

**FIBER OPTIC SHARED RESOURCE AGREEMENT
BETWEEN THE WYOMING DEPARTMENT OF TRANSPORTATION
AND
[INSERT FULL LEGAL COMPANY NAME]**

1. **PARTIES.** The parties to this Agreement are [Insert Full Legal Company Name] (Company), whose address is [Insert Company Name] and the Wyoming Department of Transportation (Agency), whose address is 5300 Bishop Blvd, Cheyenne, Wyoming 82009-3340.
2. **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions by which the Company shall construct, operate, and maintain fiber optic communication facilities longitudinally within defined segments of the Agency's highway right-of-way.
3. **DEFINITIONS.**
 - A. Agreement - The documents setting forth the obligations of the parties on the project including this Agreement and the Agreement Documents.
 - B. Agreement Documents - Any Agency-approved plans/staking sheets and the M-54 licensing packet found on the Agency's website in addition to any other Agency required forms or any required permits.
 - C. District - The Agency district office where work is being done.
 - D. Person - Any natural person, association, corporation or partnership.
 - E. Project - The defined sections of highway right-of-way together with all appurtenances and construction to be performed thereon related to the installation of fiber optics under this Agreement.
 - F. Permit - Agency Form M-54 License and its attachments and/or Agency Form M-21 and its attachments.
 - G. Regulation - The Agency's current *Utility Accommodation Regulation*.
 - H. Roadway - Existing paved surfaces for each direction of travel along the highway right-of-way not including interchange ramps, cross roads, and parking areas.

4. **RIGHT-OF-WAY LOCATIONS.** This Agreement authorizes Company to install facilities within the highway right-of-way as shown in this Agreement and the Agreement Documents which are incorporated into this Agreement by this reference.
5. **DIG-ONCE POLICY.** The Company agrees to enhance telecommunication services to the State of Wyoming and meet the Agency's *Dig-Once* policy, which is incorporated into this Agreement by this reference. The Company is required to install additional conduits as described in Section 6, Compensation, providing increased capacity for future use by the Company or competitors. The Company agrees to also provide access points or vaults at every metropolitan and rural community, and at each interchange for the length of the proposed facility.

The facilities located in the Agency's right-of-way shall be the Company's property throughout the term of this Agreement. The Company agrees to lease excess capacity and/or extra conduits on a competitively neutral and non-discriminatory basis. The Company may sell a portion of its facility or grant an "Indefeasible Right of Use" (IRU) to another company for the purpose of installing its own facility. The Company shall notify the Agency in writing prior to the closing of the transaction. In such an event, the Company is required to continue as the single point of contact for all Operations. The purchasers/lessees are required to obtain Permits.

If negotiations breakdown during transactions, the Company agrees to allow the Agency or the State of Wyoming to participate in the arbitration process between the purchaser/sub-lessee and the Company. The Company will provide market information based on its existing lease or IRU arrangements to assist the Agency or the State of Wyoming in validating fair market value. Any and all customer information submitted by the Company will be marked as "Confidential" and will be held as such by the Agency and the State of Wyoming.

6. **COMPENSATION.** In consideration of the permission granted herein by Agency, Company hereby agrees to provide the State of Wyoming the consideration described below and in the Agreement Documents.
 - A. The Company is required to provide [*Insert Agency Request*] fiber exclusively for Agency use. The Agency agrees not to lease, sell, or resell to any other entity.
 - B. The Company is required to install [*Insert Number of Conduits*] additional conduits providing increased capacity per the *Dig-Once* policy.
 - C. The Company agrees to extend telecommunication connections, not including services, at its expense, to allow for future services at designated and approved Agency facilities such as rest areas, maintenance storage areas and garages that are detailed in the Permit(s). Services will be provided via separate agreements once a service request is submitted by the Agency.

- D. As to possible future approved requests by Agency and to allow for the future interconnection of its fiber optic facilities, Company will construct periodic access points as detailed in the Permit(s) along its fiber optic route to meet servicing requirements; Company will connect to the Agency facilities from these access points.
 - E. For existing designated Agency facilities such as maintenance areas or rest areas that are presently located on the other side of the roadway, across the roadway from the Company's fiber optic facilities, Company will construct a connection (of its choice and agreed to by the Agency) across the roadway to connect to the existing Agency facilities.
 - F. For future Agency facilities such as dynamic message signs, cameras or weather stations that are identified but for which there is no immediate need for a connection, Company will serve these facilities from its existing access points when the Agency intends to purchase finished services from the Company. The Company will construct the connection to the facilities from the access points when a service request is submitted by the Agency and once the Agency advises the Company that the designated locations are ready to utilize the fiber optic facilities. For future Agency facilities that are not requiring finished services from the Company, the Company will allow the Agency to connect to the access points to utilize the Agency's designated fiber strands to interconnect with the Agency's network.
 - G. The Company's obligation to construct telecommunications facilities to interconnect with Agency or other State agency facilities along its fiber optic line or across the roadway right-of-way as described in the Agreement and as specified herein, will only apply to fiber optic facilities constructed along the highway right-of-way, and must be within two thousand (2000) feet of the nearest Roadway. If construction is required apart and away from the right-of-way, it will be constructed consistent, when applicable, with the Company's Public Service Commission tariff, and if it exceeds the extension provisions of the tariff, the Company may need to request an extension from the regulatory body. Extensions to Agency and other State agency facilities beyond the two thousand (2000) foot limit will be at the expense of the requesting State agency.
7. **RIGHT-OF-WAY USE.** The Company shall use the Agency's highway right-of-way only for the construction, operation, repair, replacement, and maintenance (collectively the Operations) of a longitudinal fiber optic broadband facility and associated communication facilities. Any other use of the right-of-way by the Company without prior written permission from the Agency shall constitute a breach of this Agreement. The Company's use of the right-of-way along with all corresponding Operations shall:
- A. Comply with the requirements of all applicable governing agencies as described in the Regulation.

- B. Not interfere with the operations of any existing utility or carrier with facilities in the right-of-way.
 - C. The Company shall have the right to exit and enter the right-of-way with lateral connections for the purpose of extending or connecting to adjacent facilities in accordance with the Regulation.
 - D. The Company will submit a traffic control plan to the District(s) for approval prior to Operations.
 - E. Any new radio frequency device(s) shall require the approval of the Agency prior to Permit approval.
8. **TERMS OF AGREEMENT AND PERMITS.** This Agreement and all Permits issued hereunder shall not expire unless the Agreement is terminated pursuant to the terms contained in this Agreement. Other permits issued to the Company prior to actual construction (e.g., for preliminary corridor surveys) or for changes beyond routine maintenance after construction, shall be effective for the dates listed on each individual permit, and shall not affect the terms of this Agreement.
9. **TERMINATION.** This Agreement, and/or any individual Permit(s) may be terminated at any time by mutual agreement of the parties. Upon termination of this Agreement, all Permits issued under this Agreement shall also terminate.

This Agreement and/or any Permit(s) issued pursuant to this Agreement may be terminated as follows:

- A. **Permit Revocation by Agency for Highway Convenience.** The Agency may revoke any individual Permit within the Agency's right-of-way for the Agency's convenience per the Regulation. In such event, the Agency shall provide the Company with written notice a minimum of six (6) months prior to such termination.
- B. **By Agency for Non-Compliance Violations.** The Agency may, after oral or written notice and given the opportunity for cure as set forth below, terminate this Agreement or revoke individual Permits if the Company fails to comply with the terms of this Agreement or the Regulation. The Company's failure to comply with respect to an individual Permit will not necessarily result in the termination of all Permits or this Agreement.
 - (i) If public safety is threatened by or there is a Non-Compliance Violation that requires the Company's prompt attention, the Company shall immediately act to cure the hazard or Non-Compliance Violation.
 - (ii) The Company shall have up to thirty (30) days to cure all other violations, or start the cure if, by its nature, the condition cannot be resolved within the time

allowed. The Company may ask the Agency for an extension and such extension may or may not be approved.

The Agency may require the Company to do one of the following:

- (i) Forfeit ownership to State of Wyoming all of the Company's facilities located within the right-of-way at the location covered by the terminated Agreement or Permit. If the Agency exercises its option to keep the communications facilities, the Company shall have no further obligations.
- (ii) If the entire Agreement or any Permit(s) are terminated, the Company shall have sixty (60) days to remove all of the Company's above ground facilities except for those portions used by the Agency. The Company shall return the right-of-way to an equal or better condition than what existed upon issuance of the applicable Permits. Removal and restoration of the right-of-way shall be at the Company's expense. If the Company fails to comply within sixty (60) days of the termination notice, then the Agency shall have the facilities removed and the Company shall pay the actual cost of such removal.

C. By Company for Commercial Reasons. The Company may terminate this Agreement or any individual Permit with written notice to the Agency if:

- (i) At any time during the term of this Agreement, it becomes commercially, economically, technologically, or legally inadvisable in the Company's business judgment for it to utilize the Agency's right-of-way;
- (ii) All, or a significant portion of the Company's facilities are destroyed by a natural disaster, fire, war, or other calamity; or
- (iii) Any required certificate, permit, license or approval is denied, canceled or otherwise terminated for reasons beyond the Company's control such that it is unable to use the Agency's right-of-way for the Company's intended purposes.

D. Forfeiture. Upon the Company's termination of this Agreement or any Permit(s) for reasons listed above, the Company shall forfeit any prepaid fees and shall do one of the following:

- (i) Sell the facilities in the right-of-way to another entity and give notice of such sale to the Agency. The new entity shall be required to enter into a new Agreement with the Agency; or
- (ii) Remove all of its above ground facilities in the right-of-way within sixty (60) days and return the right-of-way to an equal or better condition than what existed upon issuance of the applicable Permits.

E. Bankruptcy. If the Company files for bankruptcy or becomes insolvent, the Agency reserves the right and at its sole discretion to cancel this Agreement and hold the Company liable for all resulting damages.

10. **PRELIMINARY CORRIDOR SURVEYS.** The Company may perform preliminary corridor surveys to develop engineering plans, check environmental conditions, perform soil borings, etc. If the Company elects to perform a corridor survey, it shall obtain a permit from the appropriate District(s) prior to doing any work.

In the event that the Agency has an improvement project in the vicinity of the Company's location(s) and has done an environmental review of the area, the Agency will furnish the Company with the information upon request. Any information provided to the Company shall be considered "for informational purposes only." No representation is made as to the accuracy or adequacy of the information for the Company's purposes.

11. **PERMISSION FROM OTHER LANDOWNERS/ENTITIES.** The parties recognize that the Agency may not own in fee the entire highway corridor is situated upon. The Agency may be situated upon lands owned by entities such as the United States Forest Service, Bureau of Land Management, Railroads, Indian Tribal Lands or others by permit or easement. It is the Company's responsibility to determine if any other permits are necessary and obtain them from the other entities.

If any permits are required from local jurisdictions whose highways cross over or under the Agency's right-of-way, the Company is responsible for determining ownership and obtaining permits even though the Company facility is technically within the Agency's right-of-way.

The Company will avoid or mitigate impacts to cultural, environmental, or historical sites.

12. **OTHER UTILITIES.** Subject to the Agency approval, the Company may be allowed to have other utilities installed in the right-of-way to serve its facilities per the Regulation.
13. **EMERGENCIES.** The Company may respond to any facility-related emergency without first obtaining a Permit from the Agency so long as it follows the District guidelines while handling the emergency. Emergency repairs may take place during nighttime hours; however, the Company shall provide notice to the appropriate District as soon as possible of such repair activity.
14. **ENVIRONMENTAL COMPLIANCE.** The Company shall comply with existing or hereinafter-enacted environmental laws or regulations that apply to or affect the Operations covered by this Agreement. The Company shall not generate, store, or dispose of any hazardous substances nor transport those substances to or from the right-of-way. The Company's facilities shall not constitute, contain, generate or release any hazardous substance, waste, pollutant, or contaminant as defined under federal, state, and local laws. When right-of-way remediation must be undertaken as a result of contamination created

by the Company, the Company shall initiate, finance, and carry out an Agency approved remediation plan.

If the Company discovers any environmental conditions on the Agency right-of-way, which constitute potential violations of applicable regulations or other problems, before, during, or after installation of its facilities, the Company shall notify the Agency in writing, to the appropriate District. The Company shall not be responsible for the assessment, mitigation or remediation of pre-existing right-of-way environmental conditions.

The obligations of the Company set forth in this section shall survive the termination of this Agreement. However, if the Company removes all of its facilities from a right-of-way area and completes the required restoration or is allowed by the Agency to leave its underground facilities in place, and provides the Agency with a survey from an environmental consultant licensed to do business in the State of Wyoming documenting that the area is free and clear from all the Company generated contaminants, then this obligation shall be released in writing by the Agency for that particular location.

15. INSTALLATION REQUIREMENTS. All installations shall follow the requirements set forth in the Regulation, except as specified in this Agreement or in any special Permit provisions. Specifically:

A. Contact List/Scheduling. The Company shall provide the Agency with the contact information for the Person in charge of its Operations.

Field personnel shall have cellular phones that would enable an Agency representative to contact them at any time. The Company shall provide the Agency with the names and corresponding phone numbers no later than the pre-construction meeting, and shall update them as necessary within three (3) working days of a change.

The Company shall provide to the appropriate District a weekly schedule of all construction activities. The schedule shall be provided by noon every Monday, or the first working day of the week in the event of a holiday. If schedules are not received by noon, the Agency may shut down the Operations within the District(s) involved. The schedules shall include:

- (i) Contractor name(s)
- (ii) Contractor lead contact name(s)
- (iii) Cell phone number of the lead contact(s)
- (iv) Construction location(s): county, highway and mileposts
- (v) Brief description of planned Operation for the week

- B. Hours of Operation/Work Restrictions.** The Company is authorized to work sunrise to sunset Monday through Saturday, except as restricted in this Agreement. No Operations shall take place during nighttime hours unless authorized by the Agency. The Company shall not work on State holidays except for emergencies.
- C. Meetings.** The Agency and Company, along with its contractors and consultants, and all other interested parties shall hold a minimum of two (2) meetings (pre-staking and pre-construction) prior to the start of construction. These meetings shall discuss the entire project and its corresponding timetable. No work shall begin prior to the pre-construction meeting. All Agency representatives shall be invited to all meetings where construction details are discussed. These meetings shall be arranged by the Company and scheduled to occur at the District office.
- D. Existing Agency Facilities.** The Agency may not know the exact location of all of its buried highway facilities. The Company shall notify each District in writing two (2) weeks prior to excavating on the Agency's right-of-way so that the Agency can locate and mark all buried facilities.
- During installation, when crossing the Agency facilities, the Company shall expose the Agency's facility and determine its vertical location. Any Agency facility damaged by the Company during construction shall be repaired by the Company at its sole expense. The Company shall also be responsible for any Agency's loss of service costs associated with such damage.
- E. As-Constructed Plans.** The Company shall submit as-constructed plan(s) per the Permit(s).
- F. GIS Location Files.** The Company shall submit the geographic location of the placement of each line. This location shall be submitted in shape file format, referenced with proper geographic projection, and shall include line features representing the location of each asset. Vertices along the linear feature of the location shall be accurate to within five (5) meters.
- G. Work Area Protection During Non-Working Times.** The Company shall store its equipment/materials off of the right-of-way during non-work times. If necessary, the Company may store its equipment/materials on the right-of-way provided it is placed as close to the right-of-way line as possible and outside of the clear zone. The Company will not leave open excavations in the right-of-way during non-work times.
- H. Equipment Washing.** The Company will ensure all equipment is cleaned prior to mobilizing the equipment onto the job site removing all dirt and grease which may contain noxious weed seed. The equipment will be cleaned in a manner consistent with all applicable state and federal regulations. Washing of equipment on the job site is prohibited.

- I. Right-of-Way Restoration.** The Company shall restore the Agency right-of-way in accordance with the Regulation upon completion of construction.

The Agency will notify the Company one (1) week prior to any scheduled mowing operations in the area. The Company will temporarily restore the right-of-way up to fifteen (15) feet from the edge of shoulder. Time extensions for restoration(s) may be allowed at the discretion of the District(s).

If the Company fails to do restoration within the required time period, the Agency shall have the right-of-way restored, and the Company will reimburse the Agency for the costs of such restoration work.

- J. Above-Ground Facility Marking.** The Company shall mark the facility with line markers every one-thousand (1,000) feet for parallel facilities, at the right-of-way line for each crossing, and at critical locations such as road and culvert crossings. The markers shall be placed as nearly as practical over the top of the facility.

- 16. LIENS.** The Company is responsible for and shall promptly pay assessments, fees and other charges levied or assessed against its facilities situated on the Agency right-of-way for the term covered by this Agreement.

The Company shall not permit the filing of any liens against any part of the Agency right-of-way arising from Operations or obligations incurred by the Company. Upon completion of construction, copies of any signed lien waivers shall be supplied to the Agency.

17. GENERAL PROVISIONS.

- A. Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment Prohibited and Agreement Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Company shall not use this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Agency.

- D. Assumption of Risk.** The Company shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Company's failure to comply with state or federal requirements. The Agency shall notify the Company of any state or federal determination of noncompliance.
- E. Audit and Access to Records.** The Agency and its representatives shall have access to any books, documents, papers, electronic data, and records of the Company which are pertinent to this Agreement.
- F. Certificate of Good Standing.** The Company shall provide to the Agency a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that the Company is authorized to conduct business in the State of Wyoming, if required, before performing work under this Agreement. The Company shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Agreement.
- G. Compliance with Laws.** The Company shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.
- H. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Company in the performance of this Agreement shall be kept confidential by the Company unless written permission is granted by the Agency for its release. If and when the Company receives a request for information subject to this Agreement, the Company shall notify the Agency within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Agency.
- I. Entirety of Agreement.** This Agreement, consisting of **seventeen (17)** pages and the Agreement Documents represent the entire and integrated Agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Agreement and the language of any attachment or document incorporated by reference, the language of this Agreement shall control.
- J. Ethics.** The Company shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing the Company's profession.
- K. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits

delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

- L. Indemnification.** The Company shall release, indemnify, and hold harmless the State and the Agency, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of the Company's failure to perform any of the Company's duties and obligations hereunder or in connection with the negligent performance of the Company's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of the Company's negligence or other tortious conduct.
- M. Independent Contractor.** The Company shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the Agency or the State of Wyoming for any purpose. Consistent with the express terms of this Agreement, the Company shall be free from control or direction over the details of the performance of services under this Agreement. The Company shall assume sole responsibility for any debts or liabilities that may be incurred by the Company in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Company or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency or to incur any obligation of any kind on behalf of the State of Wyoming or the Agency. The Company agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Company or the Company's agents or employees as a result of this Agreement.
- N. Kickbacks.** The Company certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Company breaches or violates this warranty, the Agency may, at its discretion, terminate this Agreement without liability to the Agency.
- O. Nondiscrimination.** The Company shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Agreement.
- P. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement.

- Q. Notice of Sale or Transfer.** The Company shall provide the Agency with notice of any sale, transfer, merger, or consolidation of the assets of the Company. Such notice shall be provided in accordance with the notices provision of this Agreement and, when possible and lawful, in advance of the transaction. If the Agency determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Company's obligations under this Agreement, then the Agency may, at its discretion, terminate or renegotiate the Agreement.
- R. Ownership and Return of Documents and Information.** The Agency is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Company in the performance of this Agreement. Upon termination the Agreement, for any reason, the Company agrees to return all such original and derivative information and documents to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon the Agency's verified receipt of such information, the Company agrees to physically and electronically destroy any residual Agency-owned data, regardless of format, and any other storage media or areas containing such information. The Company agrees to provide written notice to the Agency confirming the destruction of any such residual Agency-owned data.
- S. Patent or Copyright Protection.** The Company recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Company or its subcontractors will violate any such restriction. The Company shall defend and indemnify the Agency for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- T. Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Agreement has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-3204(b)(iv).
- U. Insurance Requirements.**
- (i) During the term of this Agreement, the Company shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage, below.
 - (ii) All policies shall be primary over any insurance or self-insurance program carried by the Company or the State of Wyoming. All policies shall include clauses stating that each insurance carrier shall waive all rights of recovery

under subrogation or otherwise against the Company or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

- (iii) The Company shall provide Certificates of Insurance to the Agency verifying each type of coverage required herein. If the policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but is not limited to, retroactive dates and extended reporting periods or tails.
- (iv) All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Agency. A copy of the policy endorsement shall be provided with the Certificate of Insurance.
- (v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Agency may, at the Agency’s option, obtain and maintain, at the expense of the Company, such insurance in the name of the Company, or subcontractor, as the Agency may deem proper and will be the responsibility of the Company.
- (vi) All policies required by this Agreement shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.
- (vii) The Agency reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

V. Insurance Coverage.

- (i) Commercial General Liability Insurance. Commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as follows:
 - (a) \$1,000,000.00 each occurrence;
 - (b) \$1,000,000.00 personal injury and advertising injury;
 - (c) \$2,000,000.00 general aggregate; and
 - (d) \$2,000,000.00 products and completed operations.

The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by endorsement.

- (ii) Workers’ Compensation and Employer’s Liability Insurance. Employees hired in Wyoming to perform work under this Agreement shall be covered by workers’ compensation coverage obtained through the Wyoming

Department of Workforce Services' workers' compensation program, if statutorily required. Employees brought into Wyoming from the Company's home state to perform work under this Agreement shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program or other state or private workers' compensation insurance approved by the Wyoming Department of Workforce Services, if statutorily required.

The Company shall provide the Agency with a Certificate of Good Standing or other proof of workers' compensation coverage for all of its employees who are to perform work under this Agreement, if such coverage is required by law. If workers' compensation coverage is obtained by the Company through the Wyoming Department of Workforce Services' workers' compensation program, the Company shall also obtain Employer's Liability "Stop Gap" coverage through an endorsement to the CGL policy required by this Agreement, with minimum limits as follows:

- (a) Bodily Injury by Accident: \$1,000,000.00 each accident;
- (b) Bodily Injury by Disease: \$1,000,000.00 each employee; and
- (c) Bodily Injury by Disease: \$1,000,000.00 policy limit.

(iii) Unemployment Insurance. The Company shall be duly registered with the Department of Workforce Services and obtain such unemployment insurance coverage as required. The Company shall supply the Agency with a Certificate of Good Standing or other proof of unemployment insurance coverage.

(iv) Automobile Liability Insurance. Automobile liability insurance covering any auto (including owned, hired, and non-owned) with minimum limits of \$1,000,000.00 each accident combined single limit.

W. Publicity. Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Company, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.

X. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

Y. Sovereign Immunity and Limitations. Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Agency expressly reserve sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has

sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Company, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Agreement, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

- Z. Subcontracts.** The Company shall not enter into any subcontracts for any of the work contemplated under this Agreement without prior written authorization of the Agency.
- AA. Taxes.** The Company shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.
- BB. Termination of Agreement.** This Agreement may be terminated, without cause, by the Agency upon thirty (30) days written notice.
- CC. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- DD. Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- EE. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- FF. Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute waiver.

GG. Counterparts. This Agreement may be executed in the counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement. Delivery by the Company of an originally signed counterpart of this Agreement by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Agency.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

18. **SIGNATURES.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The Effective Date of this Agreement is the date of the signature last affixed to this page.

AGENCY:

[Insert Name and Title for Agency Signature]

Date

COMPANY:

[Insert Name and Title for Company signature]

Date

FOR AGENCY USE ONLY:

Shared Resource Agreement Permit #(s)

WYDOT Standard Fiber Optic Resource Agreement, revision August 2022 approved as to form by the Wyoming Attorney General's office. Any changes to this document require AG approval.