

**MASTER EXCESS FIBER LEASE AGREEMENT
BY AND BETWEEN
SOUTH CAROLINA PUBLIC SERVICE AUTHORITY
AND
XYZ ENTITY**

This MASTER EXCESS FIBER AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _____, 202__ ("Effective Date"), between **South Carolina Public Service Authority**, a body corporate and politic created by the laws of the State of South Carolina, with its principal place of business at 1 Riverwood Drive, Moncks Corner, South Carolina (hereinafter referred to as "Lessor" or "Authority") and **[COMMUNICATIONS SERVICE PROVIDER]**, a **[TYPE OF ENTITY]** duly organized and existing under the laws of the state of [INSERT STATE] with its principal place of business at **[ADDRESS]** (hereinafter referred to as "Lessee"). Authority and Lessee may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

WHEREAS Authority operates an electric transmission system in certain portions of South Carolina;

WHEREAS, Authority uses a fiber-optic network (the "Authority Network") for internal communications in support of the provision of electric services;

WHEREAS, the South Carolina General Assembly granted Authority the authority to, among other things, lease Excess Fiber to Unaffiliated Communications Service Providers for the provision of Broadband Services;

WHEREAS, Authority has Excess Fiber available for lease and is willing to lease that Excess Fiber to facilitate the delivery of widespread Broadband Services within South Carolina;

WHEREAS, Lessee is an Unaffiliated Communications Service provider;

WHEREAS, Lessee is acquainted with and trained in the conditions and work to be performed under this Agreement;

AGREEMENT

ARTICLE 1 – DEFINITIONS

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a section of this Agreement or in the Technical Requirements. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number1(num)e

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provide internal communications in support of the provision of electric services, that is unused, unlit, available, and in excess of the capacity needed by Authority, including its reserve margins, for its internal communications in furtherance of its provision of electric service. Excess Fiber may also be referred to as “Dark Fiber” and the two terms may be used interchangeably.

- 1.8. “Day(s)” means calendar days unless expressly provided for by otherwise.
- 1.9. “Demarcation Points” means the point of connection (PoC) that defines where ownership and maintenance obligations begin and end as and as specifically defined in the Technical Requirements.
- 1.10. “Equipment” means communications and networking electronics, facilities, and other equipment owned or leased from third parties by Lessee and used in connection with lighting the Excess Fiber and providing the Lessee Services. Equipment does not include the Excess Fiber or any equipment, facilities, or property owned or leased from third parties by Authority.
- 1.11. “Effective Date” has the meaning ascribed in the preamble.
- 1.12. “Escorted Access” means Lessee accompaniment by an Authority representative.
- 1.13. “Evaluation Period” means the period of ten (10) days after Lessee receives the Fiber Test Results Acceptance Package.
- 1.14. “Facilities” means conduit, innerduct, risers, collocation equipment and space, fiber termination equipment, splice cans, interconnection equipment, racks, or other equipment associated with Leased Fiber.
- 1.15. “Fiber Test Results” means the results of the acceptance tests conducted by Authority on the and s:67ar Leased Fibere.

Authority- [ENTITY]

service provider, internet service provider, telephone company, communications carrier, or any other kind of common carrier, or any kind of utility other than a state owned electric and water utility.

- 2.3. Title. The Authority makes no warranty as to its title or rights to any of the property herein referred to and only grants the rights to set out in

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impairment, or disruption caused by Lessee's use of the Leased Fiber ("Lessee Interfe

- 4.6. Limitation on Inspection of Traffic. Authority will not, either directly or indirectly, (a) access or use, for itself or on behalf of any other Person, any content or traffic transmitted over the Leased Fiber by Lessee or by end users of the Lessee Services, or (b) allow any Person, other than governmental authorities pursuant to a validly issued subpoena or similar order, to access, directly or indirectly, any content or traffic transmitted over Leased Fiber by Lessee or by End Users of the Lessee Services. Lessee will not, either directly or indirectly, (a) access or use, for itself or on behalf of any other Person, any content or traffic transmitted over the Authority Network (other than over the Leased Fiber) by Authority or any third party, or (b) allow any Person, other than governmental authorities pursuant to a validly issued subpoena or similar order, to access, directly or indirectly, any content or traffic transmitted over Authority Network (other than over the Leased Fiber) by Authority or any third party.
- 4.7. Improvements to Leased Fiber. At any point after Acceptance by Lessee of Leased Fiber, Lessee may request that Authority take additional actions to improve the quality or performance of the Leased Fibers. Authority will make commercially reasonable efforts to make personnel available to engage in good faith discussions with Lessee to explore ways of accommodating such requests in a timely fashion and without disrupting third-party Lessees' use of the Leased Fiber. If Authority agrees to take such additional actions, Authority will notify third-party lessees. Lessee will reimburse Authority for the costs it incurs to make the improvements to the Leased Fiber. For avoidance of doubt, no such additional actions contemplated by this Article 4.7 will change the amounts of Lease fees paid under Article 5.
- 4.8.

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Lessee for charges on

deposit will be returned to Lessee.

5.9.3. The purpose of the Security is to ensure Lessee's performance of all of its obligations under this Agreement, cover unpredictable costs to serve, and for the payment by Lessee of any claims, liens, taxes, liquidated damages, penalties, and fees due to Authority that arise by reason of this Agreement. Within thirty (30) days after notice to Lessee that Authority has drawn any amount against the Security, Lessee shall take action to replenish the Security to its prior amount.

5.9.4. Cancellation or Replacement. Lessee shall provide Authority with thirty (30) days prior written notice of 0 Td[(44 (n)-4 9 (t)-2 [(w)-2 (r)-1c 0.003 0.32 0 P4b21 0 Td-e)4 (o46 0 Td[w [(L 6 wlt(e lt(e (bw T[.83 2aeaBT- .1)-5.83t)Tj)] 0 Td2 (t)-221p [(w)-2 (5.83 2a.2- .31 12]TJ03 (m)

- 6.4. Acceptance Date. Lessee will not have use of the Excess Fiber until it's acceptance. The "Acceptance Date" is the earlier of the date Lessee confirms its Acceptance or the last day of the Evaluation Period, provided that the Evaluation Period will be suspended for the duration of any corrective action or retesting pursuant to Article 6.3. However, no Acceptance or deemed Acceptance will constitute a waiver by Lessee of Authority's obligations of maintenance and repair of the Leased Fibers in accordance with the Technical Requirements.

ARTICLE 7 – MAINTENANCE, REPAIR AND OPERATIONS

- 7.1. General Maintenance and Repair of Leased Fiber. Authority will be responsible for maintenance and repair of Leased Fiber or Facilities in accordance with the Technical Requirements. Lessee acknowledges that due to electric safety concerns, only Authority can perform Make Ready Work, maintenance, and repair work on Leased Fiber. IN NO EVENT WILL LESSEE PERSONNEL, TECHNICIANS, O9 0 Tdw 0.T71c (ai)-6 (n)-4 cttttItIn O9(t)-2cotH2 (()T)-2coESc 1(ES)-.L M54 Tw2 (O9

- 7.7. Emergency Relocations. In addition to any obligation to perform maintenance under the Technical Requirements, Authority shall have the power at any time to remove or relocate any pole, wire, cable, or structure that presents an imminent danger to life or property in Authority's sole discretion ("Danger Poles") without incurring any liability for such removal or relocation, provided that Authority shall restore such pole, wire, cable or structure that has been cut or removed due to Danger Poles as soon as commercially reasonable and be responsible for such removal and/or relocation costs. Lessee shall cooperate with Authority to affect any such modifications. Relocations of Leased Fiber or Facilities shall not affect the price Lessee pays for use of that Fiber or Facilities.
- 7.8. Route Modifications. Authority may relocate all or any portion of the Leased Fiber as conditions and circumstances may warrant. These modifications may cause portions of the Leased Fiber to be relocated, permanently or temporarily, to one or more alternate locations as determined by the Authority in its sole discretion. Authority will give Lessee sixty (60) days' prior written notice of any relocation of any Leased Fiber, provided, however, that if Authority does not have notice of a relocation at least sixty (60) days prior to the date of the relocation, then Authority will notify Lessee as soon as practicable. Lessee will cooperate in good faith with Authority to facilitate any relocation. Authority will use its commercially reasonable efforts to ensure such action shall not directly or substantially interfere with the performance or operations of the Leased Fiber and/or Equipment.
- 7.9. Use of Subcontractors. Authority may outsource to third-party service providers or suppliers any Services it is obligated to provide under this Agreement.

Article 8 – Termination & Default

- 8.1. Default – Failure to Make Lease Payment. Failure to make any Lease payment when due and such failure continues for more than thirty (30) days after the due date shall be a material breach of this Agreement.
- 8.1.1. If Lessee fails to make any payment then Authority may elect to: (1) terminate this Agreement and any other agreements made with Lessee; (2) continue attempts to collect the past due Lease Payment(s); (3) disconnect Leased Fiber; and/or (4) draw the amount of the past due Lease Payment(s) from the required Security.
- 8.1.2. If the Authority elects to disconnect the Leased Fiber, prior to any reconnection Lessee must cure the default, replenish any amounts deducted from the required Security, and pre-pay any re-connection or splicing costs in order to continue this Agreement and use of the Leased Fiber.
- 8.2. Default - Other Grounds. This Agreement may be terminated by either Party ("Non-Defaulting
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- 8.5.4. Electric System Communications. In the event the Authority's Network requires additional Fiber, and there is not Excess Fiber available, with sixty (60) days' notice, Authority may terminate or modify the Product Orders

ARTICLE 9 – FORCE MAJEURE

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agrees to hold Authority harmless shall include latent defects.

While not limiting any of the above, in addition Lessee shall indemnify, hold harmless, and defend (at Authority's election) Authority directors, officers, employees, and agents for, from, and against all claims, damages, losses, and expenses (including, but not limited to, attorneys' fees) arising out of or relating to the following:

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- 11.1.1. It is a [**TYPE OF ENTITY**] duly organized and validly existing in good standing under the laws of the State of [**INSERT STATE**] with full power and authority to conduct its business as now conducted, own its assets and enter into and perform its obligations under this Agreement.
- 11.1.2. It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;
- ~~11.3.~~ **11.33.** This Agreement constitutes a legal, valid, and binding obligation of Lessee enforceable

Authority- [ENTITY]

Authority- [ENTITY] Excess Fiber Lease Agreement

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request shall give written notice of same to the other Party at least ten (10) days prior to the date of compliance with such request (unless that Party has less than ten (10) days within which to comply, in which case said Party shall give the other Party as much notice as is practicable under

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Attention: Sr. Manager of Broadband and Telecom Services;
broadband_SC@santecooper.com

Either party may, by giving notice, change (or add to) its address for receiving such notices. Either party may agree to accept notice by acknowledging receipt of an email transmittal.

15.9. No Third-Party Beneficiaries

LESSEE

**SOUTH CAROLINA PUBLIC SERVICE
AUTHORITY**

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

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EXHIBIT A

O&M ADJUSTMENT

Schedule to be generated after the execution of the Agreement.

REQUIRED INSURANCE COVERAGE

During the Lease Term, Lessee shall procure, pay premiums for and maintain in full force and effect the insurance coverage described below. Lessee shall include an endorsement in the following policies to include a waiver of subrogation in favor of the Authority and, with respect to the policies described in Subsections 1(b) to 1(d) below, listing Authority as an additional insured. Lessee may combine primary and excess policies to satisfy the coverage and amount of insurance required herein at Lessee's discretion.

- (a) Worker's compensation insurance with statutory limits as required by the laws of the state in which the Facility is located, and employer's liability insurance with minimum limits of \$1,000,000 or as established by state or federal law, if applicable. This insurance shall include all applicable maritime coverage as required by law.
- (b) Commercial general and umbrella/excess liability insurance, including coverage for (i) premises/operations, (ii) independent contractor, (iii) products and completed operations, (iv) broad form contractual liability, (v) broad form property damage, (vi) explosion, collapse and underground damage exclusion deletion, and (vii) personal injury, all with limits of not less than \$10,000,000 each occurrence and in the aggregate.
- (c) Business auto liability insurance with minimum limits of \$1,000,000, covering all vehicles and automobiles whether owned, leased, or rented when used by Lessee in connection with performance of this Agreement and including commercially reasonable coverage for each accident of bodily injury and property damage.