

**Santa Paula Branch Line  
Right of Way License Agreement  
between  
Ventura County Transportation Commission  
and  
The County of Ventura**

**Agreement Number:**

**Mile Post:** Approximately 27.54 miles from rail Crossing @ South Saticoy Avenue in the City of Ventura to Termination of rail line approximately 1.5 miles east of Piru at Lat 34.4070892328769, Long -118.7560223978569.

**Location:** Ventura County, California

**Licensee:** The County of Ventura

This Right of Way License Agreement (the "Agreement" or "License"), dated as of the latter of two signatures below ("Effective Date"), is between Ventura County Transportation Commission ("VCTC") as licensor and the County of Ventura ("Licensee") as collectively referred to herein as the "Parties".

**WHEREAS**, VCTC is the owner of that certain real property containing a right of way currently utilized for railway and related purposes as more specifically described and depicted in **Exhibit B** ("Right of Way")

**WHEREAS**, VCTC has entered into a lease agreement with Sierra Northern Railway for the maintenance and operation of the Right of Way.

**WHEREAS**, VCTC desires to grant and Licensee desires to obtain a License to construct, install, and maintain underground conduits, fiber optic cables, handholes, pull boxes, splice boxes, junction boxes and cabinets, and other related appurtenances and structures, as may be updated from time to time ("Utilities"), within a portion of VCTC's Right of Way, as more specifically described and depicted in **Exhibit B** ("License Area"). The term "Utilities" as used in this License shall include all facilities, structures, foundations, pads, cables, conduits and equipment and related appurtenances that Licensee erects, installs and/or uses on or under the License Area, as authorized and depicted in **Exhibit B**, as may be modified from time to time in accordance with this License.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Parties agree to the following:

**1. LICENSE**

- (a) Grant. Subject to the terms and conditions herein, VCTC hereby grants to Licensee, insofar as it has the legal right and its present title hereby permits and subject to the limitations contained in this Agreement, a license to construct, install, remove and maintain Utilities within the License Area in strict accordance with the drawings and specifications developed by a qualified and licensed civil engineer and reviewed by VCTC, subject to limited exceptions outlined herein.

- (b) VCTC Approval. Prior to any installation or construction activities, Licensee will submit the drawings, specifications, and construction details for the Utilities to VCTC for its review and written approval, which may not unreasonably be withheld, conditioned or delayed. After completion of construction, Licensee shall provide VCTC with as-built plans for the Utilities. Licensee shall be permitted to complete routine maintenance and make minor modifications to the Utilities which do not: (i) increase the overall size of the Utilities; (ii) do not require the addition of new improvements; or (iii) involve changes in location of any portion of the Utilities, without the need to submit plans/specifications to VCTC in advance for approval. Any entry upon the License Area for construction, maintenance, or work related to the Utilities shall be memorialized by a Notice to Proceed/Right of Entry Agreement issued by VCTC's Executive Director or his or her designee, prior to commencing such work. If Licensee desires to make any modification to the Utilities that deviates from the approved design after completion of construction (except for routine maintenance and minor modifications outlined above), Licensee shall submit revised drawings, specifications, and construction details to VCTC for prior approval.
- (c) No Warranty. Licensee agrees that it is accepting the License without any warranty or representation by VCTC whatsoever and subject to any and all valid and existing licenses, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations and conditions.
- (d) Private Rights/No Transfer. The License shall be used solely for the purposes stated in this Agreement and Licensee shall not permit it to be used for any other purpose. No lease, assignment of any type or transfer or conveyance of a real property interest is intended by this License.
- (e) Assignment; Sublicensing.
- i. It is understood and agreed that Licensee intends to grant to third parties the right to use capacity, fiber, conduit and appurtenances which comprise all or a portion of its Utilities. The parties acknowledge and agree that third party use of capacity, fiber, or conduit necessarily includes access to and the use of the License Area in which the Utilities are located. The granting of the right to use capacity, fiber, conduit and appurtenances, and the related access to and use of the License Area by such third parties, will not constitute an assignment, license or sublicense under this License.
  - ii. Authorized Sublicenses. VCTC furthermore acknowledges that not all Utilities constructed and installed within the License Area may be owned by Licensee, but may be financed, constructed, owned, and maintained by authorized sublicensees, subject to all of the same terms, conditions, VCTC review and approvals, and specifications contained herein. As of the Effective Date of this Agreement, Licensee intends to sublicense and VCTC authorizes sublicenses to: (a) Astound Broadband LLC, a Washington limited liability company, or affiliate, and (b) State of California Department of Technology.
  - iii. Licensee may grant additional sublicenses for portions of its rights, benefits and privileges under this Agreement, and delegate any of its duties, obligations or burdens, to third parties in connection with the conveyance or transfer of

ownership interests in the conduits or fibers that are part of the Utilities. Licensee shall give VCTC prior notice of any additional sublicense. No VCTC authorization of sublicenses shall be required provided that following the execution of any additional sublicense agreement, Licensee shall provide sufficient documentation to VCTC demonstrating that the sublicensee has procured insurance with coverage amounts consistent with this Agreement and that such sublicensee agreement includes required indemnification clause(s) at least as broad as the indemnification provisions in this Agreement. VCTC shall not require any authorized sublicensee to acquire any additional authorizations to utilize, maintain, operate, repair and remove portions of the Utilities except that sublicensees shall be required to obtain Right of Entry Agreements from VCTC prior to entering upon the License Area.

- (f) No Modification in Location or Design. The Utilities shall be located in the License Area in accordance with **Exhibit B** and/or any future design, specifications, drawings, or plans as submitted by Licensee and reviewed and approved by VCTC, and such approval may not be unreasonably withheld, conditioned or delayed, and no material deviation shall at any time be made therefrom except upon the prior written approval of VCTC. After completion of construction, Licensee shall provide VCTC with as-built plans for the Utilities.
- (g) Right of Entry for Access. Upon approval and execution of a Right of Entry Agreement by VCTC or Sierra Northern Railway, as applicable, Licensee and its employees, agents, contractors, subcontractors, and sublicensees may have access to and over the Right of Way, from any open and improved public road to the License Area, for the installation, maintenance, repair, upgrade, removal and operation of the Utilities as specified in the Right of Entry Agreement. Pursuant to the Right of Entry Agreement, VCTC agrees to provide to Licensee such codes, keys and other instruments necessary for such Access at no additional cost to Licensee.
- (h) Emergency Access. Any Right of Entry Agreement executed by VCTC or Sierra Northern Railway, as applicable, to facilitate access contemplated by this License shall permit emergency access upon four (4) hours' notice by Licensee and Licensee's sublicensees to correct emergency outages, and repair damage to Utilities that creates a hazardous condition. Any costs associated with such emergency access will be paid for by Licensee in accordance with the applicable fee schedule outlined in the Right of Entry Agreement.

## **2. IN-KIND COMPENSATION**

- (a) In lieu of monetary compensation, VCTC shall have the right to utilize twelve (12) strands of dark fiber along the path preliminarily identified in **Exhibit C**, as may be modified or changed in the final design submitted by Licensee and approved by VCTC ("VCTC Strands"). No rent or license fee shall be payable to Licensee from VCTC for VCTC's use of the twelve (12) strands of dark fiber. Licensee at no cost to VCTC, shall maintain the VCTC Strands in accordance with the Service Level Agreement for dark fiber strands, substantially in the form attached hereto as **Exhibit D**, or successor agreement as may be updated from time to time and agreed to by VCTC. VCTC shall provide at VCTC's cost, all electronics, connections, and other improvements and

equipment necessary to utilize the VCTC Strands. VCTC's use of the VCTC Strands shall be for non-commercial purposes. For purposes of this Section, the term "non-commercial purposes" means VCTC's or Sierra Northern Railway's, or successor railroad operator's own use and for their customers'/riders' use of the Santa Paula Branch Line, including but not limited to operation and maintenance of railroad transportation assets, of related or supporting publicly-owned or operated infrastructure such as signals, crossings, street lights and CCTV, and of public Wi-Fi for users of VCTC's trains, trails, and bike paths. VCTC may not sublease or sublicense the VCTC Strands to any third party for any other purposes without the prior written consent of Licensee.

- (b) Licensee shall reimburse VCTC for reasonable and necessary costs associated with review of plans and specifications and administrative oversight of this License, not to exceed \$75,000 (seventy-five thousand dollars). Licensee shall reimburse VCTC for reasonable and necessary costs associated with review of any subsequent plans and specifications and administrative oversight after completion of the Utilities where review of such new County improvements necessitates that VCTC hire outside expert consultants pursuant to the requirements of applicable Right of Entry Agreements. Licensor will invoice Licensee for actual, reasonable, documented costs associated with review of plans, specifications, inspections, and administration of this Agreement.

### **3. CONSTRUCTION**

- (a) All materials and work associated with use of this License shall be furnished and performed by Licensee as specifically set forth in the drawings, specifications and plans approved by VCTC and shall be at the sole cost and expense of Licensee. Licensee is responsible for any reasonable costs associated with and incurred by VCTC and/or its agent/representative in conducting plan review.
- (b) During construction of the Utilities, VCTC agrees to allow Licensee the reasonable use, at no charge, of available portions of the Right of Way adjacent to or within the License Area for temporary staging areas and to erect temporary structures and fences to protect Licensee's equipment, provided that such structures and fences: (1) do not interfere with or disrupt the VCTC or railway operations; (2) such locations and structures are approved by VCTC prior to commencement of construction; and (3) the use of VCTC-owned property for temporary staging shall not exceed one (1) year from the commencement of such VCTC-approved work, unless otherwise extended in writing by VCTC. When construction is complete, Licensee shall remove all structures, fences, equipment and material placed thereon such temporary staging areas by Licensee, and restore any land used for such structures and fences substantially to its previous condition, reasonable wear and tear excepted.

### **4. MAINTENANCE**

- (a) Licensee shall at all times repair and maintain the Utilities in good condition, reasonable wear and tear and damage from the elements excepted. If Licensee fails to perform maintenance work when needed after fourteen (14) calendar days prior notice from VCTC (except in an emergency where no prior notice is required), VCTC or its agent/representative, for the purpose of protecting and safeguarding its property, traffic, employees or patrons, may perform such maintenance activities, and



thereafter, bill Licensee in accordance with the terms of Section 7 for all reasonable costs and expenses incurred by VCTC or its agent/representative.

- (b) When performing any work on the Utilities, Licensee shall provide notice to VCTC and Sierra Northern Railway (or the successor operating railroad) and be responsible to ensure that people, equipment and materials are kept a safe distance away from the tracks all in accordance with the requirements outlined in the applicable Right of Entry Agreement.

## **5. MAINTENANCE OF RIGHT-OF-WAY**

- (a) In the event VCTC shall, during the term of this Agreement, be required, or desire at any time, or from time to time, to change the grade or location of any of its tracks or facilities, or to remove, construct or add to any of its tracks or facilities upon the Right of Way ("VCTC Modification"), then VCTC may require Licensee, after a minimum of two hundred forty (240) calendar days prior written notice to Licensee, at the sole cost and expense of Licensee, to make such adjustments or relocations in the Utilities, as may be necessary to facilitate the VCTC Modification.
- (b) In connection with any change in grade, alignment or width of any streets, or the construction of any track, track support structures or viaduct, or any other improvement of any kind by VCTC, Licensee's rights to occupy the License Area do not supersede VCTC's rights. Accordingly, Licensee must, at the VCTC's direction and at Licensee's sole cost and expense, comply with all of the following provisions, as applicable:
  - (i) VCTC shall have the right to require relocation and/or repairs of the Utilities for any VCTC Modification including but not limited to the construction, repair, relocation or new installation of any aboveground or underground facility, utility, storm drain, sewer, waterline, track, track support structures, or roadway improvement (such as any lawful change of grade, alignment or width of any street). Licensee shall relocate/repair its Utilities, or portion thereof, to the reasonably nearest alternative location or other location mutually reasonably agreeable to VCTC and Licensee, either permanently or temporarily, as is determined by VCTC and within the reasonable timeline proposed by the VCTC, provided such timeline is not less than two hundred forty (240) calendar days. Said relocation/repair shall be accomplished at the Licensee's sole expense.
  - (ii) If Licensee fails to relocate its Utilities within the reasonable timeline proposed in the VCTC's notice of relocation or repair, or to complete construction and/or site restoration, VCTC may, provided that it complies with applicable law, cause the work to be done and Licensee shall reimburse VCTC for any such actual, reasonable costs within sixty (60) days after presentation to Licensee of an itemized accounting of such costs, accurately detailing such expenses and costs.
  - (iii) In the decision process necessary to determine if Utilities are required to be relocated, VCTC shall consider all known future public projects that, if done separately, may cause multiple relocations of the Utilities. If such known future public

projects can be identified, full consideration of concurrent projects will be given by VCTC and such relocation requests shall be limited as practicable.

- (iv) In the event that VCTC changes the planned rearrangement of Utilities previously noticed to Licensee, or the content and terms of the notice given to Licensee pursuant to this Section 5, Licensee will be given an additional period of not less than ninety (90) days to accomplish such work.
- (v) Except as otherwise provided above, when VCTC requires a rearrangement of Utilities and such rearrangement is done for the accommodation of any private person, firm, or corporation, the cost of such rearrangement will be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, must: (a) deposit with Licensee either cash or a corporate surety bond in an amount reasonably determined by Licensee, to pay the costs of such rearrangement; and (b) execute an instrument agreeing to indemnify, defend and hold harmless Licensee and its Utilities from any and all damages or claims caused by such rearrangement. This provision will not be construed to require Licensee to rearrange its Utilities. Any accommodation for rearrangement of Utilities for an accommodated party will be made at the Licensee's sole discretion. The foregoing shall not apply to rearrangement or relocation required by VCTC for a VCTC Modification.

## **6. VCTC'S PARAMOUNT USE**

- (a) VCTC and Sierra Northern Railway (or a successor railroad operator) shall have the paramount right at all times to use its tracks, right-of-way and property in the License Area. In the event that Licensee's activities in the License Area materially interfere or conflict with VCTC's use and/or enjoyment of its property to prevent such use, VCTC may require Licensee to relocate or alter its facilities to remedy such interference or conflict and Licensee may make adjustments or relocations reasonably necessary to remedy such interference or conflict in accordance with the procedure outlined in Section 5 above. Licensee shall exercise the greatest care in the use of the License Area and shall require all others permitted hereunder to use the License Area to also exercise the greatest care in the use of the License Area.
- (b) Licensee understands that there are active train operations on the Santa Paula Branch Line and acknowledges that any construction, operation, removal, repair, upgrade, and maintenance activities occurring on or near the Santa Paula Branch Line must be (1) coordinated with Sierra Northern Railway (or a successor railroad operator) to avoid interruption of rail service, and (2) undertaken in compliance with all applicable regulations governing rail lines, including regulations promulgated by the California Public Utilities Commission (CPUC) and the Federal Railroad Administration. Licensee shall provide Sierra Northern Railway (or any successor the railroad operator) a minimum of seven (7) days advance notice of any Licensee or Licensee's contractor's activities within the rail right of way and shall take reasonable actions to prevent any disruption to normal train operations.

## **7. BILLING**

Licensee shall pay all bills rendered pursuant to this License within sixty (60) calendar days of presentation by VCTC. In the event of a dispute regarding any such bill, Licensee shall identify in writing those portions of a bill it disputes, and provide such dispute notice to VCTC within sixty (60) calendar days. Licensee's obligation to pay such disputed amounts on an invoice shall be tolled until the dispute is resolved and Licensee shall pay such resolved bill as soon as reasonably practicable thereafter.

## **8. TAXES**

Licensee shall assume and pay any and all taxes and assessments which may be levied upon the License Area to the extent such taxes and assessments are imposed directly as a result of the Utilities constructed, used and maintained by Licensee (or a sublicensee) on the Licensed Area only for so long as this License has not expired of its own terms or is not terminated by either party, and Licensee shall indemnify, defend and hold VCTC harmless therefrom.

## **9. INDEMNIFICATION / LIABILITY**

(a) To the fullest extent permitted by law, Licensee, shall indemnify, defend and hold harmless VCTC, its officers, officials, employees and agents, and Sierra Northern Railway its officers, agents, and employees (collectively, with VCTC, the "VCTC Parties") from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense, (collectively "Liabilities") to the extent resulting from or arising directly from the installation, use, maintenance, repair or removal of the Utilities by Licensee or its authorized sublicensees or Licensee's or its authorized sublicensees' breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of VCTC Parties. Licensee obligations under this Section shall survive termination of this Agreement.

(b) In the event of a claim, VCTC: (i) shall promptly provide the Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the Licensee; and (iii) shall fully cooperate with the Licensee in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve Licensee of its indemnity obligation, except (1) to the extent the Licensee can show it was prejudiced by the delay; and (2) the Licensee shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

## **10. CONTAMINATION INDEMNIFICATION**

(a) For the purposes of this Section 10: "Contamination" means the presence of any chemical, compound, material, substance, or other matter that (i) is a flammable, corrosive, explosive, hazardous, toxic or regulated material, substance, or waste, or other injurious or potentially injurious material, whether injurious itself or in combination with other materials, (ii) is controlled, designated in or governed by any Environmental Law, or (iii) gives rise to any reporting, notice, or publication requirements or remediation obligation under any applicable Environmental Law; "Environmental Law" means any applicable federal, state, local or tribal statute, law, rule, regulation, ordinance, or any governmental, administrative, or judicial order, decree, directive, or decision, or any other requirement of any governmental authority, pertaining to the protection of the environmental or health and safety that may now be in effect or which may be enacted,

adopted, or made effective at a future date; "Losses" means any claims, obligation, payment, fines, demands, causes of action, suits, judgments, damages, settlement, compensation, loss contingency, lien, debts, costs, expenses, losses, penalties, stipulated penalties, and liability of any kind, alleged by any person or entity or any governmental authority, including bodily injury and property damage and consequential damages awarded to a third party against VCTC Parties.

(b) To the fullest extent permitted by law, Licensee, each for itself and on behalf of its successors and assigns, shall and hereby agrees to defend, hold harmless, and indemnify the VCTC Parties from and against any and all Losses arising out of, or related to, the discovery, presence, release, use, exacerbation, discharge, storage, generation, manufacture or disposal of any Contamination related to Licensee's use of the License Area or construction, installation, use, maintenance and removal of the Utilities, including all Losses arising out of, or related to, any violation on, upon or within the area covered by this License of any applicable Environmental Law and Losses that would not have arisen, but for, Licensee's use of the License Area or construction, installation, use, maintenance and removal of the Utilities. Licensee obligations under this Section shall survive termination of this Agreement.

## **11. MINIMUM SCOPE AND LIMIT OF INSURANCE**

Licensee, before beginning any activities under this Agreement, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for as long as the License granted herein remains in existence covering Licensee's and its authorized sublicensee's actions and omissions. A program of self-insurance may be used to satisfy the coverage amounts and requirements of this section, upon the provision of evidence satisfactory to VCTC that such self-insurance program meets the following coverage amounts and requirements:

- 11.1 Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Licensee with limits of not less than one million dollars (\$1,000,000.00) per accident as required under applicable law.
- 11.2 Commercial General and Automobile Liability Insurance; Professional Liability
  - 11.2.1 Commercial General Insurance. Commercial general liability insurance, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations or activities of Licensee. The policy shall provide a minimum limit of \$5,000,000 per occurrence/\$10,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.
  - 11.2.2 Automobile Liability. Automobile liability insurance form CA 0001 (current edition) covering any loss or liability, including the cost of defense of any action, arising from

the operation, maintenance or use of any vehicle pursuant to this Agreement, whether or not owned by the Licensee, on or off VCTC License Area. The policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

11.2.3 General Liability/Umbrella Insurance. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

11.2.4 Professional Liability (Errors and Omissions) Insurance by the professional consultants of Licensee, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000.

11.3 All Policies Requirements.

11.3.1 Verification of coverage. Licensee, prior to beginning any activities under this License, shall provide VCTC with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 11.2 adding the VCTC, its officers, agents, and employees, and Sierra Northern Railroad, its officers, agents, and employees, as additional insureds and declaring such insurance primary in regard to work performed pursuant to this Agreement.

11.3.2 Notice of Reduction in or Cancellation of Coverage. Licensee shall provide at least thirty (30) days prior written notice to VCTC of any reduction in scope or amount, cancellation, or modification adverse to VCTC of the policies referenced in Section 11.

11.3.3 Higher Limits. If Licensee maintains higher limits than the minimums specified herein, then VCTC shall be entitled to coverage for the higher limits maintained by Licensee.

11.4 Waiver of Subrogation. Licensee agrees to waive subrogation which any insurer of Licensee may acquire from Licensee by virtue of the payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of VCTC for all work performed by Licensee and its employees, agents and contractors.

11.5 Additional Insurance Obligation. Licensee shall be solely responsible for ensuring that all equipment, vehicles and other items utilized or operated in the performance of their activities pursuant to this Agreement are and remain covered by the policies referenced in Section 11. Licensee shall also ensure that all workers involved in the performance of the activities under this License are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law.

11.6 Self-Insured Retention. If any of the insurance policies required under this Agreement includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments

of the self-insured retention by others, including additional insureds or insurers, do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this Agreement so as to not prevent any of the parties to this Agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability.

## **12. EFFECTIVE DATE AND TERM**

- (a) This License shall become and be effective as of the Effective Date set forth above.
- (b) This Agreement shall remain in force for a duration of fifty (50) years from the Effective Date with two (2) five-year extensions that may be exercised by mutual agreement of the parties in writing.

## **13. TERMINATION**

- (a) This Agreement shall be terminated at the expiration of its term in accordance with Section 12(b). Upon expiration, Utilities *in situ* shall be deemed abandoned in place and Licensee shall have no obligation to remove the Utilities or restore the License Area; provided, however, if any governmental or regulatory body orders the removal of the Utilities within twenty-five (25) years following the expiration or earlier termination of this Agreement, Licensee shall remove the Utilities and restore the License Area at Licensee's cost.
- (b) This Agreement may be terminated upon written, mutual agreement by both parties. Ownership of Utilities upon mutual termination shall be determined and negotiated by both parties as part of the termination agreement.
- (c) If Licensee shall fail to perform any of the material terms or conditions of this License and, if such failure continues for a period of ninety (90) days after receipt of written notice of such failure is received by Licensee from VCTC, then such failure shall be an "Event of Default" under this License, and VCTC may terminate this License upon ninety (90) calendar days advance notice; provided, however, that it shall not be deemed an "Event of Default" under this License if the Licensee commences to cure such failure within said ninety (90) day period and thereafter diligently prosecutes such cure to completion.

## **14. PERMITS AND APPROVALS**

Licensee, at its sole risk, cost and expense, shall obtain all permits and approvals which may be necessary or appropriate for the activities contemplated under this Agreement and shall comply with all federal, state and local laws, and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of VCTC. Licensee agrees to forward copies of any permits or approvals to the VCTC, upon request. Licensee agrees to indemnify, defend and hold harmless VCTC therefrom.

## **15. SALE OR ABANDONMENT BY VCTC**

If VCTC plans to abandon, convey, transfer or sell any part of its Right of Way which is subject to this Agreement, VCTC shall give reasonable prior notice to Licensee of such proposed abandonment, conveyance, transfer, or sale. In each case VCTC shall preserve the rights of Licensee under this Agreement. Any transfer deed or other instrument of conveyance shall reference this Agreement, and such transferee shall take the Right of Way subject to, and assume and agree to be bound by, the terms of this Agreement.

## **16. SUCCESSORS**

This License shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, successors and assigns. The permission and License hereby afforded shall be the personal privilege of Licensee, and no assignment or transfer thereof by operation of law or voluntary act of Licensee shall be made, or other use of License Area permitted as herein provided, except as authorized herein, without the prior written consent of VCTC, which may not be unreasonably withheld, conditioned or delayed.

## **17. WAIVER**

The waiver by any party of any breach of any term, covenant, obligation or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or a waiver of any other term, covenant, obligation or condition herein contained.

## **18. NOTICES**

- (a) Every notice, approval, consent, or other communication desired or required under this License shall be effective only upon receipt and only if the same shall be in writing and sent postage prepaid by overnight mail or United States registered or certified mail (or a similar mail service available at the time), directed to the other party at its address as follows (or such other address as either party may designate by notice given from time to time in accordance with this Section):

If to VCTC:

Ventura County Transportation Commission  
Attn: Martin Erickson, Executive Director  
751 E. Daily Drive, Suite 420  
Camarillo, CA 93010

If to Licensee:

Ventura County Information Technology Services  
Attn: Chief Information Officer  
800 S. Victoria Avenue

Ventura, CA 93003

## **19. ENTIRE AGREEMENT**

The entire agreement between VCTC and Licensee pertaining to the License Area is set forth in this License and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise other than as set forth in this License. No change or modification of any of the terms, obligations or provisions hereof shall be valid unless in writing and signed by the parties hereto.

## **20. PARTIAL INVALIDITY**

If any term, obligation or condition of this License or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment or award which shall not be subject to change by appeal, then the remainder of this License or the application of such term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant and condition of this License shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each agreement, obligation and other provision of this License is and shall be deemed and construed as a separate and independent obligation of the party bound by, undertaking or making the same, and not dependent on any other provision of this License unless expressly so provided.

## **21. THIRD PARTY BENEFICIARY**

Except for any authorized sublicensees, nothing contained in this License shall be construed as to confer upon any other party the rights of a third-party beneficiary.

## **22. GOVERNING LAW**

This License and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of California with venue in the County of Ventura.

## **23. EXHIBITS AND ADDENDA**

The Recitals set forth above and the following Exhibits are incorporated as a term of this Lease:

- |           |  |
|-----------|--|
| Exhibit A | Utilities – Conceptual Design for Fiber Optic Route    |
| Exhibit B | License Area—Depiction and Description of License Area |
| Exhibit C | Dark Fiber Path  |
| Exhibit D | Service Level Agreement for VCTC Fibers                |

## **24. HEADINGS**

Section headings are inserted for convenience only and shall not affect the construction or interpretation of this License.

## **25. FORCE MAJEURE**



The time for performance by Licensee or VCTC of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Licensee or VCTC, as the case may be.

Signatures on the following page

IN WITNESS THEREOF, the said parties hereto have caused this License to be duly executed and delivered as of the day and year first above written.

VCTC:

LICENSEE:

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By: Martin R. Erickson

Its: Executive Director

Date:

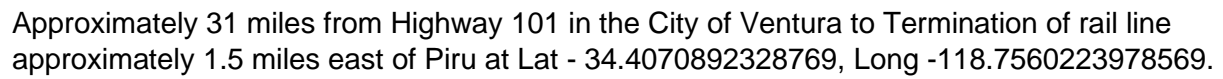
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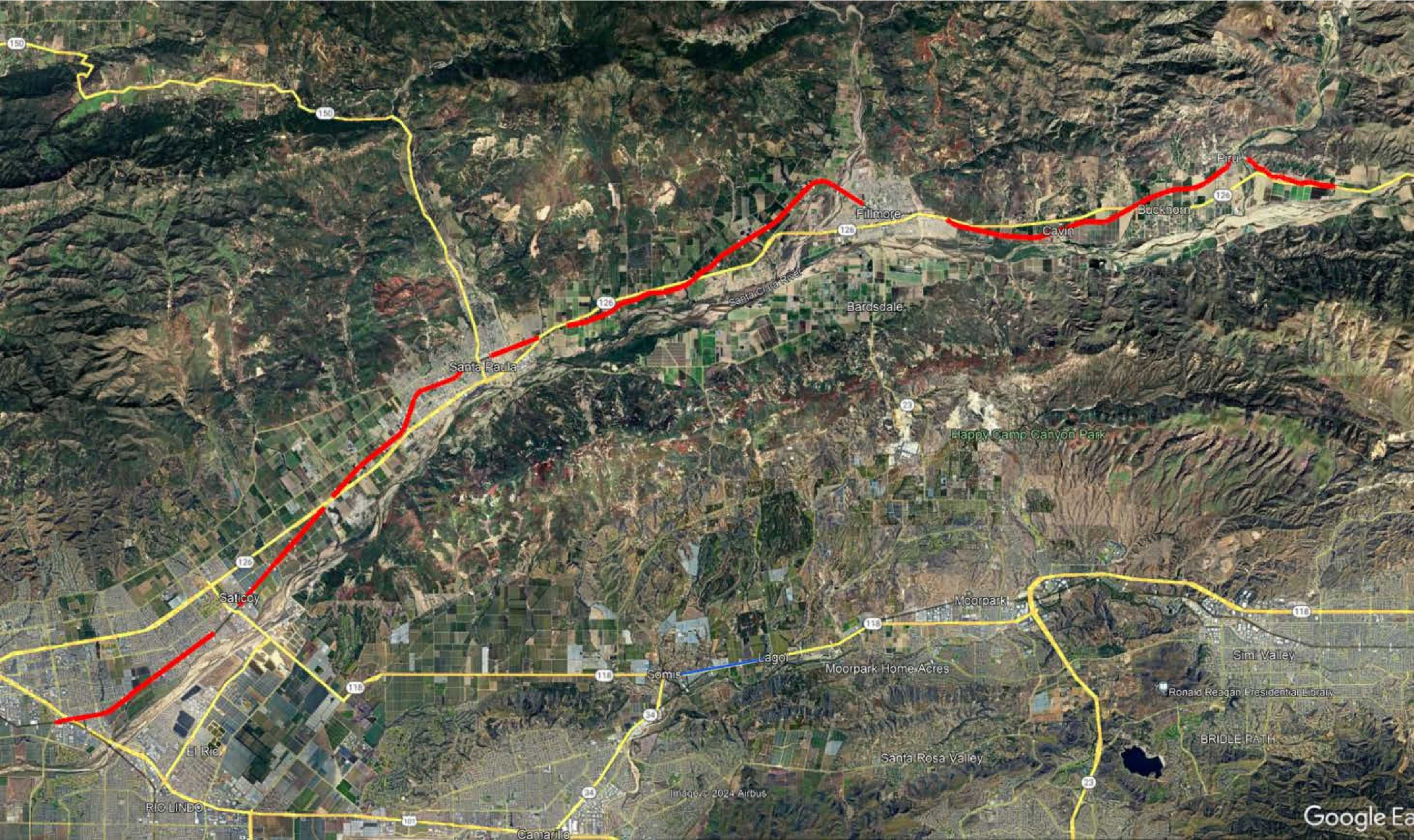
Date:

## Utilities – Conceptual Design for Fiber Optic Route



## **EXHIBIT B License Area**

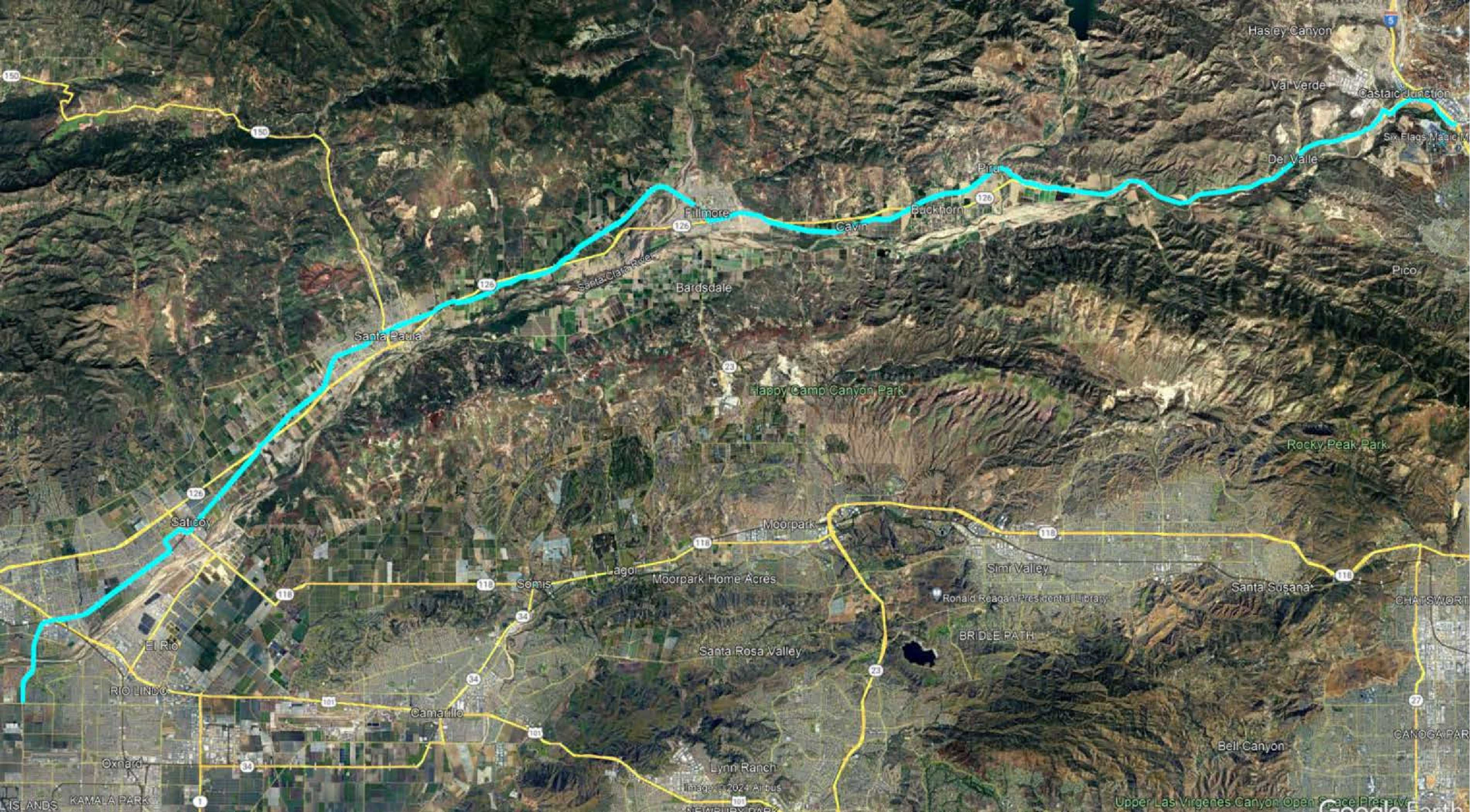






## **EXHIBIT C Dark Fiber Path**





Hasley Canyon

Val Verde

Castaic Junction

Six Flags Magic Mountain

De Valle

Pico

Buckhorn

Cavin

Fillmore

126

Bardsdale

Santa Clara River

126

Santa Paula

23

Happy Camp Canyon Park

Rocky Peak Park

126

Salton

110

El Rio

ROLINDO

110

Somis

34

Lago

Moorpark Home Acres

110

Moorpark

110

Simi Valley

Ronald Reagan Presidential Library

BRIDLE PATH

Santa Rosa Valley

34

Camarillo

101

Oxnard

KAMALA PARK

Lynn Ranch

Images © 2024 Airbus

101

NEWBURY PARK

Bell Canyon

CANOGA PARK

27

CHATSWORTH

Santa Susana

110

Upper Las Virgenes Canyon Open Space Preserve

Google Earth



## **EXHIBIT D Service Level Agreement Template for VCTC Strands**



## STANDARD TERMS AND CONDITIONS FOR ENTERPRISE SERVICES

### ARTICLE 1 – INTRODUCTION; DOCUMENTS COMPRISING AGREEMENT

1.1 Introduction. Astound Business Solutions, LLC and its Affiliates (collectively, “**Provider**”) provide various facilities-based communications services, including Ethernet transport, dedicated Internet access, voice over fiber, hosted voice, dark fiber, wavelength, colocation and related services (as applicable, the “**Services**”). These Standard Terms and Conditions for Enterprise Services (these “**T&Cs**”) may be incorporated by reference into one or more Service Orders that are executed by and between Provider and the customer specified in such Service Order(s) (“**Customer**”). When so incorporated, these T&Cs together with the applicable Service Order(s) shall be collectively referred to as the “**Agreement**” between Provider and Customer and shall govern Provider’s provision of Services to Customer. For purposes of the Agreement, the term “**Affiliate**” shall mean any other person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the first person or any of its subsidiaries. Affiliates of Astound Business Solutions, LLC include, but are not limited to (i) RCN Telecom Services, LLC, (ii) Grande Communications Networks, LLC, and (iii) Wave Business Solutions, LLC. Each of Provider and Customer may be referred to in the Agreement as a “**Party**” and together as the “**Parties**.”

1.2 Service Orders. The purchase of Services shall be accomplished only through the negotiation and mutual execution and delivery of a Service Order memorializing the terms and conditions pursuant to which Provider shall provide the desired Services to Customer. Service Orders shall clearly specify the following: (i) the type of Service at issue (e.g., Internet access, data transport, VoIP, dark fiber, etc.); (ii) the location(s) at which the Service is to be provided (each, a “**Service Site**”); (iii) the initial term of the Service Order (the “**Initial Service Term**”); (iv) the pricing for the Service, including (a) the monthly recurring charges (“**MRC**”) for the Service, and (b) any non-recurring charges (“**NRC**”) associated with installation of the Service; and (v) any other terms or conditions specific to the particular Service Order. Depending on the location of the Service Site, in some instances Services may be provided by an Affiliate of Provider.

1.3 Additional Documents Comprising Agreement; Order of Precedence. The Service Level Agreements attached to these T&Cs as Exhibits (together, the “**SLA**”) constitute a part of these T&Cs. Customer’s use of any Services purchased pursuant to the Agreement will also be governed by Provider’s Acceptable Use Policy for Commercial Services (the “**AUP**”) which is posted on Provider’s website at <http://www.astound.com/business/aup>. Additional provisions that are applicable only to specific types of Services are contained in Provider’s Service-Specific Terms and Conditions (the “**Service-Specific T&Cs**”) which is posted on Provider’s website at <http://www.astound.com/business/service-terms>. In the event of a conflict between the provisions of any of the foregoing documents, the documents shall have the following order of precedence unless expressly stated otherwise in a particular Service Order: (i) these T&Cs (including the SLA); (ii) the applicable Service Order; (iii) the AUP; and (iv) the Service-Specific T&Cs.

### ARTICLE 2 – TERM AND RENEWAL

The Initial Service Term of each Service Order shall be as specified in the Service Order. Upon expiration of the Initial Service Term of a Service Order, unless either Party terminates the Service Order by giving written notice of termination to the other Party not less than thirty (30) days prior to the end of the Initial Service Term, the Service Order will automatically renew for successive periods of one (1) year (each, a “**Renewal Term**”). During any Renewal Term for a Service Order, either Party may terminate the Service Order at the end of the then-current Renewal Term by giving written notice of termination to the other Party not less than thirty (30) days prior to the end of the then-current Renewal Term. Written notice of termination by Customer must be given to Provider by completing and submitting the online “Change of Service” form on the Astound Business Solutions website located at <http://www.astound.com/business/support/macd>. The total period of time a Service Order is in effect is referred to as the “**Service Term**” for the Service Order at issue.

### ARTICLE 3 – INSTALLATION, TESTING, ACCEPTANCE AND USE

3.1 Service Site; Demarcation Points; Equipment. Unless a Service Site is within Provider’s control, Customer shall provide

Provider with access to the Service Site as and to the extent reasonably necessary for Provider to install, test, inspect and maintain the Service(s) ordered during the Service Term. Unless otherwise stated in a Service Order: (i) Provider shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the “**Provider Equipment**”) necessary to connect Provider’s network facilities to the Customer demarcation point(s) at the Service Site (the “**Demarcation Point(s)**”); and (ii) Customer shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the “**Customer Equipment**”) from the Demarcation Point(s) to Customer’s internal network. Unless a Service Site is within Provider’s control, Customer shall be responsible for maintaining appropriate conditions at the Service Site, including HVAC, electrical power, and security. Title to the Provider Equipment shall at all times remain vested in Provider. Customer shall not re-arrange, disconnect, tamper with, attempt to repair, or otherwise interfere with the Provider Equipment, nor shall Customer permit any third party to do so.

3.2 Testing, Acceptance and Service Commencement Date. Provider shall use commercially reasonable efforts to install the Services consistent with Provider’s usual and customary installation timeline, and shall endeavor to keep Customer regularly informed regarding installation progress. Provider shall notify Customer when a Service has been installed and is ready for testing and use. Customer may, at Customer’s option, participate in Provider’s final testing of the Service. For Services having a committed bandwidth, the committed information rate shall be measured at the Ethernet layer and includes the Ethernet frame itself. The Initial Service Term for the Service at issue shall commence on the date on which the Service has been installed, tested and is active and available for use by Customer (the “**Service Commencement Date**”). Customer shall have a period of five (5) business days after the Service Commencement Date in which Customer may notify Provider that the Service at issue is not functioning properly. If Customer notifies Provider of problems with a Service pursuant to this Section 3.2, Provider shall investigate and correct same and the Service Commencement Date shall be revised to be the first calendar day after the date on which Provider has corrected the problems. Unless Customer delivers notification of problems to Provider within the time period set forth above, Customer shall be deemed to have accepted the Service at issue and to have confirmed that the Service has been installed and is functioning properly as of the Service Commencement Date.

3.3 No Sub-Licensing; Non-Compete. Any Services provided to Customer pursuant to the Agreement are for the sole benefit of Customer. Customer shall not grant to any third party the right to use any of the Services, regardless of whether such grant were to take the form of a license, sublicense, lease, sublease, or any other form. Nor shall Customer use the Services for commercial purposes that are competitive with Provider’s business (e.g., use the Services to sell Internet access services, point-to-point data transport services, VoIP services, etc., to third parties within Provider’s service area).

#### **ARTICLE 4 – PAYMENT AND BILLING**

4.1 Invoicing. All amounts owed by Customer to Provider under the Agreement shall be collectively referred to as “**Fees**.” Provider shall begin billing Customer for the MRC applicable to a Service as of the Service Commencement Date. Invoices shall be delivered monthly, and shall be paid by Customer within thirty (30) days of receipt. Fixed Fees shall be billed in advance and usage-based Fees shall be billed in arrears. Fixed fees for any partial month shall be pro-rated. For Services having an NRC, unless otherwise stated in the Service Order, Provider shall invoice Customer for the NRC upon full-execution of the Service Order. Except for amounts disputed in good faith by Customer pursuant to Section 4.2 below, past due amounts shall bear interest in the amount of 1.5% per month, or the highest amount allowed by law, whichever is lower.

4.2 Disputed Invoices. If Customer in good faith disputes any portion of a Provider invoice, Customer shall pay the undisputed portion of the invoice and submit written notice to Provider regarding the disputed amount, which notice shall include documentation supporting the alleged billing error (each such notice, a “**Fee Dispute Notice**”). A Fee Dispute Notice must be submitted to Provider within thirty (30) days from the date the invoice at issue is received by Customer. Customer waives the right to dispute any Fees not disputed within such thirty (30) day period. The Parties shall negotiate in good faith to attempt to resolve any such disputes within sixty (60) days after Customer’s delivery of the applicable Fee Dispute Notice. Fee disputes unresolved within that time period shall be resolved by the mediation and arbitration procedures set forth in Sections 11.3 and 11.4 below.

4.3 Applicable Taxes. All charges for Services set forth in Service Orders are exclusive of Applicable Taxes (as defined below). Except for taxes based on Provider’s net income or taxes for which Customer possesses a valid exemption certificate,

Customer shall be responsible for payment of all applicable taxes and regulatory fees, however designated, that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, or other taxes, fees, assessments, duties, charges or surcharges, that are imposed on, incident to, or based upon the provision, sale, or use of the Service(s) (collectively “**Applicable Taxes**”). The Applicable Taxes will be individually identified on invoices. If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Provider with a valid exemption certificate (in a form reasonably acceptable to Provider). Provider will give prospective effect to any valid exemption certificate provided in accordance with the preceding sentence.

## ARTICLE 5 – DEFAULT AND REMEDIES

5.1 Customer Default. Each of the following shall constitute a default by Customer under the Agreement (each a separate event of “**Default**”): (i) if Customer fails to pay any undisputed Fees when due, the failure of Customer to cure same within ten (10) days after receiving written notice from Provider regarding such failure to pay; (ii) if Customer fails to comply with any other material provision of the Agreement, the failure of Customer to cure same within thirty (30) days of receiving written notice from Provider regarding such non-compliance; or (iii) if Customer files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.2 Remedies for Customer Default. In the event of a Default by Customer under the Agreement, Provider may, at its option: (i) suspend any applicable Services until such time as the Customer Default has been corrected (provided, however, that any suspension shall not relieve Customer’s on-going obligation to pay Provider all Fees and other amounts due under the Agreement as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and/or the applicable Service Order(s); (iii) after the occurrence of any two Customer Defaults in any twelve (12) month period, terminate all Service Orders entered into with Customer; and/or (iv) pursue any other remedy available to Provider under the Agreement or applicable law. In the event of early termination for Customer Default pursuant to this Section 5.2, Customer shall pay to Provider the Termination Charge described in Section 6.3 below.

5.3 Provider Default. Each of the following shall constitute a Default by Provider under the Agreement: (i) if Provider fails to comply with any material provision of the Agreement other than provisions of the SLA, the failure by Provider to cure same within thirty (30) days of receiving written notice from Customer regarding such non-compliance; or (ii) Provider files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.4 Remedies for Provider Default. In the event of a Default by Provider under the Agreement Customer may, at its option: (i) terminate the applicable Service(s) and/or the applicable Service Order(s); and/or (ii) pursue any other remedy available to Customer under the Agreement or applicable law. Early termination by Customer shall be accomplished by providing termination notice to Customer’s account manager and to the notice address specified in Article 13 below. In the event of early termination for Provider Default pursuant to this Section 5.4, Provider shall reimburse Customer for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Service Order(s), and Customer shall have no further liability to Provider for the terminated Service(s) and/or Service Order(s). Early termination by Customer pursuant to this Section 5.4 shall not relieve Customer of its obligations to pay all Fees incurred prior to the early termination date.

## ARTICLE 6 – EARLY TERMINATION & PORTABILITY

6.1 Early Termination for Customer Convenience. Customer may, at any time after executing a Service Order, discontinue one or more of the Services ordered and/or terminate the Service Order by giving at least thirty (30) days’ advance written notice to Provider by completing and submitting the online “Change of Service” form on the Astound Business Solutions website located at <http://www.astound.com/business/support/macd>. Any early termination of a Service pursuant to this Section 6.1 shall be referred to as “**Termination for Customer Convenience**.” In the event of Termination for Customer Convenience, Customer shall pay to Provider the Termination Charge described in Section 6.3 below.

6.2 Early Termination for Default. In accordance with Article 5 above, either Party may elect to terminate one or more Service Orders prior to the scheduled expiration date in the event of an uncured Default by the other Party.

6.3 Termination Charge. In the event of Termination for Customer Convenience pursuant to Section 6.1 above, or termination for Customer Default pursuant to Section 5.2 above, Customer shall pay a Termination Charge to Provider. The “**Termination Charge**” shall equal the sum of the following: (i) all unpaid amounts for Services actually provided prior to the termination date; (ii) any portion of the NRC for the terminated Service(s) that has not yet been paid to Provider; (iii) with respect to off-net Services only, any documented cancellation or termination charges or fees imposed on Provider by any third party in connection with the early termination of the Services; and (iv) one hundred percent (100%) of all remaining MRCs Customer was to pay Provider for the Service during the remainder of the applicable Service Term. If incurred, the Termination Charge will be due and payable by Customer within thirty (30) days after the termination date of the Service at issue. Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider’s actual damages and is not a penalty.

6.4 Portability; Substitution of Services. At any time during the Service Term of a Service Order, Customer may elect to substitute new Services for then-existing Services. In such event, Provider will waive the Termination Charge associated with the termination of the then-existing Services as long as: (i) the Fees payable to Provider in connection with the substitute Services are equal to or greater than the Fees of the discontinued Services; (ii) Customer commits to retain the substitute Services for a period equal to or greater than the remainder of the Service Term for the discontinued Services; (iii) Customer pays all applicable installation and other NRCs, if any, for provision of the substitute Services; and (iv) Customer reimburses Provider for all reasonable and documented engineering, installation and construction costs associated with the discontinued Services, calculated on a time and materials basis, that have not already been recovered by Provider by the time of the substitution.

## ARTICLE 7 – CONFIDENTIAL INFORMATION

7.1 Definition of Confidential Information. “**Confidential Information**” shall mean all information, including the Agreement, regarding the telecommunications needs of Customer and the Services that Provider offers under the Agreement which is disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”), to the extent that such information is marked or identified as confidential or proprietary or would be reasonably deemed confidential or proprietary given the circumstances surrounding its disclosure. All written or oral pricing and contract proposals, as well as network maps or diagrams exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. The fact that Customer is a customer of Provider shall not be deemed Confidential Information and may be freely disclosed by either Party. Information shall not be deemed Confidential Information if (i) it is independently developed by or for the Receiving Party, (ii) it is lawfully received by the Receiving Party free of any obligation to keep it confidential, (iii) it becomes generally available to the public other than by breach of the Agreement, or (iv) it was known to the Receiving Party prior to the Disclosing Party’s disclosure of same.

7.2 Obligations Regarding Confidential Information. Confidential Information is the property of the Disclosing Party and shall be returned to the Disclosing Party upon request. The Receiving Party shall hold all Confidential Information in confidence. The Receiving Party: (i) shall use such Confidential Information only for the purposes of performing its obligations and/or enforcing its rights under the Agreement; (ii) shall reproduce such Confidential Information only to the extent necessary for such purposes; (iii) shall restrict disclosure of such Confidential Information to employees, contractors, advisors or consultants that have a need to know for such purposes (with disclosure to contractors, advisors and consultants being limited to contractors, advisors and consultants that have signed a non-disclosure agreement to protect the Confidential Information of third parties); (iv) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in the Agreement or as required by law, by court order, by administrative order of an agency having jurisdiction, or in the enforcement of its rights under the Agreement; and (v) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information. In the event a Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, court order or administrative order of an agency having jurisdiction, the Receiving Party will, if such notice is permitted by law, notify the Disclosing Party of the required disclosure with sufficient time for the Disclosing Party to seek judicial relief from the required disclosure, and reasonably cooperate with the Disclosing Party in any efforts the Disclosing Party may take to obtain protective measures in respect to the required disclosure. The Parties agree that breach of this Article 7

may cause irreparable injury for which monetary damages are not an adequate remedy; accordingly, each Party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this Article 7.

#### ARTICLE 8 – LIMITATION OF LIABILITY

8.1 General Limitations. Provider shall not be liable for any loss or damage occasioned by a Force Majeure Event. Except as expressly provided to the contrary elsewhere in the Agreement, Provider's aggregate liability for any and all causes and claims arising under the Agreement, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by Customer; or (ii) an amount equivalent to the total MRC received by Provider from Customer for the Service(s) at issue during the preceding twelve (12) month period.

8.2 Service Level Agreement. Should Provider fail, on any one or more occasions, to deliver any one or more Services to Customer in accordance with all of the terms and conditions contained in the applicable SLA, Customer's sole and exclusive remedy for such failure shall be as set forth in the SLA. No such failure shall be considered a Default by Provider under the Agreement.

8.3 No Special Damages. EXCEPT FOR (i) EACH PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 7 ABOVE, (ii) EACH PARTY'S THIRD-PARTY INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 9 BELOW, AND (iii) CLAIMS ARISING FROM A PARTY'S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, ARISING OUT OF OR INCURRED IN CONNECTION WITH A PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, INCLUDING, BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, EVEN IF THE OTHER PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES.

8.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.

8.5 Assumption of Risk. PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED BY CUSTOMER THROUGH THE SERVICES, SERVICE INTERRUPTIONS ATTRIBUTABLE TO CUSTOMER'S NETWORK, ANY CUSTOMER EQUIPMENT FAILURES, OR ANY OTHER SUCH CAUSES, AND CUSTOMER USES THE SERVICES AT CUSTOMER'S OWN RISK. CUSTOMER SHALL BE RESPONSIBLE FOR THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF INFORMATION CUSTOMER TRANSMITS OR RECEIVES USING ANY SERVICES.

#### ARTICLE 9 – INDEMNIFICATION FOR THIRD PARTY CLAIMS

9.1 Indemnification by Customer. Customer shall indemnify, defend and hold Provider and its members, managers, officers, agents and employees (collectively, the "**Provider Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Provider Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Customer's negligence or willful misconduct in exercising its rights or performing its obligations under the Agreement; (ii) Customer's noncompliance with or Default under the Agreement; and/or (iii) Customer's failure to comply with applicable law in connection with its performance under the Agreement.

9.2 Indemnification by Provider. Provider shall indemnify, defend and hold Customer and its members, managers, officers, agents and employees (collectively, the "**Customer Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Customer Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Provider's negligence or willful misconduct in exercising its rights and performing its obligations under the Agreement; (ii) Provider's noncompliance with or Default under the Agreement; and/or (iii) Provider's failure to comply with applicable law in connection with its performance under the Agreement.

9.3 Indemnification Procedures for Third-Party Claims. Should any third-party claim arise under this Article 9, the indemnified



Party shall promptly notify the indemnifying Party of same in writing, and shall take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The indemnifying Party shall have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that the indemnifying party shall not take any action in defense or settlement of the claim that would negatively impact the indemnified Party without the consent of the indemnified Party. The indemnified Party shall reasonably cooperate with the indemnifying Party in the defense of the third-party claim, including making its files and personnel reasonably available to the indemnifying Party, all at the cost and expense of the indemnifying Party.

#### **ARTICLE 10 – FORCE MAJEURE EVENTS**

Neither Party shall be liable for any delay in or failure of performance hereunder (other than Customer's payment obligations under Article 4) due to causes beyond such Party's reasonable control including, but not limited to, acts of God, fire, flood, earthquake, ice storms, wind storms, or other severe weather events, explosion, vandalism, cable cut, terrorist acts, insurrection, riots or other civil unrest, national or regional emergency, unavailability of rights-of-way, a governmental authority's failure to timely act, inability to obtain equipment, material or other supplies due to strike, lockout or work stoppage, or any law, order, regulation, direction, action or request of any civil or military governmental authority (each, a **"Force Majeure Event"**). If any Force Majeure Event causes an increase in the time required for performance of any of its duties or obligations, the affected Party shall be entitled to an equitable extension of time for completion. If the delay in performance caused by the Force Majeure Event exceeds thirty (30) days, either Party may terminate the Agreement or the applicable Service Order(s) immediately on written notice to the other Party, without incurring any liability in connection with such termination.

#### **ARTICLE 11 – DISPUTE RESOLUTION**

11.1 General Provisions. Except for actions seeking a temporary restraining order or injunction, or suits to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedures set forth in this Article 11 with respect to any controversy or claim (each, a **"Dispute"**) arising out of or relating to the Agreement. All discussions occurring and documents exchanged pursuant to Sections 11.2 and 11.3 below are confidential and inadmissible for any purpose in any legal proceeding involving the Parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or mediation process.

11.2 Negotiations. Should any Dispute arise, either Party may give the other Party written notice of the Dispute (each, a **"Dispute Notice"**). The Parties shall use good faith efforts to resolve the Dispute through negotiation within thirty (30) days of the date on which the Dispute Notice is delivered. With respect to Fee disputes arising under Article 4, compliance with the negotiation procedures described in Section 4.2 shall be in lieu of the provisions of this Section 11.2. If the Parties do not resolve the Dispute within such thirty (30) day period, either of the Parties may submit the matter to non-binding mediation through a professional mediation service. Any Dispute that is not resolved by negotiation and is not submitted to mediation shall be resolved by binding arbitration pursuant to Section 11.4 below.

11.3 Mediation. If a Dispute is submitted to mediation, the Parties will cooperate in selecting a qualified mediator from a panel of neutral mediators having experience in the telecommunications and broadband internet industry. The Parties shall share equally in the costs of mediation. Any Dispute submitted to mediation that is not resolved within sixty (60) days of submitting the Dispute to mediation shall be resolved by binding arbitration as provided in Section 11.4 below.

11.4 Binding Arbitration. Any arbitration hearing shall be before a single neutral arbitrator and shall be held in the New York, New York offices of Judicial Arbitration & Mediation Services, Inc., or a similar professional dispute resolution organization. The arbitration shall be administered pursuant to the commercial arbitration rules and procedures of the American Arbitration Association. The Parties shall equally share the fees of the arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-15, not state law, shall govern the arbitrability of all disputes.

11.5 Governing Law. The Agreement and all matters arising out of the Agreement shall be governed by the laws of the State of Delaware. Any judicial action arising in connection with the Agreement shall be in the Superior Court of the State of Delaware.

in and for New Castle County, or in the Federal District Court for the District of Delaware, as applicable. Customer waives all defenses of lack of personal jurisdiction and forum non conveniens. ***Each party irrevocably waives, to the fullest extent permitted by law, trial by jury of any disputes, claims or issues arising under the Agreement.***

#### **ARTICLE 12 – ASSIGNMENT AND ASSUMPTION**

Except as otherwise provided in this Article 12, neither Party shall assign, delegate or otherwise transfer the Agreement or its obligations under the Agreement, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the necessity of obtaining the other Party's consent, assign its interest in and to the Agreement to: (i) any entity acquiring such Party, whether by merger or through purchase of substantially all the assets of such Party; (ii) a lender as an asset securing indebtedness; or (iii) an Affiliate of such party; provided, that in the event of a transfer to an Affiliate, the transferring Party shall continue to remain liable for the obligations under the Agreement.

#### **ARTICLE 13 – NOTICES**

Unless otherwise provided elsewhere in the Agreement, any notice to be given to either Party under the Agreement will be in writing. Notices to Provider shall be directed to Provider's address set forth below. Notices to Customer shall be directed to Customer's addresses set forth in the applicable Service Order. Notices will be deemed received (i) the next business day, when sent by reliable, commercial overnight courier; (ii) three (3) business days after being sent by certified mail, postage prepaid and return receipt requested; (iii) when actually received, if sent by email during the business hours of 9:00 a.m. to 5:00 p.m. (recipient's time). Notices received after 5:00 p.m. (recipient's time) will be effective the next business day.

**Provider's Address for Notices:**

Astound Business Solutions, LLC  
650 College Road East, Suite 3100  
Princeton, NJ 08540  
ATTN: Business Solutions

**With a Copy to:**

Astound Business Solutions, LLC  
650 College Road East, Suite 3100  
Princeton, NJ 08540  
ATTN: Legal Department

Either Party may change its notice address by giving notice to the other Party in accordance with this Article.

#### **ARTICLE 14 – REPRESENTATIONS AND COVENANTS**

Each Party represents and covenants to the other as follows: (i) the execution and delivery of the Agreement and the performance of its obligations hereunder have been duly authorized; (ii) the Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms; (iii) to the best of its knowledge and belief, it is in material compliance with all laws, rules and regulations and court and governmental orders related to the operation of its business; and (iv) it shall comply with all applicable laws and regulations when exercising its rights and performing its obligations under the Agreement.

#### **ARTICLE 15 – MISCELLANEOUS**

15.1 Entire Agreement; Interpretation. The Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. The Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party. The Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of the Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties. If any provision of the Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of the Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect.

15.2 No Waiver. No failure by either Party to enforce any rights hereunder will constitute a waiver of such rights. Nor shall a waiver by either Party of any particular breach or default constitute a waiver of any other breach or default or any similar future breach or default. Provider's acceptance of any payment under the Agreement will not constitute an accord or any other

form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Provider for additional amounts due from Customer.

15.3 Attorneys' Fees. If any proceeding is brought by a Party to enforce or interpret any term or provision of the Agreement, the substantially prevailing Party in such proceeding will be entitled to recover, in addition to all other relief as set forth in the Agreement, that Party's reasonable attorneys' and experts' fees and expenses.

15.4 Relationship; No Third Party Beneficiaries. The Agreement is a commercial contract between Provider and Customer and the relationship between the Parties is that of independent contractors. Nothing in the Agreement creates any partnership, principal- agent, employer-employee or joint venture relationship between the Parties or any of their Affiliates, agents or employees for any purpose. The Agreement is for the sole benefit of Provider and Customer and is not intended to confer any rights on any other person; there are no third party beneficiaries of the Agreement.

15.5 Exhibits. The following Exhibits, which are attached to these T&Cs, are incorporated herein and by this reference made a part of these T&Cs:

- EXHIBIT A - Service Level Agreement for Lit Fiber Services
- EXHIBIT B - Service Level Agreement for Dark Fiber & Wavelength Services

15.6 Computation of Time. Except where expressly provided to the contrary, as used in the Agreement, the word "day" shall mean "calendar day," and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified in the Agreement. If the final date of any period of time set out in any provision of the Agreement falls upon a Saturday or a Sunday or a legal holiday, then in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in the Agreement, the term "business day" shall mean a day that is not a Saturday, Sunday or a legal holiday.

15.7 Counterparts; Electronic Signatures. Any Service Order entered into by the Parties pursuant to these T&Cs may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument. Any executed documents sent to the other Party in portable document format (pdf) images via email will be considered the same as an original document. The Parties consent to the use of electronic signatures.

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**EXHIBIT A**  
**to**  
**Standard Terms and Conditions for Enterprise Services**

**Service Level Agreement for Lit Fiber Services**

This Service Level Agreement for Lit Fiber Services (this “SLA”) is a part of is a part of Astound Business Solutions, LLC’s (“Astound’s”) Standard Terms and Conditions for Enterprise Services (“T&Cs”). Unless otherwise provided in the applicable Service Order, this SLA applies to the following types of lit fiber Services provided by Astound pursuant to the T&Cs: (a) dedicated Internet access services, (b) Ethernet transport services, and (c) voice services, including hosted voice.

**1. AVAILABILITY SLA**

Astound’s Network is designed to provide a target **Availability of at least 99.99%** per month. If the Availability target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Availability	Duration of Service Outage	Customer Credit as % of MRC for the applicable Circuit*
<b>99.99% Availability</b>	Less than 4 minutes 20 seconds	Target Met
	4 min. 20 sec. up to 2 hours	5%
	> 2 hour up to 6 hours	10%
	> 6 hours up to 12 hours	20%
	> 12 hours up to 24 hours	35%
	> 24 hours	50%

\*Customer credits for Unavailability are calculated on an individual circuit basis, and the amount of any credit is based on the portion of MRC allocable to the affected circuit.

**2. MEAN TIME TO RESTORE (“MTTR”) SLA**

In the event of Outages in Services due to failure or malfunction of the Astound Network or Astound Equipment, Astound’s CNOC is designed to provide a **MTTR of 6 hours or less**. If the target MTTR is not met for a particular circuit in a given calendar month, and Customer receives a Service from Astound on the circuit at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Circuit
<b>6 hr MTTR</b>	≤ 6 Hrs.	Target Met
	> 6 Hrs. to 10 Hrs.	5%
	> 10 Hrs. to 18 Hrs.	10%
	> 18 Hrs.	20%

**3. PACKET DELIVERY/PACKET LOSS SLA**

The Astound Network is designed to provide **no greater than 0.1% Packet Loss**. If the Packet Loss target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA. Customer credits for average monthly Packet Loss are calculated on an individual circuit basis, and the amount of any credit is based on the portion of MRC allocable to the affected circuit.

Target Maximum Packet Loss	Actual Packet Loss (lower end – upper end)	Customer Credit as % of MRC for the applicable Circuit
<b>≤ 0.1% Packet Loss</b>	0% - 0.1%	Target Met
	> 0.1% - 0.4%	5%
	> 0.4% - 0.7%	10%
	> 0.7% - 1.0%	25%
	> 1.0%	50%

#### 4. LATENCY SLA

The Astound Network is designed to provide a monthly average one-way Latency not to exceed the following:

- For “Local Market” distances of ≤ 75 miles = 10 ms
- For “Inter-Market” distances of between 76 – 750 miles = 20 ms
- For “Long-Haul” distances of > 750 miles = 50 ms

If the applicable Latency target is not achieved in a given month and Astound does not remedy the problem within fifteen (15) calendar days from the date on which Customer opens a Trouble Ticket with the Astound CNOC regarding excessive Latency, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Local Market Latency	Target Inter-Market Latency	Target Long-Haul Latency	Actual One-Way Latency (lower end - upper end)	Customer Credit as % of MRC for the applicable Circuit
<b>10 ms or less</b>	<b>20 ms or less</b>	<b>50 ms or less</b>	≤ Target Latency	Target Met
			> Target up to 8 ms over Target	5%
			> 8 ms up to 15 ms over Target	10%
			> 15 ms up to 20 ms over Target	25%
			> 20 ms over Target	50%

#### 5. NETWORK JITTER SLA

The Astound Backbone Network is designed to have a monthly average one-way Network Jitter not to exceed the following:

- For Local Market distances of ≤ 75 miles = 2 ms
- For Inter-Market distances of between 76 – 750 miles = 5 ms
- For Long-Haul distances of > 750 miles = 15 ms

If the applicable Network Jitter target is exceeded in a given calendar month, Customer will be entitled to a credit of 1/30<sup>th</sup> of the MRC of the affected circuit for that month for each full 1ms of Network Jitter above the Network Jitter target set forth above. Any such credit must be claimed as described in this SLA.

#### 6. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different circuit/path for the Service and circuit/path that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the circuit/path that experienced the Chronic Outage without incurring any Termination Charge.

#### 7. DEFINITIONS

For purposes of this SLA the following terms shall have the meanings set forth below.

“Astound Backbone Network” means Astound’s core fiber backbone that connects Astound’s POPs and regional hubs.

“Astound’s Commercial Network Operations Center” or “Astound’s CNOC” means Astound’s commercial network operations center, which is staffed 24x7x365.

“Astound Network” means all equipment, facilities and infrastructure that Astound uses to provide Services to Customer, and includes Customer’s access port. The “Astound Network” does not include Customer owned or leased equipment (unless leased from Astound), or any portion of Customer’s local area network after the demarcation point for the Services provided by Astound.

“Availability” means the ability of Customer to exchange Ethernet packets with the Astound Network via Customer’s router port. Availability is measured in minutes of uptime over the calendar month during which the Services are Available:

$$\begin{array}{lcl} \% \text{ Availability} & = & \frac{(\text{Total Minutes in Month} - \text{Total Minutes of Unavailability in Month})}{\text{Total Minutes in Month}} \\ \text{(per calendar month)} & & \end{array}$$

For Ethernet Transport Services and VoIP Services, Availability is calculated at the individual circuit level, between Astound’s Backbone Network and the Customer’s router port. For Dedicated Internet Access Services, Availability is calculated from the Customer’s router port through the Astound Network to the handoff point for the Internet. Dedicated Internet Access Service Availability does not include the availability of the Internet itself or any particular Internet resource. Periods of Excused Outage are not included in Availability metrics.

“Chronic Outage” means a series of three (3) or more Service Outages affecting the same Service on the same circuit during a given calendar month, each of which has an actual time to restore “TTR” in excess of Astound’s targeted MTTR.

“Emergency Maintenance” means Astound’s efforts to correct conditions on the Astound Network that are likely to cause a material disruption to or outage in services provided by Astound and which require immediate action. Emergency Maintenance may degrade the quality of the Services provided to Customer, including possible outages. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. Astound may undertake Emergency Maintenance at any time Astound deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances.

“Excused Outage” means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond Astound’s reasonable control, such as, by way of example only, Force Majeure Events, acts or omissions of Customer or Customer’s agents, licensees or end users, electrical outages not caused by Astound, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for Astound’s delivery of the Services to Customer.

“Jitter” or “Network Jitter” refers to a variation in the interval at which packets are received, also described as the variability in Latency as measured in the variability over time of the packet Latency across a network. Jitter is calculated as an aggregate average monthly metric measured by Astound across the Astound Backbone Network between a sample of Astound POPs. Local access loops are not included. Periods of Excused Outage are not included in Jitter metrics.

“Latency” means how much time it takes, measured in milliseconds, for a packet of data to get from one designated point on Astound’s Network to another designated point on Astound’s Network. Latency is calculated as an aggregate average monthly metric measured by Astound across the Astound Backbone Network between a sample of Astound POPs. Local access loops are not included. Periods of Excused Outage are not included in Latency metrics.

“Mean Time to Restore” or “MTTR” means the average time required to restore the Astound Network to a normally operating state in the event of an Outage. MTTR is calculated on a circuit basis, as a monthly average of the time it takes Astound to repair

all Service Outages on the specific circuit. MTTR is measured from the time an Outage related Trouble Ticket is generated by the Astound CNOC until the time the Service is again Available. The cumulative length of Service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\text{MTTR in Hrs (per calendar month)} = \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}}$$

Periods of Excused Outage are not included in MTTR metrics.

“Outage” means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by Astound. Unavailability does not include periods of Service degradation, such as slow data transmission.

“Packet Loss” means the unintentional discarding of data packets in a network when a device (e.g., switch, router, etc.) is overloaded and cannot accept any incoming data. Packet Loss is calculated as aggregate average monthly metric measured by Astound across the Astound Backbone Network between a sample of Astound POPs. Local access loops are not included. Periods of Excused Outage are not included in Packet Loss metrics.

“Scheduled Maintenance” means any maintenance of the portion of the Astound Network to which Customer’s router is connected that is performed during a standard maintenance window (1:00AM – 6:00AM Local Time). Customer will be notified via email at least forty-eight (48) hours in advance of any scheduled maintenance that is likely to affect Customer’s Service.

“Trouble Ticket” means a trouble ticket generated through the Astound CNOC upon notification of a Service-related problem. Trouble Tickets may be generated by Astound pursuant to its internal network monitoring process, or by Customer’s reporting of a problem to the Astound CNOC. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the Astound CNOC and open a Trouble Ticket regarding the problem; Trouble Tickets generated internally by Astound will not provide a basis for Customer credits or Chronic Outage remedies.

## 8. CLAIMING CREDITS AND REMEDIES

**8.1 Requesting SLA Related Credits and Chronic Outage Remedies.** To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be current in its financial obligations to Astound. Credits are exclusive of any applicable taxes charged to Customer or collected by Astound.

- (i) To claim SLA-related Service credits, Customer must do the following:
  - (a) Open a Trouble Ticket with the Astound CNOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);
  - (b) Submit a written request for the credit(s) to Customer’s account manager within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and
  - (c) Provide the following documentation when requesting the credit(s):
    - Customer name and contact information;
    - Trouble Ticket number(s);
    - Date and beginning/end time of the claimed Outage or failed SLA metric;
    - Circuit IDs for each pertinent circuit/path; and
    - Brief description of the characteristics of the claimed Outage or failed SLA metric.
- (ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:
  - (a) Open a Trouble Ticket regarding the Chronic Outage with the Astound CNOC within seventy-

two (72) hours of the last Outage giving rise to the claimed remedy;

- (b) Submit a written request for a remedy regarding the Chronic Outage to Customer's account manager within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and
- (c) Provide the following documentation when requesting the remedy:
  - Customer name and contact information;
  - Type of remedy requested (e.g., substitution or termination);
  - Trouble Ticket numbers for each individual Outage event;
  - Date and beginning/end time of each of the claimed Outages;
  - Trouble Ticket number for the Chronic Outage at issue;
  - Circuit IDs for each pertinent circuit/path; and
  - Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies provided by this SLA are Customer's sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of any of the Services to which this SLA applies.

**8.2 Astound's Evaluation of Claims.** All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by Astound. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, Astound will evaluate the claim and respond to Customer within thirty (30) days. If Astound requires additional information in order to evaluate Customer's claim, Astound will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives Astound's request for additional information in which to provide the requested information to Astound. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. Astound will promptly notify Customer of Astound's resolution of each Customer claim. If Customer's claim for an SLA-related credit or Chronic Outage remedy is rejected, the notification will specify the basis for the rejection. If Customer's claim for a credit is approved, Astound will issue the credit to Customer's account, to appear on the next monthly invoice. If Customer's claim for a Chronic Outage remedy is approved, Astound will notify Customer of the date on which the requested substitution or termination will occur. Astound's determination regarding whether or not an SLA has been violated shall be final.

**8.3 Limitations and Exclusions.** Total credits for any given calendar month shall not exceed 100% of the MRC for the affected Service. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable credit amount. This SLA will not apply and Customer will not be entitled to any credit under this SLA for any impairment of Services that is caused by or due to any of the following: (i) the acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the Services or the equipment used to provide the Services, including Customer's use of the Service in an unauthorized or unlawful manner; (ii) the failure of or refusal by Customer to reasonably cooperate with Astound in diagnosing and troubleshooting problems with the Services; (iii) scheduled Service alteration, maintenance or implementation; (iv) the failure or malfunction of network equipment or facilities not owned or controlled by Astound or Astound's Affiliates; (v) Force Majeure Events; (vi) Astound's inability (due to no fault of Astound) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the Service; (vii) Astound's termination of the Service for cause, or as otherwise authorized by the Agreement; or (viii) Astound's inability to deliver Service by Customer's desired due date.

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**EXHIBIT B**  
**to**  
**Standard Terms and Conditions for Enterprise Services**

**Service Level Agreement for Dark Fiber & Wavelength Services**

This Service Level Agreement for Dark Fiber & Wavelength Services (this “SLA”) is a part of Astound Business Solutions, LLC’s (“Astound’s”) Standard Terms and Conditions for Enterprise Services (“T&Cs”). Unless otherwise provided in the applicable Service Order, this SLA applies to the following types of Services provided by Astound pursuant to the T&Cs: (i) dark fiber services, and (ii) wavelength services.

**1. AVAILABILITY SLA**

Astound’s dark fiber paths and wavelengths are designed to provide a target Availability of **at least 99.9%** per calendar month. If the Availability target is not met with respect to a given dark fiber path or wavelength in a given calendar month, Customer will be entitled to a credit in the amount set forth below, which must be claimed as described in this SLA. Customer credits for Outages of dark fiber or wavelength Services are calculated on an individual path basis, and the amount of any credit is based on the portion of MRC allocable to the affected Service.

Duration of Unavailability	Customer Credit as % of MRC for the applicable Service
Less than 45 minutes	Target Met
45 Min. up to 8 hours	5%
> 8 hours up to 16 hours	10%
> 16 hours up to 24 hours	20%
> 24 hours	35%

**2. MEAN TIME TO RESTORE (“MTTR”) SLA**

In the event of Outages in the Services, Astound’s CNOC is designed to provide a MTTR of **no greater than 6 hours**. If the target MTTR is not met for a particular dark fiber path or wavelength in a given calendar month, and Customer receives a Service from Astound on the path at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Service
<b>6 hr MTTR</b>	≤ 6 Hrs.	Target Met
	> 6 Hrs. to 10 Hrs.	5%
	> 10 Hrs. to 18 Hrs.	10%
	> 18 Hrs.	20%

**3. CHRONIC OUTAGE**

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different path for the Service that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the path that experienced the Chronic Outage without incurring any Termination Charge.

#### 4. DEFINITIONS

For purposes of this SLA the following terms shall have the meanings set forth below.

“Astound’s Commercial Network Operations Center” or “Astound’s CNOC” means Astound’s commercial network operations center, which is staffed 24x7x365.

“Astound Network” means all equipment, facilities and infrastructure that Astound uses to provide Services to Customer, and includes Customer’s access port. The “Astound Network” does not include Customer owned or leased equipment (unless leased from Astound), or any portion of Customer’s local area network after the demarcation point for the Services provided by Astound.

“Availability” means the dark fibers or the wavelength at issue is available to and accessible by Customer at the specified locations, is capable of transmitting signals and can otherwise be used by Customer. Availability does not involve the quality of data transmission. Periods of Excused Outage are not included in the Availability metric. Astound does not monitor the use or availability of dark fiber or wavelength Services, thus any Outage must be reported to Astound by Customer.

“Chronic Outage” means a series of three (3) or more Service Outages affecting the same Service on the path during a given calendar month, each of which has an actual time to restore “TTR” in excess of Astound’s targeted MTTR.

“Emergency Maintenance” means Astound’s efforts to correct conditions on the Astound Network that are likely to cause a material disruption to or outage in Services provided by Astound and which require immediate action. Emergency Maintenance may degrade the quality of the Services provided to Customer, including possible outages. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. Astound may undertake Emergency Maintenance at any time Astound deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances.

“Excused Outage” means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond Astound’s reasonable control, such as, by way of example only, Force Majeure Events, acts or omissions of Customer or Customer’s agents, licensees or end users, electrical outages not caused by Astound, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for Astound’s delivery of the Services to Customer.

“Mean Time to Restore” or “MTTR” means the average time required to restore the Service(s) to a normally operating state in the event of an Outage. MTTR is calculated on a path/route basis, as a monthly average of the time it takes Astound to repair all Service Outages on the specific path/route. MTTR is measured from the time Customer opens an Outage related Trouble Ticket is with the Astound CNOC until the time the Service is again Available. The cumulative length of Service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\begin{array}{lcl} \text{MTTR in Hrs} & = & \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}} \\ \text{(per calendar month)} & & \end{array}$$

Periods of Excused Outage are not included in MTTR metrics.

“Outage” means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by Astound. Unavailability does not include periods of Service degradation, such as slow data transmission.

“Scheduled Maintenance” means any maintenance of the portion of the Astound Network to which Customer’s demarc is



connected that is performed during a standard maintenance window (1:00AM – 6:00AM Local Time). Customer will be notified via email at least forty-eight (48) hours in advance of any scheduled maintenance that is likely to affect Customer's Service.

"Trouble Ticket" means a trouble ticket generated through the Astound CNOC upon notification of a Service-related problem. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the Astound CNOC and open a Trouble Ticket regarding the problem.

## **5. CLAIMING CREDITS AND REMEDIES**

**5.1 Requesting SLA Related Credits and Chronic Outage Remedies.** To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be current in its financial obligations to Astound. Credits are exclusive of any applicable taxes charged to Customer or collected by Astound.

- (i) To claim SLA-related Service credits, Customer must do the following:
  - (a) Open a Trouble Ticket with the Astound CNOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);
  - (b) Submit a written request for the credit(s) to Customer's account manager within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and
  - (c) Provide the following documentation when requesting the credit(s):
    - Customer name and contact information;
    - Trouble Ticket number(s);
    - Date and beginning/end time of the claimed Outage or failed SLA metric;
    - Circuit IDs for each pertinent circuit/path; and
    - Brief description of the characteristics of the claimed Outage or failed SLA metric.
- (ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:
  - (a) Open a Trouble Ticket regarding the Chronic Outage with the Astound CNOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;
  - (b) Submit a written request for a remedy regarding the Chronic Outage to Customer's account manager within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and
  - (c) Provide the following documentation when requesting the remedy:
    - Customer name and contact information;
    - Type of remedy requested (e.g., substitution or termination);
    - Trouble Ticket numbers for each individual Outage event;
    - Date and beginning/end time of each of the claimed Outages;
    - Trouble Ticket number for the Chronic Outage at issue;
    - Circuit IDs for each pertinent circuit/path; and
    - Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies provided by this SLA are Customer's sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of any of the Services to which this SLA applies.

**5.2 Astound's Evaluation of Claims.** All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by Astound. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage,



Astound will evaluate the claim and respond to Customer within thirty (30) days. If Astound requires additional information in order to evaluate Customer's claim, Astound will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives Astound's request for additional information in which to provide the requested information to Astound. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. Astound will promptly notify Customer of Astound's resolution of each Customer claim. If Customer's claim for an SLA-related credit or Chronic Outage remedy is rejected, the notification will specify the basis for the rejection. If Customer's claim for a credit is approved, Astound will issue the credit to Customer's account, to appear on the next monthly invoice. If Customer's claim for a Chronic Outage remedy is approved, Astound will notify Customer of the date on which the requested substitution or termination will occur. Astound's determination regarding whether or not an SLA has been violated shall be final.

**5.3 Limitations and Exclusions.** Total credits for any given calendar month shall not exceed 100% of the MRC for the affected Service. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable credit amount. This SLA will not apply and Customer will not be entitled to any credit under this SLA for any impairment of Services that is caused by or due to any of the following: (i) the acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the Services or the equipment used to provide the Services, including Customer's use of the Service in an unauthorized or unlawful manner; (ii) the failure of or refusal by Customer to reasonably cooperate with Astound in diagnosing and troubleshooting problems with the Services; (iii) scheduled Service alteration, maintenance or implementation; (iv) the failure or malfunction of network equipment or facilities not owned or controlled by Astound or Astound's Affiliates; (v) Force Majeure Events; (vi) Astound's inability (due to no fault of Astound) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the Service; (vii) Astound's termination of the Service for cause, or as otherwise authorized by the Agreement; or (viii) Astound's inability to deliver Service by Customer's desired due date.

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