

DARK FIBER IRU AGREEMENT
BY AND BETWEEN
DENTON INDEPENDENT SCHOOL DISTRICT
AND
LEARN: LONESTAR EDUCATION AND RESEARCH NETWORK

DARK FIBER LICENSE AGREEMENT

This DARK FIBER IRU AGREEMENT (this "IRU Agreement") is made and entered into as of the 11th day of June, 2013 (the "Effective Date"), by and between Denton Independent School District (DISD) ("Grantor"), and LEARN: Lonestar Education And Research Network, a Texas non-profit corporation ("Customer") (each a "Party" and collectively, the "Parties").

RECITALS

Grantor owns or materially controls a fiber optic communication system with end points in Denton and Savannah Elementary in Aubrey, Texas as more particularly identified herein (the "System"). Customer wishes to acquire from Grantor, and Grantor wishes to grant to Customer IRU Dark Fibers within the System subject to the terms and conditions of the Agreement and the attached completed Fiber Service Order(s) which is attached to and made a part of this Agreement.

Accordingly, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 Acceptance Date – The date that Grantor and Customer agree the Customer Fibers have passed all acceptance testing in accordance with Section 5 of this Agreement.

1.2 Affiliate – With respect to any entity, an entity controlling, controlled by, or under common control with such entity by means of direct or indirect majority equity ownership.

1.3 Cable – The fiber optic cable and all strands of fiber contained therein and associated splicing connections, splice boxes, and vaults, as required under this Agreement.

1.4 Conduit – A pipe, tube or compartmentalized structure which can contain one or more Innerducts through which Cable may be placed.

1.5 Connecting Point – Each end point of each Segment.

1.6 Costs – The actual reasonably incurred direct costs paid or payable by Grantor, which costs shall be limited to the following: (i) internal labor costs, including wages, salaries and benefits, and overhead allocable to such labor costs (the overhead allocation shall not exceed ten percent (10%) percent of labor costs); and/or (ii) other direct costs and out-of-pocket expenses on a pass-through basis such as equipment, materials (except for the incremental cost of Fibers installed in the System for Grantor's use), supplies and contract services plus an administrative fee of ten percent (10%) of such direct costs and out-of-pocket expenses. All manufacturers' rebates, discounts and incentives Grantor receives or is eligible to receive shall be deducted from Costs on a pro-rata basis.

1.7 Customer Equipment – Optronic (opto-electrical), electronic, or optical equipment, or materials, facilities, or other equipment owned, possessed, or utilized (other than the System), by Customer or any Customer Affiliate.

- 1.8 Customer Fibers – Those Dark Fibers that Grantor shall grant to Customer hereunder pursuant to an Accepted Fiber Service Order.
- 1.9 Dark Fibers – Individual strands of fiber within the Cable to which no electronics and/or optronics have been attached and which are not “lit” or activated as of the date of the Fiber Service Order.
- 1.10 Fiber Service Order – The Customer order for the grant of Dark Fibers in form substantially in accordance with **Exhibit A**.
- 1.11 Fibers – Any optical fibers contained in the System, including the Customer Fibers, the Fibers of Grantor and the Fibers of any third party.
- 1.12 Finally Determined Taxes and Fees - As defined in Section 13.4.
- 1.13 Handhole – A buried box whose lid is even with the surface of the ground. It provides a space for splicing and terminating fiber cables.
- 1.14 Impositions – Any applicable taxes, fees, levies, duties, charges or withholdings of any nature (including without limitation sales, use, franchise, license and permit fees and property taxes but excluding income based taxes), together with any penalties, fines or interest thereon, arising out of the transactions contemplated by this Agreement, that are imposed upon the System by any federal, state or local government or other public taxing authority.
- 1.15 Innerduct – A single enclosed raceway within a Conduit or any other type of duct including inner, quad, divided or other duct used to subdivide the Conduit within which the Cable may be placed.
- 1.16 IRU – shall mean the irrevocable and exclusive right to use (including without limitation, the right to attach optronics and electronics thereto) the Dark Fibers set forth in an Accepted Fiber Service Order in the System, as more particularly described in this Agreement.
- 1.17 Maintenance – Grantor’s maintenance obligations as described in Exhibit C.
- 1.18 Maintenance Fee – The fee charged by Grantor for performing the Maintenance as may be set forth in a Fiber Service Order.
- 1.19 Manhole – An underground vault with an access hole and cover which supports traffic. This is considered to be a confined space.
- 1.20 POP – A point of presence, a demarcation point or interface point between communications entities.
- 1.21 Renewal Term - As defined in Section 2.
- 1.22 Segment – A specific portion of the System identified in a Fiber Service Order.
- 1.23 Specifications – The technical terms and conditions for the acceptance of Customer Fibers, as set forth in **Exhibit B**.

1.24 System – The Grantor’s fiber optic communication system with end points as set forth in an accepted Fiber Service Order, consisting of cables, Conduits, Dark Fibers, Fibers, Manholes, Handholes, Innerducts, Underlying Rights and ancillary equipment and connections in which Grantor will grant an IRU in Dark Fibers to Customer as set out in a Fiber Service Order.

1.25 Term – As defined in Section 2.

1.26 Underlying Rights - Any agreement, conveyance, easement, license, IRU, franchise or permit obtained by Grantor from a government entity or other third party governing the terms under which Grantor may access and use public rights-of-way, private property, fiber, structures, and other property in order for Grantor to use, install, construct, repair and/or maintain the System and Customer Fibers.

2. TERM

The term of this Agreement shall commence on the Effective Date and terminate upon the later of the termination of a Fiber Service Order or the expiration of the Term, defined below. The term of the initial Fiber Service Order will be for a period of twenty (20) years, commencing on the Acceptance Date, unless terminated earlier pursuant to this Agreement, and shall thereafter automatically continue on a month-to-month basis (the “Renewal Term”) until terminated by either Party upon no less than thirty (30) days advance written notice to the other at any time during the Renewal Term or thirty (30) days prior to the Renewal Term. The term of this Agreement and the Fiber Service Order, together with the Renewal Term, is collectively hereinafter referred to as the “Term”.

3. GRANT OF IRU

3.1 With respect to the Fiber Service Order, effective as of the Acceptance Date and during the remainder of the Term, Grantor grants to Customer, and Customer accepts from Grantor, for the purposes described in this Agreement, the Customer Fibers, including the right to use and the right to attach Customer Equipment or third party equipment to the ends of the Customer Fibers (i.e., any applicable electronic or optronic equipment) and all on the terms and subject to the covenants and conditions set forth in this Agreement and the Accepted Fiber Service Order. In no event shall the foregoing language be construed as a duty or obligation of Grantor to provide any equipment space, licenses, rights-of-way, or other consents for any attachments to or other uses of the Dark Fiber, in that equipment space and such usage rights are outside the scope of this Agreement. This Agreement does not (i) convey any legal title to any real or personal property other than the IRU, including but not limited to fibers, cable, or the System; or (ii) convey or assign, in whole or in part, any right to use public rights-of-way or other public property.

3.2 The IRU does not include the right of Customer to own, modify, control or revise the System or any part thereof or the right to encumber or use the System or any part thereof in any manner, except as expressly set forth herein.

3.3 In the event of bankruptcy by Grantor (or any successor or assign of Grantor hereunder) during the Term, after Customer’s full payment of the amount specified in Section 4, the Parties hereto agree that the Customer Fibers shall be

considered separate from the Cable and shall not be deemed to be an asset of Grantor.

Effective upon Customer's full payment of the amount specified in Section 4, the Parties agree that for purposes of applicable bankruptcy and similar laws, the Parties have fully performed and executed this Agreement with respect to the granting of the IRU hereunder.

4. CONSIDERATION FOR IRU

Effective as of the Acceptance Date and during the remainder of the Term, Customer agrees to pay, and Grantor agrees to accept the following as compensation for the IRU of the Customer Fibers and the related rights granted hereunder as set forth in the Fiber Service Order: the right to acquire services from Customer at rates available to Governing Participants of the Customer.

5. ACCEPTANCE AND TESTING OF CUSTOMER FIBERS

- 5.1 At the time the Customer Fibers are ready for testing, Grantor and Customer shall jointly test all Customer Fibers in accordance with the procedures specified in **Exhibit B**. Final acceptance testing shall be based on the end to end test data described in **Exhibit B**.
- 5.2 If the certified test results provided by Grantor and Customer fail to meet the Specifications, Customer shall provide written notice to Grantor within ten (10) days of Customer's receipt of the results explaining in reasonable detail why the results are unacceptable and fail to meet the Specifications. If Customer does not provide a written failure notice to Grantor within ten (10) days of the receipt of the certified test results from Grantor, the fiber shall be deemed accepted by Customer as of the Acceptance Date.
- 5.3 Grantor shall use commercially reasonable efforts to bring the Customer Fibers in compliance with the Specifications within fifteen (15) days of receipt of the failure notice, at which time Grantor and Customer shall conduct a new test. If all or a portion of the Customer Fibers are still not within the Specifications after this second attempt, Customer will then have the option of (i) terminating the applicable Fiber Service Order relating to the unaccepted Customer Fiber, or (ii) requiring that Grantor continue to attempt to meet the Specifications. Customer shall send Grantor a written notice specifying its selected option within ten (10) days of receipt of the second set of certified test results, or the fiber shall be deemed accepted by Customer as of such date. If Customer opts for Grantor to proceed with additional delivery attempts, Grantor shall use commercially reasonable efforts to bring the Customer Fibers in compliance with the Specifications within the time periods set forth in this **Section 5.3**. This process shall be repeated until the Customer Fibers meet the Specifications or until Customer terminates the Fiber Service Order. At any point in this process after the second attempt by Grantor to bring the Customer Fibers within the Specifications, Customer may terminate this Agreement and the Fiber Service Order.

6. DOCUMENTATION

6.1 Not later than fifteen (30) days after the Acceptance Date, Grantor shall provide Customer with the following documentation: (i) a graphical representation of the fiber route in an industry accepted or mutually agreed upon format; (ii) relevant termination points of the licensed fiber; and (iii) such other information as may be agreed to by the Parties in the Fiber Service Order.

7. CUSTOMER FIBER ACCESS

7.1 At no additional charge, Grantor shall provide Customer or its designee with no less than escorted access to Grantor's facilities as reasonably necessary to install, repair and maintain the Customer Fibers.

7.2 Neither Grantor nor Customer shall have any limitations on the types of electronics or technologies employed to utilize Customer Fibers so long as such electronics or technologies do not interfere with the use of, or present a risk of, damage to any portion of the other Party's or a third party's system.

7.3 Customer shall follow standard operating procedures when accessing Grantor's site with Customer's equipment. Customer will check-in and follow school site rules. Customer shall have staff background checks in place.

8. MAINTENANCE AND REPAIR OF THE SYSTEM

8.1 From and after the Acceptance Date, Grantor shall provide Maintenance of the Customer Fibers, subject to this Agreement. Such Maintenance shall be provided in accordance with the maintenance requirements and procedures set forth in **Exhibit C** hereto.

8.2 If, at any time after the Acceptance Date during the Term, Customer reasonably determines that some or all of the Customer Fibers are not performing according to the Specifications through no fault of either Party, Grantor shall make commercially reasonable efforts to either repair the Customer Fibers or make equivalent Fibers available to Customer which may be accepted at Customer's reasonable discretion at no additional cost to Customer. The applicable accepted Fiber Service Order shall be amended to replace the Customer Fiber with the equivalent Fibers.

8.3 If at any time after the Acceptance Date during a Fiber Service Order Term, some or all of the Customer Fibers are not performing according to the Specifications due to any action or inaction of Grantor, including its employees, representatives, agents, contractors or subcontractors, Grantor shall be responsible for any and all applicable repairs, replacement or substitution, at no cost to Customer.

9. UNDERLYING RIGHTS; RELOCATION

9.1 If Grantor receives notice of or is aware that an Underlying Right related to a Customer Fiber is expiring or to be terminated, Grantor shall notify Customer of such as soon as reasonably practicable, and shall communicate with Customer regarding the status of any negotiations regarding the renewal or continuation of the Underlying Right. In the event an Underlying Right related to a Customer

Fiber expires or terminates, Grantor shall use commercially reasonable efforts to make an alternative route available to Customer. Notwithstanding the foregoing, unless Grantor procures an alternative route, any applicable Customer Fibers shall be terminated upon the expiration or earlier termination of a necessarily related Underlying Right. In such case Grantor agrees to reimburse Customer for the pro-rata portion of the up-front charge for the IRU and Customer shall no longer be obligated to make any further Maintenance Fee payments or be required to provide services to Grantor at Governing Participants rates.

- 9.2 If Customer requests that a portion of the Customer Fibers be relocated for the sole convenience of Customer, all Costs of such relocation shall be borne by Customer, but shall be performed at the discretion of Grantor.
- 9.3 If Grantor receives notice of any request, intent, or plan by any third party, including, but not limited to, a governmental entity, to relocate any Segment of Grantor's fiber system used in the provision of the Customer Fibers, Grantor shall notify Customer of such request, intent, or plan and shall communicate with Customer regarding the status of such proceedings and negotiations. If Grantor is required by any such third party to relocate any Segment of Grantor's fiber system used in providing the Customer Fibers, Grantor shall, to the extent possible, give Customer no less than sixty (60) days' prior written notice of any such relocation ("Relocation Notice"). As between the Parties, the costs of such relocation shall be shared between the parties on a prorata basis based upon the number of Customer Fibers as such relates to the total number of Fibers contained in the conduit or conduits along the relocated portions of the System.
- 9.4 If Grantor determines that a relocation of the Fibers is required for the benefit of the Grantor, Grantor shall provide Customer ninety (90) days prior written notice of any such relocation, and shall proceed with such relocation at Grantor's sole expense. Grantor shall have the right to direct such relocation, including the right, in good faith, to determine the extent of, the timing of, and methods to be used for such relocation, provided that any such relocation:
 - 9.4.1 shall be constructed and tested in accordance with the Specifications in and requirements set forth in this Agreement and applicable Exhibits;
 - 9.4.2 shall not result in a materially adverse change to the operations, performance or Connecting Points with the network of Customer, or end points of the Segment; and
 - 9.4.3 shall use best efforts to minimize impact on the System or the Customer Fibers.
- 9.5 Customer shall obtain all the registrations, permits and approvals needed for access to all its locations including the permission by building owners and shall provide all the necessary entry points and access to buildings at its locations, and specifically electrical conductors, rising mains and other building fixtures required to install, maintain, repair and relocate its fibers and the necessary equipment. Customer shall also make available the necessary rising mains and/or optical fiber cables at or for its location.

10. USE OF SYSTEM

- 10.1 Customer represents, warrants and covenants that it will use the Customer Fibers in compliance with and subject to the all applicable government codes, ordinances, laws, rules and regulations, and will be responsible for the appropriate government filings, licenses, or other requirements to place the Customer Fibers into operation.
- 10.2 Customer may use the Customer Fibers to provide access to, or use the Customer Fibers as Dark Fibers, lit fibers, or dim fibers. Grantor acknowledges that Customer may, either individually or in conjunction with an Affiliate, use the Customer Fibers for the provision of services to customers of Customer and Customer's Affiliate(s). Customer agrees and acknowledges that pursuant to this Agreement it has no right to use any of the fibers that are part of the System other than the Customer Fibers as set out in a Fiber Service Order. Customer shall not have the right to sell or lease its IRU, provided, however, that nothing herein shall prevent Customer from allowing its member or affiliate entities, healthcare providers and institutions, governmental agencies or entities, and non-profit corporations or others from sending communications over the IRU for their own lawful use.
- 10.3 Grantor acknowledges and agrees that it has no right to use the Customer Fibers during the Fiber Service Order Term.
- 10.4 Each Party shall promptly notify the other of any matters of which it has actual knowledge pertaining to damage or potential damage to the System or the Customer Fibers.
- 10.5 Customer and Grantor each agree to use reasonable efforts to cooperate with and support the other in complying with any requirements applicable to their respective rights and obligations hereunder.
- 10.6 Unless otherwise set out in the applicable Fiber Service Order, Customer shall have access to the Customer Fibers at the end points as set forth in the Accepted Fiber Service Order provided that it abides by Grantor's terms and conditions relating to such access. Customer shall not access any part of the System other than the end-points of the Customer Fibers without the prior written consent of Grantor, and then only upon the terms and conditions specified by Grantor.
- 10.7 The Customer Fibers will be used by Customer and its direct and indirect members and affiliates for purposes relating to their non-profit and/or governmental mission and for health care purposes, educational purposes, research purposes, for governmental or other lawful purposes.
- 10.8 The Customer's right of use does not include the right of the Customer to modify or revise the Customer Fibers, to locate any equipment in the public Rights-of-Way, the right of physical access to (other than the end points of the Customer Fiber), the right to encumber in any manner, or other use of the Customer Fiber, except as provided in this IRU Agreement. Such control shall remain with Grantor. The Customer shall not perform any work in the public Rights-of-Way related to the Customer Fibers, including but not limited to, pulling manhole covers, pulling fiber through conduits, splicing fibers, or constructing laterals.

11. INDEMNIFICATION AND LIMITATION OF LIABILITY

11.1 NEITHER PARTY SHALL BE LIABLE TO THE OTHER (INCLUDING WITH RESPECT TO THIRD PARTY CLAIMS) FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF THE OTHER PARTY OF ANY KIND (COLLECTIVELY "EXCLUDED DAMAGES") INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA, AND/OR LOSS OF PROFITS TO THE EXTENT THE PRECEDING ITEMS ARE DEEMED TO BE EXCLUDED DAMAGES UNDER APPLICABLE LAW) ARISING IN ANY MANNER FROM THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS HEREUNDER REGARDLESS OF THE FORESEEABILITY THEREOF. THE FOREGOING LIMITATION SHALL NOT APPLY TO THE FOLLOWING: WILLFUL MISCONDUCT OF A PARTY, AND ANY CLAIMS ARISING PURSUANT TO THE NONDISCLOSURE AGREEMENT BETWEEN THE PARTIES.

12. INSURANCE

12.1 Limit Requirements. Customer shall secure and maintain at its expense during the term of this Agreement (i) Commercial General Liability Insurance with limits of at least **\$2,000,000** combined single limit for each occurrence (limits may be satisfied with primary and/or excess coverage.), (ii) Commercial Automobile Liability with limits of at least **\$1,000,000** combined single limit for each occurrence and (iii) Workers' Compensation insurance as required by Statute, and Employer's Liability insurance with limits of not less than **\$1,000,000** per occurrence. Grantor shall self insure or acquire coverage to protect the parties interests during the term of this agreement.

12.2 Additional Requirements. Certificates of insurance must be provided prior to any work being performed and must be kept in force during the Agreement Term.

13. TAXES, FEES AND OTHER GOVERNMENTAL IMPOSITIONS

13.1 Customer shall not be responsible for applicable sales, use, income, gross receipts or other taxes or fees assessed on the basis of revenues received by Grantor from Customer pursuant to its use of Customer Fibers. If Customer claims an exemption from an Imposition, then Customer shall upon execution of this Agreement provide Grantor with an exemption certificate (or the like). Should the Customer's exemption certificate be declined by the applicable taxing authority, Customer will be responsible for the associated Imposition. The Parties acknowledge and agree that it is their mutual objective and intent to (i) minimize the aggregate Impositions payable with respect to the System, and (ii) be responsible for their respective shares of such Impositions such that Grantor shall be responsible for all Impositions relating to the System other than those directly related to and assessed with respect to the Customer Fibers. The Parties agree to cooperate with each other and coordinate their efforts to achieve such objectives in accordance with the provisions of this Section.

13.2 Grantor shall be responsible for and shall timely pay any and all Impositions with respect to the maintenance or operation of the System which are (i) imposed or assessed in exchange for the approval of the original construction of the System; (ii) assessed in return for the original right to install the System on public property

or in a public right of way; and (iii) which are imposed for the continuing right to operate and maintain the System, including the Customer Fibers, except only to the extent that such Impositions can be directly related to the Customer Fibers and are separately assessed thereon, in which case Customer shall pay such Impositions.

- 13.3 Grantor shall have the right to contest any Imposition (including by nonpayment of such Imposition) which concerns the System not including the Customer Fibers. Customer shall have the right to contest any Imposition (including by nonpayment of such Imposition) which solely concerns the Customer Fibers. Provided, however, in the event nonpayment could result in foreclosure or similar event, Grantor may, in its sole reasonable discretion, require Customer to pay the subject Imposition. Any refunds or credits resulting from a contest brought pursuant to this Section shall be divided between Grantor and Customer in the same proportion as separately determined or as originally assessed. In any such event, Grantor shall provide timely notice of such challenge to Customer.
- 13.4 If Customer and/or Grantor exhausts all its rights of appeal in protesting any Imposition and fails to obtain the relief sought in such proceedings or appeals ("Finally Determined Taxes and Fees"), Customer and Grantor may agree to relocate a portion of the System to avoid the jurisdiction that imposes or assesses such Finally Determined Taxes and Fees (subject to the consent and participation of the other interest holders in the affected portion of the System).
- 13.5 Grantor and Customer agree to cooperate fully in the preparation of any returns or reports relating to the Impositions.

14. NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing, shall be effective when actually received or refused, and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested; or by hand delivery (including by means of a nationally recognized overnight delivery service which provides delivery confirmation).

All notices and other communications shall be given to Customer at:

Customer:

LEARN: Lonestar Education And Research Network
Attn: Executive Director
P.O. Box 16920
Lubbock, TX 79490-6920

All notices and other communications shall be given to Grantor at:

Denton ISD
Technology information officer
1212 N. Elm Street
Denton, Texas 76201

Either Party may by ten (10) days prior written notice change the address to which future notices or other communications shall be sent.

15. DEFAULT AND CURE.

A PARTY SHALL NOT BE IN DEFAULT UNDER THIS AGREEMENT UNLESS AND UNTIL THE OTHER PARTY PROVIDES IT WRITTEN NOTICE OF SUCH DEFAULT AND THE FIRST PARTY SHALL HAVE FAILED TO CURE THE SAME WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE. UPON THE FAILURE OF A PARTY TO TIMELY CURE ANY SUCH DEFAULT AFTER NOTICE THEREOF FROM THE OTHER PARTY AND EXPIRATION OF THE ABOVE CURE PERIODS, THEN THE NON-DEFAULTING PARTY MAY PURSUE ANY LEGAL REMEDIES IT MAY HAVE UNDER APPLICABLE LAW OR PRINCIPLES OF EQUITY RELATING TO SUCH BREACH SUBJECT TO SECTION 11.1. ADDITIONALLY, EITHER PARTY MAY TERMINATE THIS AGREEMENT FOLLOWING THE EXPIRATION OF THE ABOVE CURE PERIODS WITHOUT LIABILITY TO CUSTOMER.

15.1 Disputed Amounts. Notwithstanding the other provisions of this Section, failure to pay an amount subject to a bona fide dispute regarding a particular Customer Fiber shall not be an event of default until such disputed amount is resolved.

15.2 Insolvency or Bankruptcy. A Party shall also be in default of this Agreement in the event: (i) the Party files an application for or consents to the appointment of a receiver, trustee or similar officer for it or any substantial part of its property or assets, or any such appointment is made without such application or consent by such Party and remains undischarged for a period of sixty (60) days; or (ii) the Party files a petition in bankruptcy or makes a general assignment for the benefit of creditors or otherwise admits in writing its inability to pay its debts on time.

16. TERMINATION AND EXPIRATION

16.1 Each party may terminate the Agreement if the other party is in breach of a material obligation hereunder and fails to remedy such breach within thirty (30) days of written notice of default. The notice period shall be extended by an additional thirty (30) day period if the defaulting party uses its best efforts to remedy the default.

16.2 Upon expiration or termination of the Term, (i) all rights and interest conveyed to Customer during the Term revert to Grantor, and (ii) Customer shall without delay remove all items, equipment and other materials belonging to Customer from sites belonging to Customer or leased or licensed by Grantor. The Customer shall remove these items in such a way that the Fibers and related equipment and materials are not damaged or adversely affected.

17. FORCE MAJEURE

Except for payment obligations hereunder, neither Party shall be liable to the other Party, and each Party's performance under this Agreement shall be excused, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions (each, a Force Majeure"), and such Party's performance of such obligation or obligations shall be extended for and during the period of any such delay: act of God; fire; flood; fiber cuts by third party, war, acts of terrorism or civil disorder. The Party claiming relief under this

Section shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay. Notwithstanding anything to the contrary herein, the term "Force Majeure" shall not include or excuse a Party's performance to the extent the failure to perform by the Party claiming Force Majeure was caused by a lack of funds. In the event a Force Majeure event extends past thirty (30) days, either Party shall have the option during the Force Majeure period, at its sole discretion, to terminate the Agreement.

18. EMINENT DOMAIN

If any Segment or portion of a Segment or any other interest belonging to Grantor affecting the viability of a Segment is acquired by eminent domain or is subject to a condemnation proceeding which is not dismissed within one hundred eighty (180) days of the date of filing of such proceeding and which could reasonably be expected to result in a taking, nationalization, or expropriation (each of which, a "Taking") by any authority or entity possessing such power, then each Party herein shall be excused from performance of its obligations. In such event, both parties shall be entitled, to the extent permitted under applicable law, to participate in any condemnation proceedings to seek to obtain compensation by either joint or separate awards for the economic value of their respective interest in the portion of the System subject to such condemnation.

19. ASSIGNMENT AND CUSTOMER FIBER TRANSFERS

19.1 Neither Party shall assign, delegate, or otherwise convey, assign or otherwise transfer all or any part of its rights, obligations or interests under this Agreement without the prior written consent of the other Party, which, in the case of an assignment of this Agreement in whole, shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, consent shall not be required for an assignment of this Agreement in whole by either Party to: (a) a successor in interest resulting from an organizational restructuring, corporate conversion, consolidation, merger or other change of control of the assigning Party provided; (b) a person, corporation or other entity acquiring all or substantially all of the assets of such Party; (c) an Affiliate or (d) with respect to Customer, any "Governing Participant", as such term is defined in Customer's governing documents; in each case under (a), (b), (c) and (d), however, notice shall be given of such assignment within thirty (30) days after the effective date of such assignment. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective permitted successors and assigns.

20. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

20.1 By execution of this Agreement each Party represents and warrants to the other that:

20.1.1 It has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, and that by entering into or performing this Agreement, it is not in violation of its charter or bylaws, or any law, regulation or agreement by which it is bound or to which it is subject.

20.1.2 The execution, delivery and performance of this Agreement has been duly authorized by all requisite company action; its signatories are

authorized to sign this Agreement; and the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

20.1.3 EXCEPT AS SPECIFICALLY SET FORTH IN THIS DARK FIBER IRU, GRANTOR MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY FIBERS, THE SYSTEM OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

21. GENERAL

21.1 Binding Effect. This Agreement and each of the Party's respective rights and obligations under this Agreement shall be binding on and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

21.2 Waiver. The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

21.3 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Texas, without reference to its choice of law principles.

21.4 Rules of Construction. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

21.4.1 Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

21.4.2 Except as set forth to the contrary herein, any right or remedy of the Parties hereto shall be cumulative.

21.4.3 Nothing in this Agreement is intended to provide any legal rights to anyone not a party to this Agreement.

21.4.4 This Agreement has been fully negotiated between the parties and shall not be construed against either Party.

- 21.4.5 All actions, activities, consents, approvals and other undertakings of the parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement the standards and practices of performance within the communications industry in the relevant market shall be the measure of a Party's performance.
- 21.5 Entire Agreement. This Agreement, together with the Fiber Service Order entered into in connection herewith, constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Exhibit are inconsistent with the express terms of this Agreement, the terms of this Agreement shall control. This Agreement may only be modified or supplemented by an instrument in writing executed by each Party and delivered to the Party relying on the writing.
- 21.6 No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party and any liability relating thereto shall be enforceable only against the company assets of such Party.
- 21.7 Cooperation. Customer and Grantor each agree to use reasonable efforts to cooperate with and support the other in complying with any requirements applicable to their respective rights and obligations hereunder.
- 21.8 Relationship of the Parties. The relationship between Customer and Grantor shall not be that of partners, agents, or joint venturers of one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. Customer and Grantor, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.
- 21.9 Severability. If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 21.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- 21.11 Survival. In the event of termination or expiration of this Agreement, those Sections which, by their sense and context, are intended to survive, shall survive for a commercially reasonable period of time given the sense and context of the provision.

21.12 Conflicts. If any conflict arises between the terms of this Agreement and the terms set out in an accepted Fiber Service Order, the terms of the accepted Fiber Service Order shall control. Any co-locations required incident to these routes will be the subject of a separate agreement and are not included within the scope of this Agreement.

In confirmation of their consent and agreement to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the parties have executed this Agreement as of the date first above written.

The foregoing Dark Fiber IRU Agreement was offered for approval on motion made by _____, seconded by _____,

and after discussion was adopted by the Board of Trustees of the Denton Independent School

District on June 11, 2013, at which _____ Trustees were present, by the following vote:

_____ For, _____ Against, _____ Abstaining.

DENTON INDEPENDENT SCHOOL DISTRICT

Charles Stafford, President

Board of Trustees

ATTEST:

Dr. Rudy Rodriguez, Secretary

CUSTOMER

LEARN: LONESTAR EDUCATION AND RESEARCH NETWORK

BY: _____
Executive Director

Signature

Print Name

Title

Date