneys' fees and expenses or penalties imposed by governmental entities (collectively, the "**Liabilities**") proximately caused by the gross negligence or willful misconduct of Indemnitor, or of Indemnitor's directors, officers, employees and agents, in the performance of Indemnitor's obligations under this Agreement; provided, however, that Indemnitor's liability to an Indemnitee

under this Section shall be reduced to the extent, and in the proportion, that such Liabilities have been proximately caused by any Indemnitee's negligence, gross negligence, or willful misconduct.

9.2 Indemnification Procedures. With respect to third-party claims, the following procedures shall apply:

(a) Promptly after receipt by any entity entitled to indemnification under this Section 9 of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the Indemnitee will seek indemnification pursuant to any such Section, the Indemnitee shall notify the Indemnitor of such claim in writing. No failure to so notify an Indemnitor shall relieve it of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within fifteen (15) business days following receipt of written notice from the Indemnitee relating to any claim (but in no event later than five (5) business days prior to the due date of any answer or other papers required to be filed in response to a complaint, petition or other papers filed by the third party that initiated the action proceeding), the Indemnitor shall notify the Indemnitee in writing if the Indemnitor elects to assume control of the defense and settlement of that claim (a "**Notice of Election**").

(b) If the Indemnitor delivers the Notice of Election relating to any claim within the required notice period, the Indemnitor shall be entitled to have sole control over the defense and settlement of such claim; provided that: (i) the Indemnitee shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim; and (ii) the Indemnitor shall obtain the prior written approval of the Indemnitee before entering into any settlement of such claim or ceasing to defend against such claim. After the Indemnitor has delivered the Notice of Election relating to any claim in accordance with the preceding paragraph, the Indemnitor shall not be liable to the Indemnitee for any legal expenses incurred by the Indemnitee in connection with the defense of that claim. In addition, the Indemnitor shall not be required to indemnify the Indemnitee for any amount paid or payable by the Indemnitee in the settlement of any claim for which the Indemnitor has delivered a timely Notice of Election if such amount was agreed to without the written consent of the Indemnitor.

(c) If the Indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the Indemnitee shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the Indemnitor. The Indemnitor shall promptly reimburse the Indemnitee for all such costs and expenses.

10. INSURANCE: Both parties shall obtain and maintain insurance insuring against its contractual liability created under this Agreement, from an insurer reasonably satisfactory to the other party, in the amount of at least Three Million Dollars (\$3,000,000.00). If requested, either party will provide Certificates of Insurance for such insurance to the other party within ten (10) days after such party's request. Such insurance coverage shall be written so that it shall not lapse or terminate



without at least thirty (30) days' written notice to the other party.

11. MATERIAL CHANGE IN LAW: If any Regulatory Requirement has the effect of canceling, changing or superseding any material term or provision of this Agreement, then this Agreement will be deemed modified in such a way as the parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with the Regulatory Requirement. If the parties cannot agree to modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then either party may terminate this Agreement and/or any Service Order impacted by the Regulatory Requirement effective as of the date of notice by providing written notice to the other party.

12. CONFIDENTIALITY: The provisions of this Agreement are considered proprietary and confidential by the parties hereto, and as such are not to be released to third parties except as may be required by law. The parties agree to abide by the terms and conditions included in the Non-Disclosure Agreement throughout the Term and/or any period covered by a Service Order in effect on expiration of the Term. The terms and conditions of such Non-Disclosure Agreement are hereby incorporated by reference into this Agreement.

13. Dispute Resolution:

13.1 Internal Dispute Resolution. Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a "Dispute") arising out of or related to this Agreement (other than any payment default by Customer that is not cured within the applicable time periods set forth elsewhere herein) shall be resolved in accordance with the procedures set forth in this Section. For any Dispute arising under or related to the Agreement, the parties shall cooperate in good faith to resolve the Dispute amicably.

(a) Any billing Dispute or request for adjustments, together with all supporting documentation, must be made in writing and sent via email to billing@intellifiber.com within sixty (60) days from the date of Intellifiber's invoice, or the right to raise such billing Dispute or request a billing adjustment shall be deemed to have been waived. Customer shall otherwise timely pay any undisputed amounts.

(b) If Intellifiber determines in good faith that a disputed charge was billed in error, Intellifiber will issue a credit to reverse the amount that was incorrectly billed, including any finance charges. If Intellifiber determines in good faith that a disputed charge was billed correctly, Intellifiber will inform Customer of such determination, and, if Customer agrees with Intellifiber's determination, then Customer shall pay the previously disputed amount within ten (10) days from the date of Intellifiber's notification.

(c) In the event that Customer reasonably determines that there is a material discrepancy between Intellifiber's invoiced charges and Customer's calculation of charges owed, Customer shall have the right to withhold payment of the disputed amount, provided that Customer gives Intellifiber written notice via email to billing@intellifiber.com of the

amount, reason for the Dispute, supporting documentation and Customer's account is not otherwise past due at the time the payment is withheld.

(d) In the event of a Dispute between the parties arising under or related to this Agreement, and upon the written request of either party, each of the parties shall appoint, within five (5) business days after a party's receipt of such request, a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives; provided, however, that all reasonable requests for information directly relevant to the Dispute made by one party to the other party shall be honored. If the parties are unable to resolve issues related to a Dispute within thirty (30) days after a party's request is made for appointment of designated representatives as set forth above the parties will escalate the Dispute to the next level.

(e) In the event the Dispute resolution process outlined above is unsuccessful, the parties shall take the next step. Prior to submitting the Dispute to arbitration, the parties agree to attempt, in good faith, within a commercially reasonable period of time, to resolve such Dispute through negotiations between senior management of the parties. If either party notifies the other that it intends to request an arbitration proceeding, Customer shall promptly place all disputed and withheld amounts, if any, on an on-going basis with a mutually acceptable third party escrow agent, pursuant to a mutually agreeable escrow agreement. Intellifiber reserves the right to suspend provisioning of the Services or terminate the Agreement pursuant to Section 7 if Customer fails to comply with the above escrow obligation.

13.2 Arbitration. Any Dispute between the parties arising out of or related to the Agreement that cannot be settled amicably through the procedures outlined above, may be brought for arbitration before J.A.M.S./Endispute or a similar arbitral body. If both parties agree to arbitration, then the parties shall attempt to agree on a single neutral arbitrator, but in the event they fail to do so within fifteen (15) days after the demand for arbitration, either party may request the arbitral body to select and appoint a single neutral arbitrator. The arbitrator shall be an attorney with experience with the contemporary telecommunications industry and the legal and technical aspects of the Dispute. The parties shall be entitled to submit expert testimony and written documentation in such arbitration. The arbitrator shall set forth his or her decision in a reasoned opinion. The language of the arbitration shall be English. The arbitrator's award shall be final, conclusive and binding on all Persons participating in the arbitration. In no event, however, shall the arbitrator have the power to award any damages that are not permitted under this Agreement. Any court having jurisdiction may enter judgment on the arbitrator's award. The cost of the arbitration, including the fees and expense of the arbitrator and the administrative and other fees of the arbitral



body, shall be shared equally between Intellifiber and Customer unless the award otherwise provides. In no event shall the arbitrator have the power to award any punitive, consequential, indirect, exemplary damages or other damages in excess of the limitations of liability set forth herein. Notwithstanding the foregoing, claims for preliminary injunctive relief may be brought in a state or federal court in the United States with jurisdiction over the subject matter and the parties.

14. MISCELLANEOUS PROVISIONS:

14.1 Force Majeure. Neither party shall be liable for any failure of performance hereunder due to a Force Majeure Event.

14.2 Assignment. Customer shall not assign or transfer its rights or obligations under this Agreement without the prior written permission of Intellifiber, which consent shall not be unreasonably withheld.

14.3 No License Granted. No license, under patents or otherwise, is granted by Intellifiber to Customer or shall be implied or arise by estoppel in Customer's favor with respect to any circuit, apparatus, system or method used by Intellifiber in connection with any Service provided under this Agreement.

14.4 No Joint Undertaking. Notwithstanding any other provision of this Agreement, this Agreement applies only to Services provided to Customer, and does not constitute the joint undertaking with Customer for the furnishing of any service to Customer's end users. None of the provisions of this Agreement shall apply or extend directly to the Customer's end users. Intellifiber does not undertake to transmit messages or offer any telecommunications services to end users under this Agreement. Intellifiber shall be responsible only for the installation, operation and maintenance of its facilities used in providing Service, as specified herein.

14.5 Limitations on Benefits of Agreement. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties hereto, and that the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

14.6 Publicity. Neither party may use the name, logos, trademarks, service marks or other proprietary identifying symbols of the other party in any press release, public statement, advertising, signage, marketing materials or other publicity materials in any medium without the other party's prior review and written consent, not to be unreasonably withheld.

14.7 Order of Precedence. Unless expressly provided otherwise in a Service Attachment, in the event of conflict among the documents comprising this Agreement, the order of priority shall be: (i) any publicly filed tariff governing the Service (or a successor document in the event of detariffing); (ii) then the Intellifiber General Terms and Conditions; (iii) then any Service Attachment; (iv) then Service Orders accepted by Intellifiber; and (v) then Exhibits to this Agreement. No Service

Attachment nor Service Order shall alter or amend the parties' obligations under Sections 8, 9, or 10 of this Agreement, unless the Service Order expressly modifies such Sections and such alterations and amendments are countersigned by authorized officers of the parties.

14.8 Service Subject to Availability. The furnishing of Service is subject to the availability thereof on a continuing basis, and is limited to the capacity of Intellifiber to provide Service as well as the capacity which Intellifiber may obtain from other carriers to furnish Service from time to time as required at the sole discretion of Intellifiber. Nothing in this Agreement shall be construed to obligate Customer to submit, or Intellifiber to accept, Service Orders.

14.9 Application of Tariffs. Intellifiber may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain Services. In the event that such tariffs are filed with respect to any Service ordered by Customer, then the terms set forth in the applicable tariff (or any successor document in the event of detariffing) shall govern Intellifiber's delivery of, and Customer's consumption or use of, such Service and such tariffs shall be incorporated by reference herein.

14.10 Waiver. The failure of either party to give notice of Default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by the parties in writing.

14.11 Attorneys' Fees. In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement, to collect any amounts due hereunder, or to collect money damages for breach hereof, the prevailing party, shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees (including, without limitation, the allocable costs of in-house counsel), court costs, costs of investigation and other related expenses incurred in connection herewith.

14.12 Amendments. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought.

14.13 Notices. All notices, demands, requests, or other communications which may be, or are required to be, given or served, or sent by any party to any other party pursuant to this Agreement shall be in writing and will be deemed to have been duly delivered or given when: (i) delivered by hand (with written confirmation of receipt) before 5:00 p.m. EST on a business day (or otherwise on the next succeeding business day); (ii) sent by facsimile before 5:00 p.m. EST on a business day (or otherwise on the next succeeding business day) and a written confirmation of the transmission is received by the sender; or (iii) the next business day after being deposited for delivery with a nationally recognized overnight delivery service, such as Federal Express, and addressed or sent, as the case may be,



to the appropriate addresses or facsimile numbers set forth on the Cover Sheet. Each party may designate by notice in writing a new address, to which any notice, demand, request or communication may thereafter be so given, served or sent.

14.14 Severability. Except as otherwise provided for in this Agreement, Service provided by Intellifiber as set forth in each Service Order attached hereto is severable, and upon termination of Service with respect to any Service Order, Services provided under other Service Orders shall continue unaffected. Similarly, if any part or provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part or provision shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts or provisions of this Agreement and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part or provision to the extent necessary to render the Agreement valid and enforceable.

14.15 Choice of Law. This Agreement shall be interpreted in accordance with the substantive and procedural laws of the Commonwealth of Virginia, without regard to its conflicts of law provisions.

14.16 Entire Understanding. This Agreement (including, the Cover Sheet, these General Terms and Conditions, all Service Attachments, Service Orders, the Non-Disclosure Agreement and other documents referenced within the Agreement) constitutes the entire understanding between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior oral or written agreements, commitments

or understandings with respect to the matters provided for herein.

14.17 Binding Effect. Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

14.18 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.

14.19 Headings. Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

14.20 Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.



Exhibit 1:

Definitions

“Agreement” means the Master Service Agreement between Intellifiber and Customer, consisting of the Cover Sheet, the General Terms and Conditions, Service Attachments, Services Orders, the Non-Disclosure Agreement and/or any Exhibits or other documents referenced and incorporated in the Agreement.

“Association” means the American Arbitration Association.

“Content” means any information or communications (in any media) made available, displayed or transmitted in connection with a Service.

“Cover Sheet” means the cover sheet to the Agreement.

“Customer” means the legal entity identified in the preamble of the Agreement executing the Agreement.

“Customer Equipment” means any circuits, facilities, equipment, hardware or software necessary to implement or receive Service.

“Deposit/Payment Assurance” means, as required by Intellifiber, either: (i) a cash deposit, (ii) an irrevocable, stand-by letter of credit from a financial institution and in a format acceptable to Intellifiber; or (iii) or such other assurance of payment as may be acceptable to Intellifiber.

“Default” means: (i) Customer's failure to pay any invoice and such failure remains uncorrected for ten (10) days after receipt of written notice that a payment is past due; (ii) Customer's failure to pay any advance payment or Deposit or to provide any Payment Assurance when due; (iii) Customer's violation of any applicable laws, statutes, ordinances, codes or other legal requirements with respect to any Service that are not remedied within ten (10) days after written notice thereof (or such shorter period as may be required by law); (iv) Customer's failure to perform or observe any material term or condition of this Agreement (other than payment terms) and such failure remains uncured for more than thirty (30) days from the date of Intellifiber's written notice thereof; or (v) either party becomes Insolvent.

“Dispute” shall have the meaning set forth in Section 13 of the Agreement.

“Due Date” means a date that is no later than thirty (30) days from the date of Intellifiber's invoice.

“Force Majeure Event” means an unforeseeable event (other than a failure to comply with payment or security obligations) beyond the reasonable control of a party, including, without limitation: acts of God, fire, explosion, vandalism, cable cuts, storms or other similar catastrophes; any law, order, regulation, direction, action or request of the United States government, or of any other government, including state and local governments having jurisdiction over either of the parties, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority; national emergencies; acts of terrorism, insurrections, riots, wars, or strikes, lockouts, work stoppages or other labor disputes or difficulties.

“Indemnitee” shall have the meaning set forth in Section 9 of the Agreement.

“Indemnitor” shall have the meaning set forth in Section 9 of the Agreement.

“Initial Term” means the period of time set forth in a Service Order during which Intellifiber agrees to provide, and Customer agrees to pay for, Service. Such Initial Term begins on the Service Date.

“Insolvent” means the occurrence of any of the following events, whereby either party: (i) becomes or is declared insolvent or bankrupt; (ii) is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer for it; (iii) makes an assignment for the benefit of all or substantially all of its creditors; or (iv) enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations.

“Liabilities” shall have the meaning set forth in Section 9 of the Agreement.

“Non-Disclosure Agreement” means the non-disclosure agreement entered into by the parties.



“**Notice of Election**” shall have the meaning set forth in Section 9 of the Agreement.

“**POP**” means a point of presence.

“**Regulatory Requirement**” means any rule, regulation, law or order issued by the FCC, a state Public Utility or Service Commission, a court of competent jurisdiction or other governmental entity affecting the Agreement or services provided by or through Intellifiber.

“**Renewal Term**” means any extension of the Initial Term in the manner described in Section 4 of the Agreement.

“**Requested Service Date**” means the date that Customer requests that Intellifiber makes a Service available for Customer’s use, as set forth in a Service Order.

“**Service(s)**” means any telecommunication services provided by Intellifiber to Customer under the Agreement, as such services are described on Intellifiber’s Service Attachments attached and made a part of the Agreement. If, at Customer’s request, Intellifiber arranges for a Third Party Service on behalf of Customer (as described in a Third Party Service Attachment that may be executed by the parties), references to “Services” shall also include such Third Party Services.

“**Service Attachment(s)**” or **Attachment(s)**” means those document(s) that describe Intellifiber Service(s), processes or procedures (including, procedures for Third Party Services order by Intellifiber for Customer). Such Service Attachments are attached to and are an integral part of the Agreement.

“**Service Charges**” means the rates and charges payable by Customer for Service provided by Intellifiber as set forth in an executed Service Attachment or Service Order accepted by Intellifiber, including any monthly recurring charges or non-recurring charges set forth on a Service Order. Unless otherwise set forth in any executed Service Attachment, such Service Charges do not include any charges and/or expenses associated with any Third Party Services (including, without limitation, monthly charges, usage charges, installation charges, non-recurring charges, cross-connection charges, and/or applicable termination/cancellation charges), all of which shall be the sole responsibility of Customer.

“**Service Date**” means the later of: (i) the Requested Service Date contained in a Service Order; or (ii) at the time Service has been tested and made available by Intellifiber to Customer, which date shall be determined by Intellifiber.

“**Service Interruption**” or “**Outage**” shall have the meaning ascribed to such term(s) in any Service Attachment.

“**Service Order**” means Service order request forms issued by Intellifiber, and as amended by Intellifiber from time to time.

“**Taxes and Additional Charges**” means any and all applicable federal, state, local or foreign use, excise, sales, gross receipts or privilege taxes, charges or surcharges (however designated), value-added and other taxes, levies, surcharges, duties, fees, pay-phone service provider compensation or other tax-related surcharges, chargeable to or against Intellifiber because of Service provided to Customer, including any charges mandated or imposed on Intellifiber by regulatory agencies or others.

“**Term**” (including any renewal term) shall have the meaning set forth in Section 3 and 4 of the Agreement.

“**Third Party Service(s)**” means any services to be provided by a third party (a “**Third Party Provider**”) that are not carried on Intellifiber’s network and/or other related equipment or facilities that are not owned and/or controlled by Intellifiber, including, without limitation, any telecommunications facilities or services provided by Third Party Providers connecting a Customer-designated termination point to a Intellifiber POP.

Other capitalized terms not defined in this Exhibit and used in the Agreement shall have the meanings ascribed to such terms elsewhere in the Agreement, or, if not so defined, the commonly accepted meaning of such terms within the telecommunications industry.