

## FIBER OPTIC AGREEMENT AND GRANT OF IRU

THIS AGREEMENT (“**Agreement**”) is made and entered into as of December 31, 2019, by and between, TDS Broadband Service LLC, a Delaware limited liability company, having an office located at 30 North LaSalle Street, Suite 4000, Chicago, Illinois – 60602 (“**Operator**”) and the Town of Davidson, North Carolina (the “**Town**”), each referred to as the “**Party**” or jointly referred to as the “**Parties**”.

### BACKGROUND

- A. Pursuant to and subject to the terms and conditions of an Asset Purchase Agreement, dated August 13, 2019 (the “**APA**”), by and among the MI Connection Communications System (d/b/a Continuum, a joint agency created under Article 20 of Chapter 160A of the North Carolina General Statutes), Davidson, the Town of Mooresville, North Carolina, and TDS, TDS will concurrently with the execution of this Agreement, acquire a communications system (the “**System**”) providing services to subscribers in the Town, among other communities.
- B. In connection with the sale of the System to TDS, the Parties have agreed that (i) the Town shall have a right to use the Fiber set forth in column “C” on **Exhibit A**, as each exists on the Closing Date (the “**Town Fibers**”), and (ii) the Town shall have right to use any Additional Fibers (as defined below), subject to the terms and conditions set forth herein.
- C. The Parties desire to enter into an agreement governing the Town’s right to use the Town Fibers and any Additional Fibers within the existing structural developments in, the Town, upon all the terms and conditions set forth below.

### DEFINITIONS

The following terms are used in this Agreement:

- A. “**Acceptance Notice**” means the notice of acceptance of an Additional Fiber pursuant to Article 5 for Additional Fiber.
- B. “**Additional Fibers**” means for each route of Fiber (a) with a description of such Fiber in Column “B” on **Exhibit A**, then for such Fibers with a Fiber count of at least forty-eight (48) as shown in column “A” on **Exhibit A**, the number equal to: (i) six (6) Fibers *minus* (ii) the number of Fibers currently used by the Town as shown in column “C” on **Exhibit A** and (b) for which **Exhibit A** contains a description of such Fiber only in column “E”, then up to six (6) Fibers in such route, in each case as it exists on the Closing Date.
- C. “**Dark Fiber**” means Fiber between two specified locations that has no optronics or electronics attached to it.

- D. **“Fiber”** means a glass strand or strands which is/are protected by a color-coded buffer tube and which is/are used to transmit a communication signal along the glass strand in the form of pulses of light.
- E. **“Fiber Optic Cable”** or **“Cable”** means a collection of Fibers contained in color-coded buffer tubes with a protective outer covering, which covering includes stiffening rods and filler.
- F. **“Indefeasible Right of Use”** or **“IRU”** is an exclusive and irrevocable right, subject to the term in Article II, to use the Town Fibers and Additional Fibers; provided, however, that granting of such IRU does not convey legal title to the Fibers.
- G. **“Operator Cable”** means a Cable containing one or more Fibers owned by the Operator and which contains Dark Fibers in which the Town has an IRU pursuant to the terms of this Agreement.
- H. **“Rights-of-Way”** see Article XIII for definition.

In consideration of their mutual promises, the Parties expressly agree as follows:

ARTICLE I  
TOWN FIBERS AND ADDITIONAL TOWN FIBERS

1.1 The Town desires to obtain an IRU for the Town Fibers. Upon Acceptance of Additional Fiber by the Town, the Operator grants an IRU to the Town for the Additional Fibers. Except for the Town Fibers serving the Cornelius Police Station, the Town shall use the Town Fibers and Additional Fiber solely to connect Town buildings and other Town facilities, and not in any other capacity, including for resale in any manner. For the avoidance of doubt, nothing in this Agreement shall be deemed to obligate the Operator to provide any Fiber or offer any services to any party (including, the Town of Cornelius, North Carolina), other than the Town.

1.2 If in the Operator’s good faith and reasonable judgment it has sufficient Fiber available in the conduit, additional and separate Fiber will be made available by the Operator to connect Town buildings and other Town facilities, and not for resale in any manner at market rates and subject to other terms and conditions that are mutually agreed upon between the Operator and the Town. Other than as provided in the preceding sentence, nothing in this Agreement obligates the Operator to offer any Fiber beyond the Town Fiber and Additional Fiber, supply to the Town any optical or electrical equipment, or other facilities, including without limitation, local distribution facilities, collocation space, regeneration facilities, generators, batteries, air conditioners, fire protection equipment, monitoring equipment and testing equipment, all of which are the sole responsibility of the Town.

ARTICLE II  
EFFECTIVE DATE AND TERM

2.1 The initial IRU term in respect of the Town Fibers and Additional Fibers shall commence on the date hereof and shall terminate upon the earlier of (x) the expiration of the useful life of such Fiber, as reasonably determined by the Operator and (y) ten (10) years from the date hereof, with the option by the Town to renew this Agreement for two (2) additional ten (10) year terms. In the event that the Operator replaces Town Fiber or Additional Fiber for its own purposes, the Operator will replace the Town Fibers at no cost to the Town, except that the Town will be responsible for any cost associated with deploying Fiber strands outside of the public right-of-way to reach the Town facilities.

2.2 Expiration or termination of this Agreement shall not affect the rights or obligations of any Party with respect to any payments of expenses incurred prior to the date of termination or pursuant to Article X (Taxes); Article XI (Liability); Article XIII (Required Rights); and Article XXIV (Dispute Resolution).

ARTICLE III  
CONSIDERATION

3.1 Subject to the splicing, testing and other maintenance costs set forth herein, the Town's consideration for the Town Fibers and Additional Fibers shall be the sale of the System to TDS and the satisfaction of its obligations under the APA and this Agreement.

ARTICLE IV  
BOUNDARIES; ACCEPTANCE

4.1 In the event the Town's boundaries expand after the date hereof, the Operator shall be under no obligation to expand the Town Fiber, offer Additional Fiber or make any other changes to the System resulting from the change in such boundaries. The Town shall provide an Acceptance Notice to the Operator in the form of **Exhibit B** ("**Acceptance Notice**") for the Additional Fibers. After making available any Additional Fiber, the Operator shall provide the Town with the opportunity to perform, subject to the protocols of the Rights-of-Way agreements, a physical inspection of the corresponding IRU routes and Fibers. In addition, the Operator shall provide the acceptance test plan ("**ATP**") and test results for the Additional Fibers in accordance with the requirements of **Exhibit C**.

4.2 Within seven (7) days after receiving the ATP and test results, the Town shall inspect the Additional Fibers in accordance with the **Exhibit C** acceptance tests. Within two (2) business days after such inspection, the Town shall then provide the Acceptance Notice or indicate that the Additional Fibers do not meet the specifications set out in **Exhibit C** by giving notice to the Operator, with such notice to include the specific details of any claim regarding non-compliance with the specifications with respect to the Additional Fibers. The Operator will reasonably cooperate with the Town to provide additional documentation that would reasonably allow the Town to evaluate the acceptability of the Additional Fibers. In addition, the Town shall be allowed,

subject to the protocols of the Rights-of-Way agreements, to conduct its own tests, at the Town's expense, to determine acceptability of the Additional Fibers.

4.3 Upon Acceptance of Additional Fibers, the Town shall receive a grant of its IRU Fibers.

4.4 Any disputes as to Acceptance of Additional Fibers shall be resolved in accordance with Article XXIV (Dispute Resolution).

ARTICLE V  
FRANCHISE/LICENSE/PERMIT FEES, AND CO-LOCATION AGREEMENTS

5.1 The Town will be responsible for the appropriate government filings, licenses, etc. or other requirements to place the Town or Additional Fibers into operation, including, but not limited to, applicable municipal licenses and/or franchise agreements.

ARTICLE VI  
PAYMENT

6.1 The Operator shall be responsible for splicing and testing to provide the Additional Fibers, and the Town shall bear all costs and expenses in connection with such splicing and testing. Any cost for additional splicing and testing for the Town to access Town Fibers or Additional Fibers will be billed to and paid by the Town within thirty (30) days after the invoice is issued. Customary splicing fees shall apply for the Town to put into use Additional Fibers.

6.2 Commencing on July 1, 2020, the Town shall pay maintenance fees to the Operator for the Town Fibers and Additional Fibers, irrespective of whether any Town Fibers or Additional Fibers are not then currently in use, at the rate of \$45 per Sheath Mile per month, within thirty (30) days after invoice.

6.3 All undisputed payments not made when due may bear a late payment charge of one and one-half (1 1/2%) percent per month of the unpaid balance or the highest lawful rate, whichever is less.

ARTICLE VII  
MAINTENANCE AND REPAIR

7.1 The Operator warrants that it will use commercially reasonable efforts to maintain its Cable containing Town Fibers and Additional Fibers in accordance with prevailing telecommunications industry standards, and with the Maintenance Standards contained in **Exhibit D** of this Agreement.

7.2 All routine maintenance and repair functions and emergency maintenance and repair functions, including "one-call" responses, conduit locate services, and necessary relocation of the Operator Cable containing the Town Fibers and Additional Fibers in a common sheath with Operator Fiber, shall be performed by the Operator or its designee for a period coterminous with

the term of this Agreement for the cost specified in Section 6.2, subject to reimbursement for emergency maintenance as provided below.

- (a) **Emergency Maintenance.** The Operator shall respond to any failure, interruption or impairment in the operation of the Town Fibers or Additional Fibers within two (2) hours after receiving a report of any such failure, interruption or impairment. Such report shall contain information in respect of the location of such issue, description of the problem in as much detail as possible, time and date the problem occurred and whether problem presents a jeopardy situation to the Operator's Cable. The Operator shall use its commercially reasonable efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of the Town Fibers or Additional Fibers within eight (8) hours in accordance with the procedures set forth in **Exhibit D**. The Town will be responsible for the costs and expenses of any emergency maintenance caused by the Town, payable within thirty (30) days after invoice. For such other emergency maintenance, the Town shall pay a proportionate share for emergency maintenance, payable within thirty (30) days after invoice. The Town may assist with emergency maintenance if approved by the Operator.
- (b) **Routine Maintenance.** The Operator shall schedule and perform specific periodic maintenance and repair checks and services, as set forth in Routine Maintenance Standards, attached as **Exhibit D**. Additional maintenance can be performed from time to time on the Town Fibers or Additional Fibers at the Operator's reasonable discretion, or upon the Town's reasonable request with reasonable advance notice to the Operator. The annual maintenance fee described in Article VIII covers all routine maintenance.
- (c) The Town will reimburse one hundred percent of all related costs associated with damage to the System, Town Fiber or Additional Fiber, in connection with negligence or willful misconduct of the Town, its affiliates, employees, agents, or contractors.
- (d) For any damage caused by negligence or willful misconduct of the Operator, its affiliates, employees, contractors or agents that impacts the functionality or use of the Town Fiber or Additional Fiber by the Town, the Operator shall repair, at its sole expense and without reimbursement from the Town such damage; provided, however, the foregoing shall not be interpreted to apply to a successor operator of the System, including TDS, for any actions taken by, or caused by, the current Operator.
- (e) The Operator will, upon request from the Town, perform maintenance, restoration or relocation of Fiber laterals outside of the Right of Way and shall charge time and materials.

7.3 In the event the Operator, or others acting on the Operator's behalf, at any time during the term for the Town Fiber or Additional Fiber, or any extension thereof, discontinues maintenance and/or repair of the Town Fiber or Additional Fiber, the Town, or others acting on the Town's behalf, shall have the right, but not the obligation, to thereafter provide for the maintenance, repair

and splicing of the Town Fibers and Additional Fibers in the Operator Cable at the Operator's sole cost and expense. The Town shall use contractors pre-approved by the Operator, which approval shall not be unreasonably withheld or delayed, and shall be deemed approved after the expiration of a thirty (30) day notice period. Any maintenance and/or repair and/or splicing discontinuance shall be upon no less than six (6) months' prior written notice by the Operator to the Town.

7.4 Notwithstanding anything to the contrary contained herein, the Town shall solely be responsible, at its own expense, for the construction, installation, operation, maintenance, repair and any other activity engaged by or on behalf of the Town relating to all communications transmission equipment used to "light" the Fibers and other terminal equipment and facilities required in connection with the use, electronics or signals of the Town Fibers or Additional Fibers.

7.5 Except in cases of discontinuance as stated in 7.3 above, the Town must obtain prior written authorization, which such authorization shall not be unreasonably withheld, conditioned or delayed, from the Operator approving any further work and specify the party performing such work before the Town shall perform any work in or around the Operator Cable.

7.6 The Operator shall provide reasonable advance notice to the Town of maintenance or repairs that may affect the Town Fibers or Additional Fibers. The Town shall have the right, subject to the protocols of the Right-of-Way providers, to have a representative present any time maintenance or repairs are performed which may affect the Town Fibers or Additional Fibers.

## ARTICLE VIII SPLICING

8.1 The Town may require that Additional Fibers be spliced into the Operator Cable. In order to maintain the integrity of the Operator Cable, the Operator, or a contractor operating under the Operator's direction, must perform all splicing performed on the Operator Cable.

8.2 For future expansion at existing splice points, the Operator will perform the necessary splicing upon written or email request by the Town. Normal requests for splicing shall be submitted at least thirty (30) business days prior to the requested splicing date, and expedited requests shall be submitted at least fifteen (15) business days prior to the requested splicing date. The Town agrees that it will not perform any splicing or interfere in any manner with the Operator Cable. The cost of splicing Fibers into the Operator Cable will be borne by the Town. The Optical Splice Points for each route shall be mutually agreed upon in writing by the Parties. The Operator shall provide the Town with a splicing and splice testing schedule(s) so the Town's representative may be present, subject to protocols of Rights-of-Way agreements. Splicing documentation (ATP and test results) will be provided by the Operator within ninety (90) days after splicing is completed.

8.3 The Town shall provide thirty (30) business days written notification to the Operator if a new splice point is needed after Acceptance of Additional Fiber. Approval of new splice points will be at the sole discretion of the Operator, and such approval shall not be unreasonably withheld.

8.4 All splicing will be performed by the fusion splicing method or by any other method that is mutually agreeable. All costs and expenses in connection with the foregoing splicing shall be borne by the Town.

## ARTICLE IX LIABILITY

9.1 No Party shall be liable for any indirect, special, punitive or consequential damages (including, but not limited to, any claim for loss of services) arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of either Party hereto, its directors, officers, employees, servants, contractors and/or agents.

9.2 Subject to the limitation on indirect, special, punitive, or consequential damages in Article 9.1, each Party assumes, releases and agrees to indemnify, defend, protect and save the other (including its directors, officers, agents, representatives and employees) harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any property or facilities of the indemnified Party arising out of or resulting in any way from the acts or omissions to act, negligence or willful misconduct of the indemnifying Party, its directors, officers, employees, servants, contractors and/or agents in connection with the exercise of its rights and obligations under the terms of this Agreement. In no event shall the liability of the Operator at any given time exceed the total amount of fees paid by the Town to the Operator pursuant to this Agreement prior to such time. The Parties hereto expressly recognize and agree that each Party's obligation to indemnify, defend, protect and save the other harmless is not a material obligation to the continuing performance of the Parties' other obligations, if any, under the terms of this Agreement. In the event a Party shall fail for any reason to indemnify, defend, protect and save the other harmless, the indemnified Party hereby expressly recognizes that its sole remedy in such event shall be the right to bring a claim pursuant to Article XXII against the indemnifying Party for its damages as a result of the indemnifying Party's failure to so indemnify, defend, protect and save harmless.

9.3 Nothing contained herein shall operate as a limitation on the right of any Party hereto to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of such third party as such acts or omissions may affect the, operation or use of the Operator Cable, or any Town Fibers or any Additional Fibers; provided, however, that each Party hereto shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the injured Party to pursue any such action against such third party, other than against the Operator or its affiliates. This Agreement shall not limit any rights of recovery or claims pursuant to the APA. In no event shall the Operator be responsible or liable for any event, matter, claim or action in connection with this Agreement, the Town Fibers or the Additional Fibers prior to the consummation of the transactions contemplated by the APA (including the assignment of this Agreement).

ARTICLE X  
FORCE MAJEURE

The obligations of the Parties (except for the payment of money hereunder) are subject to force majeure, and neither the Operator nor the Town shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefor; lack of transportation; legal inability to access property; acts of any governmental authority; government codes, ordinances, laws, rules and regulations or restrictions (collectively "**Regulations**") (but not to the extent the delay caused by such Regulations could be avoided by rerouting the Cable if such a reroute was commercially reasonable); condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either Party hereto. The excused Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. Notification shall be given by the excused Party of the cause and of the estimated duration, when possible.

ARTICLE XI  
PERMITS AND REQUIRED RIGHTS-OF-WAY; REPRESENTATIONS AND  
WARRANTIES

11.1 In respect of the Town Fibers and Additional Fibers as they shall exist as of the Closing Date, it is expressly understood that the Operator shall have no obligation to obtain any additional right-of-way agreements, easements, licenses, rights, or other agreement necessary for the use of poles, conduit, cable, wire, physical plant facilities, access to real property underlying the Operator Cable, rights, licenses, franchises, authorizations, agreements, permits, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) (collectively, "**Permits**"), and the Operator shall not be responsible or liable for any failure to obtain any Permit, including for any such actions, events, circumstances or matters arising prior to or, related to, the period prior to the closing of the transactions contemplated by the APA. In the event any changes in the Town Fibers or Additional Fibers would require the Operator to obtain any Permit, Operator shall exercise commercially reasonable efforts to obtain such Permit.

11.2 THE OPERATOR MAKES NO REPRESENTATIONS OR WARRANTIES IN RESPECT OF THE TOWN FIBERS OR THE ADDITIONAL FIBERS. THE CONDITION OF EACH TOWN FIBER AND EACH ADDITIONAL FIBER IS EACH ON AN "AS-IS", "WHERE-IS" BASIS, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, AND THE OPERATOR SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY MATTERS OR THE CONDITION OF THE TOWN FIBER OR ADDITIONAL FIBER AS IT SHALL EXIST ON THE DATE OF THE CLOSING OF THE TRANSACTIONS CONTEMPLATED BY THE APA.



ARTICLE XII  
RELOCATION OF CABLE

12.1 If the Operator is required to relocate or replace its Cable or any of the appurtenant facilities used or required in providing the IRU, and the gross cost (excluding reimbursements) of the Operator's relocation or replacement exceeds \$5,000 per occurrence, then, so long as such work is not necessitated by a breach of the Operator's obligations, the Town shall reimburse the Operator for the Town's proportionate share of such costs, including, without limitation, placement or relocation labor, Fiber acquisition, splicing, and testing. In the event that a third party reimbursed the Operator for all or a portion of the cost to perform such work, then this reimbursement amount shall reduce on a dollar for dollar basis the aggregate amount of costs deemed to have been spent by the Operator. The Operator shall deliver to the Town updated as-built drawings and documentation with respect to any relocated portion of the Cable not later than ninety (90) days following such relocation.

12.2 The Operator shall give the Town sixty (60) days prior notice of any such relocation, if possible, and shall have the obligation to proceed with such relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to use for such relocation; provided that any such relocated Cable and Fibers shall be constructed and tested in accordance with the specifications and requirements set forth in this Agreement. Acceptance of the relocated IRU Fibers shall be in accordance with Article IV (Acceptance) of this Agreement. In addition, the Operator shall use reasonable efforts to ensure relocation shall not result in an adverse change to the operations, performance, or connection points with the network of the Town, or end points of the applicable Cable.

12.3 The Town has the right to review the relocation plans of the Operator fourteen (14) days prior to any relocation and has the right to have, subject to the protocols of the Rights-of-Way Agreements, a representative present at the time the Operator relocates the Cable that contains the Town Fibers or Additional Fibers.

ARTICLE XIII  
INSURANCE

13.1 Each of the Town and the Operator shall maintain insurance, for the duration of this Agreement, as follows:

- (a) Workers' Compensation Insurance complying with the law of the state or states in which the services are to be provided and Employers Liability Insurance with the limits of \$500,000 each accident, including occupational disease coverage with limits of \$500,000 each employee, \$500,000 policy limit.
- (b) Commercial General Liability Insurance, including premises, operations, products and completed operations, contractual, broad form property damage, independent contractors and personal injury with the following minimum limits: Personal Injury - \$5,000,000 each person and \$5,000,000 each accident, and Property Damage - \$1,000,000 each accident in any combination of primary or umbrella coverage.

(c) Railroad Protective Liability Coverage required for any work within fifty (50) feet of a railroad right of way: \$2,000,000 or any other amounts required by the Rights-of-Way providers.

(d) Automobile Liability Insurance for owned, hired and non-owned autos: \$2,000,000 combined single limit bodily injury/property damage.

Insurance amounts contained in this section shall be increased every ten (10) years based upon the increase in the Consumer's Price Index.

13.2 Failure of either Party to enforce the minimum insurance requirements listed above shall not relieve such Party of the responsibility for maintaining these coverages. Each Party shall furnish to the other Party the certificates of insurance reflecting policies carried and limits of coverage as required above, which shall state that thirty (30) days' notice shall be given prior to cancellation, non-renewal or any material change in any such insurance coverage. The insurance for the Town shall name the Operator and its subsidiaries as additional insured parties.

13.3 If permitted by this Agreement, Contractor(s) employed by the Town to work on the Fiber Optic Cable shall provide and maintain at all times during the provision of services to the Parties the same types of and amounts of insurance (with the exception of the amount of Commercial General Liability Insurance), which insurance shall be issued by companies approved by the Parties.

For Commercial General Liability Insurance, contractor(s) shall carry:

- (1) Combined Single Limit: \$2,000,000 each occurrence; and
- (2) Bodily Injury and Property Damage: \$2,000,000 general aggregate, \$1,000,000 products and completed operations aggregate.

The contractor(s) insurance shall be evidenced by certificates of insurance, which shall be delivered to the contracting party prior to commencement of the provision of services. The certificates of insurance shall show that the insurance is prepaid and in full force and effect and that such insurance shall not be canceled, non-renewed or materially changed during the term of this Agreement or during any extension thereof, without at least thirty (30) days written notice to the Parties. The maintenance of insurance by the contractor shall in no way limit or affect the extent of the contractor's liability.

#### ARTICLE XIV CONDEMNATION

14.1 In the event any portion of the Operator Cable or the Rights-of-Way in or upon which it has been installed, become the subject of a condemnation proceeding by any governmental agency or other party cloaked with the power of eminent domain for public purpose or use, then and in such event, it is agreed that the Operator shall be entitled to pursue an award in such proceedings and shall be solely entitled to any award arising therefrom.

14.2 Upon its receipt of a formal notice of condemnation or taking other than from the Town, the Operator shall notify the Town immediately of any condemnation proceeding filed against the Operator Cable, including the Town Fibers and the Additional Fibers. The Operator shall also notify the Town of any similar threatened condemnation proceeding, other than from the Town.

14.3 In the event of condemnation by a party other than the Town, it is expressly recognized and understood by the Town that relocation costs resulting from any such condemnation proceeding may not be reimbursed by the condemning authority and, if the Town requests the Operator to relocate the Town Fibers or the Additional Fibers, the Town shall pay its proportionate share of all costs associated with the relocation of the Town Fibers in excess of such costs which were reimbursed by the condemning authority.

14.4 It is understood that none of the foregoing shall apply in the event of a condemnation by the Town, and the Town shall maintain its obligations to among other matters set forth in the APA, not adversely regulate or discriminate against the Operator and to facilitate the operation of the System as contemplated by the APA.

#### ARTICLE XV CONFIDENTIALITY

15.1 The Parties represent, certify, and warrant that they shall use their best reasonable efforts to ensure that any and all information and documents obtained from the other Party during the term of this Agreement, and identified as being confidential information will be held in strict confidence and will not be used by their company, its employees, subcontractors, consultants or agents for any purpose other than its performance required by this Agreement.

15.2 All documents, data, or information furnished by the Parties is the sole property of that Party. Upon the expiration of this Agreement and any extensions thereof, those documents, data, or information shall be returned to its owner if readily available.

15.3 Neither the Town nor the Operator may make any news release, public announcement, denial or confirmation concerning all or any part of this Agreement or use the other's name in sales or advertising materials, or in any manner advertise or publish the fact that the companies have entered into this Agreement, or disclose any of the details of this Agreement to any third party, including the press, without the prior written consent of the Operator or the Town, respectively, except such disclosures required by law, or the rules and regulations of the relevant government agencies.

#### ARTICLE XVI ABANDONMENT

Should the Town decide to abandon all or part of the Town Fibers or Additional Fibers, it may do so by informing the Operator in writing, such abandonment being made at no cost to either Party. The Town shall remove its equipment and electronics within thirty (30) days of such notification of abandonment by the Town, and if it fails to do so, the Operator may remove such at the Town's cost payable within thirty (30) days of receipt of the invoice. At the time of abandonment, the

Town shall have no further rights with respect to its IRU. Such abandonment shall not reduce or otherwise affect the abandoning Party's obligations hereunder.

ARTICLE XVII  
DEFAULT

17.1 Neither the Operator nor the Town shall be in default under this Agreement unless and until the other Party shall have given the defaulting Party written notice of such default and the defaulting Party shall have failed to cure the default within thirty (30) days after written receipt of such notice; provided, however, that where a default cannot be reasonably cured within the thirty (30) day period, if the defaulting Party shall promptly proceed to cure the default with due diligence, the time for curing the default shall be extended for a period of up to ninety (90) days from the date of receipt of the default notice.

17.2 Upon the failure by the defaulting Party to timely cure any default after notice thereof from the non-defaulting Party, the non-defaulting Party may take any action it determines, in its discretion, to be necessary to correct the default, and/or pursue any legal remedies it may have under applicable law or principles of equity relating to the breach, including, at the Operator's option, no longer offering any Additional Fiber to the Town.

17.3 An event of default shall also be deemed to have occurred if either Party becomes insolvent, or institutes or has instituted against it bankruptcy proceedings which are not dismissed within ninety (90) days of filing, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, and the non-defaulting Party may immediately terminate this Agreement.

ARTICLE XVIII  
NOTICES

18.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to the Operator:

TDS Broadband Service LLC  
30 North LaSalle Street, Suite 4000  
Chicago, IL 60602  
Attention: Scott H. Williamson  
Email: scott.williamson@tdsinc.com; and

TDS Metrocom, LLC  
525 Junction Road  
Madison, WI 53717

Attention: Andrew Buchert VP – Field Services  
Email: andrew.buchert@tdstelecom.com

With a copy (which shall not constitute notice) to:  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, Illinois 60603  
Attention: Stephen P. Fitzell and Christopher R. Hale  
Email: sfitzell@sidley.com and chale@sidley.com

If to the Town:

Town of Davidson  
216 South Main Street  
Davidson, North Carolina 28036  
Attention: Jamie Justice and Cindy Reid  
Email: [jjustice@townofdavidson.org](mailto:jjustice@townofdavidson.org); [creid@townofdavidson.org](mailto:creid@townofdavidson.org)

With a copy (which shall not constitute notice) to:  
Troutman Sanders LLP  
1001 Haxall Point  
Richmond, Virginia 23219  
Attention: David M. Carter and Coby Beck  
Email: david.carter@troutman.com and coby.beck@troutman.com

18.2 Unless otherwise provided herein, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service which provides acknowledgement of delivery, and shall be deemed delivered: if sent by U.S. Mail, five (5) days after deposit; if sent by commercial overnight delivery service, upon verification of receipt.

## ARTICLE XIX ASSIGNMENT, SUCCESSION

19.1 Except as provided in this Article, the Town shall not assign this Agreement to any other party without the prior written consent of the Operator.

19.2 Except as provided in this Article, the Operator shall not assign this Agreement to any other party without the prior written consent of the Town; provided, however, that without such consent, the Operator shall have the right to assign, sublet or otherwise transfer this Agreement, in whole or in part, to any parent, subsidiary or affiliate of the Operator or to any person, firm or corporation which shall control, be under the control of or be under common control with the Operator, or any corporation or entity into which the Operator, or a subsidiary of the Operator, may be merged or consolidated or which purchases all or substantially all of the assets of the Operator, or a subsidiary of the Operator.

19.3 Subject to the provisions of this Article, each of the Parties' respective rights and obligations hereunder, shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns.

19.4 Nothing in this Agreement shall prevent or be construed to prevent the Operator from selling or otherwise disposing of any portion of the Operator Cable or other property of the Operator used for the Town's Fiber Optic Cable; provided, however, in connection with a transaction in which the Operator sells all or substantially all of its assets, the Operator shall exercise commercially reasonable efforts to cause the purchaser to assume the commercial relationship as set forth in this Agreement.

#### ARTICLE XX GOVERNING LAW

This Agreement shall be interpreted and construed in accordance with the laws of the state of North Carolina, without regard to its conflict of laws principles.

#### ARTICLE XXI INDEPENDENT CONTRACTOR

The performance by the Operator and/or the Town of all duties and obligations under this Agreement shall be as independent contractors and not as agents of the other Party, and no persons employed or utilized by a performing Party shall be considered the employees or agents of the other. Neither Party shall have the authority to enter into any agreement purporting to bind the other without its specific written authorization. The Parties agree that this Agreement does not create a partnership between, or a joint venture of the Parties.

#### ARTICLE XXII DISPUTE RESOLUTION

22.1 It is the intent of the Operator and the Town that any disputes which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the Parties' designated representatives. When such resolution is not possible, and depending upon the nature of the dispute, the Parties hereto agree to resolve such disputes in accordance with the provisions of this Article. The obligation herein to arbitrate shall not be binding upon any party with respect to requests for preliminary injunctions, temporary restraining orders, specific performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.

22.2 The Parties shall each designate, by separate letter, representatives as points of contact and decision making with respect to the obligations and rights of the Parties, said letters to be furnished by each Party to the other within thirty (30) days from the date of this Agreement. Any disputed issues arising during the term of this Agreement shall in all instances be initially referred to the

Parties' designated representatives. The Parties' designated representatives shall render a mutually agreeable resolution of the disputed issue, in writing, within seventy-two (72) hours of such referral. Either Party may replace their designated representative upon written notice to the other Party.

22.3 Any claims or disputes arising under the terms and provisions of this Agreement, or any claims or disputes which the Parties' representatives are unable to resolve within the seventy-two (72) hour time period shall continue to be resolved between the Parties' representatives if mutually agreeable, or may be presented by the claimant in writing to the other Party within thirty (30) days after the circumstances which gave rise to the claim or dispute took place or become known to the claimant, or within thirty (30) days after the Parties' representatives fail to achieve resolution, whichever is later. The written notice shall contain a concise statement of the claim or issue in dispute, together with relevant facts and data to support the claim.

22.4 Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The Parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the Parties are unable to agree to such a selection, each of the Parties will select an arbitrator and the arbitrators in turn shall select a third arbitrator.

The arbitrator(s) shall not have the authority, power or right to alter, change, amend, modify, add or subtract from any provision of this Agreement except pursuant to Article 26.3, or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the Parties and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under the prevailing arbitration law.

22.5 During the continuance of any arbitration proceeding, each of the Parties shall continue to perform their respective obligations under this Agreement.

### ARTICLE XXIII LIENS; TAXES

23.1 The Town shall not grant or permit any mechanics', artisans' or materialmen's lien, or other encumbrance on the Town Fibers or the Additional Fibers, and in the event of any such lien or encumbrance, the Town shall promptly cause such lien or encumbrance to be discharged and released of record (by payment, posting of bond, court deposit or other means) without cost to the Operator and shall indemnify the Operator against all costs and expenses (including attorney's fees) incurred in discharging and releasing such lien or encumbrance; provided, however, that if any such lien or encumbrance is not so discharged and released within thirty (30) days after written notice by the Operator to the Town, then the Operator may pay or secure the release or discharge thereof at the expense of the Town. The Operator shall reimburse the Town for such payments within thirty (30) days of invoice by the Town.

23.2 The Town agrees and acknowledges that it has no right to use any of the Fibers, other than Town Fibers, included in the Operator Cable or otherwise incorporated in the Operator's system,

or any system of any affiliate of the Operator, and that the Town shall keep any and all of the Operator's system, free from any liens, rights or claims of any third party attributable to the Town.

23.3 The Parties shall cooperate to minimize adverse tax consequences and may mutually amend this Agreement to improve their respective tax positions.

#### ARTICLE XXIV MISCELLANEOUS

24.1 The headings of the Articles in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions or conditions of this Agreement.

24.2 In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

24.3 No provision of this Agreement shall be interpreted to require any unlawful action by either Party. If any section or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such a section or clause is an essential element of the Agreement, the Parties shall promptly negotiate a replacement section or clause that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

24.4 This Agreement may be amended only by a written instrument executed by the Party against whom enforcement of the modification is sought.

24.5 No failure to exercise and no delay in exercising, on the part of either Party hereto, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either Party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both Parties.

24.6 In the event of a conflict between the provisions of this Agreement and those of **Exhibit A**, the provisions of **Exhibit A** shall prevail and the Agreement will be corrected accordingly. If there is a conflict or difference between this Agreement and other Exhibits, this Agreement shall prevail.

24.7 This Agreement has been fully negotiated between and jointly drafted by the Parties.

24.8 All actions, activities, consents, approvals and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner.



24.9 Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

ARTICLE XXV  
COUNTERPARTS

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

ARTICLE XXVI  
ENTIRE AGREEMENT; APA

This Agreement and the APA, and any Exhibits referenced and attached hereto or to be attached hereto, constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede any and all prior negotiations, understandings and agreements with respect hereto, whether oral or written. Nothing contained in this Agreement shall be interpreted or result in limiting the rights or obligations set forth in the APA.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first above written.

**Town of Davidson, North Carolina**

By:   
Name: Rusty Knox  
Title: Mayor

Attest:   
Name: Betsy Shores  
Title: Town Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

By:   
Name: Pieter Swart  
Title: Finance Director

**TDS Broadband Service LLC**

By: \_\_\_\_\_  
Printed: Kenneth M. Kotylo  
Title: Authorized Representative

**EXHIBITS:**

- A: Initial IRU Grant for Town Fibers
- B: Form of Acceptance Notice
- C: Acceptance Test Plan
- D: Maintenance and Repair

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first above written.

**Town of Davidson, North Carolina**

By: \_\_\_\_\_  
Name: Rusty Knox  
Title: Mayor

Attest: \_\_\_\_\_  
Name: Betsy Shores  
Title: Town Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

By: \_\_\_\_\_  
Name: Pieter Swart  
Title: Finance Director

**TDS Broadband Service LLC**

By: Kenneth M. Kotylo  
Printed: Kenneth M. Kotylo  
Title: Authorized Representative

**EXHIBITS:**

- A: Initial IRU Grant for Town Fibers
- B: Form of Acceptance Notice
- C: Acceptance Test Plan
- D: Maintenance and Repair

**EXHIBIT A**

**Initial Grant of IRU for the Town Fibers, effective December 31, 2019**

- Town Fibers covers the following Fiber strands set forth in column “C”:

A	B	C	D	E
FIBER COUNT	ROUTE OF FIBER	# OF FIBERS IN USE BY THE TOWN	SHEATH FOOTAGE	FIBER CT WITH AVAILABLE & UNUSED
348 CT	DAVIDSON HUB TO MOORESVILLE HEADEND/// R ON GAMBLE STR ON SLOAN ST L ON WATSON ST L ON ARMOUR STR ON BEATY ST L ON MECKLENBURG HIGHWAY TO SPLICE POINT AT BRIDGES FARM RD THEN TIES TO 288 TO MOORESVILLE HEADEND	2	33,693'	BRANCHES OFF FROM 348 CT AT SPLICE POINT AT D005 GOES TO SPLICE POINT D004 BOTH ON ARMOUR ST TOTAL FOOTAGE: 2228'
12 CT	DAVIDSON HUB TO DAVIDSON TOWN HALL/// L ON W WALNUT ST L ON POTTS TO REAR EASEMENT TO EDEN AVE R TO DEPOT STR ON JACKSON ST TO BACK OF TOWN HALL	6	4,500'	
42 CT	DAVIDSON HUB TO PARKS AND REC BUILDING/// L ON W WALNUT ST L ON POTTS TO REAR EASEMENT TO EDEN AVE R TO DEPOT STR ON S MAIN ST L ON DAVIDSON CONCORD RD R ON WOODLAND ST R ON SPRING ST L ON SOUTH ST TO JUST PAST 627 SOUTH ST	2	12,490'	BRANCHES OFF 42 CT AT SPLICE POINT @ D023 AT THE CORNER OF SOUTH ST AND SPRING ST GO NORTH ON SOUTH ST L ON WALNUT ST L ON S MAIN ST TO SPLICE POINT AT D016 JUST PAST 452 S. MAIN ST TOTAL FOOTAGE: 3,386'
				120 CT FIBER FROM DAVIDSON HUB TO D034 SPLICE POINT AT INTERSECTION OF GOODRUM RD AND N HARBOUR PLACE TOTAL FOOTAGE: 8,300'
				BRANCHES OFF 120 CT FIBER SPLICE POINT AT D003 AT GRIFFITH ST AND JETTON N ON JETTON ST TO SPLICE POINT AT JETTON AND HARBOR PARK DR. TOTAL FOOTAGE: 1,543'

A	B	C	D	E
FIBER CT	ROUTE OF FIBER	# OF FIBERS IN USE	SHEATH FOOTAGE	FIBERCTWITHAVAILABLE6UNUSED
				432 CT FIBER FROM DAVIDSON HUB TO END OF DAVIDSON-CONCORD RD. AND HIGHWAY 73) SAM FURR RD. SPLICE POINT///L ON W WALNUT ST L ON POTTS TO REAR EASEMENT TO EDEN AVE R TO DEPOT ST R ON S MAIN ST L ON DAVIDSON CONCORD RD TO END AT SPLICE POINT 2 POLES BEFORE SAM FURR RD TOTAL FOOTAGE: 29,791'
		TOTAL FOOTAGE:	50,691	45,248
		TOTAL MILEAGE:	9.6	8.6

**EXHIBIT B**

**Form of Acceptance Notice**

Pursuant to Article IV of the Fiber Optic Agreement and Grant of IRU between the Town of Davidson and TDS Broadband Service LLC, dated \_\_\_\_\_, delivery of the Additional Fibers was made by \_\_\_\_\_, to \_\_\_\_\_ for the Additional Fibers described as \_\_\_\_\_. In addition, \_\_\_\_\_ hereby acknowledges the work was performed in accordance with all applicable construction standards.

Accepted: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT C

### **Acceptance Test Plans**

1.0 The Operator will prepare and provide the Town with an Acceptance Test Plan (“ATP”), prior to conducting actual field tests of the IRU Fibers.

Testing will include, but not be limited to, the following:

- (a) Bi-directional OTDR tests for 1550nm wavelength  
Acceptance criteria: bi-directional splice test average not-to-exceed 0.15 dB with no single direction test greater than 0.25 dB
  
- (b) Span tests with a power meter at 1550 nm wavelength  
Acceptance criteria: The span test shall not exceed the following calculated loss for any given span:

$$(0.3 \text{ dB/km})(d) + (0.15 \text{ dB})(n) = \text{Total Allowable Span Attenuation Loss}$$

d = Fiber distance in kilometers

n = total number of splices in the span, including pigtails

2.0 The Operator will submit a tentative schedule for the ATP to the Town at least thirty (30) days prior to completion of construction and installation of its Cable, which contains IRU Fibers. The ATP will be performed on the entire Cable Segment upon completion of construction and installation.

3.0 The Town shall have the option to have a person or persons present to observe the testing undertaken by the Operator as part of the ATP.

**EXHIBIT D**

**Maintenance and Repair Procedures**

MAINTENANCE AND ESCALATION LIST

Upon the Operator’s Network Management Center receiving a trouble report from the Town, the Operator will dispatch qualified personnel to the location of the outage within 3 hours. At the same time the call will be escalated to the Operator’s Field Operations Manager. The Operator’s Field Operations Manager will respond with on call qualified personnel to isolate the problem. The problem may then be escalated as necessary for notification.

Town Escalation List:

<u>Name</u>	<u>Title</u>	<u>Phone</u>
Pieter Swart	Finance Director	704 940 9648

Operator Escalation List:

<u>Name</u>	<u>Phone</u>
TDS Network Management Center	888-790-1216

**Routine Maintenance Standards**

Maintenance of the Fiber plant should be completed on a regular recurring basis and documented. Properly installed Fiber plant normally needs minimal routine maintenance. Most hazards to Fiber plant are external in nature, such as dig ups, pole hits, gun shots, etc. Most destructive events are detected immediately and corrected with plant restoration. A well implemented maintenance plan will permit correction of marginal plant conditions that might otherwise become restoration events. The Operator’s Network Management Center should be notified in advance of any scheduled OSP maintenance activity reported or planned:

Town \_\_\_\_\_  
Operator \_\_\_\_\_

1.0 CABLE ROUTE SURVEILLANCE

Outside Plant facilities (OSP) are periodically inspected by field personnel. During this periodic inspection the Cable route is driven/walked to inspect for discrepancies that may affect cable integrity. Any discrepancies found are documented and forwarded into the



Outside Plant Maintenance desk for correction and repair as necessary. The following are some of the OSP items that will be inspected:

- Cable route integrity (e.g.: erosion)
- Condition of poles, pedestals, risers, lashing wire, route markers and signs
- Clearance of aerial facilities
- Construction activity in the area near the cable

## 2.0 PLANT LOCATION REQUESTS

All facilities associated with this agreement are located in North Carolina which has a statewide “one call” agency for excavators to request and notify utilities of digging in the vicinity of the Operator’s facilities. The Operator will subscribe to these services and follow the guidelines and laws applicable to that state including the marking of their facilities within the required time of receipt of request. The Operator will also take action to insure excavator is aware and protect the facility during the excavation as required.

## 3.0 PLANT RELOCATION REQUESTS

Plant relocation requests will be submitted to the manager of field operations to be reviewed for applicable resolution. Requests should be responded to and scheduled as required taking into consideration the scope of work and the urgency of the activity.