

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



November 25, 2013

Advice Letter 4304-E

Brian K. Cherry
Vice President, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

**SUBJECT: Master Indefeasible Right of Use Agreement for Optical Fiber Installations
between PG&E & OpticAccess, LLC - Request for Approval Under Section
851**

Dear Mr. Cherry,

Advice Letter 4304-E is effective as of November 16, 2013.

Sincerely,

A handwritten signature in cursive script that reads "Edward F. Randolph".

Edward F. Randolph, Director
Energy Division



Brian K. Cherry
Vice President
Regulatory Relations

Pacific Gas and Electric Company
77 Beale St., Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

Fax: 415.973.7226

October 17, 2013

Advice 4304-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: Master Indefeasible Right of Use Agreement for Optical Fiber Installations between Pacific Gas and Electric Company and opticAccess, LLC – Request for Approval Under Section 851

Purpose

Pacific Gas and Electric Company (“PG&E” or the “Company”) respectfully requests approval of the California Public Utilities Commission (“CPUC” or “Commission”) pursuant to Public Utilities Code Section 851 (“Section 851”) to grant a right to use certain fiber optic lines (“optical fiber” or “fiber optic facilities”) on PG&E electric transmission and distribution infrastructure and equipment sites (“equipment sites”) pursuant to the Master License and IRU Agreement (together “Agreement”) between PG&E and opticAccess, LLC, a Nevada company (“opticAccess”). A copy of the Master License and IRU Agreement is appended hereto as Attachment A.

Background

The Company owns and maintains electric utility facilities throughout its electric service area for the purpose of providing safe, reliable electric service to electric customers in Northern and Central California. The Company also owns extensive electric and gas distribution utility facilities which it directly operates and controls.

The Company has installed, and maintains and operates, fiber optic facilities and other communications equipment in portions of its utility system to support its provision of electric and gas utility service within its service area. In certain areas, the Company continues to need additional or expanded fiber optic communications capability for its electric and gas utility communication needs, and to provide alternative communications paths for the operation of its utility facilities and utility business.

opticAccess is a provider of telecommunications services and holds a certificate of public convenience and necessity to provide such services in the State of

California. opticAccess services will consist primarily of a broadband telecommunications network that will provide advanced voice and data solutions to business customers.

In July 2013, the Company executed an Agreement with opticAccess that gives opticAccess permission to assist the Company in construction of optical fiber communications systems, and reserves rights to use some of the optical fibers in the completed systems to provide its services to their customers, and licenses certain real properties held by PG&E for the purpose of installing equipment sites at those locations.

The Agreement will enable the Company to obtain additional optic fiber capacity and telecommunications services and expand its communications and control systems. Specifically, the Agreement facilitates additional use of the Company's electric facilities and existing fiber optic resources to expand and utilize the Company's communications system very cost effectively and to enhance system control and communication. By enabling the Company to acquire new fiber optic communications capacity and facilities, the Agreement enhances the Company's ability to extend its fiber optic communications network and to use fiber optic signals over additional paths. This extended network will give the Company new capacity for energy utility communication and control purposes.

In accordance with General Order ("G.O.") 173, PG&E provides the following information related to the proposed transaction:

(a) Identity of All Parties to the Proposed Transaction:

Pacific Gas and Electric Company	Chief Operating Officer
Darren P. Roach	Jeff Yount
Law Department	opticAccess, LLC
P.O. Box 7442	533 AirportBlvd., Suite 400
San Francisco, CA 94120	Burlingame, CA 94010
Telephone: (415) 973-6345	
Facsimile: (415) 973-5520	
Email: DPRC@pge.com	

(b) Complete Description of the Facilities and Property Including Present Location, Condition and Use:

A description of the Company's electric property potentially involved in the Agreement is contained herein. Generally, the Company seeks authorization for opticAccess to use the following property under the Agreement:

1. Optical Fibers
2. Land Owned by the Company in fee simple
3. Electric transmission towers and facilities
4. Electric distribution poles, conduits and facilities
5. Electric transmission and distribution substations

Under the Agreement, the Company acquires new facilities and licenses fiber capacity in the new facilities to opticAccess. No Company property is being sold or disposed of. Under the Agreement, opticAccess is permitted to occupy and use only a portion of the Company property, and only to the extent such use is compatible with the Company's use of the properties for utility service.

The Agreement benefits opticAccess, the Company and their respective customers. The Agreement allows the Company to obtain improved and expanded utility communications plant and capacity with minimal or no annual expense. The additional communications capacity will be used by the Company to meet its continuing communications needs.

opticAccess also acquires important communications capacity on a cost-effective basis, with important improvements in its ability to provide communications services to its customers. opticAccess anticipates that it may use its fibers for any lawful purpose, including, without limitation, the sale of services to telecommunications service providers at wholesale, and to retail commercial telecommunications service users.

(c) Intended Use of the Property and Facilities:

To support and expand its offering of telecommunications equipment, opticAccess desires to obtain fiber optic capacity by working with the Company and assisting in installation of new fiber optic lines. opticAccess also wishes to facilitate the installation of new fiber optic system electronics ("System Electronics"), which opticAccess would install in existing Company structures already sheltering communications facilities, as well as constructing new modular structures for PG&E and opticAccess' equipment ("Equipment Stations") in order to upgrade both companies' communications capabilities.

The shared use of utility property by the Company and opticAccess results in both economic and environmental benefits, by encouraging energy utilities to use their property productively and reducing the need for construction of new telecommunications project sites.

(d) Complete Description of Financial Terms of the Proposed Transaction:

opticAccess will pay a Monthly Fee that is proportionate to its utilization of PG&E infrastructure. The sum of the Monthly Fees for a given year will be compared to a designated minimum annual fee at the beginning of the following year, and a true-up will occur if the Monthly Fees fall short of the minimum annual fee for such year.

The particular financial terms of the Agreement include certain information regarding the compensation, the fibers assigned to the Company and to opticAccess, and the term of the Agreements. The compensation for use of the fibers would provide entities competing with opticAccess with valuable, commercially sensitive information. Release of this information into the public domain also would put the Company at a competitive disadvantage in negotiating future arrangements with communications companies in a highly competitive market. Therefore, the Company requests for confidential treatment of this information as submitted (see Attachment 2) pursuant to Public Utilities Code 583 and General Order 66-C.

(e) Description of How Financial Proceeds of the Transaction Will Be Distributed:

Any compensation received by PG&E from opticAccess will be credited as follows:

Electric Transmission Property

Proceeds from the license fees received for sites located on PG&E's electric transmission property are subject to Federal Energy Regulatory Commission (FERC) jurisdiction for ratemaking. All costs for PG&E's electric transmission system are now part of FERC ratemaking for transmission service in PG&E's transmission owner cases. PG&E will account for license fees related to electric transmission property pursuant to applicable FERC rules for accounting and ratemaking.

Electric Distribution Property

Site license fees for sites located on PG&E's electric distribution property will be treated as Electric Other Operating Revenue and will be used to reduce PG&E's revenue requirement consistent with conventional cost-of-service ratemaking. The Commission approved similar ratemaking proposals in D.09-07-035, Ordering Paragraph No. 5, pp. 26-27.

(f) Statement on the Impact of the Transaction on Ratebase and Any Effect on the Ability of the Utility to Serve Customers and the Public:

The Agreement does not adversely affect existing ratepayers. It is expected that customers will see neither a decline in service, nor an increase in cost due to the Agreement.

The use of Company's electrical utility facilities and land for the new installation will not interfere with the electric system's operations and will enhance the electrical system by permitting additional control capacity not currently possible without this new fiber and equipment. This work will not adversely affect electric service to the Company's customers. The Company has sufficient oversight of opticAccess' use of its fiber capacity and the Company's facilities to ensure the Company's fiber and facilities will be completely protected.

(g) The Original Cost, Present Book Value, and Present Fair Market Value for Sales of Real Property and Depreciable Assets, and a Detailed Description of How the Fair Market Value Was Determined (e.g., Appraisal):

The Agreement does not involve the sale of real property.

(h) The Fair Market Rental Value for Leases of Real Property, and a Detailed Description of How the Fair Market Rental Value Was Determined:

The compensation arrangement¹ negotiated between the Company and opticAccess represents a fair market value for opticAccess' use of the capacity being created or installed under the Agreement. Through the Agreement, the costs of creating the capacity and installing the new fiber optic facilities, System electronics and Equipment Stations are borne by opticAccess, allowing the Company to avoid costs to create capacity and install facilities. The rates for the licenses are comparable to prices negotiated in comparable agreements.

(i) For Fair Market Rental Value of the Easement or Right-of-Way and a Detailed Description of How the Fair Market Rental Value Was Determined:

The Agreement does not involve transfer of an easement or right-of-way.

¹ As described in Section (d) of this advice letter, the Company requests confidential treatment for the financial terms of the Agreement.

(j) A Complete Description of any Recent Past (Within the Prior Two Years) or Anticipated Future Transactions that May Appear To Be Related to the Present Transaction:²

PG&E and opticAccess have a master agreement for fiber optic licenses (i.e. opticAccess licenses “spare” fibers from PG&E), and it is possible that when opticAccess installs some fiber under the IRU agreement they may supplement their fiber network with fiber they license from PG&E.

(k) Sufficient Information and Documentation (Including Environmental Review Information) to Indicate that All Criteria Set Forth in Rule 3 of General Order (“GO”) 173 are Satisfied:

PG&E has provided information in this Advice Letter to satisfy the eligibility criteria under GO 173 in that:

- The activity proposed in the transaction will not require environmental review by the CPUC as a Lead Agency (see (m) below);
- The transaction will not have an adverse effect on the public interest or on the ability of PG&E to provide safe and reliable service to its customers at reasonable rates;
- The transaction will not materially impact the ratebase of PG&E; and
- The transaction does not warrant a more comprehensive review that would be provided through a formal Section 851 application.

(l) Additional Information to Assist in the Review of the Advice Letter:

PG&E is not aware of any additional relevant information other than what is included with this advice letter.

(m) Environmental Information

Pursuant to GO 173, the Advice Letter program applies to proposed transactions that will not require environmental review by the CPUC as a lead agency under the California Environmental Quality Act (“CEQA”) either because: (a) a statutory or categorical exemption applies (the applicant must provide a notice of exemption from the Lead Agency or explain why an exemption applies), or (b) because the transaction is not a

² During adoption of the Advice Letter pilot program in ALJ-186 (later followed by ALJ-202 and ALJ-244), this category of information was included to enable the CPUC to ensure that utilities were not seeking to circumvent the \$5 million Advice Letter threshold by dividing what is a single asset with a value of more than \$5 million into component parts each valued at less than \$5 million, which is clearly not the case here. (See CPUC Resolution ALJ-186, issued August 25, 2005, mimeo, p.5.)

project under CEQA (the applicant must explain the reasons why it believes that the transaction is not a project), or (c) because another public agency, acting as the Lead Agency under CEQA, has completed environmental review of the project, and the Commission is required to perform environmental review of the project only as a Responsible Agency under CEQA.

The work to be completed by opticAccess falls into one of two categories: either (1) it is minor work that is categorically exempt under CEQA; or (2) it is work that is subject to CEQA in a separate permitting procedure.

The installation of innerduct and optical fiber in existing Company conduit and System Electronics in existing Company structures, the construction of small, modular Equipment stations to shelter PG&E utility communications equipment as well as opticAccess System Electronics, the installation of above-ground conduit, and the installation of handholes and pull/splice boxes appurtenant to existing conduit for purposes of installing, pulling and repairing the optical fiber is categorically exempt from environmental review under Sections 15301, 15303, and 15311 of the CEQA guidelines.

As to the other work described in the Agreement, opticAccess must secure all necessary discretionary permits, and thus fulfill the necessary CEQA requirements, before beginning construction. Section 9.6 of the Agreement, expressly requires opticAccess to secure the licenses and franchises required by governmental authorities as necessary for its operations under the Agreement.

Protests

Anyone wishing to protest this filing may do so by sending a letter by November 6, 2013, which is 20 days from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

CPUC Energy Division
ED Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102

Facsimile: (415) 703-2200
E-mail: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest shall also be sent to PG&E either via E-mail or U.S. mail (and by facsimile, if possible) at the address shown below on the same date it is mailed or delivered to the Commission:

Brian K. Cherry
Vice President, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-7226
E-mail: PGETariffs@pge.com

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter. (General Order 96-B, Section 7.4.) The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).

Effective Date

Pursuant to the review process outlined in General Order 173, PG&E requests that this Tier 2 advice filing become effective on November 16, 2013, which is 30 days from the date of filing.

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and/or via U.S. mail to parties shown on the attached list. Address changes to the General Order 96-B service list should be directed to PG&E at email address PGETariffs@pge.com. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov. Send all electronic approvals to PGETariffs@pge.com. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>.



Vice President – Regulatory Relations

Attachment 1: Public Redacted Master License and IRU Agreement

Attachment 2: Confidential Master License and IRU Agreement

***** SERVICE LIST Advice 4304-E *****
APPENDIX A

***** AGENCIES *****

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bca@cpuc.ca.gov

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 E)**

Utility type:

ELC GAS
 PLC HEAT WATER

Contact Person: Igor Grinberg

Phone #: (415) 973-8580

E-mail: ixg8@pge.com and PGETariffs@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **4304-E**

Tier: **2**

Subject of AL: **Master Indefeasible Right of Use Agreement for Optical Fiber Installations between Pacific Gas and Electric Company and opticAccess, LLC – Request for Approval Under Section 851**

Keywords (choose from CPUC listing): Agreements

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: N/A

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL: _____

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: Yes, PG&E requests the redacted contract terms and conditions be kept confidential.

Confidential information will be made available to those who have executed a nondisclosure agreement: Yes No

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: Igor Grinberg, (415) 973-8580

Resolution Required? Yes No

Requested effective date: **November 16, 2013**

No. of tariff sheets: N/A

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

California Public Utilities Commission

Energy Division

EDTariffUnit

505 Van Ness Ave., 4th Flr.

San Francisco, CA 94102

E-mail: EDTariffUnit@cpuc.ca.gov

Pacific Gas and Electric Company

Attn: Brian Cherry

Vice President, Regulatory Relations

77 Beale Street, Mail Code B10C

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

Attachment 1

Redacted Master License and IRU Agreement

MASTER IRU AGREEMENT
FOR OPTICAL FIBER INSTALLATIONS
BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY
AND
OPTICACCESS

July 2013

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MASTER IRU AGREEMENT

THIS MASTER LICENSE AND IRU AGREEMENT FOR OPTICAL FIBER INSTALLATION ("Agreement") is made and entered into effective as of July 1, 2013 by and between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("PG&E"), located at 245 Market Street, San Francisco, California 94105 and opticAccess, LLC, a Nevada limited liability company ("CUSTOMER"), located at 533 Airport Blvd., Suite 400, Burlingame, CA 94010. Each of CUSTOMER and PG&E may hereinafter be referred to individually as a "Party" and together as the "Parties."

RECITALS

- A. PG&E is a public utility regulated by, among others, the California Public Utilities Commission and the Federal Energy Regulatory Commission. PG&E owns electric transmission and gas and electric distribution facilities used to provide gas and electricity to its customers throughout northern and central California. PG&E operates its gas and electric distribution facilities, but has ceded operational control of its electric transmission system to the Independent System Operator. PG&E also owns and operates an internal telecommunications system.
- B. CUSTOMER and/or its Affiliates is a provider of telecommunications services and holds a certificate of public convenience and necessity to provide such services in the State of California. CUSTOMER is or has been in the process of being approved by the California Public Utilities Commission as a facilities-based Competitive Local Carrier ("CLC") installing, operating and marketing advanced telecommunications services in the State of California, and CUSTOMER has the authority under its CLC certification to use currently installed conduit or duct system within the public right of way for installing fiber optic cable in, under and along public streets and roads in the State of California.
- C. PG&E requires additional optical fiber capacity and desires to construct optical fiber communications systems for its own internal communications needs and to provide ancillary communications services for operation of gas and electric facilities.
- D. CUSTOMER, upon the terms, covenants and conditions contained in this Agreement, is willing to assist PG&E to construct optical fiber communications systems, and desires to reserve to itself an indefeasible right to use some of the optical fibers in the completed systems to provide its services to CUSTOMER's customers, and CUSTOMER desires a license to certain real properties held by PG&E for the purpose of installing equipment status at those locations.
- E. PG&E, upon the terms, covenants and conditions contained in this Agreement, is willing to: (1) allow CUSTOMER to assist PG&E with the installation of optical fiber systems; (2) take bare legal title to the fiber optic cable and accessories and give to CUSTOMER an irrevocable right to use some of the optical fibers within the cable to provide services to CUSTOMER's customers; (3) reserve ■ of the optical fibers within the cable installed under this for use in connection with PG&E's own internal communications needs and to provide ancillary communications services, 4) grant to CUSTOMER a license to enter upon certain property owned in fee simple by PG&E for the purpose of installing the System Electronics, 5) grant to CUSTOMER a License to certain real properties held by PG&E for the purpose of installing Equipment Stations and grant to CUSTOMER permission to lease or license those optical fibers and space in Equipment Stations not dedicated to PG&E to third parties.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, PG&E and CUSTOMER agree as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below:

- 1.1 "Acceptance of Construction" means the written notification from PG&E to CUSTOMER, pursuant to Section 7.10 that specified work has been inspected by PG&E and found to have been performed substantially in accordance with the requirements of this Agreement and standard industry practice.
- 1.2 [REDACTED]
- 1.3 "Ad Valorem Taxes" means ad valorem property taxes, special assessments, local improvement district levies and other levies assessed against the System, Equipment Stations, Equipment Sites, System Electronics or the Right of Way.
- 1.4 "Affected Portion" means any portion of a System that is or may (1) be necessary for PG&E to perform Utility Operations, (2) be affected by a discontinuance or relocation, (3) be affected by a Taking, (4) become the subject of a lien or transfer, or (5) be damaged or destroyed as the result of the occurrence of an event of casualty, or (4) becomes necessary to conduct PG&E utility operations as described in Section 3.10.
- 1.5 "Affiliate" means, with respect to PG&E or CUSTOMER, any corporation or other entity that controls such party, is controlled by such party, or is with such party under common control of another entity.
- 1.6 "Annual Site License Fee" means one payment applicable to all Sites, a fee for the license of each Equipment Site in annual installments, due pursuant to Section 5.6.
- 1.7 "Approvals" means all permits, approvals and licenses from all government authorities having jurisdiction or approval rights with respect to (1) the construction and installation of the System, or (2) the use and occupation of the Right of Way along the Cable Route where the System is to be located or constructed.
- 1.8 "Approved System Segment" means a System Segment for which Working Drawings have been approved under the terms of this Agreement for construction and installation of the Cable, the Cable Accessories, System Electronics and other facilities and equipment associated with the Approved System Segment.
- 1.9 Intentionally omitted.
- 1.10 "Building Entry" means the PG&E owned or controlled service lateral extending from the manhole, splice box, handhold or other and extending to or into the building at or near the electrical service entry location.
- 1.11 "Building Lateral" means a fiber optic cable that extends from the Point of Interface back to the nearest Cable access point (e.g. manhole, vault, utility pole) on an existing lateral, including

any Building Entry, or [REDACTED] such that (a) the cable is placed in existing PG&E facilities or controlled space; [REDACTED]; and (c) [REDACTED]

- 1.12 "Cable" means a single optical fiber cable with specific characteristics and a specific number of fibers as specified in any Route License Acknowledgment appended in Exhibit A of this document. The size of the Cable shall be limited to one inch (1") in diameter unless PG&E determines that the conduit can accommodate a larger cable size.
- 1.13 "Cable Accessories" means all hardware and appurtenances necessary for the attachment or installation of the Cable on PG&E Facilities, excluding steel peaks.
- 1.14 "Cable Route" means the corridor in which the Cable for the System, including but not limited to the Building Laterals and [REDACTED], will be deployed for engineering purposes. [REDACTED] An approximate location of each Cable Route is provided in the Route License Acknowledgments appended in Exhibit A.
- 1.15 "Cable Specifications" means the drawings and specifications regarding the Cable, the Cable Accessories, and related hardware and materials to be employed in the installation of the Cable.
- 1.16 Intentionally omitted.
- 1.17 "Contractor" means a company with appropriate qualifications that acts as CUSTOMER's general contractor for the design and/or installation of the Cable along the Cable Route preparation of the Equipment Sites or the installation of the Equipment Stations in accordance with the terms, covenants, conditions and specifications stated in this Agreement. CUSTOMER may have more than one Contractor. In particular, CUSTOMER may desire separate Contractors for design and installation, or for installation of each System Segment.
- 1.18 "CPUC" means the California Public Utilities Commission.
- 1.19 "Detailed Restoration Plan" means the restoration plan applicable to the System as described in Section 8.2. The Detailed Restoration Plan is attached as Exhibit H.
- 1.20 "Developed System Segment" means a System Segment on which all construction and installation work has been completed and an Acceptance of Construction has been issued.
- 1.21 "Effective Date" means the date first written above.
- 1.22 "Equipment Station" means each building along the Cable Route located on property owned by PG&E and housing any System Electronics used by CUSTOMER to operate the System. For purposes of this Agreement, CUSTOMER shall own or lease the physical structure comprising all System Electronics used in connection with the Equipment Station.
- 1.23 "Equipment Sites" means those areas on or near the Right of Way where PG&E owns the land in fee simple and maintains equipment and on which CUSTOMER, pursuant to the terms of this Agreement, may locate Equipment Stations.
- 1.24 "Force Majeure Event" shall have the meaning given in Section 16.2.

- 1.25 "Hazardous Substances" means any waste, pollutant (as that term is defined in 42 U.S.C. § 9601(33) or in 33 U.S.C. § 1362(13) or any successor statutes thereto), hazardous substance (as that term is defined in 42 U.S.C. § 9601(14) or any successor statute thereto), hazardous chemical (as that term is defined by 29 CFR Part 1910.1200(c) or any successor regulation thereto), toxic substance, hazardous waste (as that term is defined in 42 U.S.C. § 690 I or any successor statute thereto), radioactive material, special waste, petroleum, including crude oil or any other hydrocarbon based substance, waste, or breakdown or decomposition product thereof, or any constituent of any such substance or waste, including, but not limited to polychlorinated biphenyls, and asbestos.
- 1.26 "Independent System Operator" means the California Independent System Operator, the entity to which PG&E has ceded operational control of its electric transmission system. The Independent System Operator has, among other powers, authority to direct the operation of all facilities under its control that affect the reliability of the electric transmission system and to approve requests to work on electric transmission facilities.
- 1.27 "CUSTOMER Fibers" means the number of optical fibers in the Cable, as specified in each Route License Acknowledgment which are not PG&E Fibers along the entirety of each Developed System Segment in which CUSTOMER, pursuant to the terms, covenants and conditions of this Agreement, reserves an exclusive IRU and which are relevant to the calculation of the Monthly Fee as specified in Article 5.3.
- 1.28 "CUSTOMER Space" means the physical space inside Equipment Station(s) reserved to accommodate System Electronics.
- 1.29 "CUSTOMER System Electronics" means those System Electronics owned by CUSTOMER.
- 1.30 "Irrevocable License" means the nonexclusive and nonpossessory irrevocable right to exercise certain rights granted under the terms of this Agreement, which irrevocable license does not include a conveyance of any interest in real property.
- 1.31 "IRU" means the exclusive indefeasible right in and to optical fibers contained in the Cable in the entire length of the Developed System Segment(s) for the remainder of the Term.
- 1.32 "Maintenance" means (1) routine visual inspection, repair and maintenance of the Cable, the Cable Accessories, PG&E Facilities; and (2) restoration.
- 1.33 "Minimum Annual Fee" is defined in Section 5.3.
- 1.34 "Monthly Fee" is defined in Section 5.3.
- 1.35 [REDACTED]
- 1.36 "Point of Interface" means a point, usually a splice point, at which the PG&E Fiber physically diverges from the CUSTOMER Fiber.

- 1.37 "PG&E Facilities" means utility infrastructure used to support and/or contain Cable along the Cable Route. This includes, but is not limited to, towers, poles, and conduits.
- 1.38 "PG&E Fibers" means the number of optical fibers in the Cable, specified in each Route License Acknowledgment, along the entirety of each Developed System Segment that PG&E retains for the purposes and on the terms described in this Agreement.
- 1.39 "PG&E System Electronics" means those System Electronics owned by PG&E.
- 1.40 "PG&E System Integrity" means the operation of PG&E's electric system in a manner that is deemed to minimize the risk of injury to persons and property and enable PG&E to provide adequate and reliable electric service to its customers, as determined by PG&E.
- 1.41 "PG&E Utility Operations" means the procurement, generation, transmission, distribution, management or monitoring by PG&E of electricity, natural gas, or any combination thereof, including, without limitation, consulting and advising with respect to the use thereof and providing all related equipment and services.
- 1.42 "RLA Execution Date" means the date first written of any Route License Acknowledgment as included in Exhibit A.
- 1.43 "Revocable License" means the nonexclusive and revocable right to exercise certain rights granted under the terms of this Agreement, which revocable license does not include a conveyance of any interest in real property.
- 1.44 "Right of Way" means PG&E's real property and rights related thereto, whether created pursuant to a grant, easement, lease, license or other agreement, which are used for the Cable Routes.
- 1.45 "Route Application Form" means an application for a potential Route License Acknowledgment in the form found in Exhibit K.
- 1.46 "Route License Acknowledgment" is defined in Section 2.2.
- 1.47 "Route Miles" means the actual miles traversed by the Cable (including spurs) based on the "as-built" drawings described in Section 7.11.
- 1.48 "Site License Acknowledgment" is defined in Section 2.3.
- 1.49 "SLA Execution Date" means the date first written of any Site License Acknowledgment as included in Exhibit B.
- 1.50 "System" means all of the Cable, including the fiber optic strands therein, Cable Accessories, Equipment Sites, Equipment Stations, PG&E Facilities, System Electronics, Building Entries and other improvements forming a part of the fiber optic network constructed or installed pursuant to the terms of this Agreement.
- 1.51 "System Electronics" means all items of equipment, hardware, software, electronics, optronics and any components that are used to transmit or monitor services over the System, including, without limitation, routers, access nodes, MSDTs, channel banks, digital system cross connect

- Equipment, fiber optic terminals, multiplexers, terminal, and switches.
- 1.52 "System Materials" means all Cable, Cable Accessories, and other equipment and materials obtained under the terms of this Agreement to construct or equip any portion of the System.
- 1.53 "System Segment" means a portion of the System with defined beginning and end points, as set forth in Exhibit A.
- 1.54 "Taking" means the exercise of the power of eminent domain by any public or quasi-public authority.
- 1.55 "Term" means: (I) the period of time beginning on the Effective Date of this Agreement and terminating as specified in Section 4.1. The Term includes any extension of the original Term, as specified in Section 4.2.
- 1.56 "Transferee" means any individual or entity to which either PG&E or CUSTOMER, pursuant to Article XII, transfers or assigns any interest in this Agreement.
- 1.57 "Working Drawings" means the construction plans for the installation of the System along the Cable Route.

ARTICLE II: MASTER IRU AGREEMENT

- 2.1 Master IRU Agreement. This Agreement contains the terms and conditions upon which PG&E will grant to CUSTOMER permission to install System Materials and System Electronics on or in PG&E Facilities, to install Equipment Stations and System Electronics on PG&E property and to operate the System under this agreement, provided however, under no circumstances shall CUSTOMER be permitted to install any System Materials on PG&E Facilities without required Approvals.
- 2.2 Route Application Form. During the Term, CUSTOMER may request that a Cable Route be added to this Agreement by submitting a Route Application Form to PG&E ("RAF") and paying PG&E the applicable Administrative Fee as set forth in Section 5.5. PG&E will review the Route Application Form in accordance with Section 6.3(a). The Route Application Form to be used under this Agreement will be attached as Exhibit K hereto upon completion by PG&E.
- 2.3 Route License Acknowledgment. The Cable Routes for which the Parties have completed and executed Route License Acknowledgment ("RLA") forms are included in Exhibit A, and are those specific locations that the Parties hereby agree are covered by this Agreement as of the date the RLAs are executed. CUSTOMER and PG&E may, from time to time, mutually agree to add Cable Routes and Cable to this Agreement, and shall execute an RLA for each such new Cable Route. Each such additional RLA shall become part of Exhibit A to this Agreement and shall be incorporated by reference herein at the time it is executed and delivered and the location specified therein shall become a Cable Route for all purposes of this Agreement. The RLA form to be used under this Agreement is attached as Exhibit D hereto. Prior to submitting a RLA, CUSTOMER shall submit an application form for each Cable Route it wants to pursue. The application form is attached as Exhibit K.
- 2.4 Equipment Sites. The Equipment Site(s) for which the Parties have completed and executed

Site License Acknowledgment ("SLA") forms are included in Exhibit B, and are those specific locations that the Parties hereby agree are covered by this Agreement as of the date that the SLAs are executed. Each such additional SLA shall become part of Exhibit B to this Agreement and shall be incorporated by reference herein at the time it is executed and delivered and the location specified therein shall become an Equipment Site for all purposes of this Agreement. Notwithstanding the foregoing, PG&E may take into account the needs of its business operations when deciding whether to consent to any SLA request. The SLA form to be used under this Agreement is attached as Exhibit E hereto.

ARTICLE III: RIGHTS IN AND TO THE FIBER AND EQUIPMENT SITES

- 3.1 Regulatory Approval. PG&E, with CUSTOMER's assistance, shall apply to the CPUC under Section 851 of the California Public Utilities Code for an approval authorizing PG&E to enter into the Irrevocable License with CUSTOMER for the use and operation of the CUSTOMER Fibers by CUSTOMER. PG&E shall exercise reasonable business efforts to pursue and secure such an approval as expeditiously as possible. CUSTOMER shall cooperate fully with PG&E's efforts by providing any information, personnel or other resources PG&E may reasonably request from time to time only as directly related to PG&E's efforts in securing CPUC approval. CUSTOMER's cooperation shall include assisting in the preparation of applications, discovery and testimony and making available to PG&E, the CPUC and other relevant authorities all necessary and appropriate CUSTOMER information and personnel. PG&E makes no representation or warranty concerning its ability to secure any such approval, the nature or extent of any conditions or limitations, which may be, imposed thereby, how long the application or approval process may take, or the costs that may be incurred in such process.
- 3.2 Reservation of IRU. Effective as of the date legal title to any Developed System Segment passes to PG&E (as described in Section 7.7(a)), CUSTOMER, upon the terms, covenants and conditions contained in this Agreement, shall reserve to itself an exclusive IRU in and to the CUSTOMER Fiber and the CUSTOMER Exclusive Fiber contained in the Cable in the entire length of such Developed System Segment for the remainder of the Term and any extension thereof.
- 3.3 Use of the CUSTOMER Fibers. CUSTOMER may use the CUSTOMER Fibers for any lawful purpose, including, without limitation, the sale of services to telecommunications services providers at wholesale, and to retail commercial and residential telecommunications services users. PG&E acknowledges and agrees that PG&E has no right to use the CUSTOMER Fibers during the Term. CUSTOMER warrants that its use of the CUSTOMER Fibers and the System shall comply in all material respects with applicable government codes, ordinances, laws, rules, regulations and restrictions.
- 3.4 Use of PG&E Fibers. Concurrently with the effective date of the reservation of an IRU for any Developed System Segment, PG&E reserves the right to use the PG&E Fibers contained in and associated with length of such Developed System Segment. CUSTOMER acknowledges and agrees that CUSTOMER has no right to use the PG&E Fibers during the Term. PG&E may access the PG&E Fibers at prearranged splice points along each Developed System Segment designated by PG&E and agreed to by CUSTOMER in connection with the approval of the Working Drawings for such System Segment, as described in Section 6.3. Any such interconnection shall be made, and all related equipment shall be acquired and installed, at PG&E's cost and expense. Throughout the Term of the Agreement, including any extensions

thereof pursuant to Section 4.2, PG&E and its Affiliates shall have unrestricted use of the PG&E Fibers. However, any use of the PG&E Fibers by an Affiliate, which is primarily engaged in the business of providing Telecommunication Services, shall be subject to the terms of Section 10.8. PG&E may use the PG&E Fibers for any lawful purpose, including, without limitation, the sale of services to telecommunications services providers at wholesale, and to retail commercial and residential telecommunications services users.

- 3.5 Development of Equipment Stations. CUSTOMER agrees to install Equipment Stations, pursuant to Section VII, at each Equipment Site. CUSTOMER will provide PG&E with space, "PG&E Space" sufficient to accommodate equipment. PG&E's minimum space requirements shall be identified in Exhibit B. CUSTOMER will reserve to itself space, "CUSTOMER Space" sufficient to accommodate the System Electronics. Remaining racks and other space inside the Equipment Stations will be considered Non-Exclusive Space and will be reserved for CUSTOMER for the purpose of licensing, leasing or otherwise making available such Non-Exclusive space to third parties at minimal market value.
- 3.6 Intentionally omitted.
- 3.7 Access to Equipment Stations. CUSTOMER and Third Parties shall have twenty-four (24) hour-a-day accesses to the Equipment Stations. However CUSTOMER and third parties shall have no access or entry within the perimeter fence of PG&E's substation facilities without a PG&E authorized escort. Any such Third Party shall be equally bound to the terms and conditions of this Agreement as the Parties.
- 3.8 Reservation of IRU to Space in Equipment Stations. Effective as of the date of conversion to an Irrevocable License specified in Section 3.3 CUSTOMER shall, upon the terms, covenants, and conditions contained in this Agreement (1) reserve to itself the CUSTOMER Space and Non-Exclusive Space, (2) reserve to PG&E an exclusive IRU in and to the PG&E Space.
- 3.9 Nonexclusive Use. Neither the payment of any amount under this Agreement by CUSTOMER or any other provision of this Agreement shall impair in any way PG&E's right or ability to negotiate with any third-party with respect to the use by such third-party of PG&E Facilities, Right of Way, or the PG&E Fibers, except to the extent of the rights specifically granted to CUSTOMER under this Agreement
- 3.10 Reservation of Certain PG&E Rights. PG&E reserves for itself, its successors and assigns, the right to use PG&E Facilities, Equipment Sites or Equipment Stations and the Right of Way, or any portion thereof, for any purpose that PG&E may find necessary, together with the right to enter upon or into PG&E Facilities and the Right of Way, or any portion thereof, at all times, and for any and all purposes. These rights may be exercised by PG&E without any notice to or consent from CUSTOMER and without payment of any compensation to CUSTOMER.
- 3.11 No Property or Possessory Interest. Neither the IRU nor CUSTOMER's exercise of its rights under this Agreement, shall confer upon CUSTOMER any property interest in any of the PG&E Facilities or Right of Way, whether or not owned in fee simple by PG&E or a third-party. Notwithstanding the generality of the foregoing sentence, CUSTOMER shall have the contractual rights granted under the terms of the Revocable License and the Irrevocable License, as applicable, to enter upon the PG&E Facilities and the Right of Way to install the Cable and the Cable Accessories, and the System Electronics and to use the System subject to the terms, covenants and conditions of this Agreement.

- 3.12 Entry Conditions. PG&E, from time to time by written notice to CUSTOMER, may specify additional reasonable and necessary entry conditions or requirements, including, but not limited to, no entry unless accompanied by PG&E personnel, and entry only through a specific route. CUSTOMER's right of entry to the PG&E Facilities and Right of Way is further subject to the conditions that: (a) CUSTOMER shall comply with PG&E's established safety rules, a copy of which is attached to and incorporated by reference in this Agreement as Exhibit J, when working around the towers, electric cables or other elements of the PG&E electric power distribution and transmission system; (b) CUSTOMER shall comply with any conditions legally imposed by the owner of the property on which the Right of Way is located; and (c) CUSTOMER shall indemnify PG&E with respect to such entry as further provided in Section 15.2 of this Agreement. If entry by CUSTOMER is scheduled to last more than one consecutive day, a single telephone notice describing the scope and duration of the entry shall be sufficient notice.
- 3.13 Disclaimer. PG&E makes no representation or warranty whatsoever (including no warranty of merchantability or fitness for a particular purpose) concerning the nature, adequacy or suitability of the PG&E Facilities or the Right of Way for the purposes intended by CUSTOMER. CUSTOMER acknowledges that neither PG&E nor any of PG&E's officers, employees or agents has made, nor is CUSTOMER entering into this Agreement in reliance upon, any such representation or warranty.
- 3.14 Conflicting Provisions. In the event of any conflict between this Agreement and any exhibit hereto (other than a RLA), the terms and conditions of this Agreement, as amended from time to time, shall control. In the event of any conflict among the exhibits, the exhibit of the latest date mutually agreed upon by the Parties shall control. In the event of any conflict on the subject of the provision of electric or natural gas service between PG&E's Rules as filed with the CPUC and any provision of this Agreement, including the exhibits hereto, PG&E's Rules Shall govern. Notwithstanding the foregoing, the terms and conditions of an executed RLA will govern and control in the event there is any conflict between the terms and conditions of such RLA and this Agreement.

ARTICLE IV: TERM

- 4.1 Term. The Term of this Agreement shall commence on the Effective Date of this Agreement and shall expire, unless sooner terminated pursuant to the terms of this Agreement and subject to extension as provided in Section 4.2, on midnight Pacific Time on the [REDACTED] anniversary of the Effective Date.
- 4.2 Extension of Term. CUSTOMER shall have the option to extend the Term for [REDACTED] additional terms of [REDACTED] years each. Either party shall exercise the option to extend by providing a written notice to the other party stating party's exercise of its option to extend the Term or any extension thereof, which notice must be given at least one hundred eighty (180) days prior to the scheduled expiration date of the Term (as previously extended, if applicable). In the event neither party gives notice of election to extend the Term (if such an extension is then available) within the time period specified above, both parties shall be deemed to have elected not to extend the Term. In the event the Term is not extended, CUSTOMER gives up its right to the IRU, and each party gives up its rights to the obligations and benefits stated under the terms of this Agreement, with the exception of those terms that survive termination pursuant to Section 20.15, and the provisions of Section 4.4 will apply.

4.3 Effect of Extension. The terms, covenants and conditions of this Agreement shall continue in force throughout any extension of the Term.

4.4 Quit and Surrender. For any Cable Route, Equipment Site or Building Lateral included in this Agreement under Exhibit A, B or C no later than one hundred eighty (180) days, prior to the scheduled expiration or earlier termination of the applicable Cable Route, Equipment Site, Building Lateral or this Agreement and any renewal terms either in its entirety or as it pertains to specific Cable Route(s), PG&E shall provide CUSTOMER with written notice of PG&E's election to do one of the following. Notice to be shorter if explicitly stated in Section 17.

- (a) Have CUSTOMER remove, at CUSTOMER's sole cost, all of the System and other personal property and fixtures installed under this Agreement for CUSTOMER on or in PG&E Facilities and Right of Way, at which time title to the Cable and the Cable Accessories shall pass to CUSTOMER, and to restore, at CUSTOMER's sole cost, the PG&E Facilities and Right of Way to as good an order and condition as they were at the time immediately prior to their removal
- (b) Have PG&E remove, at CUSTOMER's sole cost and in accordance with removal policies provided by CUSTOMER, all of the System and other personal property and fixtures installed under this Agreement for CUSTOMER on or in PG&E Facilities and Right of Way, at which time title to the Cable and the Cable Accessories shall pass to CUSTOMER, or
- (c) Leave the System in place, at which time title to the same shall pass to PG&E CUSTOMER.

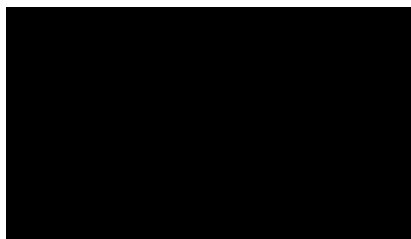
PG&E and CUSTOMER shall mutually agree to a schedule for implementing the election provided in PG&E's written notice, but in no event will the schedule extend more than one (1) calendar year from the date of expiration or earlier termination of this Agreement, either in its entirety or as it pertains to specific Cable Route(s), Equipment Site(s) or Building Lateral(s).

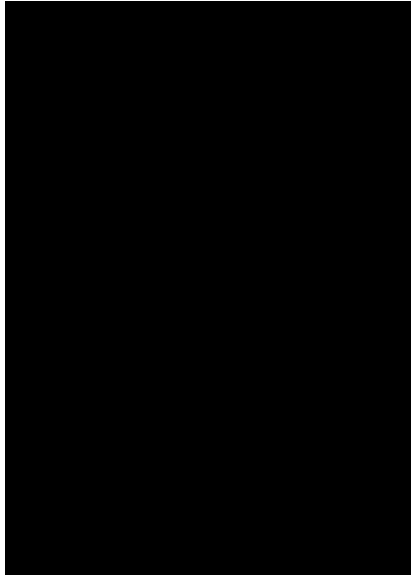
4.5 Holdover. If CUSTOMER continues to utilize the Cable Route(s) after expiration or earlier termination of this Agreement and any renewal terms, either in its entirety or as it pertains to specific Cable Route(s), such use or holding over will, unless otherwise agreed to by PG&E in writing, constitute and be construed to be a month-to-month use at a Monthly Fee as specified in Article 5. Notwithstanding the foregoing, any period when the System is being removed pursuant to Section 4.4 shall not be deemed a holdover.

ARTICLE V: FEES and REIMBURSEMENTS

5.1 Minimum Annual Fee.

(a) CUSTOMER will pay PG&E no less than a minimum annual fee in the amount of [REDACTED] [REDACTED] (the "Minimum Annual Fee") as provided in 5.1(b) below. The Minimum Annual Fee will increase on an annual basis by [REDACTED] per year [REDACTED] as displayed in the following table:





(b) Minimum Annual Fee True-Up. If the sum of the twelve Monthly Fees (as defined below) from CUSTOMER to PG&E for any calendar year total less than the Minimum Annual Fee for such calendar year, then CUSTOMER shall pay PG&E the excess of (1) the Minimum Annual Fee for such year over (2) the sum of the twelve Monthly Fees for such year ("True-Up Payment"). The True-Up Payment, if applicable, will be due and payable to PG&E within thirty (30) days of PG&E's receipt of the Monthly Fee for December of the applicable year. The twelve Monthly Fees in a calendar year are defined as the Monthly Fee payment pertaining to the month of January of the calendar year (paid in February) through the Monthly Fee payment pertaining to the month of December of the calendar year (paid in January of the succeeding calendar year), inclusive. If the Term does not begin on January 1 of a calendar year and/or if the Term does not end on December 31 of a calendar year, the Minimum Annual Fee for the applicable calendar year shall be pro-rated accordingly and CUSTOMER will pay PG&E the excess of (1) the pro-rated Minimum Annual Fee for such year over (2) the sum of the Monthly Fees for such year.

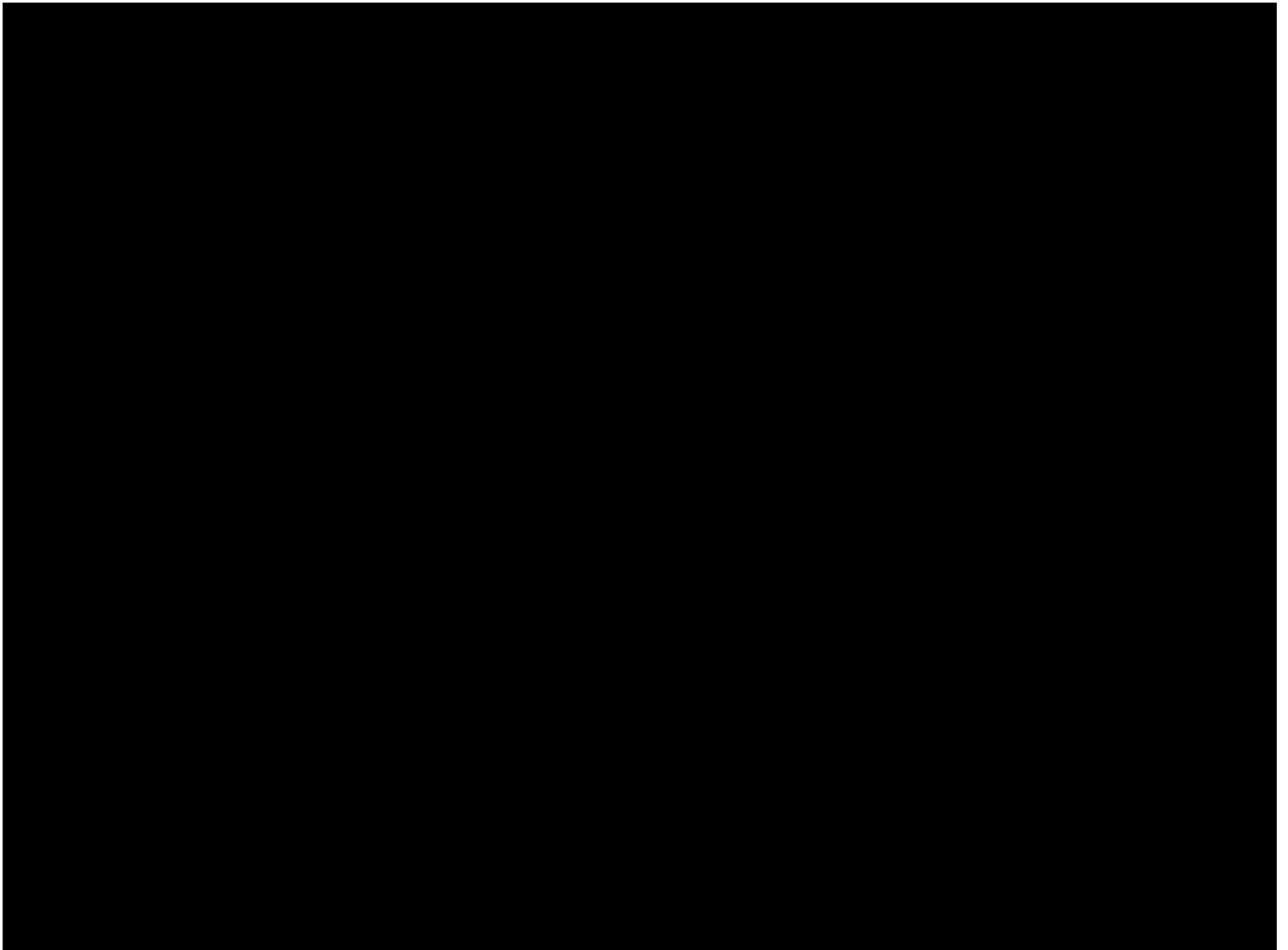
5.2 Monthly Fee. CUSTOMER will pay PG&E a monthly fee (the "Monthly Fee") [REDACTED]

5.3 Monthly Fee Calculation. In each calendar month during the Term, the Monthly Fee shall be calculated as follows:

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

For illustrative purposes only, an example calculation of the Monthly Fee is set forth in the table below (actual calculations will vary):



5.4 Payment of the Monthly Fee.

(a) CUSTOMER will pay the Monthly Fee within 30 days from the date of receipt of PG&E's invoice.

[REDACTED]

(b) CUSTOMER must notify PG&E of any [REDACTED]

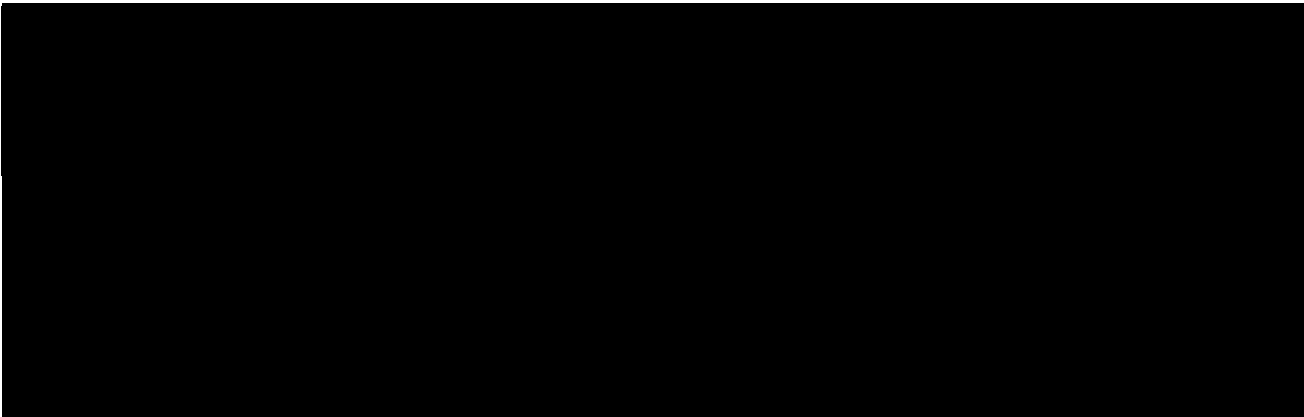
██████████ and will pay the applicable ██████████ Fees ██████████
██████████ Thereafter, CUSTOMER will pay the applicable monthly ██████████ Fee ██████████
██████████ throughout the remainder of the Term ██████████
██████████
██████████
██████████

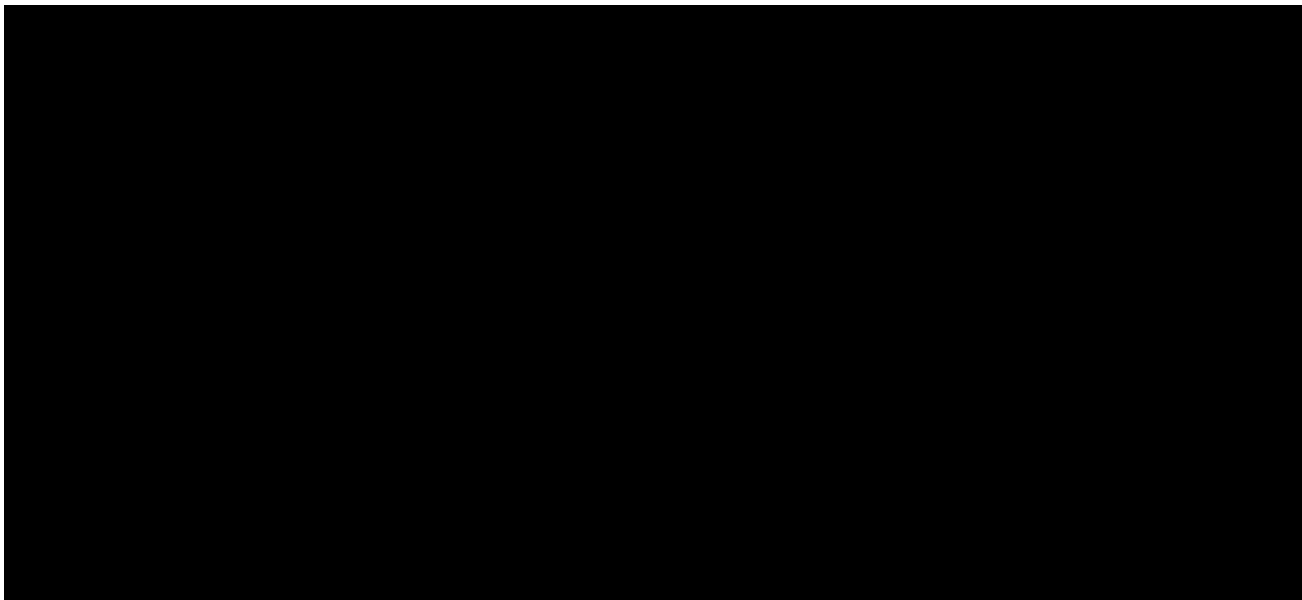
(c) Within five (5) business days of the Closing Date and on January 15^h of every year thereafter, CUSTOMER shall provide a written report to PG&E ██████████
██████████
██████████

(d) PG&E reserves the right to audit CUSTOMER to verify the accuracy of any reported ██████████
██████████ process or otherwise, subject to Section 10.11 of the Agreement. CUSTOMER shall at its expense provide all documentation or proof, ██████████
██████████ as reasonably requested by PG&E. PG&E shall have the right once per year to conduct a physical inspection ██████████ or take such other actions as may be necessary to verify ██████████. If the result of an audit shows underreporting, CUSTOMER shall timely remediate by paying PG&E, for ██████████
██████████ discovered by the audit, an amount equal to the fee(s) that should have been paid but were not plus interest at the rate of ██████████% per month compounded monthly starting from the month in which the last ██████████
██████████ was conducted to the current month. In addition, if the result of an audit shows underreporting of fees by more than ██████████ percent (██████████%), CUSTOMER shall reimburse PG&E for its reasonable costs of the audit.

(e) In addition to PG&E's rights under 5.4(d), PG&E may from time to time during the Term ██████████
██████████ Such sampling shall be at PG&E's cost and expense unless ██████████
██████████ results in an underreporting of more than two percent (2%).
██████████
██████████

The table below shows the rates for ██████████ throughout the first ██████████ years of this Agreement. The table will be updated to reflect the ██████████
██████████
██████████





5.5 Administrative Fee. For each [REDACTED] [REDACTED] CUSTOMER will pay PG&E an [REDACTED] to cover administrative project documentation, mapping and other associated project-related administrative costs. This administrative fee is non-refundable and non-returnable, except as otherwise provided herein.

5.6 Annual Site License Fee. CUSTOMER shall pay PG&E an Annual Site License Fee for the use of Equipment Sites specified in the Site License Acknowledgments attached in Exhibit B. The Annual Site License Fee shall be at the market rate on a per square foot per year of space used basis, and once in place such fee shall be increased [REDACTED] percent ([REDACTED]%) per year for the Term of the Agreement.

5.7 Reimbursement of Costs.

(a) Project Costs. CUSTOMER will reimburse PG&E for all actual and reasonable project expense and capital costs incurred by PG&E. Project costs incurred by PG&E will include but not be limited to costs associated with obtaining permits, project management, design and engineering, construction and installation, inspection, Equipment Stations, Building Entries, associated labor, and procurement of equipment, pursuant to Sections 6.1 (Design Responsibility), 6.2 (PG&E Information), 6.3 (Working Drawings), 6.6 (Reimbursement), 7.10 (PG&E Inspection of Construction), 7.11 (As-Built Drawings), 7.13 (Reimbursement), 8.1 (Maintenance Responsibilities), and 8.3 (Restoration Plan), 9.3 (Property Interest Documentation), and 9.4 (Perfection of PG&E's Easements). Reimbursable Project Costs will be calculated at [REDACTED]
[REDACTED]
[REDACTED]

(b) Other Costs. CUSTOMER shall also reimburse PG&E for actual and reasonable costs incurred by PG&E pursuant to: Sections 4.4 (Quit and Surrender), 9.2(d) (Contest of Ad Valorem Taxes), 9.5 (Incremental Property Rights Costs), 9.6 (Franchise Rights and Licensing Costs), 9.7(a) Release of Liens, 10.3(h) (Equitable Relief), 10.12 (Interference), 13.1 (Discontinuance and Relocation), 15.2 (CUSTOMER Indemnity), 19.1 (Income Taxes), and 20.10 (Attorney Fees). Such costs shall be calculated utilizing whatever

Reasonable method PG&E has in place at the time such costs become reimbursable, and shall include all applicable fully loaded costs..

- (c) Pursuant to this section 5.9 the term "incurred" means the actual and reasonable payments made by PG&E to contractors, vendors, suppliers, and other third-parties, as well as actual and reasonable expenses booked or recorded by PG&E for costs relating to its own personnel, materials and supplies charged to such work, including fully-loaded labor costs. PG&E's costs shall not include costs associated with the following: return on capital, negotiating and preparing this Agreement, market research, marketing, billing, and payment processing.
- 5.8 Prepayment of Reimbursements. If at any time during the Term, CUSTOMER fails to make any payment required under the terms of this Agreement when due or otherwise is determined by PG&E to be a credit risk, PG&E may send a written notice to CUSTOMER, no later than fifteen (15) days prior to the first day of the calendar month, specifying the pre-payment amount due to PG&E based on CUSTOMER's projection of upcoming project costs under Section 5.9(a). On or before the first day of each month, CUSTOMER shall give PG&E a check in an amount equal to PG&E's specified pre-payment amount.
- 5.9 Invoices for Reimbursement of Costs. On or before the twentieth (20th) day of each calendar month, PG&E shall prepare and submit to CUSTOMER an invoice for all identified reimbursable costs pursuant to Section 5.6 incurred by or for the account of PG&E during the immediately preceding calendar month, together with all other identified reimbursable costs previously incurred by PG&E and not previously invoiced. Upon request by CUSTOMER, PG&E shall provide sufficiently detailed back-up documentation to support the costs. Any amount not in dispute shall be promptly paid by CUSTOMER. If CUSTOMER disputes any amounts, it shall submit a detailed letter explaining the basis for the dispute to PG&E within sixty (60) calendar days of receiving an invoice from PG&E containing the disputed amount. Any dispute that is not resolved by mutual agreement of the parties shall be resolved in accordance with Article XVIII. PG&E will use reasonable efforts to invoice within [REDACTED] days of the month in which the costs occurred.
- 5.10 Fee Payment Procedure. Any fees payable to PG&E or CUSTOMER under this Agreement shall be made by check or wire payable to Pacific Gas and Electric Company or CUSTOMER, as applicable, and sent to the following addresses:
- Pacific Gas and Electric Company
Attn: Director, Business Development
245 Market Street, MC NIOD
San Francisco, CA 94105
- opticAccess
Attn: Accounts Payable
533 Airport Blvd., Suite 400
Burlingame, CA 94010
- 5.11 Late Fees. If any payment due from one party to the other party under the terms of this Agreement is not received by the receiving party within forty-five (45) calendar days after the date it becomes due, the party which owes the payment obligation shall pay to the other party, in addition to the amount due, a late fee charge in an amount equal to [REDACTED] per month of the amount due.

5.12 Other Fees.

- (a) Any work performed by PG&E pursuant to Section 6.7 or Section 7.14 of the Agreement will be compensated as separately arranged and mutually agreed between CUSTOMER and PG&E. PG&E will not bill CUSTOMER under Section 5.9 for any costs or expenses that are appropriately incurred under Section 6.7 or Section 7.14. Any dispute regarding invoicing or payment of costs incurred pursuant to Sections 6.7 or 7.14 will be resolved as specified in Section 5.11.
- (b) Rack space fees will be at market price where space is available and as needed to support network infrastructure. Once set, these fees will escalate once per year at an annual rate of [REDACTED] percent.

ARTICLE VI: SYSTEM DESIGN

- 6.1 Design Responsibility. CUSTOMER, at CUSTOMER's cost and expense, shall design and engineer the System specified in the RLA, including the Cable and the Cable Accessories, Building Laterals, Equipment Sites, Equipment Stations and any equipment attachment modifications to PG&E Facilities, and the splice points necessary to accommodate the System. The design and engineering work shall be performed by CUSTOMER or the Contractor (and applicable subcontractors). PG&E shall have the right to approve the appointment and qualifications of the Contractor, which consent shall not be unreasonably withheld or delayed. CUSTOMER or the Contractor shall furnish PG&E with copies of any computer models, analyses, and design specifications developed for modifications to the towers and distribution facilities. In fulfilling its responsibilities under this Section 6.I, CUSTOMER and the Contractor shall follow: (a) the Cable Specifications; (b) PG&E's established procedures for working in and around PG&E Facilities, including the safety rules set forth on Exhibit J; (c) PG&E's design specifications relating to the PG&E Fibers and associated splicing points, as set forth on Exhibit A; (d) PG&E's engineering standards and specifications for PG&E Facilities, as set forth on Exhibit I; and (e) CUSTOMER's customary design and engineering standards and specifications, as set forth on Exhibit I.

During the design process, PG&E will, at CUSTOMER's cost and expense, provide advice and assistance at the request of CUSTOMER and if PG&E has sufficient resources available to meet CUSTOMER's requests. Upon receiving the System design, PG&E shall, at CUSTOMER's cost and expense, review any proposed Cable Route and modifications proposed to PG&E Facilities. PG&E shall, at CUSTOMER's cost and expense, perform structural analysis, pole-loading calculations and design any rearrangement necessary to accommodate the installation of the System on PG&E Facilities. If PG&E labor is not available, CUSTOMER may perform pole-loading engineering to accommodate the installation of the System on PG&E poles.

- 6.2 PG&E Information. To facilitate CUSTOMER's design and engineering of the System, PG&E shall furnish to CUSTOMER, if available, with reasonable promptness after request from CUSTOMER, and upon the condition that CUSTOMER shall reimburse PG&E for PG&E's reasonable cost of producing and delivering the same:
- (a) Copies of PG&E's established procedures for working in and around PG&E Facilities and Right of Way and copies of PG&E's design specifications relating to the PG&E Fibers and

associated splicing points.

- (b) Copies of available maps, charts and other engineering data and documentation pertaining to specified portions of the Right of Way and the physical conditions thereof, including the location and nature of towers, power stations, distribution facilities, and other improvements, as well as all relevant engineering data and plans relating thereto;
- (c) Copies of available title documentation with respect to specified sections of the Right of Way (including existing easements, rights of use or other use or occupancy rights, if any, previously granted), and other existing agreements respecting the Right of Way (including, without limitation, utility crossings) and restrictions on the right to use and to occupy the same for the purposes intended by this Agreement;
- (d) Any available information on pending or planned relocation projects by PG&E or others along specified sections of the Right of Way and information regarding material scheduling restraints on obtaining temporary clearances to install particular System Segments along the Right of Way; and
- (e) Maps and other available documentation sufficient to describe the identity and location of other users of specified portions of the Right of Way and PG&E Facilities as well as identification of areas within the Right of Way which might contain title or possession problems due to the nature of the ownership, third-party right of way ownership (including, without limitation, reversionary or reentry rights of underlying fee owners) or third-party rights to use PG&E Facilities.

6.3 Route Application Process and Working Drawings.

- (a) Route Application. When CUSTOMER has identified a route to build or a building to reach, CUSTOMER shall submit a Route Application Form to PG&E, along with (i) the Administrative Fee; (ii) single-line sketch of the proposed Cable Route, including building entry locations and cable collection points, using PG&E Facilities as reference points; (iii) desired work schedule containing enough detail for PG&E to determine the workforce needed to support the build and (iv) all other relevant information as may be reasonably requested by PG&E (collectively, the "Application Package"). Upon receipt of a complete Application Package, including the Administrative Fee, PG&E shall acknowledge the date of receipt. PG&E shall at all times use commercially reasonable efforts to review the Application Packages submitted by CUSTOMER as soon as practicably possible. Provided that CUSTOMER has not submitted more than [REDACTED], and further provided that the Route Application Forms are limited to underground electric distribution System Segments that [REDACTED], PG&E shall process and respond to the Application Package typically within [REDACTED] business days from receipt with the following information: (1) (a) known or obvious issues that may be present along the proposed pathway (based on a paper review) and (b) an estimate of the PG&E supplemental labor hours and cost to escort and inspect the installation (this will be based on the information provided in the Application Package and will be subject to modification if conditions change), or (2) if the Application Package is not approved, the reason for PG&E's rejection. Provided there are no other issues with the Application Package, PG&E and CUSTOMER shall work together to schedule and complete the field verification of the pathway. PG&E may take into account the needs of its business operations when deciding whether to approve any Application Package. Unless otherwise mutually agreed to by the Parties, all RAFs shall expire sixty (60) days from the

date of PG&E's receipt of the RAF.

(b) Working Drawings When CUSTOMER has completed the design for any System Segment, CUSTOMER shall either prepare, or cause the Contractor to prepare, and submit to PG&E Working Drawings for the construction of that System Segment. The Working Drawings shall include plans and specifications for the Cable, the Cable Accessories and splicing points (including splicing points for the PG&E Fibers at locations designated by PG&E). Provided that CUSTOMER has not submitted more than [REDACTED] Route Application Forms to PG&E in a given week, and further provided that the Route Application Forms are limited to underground electric distribution System Segments, PG&E shall review the Working Drawings, at CUSTOMER's cost and expense, and typically within [REDACTED] working days of submission of the Working Drawings, PG&E shall approve the same in whole or in part (which approval shall not be unreasonably withheld) or raise any objections to the Working Drawings; which objections shall be stated in writing and in reasonable detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any objections to the Working Drawings, CUSTOMER shall use its reasonable efforts to: (i) correct, or cause the Contractor to correct, the Working Drawings with respect to which such objections were noted by making appropriate changes thereto and to re-submit the same to PG&E for approval or objection as stated above. Notwithstanding the foregoing:

(a) PG&E shall have sole authority for approval, which shall not be unreasonably withheld, of the Working Drawings with respect to the impact of the System on PG&E Facilities and Right of Way.

(b) CUSTOMER shall have sole authority and responsibility for determining the fitness of the Cable and the System Electronics, as set forth in the Working Drawings, for use in connection with the System and for approval of the Working Drawings with respect to the operation and use of the System for telecommunications purposes.

(c) The estimated times for review noted in this Section 6.3 are based on the Working Drawing consisting of an underground electric distribution System Segment. The Parties will mutually agree upon the review times and process for any overhead Working Drawing submitted by CUSTOMER'.

Approval by PG&E of Working Drawings submitted by CUSTOMER shall constitute PG&E's approval solely with respect to PG&E's electric transmission and electric and gas distribution system and shall in no way be deemed to constitute an opinion of PG&E with respect to the adequacy of any aspects of the System for telecommunications purposes.

6.4 Construction Schedule. Promptly after the Working Drawings for any System Segment have been approved, PG&E and CUSTOMER shall agree upon a detailed schedule for completion of the construction of the Approved System Segment, which schedule shall be consistent with the assumptions underlying the applicable Working Drawings and PG&E electric clearance requirements.

6.5 Warranty of Work. Each of PG&E and CUSTOMER shall cause their respective contractors, subcontractors and agents who perform work to design or engineer the System (including, without limitation, the Contractor) to warrant their work in accordance with industry standards and practices and the terms of this Agreement (including, without limitation, the Cable Specifications). In addition, PG&E or CUSTOMER, as applicable, shall, at its own cost and

expense, enforce the provisions of such warranties following completion of the Work.

- 6.6 Reimbursement. CUSTOMER shall reimburse PG&E for any reasonable cost incurred by PG&E under the terms of this Article VI as provided in Section 5.4.
- 6.7 PG&E Option. If so requested by CUSTOMER, PG&E may, at PG&E's option and if PG&E has sufficient resources available, submit a proposal or bid to perform for CUSTOMER the design and engineering functions specified as CUSTOMER's or Contractor's responsibility in this Article VI. Such proposal or bid shall specify the terms of payment or reimbursement for the specific functions to be performed by PG&E, along with any other appropriate terms. If CUSTOMER elects to have PG&E perform the specified design and engineering functions, then PG&E's compensation for such work shall be under the terms of the proposal or bid, as modified by mutual agreement and accepted by both parties. In this event, PG&E will separately track and account for costs incurred by PG&E under this Section 6.7 and other costs incurred by PG&E under Article VI, which are separately reimbursable. PG&E will not bill CUSTOMER under Sections 6.6 and 5.3 for any costs or expenses, which are appropriately incurred under Section 6.7.

ARTICLE VII: CONSTRUCTION

- 7.1 Scope of Work. CUSTOMER, at its expense, shall be responsible for the installation of the Cable, Cable Accessories, preparation of Equipment Sites, Equipment Stations, splice points, construction of any modifications to PG&E Facilities necessary to accommodate the System, and the installation of the CUSTOMER System Electronics. The installation work shall be performed by CUSTOMER or the Contractor (and applicable subcontractors). PG&E shall have the right to approve the appointment and qualifications of the Contractor, which consent shall not be unreasonably withheld or delayed. In order to permit CUSTOMER to perform its work, PG&E shall allow CUSTOMER and the Contractor access to PG&E Facilities and the splice point sites, subject to the notice requirements of Section 3.7.
- 7.2 Work Standards. All work to be performed hereunder by CUSTOMER shall be performed in a good, workmanlike manner and in compliance with the requirements of applicable electrical safety codes, prudent utility practice, and all applicable other laws, ordinances, codes, regulations and Approvals of any government authority having jurisdiction over the work. Work in areas adjacent to electrically energized equipment shall be performed in accordance with PG&E's established safety rules, as set forth on Exhibit J.
- 7.3 Time. Installation of the Cable and the Cable Accessories, construction of and installation of the System Electronics and for installation of the Equipment Stations shall, to the extent practicable and within the reasonable control of CUSTOMER, be carried out by CUSTOMER in accordance with the construction schedule prepared pursuant to Section 6.4. The construction schedule shall be updated and revised at regular intervals by CUSTOMER with the approval of PG&E, which approval shall not be unreasonably withheld. Such updating and revision shall include, without limitation, adjustment for delays caused by a Force Majeure Event.
- 7.4 Construction-Related Permits and Approvals. CUSTOMER, at CUSTOMER's cost and expense and, shall be responsible for securing all necessary Approvals from government authorities having jurisdiction or approval rights with respect to the installation of the Cable,

the Cable Accessories, Equipment Stations, and the System Electronics, and the use and occupation of the Right of Way and PG&E Facilities by the System. PG&E shall perform the work needed to acquire such Approvals unless agreed to otherwise. In addition, before construction begins on an Approved System Segment, PG&E at its option and at CUSTOMER's cost and expense, may send written notice to the owners of the property underlying the Right of Way informing the owners of the work to be undertaken to install the Cable and the Cable Accessories on the portion of the Right of Way on the owner's property.

- 7.5 System Materials. CUSTOMER, at its expense, shall provide all System Materials necessary to install and operate the Cable. All System Materials shall comply with the Cable Specifications and shall meet the specifications described in the Working Drawings. CUSTOMER, at its expense, shall complete staking and marking of the Cable in accordance with standard industry engineering practices. CUSTOMER System Electronics and Equipment Stations shall be installed at CUSTOMER's sole cost and expense. PG&E System Electronics shall be installed at PG&E's sole cost and expense.
- 7.6 Interfaces between PG&E and CUSTOMER. PG&E and CUSTOMER shall cooperate and mutually agree upon the respective responsibilities of each party with respect to the interface or interconnection between the portion of the System for which CUSTOMER has construction, installation and Maintenance responsibilities, and the portion of the System for which PG&E has Maintenance responsibilities.
- 7.7 Title and Risk of Loss.
- (a) Cable and Cable Accessories. Upon the issuance of an Acceptance of Construction with respect to any System Segment, legal title to the Cable (of which PG&E has an interest in the PG&E Fibers) and the Cable Accessories shall pass to PG&E. Notwithstanding such transfer to PG&E, because of the IRU retained by CUSTOMER in and to the fibers, CUSTOMER will carry the Cable, including the optical fibers therein, as an asset on CUSTOMER's books and records. CUSTOMER shall be entitled to depreciate such asset for book, regulatory and tax purposes. [In addition, at all times during the Term, CUSTOMER shall bear the risk of loss or damage with respect to the Cable, including the optical fibers therein, and Cable Accessories.
- (b) System Electronics. Title to and risk of loss associated with CUSTOMER System Electronics shall remain with CUSTOMER throughout the Term and shall at no time pass to PG&E. Title to and risk of loss associated with PG&E System Electronics shall remain with PG&E throughout the Term and shall at no time pass to CUSTOMER.
- (c) Equipment Stations. Title to and risk of loss associated with CUSTOMER Equipment Stations shall remain with CUSTOMER throughout the Term and shall at no time pass to PG&E.
- 7.8 System Warranties. In procuring and obtaining System Materials pursuant to Section 7.5, CUSTOMER shall assign to PG&E, or enforce on behalf of PG&E and at PG&E's direction, any and all warranties regarding the System Materials that it obtains from the vendors and suppliers thereof. Following any such assignment, PG&E shall administer all such warranties for the benefit of PG&E and CUSTOMER. CUSTOMER shall administer the manufacturers and other warranties with respect to the CUSTOMER System Electronics and Equipment Stations both before and after the issuance by PG&E of an Acceptance of Construction associated with such System Segment.

7.9 Use of Contractors. CUSTOMER shall have the right, at its cost and expense, to have any of the construction and installation work to be provided by CUSTOMER under the terms of this Agreement performed by the Contractor, or one or more other contractors or subcontractors; provided that the Contractor and any other contractor or subcontractor retained by CUSTOMER to install the Cable or Equipment Stations shall be subject to the prior approval of PG&E, which approval shall not be unreasonably withheld or delayed. No such contract or subcontract shall create a contractual relationship between the Contractor or any other contractors or subcontractors and PG&E, and CUSTOMER shall be solely responsible for the engagement and management of the Contractor and any other contractor or subcontractor.

7.10 PG&E Facility Access and Inspection of Construction. PG&E may, at CUSTOMER's cost and expense, provide access to PG&E Facilities and, perform routine inspections of construction while in progress. A PG&E representative may be on-site during all construction work to perform functions such as safety watch, protection of PG&E Facilities, and obtaining clearances. Within ten (10) working days after the completion of the installation of the Cable and the Cable Accessories along an Approved System Segment or the Equipment Stations, CUSTOMER shall notify PG&E of such completion and provide to PG&E a summary of or a copy of the results of any testing with respect thereto performed by CUSTOMER or the Contractor. PG&E shall have twenty (20) working days following receipt of such notice from CUSTOMER to make an inspection, at CUSTOMER's cost and expense, of the Cable, Cable Accessories and Equipment Stations for conformance with the applicable Working Drawings and the other construction requirements of this Agreement. Within ten (10) working days following such inspection, PG&E shall furnish CUSTOMER with either: (i) an Acceptance of Construction with respect to the installation of the Cable, Cable Accessories or Equipment Stations along such Approved System Segment; or (ii) a statement setting forth in reasonable detail any objections to or defects in the installation of the Cable, Cable Accessories or Equipment Stations along such Approved System Segment. Upon receipt of the statement of objections, CUSTOMER shall either: (x) correct, or cause the Contractor to correct, the objections or defects, whereupon PG&E shall re-inspect the same within ten (10) working days following receipt from CUSTOMER that the work has been corrected, and if found corrected, issue an Acceptance of Construction as stated above. Notwithstanding the foregoing:

- (a) PG&E shall have sole authority, not to be unreasonably withheld, for determining the fitness and acceptance of the Cable Accessories, including, without limitation, the attachment of the Cable to PG&E Facilities Right of Way, as the same may impact PG&E's electric transmission or gas or electric distribution system.
- (b) CUSTOMER shall have sole authority and responsibility for determining the fitness and acceptance of the construction with respect to the operation and use of the System for broadband telecommunications purposes.

Acceptance of the construction and installation work associated with the Cable and the Cable Accessories for any System Segment by PG&E shall constitute PG&E's approval solely with respect to PG&E's electric transmission and electric and gas distribution system and shall in no way be deemed to constitute an opinion of PG&E with respect to the adequacy of any aspects of the System for telecommunications purposes.

7.11 As-Built Drawings. Within one hundred and eighty (180) days following the issuance of an Acceptance of Construction for any System Segment, CUSTOMER, at its cost, shall submit, or cause the Contractor to submit, to PG&E "as-built" drawings (CAD and PDF versions) of the

Cable and the Cable Accessories including fiber cable numbers, fiber cable type and count, tracer wire details, butterfly drawings, splice locations, building POI locations, GPS or latitude & longitude coordinates and a bill of materials including all restoration materials delivered to PG&E. Additional details would be required for overhead as-built drawings. Within thirty (30) working days following the delivery of the "as-built" drawings, PG&E shall, at CUSTOMER's cost and expense, inspect the Cable and the Cable Accessories along such Developed System Segment for conformance with the "as-built" drawings. Within thirty (30) working days following such inspection, PG&E shall furnish CUSTOMER with either: (a) an acceptance of the drawings with respect to the Cable and the Cable Accessories; or (b) a statement setting forth in reasonable detail any reasonable objections to or defects in the drawings thereof. Upon receipt of a statement of reasonable objections or defects, CUSTOMER shall either: (i) promptly amend, or cause the Contractor to amend, the "as-built" drawings, if so requested by PG&E; (ii) correct the defects, or cause the Contractor to correct the defects, whereupon PG&E shall re-inspect the same within thirty (30) working days following notice from CUSTOMER that the work has been corrected and, if found corrected, issue an acceptance of the drawings as provided above. Notwithstanding the foregoing, PG&E's approval of any "as-built" drawings or statement of any objections to any "as-built" drawings shall signify approval of or objections with respect to PG&E's electric transmission and electric and gas distribution system along the Developed System Segment only and shall in no way be deemed to represent an opinion of PG&E with respect to the adequacy of any aspects of the Developed System Segment for telecommunications purposes.

- 7.12 Warranty of Work. Each of PG&E and CUSTOMER shall cause their respective contractors, subcontractors and agents who perform work to install the System (including, without limitation the Contractor) to warrant their work in accordance with industry standards and practices and the terms of this Agreement (including, without limitation, the Cable Specifications). In addition, PG&E or CUSTOMER, as applicable, shall, at its own cost and expense, enforce the provisions of such warranties following completion of the work.
- 7.13 Reimbursement. CUSTOMER shall reimburse PG&E for any reasonable cost incurred by PG&E under the terms of this Article VII as provided in Section 5.4.
- 7.14 PG&E Option. If so requested by CUSTOMER, PG&E may, at PG&E's option and if PG&E has sufficient resources available, submit a proposal or bid to perform for CUSTOMER the construction and installation functions specified as CUSTOMER's or Contractor's responsibility in this Article VII. Such proposal or bid shall specify the terms of payment or reimbursement for the specific functions to be performed by PG&E, along with any other appropriate terms. If CUSTOMER elects to have PG&E perform the specified construction and installation functions, then PG&E's compensation for such work shall be under the terms of the proposal or bid, as modified by mutual agreement and accepted by both parties. In this event, PG&E will separately track and account for costs incurred by PG&E under this Section 7.14 and other costs incurred by PG&E under Article VII, which are separately reimbursable. PG&E will not bill CUSTOMER under Sections 7.13 and 5.3 for any costs or expenses, which are appropriately incurred under Section 7.14.

ARTICLE VIII: MAINTENANCE

- 8.1 Maintenance Responsibilities. During the Term and any extension thereof, PG&E shall be responsible for the Maintenance of the Cable, the Cable Accessories, and PG&E Facilities along the Cable Route up to the Point of Interface. CUSTOMER shall be responsible for

maintenance of the cable and CUSTOMER facilities along the Cable Route beyond the Point of Interface. PG&E and CUSTOMER shall maintain the Cable, the Cable Accessories, the Facilities and the Right of Way at all times in good working order and in a safe condition, in conformity with the Cable Specifications and all applicable laws and regulations. PG&E and CUSTOMER will be proportionally responsible for Maintenance costs, based on the proportion of fibers each owns within the Cable.

8.2 CUSTOMER Maintenance Responsibilities. CUSTOMER, at CUSTOMER's cost, will control and perform operations, monitoring, maintenance and provisioning of any System Electronics not controlled by PG&E, Equipment Stations and Equipment Sites. CUSTOMER shall maintain the facilities at all times in good working order and in a safe condition, in conformity with all applicable laws and regulations. In addition, CUSTOMER, at CUSTOMER's cost, will repair or replace any Cable which does not meet or exceed its original specifications.

8.3 Restoration Plan. PG&E will perform cable restoration services. PG&E and CUSTOMER will be proportionally responsible, based on the proportion of fibers PG&E owned within the cable, for restoration costs resulting from any causes of cable failure not recoverable from third parties. CUSTOMER, at CUSTOMER's cost, shall provide spare materials such as cable and cable accessories for use in cable restoration. Materials shall be stored at mutually agreeable PG&E locations. PG&E will be responsible for costs related to the CUSTOMER material storage. Restoration activities will be integral to ensuring successful implementation of this Agreement. Timely restoration is dependent on timely coordination and cooperation between PG&E and CUSTOMER. Within one hundred twenty (120) days after the Effective Date of this Agreement, PG&E and CUSTOMER shall jointly develop a Detailed Restoration Plan, which upon its completion shall be attached to this Agreement as Exhibit H.

(a) Priorities and General Requirements. The Detailed Restoration Plan shall contain the following priorities and general requirements:

PG&E's obligation to maintain and repair the Cable, Cable Accessories, PG&E Facilities, and Right of Way and any activities incidental thereto shall be subordinate to, and shall not conflict with, PG&E's rightful use and operation of its transmission and distribution facilities. In the event both PG&E Facilities and Cable/Cable Accessories require Maintenance or repair, PG&E shall use reasonable efforts to repair the PG&E Facilities, Cable and Cable Accessories concurrently. However, the restoration of the Cable and Cable Accessories shall be at all times subordinate to the restoration of PG&E Facilities. If restoration is needed and only involves the Cable or Cable Accessories and PG&E is not able to perform the restoration in a timely manner, PG&E at its option may permit CUSTOMER or another third party of its choosing to perform the restoration.

- (1) Any and all PG&E and CUSTOMER representatives that construct, install, repair, replace or otherwise handle the Cable, including the optical fibers therein, the Cable Accessories, or any related materials and equipment shall be properly trained and equipped to meet all current industry standards.
- (2) A PG&E representative must be on-site during all repairs and restoration work to perform functions such as safety watch, protection of PG&E Facilities, and obtaining line clearances. PG&E shall make reasonable efforts to have a representative arrive at the site requiring emergency Maintenance or repair activity.
- (3) PG&E and CUSTOMER, when performing repair and restoration work, shall employ

prudent utility practices and to the extent practical, use the most cost-effective restoration procedures and materials available given the Cable Specifications and current industry standards.

- (4) All employees and agents of CUSTOMER, including the Contractor, who work near PG&E Facilities shall be properly trained and equipped to perform their work. PG&E shall have the right to have a representative present when work is conducted on or around PG&E Facilities.
- (5) PG&E shall have the authority to stop any work activities or equipment functions for reasons, determined in good faith, to involve potential health hazards, safety concerns or potential disruption to PG&E's transmission and distribution system. PG&E shall make reasonable efforts to coordinate with CUSTOMER in case of such events.

(b) Cable Restoration. The Detailed Restoration Plan shall include the following with respect to the restoration of the Cable:

- (1) A timeframe within which to mobilize PG&E or CUSTOMER crews in the event of an interruption of service, failure, disrepair, or impairment or other need to repair or restoration of the Cable.
- (2) In the event PG&E *is* unable to restore the Cable and Cable Accessories concurrently with PG&E Facilities, PG&E shall give CUSTOMER immediate notice thereof. In addition, PG&E shall use reasonable efforts to complete the restoration work within the time frames established in the Restoration Plans.
- (3) For purposes of Sections 8.2(a) and 8.2(b), "reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for PG&E hourly employees, preserving PG&E System Integrity, and response times that do not jeopardize the health and safety of the employees and agents of PG&E and CUSTOMER. In any event, PG&E shall have the sole discretion to prioritize work in the event of an emergency.
- (4) The Detailed Restoration Plan shall set forth the roles and responsibilities of PG&E and CUSTOMER, and shall address issues regarding logistical considerations, response interval factors, communication between PG&E and CUSTOMER, sequential activity requirements, and other related items which could impact response time and restoration intervals.

8.4 CUSTOMER Maintenance Fees

CUSTOMER shall reimburse PG&E for all maintenance and restoration on a time and material plus ████ basis.

ARTICLE IX: PROPERTY RIGHTS AND OBLIGATIONS

- 9.1 **Maintain Property Rights.** With respect to any portion of the Right of Way, PG&E shall timely perform in accordance with all applicable terms and conditions of the property conveyances by which PG&E holds its interest in the Right of Way, and shall take such other actions as may reasonably be necessary to prevent the lapse, forfeiture or termination of such property

interests.

9.2 Payment of Ad Valorem Taxes.

- (a) Right of Way. With respect to any portion of the Right of Way, PG&E shall timely pay any non-disputed Ad Valorem Taxes the nonpayment of which could result in a lien upon the Right of Way.
- (b) Cable and Cable Accessories. CUSTOMER shall timely pay any and all Ad Valorem Taxes allocable to the Cable and the Cable Accessories.
- (c) System Electronics and Equipment Stations. CUSTOMER shall timely pay any and all Ad Valorem Taxes assessed against the CUSTOMER System Electronics. PG&E shall pay any and all Ad Valorem Taxes assessed against the PG&E System Electronics.
- (d) Contest of Ad Valorem Taxes. Notwithstanding the foregoing, the named taxpayer shall consider in good faith a request by the other party to contest an assessment of Ad Valorem Taxes that would be or have been charged to the requesting party under this Agreement, upon the requesting party's written request and provided the requesting party agrees in writing to assume the full cost of such appeal. Any decision to appeal an unfavorable administrative decision to a court of competent jurisdiction shall be made by the taxpayer in its sole and absolute discretion. The taxpayer shall afford the requesting party and its counsel an opportunity to review written submissions and discuss case strategy prior to filing any appeal. The taxpayer shall retain control of the administration of the tax appeal process. If the contest is favorably resolved, in whole or in part, upon receipt of a refund, the taxpayer shall promptly remit the requesting party's share of such refund. To the extent the contest is not favorably resolved; the requesting party shall not be entitled to any refund of any costs incurred by the requesting party or the taxpayer.

9.3 Property Interest Documentation. From time to time upon request of CUSTOMER, PG&E, at CUSTOMER's cost and expense, shall make available to CUSTOMER for CUSTOMER's review at the PG&E main office agreements and other documents in PG&E's possession with respect to PG&E's right, title and interest in and to the Right of Way along the Cable Route, Equipment Sites or Building Entry. In addition, from time to time throughout the Term, and any extension of Term, when a property interest is in dispute or as necessary to design the System, PG&E shall inform CUSTOMER of mly facts relating to such property interest of which PG&E has knowledge which are material to CUSTOMER's exercise or defense of the rights granted to CUSTOMER under the terms of this Agreement.

9.4 Perfection of PG&E's Easements. Prior to execution of an RLA for any Cable Route, or a Building Entry, PG&E, at CUSTOMER's cost and expense, shall review its records, including but not limited to real property deeds and easements in its possession and other documentation. In the event PG&E Facilities or Right of Way on which Cable Routes are to be located occupy real propely by virtue of any easement or other right conveyed to PG&E by the underlying fee owner of the real property, or its predecessor in interest, and if any such easement or other right held by PG&E is not sufficient to (1) accommodate the presence and operation of the Cable and Cable Accessories to be installed along the Route or Building Entry or (2) permit CUSTOMER access to and use of the CUSTOMER Fibers on such Route or Building Entry as set forth in this Agreement, CUSTOMER shall determine whether to proceed or not. If CUSTOMER elects to proceed, at CUSTOMER's cost and expense, PG&E shall, at its option, either by itself or through a third party of its choosing, or otherwise give CUSTOMER permission to proceed

to secure and acquire such necessary rights from the property owner of record to allow such easement or other right to accommodate the presence and operation of the Cable and Cable Accessories. Subject to Section 5.4, CUSTOMER shall reimburse PG&E's reasonable labor and miscellaneous expenses incurred, including but not limited to any payments to fee owners or property right holders, irrespective of whether the parties ultimately execute an RLA for the prospective Route or Building Entry.

- 9.5 Incremental Property Rights Costs: If at any time during the Term a third-party Right of Way grantor of PG&E makes a demand for additional compensation or indicates its intent to reopen, renegotiate or terminate the easement, license or other agreement establishing PG&E's rights in any portion of the Right of Way as a direct result of the existence of this Agreement or the presence of the System on the Right of Way, PG&E shall promptly notify CUSTOMER. After conferring with PG&E and allowing PG&E an opportunity to resolve the issue, CUSTOMER may attempt, at CUSTOMER's expense, to resolve the issue with such grantor through negotiation or settlement, provided CUSTOMER may not enter into a settlement that imposes any costs or obligations on the part of PG&E without PG&E's prior written consent. Any decision to commence litigation on behalf of or in the name of PG&E shall be in the sole discretion of PG&E, and any subsequent litigation, whether brought by PG&E at CUSTOMER's request or by such third-party Right of Way grantor, shall be conducted at CUSTOMER's expense, and under PG&E's direction and control with respect to any issues materially affecting PG&E's rights in the Right of Way. If the dispute is resolved through negotiation or settlement, and such resolution requires the payment of additional consideration by PG&E, CUSTOMER shall reimburse PG&E for the amount of such additional consideration. If the dispute is resolved through litigation in accordance with the foregoing and the resulting judgment requires the payment of additional consideration by PG&E, CUSTOMER shall reimburse PG&E for the amount of such additional consideration. If CUSTOMER possesses the power of eminent domain within the relevant jurisdiction, CUSTOMER shall have the right, in its sole discretion, independently of PG&E to seek resolution of such a dispute by exercising such power of eminent domain, provided that CUSTOMER shall pay all costs of such exercise. The terms of any settlement must be approved by PG&E and CUSTOMER before it becomes binding, which approval shall not be unreasonably withheld, conditioned or delayed.
- 9.6 Franchise Rights and Licensing Costs. PG&E and CUSTOMER shall each be responsible for all franchises and licenses required by government authorities as may be necessary for their respective operations. If at any time during the Term, a government authority having or asserting franchise or licensing authority over PG&E makes a demand, as a direct result of the IRU reserved by CUSTOMER under the terms of this Agreement, for a new franchise or license, for additional compensation under an existing franchise or license, or indicates its intent to reopen, renegotiate or terminate an existing franchise or license or gives notice of a forfeiture thereof, PG&E shall promptly notify CUSTOMER in writing of such demand. After conferring with each other and allowing PG&E an opportunity to resolve the issue, CUSTOMER may attempt, at its expense, to resolve the issue with the government authority through negotiation or settlement. Any decision to commence litigation on behalf of or in the name of PG&E shall be in the sole discretion of PG&E, and any subsequent litigation, whether brought by PG&E at CUSTOMER's request or by the government authority, shall be conducted at CUSTOMER's expense, but under PG&E's direction and control in coordination with CUSTOMER. If the dispute is resolved through negotiation or settlement approved by CUSTOMER, and the resolution requires the payment of additional consideration by PG&E, or additional costs and expenses to comply with any alternative, additional or modified franchise provisions imposed on PG&E by any government authority having or asserting franchise

authority, CUSTOMER shall reimburse PG&E for the amount of the additional consideration, costs and expenses. If the dispute is resolved through litigation in accordance with the foregoing and the resulting final judgment requires the payment of additional consideration by PG&E or additional costs and expenses to comply with any alternative, additional or modified franchise provisions imposed on PG&E by any government authority having or asserting franchise authority, CUSTOMER shall reimburse PG&E for the amount of the additional consideration, costs and expenses. The terms of any settlement must be approved by PG&E and CUSTOMER before it becomes binding. CUSTOMER's obligation to reimburse PG&E for any additional consideration, costs or expenses incurred prior to the expiration or earlier termination of this Agreement shall survive the expiration or termination of this Agreement.

9.7 Liens.

- (a) Release of Liens. In the event the System or any portion thereof becomes subject to any mechanics', artisans' or material men's lien, the following provisions shall apply:
- (1) If the lien is chargeable to or through PG&E, PG&E shall promptly cause the lien to be discharged and released of record (by payment, posting of bond, court deposit or other means) without cost to CUSTOMER. PG&E shall indemnify CUSTOMER against all costs and expenses (including reasonable attorney fees) reasonably incurred in discharging and releasing such lien. If any such lien is not so discharged and released within ninety (90) days after notice thereof by CUSTOMER to PG&E, then CUSTOMER may pay or secure the release or discharge thereof at the expense of PG&E.
 - (2) If the lien is chargeable to or through CUSTOMER, CUSTOMER shall promptly cause the same to be discharged and released of record (by payment, posting of bond, court deposit or other means) without cost to PG&E. CUSTOMER shall indemnify PG&E against all costs and expenses (including reasonable attorney fees) reasonably incurred in discharging and releasing the lien. If any lien is not so discharged and released within ninety (90) days after notice thereof by PG&E to CUSTOMER, then PG&E may pay or secure the release or discharge of the lien at the expense of CUSTOMER.
- (b) Contest of Liens. Nothing in this Agreement shall preclude PG&E or CUSTOMER from contesting any lien described in subsection (a) above or the contract or action upon which the lien arose after the lien shall have been bonded or otherwise released of record, as provided above.
- (c) Facilities as Collateral. Neither PG&E nor CUSTOMER shall pledge or encumber any of its interests in the System in any manner that impairs or could impair the other party's use and operation of the System for internal or commercial purposes, provided that the lien of PG&E's First and Refunding Mortgage shall not be deemed to impair the use and operation of the System.

ARTICLE X: REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Representations, Warranties and Covenants of CUSTOMER. CUSTOMER represents and warrants to PG&E, and covenants with PG&E, as follows:

- (a) Authority. CUSTOMER is a Nevada limited liability company duly organized, validly

existing and in good standing under the laws of the State of Nevada, and registered as a foreign corporation in good standing in the State of California, and has all requisite corporate power and authority to enter into this Agreement and to perform according to the terms, covenants and conditions contained in this Agreement.

- (b) Restrictions. To the best of CUSTOMER's knowledge, the execution of this Agreement, any instrument or document required by this Agreement, and the consummation of the transactions contemplated by this Agreement will not violate any article, bylaw or other corporate restriction, or any statute, ordinance, law, order, ruling, certificate or license, regulation or demand of any court, regulatory agency or other tribunal to which CUSTOMER is subject.
- (c) Binding Obligation. This Agreement, when duly executed by CUSTOMER, shall constitute a valid, legal and binding obligation of CUSTOMER, and shall be enforceable in accordance with its terms, subject to the effect of any bankruptcy, insolvency, reorganization, liquidation, moratorium, receivership, conservatorship, readjustment of debts, or other similar action affecting the rights of creditors generally.
- (d) Government Approvals. CUSTOMER has all necessary government approvals to enter into this Agreement. CUSTOMER has, or will obtain in a timely manner consistent with meeting CUSTOMER's obligations hereunder, all necessary government approvals to perform its obligations under this Agreement.
- (e) Proceedings. Except for matters now pending or that may hereafter be brought by or before the CPUC or other regulatory bodies having jurisdiction over CUSTOMER and the activities contemplated by this Agreement relating to the provision of services, no litigation or government proceeding is pending, or to CUSTOMER's knowledge, threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or CUSTOMER's rights under, or ability to perform pursuant to the terms of, this Agreement. CUSTOMER shall promptly notify PG&E of any material adverse claims, actual or threatened, affecting any part of the System or CUSTOMER's ability to perform under this Agreement.
- (f) Conduct of Business. CUSTOMER will operate the System in a safe manner and will use reasonable efforts to comply in all material respects with applicable laws, regulations and government orders.
- (g) Compliance with Government Requirements. To its knowledge, CUSTOMER has not violated any rule, order or regulation issued by any government authority with respect to CUSTOMER, its business or operations that may materially and adversely affect CUSTOMER's ability to execute and perform its obligations under this Agreement.
- (h) Financing Restrictions. This Agreement does not violate any terms, covenants, conditions or restrictions in any mortgages, bonds and other indentures of CUSTOMER.
 - (i) Resources and Capacity. CUSTOMER possesses sufficient financial, managerial, and technical capacity and resources to perform its obligations under the terms of this Agreement.

10.2 Representations, Warranties and Covenants of PG&E. PG&E represents and warrants to CUSTOMER, and covenants with CUSTOMER, as follows:

- (a) Authority. PG&E is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and has all requisite corporate power and authority to enter into this Agreement and to perform according to the terms, covenants and conditions contained in this Agreement.
- (b) Restrictions. To the best of PG&E's knowledge, the execution of this Agreement, any instrument or document required by this Agreement, and the consummation of the transactions contemplated by this Agreement will not violate any article, bylaw or other corporate restriction, or any statute, ordinance, law, order, ruling, certificate or license, regulation or demand of any court, regulatory agency or other tribunal to which PG&E is subject.
- (c) Binding Obligation. This Agreement, when duly executed by PG&E, shall constitute a valid, legal and binding obligation of PG&E, and shall be enforceable in accordance with its terms, subject to the effect of any bankruptcy, insolvency, reorganization, liquidation, moratorium, receivership, conservatorship, readjustment of debts, or other similar action affecting the rights of creditors generally.
- (d) Government Approvals. PG&E has all necessary government approvals to enter into and to perform its obligations under this Agreement, excepting approval from the CPUC regarding this Agreement.
- (e) Proceedings. Except for matters now pending or that may hereafter be brought by or before the CPUC or other regulatory bodies having jurisdiction over PG&E or the activities contemplated by this Agreement relating to the provisions of services, no litigation or governmental proceeding, including, without limitation, before the CPUC, is pending, or to PG&E's knowledge, threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or PG&E's rights under, or ability to perform pursuant to the terms of, this Agreement. PG&E shall promptly notify CUSTOMER of any material adverse claims, actual or threatened, affecting any portion of the System.
- (f) Conduct of Business. Except as otherwise provided herein, PG&E will maintain PG&E Facilities and Cable and Cable Accessories, and will use reasonable efforts to comply in all material respects with all applicable laws, regulations and government orders.
- (g) Compliance with Government Requirements. To its knowledge, PG&E has not violated any rule, order or regulation issued by any government authority with respect to any license, permit, franchise or right of way which may materially and adversely affect CUSTOMER's use of the System as contemplated by this Agreement or PG&E's right to grant the Revocable License to CUSTOMER, or to execute and perform this Agreement.
- (h) Financing Restrictions. This Agreement does not violate any terms, covenants, conditions or restrictions in any mortgages, bonds and other indentures of PG&E.
 - (i) Resources and Capacity. PG&E possesses sufficient financial, managerial, and technical capacity and resources to perform its obligations under the terms of this Agreement.

10.3 Confidentiality. For purposes of this Section 10.3, the term "Information" shall mean all information furnished by PG&E and CUSTOMER to each other, or by or to their respective

representatives, including drafts and the final form of this Agreement, whether or not reduced to writing or specifically identified as intellectual property, non-public, confidential, or proprietary, and all analyses, compilations, data, studies, or other documents prepared by PG&E or CUSTOMER containing, or based in whole or in part on, any such furnished information, or reflecting review of, or interest in, all or part of such information. As used in this Agreement, a "representative" of PG&E or CUSTOMER, as the case may be, shall mean any and all directors, officers, employees, agents or consultants, including, without limitation, attorneys, accountants and financial advisors of PG&E or CUSTOMER, as the case may be. In consideration of being furnished with the Information, PG&E and CUSTOMER agree that:

- (a) Nondisclosure. Each party will take reasonable steps to keep the Information confidential and the Information will not be used by a party or any of its representatives directly or indirectly for any purpose other than activities contemplated by this Agreement. Moreover, PG&E and CUSTOMER will transmit the Information only to those representatives who need to know the Information for the purpose of performing or exercising each party's obligations and rights under this Agreement.
- (b) Authorized Disclosure. Without the prior written consent of the other party, neither party or its representatives will disclose to any other person the fact that the Information has been made available, or any of the terms, conditions or other facts with respect to this Agreement, except as required by law. The term "person" as used in this Agreement shall be interpreted broadly to include, without limitation, any corporation, company, group, partnership or individual.
- (c) Non-confidential Information. This Section 10.3 shall be inoperative as to any portion of the Information which: (1) is or becomes generally available to the public other than as a result of a disclosure by a party or its representatives; (2) becomes available to a party in good faith from a third-party not subject to a confidential obligation to the party; (3) was known to a party on a non-confidential basis prior to its disclosure by the other party or one of its representatives; (4) is independently developed by employees of the receiving party who have not had access to or received any information under this Agreement; or (5) is authorized in writing by the disclosing party to be released from the confidentiality obligations of this Agreement.
- (d) Compelled Disclosure. In the event that either party or anyone to whom the party transmits the Information relating to this Agreement becomes legally compelled or is required as part of obtaining any Approval or as part of the regulatory approval process described in Section 3.2 (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or any similar process) to disclose any of the Information, the party so compelled will, if permitted, provide prompt written notice of such event to the other party so that the notified party may seek a protective order or other appropriate remedy, waive compliance with the provisions of this Agreement or both. In the event that such protective order or other remedy is not obtained or that the notified party waives compliance with the provisions of this Agreement, the legally compelled party will furnish only that portion of the Information which is legally required and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.
- (e) Public Records Law. It is understood that PG&E and CUSTOMER are or may in the future be subject to public records disclosure laws, and that these laws will govern the disclosure responsibilities of PG&E and CUSTOMER notwithstanding the terms of this Agreement.

To the extent reasonably practical, PG&E and CUSTOMER will notify each other of any public records requests of any part of the Information, and will give the other party a reasonable opportunity to contest the public records request.

- (f) Non-Waiver. The failure or delay by a party in exercising any rights, power or privilege under this Section 10.3 shall not operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
 - (g) Public Communications. All press releases and other public communications of any sort, other than as may be required by law, relating to this Agreement or the transactions described herein shall be subject to the prior approval of both PG&E and CUSTOMER, which approval shall not be unreasonably withheld or delayed.
 - (h) Equitable Relief. A party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by a party or its representatives, but shall be in addition to all other remedies available by law or equity. A breach of the provisions of this Section 10.3 may subject that party who has provided Information to irreparable harm and injury.
 - (i) Ownership of Information. The Information acquired from the other party or any of its representatives shall be and shall remain the exclusive property of the disclosing party. Neither the disclosure of Information nor the execution of this Agreement shall be construed as a license to the party receiving Information to make use of, or sell the Information or products derived from the Information, or to make use of it in any way that damages or competitively disadvantages the party disclosing the Information.
- 10.4 Cooperation. PG&E and CUSTOMER shall cooperate with each other, in good faith, and shall use commercially reasonable efforts to:
- (a) System Design and Deployment. Expediently complete the design and installation of the System as provided in this Agreement;
 - (b) Conflicts Resolution. Negotiate reasonable and mutually beneficial resolutions to all conflicts that may arise between PG&E and CUSTOMER relating to the design, installation, Maintenance, operation and use of the System or any other duty, right or obligation of either of them relating to or arising out of this Agreement; and
 - (c) Approvals and Consents. Obtain all regulatory, governmental, third-party and shareholder approvals, consents, permits and franchises as may be necessary or prudent for the operation of the System as described in this Agreement.
- 10.5 Regulatory Compliance. PG&E and CUSTOMER shall each be responsible to comply with the regulatory requirements relating to its own business practices and operations.
- 10.6 Certificates. Upon request of either PG&E or CUSTOMER, at any time and from time to time, the other party without charge and within thirty (30) days following receipt of such request, shall certify in writing to the requesting party: (a) that this Agreement is in full force and effect and has not been supplemented, modified or amended (or if there have been supplements, modifications or amendments, specifying those); (b) whether, to the best knowledge of the

party issuing the certificate, any sums are then due and payable by CUSTOMER to PG&E or by PG&E to CUSTOMER pursuant to any provisions of this Agreement (and if any sums remain unpaid, the amount thereof); (c) whether, to the best knowledge of the party issuing such certificate, the other party is in default in the performance of any term, covenant or condition of this Agreement (or, if defaults exist, specifying each particular in which it is asserted the other party is in default); (d) if the certificate is issued in connection with any financing of any portion of the System, the requesting party is authorized to enter into the financing transaction and that the other party will adhere to and perform its obligations under Article XII, following its receipt of notice of the Transfer (as defined in Section 12.2); and (e) as to other matters as the party requesting the certificate may reasonably request.

- 10.7 Independent Status. PG&E and CUSTOMER reserve no control whatsoever over the employment, discharge, compensation of, or services rendered by the employees or contractors of each other, notwithstanding the ability of PG&E and CUSTOMER to exercise certain rights to enforce the various standards and specifications agreed upon pursuant to this Agreement. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent status and relationship or as creating or implying a partnership or joint venture between PG&E and CUSTOMER.
- 10.8 Transactions with Affiliates. All transactions with an Affiliate involving the System entered into by either PG&E or CUSTOMER shall be at arm's-length and shall comply with applicable regulatory requirements.
- 10.9 Further Assurances. PG&E and CUSTOMER, with reasonable promptness, shall each execute and deliver any instruments, documents, applications and requests or petitions for authority as may be necessary or prudent to implement or carry out more effectively the terms, covenants and conditions of this Agreement.
- 10.10 Damage and Destruction. In the event any portion of the System is damaged or destroyed, PG&E or CUSTOMER, as applicable, shall give immediate notice to the other party of the occurrence of the damage or destruction. PG&E and CUSTOMER shall cooperate with each other to reroute or substitute services delivered by means of the Affected Portion to allow for continued and uninterrupted service to customers. Unless mutually agreed otherwise, PG&E and CUSTOMER shall use any available insurance proceeds to repair or reconstruct the damaged or destroyed Affected Portion and to restore the Affected Portion to its full and proper use. PG&E and CUSTOMER shall coordinate efforts to minimize any disruption of service that may result from the occurrence of the damage or destruction.
- 10.11 Audit Rights. CUSTOMER shall have the right, not more than two (2) times per year, to audit PG&E's books and records relating to any costs for which PG&E, under the terms of this Agreement, seeks reimbursement or contribution from CUSTOMER, including any and all records of PG&E and its subcontractors for the purpose of verifying compliance with Section 20.14. PG&E shall have the right, not more than two (2) times per year, to audit CUSTOMER's books and records relating to (i) CUSTOMER's costs for which CUSTOMER, under the terms of this Agreement, seeks reimbursement or contribution from PG&E, (ii) CUSTOMER's costs or revenues which pertain to CUSTOMER's calculation of Monthly Fees or other payments due to PG&E, and (iii) any and all records of CUSTOMER and its subcontractors for the purpose of verifying compliance with Section 20.14. Any such audit shall be conducted: (a) by a reputable public accountant or, as applicable, a member of the internal auditing staff of PG&E or CUSTOMER; and (b) during reasonable business hours in a manner as not to interfere with the normal business activities of the party being audited. PG&E

and CUSTOMER shall include the necessary provisions in their contracts and subcontracts to ensure compliance with this Section 10.11.

- 10.12 Interference. Whenever PG&E notifies CUSTOMER that the System or any portion thereof materially interferes with the operation of PG&E's equipment or with existing equipment of current licensees, or constitutes a hazard to the service rendered by PG&E or other licensee, or fails to comply with applicable codes or regulations, CUSTOMER shall use best efforts to cooperate with and assist PG&E to remedy the interference or hazard, at CUSTOMER's cost and expense. Under no circumstances shall CUSTOMER, its employees or contractors or subcontractors disturb, tamper with or contact any PG&E equipment, without PG&E's consent. CUSTOMER shall avoid contact with PG&E's lines, wires and transformers, whether or not they appear to be energized, unless otherwise directed by and under the direction of PG&E.

ARTICLE XI: INSURANCE

11.1 Required Insurance Coverage. Without limiting any of the liabilities or other obligations of PG&E or CUSTOMER, both parties shall procure and cause their respective contractors to procure and maintain in force at their own cost and expense the following insurance coverage throughout the Term:

- (a) Workers Compensation and Employers Liability Insurance. Workers Compensation Insurance to cover obligations imposed by applicable federal and state statutes and Employers Liability Insurance with a minimum limit of \$1,000,000.00 for injury or death for each accident.
- (b) Commercial Liability Insurance. Commercial Liability Insurance with a minimum combined single limit of \$10,000,000.00 each occurrence. The policy shall include coverage for bodily injury liability, property damage liability, personal injury liability, product liability, completed operations liability, and contractual liability for liability assumed under this Agreement. The policy shall contain a severability of interest provision.
- (c) Automobile Liability Insurance. Automobile Liability Insurance with a minimum combined single limit of \$3,000,000.00 for each accident for bodily injury and property damage, to include coverage for all owned, non-owned and hired vehicles.
- (d) Professional Liability Insurance. Professional Liability Insurance for engineering activities (to be maintained by the contractor, including without limitation the Contractor, performing the engineering activity) performed by each party under the terms of this Agreement. The limit of coverage shall not be less than \$1,000,000.00 for each claim.
- (e) Pollution Liability Insurance. Coverage for bodily injury, property damage, including cleanup costs and defense costs resulting from sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water. The limit shall not be less than \$1,000,000 each occurrence for bodily injury and property damage.

- 11.2 General Conditions. The policies required to be maintained by CUSTOMER and its contractors pursuant to Sections 11.1(b), (c) and (d), and Section 11.4, shall (1) include PG&E as an additional insured; (2) provide that PG&E shall not by reason of its inclusion as an additional insured, incur liability to the insurer for payment of premiums for such insurance; and (3) provide that such insurance is primary and not excess without right of contribution from any other insurance which might be otherwise available to PG&E.
- 11.3 Evidence of Insurance. Prior to commencing work under the terms of this Agreement, CUSTOMER and its respective contractors shall furnish to PG&E a certificate of insurance as evidence attesting that the insurance required under this Article XI is in effect. Each policy of insurance required hereunder shall state that coverage shall not be canceled except after thirty (30) days' prior written notice to the other party. PG&E uses a third party vendor, Exigis, to confirm and collect insurance documents. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to issue certificates of insurance and endorsements on its behalf, and submitted via email or fax to:
- Certificate Holder:
PG&E
c/o EXIGIS LLC
support@exigis.com
Fax: 646-755-3327
- 11.4 Insurance for Contractors. CUSTOMER shall require and ensure that all of its contractors and subcontractors obtain and maintain, throughout the Term, the types and amounts of insurance coverage as set forth above in Section II.I (Required Insurance Coverage). In addition, if any contractor or subcontractor performs any engineering or similar professional services, said contractor and/or subcontractor shall be required to obtain and maintain throughout the Term, professional liability insurance for errors and omissions in an amount not less than \$1,000,000 per occurrence. Upon request, CUSTOMER shall furnish PG&E with evidence of this insurance for its contractors and subcontractors.
- 11.5 Self-Insurance. Notwithstanding any provision in this Article XI to the contrary, PG&E may self-insure.

ARTICLE XII: ASSIGNMENT, SUBLETTING AND OTHER TRANSFERS

- 12.1 Transfers. This Agreement and the rights granted under this Agreement are being granted in reliance on the financial standing and technical experience of PG&E and CUSTOMER and are thus granted personally to CUSTOMER by PG&E and to PG&E by CUSTOMER. Neither PG&E nor CUSTOMER may assign any right under this Agreement, whether in whole or in part, without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the generality of the foregoing:
- (a) Either party may assign its rights in this Agreement in whole or in part without the consent of the other party to a domestic Affiliate, provided that such assignment shall not relieve the assigning party of any of its obligations under this Agreement.
 - (b) CUSTOMER, without prior notice to or the prior consent of PG&E, shall have the right to sell and lease rights in and to the CUSTOMER Fibers to commercial users of services and to other services providers. CUSTOMER may assign or swap CUSTOMER Fibers with

prior notice to PG&E. All such transactions shall be subject to the terms of this Agreement, and no such transaction shall relieve CUSTOMER of its obligations under this Agreement.

- (c) CUSTOMER shall have the right, without PG&E consent, to assign or otherwise transfer this Agreement to any parent, subsidiary or Affiliate of CUSTOMER, or to any person, firm or corporation which shall control, be under the control of or be under common control with CUSTOMER, or any corporation into which CUSTOMER may be merged or consolidated or which purchases all or substantially all of the assets of CUSTOMER or as collateral to any lender; provided, however, that any such assignment or transfer shall be subject to CUSTOMER's rights under this Agreement and any Transferee shall continue to perform CUSTOMER's obligations to PG&E under the terms and conditions of this Agreement.

- 12.2 PG&E or CUSTOMER Financing. In the event that PG&E or CUSTOMER assigns its interest under this Agreement pursuant to a sale-leaseback or other financing transaction, the other party agrees that, upon written notice to it specifying: (a) the name and address of the Transferee; and (b) the name and address of the Transferee's agent who is entitled to receive notice on behalf of the Transferee, the other party will simultaneously give to such agent any notices required to be given to the financing party under this Agreement. PG&E and CUSTOMER shall accept payment or performance by the Transferee's agent of any obligation of the other party provided such payment or performance shall be made within the applicable cure periods allowed by this Agreement. The Transferee's agent shall have the right to cure any default by PG&E or CUSTOMER, as the case may be, within the applicable cure periods allowed by this Agreement. Subject to the terms of this Section 12.2, the Transferee may further assign or transfer any rights or interests it may have under this Agreement from time to time, in whole or in part, with the prior written consent of PG&E or CUSTOMER, as the case may be, which consent shall not be unreasonably withheld or delayed.
- 12.3 PG&E and CUSTOMER Recognition of Transferees. If any such Transferee receiving interest pursuant to Section 12.2 shall obtain use of all or any part of the System, through enforcement of any agreement with PG&E or CUSTOMER, then, so long as all of the obligations of the other party under this Agreement are being performed and such Transferee agrees to be bound by and to observe and perform the obligations of the financing party under this Agreement with respect to the Affected Portion, the other party shall not disturb the use of the Affected Portion by such Transferee and shall recognize such Transferee's right to use thereof, subject to the terms of this Agreement.
- 12.4 No Assumption or Release. Except as set forth in Section 12.3, no assignment under this Article XII shall be deemed to be an assumption by the Transferee of the obligations of PG&E or CUSTOMER under this Agreement. PG&E or CUSTOMER, as the case may be, shall not in any event be released, relieved or discharged of or from any of the obligations assumed under this Agreement unless specifically agreed to by the other.
- 12.5 Mergers and Acquisitions. Notwithstanding any provision of this Agreement to the contrary, neither PG&E nor CUSTOMER shall be restricted or prohibited by this Agreement from participating in or completing any mergers with or acquisitions of businesses, provided that the successor by merger to either PG&E or CUSTOMER shall be subject to the terms, covenants and conditions of this Agreement and shall be deemed to have assumed all obligations of the merging party under this Agreement.

ARTICLE XIII: DISCONTINUANCE, RELOCATION AND CONDEMNATION

- 13.1 Discontinuance and Relocation. PG&E shall be entitled to discontinue its use of and to relocate any part of its electric transmission or electric or gas distribution system, including any PG&E Facilities or to discontinue use of any portion of the Right of Way. However, PG&E shall not take any action to release or relinquish voluntarily its underlying property interests along the Right of Way without first notifying CUSTOMER. In the event of any such discontinuance and relocation which necessitates discontinuation or relocation of the Cable or Cable Route, PG&E shall give written notice to CUSTOMER as soon as reasonably practicable. The notice shall state a termination date for the Affected Portion and the provisions of Section 4.4 will apply to the Affected Portion, which is terminated. The notice shall be accompanied by a plan of any alternative route for the Affected Portion, if available. If an alternate route can be made available, design, installation and construction of the alternate route will be according to the provisions of Articles VI and VII, except that the cost of relocating the Cable or Cable Route shall be allocated as follows rather than as specified in Articles VI and VII:
- (a) If requested by CUSTOMER, CUSTOMER shall pay all of PG&E's and CUSTOMER's relocation costs.
 - (b) If requested by PG&E, PG&E shall pay all of PG&E's and CUSTOMER's relocation costs.
 - (c) If the relocation must be made due to the order of any court or government agency or the Independent System Operator, PG&E, in consultation with CUSTOMER, shall designate a replacement route for the Cable. The costs associated with the relocation of the Cable that are not paid by a third-party shall be prorated fifty percent (50%) to each party. CUSTOMER shall be responsible for any relocation costs associated with the CUSTOMER System Electronics.
- 13.2 Taking. Should any portion of the PG&E Facilities or Right of Way or property controlled by PG&E, or any other interest belonging to PG&E, be the subject of a Taking, the Revocable License or the Irrevocable License granted to CUSTOMER under the terms of this Agreement, as then applicable, to the extent appropriated by such Taking, shall terminate upon a date specified by PG&E as necessitated by the Taking, and the provisions of Section 4.4 shall apply to the Affected Portion. PG&E's written notice of termination shall be accompanied by a plan of any alternative route for the Affected Portion, if available. If an alternate route can be made available, design, installation and construction of the alternate route will be according to the provisions of Articles VI and VII. In addition, PG&E shall not sell or convey any Equipment Sites without acquiring authority in lieu of condemnation without giving prior notice to and the opportunity to CUSTOMER to participate in the negotiations with respect to such conveyance.
- 13.3 Taking Awards. In the proceeding for any such Taking (or an involuntary discontinuance of the use of a portion of the Right of Way or PG&E Facilities in anticipation of a Taking), the interests of PG&E and CUSTOMER in and to the Affected Portion shall be severed. Any awards resulting from the proceeding shall be allocated between and payable in accordance with the respective interests of PG&E and CUSTOMER (both physical and occupational, including any incremental value of any property interest by virtue of the installation therein of the System). In addition, PG&E and CUSTOMER shall each be entitled to claim and receive the portion of the total award attributable to its interest in the System and associated construction costs and may claim damages payable on account of relocation or re-routing

expenses relating to the System.

- 13.4 Notice of Taking. PG&E and CUSTOMER shall each notify the other immediately of any Taking threatened or filed against any portion of the PG&E Facilities or Right of Way. In addition, PG&E shall not sell or convey any portion of the Right of Way containing any of the System Electronics to an acquiring authority in lieu of condemnation without giving prior notice to and the opportunity to CUSTOMER to participate in the negotiations with respect to any conveyance.

ARTICLE XIV: ENVIRONMENTAL HAZARD LIABILITY

- 14.1 Responsibilities of Parties. If any Hazardous Substance is unlawfully introduced or released by CUSTOMER that affects any portion of the System, CUSTOMER shall defend, indemnify and hold PG&E harmless from and against any and all expenses, claims, fines and actions arising out of the existence, introduction or release of any such Hazardous Substance. In addition, CUSTOMER shall also bear all costs of removing, neutralizing, containing or otherwise remediating any such Hazardous Substance. If any Hazardous Substance is unlawfully introduced or released by PG&E that affects any portion of the System, PG&E shall defend, indemnify and hold CUSTOMER harmless from and against any and all expenses, claims, fines and actions arising out of the existence, introduction or release of any such Hazardous Substance. In addition, PG&E shall also bear all costs of removing, neutralizing, containing or otherwise remediating any such Hazardous Substance.
- 14.2 Alternate Locations. Upon learning of the existence, introduction or release of Hazardous Substances on areas within which the System is or is intended to be located, PG&E and CUSTOMER, to the extent commercially reasonable, shall use alternate contiguous areas within which the System may be relocated to avoid the contaminated areas.
- 14.3 Warning. The California Health and Safety Code requires businesses to provide warnings prior to exposing individuals to material listed by the Governor of California as chemicals "known to the State of California to cause cancer, birth defects or reproductive harm". PG&E uses chemicals on the Governor's list at many of its facilities and locations. Accordingly, in exercising its rights and performing the work or services contemplated by this Agreement, CUSTOMER and its contractors and subcontractors and their respective employees and agents may be exposed to chemicals on the Governor's list. CUSTOMER shall be responsible for notifying all such persons that work performed hereunder may result in exposures to chemicals on the Governor's list.

ARTICLE XV: LIABILITY AND INDEMNITY

- 15.1 PG&E Indemnity. PG&E shall indemnify, defend and hold harmless CUSTOMER, its parent corporation, directors, officers, agents and employees of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of PG&E or CUSTOMER, and damage or destruction of property, including, but not limited to, property of either PG&E or CUSTOMER, arising out of: (a) negligent acts or omissions or willful misconduct of PG&E, its agents, officers, directors, employees or contractors; or (b) the breach by PG&E of any of its obligations under this Agreement. The obligation to indemnify

shall extend to and encompass all costs incurred by CUSTOMER in defending such claims, demands, lawsuits or actions, including, but not limited to, reasonable attorney, witness and expert witness fees, and any other litigation related expenses. PG&E's obligations pursuant to this Section 15.1 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of CUSTOMER, its parent corporation, directors, officers, employees, contractors, successors or assigns, or the acts of third-parties. PG&E shall pay any cost that may be incurred by CUSTOMER in enforcing this indemnity, including reasonable attorney fees.

15.2 CUSTOMER Indemnity. CUSTOMER shall indemnify, defend and hold harmless PG&E, its directors, officers, agents and employees of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of PG&E or CUSTOMER, and damage or destruction of property, including, but not limited to, property of either PG&E or CUSTOMER, arising out of: (a) negligent acts or omissions or willful misconduct of CUSTOMER, its agents, officers, directors, employees or contractors; or (b) the breach by CUSTOMER of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by PG&E in defending such claims, demands, lawsuits or actions, including, but not limited to, reasonable attorney, witness and expert witness fees, and any other litigation related expenses. CUSTOMER's obligations pursuant to this Section 15.2 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of PG&E, its directors, officers, employees, contractors, successors or assigns, or the acts of third-parties. CUSTOMER shall pay any cost that may be incurred by PG&E in enforcing this indemnity, including reasonable attorney fees.

15.3 No Consequential Damages. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, NEITHER PG&E, CUSTOMER NOR THEIR RESPECTIVE CONTRACTORS OR SUBCONTRACTORS SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY LESSEE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL OR INCREASED OPERATING COSTS, ARISING OUT OF THIS TRANSACTION WHETHER BY REASON OF CONTRACT, INDEMNITY, STRICT LIABILITY, NEGLIGENCE, INTENTIONAL CONDUCT, BREACH OF WARRANTY OR FROM BREACH OF THIS AGREEMENT. PG&E AND CUSTOMER AGREE THAT ANY AGREEMENTS ENTERED INTO BY CUSTOMER OR PG&E WITH THIRD PARTIES FOR THE LEASE, SALE OR IRU OF CUSTOMER FIBERS OR CUSTOMER EXCLUSIVE FIBERS SHALL INDEMNIFY AND HOLD HARMLESS BOTH PG&E AND CUSTOMER FROM INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OF PROFIT OR REVENUE, COST OF CAPITAL OR INCREASED OPERATING COSTS, ARISING OUT OF THAT TRANSACTION WHETHER BY REASON OF CONTRACT, INDEMNITY, STRICT LIABILITY, NEGLIGENCE, INTENTIONAL CONDUCT, BREACH OF WARRANTY OR FROM BREACH OF THAT AGREEMENT.

15.4 Waiver of Subrogation. To the extent that such insurance is in force and collectible and to the extent permitted by law, each of PG&E and CUSTOMER hereby releases and waives all right of recovery against the other or anyone claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force and effect only if the releasing party's insurance policies contain provisions to the effect that such a release and waiver shall not invalidate the insurance, and each of PG&E and CUSTOMER shall use its best

efforts to secure such provisions in its policies.

- 15.5 Defense of Claims. Either PG&E or CUSTOMER as the indemnifying party hereunder shall have the right to defend the other by counsel of the indemnifying party's selection reasonably satisfactory to the indemnified party, with respect to any claims within the indemnification obligations of this Article XV. PG&E and CUSTOMER shall give each other prompt notice of any asserted claims or actions indemnified against, shall cooperate with each other in the defense of the claims or actions, and shall not settle the claims or actions without the prior written consent of the other.
- 15.6 Third-Party Claims. Except as set forth in Sections 12.2, 15.1 and 15.2, nothing in this Agreement shall be construed to create rights in, or duties or liabilities to, or any standard of care with reference to, or to grant remedies to, any person or entity not a party to this Agreement. PG&E and CUSTOMER by entering into this Agreement do not hold themselves out as furnishing like or similar services to any other person or entity.
- 15.7 Survival. The obligations of the respective parties under this Article XV shall survive the expiration or earlier termination of this Agreement.
- 15.8 Applicability of Liability Limitations. The waivers and disclaimers of liability, releases from liability, exclusive remedy provisions, and (except as expressly stated to the contrary therein) indemnity and hold harmless provisions expressed throughout this Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability, or breach of contract of the party released or whose liability is waived, disclaimed, limited, apportioned or fixed by such exclusive remedy provision, or who is indemnified or held harmless, and shall extend to their respective Affiliates and its and their parent corporations, directors, officers, employees and agents. Such provisions shall continue in full force and effect notwithstanding the completion, termination, suspension, cancellation or rescission of this Agreement, or termination of the rights and privileges granted by this Agreement. No officer, director, employee, agent or other individual representative of either PG&E or CUSTOMER shall be personally responsible for any liability arising under this Agreement.
- 15.9 Claims Against Third-Parties. Nothing contained herein shall operate as a limitation on the right of either PG&E or CUSTOMER to bring an action for damages against any third-party, including indirect, special or consequential damages, based on any acts or omissions of such third-party as such acts or omissions may affect the construction, operation or use of any portion of the System. PG&E and CUSTOMER shall reasonably cooperate with each other, including, without limitation, executing documents and doing whatever else may be reasonably appropriate to enable the other to pursue any such action against such third-party.

ARTICLE XVI: FORCE MAJEURE

- 16.1 Excuse of Performance. Notwithstanding anything in this Agreement to the contrary, neither PG&E nor CUSTOMER shall be liable or responsible for a delay or failure in performing or carrying out any of its obligations (other than obligations to make payments) under this Agreement caused by a Force Majeure Event (as defined below).
- 16.2 Definition. The term "Force Majeure Event" as used in this Agreement shall mean any cause beyond the reasonable control of PG&E or CUSTOMER, as applicable, or beyond the

reasonable control of any of their respective contractors, including without limitation the Contractor, subcontractors, suppliers or vendors, including without limitation:

- (a) Acts of God. Acts of God, including, but not necessarily limited to, lightning, earthquakes, adverse weather of greater duration or intensity than normally expected for the job area and time of year, fires, explosions, floods, other natural catastrophes, sabotage, acts of a public enemy, acts of government or regulatory agencies, wars, blockades, embargoes, insurrections, riots or civil disturbances;
- (b) Labor Disputes. Labor disputes, including, but not necessarily limited to, strikes, work slowdowns, work stoppages or labor disruptions, labor or material shortages, or delays or disruptions of transportation;
- (c) Court Orders. Orders and judgments of any federal, state or local court, administrative agency or governmental body or the Independent System Operator having operational control over PG&E's electric transmission system;
- (d) Change in Law. The adoption of or change in any federal, state or local laws, rules, regulations, ordinances, permits or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits or licenses, by a court or public agency having appropriate jurisdiction after the date of the execution of this Agreement; or
- (e) Government Approvals. Any suspension, termination, interruption, denial or failure to issue or renew by any government authority or other party having approval rights of any Approval required or necessary hereunder for the construction, installation or operation of the System or for either party to perform its obligations hereunder, except when such suspension, termination, interruption, denial or failure to issue or renew results from the negligence or failure to act of the party claiming the occurrence of a Force Majeure Event.

16.3 Continuance after Force Majeure Event. If either PG&E or CUSTOMER cannot fulfill any of its obligations under this Agreement by reason of a Force Majeure Event, such party shall promptly notify the other and shall exercise due diligence to remove such inability with all reasonable dispatch; provided, that nothing contained in this Section 16.3 shall be construed as requiring PG&E or CUSTOMER to settle any strike, work stoppage or other labor dispute in which it may be involved, or to accept any permit, certificate, license or other Approval on terms reasonably deemed unacceptable to such party, or to enter into any contract or other undertaking on terms which the party reasonably deems to be unduly burdensome or costly.

ARTICLE XVII: TERMINATION

17.1 Termination Events. The occurrence and continuance of the events herein may result in the termination of this Agreement, subject to the provisions of this Article XVII.

- (a) Change of Conditions. A change of conditions under which PG&E, CUSTOMER or the System operates which is beyond the control of the parties such that the System cannot continue to operate as contemplated by the terms of this Agreement, including, without limitation:

- (1) A change in the financial condition of PG&E or CUSTOMER that materially and

adversely affects the ability of PG&E or CUSTOMER to perform in accordance with the terms, covenants and conditions of this Agreement;

- (2) The occurrence of an event of casualty which results in the physical destruction of seventy-five percent (75%) or more of each local loop access network;
 - (3) Changes in law or in the regulatory environment, including, without limitation, actions by the Independent System Operator, CPUC, Federal Energy Regulatory Commission, or the Federal Communications Commission that materially and adversely affects or impairs the use of the System;
 - (4) The occurrence of a Force Majeure Event that renders PG&E or CUSTOMER unable to perform its material obligations under this Agreement for a continuous period of six (6) months;
 - (5) The inability of PG&E or CUSTOMER to obtain any required material Approvals in a timely manner and upon terms and conditions acceptable to the Parties for the construction, installation, use, or operation of one (1) or more System Segments;
- (b) **Breach or Default or Bankruptcy.** A material breach or material default under the terms, covenants or conditions of this Agreement by either PG&E or CUSTOMER, including, without limitation:
- (1) The failure of either PG&E or CUSTOMER to make any payment required under the terms of this Agreement when due.
 - (2) The filing by either Party of a petition under any chapter of the U.S. Bankruptcy Code (or any similar petition under any insolvency law of any jurisdiction), or the filing against either Party of any such petition which is not dismissed within sixty (60) days of the date filed, or the proposal by either Party of any dissolution, liquidation or composition with creditors, or if a receiver, trustee, custodian or similar agent is appointed with respect to or takes possession of any material portion of the property or business of a Party.

17.2 Actions Following Occurrence of Termination Event. Should any termination event described in Section 17.1 occur, PG&E and CUSTOMER shall have the following rights and obligations:

- (a) Change of Conditions. If the termination event is a change in conditions described in Section 17.1 (a), PG&E and CUSTOMER shall meet expeditiously to discuss and negotiate in good faith the effect of the changed condition on this Agreement, their respective performance obligations hereunder, and their ability to perform under the terms, covenants and conditions of this Agreement. By mutual consent, PG&E and CUSTOMER may terminate this Agreement, either in whole or in part as it relates to any System Segment, or modify this Agreement to address and account for the changed condition in a mutually acceptable manner. If PG&E and CUSTOMER cannot agree on a solution to the effect of the changed condition, either party, by written notice to the other, may elect to terminate this Agreement. The termination date shall be one-hundred and eighty (180) days from the date of the issuance of the written notice of termination, unless the Parties mutually agree to an alternative date.
- (b) Breach or Default or Bankruptcy. If the termination event is a breach or default or

bankruptcy described in Section 17.1(b), the non-defaulting party shall give written notice of such occurrence to the defaulting party. The defaulting party shall be given a reasonable time to cure any breach or default as follows:

- (1) In the case of a monetary default, the defaulting party shall have thirty (30) days after receipt of the written notice in which to effectuate a cure. If such monetary default is not cured in the specified time period, then the non-defaulting party may elect to terminate this Agreement by providing written notice of such election to the defaulting party. The termination date shall be thirty (30) days from the date of the issuance of the written notice of termination, unless the Parties mutually agree to an alternative date.
- (2) In the case of a non-monetary default, the defaulting party shall have sixty (60) days after receipt of the written notice in which to effectuate a cure. If the non-monetary default cannot be corrected within the sixty (60) day period, the defaulting party shall have an additional sixty (60) day period in which to effectuate a cure, provided the defaulting party commences corrective action within the original sixty (60) day period and thereafter diligently prosecutes the corrective action to completion. If the defaulting party does not timely cure the breach or default within the time periods specified above, the non-defaulting party may elect to terminate this Agreement by providing written notice of its election to do so to the defaulting party. The termination date shall be thirty (30) days from the date of the issuance of the written notice of termination, unless the Parties mutually agree to an alternative date.
- (3) In the case of a bankruptcy, as described in Section 17.1 (b)(2), the provisions of Section 17.2 (b)(1) shall apply if the Party filing for bankruptcy fails to make any payment required under the terms of this Agreement when due. Otherwise, the provisions of Section 17.2 (b) (2) shall apply.

(c) Remedies. In the event of an uncured breach or default described in Section 17.1(b), the non-defaulting party, in addition to the remedies and obligations set forth in Section 17.3, shall have available to it all legal remedies available at law or in equity for breach of contract, including, without limitation, general contract damages.

17.3 Actions Following Termination Notice. Following notice of termination of this Agreement, either in whole or in part as it pertains to specific System Segments, the provisions of Sections 4.4 and 4.5 will apply.

17.4 Amounts Due Upon Termination. If this Agreement is terminated prior to the expiration of the Term, the Monthly Fee for the then current month at the termination date shall be prorated based on the actual number of days elapsed in the month. The provisions of this Section 17.4 are in addition to and not in lieu of other remedies available under the terms of this Agreement.

17.5 No Release. No termination or expiration of this Agreement or the rights granted hereunder shall release either PG&E or CUSTOMER, as applicable, from any liability or obligation (whether for the Monthly Fee or other payments, indemnity or otherwise) which may have become due, attached or accrued prior to, or which become due, attach or accrue at the time or by reason of, such termination or expiration.

17.6 Termination of an RLA or SLA, CUSTOMER may terminate an RLA or SLA upon [REDACTED] days advance written notice to PG&E, unless otherwise specified in [REDACTED]

the RLA or SLA. Following notice of termination of an RLA or SLA, the provisions of Sections 4.4 and 4.5 will apply to the particular RLA or SLA to the extent applicable.

ARTICLE XVIII: DISPUTE RESOLUTION

- 18.1 Dispute Resolution. Except as may otherwise be set forth expressly herein, all disputes arising under this Agreement shall be resolved as set forth in this Article XVIII.
- 18.2 Negotiation and Mediation. PG&E and CUSTOMER shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between a Vice President of PG&E or his or her designated representative and an executive of similar authority of CUSTOMER. Either PG&E or CUSTOMER may give the other party written notice of any dispute. Within twenty (20) days after delivery of the notice, the designated executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days of the first meeting, either PG&E or CUSTOMER may initiate a mediation of the controversy. The mediation shall be facilitated by a mediator that is acceptable to both parties and shall conclude within sixty (60) days of its commencement, unless PG&E and CUSTOMER agree to extend the mediation process beyond this deadline. Upon agreeing on a mediator, PG&E and CUSTOMER shall enter into a written agreement for the mediation services. The mediation shall be conducted in accordance with the Commercial Rules of the American Arbitration Association.
- 18.3 Confidentiality. All negotiations and any mediation conducted pursuant to Section 18.2 shall be confidential and shall be treated as compromise and settlement negotiations, to which Section 1152.5 of the California Evidence Code shall apply, which Section is incorporated in this Agreement by reference.
- 18.4 Injunctive Relief. Notwithstanding the foregoing provisions, either PG&E or CUSTOMER may seek a preliminary injunction or other provisional judicial remedy if in its judgment that action is necessary to avoid irreparable damage or to preserve the status quo.
- 18.5 Continuing Obligation. PG&E and CUSTOMER shall continue to perform their obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.
- 18.6 Failure of Mediation. If PG&E and CUSTOMER, after good faith efforts to mediate a dispute under the terms of this Agreement (as provided in Section 18.2), cannot agree to a resolution of the dispute either party may pursue whatever legal remedies may be available to that party, at law or in equity, before a court of competent jurisdiction and with venue as provided in Section 20.7.

ARTICLE XIX: TAX INDEMNITY

- 19.1 Income Taxes.
- (a) CUSTOMER shall provide a limited income tax indemnification to PG&E relating to CUSTOMER's development, construction and installation of the System pursuant to this Agreement as provided in this Section 19.1. The limited tax indemnification shall be

available to PG&E and to PG&E Corporation (each, a "Tax Indemnitee"). The limited income tax indemnification shall be governed by the following:

- (1) The limited income tax indemnification shall apply if:
 - (i) PG&E or another Tax Indemnitee is required by the Internal Revenue Service (the "IRS") or any state taxing authority (each, a "Taxing Authority") to make any Gross Income Transfer Adjustment (as defined below); or
 - (ii) PG&E or another Tax Indemnitee elects to settle or compromise any audit or review of its federal or state income tax liability by agreeing to any Gross Income Transfer Adjustment.
- (2) For purposes of this Section 19.1, the term "Gross Income Transfer Adjustment" shall mean any adjustment to the reported gross income of PG&E or any other Tax Indemnitee for federal or state income tax purposes attributable to or arising from:
 - (i) any cash payment made by or on behalf of CUSTOMER with respect to upgrades or modifications to PG&E Facilities to accommodate the installation of the Cable; or
 - (ii) any actual or deemed transfer of property by CUSTOMER to PG&E pursuant to this Agreement.

Notwithstanding the foregoing, the term "Gross Income Transfer Adjustment" shall not include any adjustment to gross income attributable to or arising from CUSTOMER's payment of Monthly Fees, Minimum Annual Fees, Annual Site License Fees, Rack Space Fees or Building Entry License Fees any gross income attributable to any actual or deemed transfers of the PG&E Fibers or rights therein.

- (3) The amount of the limited income tax indemnification shall be limited to an amount equal to the sum of:
 - (i) the amount determined by multiplying (A) the amount of any Gross Income Transfer Adjustment, reduced by offsetting deductions for construction expenditures (excluding depreciation or amortization deductions) attributable to the System, exclusive of the PG&E Fibers, that PG&E or any other Tax Indemnitee determines to be allowable in a year of income includability by (B) the CPUC gross-up rate applicable to contributions in aid of construction, as provided in PG&E's electric tariffs (which is currently thirty-five percent (35%)), for that year of income includability; and
 - (ii) interest with respect to the amount described in (i) above for the period during which statutory interest accrues with respect to such Gross Income Transfer Adjustment under the Internal Revenue Code at a rate equal to the rate attributable to corporate deficiencies under Internal Revenue Code Section 6621 (c).

The parties agree that the foregoing amount is a reasonable measure of the economic loss that PG&E or another Tax Indemnitee would suffer upon the occurrence of any of the events described in this Section 19.1 (a).

- (b) PG&E shall pay, without right of indemnification by CUSTOMER, all additional or incremental income taxes, if any, assessed against PG&E in connection with the development, construction and installation of the System and transfer of legal title thereto by CUSTOMER that is attributable to the PG&E Fibers.
 - (c) For purposes of Section 19.1 (a), PG&E or any other Tax Indemnitee shall be deemed to be required to recognize gross income for a taxable year in connection with the development, construction and installation of the System if: (i) an IRS Revenue Agent's Report is issued which includes any adjustment attributable to the development, construction and installation or an assessment is made by the IRS or any Taxing Authority with respect to such gross income; or (ii) the IRS or any Taxing Authority issues any ruling, notice or other administrative pronouncement, or a court issues an opinion, which PG&E determines in good faith requires recognition of such gross income for that taxable year (individually or collectively an "Authoritative Precedent").
 - (d) If, during the course of any audit or other examination of the tax returns of PG&E or any other Tax Indemnitee for a taxable year that would give rise to an obligation of indemnity by CUSTOMER under Section 19. J(a), the issue of the includability by PG&E or any other Tax Indemnitee of any Gross Income Transfer Adjustment is raised or reviewed, or if PG&E or any other Tax Indemnitee becomes aware of any Authoritative Precedent, or if any adjustment is proposed, PG&E or any other Tax Indemnitee shall promptly give written notice thereof to CUSTOMER.
 - (e) Any amount payable to PG&E or any other Tax Indemnitee pursuant to Section 19.1(a) shall be paid within 90 days after receipt by CUSTOMER of a written demand therefore from PG&E or any other Tax Indemnitee accompanied by a statement describing in reasonable detail the circumstances giving rise to the claim for indemnity and the computation of the amount payable.
 - (f) If in the course of an audit of PG&E or any Tax Indemnitee by any Taxing Authority, there is a proposed adjustment, which would result in a requirement that CUSTOMER indemnify PG&E or any other Tax Indemnitee pursuant to Section 19.1(a), PG&E or the other Tax Indemnitee shall promptly notify CUSTOMER. If CUSTOMER requests PG&E or the other Tax Indemnitee to contest or dispute the proposed adjustment, all costs and expenses incurred by PG&E or the other Tax Indemnitee in connection with the contest or dispute, including all reasonable legal and accounting fees and disbursements, shall be borne by CUSTOMER.
 - (g) PG&E and each other Tax Indemnitee shall in good faith use reasonable efforts in filing its tax returns, and in dealing with Taxing Authorities, to report and defend the payments and transfers in accordance with the description of the form of this transaction and the intent of the parties as described in this Agreement.
- 19.2 Sales and Use Taxes. CUSTOMER shall pay or cause to be paid, and shall indemnify and hold PG&E harmless from and against, all sales and use taxes applicable to the development, construction and installation of the System by CUSTOMER, including without limitation the purchase of all materials incorporated by CUSTOMER into the System.
- 19.3 Indemnification Conditions. CUSTOMER's indemnification obligation set forth in this Article XIX is expressly conditioned upon CUSTOMER receiving timely notice of any tax liability or

the possibility that there may a proposed adjustment to any tax liability to which PG&E or any other Tax Indemnitee believes this indemnity applies and upon CUSTOMER receiving the opportunity to request that PG&E contest or dispute any such adjustment or proposed adjustment consistent with Section 19.1(f).

ARTICLE XX: MISCELLANEOUS

- 20.1 Amendments. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally and may only be modified or amended by an instrument in writing, signed by both PG&E and CUSTOMER.
- 20.2 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of PG&E, CUSTOMER and their respective successors and assigns.
- 20.3 Waivers. The failure by PG&E or CUSTOMER at any time or times hereafter to require strict performance by the other of any of the undertakings, agreements or covenants contained in this Agreement shall not waive, affect or diminish any right of PG&E or CUSTOMER under this Agreement to demand strict compliance and performance therewith. None of the undertakings, agreements or covenants of PG&E and CUSTOMER under this Agreement shall be deemed to have been waived unless such waiver is evidenced by an instrument in writing signed by the party to be charged specifying such waiver.
- 20.4 Notices. Unless otherwise specifically provided in this Agreement, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, or sent by courier or United States certified mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy, or five (5) days after deposit in the United States mail, with postage prepaid and properly addressed, as follows:

If to PG&E, to: Pacific Gas and Electric Company
Mail Code N10A
Post Office Box 770000
San Francisco, CA 94177
Attention: Supervisor, Land Rights Services
Telephone: (415) 973-3201
Facsimile: (415) 973-5790

With copy to: Pacific Gas and Electric Company
Mail Code N10D
Post Office Box 770000
San Francisco, CA 94177
Attention: Manager, Business Development
Telephone: (415) 973-0927
Facsimile: (415) 973-3884

If to PG&E by
Hand delivery: Pacific Gas and Electric Company
245 Market Street
Room 1002
San Francisco, CA 94105

With copy to: Pacific Gas and Electric Company
245 Market Street
Room 1048
San Francisco, CA 94105

If to CUSTOMER, to: Chief Executive Officer
opticAccess, LLC
533 Airport Blvd., Suite 400
Burlingame, CA 94010

With copy to: General Counsel
opticAccess, LLC
533 Airport Blvd., Suite 400
Burlingame, CA 94010

Such addresses may be changed by notice to the other party given in the same manner as above provided.

- 20.5 Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.
- 20.6 Interpretation. Whenever the context shall require, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The article, section and subsection headings contained in this Agreement are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof. All references in this Agreement to articles, sections and subsections, unless expressly noted otherwise, are to articles, sections and subsections contained in this Agreement. Unless the context requires otherwise, references in this Agreement to "party" shall be to either PG&E or CUSTOMER, as applicable, and references to "parties" shall be to both PG&E and CUSTOMER.
- 20.7 Governing Law and Choice of Forum. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of California. Any mediation under this agreement shall be held in the State of California, County of San Francisco. Jurisdiction for any disputes arising out of this Agreement shall be exclusively in the courts of the State of California, state or federal, and any litigation shall be brought in San Francisco County, California.
- 20.8 Commissions. PG&E and CUSTOMER shall indemnify and hold each other harmless (including attorney fees and costs) from and against any and all claims for brokerage and finder's fees or commissions, which may be asserted against the other, based on the actions or omissions of the indemnifying party. PG&E and CUSTOMER shall each pay any fees or compensation due to their respective consultants as advisors, if any, with respect to this transaction.
- 20.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute only one instrument.

- 20.10 Attorney Fees. PG&E and CUSTOMER agree that should either of them default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney fees and costs, incurred by the nondefaulting party to protect its rights hereunder, regardless of whether an action is commenced or prosecuted to judgment.
- 20.11 Costs. Except as otherwise set forth in this Agreement, PG&E and CUSTOMER shall each be responsible for its own costs, including legal fees, incurred in negotiating and finalizing this Agreement.
- 20.12 No Third-Party Beneficiaries. Except as otherwise expressly provided in this Agreement, the terms, covenants and conditions of this Agreement, shall not be construed as being for the benefit of any person who is not a signatory to this Agreement.
- 20.13 Entire Agreement. This Agreement expresses the entire understanding of PG&E and CUSTOMER relating to the subject matter hereof. All prior understandings, written or oral, with respect to such subject matter are hereby merged herein and superseded.
- 20.14 Conflict of Interest/Business Ethics. Each party shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the other party's interest. Each party or its employees shall not offer substantial gifts, entertainment, payments, loans or other considerations to the other party's employees, their families, vendors, subcontractors and other third-parties for the purpose of influencing such persons to act contrary to the party's interest. All financial statements, reports, billings and other documents rendered shall properly reflect the facts about all activities and transactions handled for the account for each party. Each party shall immediately notify the other party of any and all violations of this Section 20.14 upon becoming aware of such violation.
- 20.15 Survival. In addition to the survival provisions set forth elsewhere in this Agreement, those Articles or Sections of this Agreement which by their nature should survive expiration or other termination of the Agreement, including Section 4.4 (Quit and Surrender), Section 4.5 (Holdover), Section 9.6 (Franchise Rights and Licensing Costs), Section 10.3 (Confidentiality), Article XV (Liability and Indemnity), Section 17.2 (Actions Following Occurrence of Termination Event), Section 17.3 (Actions Following Termination Event), Section 17.4 (Amounts Due Upon Termination), Section 17.5 (No Release) and Article XIX (Tax Indemnity).

20.16 Exhibits. The exhibits to this Agreement referenced above are an integral part of the agreement and understanding of the parties and are incorporated in this Agreement by reference. Any exhibits referred to above in this Agreement, which are not attached hereto as of the Effective Date, may be attached to this Agreement following the Effective Date when approved as to form by both PG&E and CUSTOMER. The omission of any of the exhibits from this Agreement as of the Effective Date shall not affect the enforceability of this Agreement.

DATED effective as of the date first above written.

PACIFIC GAS AND ELECTRIC COMPANY,
a California Corporation

By: _____

Name: Deanna Toy

Title: Director

CUSTOMER

a Nevada limited liability company

By: _____

Name: Jeff Yount

Title: Chief Operating Officer

EXHIBIT A: ROUTE LICENSE ACKNOWLEDGMENTS

(Attach executed Route License Acknowledgment forms.)

EXHIBIT B: SITE LICENSE ACKNOWLEDGMENTS

(Attach executed Site License Acknowledgment forms.)

EXHIBIT C: INTENTIONALLY OMITTED

Additional Provisions:

PACIFIC GAS AND ELECTRIC
COMPANY

OPTICACCESS LLC

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

EXHIBIT E: SITE LICENSE ACKNOWLEDGMENT FORM

This Site License Acknowledgment ("SLA") is made pursuant to the Master IRU Agreement for Optical Fiber Installations between Pacific Gas and Electric Company ("PG&E") and opticAccess LLC ("CUSTOMER") dated _____ (the "Agreement") and supersedes any Site Application Forms related to this Site. Capitalized terms used in this SLA have the same meanings given terms in the Agreement unless otherwise indicated herein.

1. SLA Execution Date:
2. SLA Expiration Date:
3. Site Name and Description:
4. Site Address:
5. Square footage required: CUSTOMER footage:____ PG&E footage:____
6. Equipment Enclosures Physical Dimensions:
7. Site Legal Description:
8. County Assessor's Parcel Number:
9. SBE Number (if applicable):
10. Site Latitude and Longitude:
11. Site Township, Range, Section:
12. Site Access Procedures: (Include Notification Requirements and Access Limitations):

13. Fee for Site:

14. PG&E contact: Name: Jill Miller-Robinett
Address: 245 Market Street, Mail Code N10D
San Francisco, CA 94105
Telephone: (415) 973-0927
15. CUSTOMER contact: Name:
Address:
Telephone:
16. PG&E contact for emergencies: Name: Telecommunications Control Center
Telephone: 707.427.6387
Electric and Gas Service Call Center
Telephone: 800.743.5000
17. CUSTOMER contact for emergencies: Name:
Telephone:
18. Additional Provisions: This agreement is conditioned upon PG&E's approval of site plan and any use permits issued by any regulatory agency having jurisdiction over the installation on PG&E property. In the event that PG&E does not approve the site plan or the terms and conditions of such use permit, PG&E will terminate this agreement in writing. CUSTOMER is responsible for obtaining a draft staff report from the regulatory agency in advance of any public hearing of CUSTOMER's application. Any easement modifications, draft staff reports, draft conditional use permits or applications that are obtained for this site shall be submitted to PG&E's Director of Land Rights and Resource Management for review,

approval or denial.

This license is subject to existing easements. Underground facilities must be located prior to construction. Site plan must be submitted to PG&E for approval prior to construction. If CUSTOMER cannot obtain permits or other required material Approvals necessary to construct this site, this agreement will be null and void.

If installation of the Equipment Facilities is not completed within one (1) year, provided the cause for the delay in completion is not attributable in whole or in part to PG&E, the Independent System Operator or a Force Majeure Event, PG&E shall have the option to terminate this SLA.

**PACIFIC GAS AND ELECTRIC
COMPANY**

OPTICACCESS LLC

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT F: INTENTIONALLY OMITTED

EXHIBIT G: INTENTIONALLY OMITTED

EXHIBIT H: DETAILED CABLE ROUTE RESTORATION PLAN

(To be Provided at a Later Date)

EXHIBIT I: DESIGN & ENGINEERING STANDARDS

(To be Provided at a Later Date)

EXHIBIT J: PG&E SAFETY RULES

J.1 Personnel safety is a primary objective to PG&E and CUSTOMER. The Parties shall stress SAFETY FIRST to their respective employees and contractors in the performance of their duties. Applicable safety standards and practices of PG&E and CUSTOMER shall be made available to PG&E and CUSTOMER personnel and shall be adhered to at all times.

J.2 All personnel of PG&E, CUSTOMER, or the contractors of either Party working on or in proximity to any Cable Route shall be required to comply with PG&E safety guidelines and shall attend periodic safety training classes provided by their respective companies. The safety classes shall be conducted as needed and shall reflect the latest available concepts and practices. Should PG&E and CUSTOMER operational personnel agree that any other applicable training is required, this also shall be provided by the appropriate Party. Each Party shall bear its own costs of providing safety training to its employees and/or its contractors' employees, of attending any required safety courses, and of providing any other applicable training that may be required. Any extra-ordinary training costs related to the performance of the Agreement shall be provided at the sole cost of CUSTOMER.

J.3 Both Parties shall endeavor to assure that all work is performed in a good workmanlike manner in accordance with applicable telecommunications and electric industry standards and in compliance with all applicable laws, ordinances, codes, and regulations of any governmental authority (including Cal-OSHA) having jurisdiction thereof.

J.4 CUSTOMER EMPLOYEES, AGENTS, OR SUBCONTRACTORS SHALL NOT CLIMB THE PG&E TRANSMISSION TOWERS, DISTRIBUTION POLES, NOR ENTER ANY ENERGIZED VAULT, MAN HOLE OR ENCLOSURE OR PERFORM ANY WORK ON THEM WITHOUT PRIOR CERTIFICATION FROM PG&E. This includes making attachments to the base of the transmission towers.

J.5 PG&E workers shall follow the same work rules as CUSTOMER workers when working in the vicinity of any CUSTOMER System Materials or CUSTOMER System Electronics provided such rules, at a minimum, comply with the applicable industry standard. CUSTOMER shall inform PG&E workers of its other internal work practices concerning CUSTOMER System Materials or CUSTOMER System Electronics. PG&E workers shall maintain the safe working distance specified by CUSTOMER.

J.6 CUSTOMER System Electronics on the Right-of-Way of a Cable Route shall be placed sufficiently far away from any electric transmission tower or energized vault, man hole or conduit so that CUSTOMER employees, agents, or contractors will be unlikely to come in direct or indirect contact with the transmission tower or energized vault, man-hole or conduit.

J.7 Any PG&E representative will have the authority to stop any work, including CUSTOMER access and activities, if it is determined that the work cannot be completed safely.

EXHIBIT K: ROUTE APPLICATION FORM

This Route Application Form describes the proposed route license that opticAccess desires to obtain from PG&E pursuant to the Master License and IRU Agreement for Optical Fiber Installations between Pacific Gas and Electric Company ("PG&E") and opticAccess, LLC ("CUSTOMER") dated _____, 2013 (the "Agreement"). If the Route Application Form is acceptable to PG&E, in its sole discretion, the Parties will execute a Route License Acknowledgment. Capitalized terms used in this Route Application Form have the same meanings given terms in the Agreement unless otherwise indicated herein.

1. Proposed Route License Scope of Work:
2. Route Name and Description:
 - a. Total Number of Route Miles:
 - b. Fiber Description and Count:
 - c. Special Conditions:
3. Application Term. Unless otherwise mutually agreed to by the Parties, this Route Application Form will automatically terminate sixty (60) days from the Date Received below.
4. Administrative Fee: [REDACTED] payable upon submittal of this application.
5. Single Line Sketch:
6. Proposed Work Schedule: e.g. number of crews, number of PG&E inspectors needed, etc.

To be completed by P&E:

DATE RECEIVED:	DATE APPROVED:
----------------	----------------

OPTICACCESS, LLC

By: _____
Name: _____
Title: _____
Date: _____

**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

1st Light Energy	Douglass & Liddell	OnGrid Solar
AT&T	Downey & Brand	Pacific Gas and Electric Company
Alcantar & Kahl LLP	Ellison Schneider & Harris LLP	Praxair
Anderson & Poole	G. A. Krause & Assoc.	Regulatory & Cogeneration Service, Inc.
BART	GenOn Energy Inc.	SCD Energy Solutions
Barkovich & Yap, Inc.	GenOn Energy, Inc.	SCE
Bartle Wells Associates	Goodin, MacBride, Squeri, Schlotz & Ritchie	SDG&E and SoCalGas
Braun Blasing McLaughlin, P.C.	Green Power Institute	SPURR
CENERGY POWER	Hanna & Morton	San Francisco Public Utilities Commission
California Cotton Ginners & Growers Assn	In House Energy	Seattle City Light
California Energy Commission	International Power Technology	Sempra Utilities
California Public Utilities Commission	Intestate Gas Services, Inc.	SoCalGas
California State Association of Counties	Kelly Group	Southern California Edison Company
Calpine	Linde	Spark Energy
Casner, Steve	Los Angeles Dept of Water & Power	Sun Light & Power
Center for Biological Diversity	MAC Lighting Consulting	Sunshine Design
City of Palo Alto	MRW & Associates	Tecogen, Inc.
City of San Jose	Manatt Phelps Phillips	Tiger Natural Gas, Inc.
Clean Power	Marin Energy Authority	TransCanada
Coast Economic Consulting	McKenna Long & Aldridge LLP	Utility Cost Management
Commercial Energy	McKenzie & Associates	Utility Power Solutions
County of Tehama - Department of Public Works	Modesto Irrigation District	Utility Specialists
Crossborder Energy	Morgan Stanley	Verizon
Davis Wright Tremaine LLP	NLine Energy, Inc.	Water and Energy Consulting
Day Carter Murphy	NRG Solar	Wellhead Electric Company
Defense Energy Support Center	Nexant, Inc.	Western Manufactured Housing Communities Association (WMA)
Dept of General Services	North America Power Partners	
Division of Ratepayer Advocates	Occidental Energy Marketing, Inc.	