



Summary of MCNC’s Master Agreement for Indefeasible Right to Use (IRU) Fiber

*THE FOLLOWING IS ONLY A SUMMARY OF TERMS AND CONDITIONS OF MCNC MASTER AGREEMENT FOR INDEFEASIBLE RIGHT TO USE FIBER (THE “AGREEMENT”). IT IS INTENDED TO PROVIDE PROSPECTIVE CUSTOMERS AND OTHER PARTIES WITH A GENERAL UNDERSTANDING OF THE TERMS AND CONDITIONS APPLICABLE TO AN IRU GRANTED UNDER THE AGREEMENT. THIS SUMMARY DOES NOT INCLUDE OR PURPORT TO INCLUDE ALL DEFINITIVE TERMS AND CONDITIONS OF THE ACTUAL AGREEMENT AND IS ACCORDINGLY NOT BINDING IN ANY MANNER WHATSOEVER ON MCNC. THE DEFINITIVE AGREEMENT IS AVAILABLE TO APPROPRIATE PARTIES FOR APPROPRIATE PURPOSES FROM MCNC. THE AGREEMENT SHALL SUPERSEDE AND BE CONSIDERED ACCURATE IN THE EVENT OF ANY INCONSISTENCY OR OMISSION AS BETWEEN THIS SUMMARY AND THE AGREEMENT. HOWEVER THERE SHALL IN ANY EVENT 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 A CUSTOMER AND MCNC.

1. Agreement Subject Matter: MCNC owns or controls, operates and maintains the North Carolina Research and Education Network (the “Network”), which is composed of various fiber optic cable systems. The Agreement contains the terms and conditions regarding the grant by MCNC of an indefeasible right to use (“IRU”) a certain number of specifically identified dark fibers on the Network to a Customer (“Customer Fibers” or together with any other item provided by MCNC “Product”).

2. IRU Rights; Term: The IRU includes an undivided interest and exclusive right of use regarding the Customer Fibers located along an identified route for a designated term and includes nonexclusive access and use of designated handholes or splice points (“access points”) along the route on which the Customer Fibers are located subject to certain protocols. Except as provided in the IRU, Customer has no legal ownership or other rights in the Network including the conduit within which the Customer Fibers exist or in any proceeds from the disposition of any or all portions of the Network. Customer may test the Customer Fibers with reference to industry standards and either accept or reject within 10 days of notice of construction and installation, with acceptance deemed to occur absent notice from Customer within such 10-day period. In the event of any such Customer rejection, MCNC will address issues and Customer Fibers are subject to re-testing and rejection, acceptance or deemed acceptance by Customer.

3. Use of Customer Fibers: Customer will use the Customer Fibers in compliance with all applicable federal, state and local laws, codes, rules and regulations and all applicable franchises, rights of



way, leases, licenses, contracts and other obligations to third parties, and in a manner which will not interfere with or interrupt the Network or use by MCNC or MCNC's other customers. At its expense, Customer will obtain all licenses, permits, approvals and authorizations required for Customer's business use of the Product, as well as for access to Customer locations and colocation facilities, for the purposes of equipment installation and maintenance, services related thereto, use of Customer Fibers and any building entrances or facilities.

4. IRU, Provisioning and Splicing Fees; Late Payment Charges: Customer shall pay MCNC (a) an IRU Fee in the amount to be stated in the Agreement determined on the basis of an agreed price per fiber strand mile, payable as provided in the Agreement; (b) a one-time provisioning fee per route at acceptance of the Customer Fibers, in the amount agreed at the time of the Agreement; and (c) a splicing fee per splice as to Customer Fibers at access points in an amount equal to the greater of MCNC's direct costs incurred plus 18% for overhead or the then reasonable prevailing rate for such work, within 30 days of receipt of MCNC's invoice. Late payment of all fees under the Agreement accrue interest at a rate equal to the lower of the highest rate permitted in North Carolina or .5% per month

5. Maintenance and Repair; Maintenance, Repair, Replacement, Relocation, Access and Removal Fees: MCNC will maintain and repair the Customer Fibers in accordance with the Agreement. Routine and ordinary maintenance shall be performed by MCNC or its designee in accordance with industry standards. MCNC will respond to notice of an interruption or material degradation of Customer Fibers resulting from physical damage, severance or other failure and commence or arrange for the commencement of its work promptly, but in any event within 6 hours after becoming aware thereof, and restore effective use of the Customer Fibers as expeditiously as practicable subject to Force Majeure and excluding any time during which MCNC or its designee is denied access to Customer locations or other facilities owned or controlled by Customer needed for such work. MCNC's maintenance, repair, and replacement duties do not include maintenance, repair, or replacement of Customer's equipment, materials or facilities used in connection the Customer Fibers or Customer's fiber network. Such equipment maintenance, repair, replacement, relocation and splicing are Customer's sole responsibility, cost and expense. Customer shall pay MCNC a fee for routine and ordinary maintenance as stated in the Agreement, determined on the basis of a price per route mile, payable annually in advance and subject to adjustment after 3 years based on the Consumer Price Index for Urban Customers. Customer shall pay MCNC a pro rata share for repair, unscheduled maintenance, and involuntary replacement, relocation, change and substitution related to Network routes within which Customer Fibers are located within 30 days of receipt of MCNC's invoice, except that Customer shall pay for all repairs, replacement, relocation, change and substitution costs and expenses arising out of acts or omissions of, or otherwise attributable to, Customer. Customer shall pay MCNC's standard service fee for access as stated in the Agreement within 30 days of receipt of MCNC's invoice. Customer is responsible for prompt removal of Customer's property, equipment and materials from the Product upon termination thereof.



6. Taxes and Impositions: MCNC and Customer shall pay all taxes required to be paid by each such party respectively; provided that Customer will reimburse MCNC annually \$1.00 per \$100 of the IRU fee(s) for a 10-year life depreciation schedule as an agreed payment by Customer of ad valorem and property taxes for the Customer Fibers. Customer shall pay MCNC all taxes and fees which MCNC is legally required or permitted to collect from Customer associated with the grant of the IRU or the Product. Customer also shall reimburse MCNC for right-of-way, franchise, permit and other charges and fees imposed by third parties that arise out of the Agreement, the Product or Customer's use or permitted improvement of any of the Product.

7. Limitation of Liability; Indemnification: Except as to gross negligence, willful misconduct and indemnification, the liability of each party to the other party for damages will be limited to the total charges paid or payable by Customer for the period during which the damages were incurred (said sum, as to Customer, being in addition to other sums payable under the Agreement). IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSS, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, DAMAGES BASED ON LOSS OF REVENUES, PROFITS OR LOST BUSINESS OPPORTUNITIES), AND WHETHER BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER TORT OR LEGAL THEORY, REGARDLESS OF WHETHER ANY PARTY COULD HAVE FORESEEN SUCH DAMAGES, LOSS, COST OR EXPENSE ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE PRODUCT. IN NO EVENT WILL MCNC BE LIABLE FOR ANY DAMAGE, LOSS, COST OR EXPENSE ARISING FROM ANY OUTAGE, INCORRECT OR DEFECTIVE TRANSMISSION OR ANY CONSEQUENCES THEREOF. Claims as may relate to the Agreement shall be made only against MCNC as a corporation and shall be enforceable only against MCNC's corporate assets. Each party will indemnify the other as to third-party claims for bodily injury, death and property damage from gross negligence and willful misconduct attributable to the indemnifying party. Customer will indemnify MCNC for Customer's business use of the Product, including, without limitation, the content of any video, voice or data carried by Customer on the Product or Network.

8. No Warranties: MCNC EXCLUDES AND DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE NETWORK, PRODUCT, ANY EQUIPMENT, CONSTRUCTION, INSTALLATION, MAINTENANCE, REPAIR AND ANY OTHER SERVICE(S) OR ITEM(S) PROVIDED BY OR ON BEHALF OF MCNC.

9. Replacement, Relocation, Substitution and Condemnation: MCNC may replace, relocate, otherwise change or substitute any Customer Fiber(s), access point(s) and route(s), provided that no such voluntary change may change the number of Customer Fibers in the subject route(s) or result in Customer's inability to use the Customer Fibers as permitted by the Agreement other than from



midnight to 6:00 a.m. local time. If any of the Network or rights necessary to provide the Product become the subject of a condemnation proceeding which is not dismissed within 180 days after the date of its filing and which could be expected to result in a taking of a portion of the Network containing Customer Fibers by any governmental agency or other party having the power of eminent domain, MCNC may terminate the IRU in the subject Product.

10. Assignment: In no event will Customer encumber the Customer Fibers. Customer shall not assign by assignment, merger, consolidation, acquisition or operation of law the Agreement or any or all of its rights or obligations under the Agreement without the prior written consent of MCNC. Any proposed assignee will be required to assume Customer's obligations and demonstrate the financial capability to perform under the Agreement.

11. Abandonment: MCNC may abandon any of the Network, Customer Fibers or access points. If MCNC decides to abandon the Network in any route or any Customer Fibers or access point(s), MCNC will give Customer 90 days' written notice; and, at the expiration of the notice period, MCNC's duties related thereto shall terminate. Routine and ordinary maintenance fees as to any abandoned portion no longer will be payable by Customer to MCNC, and MCNC will cooperate reasonably with Customer to take such action as is required to allow Customer to use and maintain the abandoned Customer Fibers and access points. MCNC will reimburse Customer, as Customer's sole and exclusive remedy, the prepaid unamortized portion of the IRU Fee over the then current Term as to the subject portion of the IRU as of the date of abandonment. MCNC also will reimburse Customer the fractional portion of the most recently paid annual maintenance fee as to the abandoned portion that relates to the number of months remaining in the year covered by said fee.

12. Force Majeure: Neither party will be in breach of the Agreement resulting from delay or prevention of performance of such party which is caused by an act or event beyond the reasonable control of such party ("Force Majeure"). Force Majeure includes, for example, an action or request by governmental authority (including, without limitation, moratorium on any activities related to the Agreement), third-party labor dispute or other inaction or demand, flood, hurricane, earthquake, fire, lightning, epidemic, unanticipated regulatory changes, war, riot, civil disturbance, vandalism, failures of materials or availability of materials, power or transmission link failures, radiation and hazardous substances, and extreme temperature. The party claiming applicability of Force Majeure will notify the other party promptly thereof. Such notice will specify the anticipated length of delay, the cause of the delay and a timetable by which any remedial measures will be implemented.

13. Insurance; Subrogation: Customer shall maintain comprehensive liability insurance, including public liability, bodily injury, and property damage, written by a company licensed to do business in



North Carolina, covering its use contemplated by the Agreement with combined single limits of at least \$5,000,000 per occurrence and \$10,000,000 aggregate. Each policy shall name MCNC as an additional insured. Customer also shall maintain Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of North Carolina where applicable, provided that such coverage shall be at least \$500,000 per accident; and comprehensive automobile liability insurance covering the ownership, operation, and maintenance of all owned, non-owned and hired motor vehicles used in connection with the Agreement with limits of at least \$1,000,000 per occurrence for bodily injury and property damage. To the extent of any payment of proceeds under any property damage or liability insurance policy maintained by Customer, Customer waives the right of subrogation against MCNC.

14. Compliance with Third-party Provisions: The National Telecommunications and Information Administration ("NTIA") during the Broadband Technology Opportunities Program ("BTOP"), under the American Recovery and Reinvestment Act, awarded MCNC grants (each as applicable to the subject fiber assets, the "BTOP Grant" or, collectively, the "BTOP Grants"). Notwithstanding any provision or implication to the contrary, if the Customer Fibers or any access points were funded by a BTOP Grant, the Agreement and the parties' obligations under the Agreement are subject to all of the rules and requirements applicable to the BTOP Grants (the "BTOP Requirements"), and the parties agree that they shall cooperate to comply with the BTOP Requirements, including, without limitation, Customer will comply with the requirements of Exhibit A, provided that all substantive decisions and actions that impact the ability of MCNC to carry out its said program and the overall success of the program rest solely with MCNC. If any asset is not owned by MCNC but instead is leased, licensed or otherwise acquired by MCNC from one or more third parties, Customer is bound by each term of such agreement(s) which is of the type which "flows through" to Customer or which Customer's compliance is needed by a sublessee, sublicense or similar interest holder, notwithstanding any provision to the contrary in the Agreement. Said terms will be incorporated into the Agreement by reference.

15. Miscellaneous: The Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior negotiations, understandings and agreements with respect thereto, whether oral or written. Except as otherwise provided in the Agreement, the Agreement may be amended only by a written instrument signed and delivered by both parties. No failure or delay in exercising any right, power or privilege under the Agreement will operate as a waiver, except as expressly provided in the Agreement. No course of dealing between the parties shall operate as a waiver of any of the rights under the Agreement, or provided by law or equity. If any provision of the Agreement is held invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such provision nor the validity of the remaining provisions of the Agreement will be in any way affected thereby. The Agreement and the rights and obligations of the parties shall be governed by, and construed and enforced in accordance with, the laws of North Carolina without regard to North Carolina's conflict of law principles.



Exhibit A

1.1 Use; Nondiscrimination and Interconnection

- a.** In entering into the Agreement, Customer will use the Customer Fibers to provide broadband service.
- b.** In making use of the Customer Fibers, Customer will, consistent with the requirements governing the Broadband Technology Opportunities Program, 75 Fed. Reg. 3792 (Jan. 22, 2010):
 - i.** adhere to the FCC's Open Internet Rules, 47 C.F.R. §§ 8.1 – 8.17, and any subsequent rulings related to such rules;
 - ii.** provide Internet connectivity directly or indirectly; and
 - iii.** offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, at reasonable rates and terms to be negotiated with requesting parties, which shall include both the ability to connect to the public Internet and physical interconnection for the exchange of traffic.
- c.** The Parties acknowledge and agree that the requirements in Article 1.1(b) do not apply to any facilities other than the Customer Fibers, including, but not limited to, any of Customer's existing network arrangements, except as may otherwise be required by applicable law.
- d.** Notwithstanding the provisions of Article 1.1(a), if the number of Customer Fibers is six (6) strands or less in any route(s) and if said Customer Fibers are solely for the Customer's own use (which may include (but does not require) the provision of broadband services and which expressly excludes any right or ability to sublease) and if Customer complies with any other requirements per Special Award Condition 2 issued by the NTIA Grants Office, Customer need not comply with BTOP nondiscrimination and interconnection provisions as to said Customer Fibers as provided in this Article 1.1.
- e.** Customer certifies that it will use the Customer Fibers to meet its current and reasonably anticipated broadband capacity needs and that it is not entering into the Agreement to acquire unnecessary capacity that would prevent other service providers from providing a competing broadband service. Based on such certification, the parties will acknowledge and agree that Customer has shown that it would not be technically feasible to offer interconnection pursuant to Article 1.1(b)(iii) above and Customer shall not be required to comply with said condition.



- f. The parties will acknowledge and agree that any final, nonappealable order issued by either the FCC or NTIA finding that Customer has violated the requirements in this Article 1.1 will result in the termination of the Agreement.

1.2 NTIA Interest

In accordance with the BTOP Grants, MCNC is required to execute a security interest or other statement, acceptable to the NTIA, evidencing NTIA's undivided equitable reversionary interest, also known as the Federal Interest, in real property including broadband facilities and equipment acquired or improved with federal funds, which must be placed on record in accordance with local law (the "NTIA Interest"). This security interest or other statement will provide that, for the estimated useful life of the real property, facilities or equipment, MCNC will not sell, transfer, convey or mortgage any interest in the real property including broadband equipment acquired or improved in whole or in part with federal funds made available under the grant award, nor shall MCNC use the real property including broadband facilities and equipment for purposes other than the purposes for which the award was made, without the prior written approval of the appropriate NTIA authority. Customer acknowledges and agrees that (a) the Customer Fibers, access points and other BTOP-funded portions of the Network are and shall be subject to the Federal Interest for their useful life, and (b) Customer may be required by the NTIA to execute a security interest or other statement evidencing NTIA's interest in any IRU, the Customer Fibers, access points and the Agreement. Customer may not use or permit the use of the IRU, the Customer Fibers or the access points inconsistent with the purposes of the BTOP Grant(s). Each IRU shall be assignable at the direction of the NTIA if MCNC or Customer fails to act in accordance with the terms and conditions of the BTOP Grant(s). MCNC may take additional action as MCNC in its sole discretion may deem to be reasonably necessary or appropriate to document and publish any rights under the Agreement. At MCNC's request, Customer shall execute and acknowledge a memorandum of IRU(s), financing statement or similar document for recordation in the appropriate governmental office(s) to constructively notify third parties of any rights under the Agreement.

1.3 Transfer Requirements

In the event of any sublease or permitted assignment of Customer under the Agreement, the grantee must represent and warrant for MCNC's reliance thereon that said grantee and its affiliates do not with the contemplated transaction and their other interests in fiber optic fiber have rights to, and/or control of, a majority of the fiber optic capacity in the route(s) then or initially available.