

## **DARK FIBRE LICENSE AND MAINTENANCE AGREEMENT**

**BETWEEN:**

**THE CITY OF CALGARY**, a municipal corporation in the  
Province of Alberta, Canada

(hereinafter called "The City")

**OF THE FIRST PART**

- and -

**[INSERT LEGAL NAME OF LICENSEE]**, a corporation  
organized under the laws of Alberta,

(hereinafter called "Licensee")

**OF THE SECOND PART**

## DARK FIBRE LICENSE AND MAINTENANCE AGREEMENT

This Agreement is effective on the Effective Date.

BETWEEN:

**THE CITY OF CALGARY**, a municipal corporation in the  
Province of Alberta, Canada

(hereinafter called "The City")

OF THE FIRST PART

- and -

**[INSERT LEGAL NAME OF LICENSEE]**, a corporation organized under the  
laws of Alberta

(hereinafter called the "Licensee")

OF THE SECOND PART

### BACKGROUND:

- A. The City owns and manages Fibres and Facilities that form multiple Fibre Circuits, which are located throughout the City of Calgary in Alberta; and
- B. The Licensee has requested, and The City has agreed to provide, the Licensee with the use of a Fibre Circuit, as identified in this Agreement, under the terms and conditions set out in this Agreement.

In consideration of the mutual terms, conditions and covenants contained in this Agreement, **THE PARTIES THEREFORE AGREE AS FOLLOWS:**

### ARTICLE 1.0 – INTERPRETATION

**1.1** In this Agreement and in the Background above the following terms, when capitalized, have the following meanings:

- (i) "**Activation Date**" means the date on which the Licensee accepts the results of the Fibre Tests for a Fibre Circuit licensed to the Licensee by The City, or the date on which the Licensee is deemed to have accepted the results of the Fibre Tests for the Fibre Circuit;
- (ii) "**Additional Services**" means supplementary services provided by The City related to the Fibre Circuit, which include, but may not be limited to:
  - (a) re-routing of a Fibre Circuit;

- (b) additional testing of a Fibre Circuit after the Activation Date;
  - (c) on-site service calls for issues that are determined to be unrelated to the Fibre Circuits; or
  - (d) provision of cross-connections to the Calgary Internet Exchange switch hosted by The City.
- (iii) “**Agreement**” means this agreement and all Schedules attached to it, as may be amended from time to time;
- (iv) “**As-Built Drawings**” means construction drawings prepared in accordance with The City’s standards and which accurately establish the location of a Fibre Circuit;
- (v) “**Average Attenuation Per Kilometer**” means an average, per kilometer, of the attenuation measurements taken with an optical reflectometer at each end of a Fibre within a Fibre Circuit with one cursor positioned right after the end of the dead zone and the other positioned right before the end-of-Fibre reflection;
- (vi) “**Basic Maintenance**” means the routine maintenance and repair of a Fibre Circuit on The City’s Network as is necessary to maintain the Fibre Circuit in an operational condition capable of transmission performance and in compliance with The City’s network operations policies and procedures, and includes inspection services, routine remedial maintenance and ordinary course repairs, but does not include Emergency Maintenance;
- (vii) “**Business Day**” means 8:00 a.m. until 5:00 p.m. Calgary time on any calendar day except for Saturday, Sunday or any statutory holiday observed in the Province of Alberta;
- (viii) “**Cable**” means a sheath containing Fibres;
- (ix) “**Circuit Number**” means a number assigned by The City to a Fibre Circuit for identification purposes;
- (x) “**Confidential Information**” means the content of this Agreement and information considered proprietary by either Party that is delivered or disclosed pursuant to this Agreement and identified as such, and includes any and all material, data and information (regardless of form and whether or not patentable or protectable by copyright) that is not available to the public such as technical and business information, financial plans and records, marketing plans, business strategies, trade secrets, present and proposed products, customer lists, information regarding customers and suppliers;
- (xi) “**Deficiency**” means a break in any Fibre or any other condition in the Fibre within a Fibre Circuit that causes a transmission loss or a deterioration in performance below the Fibre Specifications;
- (xii) “**Effective Date**” means the date on which The City’s delegated representative signs this Agreement, unless another date has been expressly agreed to, in writing, by the Parties;

- (xiii) **“Emergency Maintenance”** means such work or assistance as may be necessary in the event of a Deficiency to restore a Fibre in a Fibre Circuit or correct an impairment in accordance with the provisions of Schedule B, and may include, where necessary or desirable in the circumstances, the provision of a by-pass splice connection;
- (xiv) **“Event of Default”** means the occurrence of any one or more of the following events:
- (a) A Party is in material breach of this Agreement (other than as a result of an event of force majeure as described in Article 13.0, Section 13.7) and the non-breaching Party has given prior Notice of the breach and the other Party fails to remedy or cure the breach within 30 days of receipt of the Notice, or fails to provide reasonable written evidence that it is pursuing a cure with diligence to the satisfaction of the other Party acting reasonably, or within such longer time period as may be agreed to by the Parties;
  - (b) Licensee fails to make a payment after 30 days of receipt of a written Notice from The City requesting payment of overdue amounts payable under this Agreement and the amount payable is not in *bona fide* dispute;
  - (c) Licensee becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it, or becomes voluntarily subject as a debtor to the provisions of the *Winding-Up and Restructuring Act*, R.S.C., 1985, c. W-11, the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, their successors or replacements, or other law for the reorganization or arrangement, relief or aid of debtors;
  - (d) Licensee assigns or transfers this Agreement other than in accordance with Article 11.0.
- (xv) **“Facilities”** means the support structures that house or support a Fibre Circuit and includes conduit or duct, sub-duct, poles, manholes, hand holes, pedestals, shelters and huts;
- (xvi) **“Fees”** means the fees, charges, reimbursements and other amounts to be paid by the Licensee to The City for use of a Fibre Circuit as described in Schedule A and includes fees for Additional Services;
- (xvii) **“Fibre”** means a single strand of single mode optical fibre contained within a Cable;
- (xviii) **“Fibre Circuit”** means a Fibre and Facilities connecting two geographic locations and licensed by the Licensee under this Agreement;
- (xix) **“Fibre Specifications”** means the standards for performance of a Fibre within a Fibre Circuit as described in Schedule C;
- (xx) **“Fibre Tests”** means the tests conducted to determine if a Fibre within a Fibre Circuit meets the Fibre Specifications;
- (xxi) **“Government Authority”** means any federal, provincial, municipal or other governmental body, agency, tribunal or authority having jurisdiction in the Province of Alberta and lawfully empowered to make or impose laws, bylaws, rules or regulations with respect to the obligations of the Parties under this Agreement;

- (xxii) “**Licensee**” means [INSERT LEGAL NAME], and includes its respective officers, employees, contractors or agents;
- (xxiii) “**Maintenance**” means the maintenance of a Fibre and a Fibre Circuit as described in Schedule B;
- (xxiv) “**Network**” means a Fibre optic cable communication network owned and managed by The City;
- (xxv) “**Notice**” means any communication delivered to a Party under this Agreement;
- (xxvi) “**Party**” or “**Parties**” means either The City or the Licensee if used in the singular (as the context indicates), and both The City and the Licensee if used in the plural;
- (xxvii) “**Person**” means any individual, corporation, partnership, association, joint venture or organization of any kind and its lawful trustee, successor, assignee, transferee or personal representative;
- (xxviii) “**The City**” means The City of Calgary and includes its respective officers, employees, contractors or agents;
- (xxix) “**Third Party**” means any Person that is not a Party to this Agreement;
- (xxx) “**Underlying Rights**” means all easements, rights-of-way, leases, licenses, authorities, permits, arrangements and agreements relating to the grant of rights and interest in or access to the property which The City requires to place its Networks and Facilities;
- (xxxi) “**Underlying Rights Owner**” means the owner or holder of the Underlying Rights.

- 1.2 If this Agreement cites or refers to an Act, regulation, bylaw or policy, the citation or reference is to the Act, regulation, bylaw or policy as amended and includes reference to any Act, regulation, bylaw or policy that may be substituted in its place.
- 1.3 Unless the context requires otherwise, words importing the singular will include the plural and words importing the plural will include the singular.
- 1.4 Unless context requires otherwise, references to specific Articles, Sections, Clauses, Schedules and other divisions of the Agreement followed by a number are references to the whole of the Article, Section, Clause or Schedule or other division of the Agreement as applicable, bearing that number, including all subsidiary provisions containing the same number as a prefix.
- 1.5 Headings or sub-headings in this Agreement are inserted for ease of reference and guidance purposes only and do not form part of this Agreement.

## **ARTICLE 2.0 – GRANT OF LICENSE**

- 2.1 Subject to Section 2.5, The City, in its sole discretion, will select Fibre to form Fibre Circuits. The City hereby grants the Licensee a non-transferable license to use one or more Fibre Circuits, as described in Schedule D, for the Licensee’s purposes, subject to the provisions

of this Agreement and to the extent The City may lawfully do so in accordance with The City's Underlying Rights.

- 2.2** The Licensee is not limited as to the types of electronics, services or technologies it uses or provides in connection with its use of a Fibre Circuit provided that the Licensee's use of a Fibre Circuit does not interfere with the use of, or cause a risk of damage to any portion of The City's Network or the equipment of any Third Party that may also be located in the Facilities.
- 2.3** The Licensee must not resell a Fibre or a Fibre Circuit, in whole or in part, and must not swap, assign, license, sublicense or share a Fibre or a Fibre Circuit in any other manner whatsoever. Any violation of this Section 2.3 will be considered a material breach of this Agreement.
- 2.4** Prior to the Activation Date of a Fibre Circuit, The City will conduct Fibre Tests on the Fibre selected to form the Fibre Circuit and transmit to the Licensee electronic copies of the results of the Fibre Tests. The Licensee will have 15 Business Days after the Activation Date of a Fibre Circuit to provide The City with Notice of any defect or Deficiency of the Fibre to meet the Fibre Specifications whereupon The City will take such action as necessary to correct such defect or Deficiency within a reasonable time period, but in any event not later than 5 Business Days following receipt of the Licensee's Notice. The City will repeat the Fibre Tests after correcting the defect or deficiency and transmit the results of the updated Fibre Tests to the Licensee.
- 2.5** During the term of this Agreement, The City may alter, replace, change or modify the Fibre that forms a Fibre Circuit to ensure the Fibre meets the Fibre Specifications. If The City alters, replaces, changes or modifies the Fibre that forms a Fibre Circuit, The City will:
- (a) inform the Licensee of the date or dates when the Fibre in the Fibre Circuit will be altered, replaced, changed or modified;
  - (b) conduct Fibre Tests on the new Fibre that forms the Fibre Circuit;
  - (c) make reasonable efforts to coordinate the alteration, replacement, change or modification of the Fibre in the Fibre Circuit with the Licensee in order to minimize the impact on the Licensee; and
  - (d) transmit to the Licensee electronic copies of the results of the Fibre Tests after the alteration, switching out, change or modification of the Fibre forming the Fibre Circuit is complete.

The Licensee will have 15 Business Days after receipt of the Fibre Tests to provide The City with Notice of any defect or Deficiency of the Fibre to meet the Fibre Specifications whereupon The City will take such action as necessary to correct such defect or Deficiency within a reasonable time period, but in any event not later than 5 Business Days following receipt of the Licensee's Notice.

- 2.6** The Activation Date of a Fibre Circuit is the date on which the Licensee notifies The City that Fibre that forms a Fibre Circuit is accepted by the Licensee, or, alternatively, a Fibre Circuit will be deemed to be accepted by the Licensee as of the 16<sup>th</sup> Business Day after the Licensee's receipt of the results of the most recent relevant Fibre Tests if the Licensee does not provide The City with Notice of a defect or Deficiency prior to that date.

- 2.7** The City will subsequently deliver As Built Drawings to the Licensee within 30 Business Days of the Activation Date of a Fibre Circuit or within 30 Business Days of altering, switching out, changing or modifying a Fibre that forms a Fibre Circuit.
- 2.8** The Licensee acknowledges and agrees that:
- (a) ownership and title to a Fibre Circuit and all components of a Fibre Circuit, such as all Fibr es and Facilities, is vested in The City;
  - (b) the Licensee's use of a Fibre Circuit under this Agreement is a license; and
  - (c) the Licensee must not register, or permit to be registered, any instrument claiming an interest or property right in The City's Fibre Circuit, a Fibre, Facilities, or Network in any real or personal property registry under or by virtue of the Licensee's use of any Fibre Circuit under this Agreement.

### **ARTICLE 3.0 – TERM AND TERMINATION**

- 3.1** This Agreement has an initial term of [REDACTED] years commencing on the Effective Date and will be renewed automatically for [REDACTED] successive [REDACTED] year terms and expire [REDACTED] years from the date of the Effective Date unless:
- (a) this Agreement is terminated by either Party in accordance with this Agreement;
  - (b) a Party delivers a Notice of non-renewal to the other Party at least 90 days prior to the expiration of the then current term; or
  - (c) this Agreement is replaced by a new agreement between the Parties.
- 3.2** Upon the occurrence of an Event of Default by the Licensee:
- (a) The City may take such action as it determines, in its sole discretion, is necessary to correct the Event of Default and recover from the Licensee its reasonable costs and expenses of doing so and pursue any legal remedies it may have under applicable principles of law or principles of equity, including specific performance;
  - (b) The City's obligations under this Agreement with respect to a Fibre Circuit will be suspended while the Event of Default continues; and
  - (b) The City may terminate this Agreement which will be effective upon provision of written Notice to Licensee.
- 3.3** Despite any other provision of this Agreement, The City may terminate this Agreement with written Notice of 60 Business Days to the Licensee if The City is required to terminate this Agreement by law, court order, or regulatory order or directive. In the event The City is required to terminate this Agreement pursuant to law or a court order or regulatory order or directive, The City will reimburse the Licensee for installation fees paid by the Licensee (as set out in Schedule A) on a pro-rated basis in accordance with the term (or portion of the term) for which the Licensee has had access and use of a Fibre Circuit under this Agreement.

- 3.4** Upon the occurrence of an Event of Default by The City:
- (a) the Licensee may pursue any legal remedies it has under applicable law or principles of equity relating to the Event of Default, including specific performance; and
  - (b) the Licensee's obligations with respect to this Agreement will be suspended while the Event of Default continues.
- 3.5** Either Party may terminate this Agreement for convenience upon 90 days prior written Notice to the other Party.

#### **ARTICLE 4.0 – FEES AND TERMS OF PAYMENT**

- 4.1** The City will render an invoice to the Licensee on or after the Effective Date for the initial one time installation fee as set out in Schedule A. Thereafter, The City will render invoices on a monthly basis during the term and during any renewal term of this Agreement in accordance with Schedule A and for any Additional Services provided by The City.
- 4.2** The Licensee must pay the invoices issued by The City within 30 days of receipt. If the Licensee does not pay in full within the prescribed time period all amounts payable and such non-payment continues for more than 30 days after the date payment is due, the Licensee must pay interest to The City at a rate in accordance with The City's Accounts Receivable Collections Policy FA-031.
- 4.3** The Fees, as set out in Schedule A will be increased annually by The City during the initial term and during any renewal term by THREE PERCENT (3%) per year.
- 4.4** The Fees are exclusive of all applicable sales, use, value-added, goods and services and any similar taxes, duties or assessments as applicable and attributable to the license and maintenance. The City will include these additional amounts in any invoice rendered by The City to the Licensee.
- 4.5** The Licensee must pay all taxes levied in connection with revenues or deemed revenues associated with the provisions of the License provided under this Agreement.

#### **ARTICLE 5.0 – MAINTENANCE AND RELOCATION**

- 5.1** The City will, at its sole cost and expense, be responsible for the maintenance of Fibre Circuits, such maintenance to be in accordance with the maintenance procedures described in Schedule B.
- 5.2** In the event of an outage of a Fibre Circuit, the procedures to be employed by both Parties are described in Schedule B.
- 5.3** Unless otherwise agreed to by the Parties, all access to The City's Facilities by the Licensee will be by escorted access and the Licensee will be responsible for the costs of the escorted access.
- 5.4** If Fibre and Facilities (or any part of them) which form a Fibre Circuit require relocation:



- (a) The City will pay for 100% of the costs of the relocation if:
  - i. the relocation is for The City's purposes; or
  - ii. a Person other than The City or the Licensee, including a Government Authority, causes or mandates the relocation;

but

- (b) The Licensee must reimburse The City for 100% of The City's related and reasonable costs if The City is required to perform the relocation as a result of any direct or indirect act or failure to act of the Licensee.

## **ARTICLE 6.0 – INDEMNIFICATION AND LIMITATION OF LIABILITY**

- 6.1** As a result of, or arising out of, or attributable to: (i) any negligent act or omission of a Party relating to its use of a Fibre Circuit or its provision of maintenance; or (ii) a Party's failure to observe or perform its obligations under the Agreement; or (iii) any negligent act or omission of a Party, except where any losses, costs, expenses (including all legal and other professional fees and disbursements) and damages are due to the wrongful act, omission, default or negligence of the other Party, each Party will:
- (a) be liable to the other Party for all losses, costs, expenses (including all legal and professional fees and disbursements) and damages whatsoever which the other Party may suffer, sustain, pay or incur; and
  - (b) indemnify, defend and save harmless the other Party from and against all actions, proceedings, claims and demands whatsoever which may be brought or made against the other Party, and from and against all losses, costs, damages or expenses suffered or incurred by the other Party by reason of any damage to property (including property of the other Party) or injury (including injury resulting in death) to Persons, whether in contract, tort or otherwise.
- 6.2** Despite any other provision of this Agreement, neither Party is liable for any damages in respect of incidental, punitive, exemplary, indirect, special or consequential damages of the other Party, including, but not limited to, lost business revenue, lost profits, failure to realize expected savings, loss of data or loss of business opportunity, even if a Party has been advised of the possibility of such damages. This limitation does not protect Licensee from claims made by another utility company against The City as a result of an act or omission by the Licensee.
- 6.3** The Licensee expressly acknowledges and agrees that its service, including all telecommunication service furnished by the Licensee to its customers by means of the Licensee's use of the Fibre Circuit, is provided by the Licensee and is not the responsibility of The City. The City assumes no liability for any property or any Person (and for greater certainty, Person includes the Licensee and any customer of the Licensee) for direct or indirect loss or damage arising in connection with any telecommunication and any interruption or interference with service or in respect of service quality and Licensee must indemnify The City and hold such indemnities jointly and severally harmless from all loss or damage and all fines or penalties and all claims, demands, actions, suits, or other proceedings by whomever made.

## **ARTICLE 7.0 – INSURANCE**

- 7.1 The Licensee, at its own expense and throughout the term of this Agreement, must maintain with insurers allowed by the laws of the Province of Alberta to issue insurance policies in Alberta, and in a form satisfactory to The City, a Comprehensive General Liability insurance policy covering all liabilities assumed by it under this Agreement in an amount not less than FIVE MILLION (\$5,000,000.00) CANADIAN DOLLARS in the aggregate as to any one accident or occurrence and such policy must include:
- (a) The City as an additional named insured;
  - (b) a cross liability clause; and
  - (c) broad form contractual liability.
- 7.2 The insurance policies must include a provision for The City to be given 30 days written notice prior to cancellation or material change and The City must be advised immediately if the insurance policies lapse or are otherwise discontinued.
- 7.3 The Licensee must provide documentary evidence of the insurance policies satisfactory to The City prior to execution of this Agreement and furnish documentary evidence satisfactory to The City of the renewal or continuance of such insurances at or before the expiry date(s) of the insurance.
- 7.4 The insurance requirements mentioned above will not be construed, and in no manner limit or restrict Licensee's liability under this Agreement.
- 7.5 The Licensee is responsible for any deductible that may apply in any of the insurance policies obtained by the Licensee under this Agreement.

#### **ARTICLE 8.0 – RENEGOTIATION AND DISPUTE RESOLUTION**

- 8.1 Each Party to this Agreement acknowledges that laws may come into force during the term of the Agreement which affect the Agreement and the rights and obligations of the Parties under it. Despite anything contained in the Agreement, if the Agreement or any right or obligation provided under the Agreement becomes invalid or illegal, or if any law comes into force which, as determined by either of the Parties acting reasonably, requires changes to the Agreement or any right or obligation provided under the Agreement, the Parties will use commercially reasonable efforts to renegotiate the Agreement or modify their relationship or any rights or obligations under the Agreement to ensure that the Agreement and the rights and obligations under it are in compliance with such laws.
- 8.2 Any dispute between the Parties as to the interpretation of, subject matter of, or in any way related to, this Agreement will be resolved by the Parties attempting to reach a fair and equitable resolution by using, in good faith, the following methods in the order listed and on an escalating basis to achieve resolution:
- (a) Negotiation between The City's Manager, Information Technology and \_\_\_\_\_;
  - (b) Negotiation between The City's Chief Information Technology Officer and \_\_\_\_\_;
  - (c) If such senior officers of the respective Parties are unable to resolve the dispute within 30 days, or within such time period as may be agreed to by the Parties, the Parties may, subject to their agreement, seek formal mediation by a jointly appointed mediator or, alternatively, the Parties may seek appropriate remedies through any court of competent jurisdiction.

In no event will any stage of negotiation between the Parties (as described in (a) and (b) above) exceed 45 Business Days.

- 8.3** During negotiation, neither Party will be deemed to have waived any rights or remedies at law or in equity, and both Parties agree to maintain the business relationship of the Parties to the extent reasonably practical during such negotiations.

## ARTICLE 9.0 – NOTICE

- 9.1 Unless otherwise provided in this Agreement and unless otherwise agreed to between the Parties, any Notice to a Party under this Agreement must be given or served by registered mail, postage prepaid or by facsimile transmission, addressed as follows:

**The City:**

The City of Calgary  
P. O. Box 2100  
Station "M", #8245  
Calgary, Alberta T2P 2M5  
Attention: Leader, Network Infrastructure  
FAX: (403) 268-2546

**Licensee:**

\*

**WITH A COPY TO:**

The City of Calgary  
Law Department  
P. O. Box 2100  
Station "M", #8053  
Calgary, Alberta T2P 2M5  
Attention: City Solicitor  
FAX: (403) 268-4634

**WITH A COPY TO:**

\*

- 9.2 Any Notice made by mail will be deemed to have been given or served on the 5<sup>th</sup> day after it is deposited in any post office in Canada. Any Notice given by facsimile or personal delivery will be deemed to have been given on the day following the day it is sent or delivered. Any Notice to a Party may also be served in person by delivering the same to a responsible person in the offices of the Party to be served at the above address. A Party may change its address for service at any time by Notice in writing to the other Party.

## ARTICLE 10.0 – GOVERNING LAW

- 10.1 This Agreement is governed by and interpreted in accordance with the laws in force of the Province of Alberta and the Licensee irrevocably attorns to the jurisdiction of the courts of the Province of Alberta.

## ARTICLE 11.0 – ASSIGNMENT

- 11.1 Licensee must not sublicense, grant, transfer, or assign any portion of the rights and obligations granted under this Agreement without the prior written consent of The City, which may be withheld in The City's sole discretion.

## ARTICLE 12.0 – CONFIDENTIALITY

- 12.1 The Parties will maintain the confidentiality of all Confidential Information and will not make use of Confidential Information or release it to employees other than as required for the performance of this Agreement and will not release or disclose the Confidential Information to any Third Party except as follows:
- (a) as may be required by a Government Authority under any applicable legislation or by a court of competent jurisdiction, provided that prior to any Party releasing the other

Party's Confidential Information pursuant to any legal process it will first have given the other Party prompt Notice of the legal process so that the other Party has the opportunity to seek an appropriate protective order or pursue such other legal action as may be necessary to preserve the confidentiality of that Party's Confidential Information; or

- (b) if such disclosure is expressly consented to, in writing, by The City.
- 12.2** Information that was lawfully in either Party's possession before receipt of it from the other Party, or information that is or becomes a matter of public knowledge through no fault of either Party, or was independently discovered or developed by either Party, is not considered Confidential Information under this Agreement.
- 12.3** The Parties acknowledge that under the Province of Alberta's *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ("FOIP"), The City must provide copies of all documents relevant to a FOIP request for information to its internal FOIP coordinator. If a FOIP request related to The City's agreements or business arrangements with the Licensee arises, The City will provide copies of any applicable agreement, including this Agreement, to its FOIP coordinator.
- 12.4** The duties and obligations to protect the Confidential Information survive termination of this Agreement and must continue until the Party originally claiming information to be Confidential Information releases that claim by deed or action.
- 12.5** Improper disclosure or use of Confidential Information may cause irreparable harm to the Licensee or to The City, as the case may be, and such harm may not be adequately compensated by damages. As a result, in addition to all other remedies either Party may have, either Party may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use of any Confidential Information contrary to the provisions of the Agreement.
- 12.6** Each Party will indemnify and save the other Party harmless from and against any and all liabilities, claims, suits or actions, losses, costs, damages and expenses which may be brought against or suffered by the other Party as a consequence of the unauthorized disclosure by the indemnifying Party of the Confidential Information of the other Party.

#### **ARTICLE 13.0 – GENERAL CONDITIONS**

- 13.1 Independent Contractor:** The Parties agree that nothing contained in this Agreement will be interpreted to create a relationship of agency or of partners, joint venture, fiduciaries or any other similar relationship between the Parties.
- 13.2 Good Faith:** Each Party will at all times act reasonably and in good faith in the performance of its obligations and the exercise of its rights and discretion under this Agreement.
- 13.3 Further Assurances:** Each of the Parties will from time to time execute and deliver all such further documents and instruments, including applicable permits, and do all acts and things as the other Party may reasonably require to effectively carry out the full intent and meaning of this Agreement.
- 13.4 Amendments or Modifications:** No amendment or modification to this Agreement will be effective unless it is in writing and signed by both parties.

- 13.5 Enurement:** This Agreement enures to the benefit of and is binding upon the Parties and their successors and permitted assigns.
- 13.6 Waiver:** No waiver of any part of this Agreement will be effective unless in writing and no such waiver will be deemed a waiver of any other provision in this Agreement or a continuing waiver unless agreed to in writing by the Parties. Failure by either Party to exercise any of its rights, powers or remedies under this Agreement or its delay to do so does not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy does not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 13.7 Force Majeure:** If the performance of this Agreement or any obligations provided for under this Agreement, except the making of payments, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labour disputes; inability to procure or obtain delivery of parts, supplies, power or equipment from suppliers; war or other violence; any law, other proclamation, regulation, ordinance, demand or requirement of any governmental authority; or any other act or conditions whatsoever beyond the reasonable control of either Party, a Party so affected, upon giving prompt notice to the other Party, will be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that a Party so affected takes all reasonable steps to avoid or remove such cause of non-performance and promptly resumes performance under this Agreement once such cause is removed.
- 13.8 Severability:** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision and everything else in this Agreement will continue in full force and effect.
- 13.9 Survival:** Articles 6.0 and 12.0 (and any other Articles that from their content are intended to survive the termination or expiration of this Agreement) survive the termination or expiration of this Agreement.
- 13.10 Entire Agreement:** This Agreement, together with the attached Schedules and Appendixes, constitutes the complete and exclusive statement of the understandings between the Parties with respect to the subject matter of this Agreement and supersedes all permits, letter agreements or other prior agreements, oral or written, between the Parties.
- 13.11 Execution by Counterpart:** This Agreement may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature will create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

IN WITNESS WHEREOF the Parties execute this Agreement as of the date written below.

**SIGNED AND DELIVERED**

<b>APPROVED</b>	
<b>AS TO CONTENT</b>	
<b>AS TO FORM SOLICITORS</b>	

<b>APPROVED</b> (Please Initial)	
<b>AS TO CONTENT</b>	
<b>AS TO FORM</b>	

**THE CITY OF CALGARY**

Per: \_\_\_\_\_  
Chief Information and Technology Officer,  
Corporate Services

\_\_\_\_\_  
DATE

**[LEGAL NAME OF LICENSEE]**

Per: \_\_\_\_\_

Name:  
Title:

Per: \_\_\_\_\_

Name:  
Title:

**SCHEDULE "A"**  
**FEES FOR FIBRE CIRCUITS**

**1.0** The Licensee has been granted a license for use of a Fibre Circuit as described in detail in Schedule D of this Agreement.

**2.0** The Licensee agrees to pay to The City the following Initial Installation Fee:

**Initial Installation Fee:** \_\_\_\_\_

The Licensee Agrees to pay to The City for **each** Fibre Circuit listed in Schedule D, the following Fees:

**Initial Provisioning Fee:** \_\_\_\_\_

**Monthly License Fee:** \_\_\_\_\_

**Monthly Discount:** \_\_\_\_\_

The Monthly Discount will be applied to the Monthly License Fee for each Fibre Circuit until the cumulative total of the Monthly Discount is equal to the Initial Installation Fee, subsequent to which the Licensee will pay the Monthly License Fee for the remainder of the term of this Agreement.

**3.0** The Parties agree that Schedule D may be amended by the Parties in the event the inventory of Fibre Circuits licensed by the Licensee is modified during the term of this Agreement. If Schedule D is amended, the Parties or their designated representatives will affix their signature and the date of such amendment to Schedule D demonstrating agreement to such amendment. Any such amendment to Schedule D does not modify or amend, and is not intended to modify or amend, any other part or provision of this Agreement.

**4.0** The City may perform Additional Services for the Licensee at the Licensee's request. The Licensee will be invoiced for Additional Services at The City's current rates, subject to change from time to time, as listed on The City's most current rate sheet for Additional Services. The rate sheet for Additional Services will be provided to the Licensee at the Licensee's request.



## SCHEDULE "B"

### MAINTENANCE OF FIBRES and FIBRE CIRCUITS

- 1.0 Basic Maintenance.** To the extent reasonable, having regard to the age, location, use and history of a Fibre Circuit (including, without limitation, the number of existing Deficiencies), The City will provide or cause to be provided Basic Maintenance.
- 2.0 Emergency Maintenance.** Subject to Article 5.0 below, The City will provide, or cause to be provided, Emergency Maintenance on a 7 days per week, 24 hours per day basis. For the purpose of providing Emergency Maintenance, The City agrees to maintain on hand and to have available at all times a length of "ready to use" Cable not shorter than one (1) kilometre in length and containing at least as much Fibre as is contained in the Fibre Circuit.
- The following process will apply with respect to Emergency Maintenance:
- (a) The Licensee must advise The City orally that it requires Emergency Maintenance specifying, to the extent that it is able to do so, the location and Circuit Number of the Deficiency. In respect of each request for Emergency Maintenance, the Licensee must provide The City with its Network operation centre contact information for contact regarding the Deficiency, which must be used in all subsequent communications.
  - (b) The City will, in accordance with this Agreement, provide the Licensee with an Emergency contact list for all matters under this Schedule B, Article 2.0. The City may, from time to time, change the Emergency contact list by Notice to the Licensee.
  - (c) Further to the Licensee's request for Emergency Maintenance, The City will use reasonable efforts to be on-site at the location of a Deficiency within four (4) hours from the time The City receives communication from the Licensee of a Deficiency. The City will use reasonable efforts to repair a Deficiency within twenty-four (24) hours from the time The City receives Notice of the Deficiency from the Licensee. Despite the foregoing, the amount of time The City's takes to repair a Deficiency will depend on the type and location of the Deficiency.
  - (d) As a Fibre Circuit is activated from time to time, the Licensee must immediately provide The City with Notice of the Circuit Number that is activated. When providing Emergency Maintenance, The City will give priority to splicing the tubes within Fibre Circuits containing active Fibre with the goal of restoring all operating systems on an equal basis.
- 3.0 Notice.** The City will, to the extent it is able to do so, give the Licensee Notice consistent with The City's Network operations policy but not less than 14 days before commencing any work involving The City's Facilities which The City determines may disturb the Fibre Circuit or in any other way may expose the Fibres or Fibre Circuit to a risk of Deficiency. The City will promptly advise the Licensee of any Notices from an Underlying Rights Owner involving anticipated disturbances to the Fibre Circuit.
- 4.0 Negotiation of Operating Procedures.** The City and the Licensee agree to promptly negotiate, in good faith, any operating procedures as may be required so as to give full effect to The City's maintenance obligations under this Schedule B.

**5.0 Underlying Rights.** The Parties agree and acknowledge that the ability of The City to perform its obligations under this Agreement may be affected by Underlying Rights of Third Parties and The City will not be deemed to be in default of its obligations under this Agreement if The City's failure or delay in its performance is caused by or attributable to the terms of Underlying Rights, The City's compliance with Underlying Rights or an event of force majeure as described in Article 13.0, Section 13.7 this Agreement.

**6.0 Maintenance by Third Party.** The Licensee acknowledges that, pursuant to the Underlying Rights, joint build or other applicable agreements, a Third Party may be responsible for the Basic Maintenance or Emergency Maintenance of a Fibre Circuit (as may be applicable). In such case, the Licensee must communicate any concerns relating to the Basic Maintenance or the Emergency Maintenance provided by the Third Party to The City and The City will promptly communicate such concerns to the Third Party. The City will use reasonable efforts to ensure that the Third Party fulfills its obligations and that the terms and conditions of this Agreement are complied with.

## SCHEDULE "C"

### PERFORMANCE SPECIFICATIONS

1.0 The Parties agree that Fibre in a Fibre Circuit will consist of low-attenuation, low-dispersion Fibre in both operating wavelengths ("λ") of 1310 nanometer and of 1550 nanometer, in compliance with the following specifications.

2.0 Attenuation:

(a) Attenuation at λ of 1310 nanometer

The Average Attenuation Per Kilometre for each Fibre must not exceed 0.4 dB at λ of 1310 nanometer when the measured length of the Fibre is more than ten (10) kilometres. When the measured length of the Fibre is equal to or less than ten (10) kilometres, the Average Attenuation Per Kilometre must not exceed 0.5 dB at λ of 1310 nanometer.

The attenuation of the Fibre on any given one-kilometre segment taken anywhere over the length of the Fibre must not exceed 0.5 dB at λ of 1310 nanometer, as indicated in the specifications of the Cable provided by the manufacturer, no matter the length of the Fibre under construction.

(b) Attenuation at λ of 1550 nanometer

The Average Attenuation Per Kilometre for each Fibre must not exceed 0.28 dB at λ of 1550 nanometer when the measured length of the Fibre is more than ten (10) kilometres. When the measured length of the Fibre is equal to or less than ten (10) kilometres, the Average Attenuation Per Kilometre must not exceed 0.4 dB at wavelength of 1550 nanometer.

The attenuation of the Fibre on any given one-kilometre segment taken anywhere over the length of the Fibre must not exceed 0.4 dB at λ of 1550 nanometer, as indicated in the specifications of the Cable provided by the manufacturer, no matter the length of the Fibre under construction.

(c) Other attenuation specifications

The attenuation values specified in Article 2.0 (a) and (b) include the splices made during the manufacturing process of the Fibre as well as splices required to connect the Fibre of the installed Cable, but excludes the connection devices at each end of the Fibre.

(d) Each mated connector in alignment will not exceed a loss of more than 0.5dB.



## DARK FIBRE LICENSE AND MAINTENANCE AGREEMENT

This Agreement is effective on the Effective Date.

BETWEEN:

**THE CITY OF CALGARY**, a municipal corporation in the Province of Alberta, Canada

OF THE FIRST PART

- and -

**[LEGAL NAME OF LICENSEE]**, a corporation organized under the laws of Alberta,

OF THE SECOND PART

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GLEND A. E. COLE, Q.C.  
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