



Summary of MCNC's Dark Fiber Lease Agreement Terms and Conditions

*The following is only a summary of some of the terms and conditions of the MCNC dark fiber lease agreement ("Agreement"). It is intended to provide prospective customers and other parties with a general understanding of the terms and conditions applicable to a short term lease in designated dark fiber optic strands under the Agreement. This summary does not include or purport to include all terms and conditions of the actual agreement and is accordingly not binding in any manner whatsoever on MCNC. The Agreement is available to appropriate parties for appropriate purposes from MCNC. The Agreement shall supersede in the event of any inconsistency or omission as between this summary and the Agreement; however, there shall be no binding and enforceable rights or obligations whatsoever in respect to MCNC absent the execution and delivery of a definitive agreement by and between customer and MCNC.

- 1.** The lease applies to a designated number of dark fiber optic strands (i.e., strands without electronics or optronics, and not "lit" or activated) between designated connection points between the dark fiber and customer-owned fiber optic cable or peripheral equipment ("Dark Fiber").
- 2.** The initial term of the lease shall be as agreed and subject to automatic renewal of 1 year absent notice of termination by either party at least 60 days prior to expiration of the initial term. Customer has the right to terminate the Agreement early on 60 days prior written notice to MCNC, but in the case of early termination, Customer must pay the charges otherwise remaining in the term as a cancellation fee.
- 3.** MCNC is responsible for all labor, materials, and equipment required to install and test the Dark Fiber between the Dark Fiber endpoints. Customer will be responsible for all equipment, materials, and facilities on Customer's side of the endpoints in connection with its use of the Dark Fiber. MCNC has no obligation to provide any equipment space, licenses, rights of way, or other rights in respect to any attachments to or other uses of the Dark Fiber. Customer's responsibilities ("Customer Requirements") include the purchase or other acquisition, construction, installation, maintenance, repair, and replacement of all terminals, patch cords, electronics, optronics, other optical and electrical equipment, other equipment, materials, and facilities, and all labor, materials, and equipment for any construction that may be required at Customer's locations. Customer also is responsible for maintaining rights for MCNC to install, test, maintain, repair, control, and



otherwise access conduit, fiber, and related equipment that may be installed and maintained on Customer's leased or owned land and building space on which any lateral spur(s) is/are designated to be interconnected including space for MCNC's fiber termination panel(s) and cable pathways; and rights of occupancy and access at each endpoint site for such purposes. Customer work on the Customer's side of each endpoint includes securing its own rights and related costs to access, occupy, and conduct typical telecommunication operations. The lateral spur(s) to endpoint(s) may be installed as part of the Agreement and, if applicable, Customer's Subscription Agreement(s) to the North Carolina TeleHealth Network.

4. MCNC will test the Dark Fiber with industry accepted equipment and report the test results to Customer. Customer will have 5 work days from receipt to give MCNC written notice of acceptance or rejection of the test results, specifying parts not in accordance with industry standards. Failure by Customer to timely accept or reject the test results will operate as constructive acceptance of the Dark Fiber. MCNC will have 45 days after receiving a timely rejection notice to remedy all failures to conform the Dark Fiber to industry standards. If MCNC fails to remedy all such failures within that period, Customer may either accept or reject the Dark Fiber. In the event of rejection, MCNC will refund to Customer any advance payments for the Dark Fiber and the Agreement will terminate without further obligations or penalties to Customer or MCNC.

5. MCNC will maintain and repair the Dark Fiber in accordance with MCNC's then current maintenance procedures, but Customer shall pay or reimburse MCNC to the extent any maintenance or repair of the Dark Fiber or MCNC's fiber optic network (including strands of fiber optic cable, hardware, equipment, and access locations and rights related thereto ("MCNC System")) relates to work necessitated by Customer's negligence, willful misconduct, or Customer's elective maintenance or repair requests. MCNC maintenance and repair duties do not include any of Customer's Requirements.

6. MCNC will control the Dark Fiber route configuration, access, use, and work and maintenance performed in respect to MCNC System including all splicing, lateral spur location and configuration, manholes, handholes, and other access points; and Customer accordingly has no right to control, maintain, repair, modify, and/or relocate the MCNC System (including the Dark Fiber) or to physically access the MCNC System (including the Dark Fiber and MCNC's manholes, handholes, and other access points) or to encumber the MCNC System in any manner. Customer shall only have the right to connect Customer's communications equipment with the endpoint of the Dark Fiber and, at other access point along the Dark Fibers approved by MCNC (each such endpoint and



access point being referred to as a “Connecting Point”) with any such right being non-exclusive. Customer shall have no other access rights to the MCNC System unless otherwise agreed in writing by MCNC. Any splice to the Dark Fibers at and/or on Customer’s side of the Demarcation Points or any other Connecting Points shall be subject to 10 day advance notice and MCNC approval with splicing fees payable by Customer based on the work performed at the splicing rates stated in the Agreement (“Splicing Fee”).

7. Customer shall use the Dark Fiber solely for lawful purposes, attach only MCNC pre-approved equipment to the ends of the Dark Fiber, and, if applicable, in compliance with National Telecommunications and Information Administration Grants, all in a way which does not physically interfere with or adversely affect the use of the MCNC System. Customer shall not transfer, assign, lease, license, encumber, or otherwise grant the Agreement or rights or interest under this Agreement or of use in the Dark Fiber without MCNC’s prior written consent absent which such action shall constitute a material breach justifying MCNC termination of the Agreement.

8. Customer must pay MCNC an annual or monthly lease payment plus applicable sales and use tax (“Lease Payments”) in advance within 30 days of invoice date. Customer shall also pay MCNC a one-time agreed installation fee plus any applicable sales and use tax (“Installation Fee”) on the acceptance date of the Dark Fiber; splicing fees based on the work performed and at rates to be stated in the Agreement plus any applicable sales and use tax (“Splicing Fees”) within 30 days of invoice date; and Customer’s portion of all maintenance and repair costs, fees, and expenses plus any applicable sales and use tax within 30 days of invoice date. In addition, all foreign, federal, state and local taxes, and all duties and governmental fees shall be the obligation of Customer including Customer’s proportionate share of any taxes, duties, franchise fees, ad valorem taxes, property taxes, and impositions resulting from the Agreement or any activities under the Agreement, or assessed on the MCNC System or upon the Dark Fibers. MCNC will notify Customer at least 90 days before the renewal date of any changes in lease rent and/or fees for an upcoming term; the new rent and fees shall be deemed accepted by Customer as to the ensuing extension term unless Customer timely elects to terminate the Agreement at the end of the initial term.

9. If required to do so, MCNC may relocate Dark Fiber using reasonable efforts to relocate the Dark Fiber in a manner which will avoid adverse effect on Customer’s use, operations, or performance of the Dark Fiber except for interruptions during relocation. MCNC from time to time may substitute an equal number of alternative fibers for the Dark Fiber. Except for legally required substitutions



incident to relocations, such substitution shall not adversely affect the use, operation, or performance of the Customer's network subject to interruptions during the implementation of the substitution; and shall not change the site of any Demarcation Points unless mutually agreed by MCNC and Customer.

10. The Agreement has a disclaimer of warranties and a limitation of liability: MCNC MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF SERVICES AND MCNC SYSTEM EQUIPMENT, MERCHANTABILITY, AND/OR FOR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE ENFORCEMENT OF ANY MANUFACTURER'S WARRANTIES AND GUARANTEES OR MERCHANTABILITY, NOR ARE ANY SUCH WARRANTIES TO BE IMPLIED WITH RESPECT TO THE PRODUCT OR SERVICES FURNISHED TO CUSTOMER, AND ALL EXPRESS AND IMPLIED WARRANTIES ARE HEREBY DISCLAIMED. ORAL STATEMENTS MADE BY MCNC'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AGENTS, AND DESIGNEES DO NOT CONSTITUTE WARRANTIES, SHALL NOT BE RELIED ON BY CUSTOMER, AND ARE NOT PART OF THE AGREEMENT. IN NO EVENT SHALL MCNC BE LIABLE FOR SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF USE, LOST PROFIT, LOSS OF BUSINESS OR GOODWILL, OR OTHER FINANCIAL INJURY ARISING OUT OF OR IN CONNECTION WITH THE MAINTENANCE, REPAIR, USE, RELOCATION, SUBSTITUTION, PERFORMANCE, OR FAILURE OF THE DARK FIBER OR OTHER EQUIPMENT, OR FOR ANY OTHER REASON, INCLUDING ANY BREACH BY MCNC UNDER THE AGREEMENT, EVEN TO THE EXTENT THAT MCNC HAD NOTICE OF THE POTENTIAL FOR ANY SUCH DAMAGES; ANY LOSS OR DAMAGE RELATING TO A CLAIM FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF, OR IN CONNECTION WITH, ANY INTERRUPTION OR FAILURE OF USE OF, OR ANY SERVICE AS TO OR ON THE DARK FIBER, CONNECTING POINTS, OR OTHER EQUIPMENT; AND EXPENSES, DAMAGES, COSTS, OR OTHER LOSSES INCURRED BY CUSTOMER AS A RESULT OF DELIVERY DELAYS. SUBJECT TO ANY OTHER LIMITATIONS IN THE AGREEMENT AND NOTWITHSTANDING ANY PROVISION OR IMPLICATION TO THE CONTRARY, MCNC'S AGGREGATE LIABILITY TO CUSTOMER FOR DAMAGES FROM ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR BY STATUTE, SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNT OF THE TOTAL PAYMENTS RECEIVED FROM CUSTOMER BY MCNC UNDER THIS AGREEMENT DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM GIVING RISE TO SUCH LIABILITY FIRST AROSE.



11. Customer must maintain industry standard insurance, and such insurance minimally shall include a general liability insurance policy with coverage amounts of at least \$1,000,000 insuring MCNC and Customer against liability arising out of the Dark Fiber and connecting points. Any insurance policy maintained by Customer shall include notice to MCNC in the event of any coverage modification and a waiver of any right of subrogation by Customer and insurer as to MCNC.

12. After expiration or termination, MCNC shall have the right and easement to keep that portion of the MCNC System on Customer's property in place and to remove, repair, maintain, and mark said portion of the MCNC System; and Customer shall not require any removal of said portion of the MCNC System from such property.

13. The obligations of MCNC and Customer (except payment obligations) are suspended during any period in which MCNC or Customer is prevented from performance due to circumstances beyond its control including labor disputes, power outages or shortages, fire, explosion, flood, drought, acts of God, war or other hostilities, civil commotion, domestic or foreign governmental acts, orders, or regulations, or inability to obtain facilities or supplies. The Agreement will constitute the entire agreement between the Parties relating to the subject matter thereof subject to exhibits and agreements as may be referenced and identified in the Agreement. Any amendment or modification to this Agreement shall be made in a writing signed by both Parties. The Agreement shall be governed by the laws of the State of North Carolina. Nothing in the Agreement shall be construed as granting any right or license under any copyrights, inventions, or patents owned or controlled by MCNC or Customer or granting any right, title, or interest in the other Party's trademarks, trade names, or service marks. If any provision of this Agreement is deemed to be illegal or otherwise unenforceable, such provision or provisions shall be modified, wherever possible, to provide binding force and effect, and the Parties agree to such modification and agree to be bound thereby.