

V. DARK FIBER SERVICES

This Dark Fiber Services schedule describes the nature of the Dark Fiber Service (“Services”) offered by WIN, LLC to Customer. The terms, conditions, requirements, and specifications herein may be revised from time-to-time.

1. DEFINITIONS

1.01 “Acceptance Date” means, with respect to a Dark Fiber Lease Order, the earlier of the date of Customer’s Acceptance Notice or the date of Deemed Acceptance. The Acceptance Date shall serve as the Service Activation Date as defined in the Master Service Agreement.

1.02 “Acceptance Notice” means the written Notice of Acceptance of a Segment or entire route given to WIN by the Customer.

1.03 “Access Point” is the physical location(s) at which Customer may, subject to required permits and Rights, connect its telecommunications system with the Leased Fibers. Access Points are generally an existing splice location, or other technically feasible location determined by WIN in its sole discretion, with each Access Point specifically set forth in a Dark Fiber Lease Order.

1.04 “Dark Fiber” means Fiber between two specified locations that has no optronics or electronics attached to it.

1.05 “Delivery Charges” means all costs, including administration and overhead fees, for Delivery Work.

1.06 “Delivery Work” means all work necessary in order to achieve connectivity and to provide OTDR test results to Customer for each Dark Fiber Segment.

1.07 “Fiber” means a glass strand or strands which are protected by a color-coded buffer tube and which are used to transmit a communication signal along the glass strand in the form of pulses of light. “Fiber Optic Cable” or “Cable” means a collection of Fibers contained in color-coded buffer tubes with a protective outer covering, which covering includes stiffening rods and filler.

1.08 “Dark Fiber Lease Order” means a Service Request executed pursuant to the Master Service Agreement by and between WIN and Customer.

1.09 “Leased Fibers” means those specific Dark Fibers in the WIN Cable in which Customer has been granted a Lease.

1.10 “Proportionate Share” means the percentage determined by dividing the total number of Leased Fibers in the WIN Cable or Cables by the total number of Fibers in the WIN Cable or

Cables. The Proportionate Share may vary with respect to particular Segments of the WIN Cable.

1.11 “WIN Cable” means the Cable containing Dark Fibers in which Customer has a lease pursuant to the terms of this Agreement.

1.12 “WIN Network” means the telecommunications system owned and/or operated by WIN.

1.13 “Optical Splice Point” means the point at which the Customer’s Cable connects to the Leased Fibers.

1.14 “Rejection Notice” means the written Notice of Rejection of a Segment or entire route given to WIN by the Customer.

1.15 “Rights” means any and all necessary right of way agreements, easements, licenses, leases, rights, or other agreements necessary for the occupancy and use by either Party of poles, conduit, cable, wire, physical plant facilities, and/or access to real property underlying the Cable.

1.16 “Segments” are portions of WIN Cable routes specified in a Dark Fiber Lease Order which are capable of being tested and accepted.

1.17 “Splicing Objectives and Acceptance Standards” are the objectives for splicing and standards for Acceptance of Fiber Test Results as outlined in Section III of this Dark Fiber Services Description.

2. DESCRIPTION OF SERVICES

2.01 *Dark Fiber Lease.* WIN will grant Customer an exclusive lease in the Leased Fibers designated by WIN in the Cable over the Route, all of which will be defined in the applicable Dark Fiber Lease Order.

2.02 *No Possessory Interest.* Customer agrees that all rights, title, and interest in the WIN Network, WIN Cable, and Leased Fiber shall at all times remain exclusively with WIN. Customer does not have any ownership right to the WIN Cable, WIN Network, or Leased Fiber. *Non-Interference.* Customer shall not use the Leased Fibers in a manner that materially interferes in any way with or otherwise adversely affects the use of the WIN Network, Fibers, or Cable (or any equipment or element thereof), or of the fiber, cable, or equipment of any person along the route Segments. WIN shall not use any other Fibers in the WIN Cable in a way that materially interferes with or adversely affects Customer’s use of the Leased Fibers.

2.03 *Survival of Restrictions.* Any restrictions contained herein regarding the manner in which Customer uses the Leased Fibers shall continue to apply upon the termination or other expiration of the Agreement or any Dark Fiber Lease Order.

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3. TESTING AND ACCEPTANCE

3.01 *Fiber Test Results.* Prior to Delivery and after receipt of any Deposit required by the applicable Dark Fiber Lease Order, WIN shall complete the Delivery Work for the Segment and provide Optical Time Domain Reflectometer (OTDR) test results for the specific Leased Fibers in the Segment (hereafter “Fiber Test Results”). In addition, Customer may perform a visual inspection, subject to the protocols of all Rights agreements, of all above-ground Access Points and visible WIN Cable construction. Within ten (10) days after receiving the Fiber Test Results, Customer shall (i) determine whether the Fiber Test Results conform to the requirements of the Splicing Objectives and Acceptance Standards, and (ii) provide an Acceptance/Rejection Notice to WIN. Failure to issue either an Acceptance Notice or Rejection Notice within the ten (10) day period shall constitute unconditional and irrevocable Acceptance of the Leased Fibers by Customer as of the eleventh (11th) day for all purposes under this Agreement (“Deemed Acceptance”). OTDR Standards for the Fiber Test Results shall be as follows:

- A. OTDR traces will be taken at 1550nm or 1310nm (as determined by Customer), and splice loss measurements will be analyzed. EXFO format will be used on all traces, unless another OTDR format is agreed to by both Parties;
- B. OTDR traces shall be saved in a standard file naming convention; and
- C. One CD for each Dark Fiber Lease Order with OTDR traces will be provided, or the files will be transmitted via email.

3.02 *Acceptance/Rejection Procedure.* Should Customer reject the Leased Fibers by providing a Rejection Notice within the applicable ten (10) day period described above, upon receipt thereof WIN shall promptly undertake to investigate and, if necessary, correct any deficiency or non-conformity in the Leased Fibers. Thereafter, WIN shall again conduct testing of the Leased Fibers for the Segment. The procedure described above shall apply again and successively thereafter until WIN has remedied all defects or failures and WIN has received written notice from Customer that the Leased Fibers meet the requirements of the Dark Fiber Lease Order, or until Deemed Acceptance.

If Customer issues a Rejection Notice of Leased Fibers for which WIN reasonably believes the Fiber Test Results conform to the Splicing Objectives and Acceptance Standards, the Parties shall work together to do cooperative testing, sharing the cost equally, to determine whether the Fiber Test Results conform to specifications. In the event that the cooperative testing continues to demonstrate that the Leased Fibers conform to the Splicing, Testing, and Acceptance Procedures/Standards and Customer continues to issue a Rejection Notice, or otherwise fails to consummate the transaction contemplated herein through no fault of WIN within forty-five (45) days of WIN having made viable Leased Fibers available to Customer for the Segment, the applicable Dark Fiber Lease Order shall automatically terminate and WIN shall retain any deposit made by Customer (the “Deposit”), in addition to any construction costs actually incurred by WIN for its efforts associated with the Dark Fiber Lease Order. In the event that the transaction contemplated hereunder is not consummated for any other reason as a result of the actions or omissions of Customer or third parties affiliated with Customer, then WIN shall be entitled to keep and retain one hundred percent (100%) of any Deposit associated with the Dark Fiber Lease Order.

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3.03 *Record Drawings.* Upon reasonable request, but not before one hundred twenty (120) days after the Acceptance Date, WIN shall provide record drawings regarding the as-built Cable containing the Leased Fibers. The record drawings shall contain the technical specifications of the WIN Cable, associated splices, and other details consistent with industry standards. At the request of the Customer, and at Customer's sole cost, the record drawings shall also be provided in electronic format if possible.

4. FRANCHISE/LICENSE/PERMIT FEES, AND COLOCATION AGREEMENTS

4.01 *Colocation.* Customer shall be responsible for entering into any colocation agreements with any necessary party to effectuate its use of the Leased Fibers. In the event that Lessee wishes to collocate in WIN facilities, the Parties shall execute a separate colocation service request for each site.

4.02 *Permits.* Customer shall be responsible for the appropriate government filings, licenses, or other requirements to place the Leased Fibers into operation, including, but not limited, to any necessary municipal licenses or franchise agreements other than those Rights discussed herein, which shall remain the responsibility of WIN.

5. MAINTENANCE, REPAIR, RELOCATION

5.01 *Routine and Emergency Maintenance.* WIN will maintain the Leased Fibers in accordance with prevailing telecommunications industry standards. All routine maintenance and repair functions and emergency maintenance and repair functions, including "one-call" responses, cable locate services, and necessary relocation of the WIN Cable containing the Leased Fibers, shall be performed by WIN or its designee.

5.02 *Routine Maintenance.* Outside Plant ("OSP") facilities are periodically inspected by WIN personnel. Any discrepancies found are documented and forwarded to the OSP maintenance desk for correction and/or repair as necessary. Items that are inspected may include:

- A. Cable route integrity;
- B. Condition of poles, pedestals, risers, lashing wire, route markers, and signs;
- C. Clearance of aerial facilities; and
- D. Construction activity in the area near the Cable.

5.03 *Plant Location Requests.* All facilities associated with this Agreement are located in states with statewide "one call" agencies for excavators to request and notify utilities of digging in the vicinity of the facilities. WIN will subscribe to these services and follow the guidelines and laws applicable to that state, including the marking of their facilities within the timeline required by applicable state law regarding location of utility facilities.

5.04 *Scheduled Maintenance.* WIN will notify Customer in writing at least (5) business days prior to any service-affecting non-emergency Cable maintenance ("Scheduled Maintenance") that requires scheduled downtime. Such Scheduled Maintenance may be performed within an interval of 12:00 midnight to 6:00 a.m. Central Time, seven days a week. WIN will expend

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commercially reasonable efforts to coordinate any Scheduled Maintenance with Customer. Upon request, WIN will notify Customer prior to beginning Scheduled Maintenance work, and also upon request WIN will notify Customer upon completion of Scheduled Maintenance work.

5.05 *Emergency Maintenance.* WIN shall respond to any failure, interruption, or impairment in the operation of the Leased Fibers (which shall include response to an alarm identified by its Network Management Center or notification to WIN by Customer or by any Third-Party of such failure, interruption, or impairment or of any event imminently likely to cause such failure, interruption, or impairment) within four (4) hours and shall use commercially reasonable efforts to perform maintenance and repair to correct any failure, interruption, or impairment in the operation of the WIN Cable within eight (8) hours.

5.06 *Relocation.* Customer acknowledges and agrees that, after the Acceptance Date, WIN may be required by (i) by any governmental authority under the power of eminent domain or otherwise, (ii) by the grantor or provider of any underlying right, (iii) by any other person having the authority to so require, or (iv) by the occurrence of any Force Majeure event, to relocate the Segment(s) of the WIN network. In such event Customer shall reimburse WIN for its proportionate share of the costs related to such relocation, which shall be the number of Customer fibers divided by the total amount of fibers for the particular Segment.

6. SPLICING

6.01 *WIN to Perform.* Following Acceptance and payment of any amounts required by the applicable Dark Fiber Lease Order, the Customer's lateral or other fibers beyond the WIN Network may be spliced into the WIN Cable at the Access Points. In order to maintain the integrity of the WIN Cable and Network, WIN or a contractor operating under its direction shall perform all splicing performed on the WIN Cable at the Access Points.

6.02 *Splicing Standards and Procedures.*

- A. All splices will be performed via the fusion splicing method;
- B. Splicing of Customer-owned lateral fibers will be qualified at the Access Points by the core alignment system on the fusion splicer at such time as WIN splices the Customer's owned lateral fibers into the WIN Cable at an Access Point pursuant to Customer's request;
- C. After splicing and end to end (site to site) connectivity is achieved on the Leased Fibers, including any Customer-owned fibers spliced into the WIN Cable at an Access Point, bi-directional span testing will be performed by the Customer for the entire span, or by WIN if so requested by Customer. These measurements will be made after all cable installation activities are complete for each span. Once the bi-directional testing is achieved, if Customer believes that the criteria set forth herein are not met as a result of the splicing performed by WIN at an Access Point, Customer shall provide the OTDR

tests for the entire span to WIN in order to allow WIN to verify and, if necessary, perform re-splicing in order to correct the problem;

- D. All splices will be protected with heat shrinks. An industry-accepted splice enclosure will be used on all splices; and
- E. In no event shall WIN be responsible for the performance of the Customer's owned lateral fibers or any splicing performed by Customer at its own sites or any splice point beyond the WIN Network.

6.03 Splicing Objectives and Acceptance Metrics

- A. The objective loss value of the connector and its associated splice will be 0.50 dB or less;
- B. The objective for each fiber within a span shall be an average bi-directional loss of 0.10 dB or less for each splice. For example, if a given span has 10 splices, each fiber shall have a total bi-directional loss (due to the 10 splices) of 1.5 dB or less. Individual bi-directional loss values for each splice will be reviewed for high losses; and
- C. The aforementioned standards are objectives, not the basis for Acceptance. The Acceptance standard for each fiber per span shall be calculated as:

$$\text{Span Loss} = a (\text{span distance in kilometers}) + b (0.10 \text{ dB/splice}) + c (0.50 \text{ db/connector})$$

Where:

a = maximum fiber loss in dB per kilometer for the specific fiber type/manufacturer using SMF-28 shall be .25dB/km at 1550nm and .35dB/km using 1310nm (testing wavelength to be determined by Lessee)

b = number of splice locations for the span

c = number of connectors for the span