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COLOCATION AGREEMENT

This Colocation Agreement ("**Colocation Agreement**") is entered into as of February 23, 2016 (the "**Effective Date**") by and between the Huntsville Electric Utility Board, a municipal public utility board created by the City of Huntsville, Alabama, with its principal place of business at 112 Spragins Street, Huntsville, Alabama 35801 ("**Lessor**"), and Google Fiber Inc., a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("**Tenant**").

RECITALS

WHEREAS, Lessor operates the electric distribution system in Huntsville, Madison County, Alabama;

WHEREAS, Lessor uses a fiber-optic network ("**Lessor Network**") to manage and operate its electric distribution system;

WHEREAS, Lessor is expanding its Lessor Network in its electrical service area ("**Lessor Service Area**") in order to improve its ability to manage its electric distribution system;

WHEREAS, Tenant and Lessor are contemporaneously entering into that certain Dark Fiber Lease Agreement ("**Lease Agreement**") dated the same date as this Colocation Agreement, pursuant to which Tenant will lease from Lessor excess dark fiber in the Lessor Network (the "**Leased Dark Fiber**");

WHEREAS, Lessor has constructed or will construct physical structures to house network aggregation points and associated network equipment as part of the Lessor Network ("**Colocation Structures**");

WHEREAS, Lessor anticipates that the Colocation Structures will have excess space beyond Lessor's immediate needs;

WHEREAS, Lessor desires to lease some of the excess space in the Colocation Structures to Tenant and to provide associated services in accordance with the terms set forth in herein; and

WHEREAS, Tenant desires to lease Colocation Space in the Colocation Structures to use in conjunction with the Leased Dark Fiber and Equipment.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Colocation Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Tenant do hereby agree as follows:

1. DEFINITIONS



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- 1.1. **"Acceptance"** has the meaning ascribed thereto in Section 4.3.
- 1.2. **"Acceptance Date"** has the meaning ascribed thereto in Section 4.5.
- 1.3. **"Allocated Power"** has the meaning ascribed thereto in Section 5.6.4.
- 1.4. **"Colocation Delivery Form"** has the meaning ascribed thereto in Section 4.1.
- 1.5. **"Colocation Lease"** has the meaning ascribed thereto in Section 3.1.
- 1.6. **"Colocation Lease Term"** has the meaning ascribed thereto in Section 10.1.
- 1.7. **"Colocation Services"** means services provided by Lessor to Tenant as further described in this Colocation Agreement.
- 1.8. **"Colocation Space"** means the space in a Colocation Structure allocated by the Lessor for Tenant's exclusive use, including such other space inside and outside of a Colocation Structure necessary for Tenant or Tenant's contractors and agents to enter and exit, and to bring Equipment into and out of, the Colocation Space.
- 1.9. **"Colocation Structure"** means a structure located on public rights of way or on land owned or leased by Lessor that contains the Colocation Space and that meets the technical requirements for power availability, environmental controls, and physical security as specified in this Colocation Agreement and the Space Specifications.
- 1.10. **"Committed RFS Date"** means the ready for service date set forth in a Colocation Delivery Form on which Lessor commits to deliver the Colocation Space or the Colocation Services, as applicable.
- 1.11. **"Confidential Information"** means all strategic, functional, technical, financial, marketing, sales, promotional and other information (including all related know-how, implementation, operational methods and procedures) related to the business of a Party, which is disclosed by one Party to the other Party, to the extent that such information is marked or identified as confidential or proprietary or would normally be considered confidential under the circumstances. Information that (a) is independently developed by the receiving Party, (b) is lawfully received by the receiving Party free of any obligation to keep it confidential, or (c) becomes generally available to the public other than by breach of this Colocation Agreement, shall not be considered Confidential Information.
- 1.12. **"Cost"** means all actual, documented, and reasonable on-site costs incurred and computed in accordance with: (i) the established accounting procedures used by Lessor to bill third parties for reimbursable projects; and (ii) generally accepted accounting principles. Such Costs include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs (the overhead allocation will not exceed twenty percent (20%) of the labor costs computed without such overhead); and (b) other direct costs and out-of-pocket expenses on a



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pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

- 1.13. **"Construction Cost"** means all Costs incurred by Lessor in constructing a Colocation Structure.
- 1.14. **"Dark Fiber"** means the optical fiber in the Lessor Network through which no light is transmitted and no signal is carried. Dark Fiber is unactivated deployed fiber that is left dark, *i.e.*, with no necessary equipment, such as opto-electronics or optronics attached to light the fiber to carry a signal to serve customers.
- 1.15. **"Demarcation Points"** means the end points of each segment of Leased Dark Fiber as assigned in the applicable Network Delivery Form as connection points to Equipment, including without limitation the end points located in a Colocation Structure or at a multiport service terminal or a network access point.
- 1.16. **"Electricity"** has the meaning ascribed thereto in Section 5.6.
- 1.17. **"End User"** means an end user or potential end user of Tenant Services provided using the Leased Dark Fiber and Equipment.
- 1.18. **"Equipment"** means communications and networking electronics, facilities used for service drops, and other equipment owned or leased by Tenant and used in connection with lighting the Dark Fiber and providing the Tenant Services. Equipment does not include the Dark Fiber or any equipment, facilities, or property owned or leased from third parties by Lessor.
- 1.19. **"Estimated Delivery Date"** has the meaning ascribed thereto in Section 4.1.
- 1.20. **"Evaluation Period"** means, with respect to a Colocation Structure, the period of twenty-one (21) days after Tenant receives notification from Lessor of the completion of construction of such Colocation Structure.
- 1.21. **"Force Majeure Event"** means an event or circumstance that prevents one Party from performing its obligations under this Colocation Agreement, which event is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of commercially reasonable efforts, the claiming Party is unable to overcome or avoid or cause to be avoided, including but not limited to acts of God, fire, explosion, flood, storm or other similar catastrophe, war, revolution, civil commotion, acts of public enemies, terrorism or national emergency, or any law, order, or regulation of the government (or any department, agency, commission, court, or bureau of a government) resulting from the above.
- 1.22. **"HVAC"** has the meaning ascribed thereto in Section 5.3.
- 1.23. **"Lease Agreement"** has the meaning ascribed thereto in the Recitals.
- 1.24. **"Leased Dark Fiber"** has the meaning ascribed thereto in the Recitals.



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- 1.25. **"Lessor Equipment"** has the meaning ascribed thereto in Section 3.4.2.
- 1.26. **"Lessor Network"** has the meaning ascribed thereto in the Recitals.
- 1.27. **"Lessor Service Area"** has the meaning ascribed thereto in the Recitals.
- 1.28. **"Maintenance and Operations Specifications and Procedures"** means the certain specifications and procedures outlined in Exhibit C to this Colocation Agreement.
- 1.29. **"Meet-Me-Room"** means the dedicated room or set of racks in the Colocation Structure that Lessor designates for Tenant and third parties to interconnect their respective equipment or other facilities, including, with respect to Tenant, Leased Dark Fiber.
- 1.30. **"Network Agreement"** means that certain Fiber Network Agreement between Lessor and Tenant dated the same date as this Colocation Agreement.
- 1.31. **"Network Delivery Form"** has the meaning ascribed thereto in the definition section of the Lease Agreement.
- 1.32. **"Party"** means Tenant or Lessor and **"Parties"** means Tenant and Lessor.
- 1.33. **"Person"** means a natural person, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or a governmental authority.
- 1.34. **"Required Relocation"** means any non-emergency relocation of any portion of the Lessor Network that is mandated by a governmental agency (other than Lessor), but does not include any relocation undertaken solely as part of the undergrounding Lessor's power lines.
- 1.35. **"Required Rights"** means all of the legal rights that are necessary for Lessor's installation, operation, and maintenance of the Colocation Structures and for the use of the Colocation Structures contemplated by this Colocation Agreement, including, where applicable, easements and other rights granted by third parties to Lessor.
- 1.36. **"Service Credit"** has the meaning ascribed thereto in Section 5 of Exhibit B.
- 1.37. **"Service Level Agreement"** means that certain Service Level Agreement between the Parties and attached to this Colocation Agreement as Exhibit B.
- 1.38. **"Space Specifications"** means the completed specifications approved by Tenant pursuant to the Network Agreement in accordance with which Lessor will provide the Colocation Space.
- 1.39. **"Structure Fee"** has the meaning ascribed thereto in Section 7.1.



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- 1.40. “**Tenant Services**” means communications services that Tenant may provide to End Users using the Leased Dark Fiber and Equipment.

2. GENERAL PROVISIONS

- 2.1. **Purpose.** The Parties acknowledge that, in order for Tenant to be able to provide the Tenant Services, Tenant requires the ability to colocate its Equipment with the Leased Dark Fiber within suitable structures at aggregation points on the Lessor Network, and requires electrical power and other services to operate its Equipment.
- 2.2. **Colocation Structure Location.** Colocation Structures will be located in the public rights of way or on land owned or leased by Lessor. Lessor will provide Tenant with maps, design documents, and other information reasonably requested by Tenant relating to the locations or planned locations of the Colocation Structures.
- 2.3. **Suspension and Tolling of Obligations.** Anything else to the contrary herein notwithstanding, each Party’s obligations and rights under this Colocation Agreement (other than in respect of Sections 12 and 13) will be suspended and tolled during the pendency of any legal action challenging the authority of Lessor to lease the Colocation Space or to perform its obligations under this Colocation Agreement, provided that such action prevents Lessor from leasing the Colocation Space to Tenant and from performing its obligations under this Colocation Agreement. If a governmental authority enters an order or takes any other action prohibiting Lessor’s leasing of the Colocation Space to Tenant in accordance with the terms of this Colocation Agreement, then upon exhaustion of all administrative and judicial rights of appeal by Lessor, this Colocation Agreement will immediately terminate and neither Party will have any liability to the other Party. Without limiting the foregoing, Lessor will have no liability to Tenant for any breach of Section 9.1 that results from a suspension or termination of this Colocation Agreement pursuant to this Section 2.3.

3. LEASE OF COLOCATION SPACE

- 3.1. **Grant of Lease.** Lessor hereby grants to Tenant a lease (“**Colocation Lease**”) for Tenant to peaceably and quietly have, hold, and enjoy its use of the Colocation Space in accordance with the terms and conditions of this Colocation Agreement. The Parties acknowledge and agree that each Colocation Lease is a conveyance of a leasehold interest in real property from Lessor to Tenant for the duration of the Colocation Lease Term. Tenant shall have no right to sublet its Colocation Space to third-parties.
- 3.2. **Limitations.** This Colocation Agreement is for the lease and use of the Colocation Space only, subject to the terms and conditions herein. Lessor is not transferring or granting to Tenant any other interest or estate in the Colocation Structure, Colocation Space, Leased Dark Fiber, Lessor Network, equipment, attachment points, backbone extensions, private property access, building entrances, conduit or any other property interest, including any fee, easement, or any franchise rights. This Colocation Agreement is not a contract for electric service. Electric service may be provided to



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Tenant by application to Lessor and pursuant to Lessor's rules and regulations. This is also not a franchise agreement for providing cable, video, Internet or telecommunication services. Nothing in this Colocation Agreement will be construed to require Lessor to engage in any activity that would result in its becoming a telecommunications service provider, cable service provider, Internet service provider, telephone company, communications carrier, or any other kind of common carrier, or any kind of utility other than a municipally owned electric utility.

- 3.3. **No Exclusivity.** Nothing in this Colocation Agreement is to limit the Lessor's right of use of, or right to lease or license to others Lessor's utility poles, Colocation Structures (other than the Colocation Space), attachment points, backbone extensions, private property access, building entrances, conduit, or the remaining Dark Fiber not leased in this Colocation Agreement.

3.4. **Ownership.**

- 3.4.1. **Ownership of Colocation Structure.** As between the Parties, Lessor will remain the legal owner of the Colocation Structure. Nothing in this Colocation Agreement will be interpreted to give or convey to Tenant any ownership property right, or any title or interest of ownership in such Colocation Structure or Colocation Space. Tenant will not have any interest in, or the right to occupy or otherwise use, any space in a Colocation Structure other than the Colocation Space.

- 3.4.2. **Ownership of Equipment.** As between the Parties, all ownership or other property interests, rights, and titles in and to any Equipment remain in Tenant, even if it may be or become attached to or embedded in realty. Tenant is responsible for installing, maintaining, and replacing the Equipment. Lessor will not access, use, copy, transfer, reverse-engineer, modify, or dispose of any Equipment or any portion thereof except as expressly permitted by this Colocation Agreement. As between the Parties, all ownership rights and titles in and to any equipment, facilities, or real property owned by Lessor remain in Lessor ("**Lessor Equipment**").

- 3.4.3. **Ownership of Intellectual Property.** All ownership rights, title, and intellectual property rights in and to any Equipment or Tenant Services remain in Tenant or Tenant's licensors. All ownership rights, title, and intellectual property rights in and to the Lessor Network, Dark Fiber and Lessor's equipment remain in Lessor or Lessor's licensors.

3.5. **Use of Colocation Space.**

- 3.5.1. **Use by Tenant.** Tenant and Tenant's contractors and agents will have the exclusive right to enter, occupy, and otherwise use the Colocation Space at any time for the purposes of installing, maintaining, monitoring, operating, storing, removing, or otherwise using its Equipment. Tenant will have the right to access cable raceways or other cable management as necessary to

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connect its Equipment to the Leased Dark Fiber. The Colocation Space must be physically separated from the rest of the space inside the Structures, and must have a separate, secured entrance for the exclusive use of Tenant. The secured entrance can be an entrance from the interior or the exterior of the Colocation Structure. Tenant will use the Colocation Space in accordance with requirements as described in the Space Specifications and Lessor's reasonable rules and regulations in effect from time to time that are applicable to tenants of Colocation Space. Tenant will adhere to industry standards for the installation and removal of Equipment. Tenant acknowledges that other tenants may use the Colocation Structure and that Lessor reserves the right to install and maintain cables and wiring along, above and below the space occupied by Tenant's cable raceways.

3.5.2. Interference.

- (a) Tenant has the right to use the Colocation Space free from any interference, impairment, or disruption to its Equipment caused by Lessor's or any third-party tenant's use of the Colocation Structure ("**Lessor Interference**"). If Tenant experiences Lessor Interference, Tenant will notify Lessor and Lessor will promptly abate such Lessor Interference. In the event that Lessor Interference causes an Outage and Lessor fails to abate such Lessor Interference within forty-eight (48) hours of receiving notice from Tenant, then notwithstanding the dispute resolution procedures set forth in Section 14.4, Tenant may immediately seek to enforce its rights under this Section 3.5.2 through specific performance, preliminary injunction, or a temporary restraining order.
- (b) Tenant will not interfere, impair, or disrupt the operations of the hardware or software used by Lessor or any third-party tenant at a Colocation Structure ("**Tenant Interference**"). If Lessor experiences Tenant Interference, Lessor will notify Tenant and Tenant will promptly abate such Tenant Interference. In the event that Tenant Interference causes the Lessor Network (other than the Leased Dark Fiber) to be unable to carry Lessor's or other tenant's data traffic, and Tenant fails to abate such Tenant Interference within forty-eight (48) hours of receiving notice from Lessor, then notwithstanding the dispute resolution procedures set forth in Section 14.4, Lessor may immediately seek to enforce its rights under this Section 3.5.2 through specific performance, preliminary injunction, or a temporary restraining order.

3.5.3. Interconnection. Tenant may interconnect its Equipment to the equipment or facilities of any third-party tenant directly between the parties, or in the Meet-Me-Room of a Colocation Structure if available, subject to the mutual consent of Tenant and the third-party tenant to the interconnection.

3.6. Right of Access.



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- 3.6.1. Access by Tenant. Tenant and Tenant's agents, contractors, and representatives will have the right to enter and access each Colocation Structure and will have the exclusive right to enter and access the Colocation Space within each Colocation Structure subject to Lessor's reasonable access policies in effect from time to time that are applicable to all tenants. Tenant does not have a right to enter and access the space in the Colocation Structure assigned to Lessor or a third-party other than any applicable common areas necessary to access the Colocation Space. Lessor will provide Tenant with all keys and necessary credentials to access each Colocation Structure and Colocation Space. Tenant may freely access such Colocation Structure and Colocation Space twenty-four (24) hours per day, seven (7) days per week, three hundred and sixty-five (365) days per year (or three hundred and sixty-six (366) days per leap year), subject to Lessor's reasonable, disclosed access policies that are applicable to all tenants. Lessor will provide Tenant with seven (7) days' written notification prior to implementing any changes to its access policies.
- 3.6.2. Access by Lessor. Lessor will have keys to access the Colocation Structures and Colocation Spaces, and Lessor, its agents, contractors, and representatives may enter the Colocation Space to inspect, maintain, and repair the Colocation Space. Except in emergency threats to health and safety, or as otherwise provided in the Service Level Agreement or pursuant to agreed-upon inspection and maintenance scheduling, Lessor will provide Tenant with at least forty-eight (48) hours' prior written notice of entry into the Colocation Space and will schedule any such entry by mutual agreement with Tenant. Tenant has the right to require that its representative accompany Lessor during any such entry into the Colocation Space. Subject to the next sentence, any representative of Lessor entering the Colocation Space must be subject to the terms and conditions of the nondisclosure agreement that has been executed by the Parties. In the event of Lessor's entry during an emergency, Lessor will promptly (and in any event within twenty-four (24) hours) notify Tenant in writing of (a) the nature and cause of the emergency, (b) the time and duration of the entry and name of the person(s) who entered and (c) a reasonably detailed description of the action carried out within the Colocation Space by such individuals during such entry.
- 3.7. Temporary Use. In the event (a) that a Colocation Structure or Colocation Space is damaged, vandalized, or otherwise made incapable of meeting the terms of the Service Level Agreement for longer than twenty-four (24) hours, including as a result of a Force Majeure Event, or (b) of a relocation of the Colocation Space pursuant to Section 7 of this Colocation Agreement, Tenant will have the right to place a temporary structure on and occupy Lessor's property adjacent to the Colocation Structure at no additional cost, for the purpose of accessing Colocation Services and connecting the Equipment at different Demarcation Points on the Lessor Network. Tenant may occupy and use the site of such temporary structure and the additional Demarcation Points until the Colocation Space is repaired and restored or relocated to meet the Space Specifications and Service Level Agreement requirements, and Tenant

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has accepted the Colocation Space in accordance with Section 4 and reoccupied the Colocation Space. Tenant will, within three (3) months of Tenant's Acceptance of the restored or relocated Colocation Space, disconnect the Equipment from the temporary Demarcation Points, remove the temporary structure, and vacate the property adjacent to the Colocation Structure. Lessor will make commercially reasonable efforts to restore the Demarcation Points and Colocation Services within Tenant's scheduled maintenance windows.

- 3.8. **Sale of Structures.** If Lessor sells or otherwise disposes of its right, title or interest to any Colocation Structure, Lessor will provide at least one hundred eighty (180) days' prior written notice to Tenant of such disposal and will, at Tenant's discretion, either: (a) provide Tenant with an easement to the Structures so that Tenant can continue to use the Colocation Structures under the same terms as this Colocation Agreement and obtain a recognition and non-disturbance agreement from the acquiring party in a form reasonably acceptable to Tenant, or (b) provide a credit to Tenant against the lease payment due under the Lease Agreement for Tenant's Costs of obtaining a replacement colocation space for the Equipment that would enable Tenant to provide the Tenant Services to End User, provided, however that in no event will such credit exceed the Structure Fee of the applicable Colocation Structure. Lessor will provide the credit calculated in the preceding sentence to Tenant in the month following the month in which Tenants notifies Lessor that it has obtained a replacement colocation space.
- 3.9. **No Liens.** If a Party causes a mechanic's, materialman's, or vendor's lien, or any similar lien to become attached, in the case of Tenant to the Leased Dark Fiber, and in the case of Lessor to the Equipment, then such Party will, upon becoming aware of such lien, promptly notify the other Party in writing, and promptly take all steps needed to cause such lien to be discharged and released of record without cost to the other Party.
- 3.10. **Lawful Use.** Tenant's use of its Equipment, the Colocation Structure, and the Colocation Space will at all times comply with all applicable governmental codes, ordinances, laws, rules, regulations, and restrictions.

4. NOTICE, DELIVERY AND ACCEPTANCE

- 4.1. **Notice of Colocation Space for Delivery.** Lessor will make commercially reasonable efforts to provide written notice to Tenant no later than sixty (60) days prior to the date on which Lessor anticipates delivering the Colocation Structures for Acceptance Testing (the "**Estimated Delivery Date**"). The written notice will include, at a minimum, the Estimated Delivery Date of the Colocation Structure. The written notice will be in the form and medium to be agreed upon by the Parties at the time of the acceptance of the First Network Design, such notice will include at a minimum the information specified in Exhibit A attached hereto (the "**Colocation Delivery Form**").
- 4.2. **Inspection.** Tenant will have the right to inspect each Colocation Structure and test the Colocation Services as necessary to confirm that each Colocation Structure was



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constructed and operates in accordance with the Space Specifications, and to confirm that adequate lightning protection has been implemented for each Colocation Structure. Tenant will provide Lessor with two (2) days' prior notice before conducting an inspection of the Colocation Structures, and Lessor personnel may be present for the inspection; Lessor will provide reasonable cooperation with such inspection. Lessor will, at Tenant's request, activate the Colocation Services for purposes of the inspection. Tenant has no right to inspect the Colocation Space leased by other tenants.

- 4.3. **Tenant's Acceptance.** If Tenant determines that a Colocation Structure complies with the Space Specifications, that the Colocation Services at the Colocation Structure comply with the Service Level Agreement, and that adequate lightning protection has been implemented with respect to the Colocation Structure, then Tenant will provide written notice to Lessor that it accepts the Colocation Space in the Colocation Structure ("**Acceptance**"). If, with respect to a Colocation Structure to be delivered for inspection under Section 4.2, Tenant fails to notify Lessor during the Evaluation Period that a corrective action is necessary pursuant to Section 4.4, the Colocation Space will be deemed accepted.
- 4.4. **Corrective Action.** If Tenant determines that a Colocation Structure does not comply with the Space Specifications, that the Colocation Services do not comply with the Service Level Agreement, or that adequate lightning protection has not been implemented with respect to the Colocation Structure, then during the Evaluation Period, Tenant will notify Lessor of its determination and specify in reasonable detail the aspects of the Colocation Structure that do not comply with the Space Specifications, the aspects of the Colocation Services that do not meet the Service Level Agreement, or the steps necessary to implement adequate lightning protection. Lessor will promptly take such action as is reasonably necessary to bring the Colocation Structure in compliance with the Final Specifications, to bring the Colocation Services up to meet the Service Level Agreement, and implement adequate lightning protection. After taking such corrective action, Lessor will notify Tenant thereof, and Tenant will provide notice to Lessor of a new round of inspection in accordance with Section 4.2. The cycle described above of inspection, notification, corrective action, and re-inspection will take place as necessary to ensure that the Colocation Structure meets the Space Specifications, that the Colocation Services meet the Service Level Agreement, and that adequate lightning protection has been implemented.
- 4.5. **Acceptance Date.** The "**Acceptance Date**" of a Colocation Structure is the earlier of the date Tenant confirms its Acceptance or the last day of the Evaluation Period, provided that the Evaluation Period will be suspended for the duration of any corrective action or re-inspection pursuant to Section 4. No Acceptance or deemed Acceptance will constitute a waiver by Tenant of Lessor's obligations to maintain the Colocation Structure and Colocation Space in accordance with the Space Specifications.

5. COLOCATION SERVICES



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- 5.1. **Lessor's Performance of Colocation Services.** Lessor will perform the Colocation Services as described in this Section 5 in accordance with the requirements of the Service Level Agreement. Lessor will begin performance of the Colocation Services no later than two (2) days following the Acceptance Date.
- 5.2. **Security.** Lessor will provide security to the Colocation Structures in accordance with the specifications set forth in Attachment 1 to Exhibit B.
- 5.3. **HVAC.** Lessor will ensure the availability for the Colocation Space to receive ventilation and air conditioning ("HVAC") in accordance with the Service Level Agreement.
- 5.4. **Fire Suppression.** Lessor will provide a fire suppression system for the Colocation Structure that is waterless, non-toxic, and otherwise reasonably suitable for telecommunications equipment.
- 5.5. **Cabling.** If one or more cables are required to connect Equipment to a third-party tenant's equipment, Lessor will facilitate the cable installation and connection between Tenant and the third-party tenant within the Colocation Structure, provided that Tenant and the third-party tenant notify Lessor that they consent to the interconnection. Lessor and Tenant will make commercially reasonable efforts to keep all cables inside the Colocation Structure properly groomed and in accordance with industry best practices.
- 5.6. **Electricity.** Lessor will provide Tenant with the infrastructure and services required for Tenant to receive reliable, conditioned electrical power (e.g., single phase 120/240 V AC, -48 V DC electrical power, or such other power as set forth in a Colocation Delivery Form) ("**Electricity**") to the Colocation Space twenty-four (24) hours per day, seven (7) days per week, and as more particularly described in the Service Level Agreement.
- 5.6.1. Tenant will pay Lessor a pro-rata share of the cost of electricity used in each Colocation Structure.
- 5.6.2. Lessor will provide redundant Power Distribution Units (PDUs) (for AC Power) and breaker or fuse panels (for DC power) to distribute Allocated Power to the Colocation Space.
- 5.6.3. Lessor will provide back-up power to the Colocation Structure. Lessor will install or provide for the installation of Uninterruptible Power Supply (UPS), rectifiers, diesel generators, onsite diesel fuel (sufficient for a minimum run-time of twenty-four (24) hours at full load), fuel supply contracts and other infrastructure and services needed to power the Equipment, the Colocation Space and the HVAC equipment uninterrupted during an electrical power outage. Tenant has no obligation to make any payment for the consumption of diesel fuel by such generators, and Lessor will bear the cost of all diesel fuel supplied to and consumed by such generators with respect to the periodic testing of the generators and usage, when necessary, of such generators.

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- 5.6.4. Lessor will provide the number of kW of Electricity specified by Tenant on the Colocation Delivery Form (“**Allocated Power**”). The kW specified in the Colocation Delivery Form will be the amount required for critical and redundant Electricity provided to the Equipment. The minimum redundancy level is N+1. All Electricity ordered will be protected against lightning strikes unless otherwise expressly specified in a Colocation Delivery Form as “unprotected.”
 - 5.6.5. If Tenant’s Electricity usage exceeds the Allocated Power but remains below one hundred and five percent (105%) of the Allocated Power, then Lessor will give Tenant notice that the Allocated Power level has been exceeded, and Tenant will, within thirty (30) days of such notice, reduce its usage to a level at or below the Allocated Power level or place an order for additional Electricity service to restore the usage to that which is less than the Allocated Power.
 - 5.6.6. Tenant will ensure, at its sole cost and expense, that the load connected to each of its power circuits not exceed eighty percent (80%) of the circuit breaker capacity.
 - 5.6.7. Tenant may order additional AC power capacity for the Colocation Space in minimum increments of 1 kW based on an A & B feed setup. Tenant may order DC power in minimum increments of 1 kW based on an A & B feed setup. Additional power is subject to technical feasibility and the approval of Lessor; such approval will not be unreasonably withheld, conditioned or delayed. The maximum total power capacity requested by Tenant may not exceed 8kW per rack, with a maximum total consumption of 50kW in the Colocation Space. Additional power is subject to technical feasibility and the approval of Lessor. Requests by Tenant for Lessor approval will not be unreasonably withheld, conditioned, or delayed.
 - 5.6.8. Lessor will provide a single point ground system using the PANI standard to the Colocation Space. Lessor will provide an isolated connection to a ground conductor for each equipment rack where electrified Equipment is installed. Lessor will provide technical clean earth ground via a connection to the closest main ground cable or conductor. Earth ground will consistently and effectively achieve a 1 ohm or less measurement to earth ground.
- 5.7. **Antenna Attachment.** Tenant has the right to operate and maintain at all times during the Colocation Lease Term, at no additional charge, a reasonable number of microwave, satellite, communications antennae or other communication devices under four feet (4’) in height (collectively, the “**Antenna**”) either on the Colocation Structure rooftop or such other locations as the parties may mutually agree (the “**Antenna Space**”) as well as the right to install such cable and conduit as may be reasonably necessary to connect the Antenna to the Colocation Space. Unless otherwise permitted by Lessor, Lessor retains the right to install the Tenant’s Antenna, and will install or cause to be installed the Antenna using qualified contractors and in accordance with



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specifications to be provided by Tenant and updated from time to time. Tenant agrees to pay the Costs incurred by Lessor during such installation. Notwithstanding the foregoing, Tenant's right to operate and maintain the Antenna is subject to the approval of Lessor with respect to the plans and specifications of the Antenna, the manner in which the Antenna is attached to the roof of the Colocation Structure, and the manner in which any cables are run to and from the Antenna; such approval will not be unreasonably withheld, conditioned or delayed.

- 5.7.1. Lessor will perform a load study as necessary to ensure the safe operation of the structures to which the Antenna is attached, and Tenant will reimburse Lessor for the Costs of the study in the month following the calendar month in which the study is provided to Lessor and to Tenant. Lessor will make commercially reasonable efforts to provide an alternate solution (location/height) on the structures or on its property should the signals to and from the Antenna become or are at risk of becoming obstructed, or should Tenant require a new design for any reason at its discretion. Tenant will pay for the Costs of relocation and of the additional load studies should they be required to maintain safe operation of the Antenna.
- 5.7.2. Tenant is responsible for obtaining all necessary governmental approvals and for the cost of installing, operating, maintaining and removing the Antenna, and Lessor will make reasonable efforts to assist with Tenant in obtaining such approvals.
- 5.7.3. Tenant agrees to install only equipment of types and frequencies that will not cause unreasonable interference to the antennae located on the roof of the Colocation Structure and operated by Lessor or by a third-party tenant as of the Acceptance Date of the applicable Colocation Structure. If Tenant causes such interference, Tenant will change the frequency on which the Antenna transmits or receives and take other reasonable steps necessary to abate the interference. Lessor will take, and will require third-party tenants operating antenna on the Colocation Structure to take, reasonable steps necessary to abate any interference with Tenant's use of the Antenna caused by Lessor or such third-party tenant.



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- 5.7.4. Tenant will, at its sole expense and risk, install, operate and maintain the Antenna in a good and workmanlike manner, and in compliance with all applicable electric, communication, and safety codes, ordinances and regulations. Except as otherwise expressly set forth in this Colocation Agreement, Lessor assumes no responsibility for the licensing, operation or maintenance of Tenant's Antenna. Tenant is responsible for carrying out the terms of any applicable license related to the Antenna. The Antenna will be connected to Lessor's power supply in compliance with all applicable electrical, fire and safety codes and with Lessor's requirements set forth in the Space Specifications.
- 5.7.5. Lessor will make reasonable best efforts to implement lightning protection prior to the installation of the Antenna, and Tenant will cooperate with reasonable requests for assistance from Lessor in implanting such protection.

6. OPERATION AND MAINTENANCE

- 6.1. **Routine Maintenance.** Lessor will provide routine maintenance in accordance with Lessor's Maintenance and Operations Specifications and Procedures.
- 6.2. **Maintenance at Tenant's Request.** If Tenant requests Lessor to perform maintenance or repair work at a Colocation Structure, Lessor will make commercially reasonable efforts to schedule such maintenance or repair to occur promptly after receiving notice. Lessor has no obligation to provide any maintenance or repair work on the Equipment.
- 6.3. **Non-Routine Maintenance.** If Lessor becomes aware of any damage to a Colocation Structure that could cause damage to Equipment located inside, or if Tenant notifies Lessor that, in Tenant's reasonable determination, such damage to a Colocation Structure could negatively impact Tenant's ability to deliver the Tenant Services to End Users, Lessor will make commercially reasonable efforts to begin remediating the damage within twenty-four (24) hours of becoming aware of the damage or receipt of notice from Tenant, as applicable. If Lessor becomes aware of damage to a Colocation Structure other than by being notified by Tenant, Lessor will promptly notify Tenant of the damage.
- 6.4. **Tenant Maintenance.**
- 6.4.1. **Maintenance of Equipment.** Tenant will be responsible for all maintenance and repair of Equipment.
- 6.4.2. **Maintenance of Colocation Structure.** If Lessor notifies Tenant that it is unable to perform the maintenance and repair within the specified timeframes required by Section 6.3, or if Lessor fails to perform such maintenance or repairs within the specified timeframe, then Tenant or its contractor may perform all necessary repairs to the Colocation Structures. Prior to commencing maintenance and repair under this Section 6.4.2, Tenant will make a good faith effort to notify Lessor and coordinate such maintenance and



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repair with Lessor and other tenants. Tenant will provide written notice to Lessor of the Costs of such necessary repairs, and Lessor will provide to Tenant a credit, equal to such Costs, against the following month's lease payments due under the Lease Agreement.

- 6.5. **Scheduling.** For any maintenance activity for Colocation Structures described in Section 6.1 that could affect Tenant's operation of the Equipment, Lessor will perform such activity exclusively between 12:00 a.m. and 6:00 a.m. local time or at a time agreed to by both Lessor and Tenant (a "**Maintenance Event**"). Lessor will provide written notice to Tenant of all scheduled Maintenance Events at least seven (7) days in advance of their scheduled occurrence. Lessor will not conduct any maintenance activity that simultaneously will affect both the main power (A feed) and protected power (B feed) serving the Colocation Space.

7. CONSIDERATION

- 7.1. **Structure Fee.** Upon Acceptance by Tenant of a Colocation Structure pursuant to Section 4, Lessor may invoice Tenant for an amount equal to the sum of (a) Tenant's pro-rata share, based on square-footage of the Colocation Space, of the Structure's Construction Cost and (b) ten percent (10%) of such Construction Cost (the "**Structure Fee**"); provided, however, that the Structure Fee for each Colocation Structure will not exceed five hundred thousand dollars (\$500,000), and the total Structure Fee for all Colocation Structures will not exceed two million dollars (\$2,000,000) in the aggregate. Tenant will pay the Structure Fee within forty-five (45) days of Lessor's invoice. If Tenant does not pay the Structure Fee when due, Lessor may assess a late fee of one percent (1%) per month (not to exceed the maximum rate allowed under applicable law) on all amounts payable pursuant to this Colocation Agreement.
- 7.2. **Additional Consideration.** The Parties acknowledge and agree that the lease payments payable by Tenant pursuant to the Lease Agreement constitute additional consideration for benefits provided by Lessor under the terms of this Colocation Agreement.

8. RELOCATION



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- 8.1. **Emergency Relocations.** In addition to any right to perform maintenance under Exhibit C, Lessor shall have the power at any time to remove or relocate any Colocation Structure, Colocation Space, Equipment, pole, wire, cable, fiber, conduit, or structure that is dangerous to life or property at Lessor's sole discretion without incurring any liability for such removal or relocation, other than as a result of Lessor's gross negligence or willful conduct, provided that Lessor shall restore as soon as commercially reasonable such Colocation Structure, Colocation Space, Equipment, pole, wire, cable, fiber, conduit, or structure that has been relocated or removed as soon as commercially reasonable and be responsible for such removal and or/relocation costs.
- 8.2. **Required Relocation.** Lessor will give Tenant ninety (90) days' prior written notice of any Required Relocation of any Colocation Structure, Colocation Space, or Equipment, provided, however, that if Lessor does not received notice of a Required Relocation at least ninety (90) days prior to the date of the Required Relocation, then Lessor will notify Tenant no later than three (3) days after Lessor's receipt of such notice. Tenant will cooperate in good faith with Lessor to facilitate any Required Relocation. Lessor will make commercially reasonable efforts, and Tenant will provide commercially reasonable assistance, to minimize and avoid: (a) any interruption to Tenant's enjoyment of the Colocation Space; and (b) any material impact on the delivery of the Colocation Services following the relocation. If a Required Relocation in respect of a Colocation Structure occurs before the date that is the tenth (10th) anniversary of the Effective Date, Lessor will be responsible for Lessor's and Tenant's Costs of any such Required Relocation. If a Required Relocation in respect of a Colocation Structure occurs after the date that is the tenth (10th) anniversary of the Effective Date and before the end of the Colocation Lease Term, then Tenant will be responsible for Tenant's pro-rata share, based on square footage of the Colocation Space, multiplied by (x) the number of years that have elapsed in the Colocation Lease Term (rounded to the nearest integer) divided by (y) twenty (20).
- 8.3. **Relocation for Lessor's Convenience.** Lessor will be responsible for Lessor's and Tenant's Costs of any relocation made solely for the convenience of Lessor.
- 8.4. **Relocation of Equipment.** Lessor will not require Tenant to relocate its Equipment unless Lessor provides at least nine (9) months' prior written notice. Lessor will bear all reasonable out-of-pocket costs and expenses incurred by Lessor and by Tenant in connection with such relocation of the Equipment within a Colocation Structure and any associated cabling. In case of any such relocation, Lessor will make reasonable best efforts to consult with Tenant and to specify a timetable for relocation that minimizes disruption, impair, or interference with Tenant's operation of the Equipment.
- 8.5. **Post-Relocation Testing.** Upon completing a relocation of a Colocation Structure, Tenant will have the opportunity to re-inspect the relocated Colocation Structure and Colocation Services. Lessor will reestablish the Leased Dark Fiber aggregation points at the relocated Colocation Structure. Lessor will, within five (5) days following the



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completion of the relocation, deliver a map to Tenant that describes the changes to the Lessor Network as a result of the relocation.

9. REPRESENTATIONS AND WARRANTIES

- 9.1. **Mutual Representations.** Each Party represents and warrants to the other Party that: (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Colocation Agreement, (b) it will comply with all applicable laws in connection with the its obligations under this Colocation Agreement, and (c) this Colocation Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the effect of bankruptcy, insolvency, and similar laws affecting the rights and remedies of creditors, and general equitable principles.
- 9.2. **Required Rights.** Lessor represents and warrants that it has secured (or will have secured prior to Tenant's Acceptance of the Colocation Structure) the Required Rights for the applicable Colocation Structure. Lessor will maintain the Required Rights through the Colocation Lease Term. Lessor will provide prompt written notice to Tenant upon Lessor's becoming aware of any occurrence or event that could reasonably lead to Lessor losing the Required Rights for any Colocation Structure.
- 9.3. **Lessor Warranty.** Lessor represents and warrants that the construction of the Colocation Structures will be performed in a professional workmanlike manner using qualified personnel, and that the equipment and materials used in construction of the Colocation Structures are installed and constructed in accordance with applicable building, construction and safety codes for such construction and installation. EXCEPT AS SET FORTH ABOVE, LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED.
- 9.4. **Lessor Self-Insurance.** Lessor represents and warrants that it is self-insured. Lessor further represents and warrants that its self-insurance is and will be, for the duration of the Colocation Lease Term, sufficient to meet the liability thresholds set forth below:
- 9.4.1. For general commercial liability, and for bodily injury, death, "broad form" property damage, and personal injury: not less than one million dollars (\$1,000,000) per occurrence;
- 9.4.2. For automobile liability for all owned, non-owned, and hired vehicles: not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage; and
- 9.4.3. For workers' compensation as required by applicable law: not less than one million dollars (\$1,000,000) per accident and employee.

Nothing in this Section 9.4 will be construed to affect or limit in any manner Lessor's contractual liability.

10. TERM; DEFAULT



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- 10.1. **Colocation Lease Term.** The term of any Colocation Lease (the “**Colocation Lease Term**”) under this Colocation Agreement will begin on the Acceptance Date of the applicable Structure and conclude on the date on which the Lease under the Lease Agreement expires or terminates.
- 10.2. **Tenant Default.** Tenant is in default of this Colocation Agreement if it fails to cure any material breach of any term of this Colocation Agreement within thirty (30) days of receiving written notice of the breach from Lessor; provided that if the breach is not reasonably curable within thirty (30) days then the period for cure shall be extended for up to an additional thirty (30) days so long as Tenant is diligently pursuing a cure at the end of the first thirty (30) days. In recognition of the fact that the Tenant Services promote the public welfare, health, and safety of the residents in the Lessor Service Area, and that Tenant’s ability to provide the Tenant Services requires the use of the Colocation Space and Colocation Services, Lessor agrees that, following Tenant’s payment in full of the Structure Fee, Lessor’s exclusive remedies for Tenant’s breach of this Colocation Agreement are awards of money damages or specific performance of Tenant’s obligations under this Colocation Agreement. Lessor expressly disclaims and waives any right, power, or authority to terminate this Colocation Agreement or any Colocation Lease for any reason including Tenant’s material breach of this Colocation Agreement.
- 10.3. **Lessor Default.** Lessor is in default of this Colocation Agreement if it fails to cure any material breach of any term of this Colocation Agreement within thirty (30) days of receiving written notice of the breach from Tenant; provided that if the breach is not reasonably curable within thirty (30) days then the period for cure shall be extended for up to an additional thirty (30) days so long as Lessor is diligently pursuing a cure at the end of the first thirty (30) days. Lessor acknowledges that any Lessor default under the Service Level Agreement in Exhibit B hereto, will result in lost revenue and harm to the reputation of Tenant and that actual damages resulting from any of the foregoing occurrences are difficult to ascertain. Accordingly, Lessor agrees to provide liquidated damages in the form of service credits to Tenant as set forth in the Service Level Agreement in Exhibit B hereto. The availability of service credits under the Service Level Agreement will be Tenant’s exclusive remedy for Lessor’s default thereunder, provided however that Tenant is not precluded from obtaining actual damages or from obtaining specific performance of Lessor’s other contractual obligations under this Colocation Agreement.
- 10.4. **Early Termination of Network Agreement.** In the event that the Network Agreement terminates pursuant to Section 5.4 thereof, this Colocation Agreement and any Colocation Lease hereunder will automatically terminate, and neither Party will have any further liability or obligation to the other Party under this Colocation Agreement.
- 10.5. **Insolvency.** In the event that either Party becomes subject to bankruptcy or a custodian, receiver, trustee, intervenor, or other officer under the authority of Chapters 7, 9, 11 or 13 of the Bankruptcy Code as defined in the United States Code or any applicable state law within any jurisdiction, whether voluntary or involuntary, or

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makes an admission or is determined by a court of law to be insolvent, such Party shall be deemed in default of this Colocation Agreement and either Party shall have the right to terminate this Colocation Agreement within thirty (30) calendar days of its notification of any bankruptcy proceeding or any admission or judicial determination of insolvency.

- 10.6. **Equipment and Antenna Removal.** Following termination or expiration of this Colocation Agreement, Tenant will remove all Equipment from the Colocation Spaces within thirty (30) days of the date of termination or expiration. Lessor will provide Tenant with access to any space in a Colocation Structure needed in order to safely remove the Equipment without damage thereto. If not removed within thirty (30) days, Lessor may remove the Equipment or assume title to such Equipment. For purposes of this Section 10.6, Equipment does not include any service drop that is subject to the Pole Attachment Agreement. Following termination or expiration of this Colocation Agreement, unless Lessor provides written permission for Tenant to remove the Antenna at Tenant's expense, Tenant will reimburse Lessor for Lessor's Costs of removing all Antenna from the Colocation Structures within forty-five (45) days of Tenant's receipt of Lessor's invoice for such removal.

11. INSURANCE

- 11.1. **Insurance Types and Limits.** Tenant will maintain, without lapse, at all times during the term of this Colocation Agreement, insurance meeting the following minimum requirements:

- 11.1.1. Workers' Compensation Insurance covering all employees, in statutory limits, who perform or may perform any of the activities of the Tenant pursuant to this Colocation Agreement, and which protects it from all claims under any such laws applicable thereto.
- 11.1.2. General liability and property damage liability insurance covering all of the Tenant's activities under this Colocation Agreement; limits for bodily injury or death not less than five hundred thousand dollars (\$500,000) for one person and one million dollars (\$1,000,000) for each incident; for property damage, not less than two hundred fifty thousand dollars (\$250,000) for each incident and one million dollars (\$1,000,000) aggregate for incidents during the policy period.
- 11.1.3. Automobile liability insurance on all self-propelled vehicles used in connection with this Colocation Agreement, whether owned, non-owned, hired or otherwise. This policy shall be comprehensive automobile liability policy as approved by the National Bureau of Casualty Underwriters and the Insurance Department of the State of Alabama, with liability limits of not less than three hundred thousand dollars (\$300,000) for one person and one million dollars (\$1,000,000) for each incident; and a property damage limit of not less than two hundred thousand dollars (\$250,000) for each incident.



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- 11.1.4. An umbrella liability policy certificate in addition to the certificates listed above with a minimum limit of liability of not less than five million dollars (\$5,000,000) per occurrence, unless otherwise mutually agreed to by the Parties in writing.
- 11.1.5. All risk property insurance. Such insurance shall be full replacement cost coverage. In regards to damage to property typically covered under an all risk property insurance policy, each party waives the right of subrogation except in cases where the property is damaged by the other Party's negligence or intentional misconduct.
- 11.2. Lessor and its officers, employees, and agents will be named as additional insureds on all insurance policies required under this Colocation Agreement.
- 11.3. Tenant will provide Lessor with the names of all companies issuing insurance as required by this Colocation Agreement.
- 11.4. Tenant will provide Lessor with a current certificate of insurance evidencing all of the insurance required by this Colocation Agreement prior to the installation of its Equipment and at all times thereafter while this Colocation Agreement remains in effect. Each insurance certificate will state that the issuer of the insurance certificate will give Lessor written notice of any cancellation, modification, or expiration of any insurance policy referred to in the certificate in accordance with the insurer's notice policies. Any replacement certificates will be filed with Lessor at least thirty (30) days before the expiration of the then current insurance policies.
- 11.5. All insurance policies required by this article to be maintained by the Tenant will be valid and enforceable policies issued by insurers authorized to conduct business in Alabama and in good standing under the laws of Alabama.
- 11.6. Each Party is solely responsible for ensuring that such Party's contractors and subcontractors maintain insurance coverage that is usual, reasonable and customary for the services provided by such contractors and subcontractors to ensure that such Party can meet its obligations under this Colocation Agreement.

12. CONFIDENTIALITY

- 12.1. **Non-Disclosure of Confidential Information**. Neither Party will disclose the other Party's Confidential Information, except to (a) any entity such Party directly or indirectly controls, is controlled by, or under common control with such Party; and (b) employees, agents or professional advisors of such Party but only to the extent needed to exercise its rights and fulfill its obligations under this Colocation Agreement. The Party receiving Confidential Information will ensure that any such additional recipients have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. Upon termination of the Colocation Agreement for any reason or upon request of a Party, each Party will return all Confidential Information, together with any copies of the same, to the other Party, or certify as to its destruction.



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- 12.2. **Disclosures Required by Law.** The Parties acknowledge that Lessor is a public entity subject to the Alabama Open Records Act and other public records laws. To the extent there is a third-party request for Confidential Information, the Party receiving the request may disclose Confidential Information when required by applicable law after giving the notice set forth in this Section 12.2 to the other Party, if such notice is permitted by applicable law. If any Party is required by applicable law or similar process to disclose any Confidential Information, it will provide the other Party with prompt prior written notice of such request or requirement so that such Party may seek an appropriate protective order and/or waive compliance with this Section 12.2. The Party whose consent to disclose Confidential Information is requested will respond to such request in writing within five (5) days of the request by either authorizing the disclosure or advising of its election to seek a judicial or administrative protective order. If such Party fails to respond within the prescribed period, the disclosure will be deemed approved. If a Party chooses to seek an appropriate protective order, the other Party will (a) refrain from disclosing such Confidential Information (unless legally compelled to do so) until the request for a protective order is resolved; (b) make all reasonable efforts to cooperate with the Party seeking the protective order before the applicable judicial or administrative body; and (c) comply with any validly-issued protective order.

13. LIMITATION OF LIABILITY

- 13.1. **IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF, OR IN CONNECTION WITH, THIS COLOCATION AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY INCURRED OR SUFFERED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- 13.2. **EXCEPT IN RESPECT OF ANY CREDITS AGAINST TENANT'S LEASE PAYMENTS OBLIGATIONS UNDER THE LEASE AGREEMENT THAT ARE PROVIDED FOR PURSUANT TO THE TERMS OF THIS COLOCATION AGREEMENT, IN NO EVENT WILL LESSOR BE LIABLE FOR DAMAGES FOR INTERRUPTION OF ANY TRANSMISSION THROUGH THE LEASED DARK FIBER, OR FOR FAILURE OR ERRORS IN SIGNAL TRANSMISSION, LOST DATA, FILES OR SOFTWARE DAMAGE UNLESS CAUSED BY LESSOR'S WILLFUL CONDUCT.**
- 13.3. **CONTENT OF TRANSMITTED DATA OR COMMUNICATIONS. LESSOR DISCLAIMS ALL LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT (INCLUDING THE NATURE OF MATERIALS, OPINIONS AND VIEWS) OF ANY AND ALL DATA OR COMMUNICATIONS TRANSMITTED, OTHER THAN BY LESSOR OR A PERSON ACTING AT**



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LESSOR'S DIRECTION OR ON LESSOR'S BEHALF, IN, ACROSS, ON, THROUGH OR OVER THE LEASED DARK FIBER AFTER THE ACCEPTANCE DATE. TENANT AGREES THAT IT WILL MAKE NO CLAIM WHATSOEVER AGAINST LESSOR RELATING TO THE CONTENT OF ANY DATA OR COMMUNICATIONS TRANSMITTED, OTHER THAN BY LESSOR OR A PERSON ACTING AT LESSOR'S DIRECTION OR ON LESSOR'S BEHALF, IN, ACROSS, ON, THROUGH OR OVER THE LEASED DARK FIBER.

- 13.4. **PERSONAL IMMUNITIES.** NO PERSONAL RECOURSE SHALL BE HAD FOR THE CREATION OF THIS COLOCATION AGREEMENT, FOR ANY CLAIM ARISING OUT OF THIS COLOCATION AGREEMENT, NOR FOR ANY REPRESENTATION, OBLIGATION, COVENANT, OR AGREEMENT SET FORTH IN THIS COLOCATION AGREEMENT AGAINST ANY PAST, PRESENT, OR FUTURE OFFICER, MEMBER, EMPLOYEE, OR AGENT OF LESSOR, UNDER ANY RULE OF LAW OR EQUITY, ANY STATUTE OR CONSTITUTION, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY, OR OTHERWISE, AND ANY LIABILITY OF ANY SUCH OFFICER, MEMBER, EMPLOYEE, OR AGENT IS HEREBY EXPRESSLY WAIVED AND RELEASED BY TENANT AS A CONDITION OF AND IN CONSIDERATION FOR THE EXECUTION OF THIS COLOCATION AGREEMENT. FURTHERMORE, TENANT AGREES THAT NO PAST, PRESENT, OR FUTURE OFFICER, MEMBER, OR AGENT OF LESSOR SHALL BE PERSONALLY LIABLE TO TENANT, OR ANY SUCCESSOR IN INTEREST OF TENANT, FOR ANY DEFAULT OR BREACH OF THIS COLOCATION AGREEMENT BY LESSOR.

14. MISCELLANEOUS

- 14.1. **Relationship of the Parties.** This Colocation Agreement does not make either Party the agent or legal representative of the other Party, and does not create a partnership or joint venture between the Parties. This Colocation Agreement is non-exclusive and Lessor may enter into similar agreements with third-parties. Lessor is not providing any regulated cable, Internet or telecommunications services under this Colocation Agreement.

14.2. **Assignment.**

- 14.2.1. Neither Party may transfer or assign, voluntarily or by operation of law, its rights and obligations under this Colocation Agreement (and the Colocation Leases) without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned, or delayed); provided, however, that either Party may assign its obligations and rights under this Colocation Agreement (and the Leases) upon notice and without the other Party's consent to: (a) an entity that directly or indirectly controls, is controlled with or by, or is under common control with the assigning Party; (b) an entity resulting from any merger, consolidation or other reorganization involving the assigning

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Party; or (c) the purchaser of all or substantially all of assigning Party's assets. In order to assign the Colocation Agreement, the assigning Party must also assign its rights and obligations under the Fiber Network Agreement and Dark Fiber Lease Agreement.

- 14.2.2. Without limiting Tenant's rights under Section 14.2.1, Tenant may also assign its rights and obligations under this Colocation Agreement to the purchaser of all or substantially all of Tenant's assets used to provide Tenant Services in and around Huntsville, Alabama, provided that Lessor gives its prior written consent, which consent (a) will not be unreasonably withheld, conditioned, or delayed and (b) may be denied only if Lessor reasonably determines that the proposed assignee does not have the financial capabilities to perform Tenant's obligations under this Colocation Agreement or has previously defaulted on an agreement with Lessor, and provides a written notification to Tenant setting forth the basis for such denial.
- 14.2.3. Prior to any assignment made pursuant to Section 14.2.2 becoming effective, the proposed assignee will provide to Lessor, at Lessor's request, a surety bond securing the proposed assignee's obligations to pay any amounts which are or may become due under the Colocation Agreement. The surety bond furnished pursuant to this Section 14.2.3 will be issued by an entity (a) having a minimum corporate debt rating of A- by Standard & Poor's Financial Services LLC and A3 by Moody's Investor Services (or a respective successor thereto) at the time of issuance and at all times the bond is outstanding, and (b) who is and remains authorized to transact such business and maintains an agent for service of process in the State of Alabama.
- 14.3. **Governing Law; Venue.** Any and all disputes arising out of this Colocation Agreement will be governed, construed and enforced according to the laws of the State of Alabama, excluding its conflict-of-law principles. A Party seeking to bring an action relating to the validity, construction, interpretation and enforcement of this Colocation Agreement will institute such action in any state or federal court in the State of Alabama where venue lies under applicable law as a result of Lessor providing electrical service in such venue.
- 14.4. **Disputes.** In the event a Party alleges breach of this Colocation Agreement, the Party will not give notice of breach or pursue any other remedy otherwise available to such Party unless and until the following dispute resolution process has been concluded:
- 14.4.1. On either Party's request, each Party will designate a knowledgeable representative, who will meet at the principal business office of Lessor, or such other location as the Parties may mutually agree, as promptly as reasonably practicable and in any event within fifteen (15) days, to negotiate in good faith to resolve the dispute.
- 14.4.2. If the Parties have not resolved the dispute fifteen (15) days after the first meeting of the representatives, each Party will designate a senior executive,

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who will meet at the principal business office of Lessor, or such other location as the Parties may mutually agree, as promptly as reasonably practicable and in any event within fifteen (15) days, to negotiate in good faith to resolve the dispute.

- 14.4.3. If the Parties have not resolved the dispute fifteen (15) days after the first meeting of the senior executives, the Party alleging breach may provide notice of breach to the other Party pursuant to Sections 10.2 and 10.3, and pursue any other remedy otherwise available to such Party.
- 14.5. **Force Majeure.** Neither Party will be liable for delays or any failure to perform under this Colocation Agreement due to causes that prevent the Party from performing its obligations under this Colocation Agreement by reason of a Force Majeure Event. The other Party will not be required to perform or resume performance of those of its obligations that correspond to the obligations of the Party excused by Force Majeure Event, until the end of such Force Majeure Event.
- 14.6. **Third Party Beneficiaries.** The representations, warranties, covenants and agreements of the Parties set forth in this Colocation Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a party to this Colocation Agreement
- 14.7. **Use of Names or Trademarks.** Neither Party shall use any name, logo or service mark of the other Party without the express written consent of the other Party.
- 14.8. **Taxes.** None of the Structure Fees charged to Tenant pursuant to this Colocation Agreement includes any tax or franchise fee charged by any governmental entity. Tenant agrees to pay any and all franchise fees, gross receipts, sales, rental, lease, use, property, excise and other taxes and governmental fees directly applicable to the leasing of the Colocation Space in the Colocation Structure to Tenant. Tenant shall be solely responsible for opposing, protesting, appealing, or challenging any tax or franchise fee imposed or asserted by any entity.
- 14.9. **Non-Waiver.** The waiver by any Party hereto of a breach under any of the provisions of this Colocation Agreement, or the failure of any Party, on one or more occasions, to enforce any of the provisions of this Colocation Agreement or to exercise any right or privilege hereunder will not thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provision, right or privilege hereunder. A waiver of any provision of this Colocation Agreement by a Party must be in writing to be effective, and will not be construed as or constitute a waiver of any other provision not expressly stated in the waiver by such Party.
- 14.10. **Notices.** Except as otherwise set forth, all notices of termination or breach will be in writing and addressed to the Lessor's Chief Executive Officer and the Tenant's legal department. All other notices will be in writing and addressed to the other Party's primary contact. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).



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Lessor (Chief Executive Officer):

Bradley Arant Boult Cummings LLP
Attn: Warne Heath
200 Clinton Avenue West, Suite 900
Huntsville, AL 35801

fax no.: (256) 517-5200
email: wheath@babc.com

Lessor (primary contact):

Huntsville Utilities
Attn: Jay Stowe
112 Spragins Street
Huntsville, AL 35801

Tenant (legal department):

Google Fiber Inc.
Attn: General Counsel
1600 Amphitheatre Parkway
Mountain View, CA 94043

fax no.: (650) 618-1806
email: legal-notices@google.com

Tenant (primary contact):

Google Fiber Inc.
Attn: Vice President
1600 Amphitheatre Parkway
Mountain View, CA 94043

- 14.11. **Interpretation.** This Colocation Agreement has been negotiated by the Parties and their respective counsel. This Colocation Agreement will be interpreted without any strict construction in favor of or against either Party.
- 14.12. **Attorney Fees and Costs.** Both Parties hereto agree that in any action to enforce the terms of this Colocation Agreement that each Party shall be responsible for its own attorneys' fees and costs.
- 14.13. **Severability.** If any provision of this Colocation Agreement is found unenforceable or invalid, the remainder of this Colocation Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 14.14. **Counterparts.** This Colocation Agreement may be executed in any number of counterparts, each of which would be deemed to be original and all of which taken together will constitute one and the same agreement.
- 14.15. **Electronic Signatures.** The Parties agree to use electronic signatures and be subject to the provisions of the applicable laws governing electronic signatures. Notwithstanding the foregoing, however, the Parties will execute and deliver any memorandum of lease or memorandum of assignment in a form acceptable for recording in the Office of the Judge of Probate of Madison County, Alabama.
- 14.16. **Survival.** The terms and provisions contained in this Colocation Agreement that by their nature and context are intended to survive the performance thereof by the Parties will so survive the completion of performance and termination or early termination this Colocation Agreement, including, without limitation, provisions for indemnification and confidentiality.



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- 14.17. **Captions/Headings.** Captions and section headings contained in this Colocation Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Colocation Agreement in any way.
- 14.18. **Entire Agreement.** This Colocation Agreement constitute the entire understanding between the Parties relating to the rights, duties and obligations granted and assumed therein. Any prior agreements, promises, negotiations or representations regarding the subject matter of this Colocation Agreement are of no force or effect. No alteration, modification, amendment, or variation of the terms of any provision will be valid unless made in writing and signed by duly authorized representatives of Tenant and Lessor.

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IN WITNESS WHEREOF, each Party has caused this Colocation Agreement to be executed by its duly authorized representative.

Tenant:



**Address: 1600 Amphitheatre Parkway
Mountain View, CA 94043**

Date: 3/11/2016

Lessor:


Jay Stowe

CEO

**Address: 112 Spragins Street, Huntsville,
Alabama 35801**

Date: 2/23/2016



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EXHIBIT A

COLOCATION DELIVERY FORM

DELIVERY FORM #__

This Colocation Delivery Form is governed by the Colocation Agreement entered between _____ (“**Tenant**”) and Huntsville Utilities (“**Lessor**”) on _____, 2016 (“**Colocation Agreement**”). The capitalized terms in this Colocation Delivery Form are as defined in the Colocation Agreement, unless expressly defined otherwise in this Colocation Delivery Form.

Lessor hereby conveys a leasehold interest in real property to Tenant consisting of the Colocation Space as more particularly described below and in Schedule 1. Lessor will deliver the Colocation Structure and any Colocation Services specified below by the Committed RFS Date indicated.

Location of the Colocation Structure	# of units ([cabinet] or [racks] or [sqf] or [sqm])	Allocated Power		Maximum Power Usage Efficiency	Committed Ready-for-Service Date	Notes
		AC power	DC power			

Moves, Adds, or Changes:

<input type="checkbox"/>	Additional power feed(s), including installation
<input type="checkbox"/>	Move or change of existing power feed(s)
<input type="checkbox"/>	Additional rack(s), including installation
<input type="checkbox"/>	Move or change of existing rack(s)
<input type="checkbox"/>	Additional fiber tray(s), including installation
<input type="checkbox"/>	Move or change of existing fiber tray(s)
<input type="checkbox"/>	Additional patch panel, including installation
<input type="checkbox"/>	Additional locks, including installation
<input type="checkbox"/>	Tile cutting
<input type="checkbox"/>	Earth grounding
<input type="checkbox"/>	
Service description: _____	



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Additional Information

Committed RFS Date	[Insert here a specific date (e.g., 1 June 2016), or you may insert a specific amount of lead time to express the same concept (e.g., x days following the Effective Date of this Colocation Delivery Form)]	
Term of this Colocation Delivery Form		
Tenant contact details	Name	
	Phone	
	Email	
Billing address		
Additional Information:		

IN WITNESS WHEREOF, each party has caused this Colocation Delivery Form, including any associated attachments, to be executed by its duly authorized representative as of _____, in accordance with the procedures for executing Colocation Delivery Forms in Lessor's network management system.

Attach to Colocation Delivery Form as needed:

**SCHEDULE 1 TO COLOCATION DELIVERY FORM
FLOOR PLAN FOR THE COLOCATION SPACE**

**SCHEDULE 2 TO COLOCATION DELIVERY FORM
SCOPE OF LESSOR WORK**

**SCHEDULE 3 TO COLOCATION DELIVERY FORM
PARTS FOR LESSOR WORK**



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EXHIBIT B

SERVICE LEVEL AGREEMENT

This Service Level Agreement sets forth Lessor's obligations with respect to its performance of the Colocation Services. Capitalized terms used and not defined herein will have the meanings ascribed to them in the Colocation Agreement.

1. **Post-Acceptance Service Delivery.** For all Colocation Delivery Forms for Colocation Services to a Colocation Structure submitted after the Acceptance Date for such Colocation Structure, the Committed RFS Date will be established no more than two (2) days following the submission of the applicable Colocation Delivery Form.

2. **Operations Center Response Service Level Requirements.** Lessor will maintain a network operations center ("NOC") that monitors the Colocation Services twenty-four (24) hours per day, seven (7) days per week. Tenant may notify the NOC either by telephone or electronic mail of any Colocation Service deficiencies or interruptions ("**NOC Request**"). A human staffing the NOC must respond to any such notice by telephone or electronic mail within thirty (30) minutes of receipt of the call or email, and within two (2) hours of receipt of the call or email an appropriate engineer must be actively working to cure any problem specified in the NOC Request.

3. **Infrastructure Requirements.** Lessor will maintain monthly Colocation Service availability as described below:

- (a) 99.999% per set of two (2) protected power feeds, and 99.9% per power feed for the amount and form of power specified in each Order Form ("**Electrical Power Availability**");
- (b) 99.9% for temperature maintained between fifteen degrees (15°) Celsius and twenty-seven degrees (27°) Celsius;
- (c) 99.9% for relative humidity maintained between thirty-five percent (35%) and seventy percent (70%) non-condensing; and
- (d) 99.9% for airflow to equal one hundred (100) cubic feet per minute (CFM) per kW of Allocated Power.

4. **Structure/Space Access and Security Service Level Requirements.** Lessor will maintain the security measures detailed in Attachment 1, twenty-four (24) hours per day, seven (7) days per week.

5. **Service Credits.** Lessor will provide to Tenant a credit for each failure to maintain the requirements specified in Sections 1, 2, 3, and 4 with respect to a given Colocation Structure ("**Service Credit**"). Lessor will provide the Service Credit by deducting the amount of such Service Credit from Tenant's payment obligations as set forth in this Section 5.

- (a) **Service delivery:** For each day past the Committed RFS Date that Lessor has failed to activate the Colocation Services specified in the applicable Colocation Delivery Form for a Colocation Structure, Tenant will receive a Service Credit against the respective Structure Fee



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for each applicable Colocation Structure in an amount equal to five hundred dollars (\$500) per day.

(b) **NOC service:** For each failure within a calendar month by Lessor to respond within the periods specified in Section 2 above, Tenant will receive a Service Credit against Tenant's lease payment due for the following month under the Lease Agreement in an amount equal to one percent (1%) of the Structure Fee, up to a maximum of ten thousand dollars (\$10,000) during any given calendar month.

(c) **Electrical Power Availability (per set of 2 protected power feeds: main and backup):**

Service availability in a calendar month	Service Credit for such calendar month as a percentage of the Structure Fee for the applicable Colocation Structure(s)
< 99.999% ; ≥ 99.95%	2%
< 99.95% ; ≥ 99.90%	4%
< 99.90% ; ≥ 99.75%	6%
< 99.75% ; ≥ 99.50%	8%
< 99.50%	10%

(d) **Humidity / Temperature / Electrical Power Availability (per feed):**

Service availability in a calendar month	Service Credit for such calendar month as a percentage of the Structure Fee for the applicable Colocation Structure(s)
< 99.90% ; ≥ 99.50%	2%
< 99.50% ; ≥ 99.00%	4%
< 99.00% ; ≥ 97.50%	6%
< 97.50% ; ≥ 95.00%	8%
< 95.00%	10%

(e) **Security:** For each (a) unauthorized entry to a Colocation Structure or the Colocation Space, (b) failure by Lessor to provide a written report to Tenant following any emergency or unauthorized entry into a Colocation Structure or Colocation Space as required by Section 3.6.2 of the Colocation Agreement, or (c) violation of any of the security service level requirements in Attachment 1, Tenant will receive a Service Credit against Tenant's lease payment due for the following month under the Lease Agreement in an amount equal to one thousand dollars (\$1,000), up to a maximum of five thousand dollars (\$5,000) per Colocation Structure for any given calendar month.

6. **Chronic Failure.** A "Chronic Failure" occurs if there is a failure to meet one or more of the same requirements set forth in this Service Level Agreement at any single Colocation Structure for any three (3) consecutive months or for any four (4) months within a calendar year. In the event of a Chronic Failure, Tenant may, at its election, provide written notice to Lessor



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requesting a remedial plan ("**Remedial Plan**") to address the underlying cause or causes of the Chronic Failure to the fullest extent practicable and in accordance with industry best practices. Tenant and Lessor will meet within fifteen (15) days of Lessor's receipt of such notice to discuss the Remedial Plan proposed by Lessor and to mutually agree on the Remedial Plan such period. Lessor will have up to sixty (60) days after such agreement to begin implementation of the Remedial Plan and will provide Tenant with regular updates of such implementation.

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**ATTACHMENT 1 to EXHIBIT B
SECURITY SERVICE SPECIFICATIONS**

General Colocation Structure Security Requirements

- (a) Parking and Perimeter:
 - (i) A fence must surround the Colocation Structure and be set back from the Colocation Structure on all sides (or appropriate equivalent measures to bar access to the Colocation Structure depending on the site and environment). Each Colocation Structure access point must be controlled to permit access only to authorized entrant.
 - (ii) Colocation Structures will not have any signage beyond what is required by law and by Lessor for safety purposes.
- (b) Closed Circuit Television (CCTV): Each Colocation Structure must have CCTV surveillance cameras with digital video recording capability.
 - (i) CCTV cameras outside the building monitoring parking lots and neighboring property;
 - (ii) Recording must be high quality/lowest compression with a minimum of seven (7) days of fully recorded history.
 - (iii) All surveillance video will be retained by Lessor for a minimum duration of at least seven (7) days and made available to Tenant at Tenant's request.
- (c) Lighting:
 - (i) Lighting with emergency power backup will be provided to the Colocation Space as well as the Colocation Structure common areas.
 - (ii) The area surrounding the Colocation Structure must be well lit and free of obstructions that would block surveillance via CCTV cameras.
- (d) Access Control:
 - (i) Lessor must maintain an intrusion detection system with central monitoring capability.
 - (ii) Colocation Space must have signs at the door(s) marking it as restricted access.
 - (iii) Locks must be installed and used for all Colocation Structure access points.



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- (iv) Lessor will obtain and keep on file verified identification records for all Lessor and third-party personnel having access to a Colocation Structure. Minimum identification information required by this Section 1(d)(v) includes, for each person, a government-issued photo ID, signature, agency or company represented, and purpose for access.
- (e) Utilities: Colocation Structure utility access must be restricted to authorized Lessor personnel.
- (f) Disaster Recovery Plan:
The Lessor has an emergency response and disaster recovery plan that is updated and tested annually.
- (g) Audits: Tenant has the right to review all access control records and CCTV surveillance footage recording its Colocation Space.



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EXHIBIT C

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

Lessor will use commercially reasonable efforts to maintain the Colocation Structures and Colocation Spaces in efficient working order that meets the Space Specifications; free of damage, physical obstruction, and vandalism; broom clean and free of dust deposits and pests; and in accordance with industry standards with respect to grounding, lightning protection, fire suppression, climate control, security, and water leak detection. At a minimum, Lessor will perform the following tasks, as applicable, at regular intervals as noted below:

1. Any utility transformers on the load side of the meter will be concurrently maintainable and will at a minimum have annual maintenance performed;
2. Electrical switchgear will be concurrently maintainable and will at a minimum have annual transfer tests and load banking;
3. Automatic transfer switches (ATS) will be concurrently maintainable and will at a minimum have annual ATS testing;
4. Grounding system will at a minimum have annual integrity testing;
5. All power cables providing any Colocation Services that are reasonably accessible will at a minimum have annual IR scans;
6. Generators will be concurrently maintainable and will have at a minimum monthly testing along with annual load testing, subject to applicable law including without limitation air quality regulations;
7. Batteries will be concurrently maintainable with at least monthly visual inspection and will at a minimum have semi-annual maintenance as well as a biennial load testing;
8. HVAC will be concurrently maintainable and will have at a minimum semi-annual testing and maintenance;
9. HVAC eddy current analysis will be performed initially after all equipment has been installed in the Colocation Structure and subsequently anytime any HVAC unit is replaced or any equipment is added or removed from the Colocation Structure.
10. Pumps will be concurrently maintainable and will have at a minimum annual maintenance;
11. All cables entering the facility must have a monthly visual inspection for jacket integrity and proper installation.



