

SECOND AMENDMENT TO EXCHANGE AGREEMENT

This Second Amendment (the “Second Amendment”) to the Exchange Agreement (“Agreement” as amended) is made and entered into as of the last signature date below (the “Effective Date”), by and between the **Denton Independent School District** (“Partner No. 1” or **DISD**), the **County of Denton** (“Partner No. 2” or “County”) (Partner No. 1 and Partner No. 2 together “Partners”) and **Zayo Group, LLC** (“Zayo”). Each of Partner No. 1, Partner No. 2, and Zayo may be referred to as “Party” and collectively, as the “Parties.” Unless otherwise defined in this Amendment, capitalized terms shall have the meaning given them in the Exchange Agreement or the First Amendment.

WHEREAS, the Parties entered into that certain Exchange Agreement dated July 28, 2015 (the “Exchange Agreement”) for the even exchange of certain facilities; and

WHEREAS, the Parties entered into that Amendment to the Exchange Agreement dated June 25, 2019 (“First Amendment”);

WHEREAS, Partners installed a 192 fiber count cable in the route set forth in Exhibit A, which 192 count cable was divided equally between the Partners;

WHEREAS, DISD provided Zayo, out of its portion of the 192 fibers, 48 fibers on a temporary basis along with the Associated Property thereto (“48 Fibers”) to address a shortfall in facilities the Partners were to provide Zayo in the City of Denton;

WHEREAS, DISD, on the terms and conditions herein, is willing to let Zayo continue the use of 22 of the 48 Fibers (“22 Fibers”);

WHEREAS, DISD provided 12 additional fibers along a portion of the route identified in Exhibit B on a temporary basis along with the Associated Property thereto (“South Fibers”);

WHEREAS, Zayo shall transition services on the South Fibers onto the 22 Fibers within 12 months from Effective Date and return the South Fibers to DISD;

WHEREAS, the Parties desire to amend the First Amendment to provide that Zayo shall install the 432 count fiber identified in the First Amendment and as clarified herein, and receive an IRU from the Partners in 420 of the fibers;

WHEREAS, the Parties now desire to memorialize Zayo’s indefeasible right to use (“IRU” (as opposed to the original proposed ownership transfer)) for the 22 Fibers, the 420 Ct. Fiber (defined below) and the Partner-Provided Facilities;

WHEREAS, Zayo and the Partners have agreed that Zayo shall perform certain maintenance in relation to the 420 Ct. Fibers and the Remaining Partner Fibers (defined below) as detailed herein;

WHEREAS, Exhibit A-1 of the First Amendment needs replaced to accurately capture starting and ending points of the Route Conduit and Fibers (as defined below);

NOW THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. General. The Recitals are true and accurate and incorporated herein.
2. Delivered Facilities.
 - a. Paragraph 2 of Exhibit A of the Agreement, "Partner-Provided Facilities," is modified to exclude the Interlocal Conduit, and to include the 22 Fibers as follows: 4 fibers, labeled #163-166, plus 2 fibers labeled #133-134 that proceed from DISD Data Center 1212 N. Elm St and then proceed South to the Z location labeled "Frankford Rd" in Exhibit B; and 22 fibers, labeled #161-172, that proceed to the DISD Data Center 1212 N Elm St., as shown in Exhibit A, and then proceed North and split at the Strickland Middle School access point located at 2164 Locust St, where 8 proceed to Bonnie Brae St and Loop 288, and 6 of the 22 Fibers proceed along Long Road and terminates at 1500 Long Road.
 - b. Paragraph 2 of the First Amendment is hereby modified to read:

In keeping the Exchange of even consideration, Zayo agrees to install a 432-count fiber optic cable through conduit controlled by the Partners on the DART/DCTA starting at the Corinth Parkway and proceeding south to Frankford Rd as depicted on Exhibit C. Zayo, at no charge to the Partners, shall locate, install, and provide the 432-count cable at no charge to the Partners. The Partners will maintain ownership of the cable and grants to Zayo and Zayo hereby accepts from the Partners an exclusive indefeasible right of use in four hundred twenty (420) fibers in the 432-count cable for a period of twenty-five (25) years, with an option to renew at Zayo's discretion for another twenty-five (25) years (the "Zayo Fibers" or "420 Ct. Fiber"), and a non-exclusive license to use, the Partners' Associated Property during such term (as defined in Exhibit A-1), all upon and subject to the terms and conditions set forth in Exhibit A-1 (collectively the "IRU").
 - c. The 22 Fibers, the 420 Ct. Fiber, and the Partner-Provided Facilities (the DISD Conduit (which is exclusive use of 67,887 feet of one (1) 1.50 inner duct Corinth Parkway to Frankford Rd.), are referred to collectively as the "Route Conduit and Fibers." Currently existing fibers in the same trench that are not part of the Route Conduit and Fibers are retained by Partners and referred to as "Remaining Partner Fibers."
3. Modification of Exhibit A-1 in First Amendment Exhibit A-1 of the First Amendment (for clarity, which includes the modification under 2(b) above for the 432 count fiber), is deleted and replaced with Exhibit C, "432 count fiber optic cable and 420 Ct. Fiber," hereto.
4. Conversion from Ownership Transfer to IRU. In addition to the IRU for the 420 Ct. Fiber, the Partners hereby provide an indefeasible right of use (IRU) in the Route Conduit and Fibers for a period of twenty-five (25) years, with an option to renew at Zayo's discretion for another twenty-five (25) years. Zayo agrees to abide by any and all federal and state laws, and ordinances of municipal entities in which the Route Conduit is situated, as well as any complementary agreements either or both Partners may have with such municipal entities and DART/DCTA.
5. Access, Maintenance, Repairs. Exhibit D contains additional terms and conditions for the Route Conduit and Fibers, including the Partners obligation to maintain access and Underlying Rights to the Route Conduit and Fibers, and Zayo's obligation to provide routine maintenance and non-routine maintenance of the Zayo-Provided Facilities and Route Conduit and Fibers, subject to the Partners maintaining access and Underlying Rights. Section 7 of the Agreement, and Section 4 of the First Amendment are modified only to the extent set forth in Exhibit D and this Second Amendment, and only to the extent pertaining to the Route Conduit and Fibers and the 432ct fiber optic cable. Notwithstanding anything to the contrary, Partners shall have sole responsibility, including any routine maintenance or non-routine maintenance, for any Partner fiber laterals, access point, or fiber

outside of the same trench which houses the Route Conduit and Fibers and Remaining Partner Fibers. Zayo and Partners may enter into an agreement for Zayo to perform such maintenance services under separate contract.

6. Except as amended herein, all other terms and conditions of the Exchange Agreement shall be unaffected hereby and are ratified and confirmed by the Parties. In the event of any direct conflict between the terms of the Agreement, the First Amendment, and this Second Amendment, the terms of this Second Amendment shall control.

DENTON INDEPENDENT SCHOOL DISTRICT

By: _____

Print Name: _____

Title: _____

Date: _____

ZAYO GROUP, LLC

By:  _____
DocuSigned by:
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Print Name: Ted Gilliam

Title: General Counsel, Fiber Solution

Date: 6/3/2020

COUNTY OF DENTON

By:  _____

Print Name: Andy Eads

Title: County Judge

Date: 6/9/2020

Exhibit A
192 Cable – A to Z; 22 Fibers

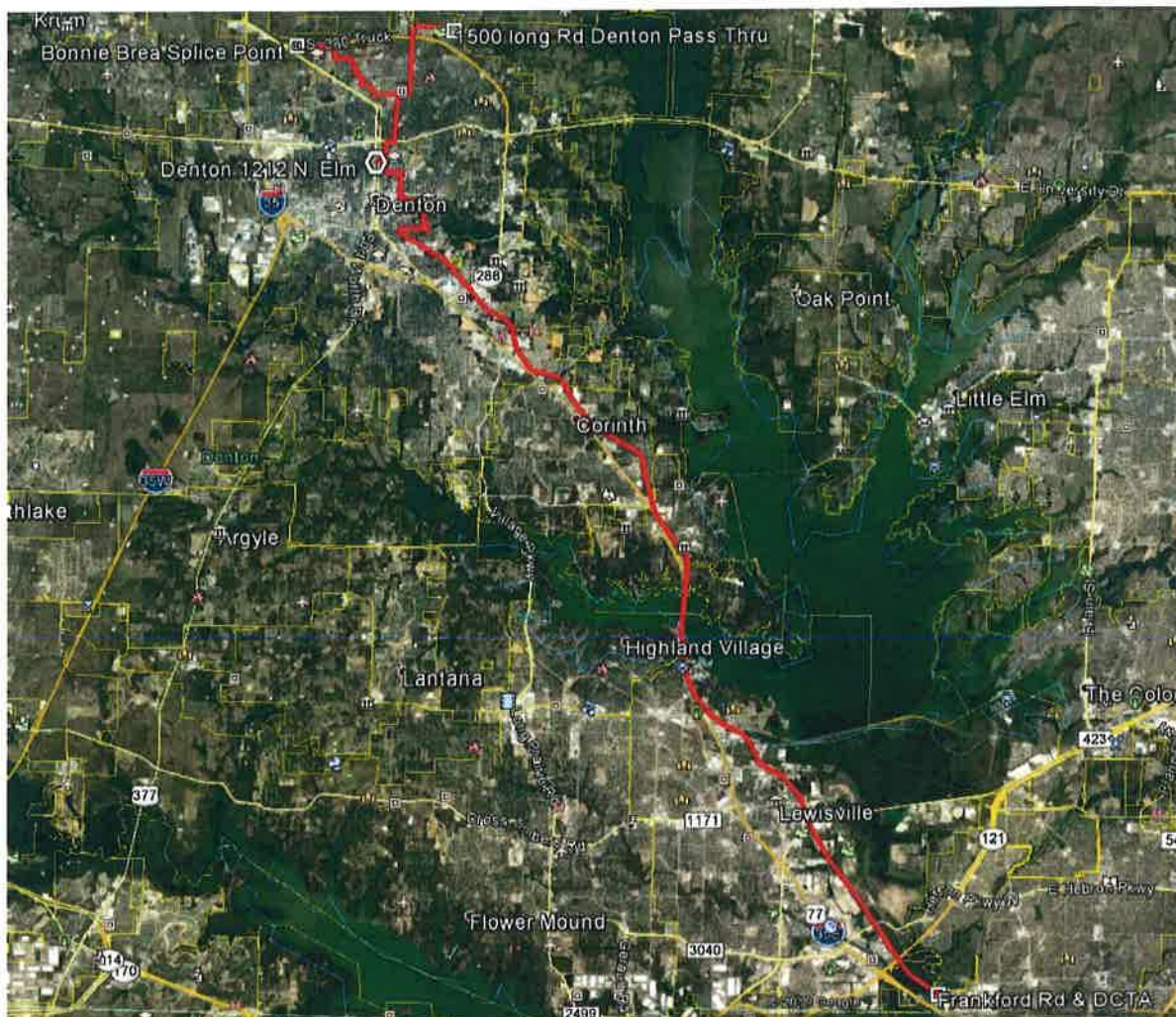


Exhibit B
South Fibers
(temporary additional 12 fibers)

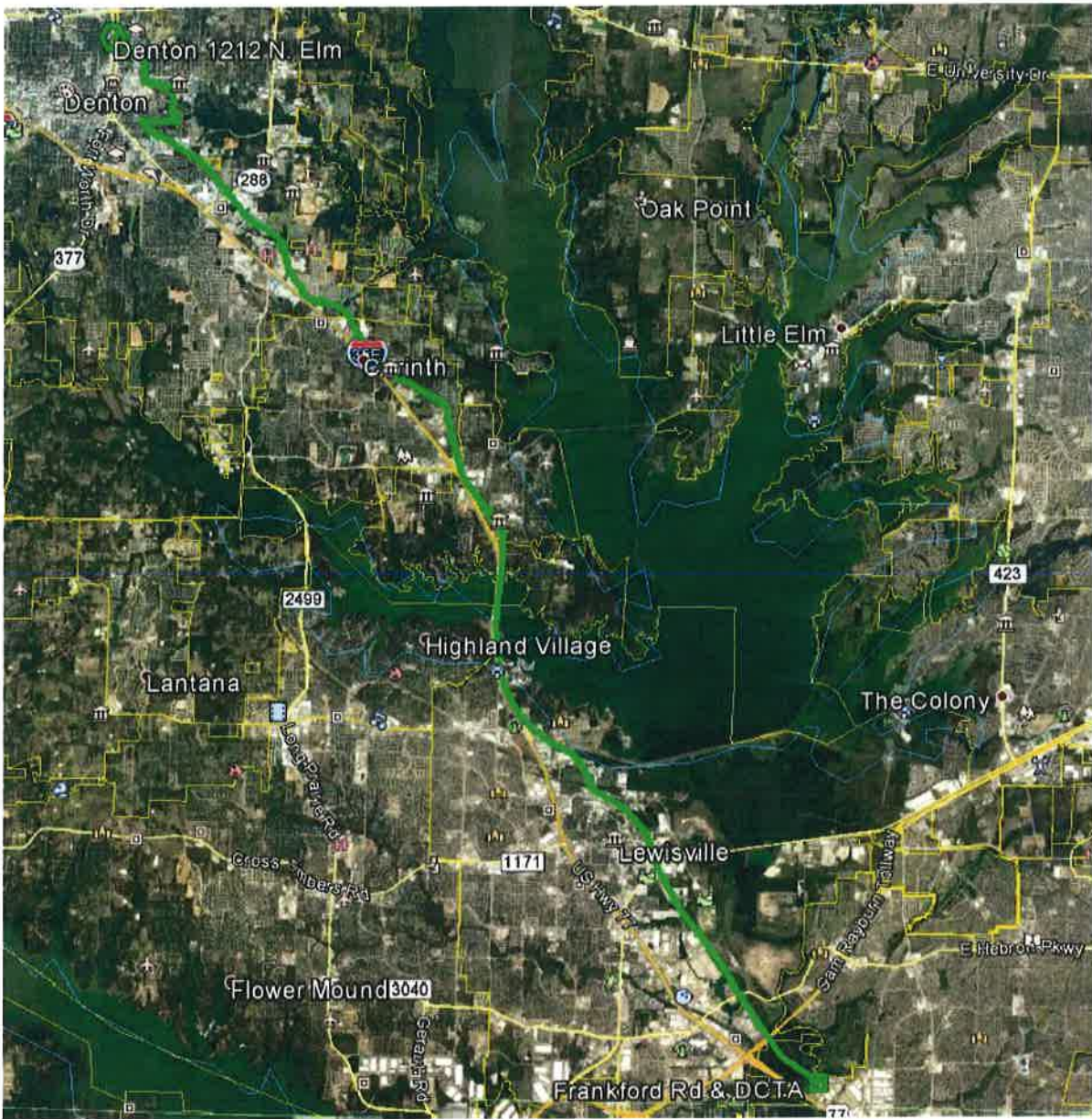


Exhibit C

(432 count fiber optic cable and 420 Ct. Fiber)

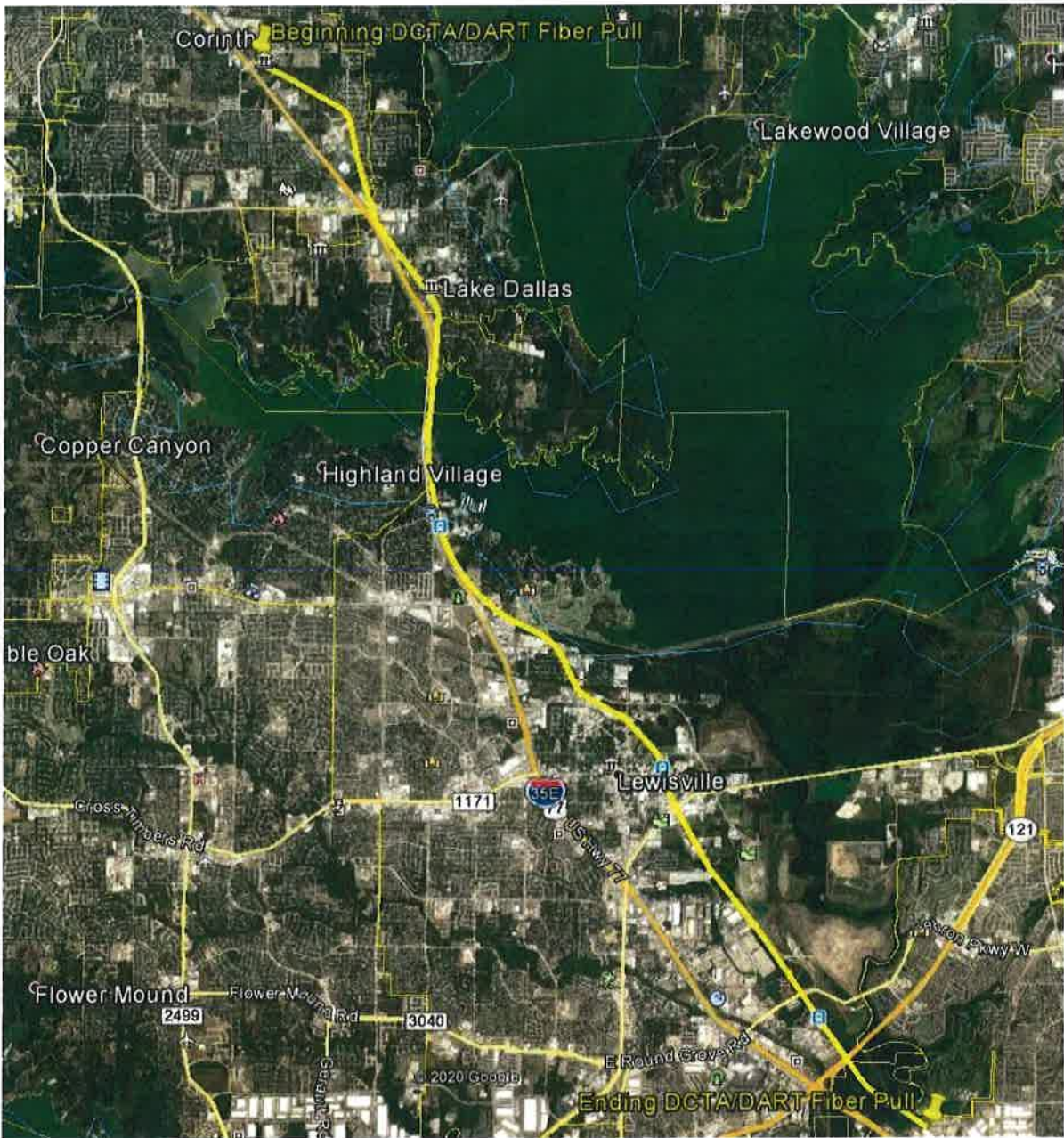


EXHIBIT D

Access, Installation, and Maintenance

1. Access to Associated Property. Partners are obligated to ensure Zayo has access to the Associated Property, and the Route Conduit and Fibers as set forth in the Agreement and the First Amendment. Additionally, Partners must provide access to the 12 fiber portion of 432 ct fiber that are part of the Remaining Partner Fibers, for Zayo to meet its obligations under Section 3 herein.

2. Installation of 432 Count Fiber Optic Cable. Partners and Denton County Transportation Authority ("DCTA") have entered, or will enter, a Limited Right of Entry Agreement ("ROE") whereby the Partners shall have a license to enter onto DCTA property for purposes of installing the 432 count fiber optic cable. Pursuant to such ROE, Partners shall subcontract with Zayo as part of this Second Amendment for installation of such cable. Zayo shall install and test in accordance with its standard practices and procedures and this Exhibit D, and shall provide Partners with as-builts following completion of installation.

3. Maintenance Procedures for Route Conduit and Fibers and the 12 Remaining Partner Fibers in the 432 Count Cable. The maintenance of Route Conduit and Fibers and 12 Remaining Partner Fibers in the 432 count cable shall be provided in accordance with the following:

a. Routine Maintenance. Zayo shall provide, or cause to be provided by contractors selected by Zayo, all required Routine Maintenance of the Route Conduit and Fibers and the Remaining Partner Fibers. "Routine Maintenance" is maintenance and repairs that Zayo deems necessary to ensure proper functioning of such fibers. Zayo will perform routine and preventative maintenance including locate activities as a part of the local "Call Before You Dig" program; Partners must cooperate with Zayo in the performance of such duties as reasonably determined by Zayo (e.g., including establishing Zayo is contractor for Partners). Any Routine Maintenance that has the possibility of impacting service on the Route Conduit and Fibers shall be pre-scheduled so as to allow notification to Zayo's customers, as appropriate. All such planned Routine Maintenance shall be conducted outside normal working hours anytime between 12:00 AM to 5:00 AM (local time) seven (7) days a week. If conditions permit, Zayo agrees to provide Partners with ten (10) business days prior written notice of Routine Maintenance that is service affecting. Notice shall be provided to contacts provided by Partners or according to Zayo's standard notification process at the time. All maintenance other than Routine Maintenance as described above shall be deemed to be "Non-Routine Maintenance." Routine Maintenance shall be provided to Zayo at no charge.

b. Non-Routine & Emergency Maintenance. Non-Routine Maintenance is maintenance that restores the functionality of services on the Zayo Fiber. For any Non-Routine and/or emergency Maintenance (including, but not limited to, repairs required due to cable cuts, fires, remodeling work or other acts of third parties or Force Majeure events), Zayo shall be permitted to access the Route Conduit and Fibers and Remaining Partner Fibers (including conduit and innerduct) for the purpose of restoring services. Partners shall reimburse Zayo for the Partner's proportionate share of costs incurred by Zayo in connection with such Non-Routine Maintenance, plus fifteen percent (15%) administrative and management fees to be divided equally among the Partners, within thirty (30) days of the date of Zayo's invoice therefor. Partner's proportionate share of such costs shall be determined based on the ratio to which the number of Partner fibers bears to the total number of fibers within the cable.

c. Contact Information for Maintenance. Unless otherwise provided in writing, the Partners may notify Zayo of any Routine Maintenance at: Vice President, OSP, Zayo Group, LLC, 13641 Omega Rd Farmers Branch, TX 75244. For Non-Routine & Emergency Maintenance, please contact Zayo Networks Operations Center at: 866.236.2824 or ncc@zayo.com.

d. DCTA ROEs. Partners must obtain ROE from the DCTA to access the Route Conduit and Fibers, the 12 Remaining Partner Fibers in the 432 count cable, and Associated Property. Zayo and Partners have agreed that Zayo shall perform as Partners' contractor as set forth in this Second Amendment for all ROE as such is required for Performance of Zayo's obligations in the Agreement. In the event that DCTA does not permit Partners to obtain ROE or Zayo to obtain ROE on Partners' behalf, and such refusal is not related to Zayo's gross negligence or willful misconduct, Zayo shall be excused from any performance and any liability under the Agreement until such ROE or other permit is issued by DCTA.

e. Splicing. Splicing of any Remaining Partner Fibers is not included as part of Zayo's obligations under this Exhibit D. If agreed to by the Parties, Zayo shall perform such splicing at cost plus an administrative fee of ten percent (10%). Such splicing shall be performed in accordance with industry standards.

4. Relocation. Zayo shall perform any relocation of the Route Conduit and Fibers and Partner fibers in the same trench; provided that each Partner shall pay its pro rata share of any relocation costs plus an administrative and management fee of fifteen percent (15%). In the event a Partner refuses to timely pay such relocation costs, Zayo may pursue either Partner for 100% of the Partners relocations costs.

5. Warranties and Representations. Zayo shall perform its obligations herein in accordance with its standard practices and procedures, industry standards, all lawful permitting requirements, and this Exhibit D. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, ZAYO MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY ZAYO, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY.

6. Limitation of Remedies. Notwithstanding anything to the contrary in the Agreement, Zayo's failure to install, maintain, or repair under this Agreement shall not constitute a material breach. The sole and exclusive remedy for such failure shall be Zayo's re-performance of its duties in accordance with the warranties and representations herein.

7. Indemnification and Hold Harmless: Zayo shall indemnify, save, and hold harmless Partners, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any negligent act or omission by Zayo, or its employees, agents, or contractors, or assignees arising out of Zayo's negligence or willful misconduct except to the extent caused by the negligence or willful misconduct of Partners or non-agent third parties; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of any statutory immunity act applicable to the Partners.

8. Limitation of Liability. For clarity, but not inference of the exclusion of other terms, the limitation of liability and force majeure contained in the Agreement shall apply to this Exhibit D.