

# **MASTER LEASE**

Among

[\_\_\_\_\_]

and

THE ENTITIES SET FORTH ON SCHEDULE 1,  
collectively, as Tenant

and

[UNITI],  
as Landlord

Dated as of [ ● ]

*[This document is not intended to create nor will it be deemed to create a legally binding or enforceable offer or agreement of any type or nature, unless and until agreed to and executed by all parties. This document remains subject to further review and revision by Uniti in all aspects based on the particular circumstances and diligence conducted with respect to the Tenant and the contemplated transaction.]*

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*[To be updated]*

## MASTER LEASE

This MASTER LEASE (the “**Master Lease**”) is entered into as of [ ● ] (the “**Execution Date**”), by and among [UNITI] (together with its permitted successors and assigns, “**Landlord**”), and [TENANT] (together with all its Subsidiaries, successors and assigns, “**Tenant**”). Landlord and Tenant are referred to collectively herein as the “**Parties**” and each individually as a “**Party**.”

## RECITALS

A. Pursuant to that certain Acquisition Agreement, dated as of [ ● ] (the “**Acquisition Agreement**”), by and among Landlord and Tenant, Landlord acquired from Tenant a communications network including, but not limited to: (i) fiber optic cabling, sheaths, conduits, hand holes, manholes, colocation facilities, in-line amplification and regeneration sites, and related components; (ii) underlying rights-of-way and other permissions necessary to site said fiber optic cables and equipment, including, but not limited to, franchises, permits to occupy public rights-of-way, private easements, pole attachment, conduit, and other agreements, and (iii) real property, improvements to real property and other interests in real property, all located in the State(s) of [ ● ] (collectively, the “**Acquired Assets**”)<sup>1</sup>.

B. Pursuant to this Master Lease, Tenant desires to lease from Landlord the exclusive use of the Acquired Assets (the “**Leased Assets**”), described with more particularity in Schedule 2 hereto.

C. Pursuant to this Master Lease, as additional security for the faithful performance by Tenant of its obligations under this Master Lease, Tenant shall pledge certain of the Tenant Assets (as defined below), now or hereafter acquired, used in connection with the operation of the Leased Assets.

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

## ARTICLE I: DEFINITIONS

Capitalized terms used in this Master Lease and not otherwise defined herein are defined in Article I below. Except as otherwise expressly provided or unless the context otherwise requires: (a) the terms defined in this Article I have the meanings assigned to them in Article I below and include the plural as well as the singular; (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; (c) the word “including” shall have the same meaning as the phrase “including, without limitation,” and other similar phrases; (d) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Master Lease as a whole and not to any particular Article, Section or other subdivision; and

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<sup>1</sup> NTD: To be updated based on final list of Acquired Assets.

(e) for the calculation of any financial ratios or tests referenced in this Master Lease, the Rent payable hereunder shall not constitute Indebtedness or Interest Expense.

**1.1 Accounting Changes:** Changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC, or changes in the application or interpretation of such accounting principles required by Tenant's or the Relevant Party's independent auditors (as set forth in an announcement or other interpretation published by such auditors).

**1.2 Accounts:** All accounts, including deposit accounts, rents, profits, income, management fees, revenues, accounts receivable, or rights to payment or reimbursement derived from the use of any Leased Assets (including, without limitation by any subtenant), whether or not evidenced by a contract or other documentation and whether or not earned by performance.

**1.3 Access Agreements:** All easements (whether express or prescriptive) or similar agreements (such as railroad crossing agreements, pole attachment agreements, joint use agreements, infeasible rights of use, and leases of conduits) affecting the Leased Assets.

**1.4 Acquisition Agreement:** As defined in Recital A.

**1.5 Additional Charge Invoice:** As defined in Section 3.3(a).

**1.6 Additional Charges:** All Impositions and other amounts, liabilities, and obligations which Tenant assumes or agrees to pay under this Master Lease, including any fine, penalty, interest, and cost arising from non-payment or late payment.

**1.7 Affiliate:** When used with respect to any corporation, limited liability company, or partnership, the term "Affiliate" shall mean any person which, directly or indirectly, controls or is controlled by or is under common control with such corporation, limited liability company or partnership. For the purposes of this definition, "control" as used with respect to any person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through the ownership of voting securities, partnership interests or other equity interests.

**1.8 Annual Capital Improvement Meeting:** As defined in Section 8.1(b).

**1.9 Annual Capital Improvement Plan:** As defined in Section 8.1(b).

**1.10 Appraisal Commencement Date:** As defined in Section 2.5(b).

**1.11 Appraiser:** As defined in Section 2.5(b)(i).

**1.12 Assignment Agreement:** [TO BE CONFORMED TO ACTUAL STRUCTURE AND INTERPLAY WITH ACQUISITION AGREEMENT].

**1.13 Audited Party:** As defined in Section 3.3(c).

**1.14** Auditing Party: As defined in Section 3.3(c).

**1.15** Beneficial Owner: shall have the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as defined in Section 13(d)(3) of the Exchange Act), such “person” will be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition.

**1.16** Business Day: Each Monday, Tuesday, Wednesday, Thursday and Friday other than days on which national banks in the City of New York, New York or Little Rock, Arkansas are authorized or obligated by law to close.

**1.17** Capital Improvements: Any improvements, additions, overbuilds, repairs, alterations, extensions, upgrades or replacements to the Leased Assets; subject to the following qualifications:

(a) Replacements of all or part of the Leased Assets shall constitute Capital Improvements if, in the aggregate of all planned or actual replacements in any twelve (12) month calendar year period, either (i) one (1) mile or greater of the route occupied by the replaced Leased Assets is affected or (ii) the replacement(s) are estimated to cost \$1,000,000.00 or greater.

(b) Additions to the Leased Assets that will constitute Capital Improvements shall include, without limitation, any fiber optic lines or related assets, including, but not limited to, laterals, extensions, handholes, manholes, and other forms of access to fiber optic cable, colocation, regeneration, in-line amplification, and other related infrastructure that occupy, connect with or attach to any portion of a route occupied by the Leased Assets.

**1.18** Capital Lease Obligations: With respect to any Person, means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**1.19** Cash: Cash and cash equivalents and all instruments evidencing the same or any right thereto and all proceeds thereof.

**1.20** Change in Control<sup>2</sup>: The occurrence of any of the following: (a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of Tenant and its Subsidiaries, taken as a whole, to any “person” (as defined in Section 13(d)(3) of the Exchange Act); (b) the adoption of a plan relating to the liquidation or dissolution of Tenant; (c) any “person” or “group” (as defined in Sections 13(d) and 14(d) of the Exchange Act) becomes the Beneficial Owner, directly or indirectly, of fifty percent (50%) or more of the voting power of the Voting Stock of Tenant; or (d) the first day on which a majority of the members

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<sup>2</sup> NTD: To be confirmed based on the identity of Tenant.

of the board of directors of Tenant were not either a member of the board of directors on said first day or nominated for election or elected to such board with the approval of a majority of the then-current board of directors at the time.

**1.21** Claims: As defined in Section 10.1(a).

**1.22** Code: The Internal Revenue Code of 1986 and the applicable Treasury Regulations promulgated thereunder, each as amended from time to time.

**1.23** Commencement Date: As defined in Section 2.4.

**1.24** Condemnation: The exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor or a voluntary sale or transfer by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

**1.25** Condemnor: Any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

**1.26** Confidential Information: All financial, technical, proprietary, confidential, and other information, including data, reports, interpretations, forecasts, analyses, compilations, studies, summaries, extracts, records, know-how, statements (written or oral) or other documents of any kind, that contain information concerning the nonpublic business and affairs of a Party or its Affiliates and Subsidiaries, which such Party or its Related Persons provide to the other Party or its Related Persons, and regardless of the time or manner in which it was furnished, in whatever form maintained, containing, reflecting or based upon, in whole or in part, any such information; provided, however, that "Confidential Information" shall not include information which: (a) was or becomes generally available to the public other than as a result of a disclosure by the other party or its Related Persons in breach of this Master Lease; (b) was or becomes rightfully available to the other party or its Related Persons on a non-confidential basis prior to its disclosure hereunder as evidenced by the written records of the other party or its Related Persons; or (c) was independently developed by the other party without the use of any Confidential Information, as evidenced by the written records of the other party.

**1.27** Consolidated Adjusted EBITDA: For any period, Consolidated Adjusted Net Income for such period plus, without duplication:

(a) provision for taxes based on income or profits of Tenant and its Subsidiaries (or the Relevant Party and its Subsidiaries, as applicable) for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Adjusted Net Income; plus

(b) Interest Expense of Tenant and its Subsidiaries (or the Relevant Party and its Subsidiaries, as applicable) for such period, to the extent that such Interest Expense was deducted in computing such Consolidated Adjusted Net Income; plus

(c) depreciation, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period), goodwill impairment charges and other non-cash expenses (excluding any such non-cash expense to the

extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of Tenant and its Subsidiaries (or the Relevant Party and its Subsidiaries, as applicable) for such period to the extent that such depreciation, amortization and other non-cash charges or expenses were deducted in computing such Consolidated Adjusted Net Income; plus

(d) any non-cash compensation charge arising from any grant of stock, stock options or other equity-based awards, to the extent deducted in computing such Consolidated Adjusted Net Income; plus

(e) any non-cash Statement of Financial Accounting Standards No. 133 income (or loss) related to hedging activities, to the extent deducted in computing such Consolidated Adjusted Net Income; minus

(f) the amount of Rent under this Master Lease for such period, with the intent that such amount shall be treated as an operating expense for purposes of calculating Consolidated Adjusted EBITDA; minus

(g) non-cash items increasing such Consolidated Adjusted Net Income for such period, other than: (i) the accrual of revenue consistent with past practice; and (ii) the reversal in such period of an accrual of, or cash reserve for, cash expenses in a prior period, to the extent such accrual or reserve did not increase Consolidated Adjusted EBITDA in a prior period;

(h) in each case determined in accordance with GAAP.

(i) Notwithstanding the preceding, the provision for taxes based on the income or profits of, the Interest Expense of, and the depreciation and amortization and other non-cash expenses of, a Subsidiary that is not a Guarantor will be added to Consolidated Adjusted Net Income to compute Consolidated Adjusted EBITDA: (x) in the same proportion that the Net Income of such Subsidiary was added to compute such Consolidated Adjusted Net Income; and (y) only to the extent that a corresponding amount has been given as a dividend or has otherwise been distributed to Tenant (or the Relevant Party, as applicable) or a Guarantor by such Subsidiary without direct or indirect violation of the terms of its charter and all agreements and instruments applicable to such Subsidiary or its stockholders.

**1.28** Consolidated Adjusted Net Income: For any period, the aggregate of the Net Income of Tenant and its Subsidiaries for such period (or the Relevant Party and its Subsidiaries, as applicable), determined in accordance with GAAP; provided that:

(a) the Net Income of any Person that is not a Guarantor will be included only to the extent of the dividends or distributions paid in cash to Tenant or any Guarantor (or the Relevant Party or Guarantor, as applicable) during such period;

(b) the Net Income of any Person acquired during the specified period for any period prior to the date of such acquisition will be excluded; and

(c) the cumulative effect of a change in accounting principles will be excluded.

**1.29** Consolidated Adjusted EBITDA to Rent Ratio: As at any date of determination, the ratio for any period of Consolidated Adjusted EBITDA to Rent. For purposes of calculating the Consolidated Adjusted EBITDA to Rent Ratio, EBITDA shall be calculated on a pro forma basis consistent with Regulation S-X under the Securities Act to give effect to any material acquisitions and material asset sales consummated by the Tenant or any Guarantor during any Test Period of Tenant as if each such material acquisition had been effected on the first day of such Test Period and as if each such material asset sale had been consummated on the day prior to the first day of such Test Period. In addition, Rent shall be calculated on a pro forma basis to give effect to any increase or decrease in Rent as a result of the addition or removal of Leased Assets to this Master Lease during any Test Period as if such increase or decrease had been effected on the first day of such Test Period.

**1.30** Consolidated Debt: As of any date, the principal amount of Indebtedness of Tenant and its Subsidiaries (or the Relevant Party and its Subsidiaries, as applicable) outstanding as of such date, determined on a consolidated basis; provided that, for purposes of this definition, the term “Indebtedness” will not include (a) contingent obligations of Tenant or its Subsidiaries (or the Relevant Party and its Subsidiaries, as applicable) as an account party or applicant in respect of any letter of credit or letter of guaranty, unless such letter of credit or letter of guaranty supports an obligation that constitutes Indebtedness of a Person other than Tenant or its Subsidiaries (or the Relevant Party or its Subsidiaries, as applicable), (b) all net obligations of Tenant and its Subsidiaries (or the Relevant Party and its Subsidiaries, as applicable) under any Derivative Swap Agreement, (c) any Earn-out Obligation or obligation in respect of purchase price adjustment in which the contingent consideration relating thereto is paid within fifteen (15) Business Days after the contingency relating thereto is resolved, (d) any bonds or similar instruments in the nature of surety, performance, appeal or similar bonds and (e) the obligations of Tenant under this Master Lease.

**1.31** CPI: The United States Department of Labor, Bureau of Labor Statistics Revised Consumer Price Index for All Urban Consumers (1982-84=100), U.S. City Average, All Items, or, if unavailable, the index designated by such Department as the successor to such index, or, if unavailable, an index for an area in the United States that most closely corresponds to the entire United States published by such Department, or if unavailable, by any other instrumentality of the United States.

**1.32** CPI Increase: The product of: (a) the CPI published for the beginning of each Lease Year; divided by (b) the CPI published for the beginning of the first Lease Year. If the product is less than one, the CPI Increase shall be equal to one.

**1.33** Credit Agreement: That certain Credit Agreement dated as of [\_\_\_\_\_], among [\_\_\_\_\_], as the same may be amended, restated, modified, renewed, replaced or refinanced from time to time.

**1.34** Credit Agreement Agent: The “Administrative Agent” under the Credit Agreement.

**1.35** Credit Agreement Agent Trigger Event: As defined in Section 12.11.

**1.36 Credit Agreement Payoff Amount:** The amount of cash required to repay in full in cash the principal of and all accrued interest on all loans outstanding under the Credit Agreement, to cash collateralize all letters of credit outstanding under the Credit Agreement and to pay in full in cash all other obligations outstanding under the Credit Agreement (other than contingent obligations for which no claim has been made) substantially simultaneously with the consummation of the transfer of the applicable Tenant Assets.

**1.37 Debt Agreement:** Any of the following items designated by Tenant to Landlord in writing to be included in the definition of “Debt Agreement”: (a) debt facilities or commercial paper facilities providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit; (b) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers’ acceptances); or (c) instruments or agreements evidencing any other indebtedness, in each case, with the same or different borrowers or issuers and, in each case: (i) entered into from time to time by Tenant and/or its Affiliates; (ii) as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time; (iii) which may be secured by assets of Tenant and its Subsidiaries, including, but not limited to, their Cash, Accounts, Tenant Assets, real property and leasehold estates in real property (including this Master Lease); and (iv) which shall provide Landlord, in accordance with Section 14.6 hereof, the right to receive copies of notices of Specified Debt Agreement Defaults thereunder and opportunity to cure any breaches or defaults by Tenant thereunder within the cure period, if any, that exists under such Debt Agreement.

**1.38 Debt Agreement Representative:** With respect to the lenders or holders under a Debt Agreement, a Person designated as agent or trustee or a Person acting in a similar capacity or as representative for such lenders or holders.

**1.39 Derivative Swap Agreement:** Any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Tenant or its Subsidiaries shall be a Derivative Swap Agreement.

**1.40 Discretionary Transferee**<sup>3</sup>: A transferee that meets all the following requirements:

(a) such transferee has: (i) at least five (5) years of experience (directly or through one or more of its Subsidiaries) operating Communications Facilities that are, in Landlord’s reasonable discretion, similar in scope and technological sophistication to that of the Leased Assets covered by this Master Lease with average annual revenues of at least \$[500,000,000.00] for [five (5)] of the immediately preceding [ten (10)] year period (or retains a

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<sup>3</sup> NTD: To be confirmed based on the identity of Tenant.

manager with such qualifications, which shall not be replaced other than in accordance with Article XIII hereof); or (ii) entered into agreement(s) in place in a form reasonably satisfactory to Landlord to retain for a period of eighteen (18) months (or more) after the effective time of the transfer at least: (y) [sixty percent (60%)] of Tenant and Tenant's Subsidiaries' personnel employed at the Leased Assets; and (z) [sixty percent (60%)] of Tenant's and Tenant's Subsidiaries' [ten (10)] most highly compensated corporate employees as of the date of the relevant agreement to transfer based on total compensation determined in accordance with Item 402 of Regulation S-K of the Exchange Act, pursuant to which such personnel shall receive: (A) a base salary or hourly wage rate and cash commission and target cash bonus opportunity and target cash equity opportunity that are substantially similar in the aggregate, to those provided to such personnel of Tenant and its Subsidiaries immediately prior to the date of the transfer; and (B) severance benefits for a period of eighteen (18) months following the date of the transfer which are comparable to the severance plan in effect for such personnel immediately prior to the date of such transfer;

(b) such transferee (directly or through one or more of its Subsidiaries) is licensed or certified by each applicable authority with jurisdiction over any portion of the Leased Assets as of the date of any proposed assignment or transfer to such entity (or will be so licensed upon its assumption of the Master Lease) to operate the Leased Assets;

(c) such transferee is Solvent and if such transferee has a Parent Company, the Parent Company of such transferee is Solvent, in each case before and after giving effect to the proposed transaction; and

(d) either: (i) the Parent Company of such transferee to the extent such Parent Company has provided a Lease Guaranty or, if such transferee does not have a Parent Company or such transferee's Parent Company has not provided a Lease Guaranty, such transferee, has sufficient assets so that, after giving effect to its assumption of Tenant's obligations hereunder or the applicable assignment (including pursuant to a Change in Control under Section 13.2(c)(i) or Section 13.2(c)(ii), its Leverage Ratio in accordance with GAAP does not exceed [\_\_\_\_ to 1.0] based on projected earnings, after giving effect to the proposed transaction, and calculated as of the consummation date of the proposed transaction; or (ii) an entity that has an investment grade credit rating from a nationally recognized rating agency with respect to such entity's long term, unsecured debt has provided a Lease Guaranty.

**1.41** Dispute: As defined in Section 16.19.

**1.42** Disqualified Equity Interests: With respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable or redeemable at the sole option of the holder thereof (other than solely for Equity Interests that are not Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise (other than solely for Equity Interests that are not Disqualified Equity Interests) or exchangeable or convertible into debt securities of the issuer thereof at the sole option of the holder thereof, in whole or in part, on or prior to the date that is 181 days after the Term then in effect at the time of issuance thereof.

**1.43** Dollars and \$: The lawful money of the United States.

**1.44** Engineering Standard: The engineering standards and methods for the performance of any Capital Improvements, as approved by Landlord as of the date hereof and as may be amended with Landlord's approval.

**1.45** Encumbrance: Any Lien affecting title to any of the Leased Assets, or any portion thereof or interest therein.

**1.46** Equity Interests: With respect to any Person, any shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest but excluding any debt security that is convertible into, or exchangeable for, any of the foregoing.

**1.47** Escalated Rent: For the applicable Lease Year, an amount equal to [ ● ] percent ([ ● ]%) of the Rent as of the end of the immediately preceding Lease Year.

**1.48** Event of Default: As defined in Section 12.1.

**1.49** Exchange Act: The Securities Exchange Act of 1934, as amended, and the rules of the SEC.

**1.50** Excluded Assets: As defined in the Acquisition Agreement.

**1.51** Expert: An independent third-party professional, with expertise in respect of a matter at issue, appointed in accordance with Article XI hereof.

**1.52** Facility Mortgage: As defined in Section 11.1.

**1.53** Facility Mortgage Documents: With respect to each Facility Mortgage and Facility Mortgagee, the applicable Facility Mortgage, loan agreement, debt agreement, credit agreement or indenture, lease, note, collateral assignment instruments, guarantees, indemnity agreements and other documents or instruments evidencing, securing or otherwise relating to the loan made, credit extended, or lease or other financing vehicle entered pursuant thereto.

**1.54** Facility Mortgagee: As defined in Section 11.1.

**1.55** Fair Market Rental: The fair market rental value based on an approach consistent with Exhibit A.

**1.56** Fair Market Value: A price that would be paid in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy.

**1.57** Final Lease Expiration: As defined in Section 12.11.

**1.58** Financial Officer: With respect to any Person, the chief financial officer, principal accounting officer, treasurer or controller of such Person.

**1.59** Financial Statements: As defined in Section 14.8(b).

**1.60** Fiscal Quarter: A fiscal quarter of Tenant.

**1.61** Fiscal Year: The fiscal year of Tenant.

**1.62** Foreclosure Assignment: As defined in Section 13.2(b)(iii).

**1.63** Foreclosure Purchaser: As defined in Section 14.1.

**1.64** GAAP: Generally accepted accounting principles in effect from time to time. For the avoidance of doubt, all matters to be determined in accordance with GAAP under this Master Lease shall be determined on a consolidated, pro forma basis, and with GAAP being consistently applied.

**1.65** Ground Lease: Any agreement, lease, sublease or similar arrangement for the use of real property, including those listed on Schedule 1.64.

**1.66** Ground Leased Assets: As defined in Section 6.3(a).

**1.67** Ground Lessor: As defined in Section 6.3(a).

**1.68** Guarantee: Any obligation, contingent or otherwise, of or by any Person guaranteeing (as a guarantor) or having the economic effect of guaranteeing any Indebtedness of any other Person (as the primary obligor) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect: (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof; (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof; (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness; or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business; provided further that the amount of any Guarantee shall be deemed to be the lower of: (i) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made; and (ii) the maximum amount for which such guarantor may be liable pursuant to the terms of the instrument embodying such Guarantee or, if such Guarantee is not an unconditional guarantee of the entire amount of the primary obligation and such maximum amount is not stated or determinable, the amount of such guarantor's maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith.

**1.69** Guarantor: Any entity that executes and delivers a Lease Guarantee to Landlord. Guarantors shall include, but may not be limited to, [\_\_\_\_\_].

**1.70** Hazardous Substances: Collectively, any petroleum, petroleum product or by product or any substance, material or waste regulated or listed pursuant to any Environmental Law.

**1.71** Impartial Appraiser: As defined in Section 11.10.

**1.72** Impositions: All taxes, rent or similar assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; water, sewer, and other utility levies and charges; fees and charges in respect of any Access Agreements; and all other regulatory or governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Assets and/or the Rent and Additional Charges and all interest and penalties thereon attributable to any failure in payment by Tenant (other than failures arising from the acts or omissions of Landlord).

**1.73** Indebtedness: With respect to any Person means, without duplication: (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person; (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accrued obligations or trade payables, in each case incurred in the ordinary course of business); (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing unconditional right to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed; (f) all Guarantees by such Person of Indebtedness of others; (g) all Capital Lease Obligations of such Person; (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty; (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances; and (j) all net obligations of such Person under any Derivative Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of any Indebtedness outstanding as of any date will be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation, and will be: (y) the accreted value thereof, in the case of any Indebtedness issued with original issue discount; and (z) the principal amount thereof, together with any interest thereon that is more than thirty (30) days past due, in the case of any other Indebtedness.

**1.74** Initial Appraisal Period: As defined in Section 2.5(b)(i).

**1.75** Initial Term: As defined in Section 2.4.

**1.76** Initial Valuation Period: As defined in Section 11.10(a).

**1.77 Insurance Requirements:** The terms of any insurance policy required by this Master Lease and all requirements of the issuer of any such policy and of any insurance board, association, organization or company necessary for the maintenance of any such policy.

**1.78 Interest Expense:** With respect to any specified Person for any period, the sum, without duplication, of:

(a) the consolidated interest expense of such Person and its Subsidiaries for such period, whether paid or accrued, including, without limitation, original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Derivative Swap Agreements, but excluding the amortization or write-off of debt issuance costs; plus

(b) the consolidated interest of such Person and its Subsidiaries that was capitalized during such period;

(c) in each case determined in accordance with GAAP.

**1.79 Investment Fund:** A bona fide private equity fund or bona fide investment vehicle arranged by and managed by or controlled by, or under common control with, a private equity fund (excluding any private equity fund investment vehicle the primary assets of which are Tenant and its Subsidiaries and/or this Master Lease and assets related thereto) that is engaged in making, purchasing, funding or otherwise or investing in a diversified portfolio of businesses and companies and is organized primarily for the purpose of making equity investments in companies.

**1.80 Landlord:** As defined in the preamble.

**1.81 Landlord Representatives:** As defined in Section 14.10(b).

**1.82 Landlord Tax Returns:** As defined in Section 3.4(b).

**1.83 Lease Guaranty:** A guaranty in form and substance reasonably satisfactory to Landlord executed by any Guarantor in favor of Landlord (as the same may be amended, supplemented or replaced from time to time) pursuant to which such Guarantor agrees to guaranty all the obligations of Tenant hereunder.

**1.84 Lease Termination Notice:** As defined in Section 2.5(b)(i).

**1.85 Lease Year:** The first Lease Year shall be the period commencing on the Commencement Date and ending on the last day of the calendar month in which the first (1st) anniversary of the Commencement Date occurs, and each subsequent Lease Year shall be each period of twelve (12) full calendar months after the last day of the prior Lease Year.

**1.86 Leased Assets:** As defined in Recital B.

**1.87** Leasehold Estate: As defined in Section 13.2(b)(iv).

**1.88** Leasehold Mortgage: A document creating or evidencing an Encumbrance on Tenant's leasehold interest (or a subtenant's subleasehold interest) in the Leased Assets.

**1.89** Legal Requirements: All applicable federal, state, county, municipal and other governmental statutes, laws, rules, policies, guidance, codes, orders, regulations, ordinances, permits, licenses, covenants, conditions, restrictions, judgments, decrees and injunctions (including common law, communications regulations and environmental regulations).

**1.90** Letter of Credit: A letter of credit, in form and substance acceptable to Landlord, from a bank whose long-term unsecured Indebtedness is rated at least "A-" by S&P or "A3" by Moody's.

**1.91** Leverage Ratio: On any date of determination, the ratio of: (a) Consolidated Debt as of such day; to (b) Consolidated Adjusted EBITDA to be determined as follows: (i) with respect to Tenant, for the period of four (4) consecutive Fiscal Quarters ended on such day (or if such day is not the last day of a Fiscal Quarter, ended on the last day of the Fiscal Quarter most recently ended for which Financial Statements have been delivered or were required to be delivered pursuant to Section 14(b)(i) before such day, or, if no Financial Statements have yet been required pursuant to Section 14(b)(i), then ended on the last day of the most recent Fiscal Quarter); and (ii) with respect to a Relevant Party, for the Test Period most recently ended for which financial statements are available. For purposes of calculating the Leverage Ratio, Consolidated Adjusted EBITDA shall be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act to give effect to any material acquisitions and material asset sales consummated by the Relevant Party and its Subsidiaries since the beginning of any Test Period of the Relevant Party as if each such material acquisition had been effected on the first day of such Test Period and as if each such material asset sale had been consummated on the day prior to the first day of such period. In addition, for the avoidance of doubt: (x) if the Relevant Party or any Subsidiary of the Relevant Party has incurred any Indebtedness or repaid, repurchased, acquired, defeased or otherwise discharged any Indebtedness since the end of the most recent Test Period for which financial statements are available, Consolidated Debt shall be calculated (for purposes of this definition) after giving effect on a pro forma basis to such incurrence, repayment, repurchase, acquisition, defeasance or discharge and the applications of any proceeds thereof as if it had occurred prior to the first day of such Test Period; (y) the Leverage Ratio shall give pro forma effect to the transactions whereby the applicable Discretionary Transferee becomes party to the Master Lease or the Change in Control transactions permitted under Section 13.2(c); and (z) with respect to a Discretionary Transferee, the Leverage Ratio shall include the Consolidated Debt and Consolidated Adjusted EBITDA of Tenant and its Subsidiaries for the relevant period.

**1.92** Lien: With respect to any asset: (a) any mortgage, deed of trust, lien, pledge, hypothecation, Encumbrance, charge or security interest in, on or of such asset; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

**1.93** Management Agreement: As defined in Section 12.12(b).

**1.94** Master Lease: As defined in the preamble.

**1.95** Material Indebtedness: Indebtedness of any one or more of Tenant, Tenant's Parent Company, and Tenant's Subsidiaries in an aggregate principal amount exceeding \$[ ● ]. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of Tenant or any of Tenant's Subsidiaries in respect of any Derivative Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Tenant or its Subsidiary would be required to pay if such Derivative Swap Agreement were terminated at such time.

**1.96** Maximum Foreseeable Loss: The largest monetary loss within one area that may be expected to result from a single fire with protection impaired, the control of the fire mainly dependent on physical barriers or separations and a delayed manual firefighting by public and/or private fire brigades.

**1.97** Monthly Construction Summary: As defined in Section 8.2(c).

**1.98** Monthly Financial Report: As defined in Section 3.3(b).

**1.99** Monthly Outage Report: As defined in Section 8.3.

**1.100** Net Income: With respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends, excluding, however:

(a) any gain or loss, together with any related provision for taxes on such gain or loss, realized in connection with: (i) any sale of assets outside the ordinary course of business of such Person or any of its Subsidiaries; or (ii) the disposition of any securities by such Person or any of its Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Subsidiaries; and

(b) any extraordinary or non-recurring gain, loss, expense or charge, together with any related provision for taxes; provided that non-recurring cash charges shall not exceed \$[ ● ] in any period of four consecutive Fiscal Quarters.

**1.101** Non-Renewal Event: As defined in Section 12.11.

**1.102** Notice: A notice given in accordance with Section 16.3.

**1.103** OFAC: As defined in Section 16.5.

**1.104** Officer's Certificate: A certificate of Tenant or Landlord, as the case may be, signed by an officer of such Party authorized to so sign by resolution of its board of directors or by its sole member or by the terms of its by-laws or operating agreement, as applicable.

**1.105 Overdue Rate:** On any date, a rate equal to five (5) percentage points above the Prime Rate, but in no event greater than the maximum rate then permitted under applicable law.

**1.106 Parent Company:** **[TBD]**.

**1.107 Payment Date:** Any due date for the payment of the installments of Rent or any other sums payable under this Master Lease.

**1.108 Permit:** Any license, permit, franchise approval, finding of suitability or other authorization or agreements issued by a federal, state or local governmental entity or regulatory agency to operate, carry on or provide voice, data, video and/or other communication services to business and consumers on the Leased Assets, required by Legal Requirements, and/or those assigned to Landlord pursuant to the Assignment Agreement which provide Landlord with the right to access and use public rights of way where the Leased Assets are installed or located.

**1.109 Person:** Any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

**1.110 Preferred Stock:** With respect to any Person, any Equity Interests in such Person that have preferential rights to any other Equity Interests in such Person with respect to dividends or redemptions upon liquidation.

**1.111 Prime Rate:** On any date, a rate equal to the annual rate on such date publicly announced by JPMorgan Chase Bank, N.A. (provided that if JPMorgan Chase Bank, N.A. ceases to publish such rate, the Prime Rate shall be determined according to the Prime Rate of another nationally known money center bank reasonably selected by Landlord), to be its prime rate for ninety (90)-day unsecured loans to its corporate borrowers of the highest credit standing, but in no event greater than the maximum rate then permitted under applicable law.

**1.112 Proceeding:** As defined in Section 14.8(b)(vi).

**1.113 Prohibited Persons:** As defined in Section 16.5.

**1.114 Prudent Industry Practice:** The standard of operating and maintenance practices, at any particular time; methods and acts, which, considering the relevant facts, are generally engaged in or approved by a significant portion of the owners of communication systems that are similar to the Leased Facilities, which could have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

**1.115 Qualified Third Party Auctioneer:** An independent auction agent of national reputation experienced in conducting auctions of assets similar to the Tenant Assets.

**1.116 Regulation S-X:** Regulation S-X promulgated by the SEC under the Securities Act.

**1.117 Related Persons:** With respect to a party, such party's Affiliates, divisions and subsidiaries and the directors, officers, employees, agents, advisors and controlling persons of such party and its affiliates, divisions and subsidiaries.

**1.118 Relevant Party:** The Discretionary Transferee or the Parent Company of the Discretionary Transferee, as applicable.

**1.119 Renewal Election Due Date:** As defined in Section 2.5(a).

**1.120 Renewal Notice:** As defined in Section 2.5(a).

**1.121 Renewal Rent:**

(a) For the first year of each Renewal Term, an annual amount equal to the Rent for the applicable Renewal Term, which shall be equal to the greater of: (i) the amount determined in accordance with Section 2.5(b); or (ii) the Rent in effect immediately prior to the commencement of such Renewal Term.

(b) Commencing with the second (2nd) Lease Year of any Renewal Term and continuing each Lease Year thereafter during such Renewal Term, the Renewal Rent shall increase to an annual amount equal to the Escalated Rent.

(c) For purposes of the Appraiser's determination of Renewal Rent under Section 2.6, the determination shall be equal to the greater of: (i) the Fair Market Rental based on an approach consistent with Exhibit A; or (ii) the Rent in effect immediately prior to the commencement of such Renewal Term.

**1.122 Renewal Term:** The term of this Master Lease may be extended for up to five (5) separate "Renewal Terms" of five (5) years each, in accordance with Section 2.5(a).

**1.123 Rent:**

(a) During the Initial Term, an annual amount equal to \$[ ● ]; provided, however, that commencing with the [ ● ] Lease Year and continuing each Lease Year thereafter during the Initial Term, the Rent shall increase to an annual amount equal to the Escalated Rent.

(b) During any Renewal Term, the Rent shall be the Renewal Rent.

(c) As applicable during the Term, Rent shall be adjusted in accordance with Article III.

**1.124 Request:** As defined in Section 16.19(a).

**1.125 Restricted Payment:** (a) Dividends (in cash, property or obligations) on, or other payments or distributions on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement, repurchase or other acquisition of, any Equity Interests of Tenant or any direct or indirect holder of Equity Interests in Tenant, but excluding dividends, payments or distributions paid through the issuance of additional shares of

Equity Interests that are not Disqualified Equity Interests and any redemption, retirement or exchange of any Equity Interest through, or with the proceeds of, the issuance of Equity Interests that are not Disqualified Equity Interests of Tenant, (b) management, oversight or similar fees payable under any management, oversight or similar fees payable to any Affiliate of Tenant (in each case other than to the Tenant or any Subsidiary that is a Guarantor) and (c) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to any Indebtedness payable to any Affiliate of Tenant or any subordinated indebtedness (in each case other than to Tenant or any Subsidiary that is a Guarantor).

**1.126 SEC:** The United States Securities and Exchange Commission.

**1.127 Securities Act:** The Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

**1.128 Selection Period:** As defined in Section 12.2(c)(ii).

**1.129 Shared Corporate Assets:** Facilities or other assets used to provide or perform shared corporate services for the operation of Tenant, its Subsidiaries and/or Affiliates, including general and administrative functions, network operations support centers, network monitoring centers, or network control centers, customer service or repair centers, warehouses for inventory or spare equipment.

**1.130 Solvent:** With respect to any Person on a particular date, that on such date: (a) the fair value of the property of such Person, on a going-concern basis, is greater than the total amount of liabilities (including contingent liabilities) of such Person; (b) the present fair salable value of the assets of such Person, on a going-concern basis, is not less than the amount that will be required to pay the probable liability of such Person on its debts (including contingent liabilities) as they become absolute and matured; (c) such Person has not incurred, and does not intend to, and does not believe that it will, incur, debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature; (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital; and (e) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Accounting Standards Codification No. 450).

**1.131 Specified Debt Agreement Default:** Any event or occurrence under a Debt Agreement or Material Indebtedness that enables or permits the lenders or holders (or Debt Agreement Representatives of such lenders or holders) to accelerate the maturity of the Indebtedness outstanding under a Debt Agreement or Material Indebtedness.

**1.132 Subsidiary:** With respect to any Person (as parent) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of

which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity with securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held by such parent. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Master Lease shall refer to a Subsidiary or Subsidiaries of Tenant.

**1.133** Successor Tenant: As defined in Section 12.11.

**1.134** SVP Representative: With respect to a Person, the senior vice president of such Person or such other similar officer of such Person.

**1.135** Tenant: As defined in the preamble.

**1.136** Tenant Assets: With respect to any facility or network constituting Leased Assets: (a) the business operations conducted by Tenant and Tenant's Subsidiaries at such facility or in connection with such network; (b) Permits, Access Agreements and any electronics and such other equipment owned by Tenant (or any of Tenant's Affiliates) located in the same area of the Leased Assets; (c) any customer relationships that Tenant or Tenant's Affiliates can no longer support as a result of the expiration or termination of the Term; provided that for the purposes of determining whether the Tenant can support a customer, Tenant will not be able to meet this standard by entering into an interconnection agreement with the Successor Tenant pursuant to which the Tenant obtains wholesale access that allows Tenant to serve such customer through the applicable facility; (d) all of Tenant Assets relating to the facility or network; and (e) if requested by the Successor Tenant, required by an applicable collective bargaining agreement, or required by applicable law, all employees that are primarily dedicated to the support, maintenance or operation of the facility or network.

**1.137** Tenant Assets FMV: **[TBD]**.

**1.138** Tenant Assets Sale Agreement: **[TBD]**.

**1.139** Tenant Capital Improvement: As defined in Section 8.1(e).

**1.140** Tenant COC: As defined in Section 13.2(b)(ii).

**1.141** Tenant Representatives: As defined in Section 14.10(c).

**1.142** Term: As defined in Section 2.4.

**1.143** Test Period: With respect to any Person, for any date of determination, the period of the four (4) most recently ended consecutive fiscal quarters of such Person.

**1.144** Third Appraiser: As defined in Section 2.5(b)(ii).

**1.145** Third Expert: As defined in Section 11.10(b).

**1.146** Transfer: As defined in Section 13.1.

**1.147** Unavoidable Delay: Delays due to strikes, lock-outs, inability to procure materials, power failure, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the reasonable control of the party responsible for performing an obligation hereunder; provided that lack of funds shall not be deemed a cause beyond the reasonable control of a party.

**1.148** Utility Charges: As defined in Section 3.4(g).

**1.149** Valuation Period: As defined in Section 11.10(b).

**1.150** Valuation Request Notice: As defined in Section 11.10.

**1.151** Voting Stock: With respect to any Person as of any date, the Equity Interests in such Person that are ordinarily entitled to vote in the election of the board of directors of such Person.

**1.152** VP Representative: With respect to a Person, the vice president of such Person or such other similar officer of such Person.

## **ARTICLE II: LEASE OF LEASED ASSETS**

**2.1** Leased Assets. Subject to the terms and conditions hereinafter set forth, Landlord exclusively leases to Tenant, and Tenant leases from Landlord, all of Landlord's rights, title and interest in and to the Leased Assets.

**2.2** Landlord Retained Assets. Notwithstanding anything to the contrary contained herein, the Leased Assets shall exclude the Landlord Retained Assets and the Tenant Assets. The Leased Assets are leased subject to all covenants, conditions, restrictions, easements and other matters affecting the Leased Assets as of the Commencement Date, whether or not of record, including any matters which would be disclosed by an inspection or accurate survey of the Leased Assets.]<sup>4</sup>

**2.3** Single, Indivisible Lease. This Master Lease constitutes one indivisible lease of the Leased Assets and not separate leases governed by similar terms. The Leased Assets constitute one economic unit, and the Rent and all other provisions have been negotiated and agreed to be based on a demise of all the Leased Assets to Tenant as a single, composite, inseparable transaction and would have been substantially different had separate leases or a divisible lease been intended. Except as expressly provided in this Master Lease for specific, isolated purposes (and then only to the extent expressly otherwise stated), all provisions of this Master Lease apply equally and uniformly to all the Leased Assets as one unit. An Event of Default with respect to any portion of the Leased Assets is an Event of Default as to all the Leased Assets. The Parties intend that the provisions of this Master Lease shall at all times be construed, interpreted and applied so as to carry out their mutual objective to create an indivisible lease of all of the Leased Assets and, in particular but without limitation, that, for purposes of any assumption,

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<sup>4</sup> NTD: To be deleted upon confirmation that no Acquired Assets will be excluded from this Master Lease.

rejection or assignment of this Master Lease under 11 U.S.C. Section 365, or any successor or replacement thereof or any analogous state law, this is one indivisible and non-severable lease and executory contract dealing with one legal and economic unit and that this Master Lease must be assumed, rejected or assigned as a whole with respect to all (and only as to all) of the Leased Assets. The Parties may amend this Master Lease from time to time to include one or more additional Leased Assets, which shall not in any way change the indivisible and non-severable nature of this Master Lease and all the foregoing provisions shall continue to apply in full force.

**2.4 Term.** The “**Term**” of this Master Lease is the Initial Term *plus* all exercised Renewal Terms. The initial term of this Master Lease (the “**Initial Term**”) shall commence on the Execution Date (the “**Commencement Date**”) and end on the last day of the calendar month in which the [fifteenth (15th)] anniversary of the Commencement Date occurs, subject to renewal as set forth in Section 2.5.

**2.5 Renewal Terms; Renewal Rent.**

(a) Renewal Terms. The term of this Master Lease may be extended for up to [five (5)] separate “**Renewal Terms**” of [five (5)] years each if at least twenty-four (24) months prior to the end of the then-current Term (each such date, a “**Renewal Election Due Date**”): (i) Tenant delivers to Landlord a “**Renewal Notice**” stating that it exercises its right to extend this Master Lease for one (1) Renewal Term; and (ii) no Event of Default has occurred and continues on the Renewal Election Due Date. Any Renewal Term must include all (and no fewer than all) of the Leased Assets as of the Renewal Election Due Date for such Renewal Term. During any such Renewal Term, except as otherwise specifically provided for herein, all the terms and conditions of this Master Lease shall remain in full force and effect. If Tenant does not timely send the applicable Renewal Notice pursuant to the provisions of this Section 2.5, the Tenant shall be deemed to have irrevocably waived its renewal rights for all subsequent Renewal Terms.

(b) Renewal Rent. No later than two hundred ten (210) days prior to the Renewal Election Due Date for any Renewal Term, Landlord shall deliver a Notice to Tenant which sets forth Landlord’s proposal for the Renewal Rent for such Renewal Term. If Landlord and Tenant do not enter into a written agreement confirming the Renewal Rent for such Renewal Term within one hundred eighty (180) days prior to such Renewal Election Due Date, the Parties shall initiate the appraisal process set forth below on such date (the “**Appraisal Commencement Date**”) to determine the Renewal Rent for such Renewal Term.

(i) The Parties shall each select to act on its behalf one independent appraisal firm, in which one or more of the members, officers or principals of such firm are members of the American Society of Appraisers and such member has a minimum of 10 years’ experience in appraising facilities similar in scope and use as the Leased Assets (each, an “**Appraiser**” and collectively, the “**Appraisers**”). Landlord or Tenant, as applicable, shall cause its Appraiser to determine the Renewal Rent as of the relevant date (giving effect to the impact, if any, of inflation from the date of the Appraiser’s decision to the relevant date). The Parties shall each ensure that its Appraiser determines the Renewal Rent within ninety (90) days after the Appraisal Commencement Date or Tenant’s receipt of a Notice (a “**Lease Termination Notice**”) that Landlord terminates this Master Lease or will repossess the Leased Assets in accordance therewith, or within ten (10) months

prior to the Final Lease Expiration (the “**Initial Appraisal Period**”). If either party fails to appoint its Appraiser within the time permitted, or only one duly appointed Appraiser determines the Renewal Rent within the Initial Appraisal Period, then the determination of such sole Appraiser shall be final and binding upon the Parties. For purposes of clarity, the “relevant date” with respect to any determination of the Renewal Rent, shall be deemed to be the date on which such applicable Renewal Term is to commence. Each Appraiser shall deliver a written report to each of Landlord and Tenant, which shall include the Renewal Rent for all the Leased Assets. This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the Parties except as otherwise provided by applicable law.

(ii) If the difference between the amounts determined by two appointed Appraisers does not exceed ten percent (10%) of the lesser of such amounts, then the Renewal Rent, shall be an amount equal to fifty percent (50%) of the sum of the amounts so determined. If the difference between the amounts exceeds ten percent (10%) of the lesser of such amounts, then the Appraisers shall appoint a third Appraiser which shall perform the services set forth in Section 2.5(b)(iii). If required by the foregoing, the Appraisers shall agree on a third Appraiser (the “**Third Appraiser**”) that meets the above requirements no later than the earlier of: (x) thirty (30) days after the Appraisal Commencement Date; (y) Tenant’s receipt of the Lease Termination Notice; (z) or twelve (12) months prior to the Final Expiration Date, which Third Appraiser shall perform the services set forth in Section 2.5(b)(iii) to the extent such services are so required. If the two Appraisers are unable to agree on the selection of the Third Appraiser by the last day of the Initial Appraisal Period, then either party may request the American Arbitration Association or any successor organization thereto to appoint the Third Appraiser meeting the above requirements within twenty (20) days of such request, and both Parties shall be bound by any appointment so made within such twenty (20) day period. If no such Appraiser shall have been appointed within such twenty (20) day period or within the Initial Appraisal Period, whichever is earlier, either Landlord or Tenant may apply to any court having jurisdiction to have such appointment made by such court. Any Appraiser appointed by the original Appraisers, by the American Arbitration Association or by such court shall be instructed to determine the Renewal Rent, as applicable, within sixty (60) days after the Initial Appraisal Period.

(iii) The Third Appraiser shall choose (without any modifications) which of the determinations made by the other two (2) Appraisers shall be final and binding, and such chosen determination shall be final and binding upon Landlord and Tenant as the Renewal Rent.

(iv) Landlord and Tenant shall each pay the fees and expenses of the Appraiser appointed by it and each shall pay one-half (1/2) of the fees and expenses of the Third Appraiser.

## **2.6 Security Deposit.**

(a) On or before the Execution Date, Tenant, as security for Tenant's performance of its obligations under this Master Lease, shall provide Landlord with cash or a Letter of Credit in an amount equal to twelve (12) months of the Rent (the "**Security Deposit**"). The Security Deposit is not an advance payment of Rent or a measure of Tenant's liability for damages hereunder. If Tenant defaults on any provision of this Master Lease, then Landlord may (but shall not be required to), without prejudice to any other remedy Landlord may have hereunder or at law or in equity, apply all or part of Security Deposit to: (i) any Rent or other amount due and payable to Landlord under this Master Lease; or (ii) any other damages that Landlord incurs as a result of such default, including any all costs (including attorneys' fees) that Landlord incurs in enforcing its rights with respect to such default. In the event that Landlord applies the Security Deposit as provided above, Tenant shall, upon 10 days' notice from Landlord replenish the Security Deposit to the required amount thereof. Upon the increase of the Rent, Tenant shall replenish the Security Deposit to reflect six (6) months of said increased Rent. Tenant waives all rights it may have, whether now existing or arising after the Execution Date, that in any way restrict Landlord's use of the Security Deposit in accordance with this Section 2.6. Upon termination of this Master Lease, Landlord may offset any amounts owed to Landlord by Tenant hereunder against the Security Deposit. Upon the expiration or earlier termination of this Master Lease, Landlord shall promptly release to Tenant any unused portion of the Security Deposit.

**2.7 Net Lease.** Landlord and Tenant acknowledge and agree that: (a) this Master Lease is and is intended to be what is commonly referred to as a "net, net, net" or "triple net" lease; and (b) the Rent shall be paid absolutely net to Landlord, so that this Master Lease shall yield to Landlord the full amount or benefit of the installments of Rent and Additional Charges throughout the Term, all as more fully set forth in Article III and subject to any other provisions of this Master Lease which expressly provide for adjustment or abatement of Rent or other charges. If Landlord commences any proceedings for non-payment of Rent or Additional Charges, Tenant will not interpose any counterclaim or cross complaint or similar pleading of any nature or description in such proceedings unless Tenant would lose or waive such claim by the failure to assert it.

**2.8 Landlord's Right to Inspect.** Upon reasonable advance written notice to Tenant, Tenant shall permit Landlord and its authorized representatives to inspect its Leased Assets during usual business hours. Landlord shall take care to minimize disturbance of the operations on the Leased Assets, except in the case of emergency.

**2.9 Quiet Enjoyment.** So long as Tenant timely pays the Rent and fully complies with all the terms of this Master Lease, Tenant shall peaceably and quietly have, hold and enjoy the Leased Assets for the Term, free of any claim or other action by Landlord or anyone claiming by, through or under Landlord, subject to all covenants, conditions, restrictions, easements, Encumbrances and other matters affecting the Leased Assets. No failure by Landlord to comply with the foregoing covenant shall give Tenant any right to cancel or terminate this Master Lease or abate, reduce or make a deduction from or offset against the Rent or any other sum payable under this Master Lease, or to fail to perform any other obligation of Tenant hereunder, provided that Tenant retains the right, by separate and independent action, to pursue any claim it may have against Landlord as a result of a breach by Landlord of the covenant of quiet enjoyment contained in this Section 2.9.

### ARTICLE III: PAYMENT OF RENT AND ADDITIONAL CHARGES

**3.1 Rent.** During the Term, Tenant will pay to Landlord the Rent and Additional Charges in lawful money of the United States of America and legal tender for the payment of public and private debts, in the manner provided in Section 3.3. The Rent during any Lease Year is payable in advance in consecutive equal monthly installments on the fifth (5<sup>th</sup>) Business Day of each calendar month during that Lease Year. Unless otherwise agreed by the Parties, Rent and Additional Charges shall be prorated as to any partial months at the beginning and end of the Term.

**3.2 Late Payment of Rent and Additional Charges.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or Additional Charges will cause Landlord to incur costs not contemplated hereunder, the exact amount of which is presently anticipated to be extremely difficult to ascertain. Accordingly, if Tenant fails to pay any installment of Rent or Additional Charges due to Landlord within five (5) days after its due date, Tenant will pay Landlord on demand a late charge equal to five percent (5%) of the amount of such installment; provided, however, with regard to the first such failure in any twelve (12) month period, Landlord will waive such late charge to the extent Tenant cures such failure within five (5) Business Days following such failure to timely pay the applicable installment of Rent. The Parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur due to late payment by Tenant and does not constitute a penalty. The Parties further agree that such late charge is an Additional Charge and not interest and such assessment does not constitute a lender or borrower/creditor relationship between Landlord and Tenant. Thereafter, if Tenant fails to pay any installment of Rent or an Additional Charge due to Landlord within ten (10) days after its due date, the amount unpaid, including any late charges previously accrued, shall bear interest at the Overdue Rate from the due date of such installment to the date of payment thereof, and Tenant shall pay such interest to Landlord on demand. The payment of such late charge or such interest shall not constitute waiver of, nor excuse or cure, any default under this Master Lease, nor prevent Landlord from exercising any other rights and remedies available to Landlord.

### **3.3 Method of Payment of Rent and Additional Charges to Landlord.**

(a) Tenant shall pay all Rent and Additional Charges to Landlord by electronic funds transfer debit transactions through wire transfer of immediately available funds, which Tenant must initiate for settlement on or before the Payment Date; provided that if the Payment Date is not a Business Day, then Tenant shall complete the settlement on the next Business Day. Landlord shall provide Tenant with a Notice containing appropriate wire transfer information. Landlord shall deliver an invoice to Tenant (each an “**Additional Charge Invoice**”) no later than twenty (20) days after the end of each calendar month which itemizes the Additional Charges incurred by Landlord and for which Tenant is responsible, that Tenant is obligated to pay to Landlord. Promptly (but in no event later than ten (10) days) following Tenant’s request, Landlord shall provide such documentation as reasonably requested by Tenant (the “**Additional Charge Documentation**”) to enable Tenant to verify the accuracy of the Additional Charges set forth on the Additional Charge Invoice. Subject to Section 3.3(b) and Section 6.3 relating to permitted contests, Tenant shall pay all invoiced Additional Charges to Landlord (or to such other person directed by Landlord) upon the later of the date which is (i) thirty (30) days after Landlord delivers

the Additional Charge Invoice to Tenant, and (ii) ten (10) days following Tenant's receipt of the Applicable Charge Documentation, if applicable.

(b) No later than fifteen (15) days after the end of each calendar month, Tenant shall deliver to Landlord a report (each a "**Monthly Financial Report**") setting forth all Additional Charges paid by Tenant during the immediately preceding calendar month. Landlord shall reasonably cooperate with Tenant in the preparation of such Monthly Financial Report. Promptly (but in no event later than ten (10) days) following Landlord's request, Tenant shall deliver to Landlord such documentation as reasonably requested by Landlord, including, without limitation, a copy of the transmittal letter or invoice and a check whereby such payment was made, to evidence the proper payment of the Additional Charges by Tenant to Parties other than Landlord hereunder. Such Monthly Financial Reports, on a quarterly basis, shall also include a certification as to the amounts accrued and paid for property taxes and insurance related to the Leased Assets.

(c) Either Landlord or Tenant (the "**Auditing Party**"), upon Notice delivered to the other party (the "**Audited Party**"), within sixty (60) days after the end of each calendar year, may elect to designate a certified accountant from a nationally recognized accounting firm to audit the books and records of the Audited Party relating to the Additional Charge Invoices or Monthly Financial Reports, as applicable, for the immediately preceding calendar year, together with reasonable supporting data therefor. The Auditing Party must ensure such audit occurs during business hours and with at least five (5) Business Days' prior notice to the Audited Party, and shall commence no later than thirty (30) days following the date of the Auditing Party's Notice, as such date may be extended on a day for day basis to the extent the Audited Party delays the Audited Party's access to such books and records following the request therefor. If Landlord or Tenant fails to deliver Notice within the time period stated above, then the Additional Charge Invoices or Monthly Financial Reports, as applicable, for the immediately preceding calendar year shall be deemed conclusive and binding upon such Party.

(d) The Auditing Party and the Auditing Party's employees, accountants and agents shall treat all the Audited Party's books and records, and any analysis thereof, as Confidential Information, and, as a condition to any review of such books and records, the Auditing Party shall confirm such confidentiality obligation in writing by executing a confidentiality agreement in form and substance reasonably acceptable to Landlord and Tenant. The Auditing Party may, at the Auditing Party's sole cost and expense, copies and/or make abstracts of the books and records as it may reasonably request in connection with its verification of any such Additional Charge Invoices and/or the Monthly Financial Reports, subject to the provisions of any related confidentiality agreement.

(e) Pending the determination of any dispute, Tenant shall pay all Additional Charges set forth in the Additional Charge Invoices in question; provided payment shall not prejudice to Tenant's right to dispute such amounts or Tenant's right to recover if Tenant successfully challenges the Additional Charge Invoices. If Tenant successfully disputes any Additional Charges, then: (i) Landlord shall refund to Tenant the amount of such overpayment no later than thirty (30) days following such determination; and (ii) if Tenant has overpaid such Additional Charges by more than five percent (5%) as a result of Landlord's overstatement of such Additional Charges, then Landlord shall reimburse Tenant for Tenant's reasonable auditing fees incurred in connection as well as the amount of such overpayment with such determination no later

than thirty (30) days following receipt of an invoice therefor (with reasonable supporting documentation) from Tenant. Landlord's obligation to make such payment shall survive the expiration or earlier termination of this Master Lease.

(f) After a dispute has been finally resolved and it is determined that Tenant has underpaid any Additional Charges based on the Landlord's audit set forth in this Section 3.3, Tenant shall pay the amount of such underpayment to Landlord (or the applicable party), together with any applicable interest, within thirty (30) days following such determination and shall send to Landlord, simultaneously with any such payment to a party other than the Landlord, a copy of the invoice or check or other evidence of payment therefor. If it is determined that Tenant has underpaid such Additional Charges by more than five percent (5%), Tenant shall reimburse Landlord for Landlord's reasonable auditing fees incurred in connection with such determination as well as the amount of such underpayment no later than thirty (30) days following receipt of an invoice therefor (with reasonable backup) from Landlord. Tenant's obligation to make such payment shall survive the expiration or earlier termination of this Master Lease.

### **3.4 Impositions.**

(a) Subject to Section 6.3 relating to permitted contests, and without any duplication as to any Additional Charges, Tenant shall pay all Impositions as they become due. Tenant shall make such payments directly to the taxing authorities or such other third parties, and promptly furnish to Landlord copies of official receipts or other satisfactory proof evidencing such payments. If any Imposition may, at the option of the taxpayer, lawfully be paid in installments, whether or not interest shall accrue on the unpaid balance of such Imposition, Tenant may pay the same, and any accrued interest on the unpaid balance of such Imposition, in installments as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto.

(b) Landlord shall prepare and file all tax returns and reports required by Legal Requirements with respect to Landlord's net income, gross receipts, franchise taxes and taxes on its capital stock and any other returns strictly required to be filed by or in the name of Landlord, and may not be filed by the Tenant in its name or on behalf of the Landlord (the "**Landlord Tax Returns**"), and Tenant shall prepare and file all other tax returns and reports as may be required by Legal Requirements with respect to or relating to the Leased Assets and Tenant Assets.

(c) Tenant may retain any refund due from any taxing authority in respect of any Imposition. If Landlord receives a such refund, Landlord shall pay such refund over to Tenant no later than thirty (30) days after receipt of the same.

(d) Each Party shall, upon request of the other, provide such data maintained by said Party receiving the request in the normal course of business with respect to the Leased Assets as may be necessary to prepare any required tax returns and reports including, cost and depreciation records, to the extent available, necessary for filing returns for any property required to be reported hereunder. Where Landlord is legally required to file property tax returns, Tenant shall be provided with copies of assessment notices indicating a value more than the reported value in sufficient time for Tenant to file a protest. In addition, Tenant shall provide, at its expense, periodic reports (no less than monthly) to Landlord, or as reasonably requested by Landlord from

time to time, in sufficient detail to enable Landlord to confirm that Tenant is discharging its obligations under this Master Lease with regard to the preparation, filing and payment of all Impositions and to permit accounting for such Impositions on Landlord's own books and records. Tenant's books and records for Impositions shall be maintained in a manner consistent with the other books and records maintained by Tenant, but no less than a commercially reasonable standard of care. Landlord shall have the right from time to time during normal business hours upon at least seventy-two (72) prior written notice to Tenant to examine and audit such books and records at the office of Tenant or other Person maintaining such books and records and to make such copies or extracts thereof as Landlord shall desire.

(e) Billings for reimbursement by Tenant to Landlord of personal property or real property taxes and any taxes due under the Landlord Tax Returns, if and to the extent Tenant is responsible for such taxes under the terms of this Section 3.4, shall include copies of bills and payments thereof which identify the personal property or real property or other tax obligations of Landlord with respect to which such payments are made.

(f) Impositions imposed or assessed in respect of the tax-fiscal period during which the Term terminates shall be adjusted and prorated between Landlord and Tenant, whether or not such Imposition is imposed or assessed before or after such termination, and Tenant's obligation to pay its prorated share thereof in respect of a tax-fiscal period during the Term shall survive such termination.

(g) Without duplication of any Additional Charges, Tenant shall pay all charges for electricity, power, gas, oil, water and other utilities used in the operation of the Leased Assets (including all Capital Improvements) (the foregoing constituting "**Utility Charges**").

(h) Tenant shall also pay or reimburse Landlord in accordance with Article III for all costs and expenses of any kind whatsoever which Landlord may impose with respect to any Leased Asset due to any of the covenants, conditions and/or restrictions affecting the Leased Assets or any portion thereof, or with respect to easements, licenses or other rights over, across or with respect to any adjacent or other property which benefits the Leased Assets, or any Capital Improvement. Landlord will not enter into any such agreements without Tenant's consent, which shall not be unreasonably withheld (it being understood that it shall not be reasonable to withhold consent to such agreements that do not adversely affect the use or future development of the Leased Asset for its intended purpose or increase Additional Charges). Tenant will not enter into agreements that will encumber the Leased Assets after the expiration of the Term without Landlord's consent, which shall not be unreasonably withheld, provided Landlord is given reasonable opportunity to participate in the process leading to such agreement.

**3.5 Impound Account.** Following the occurrence and during the continuation of an Event of Default and provided Tenant is not already being required to impound such payments in accordance with the requirements of Section 14.3(b), Landlord may upon thirty (30) days' Notice require Tenant to deposit, at the time of any payment of Rent, an amount equal to one-twelfth of the sum of: (a) Tenant's estimated annual real and personal property taxes required pursuant to Section 3.4 (as reasonably determined by Landlord); and (b) Tenant's estimated annual maintenance expenses and insurance premium costs pursuant to Article VII and Article XI hereof (as reasonably determined by Landlord), along with reasonable cost of administering such

impound account. Such amounts shall be applied to the payment of the obligations in respect of which said amounts were deposited in such order of priority as Landlord shall reasonably determine, on or before the respective dates on which the same or any of them would become delinquent.

## **ARTICLE IV: OWNERSHIP OF ASSETS**

### **4.1 Ownership of the Leased Assets.**

(a) Landlord and Tenant acknowledge and agree that: (i) the Leased Assets are the property of Landlord; (ii) Tenant has only the right to the possession and use of the Leased Assets upon the terms and conditions of this Master Lease; (iii) this Master Lease is a “true lease,” is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of this Master Lease are those of a true lease; (iv) the business relationship created by this Master Lease and any related documents is and at all times shall remain that of landlord and tenant; (v) each Party has entered into this Master Lease in reliance upon the mutual covenants, conditions and agreements contained herein; (vi) the Rent is the fair market rent for the use of the Leased Assets, and the execution and delivery of; (vii) the performance by Tenant of its obligations under, this Master Lease does not constitute a transfer of all or any part of the Leased Assets; and (viii) none of the agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make them joint venturers, to make Tenant an Affiliate, agent, legal representative, partner, subsidiary or employee of Landlord, or to make Landlord in any way responsible for the debts, obligations or losses of Tenant.

(b) Each Party covenants and agrees, subject to Section 4.1(c), not to: (i) file any income tax return or other associated documents; (ii) file any other document with or submit any document to any governmental body or authority; (iii) enter into any written contractual arrangement with any Person; or (iv) release any financial statements of Tenant, in each case, that takes a position for tax purposes other than that this Master Lease is a “true lease” with Landlord as owner of the Leased Assets and Tenant as the tenant of the Leased Assets, including: (x) treating Landlord as the owner of such Leased Assets eligible to claim depreciation deductions under Sections 167 or 168 of the Code with respect to such Leased Assets; (y) Tenant reporting its Rent payments as rent expense under Section 162 of the Code; and (z) Landlord reporting the Rent payments as rental income under Section 61 of the Code.

(c) If Tenant reasonably concludes that GAAP, or the Legal Requirements require treatment different from that set forth in Section 4.1(b) for applicable non-tax purposes, then: (i) Tenant shall promptly give prior Notice to Landlord, accompanied by a written statement that references the applicable pronouncement that controls such treatment and contains a brief description and/or analysis that sets forth in reasonable detail the basis upon which Tenant reached such conclusion; after which (ii) notwithstanding Section 4.1(b), Tenant may comply with such requirements.

(d) Tenant waives any claim or defense based upon the characterization of this Master Lease as anything other than a true lease and as a master lease of all the Leased Assets. Tenant stipulates and agrees not to: (i) challenge the validity, enforceability or characterization of

the lease of the Leased Assets as a true lease and/or as a single, non-severable instrument pertaining to the lease of all, but not less than all, of the Leased Assets; or (ii) assert or take or omit to take any action inconsistent with the agreements and understandings set forth in this Agreement regarding the same.

**4.2 Tenant Assets.** During the Term, Tenant (and Tenant's Subsidiaries) shall have the right to affix Tenant Assets to the Leased Assets. Tenant shall maintain Tenant Assets in good order, condition, and repair and in accordance with Prudent Industry Practice, in all cases as is necessary and appropriate to operate the Leased Assets in compliance with all applicable Legal Requirements, Insurance Requirements, Permits, and Access Agreements. If a Tenant Asset requires replacement in order to comply with the foregoing, Tenant shall replace said Tenant Asset with similar property of the same or better quality in a manner consistent with Prudent Industry Practice at Tenant's (or such Subsidiary's) sole cost and expense. Subject to the foregoing, Tenant and Tenant's Subsidiaries may sell, transfer, convey, pledge or otherwise dispose of any Tenant Assets (other than the Permits held by Tenant) in their discretion in the ordinary course of their business. If any such Tenant Assets are leased (rather than owned) by Tenant (or its Subsidiaries), Tenant shall use commercially reasonable efforts to ensure that the lease agreements pursuant to which Tenant (or its Subsidiaries) leases such Tenant Assets are assignable to third parties in connection with any transfer by Tenant (or its Subsidiaries) to a Successor Tenant at the end of the Term. Tenant shall remove all Tenant Assets from the Leased Assets at the end of the Term, except to the extent Tenant has transferred ownership of such Tenant Assets to a Successor Tenant or Landlord or Tenant continues to operate the Leased Assets under a Management Agreement. Any Tenant Assets left on the Leased Assets at the end of the Term whose ownership has not been transferred to a Successor Tenant shall be deemed abandoned by Tenant and shall become the property of Landlord.

**4.3 Guarantors; Tenant Assets.** Each of Tenant's Parent Companies and each of Tenant's other Affiliates set forth on Schedule 4.3 shall be a Guarantor under this Agreement and shall execute and deliver to the Landlord a Lease Guaranty. In addition, if any material Permit or other material asset necessary to operate any portion of the Leased Assets is owned by a Subsidiary not already a Guarantor, Tenant shall within two (2) Business Days after the date such Subsidiary acquires such Communication's License, other license or other material asset: (a) notify the Landlord thereof; and (b) cause such Subsidiary to become a Guarantor by executing a Lease Guaranty and updating Schedule 4.3 accordingly. In the event Tenant or Tenant's Parent Company acquires any Subsidiaries in the future, Tenant shall within two (2) Business Days after the date of such acquisition notify Landlord thereof, after which Landlord may upon notice to Tenant require Tenant to cause such future Subsidiary to become a Guarantor by executing a Lease Guaranty.

## **ARTICLE V: CONDITION AND USE OF LEASED ASSETS**

**5.1 Condition of the Leased Assets.** Tenant acknowledges receipt and delivery of possession of the Leased Assets and confirms that Tenant has examined and otherwise has knowledge of the condition of the Leased Assets prior to the execution and delivery of this Master Lease and has found the same to be in good order and repair and, to the best of Tenant's knowledge in compliance with Legal Requirements and satisfactory for its purposes hereunder. Regardless, of any examination or inspection made by Tenant, Tenant acknowledges and agrees that Tenant is leasing the Leased Assets "as is" in its present condition. Tenant waives any claim

or action against Landlord in respect of the condition of the Leased Assets including any defects or adverse conditions not discovered or otherwise known by Tenant as of the Commencement Date. LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED ASSETS OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH ALL ENVIRONMENTAL LAWS.

## **5.2 Use of the Leased Assets.**

(a) Subject to the terms of this Master Lease, Tenant shall have the exclusive and unrestricted right to use the Leased Assets. Landlord acknowledges and agrees that any of Tenant's Affiliates set forth on Schedule 4.3 shall have the right to use, occupy and operate the Leased Assets in accordance with the terms of this Master Lease, all Legal Requirements and such Affiliates shall have the right to discharge any or all of Tenant's obligations (maintenance or otherwise) hereunder on behalf of Tenant.

(b) Tenant shall not commit or suffer to be committed any waste on the Leased Assets (including any Capital Improvement thereto) or cause or permit any nuisance thereon or to, except as required by law, or take or suffer any action or condition that will diminish the ability of the Leased Assets to be used as intended under the Acquisition Agreement after the expiration or earlier termination of the Term.

(c) Tenant shall neither suffer nor permit the Leased Assets or any portion thereof to be used in such a manner as: (i) might reasonably tend to impair Landlord's title thereto or to any portion thereof; or (ii) may make possible a claim of adverse use or possession, or an implied dedication of or easement affecting the Leased Assets or any portion thereof. As an illustration of the foregoing, but without limitation, without the prior written consent of Landlord, which Landlord may withhold in its sole and absolute discretion, Tenant shall not: (w) initiate or support any limiting change in the permitted uses of the Leased Assets (or to the extent applicable, any limiting zoning reclassification of the Leased Assets); (x) seek any variance under existing land use restrictions, laws, rules or regulations (or, to the extent applicable, zoning ordinances) applicable to the Leased Assets or use of the Leased Assets; (y) impose, permit, or suffer the imposition of any restrictive covenants, easements, or other Encumbrances upon the Leased Assets in any manner that materially and adversely affects the value or utility of the Leased Assets; or (z) execute or file any subdivision plat affecting the Leased Assets, or institute, or permit the institution of, proceedings to alter any tax lot comprising the Leased Assets.

(d) Except in instances of casualty or condemnation, Tenant shall continuously operate each of the Leased Assets. Notwithstanding the foregoing, Tenant may cease operations of Leased Assets if such cessation would either: (i) not reduce the route miles of the fiber optic lines with respect to any discrete portion of the Leased Assets by more than [\_\_\_\_] percent ([\_\_\_\_]%) or the Leased Assets as a whole by more than [\_\_\_\_] percent ([\_\_\_\_]%) in the aggregate over the

Term; or (ii) not reasonably be expected to have a material adverse effect on Tenant or on the Leased Assets, taken as a whole; provided that: (x) no Event of Default has occurred and is continuing immediately prior to or immediately after the date that operations are ceased; (y) the Rent due hereunder is not reduced on account of such cessation; and (z) such cessation does not result in any non-compliance with any Legal Requirements, Permits, or Access Agreements.

(e) Tenant shall have the right to receive all rents, profits and charges arising from the Leased Assets, including but not limited to payments from customer or carriers for dark or dim fiber services, subject to Landlord's rights set forth in Section 13.4.

(f) Tenant shall not, directly or indirectly, take any action, including, but without limitation, any fiber optic overbuilds, work-arounds, or alternative fiber optic routes, that results in the diversion of any customers to which Tenant provides service through operation of the Leased Assets, either now or in the future, to other assets of Tenant, or take actions to establish substitute routes for customers that could otherwise be satisfied by the Leased Assets.

## **ARTICLE VI: COMPLIANCE WITH LEGAL AND OTHER OBLIGATIONS**

### **6.1 Representations and Warranties.**

(a) In addition to other representations and warranties required by this Master Lease, each Party represents and warrants to the other that: (i) this Master Lease and all other documents executed or to be executed by it in connection herewith have been duly authorized and shall be binding upon it; (ii) it is duly organized, validly existing and in good standing under the laws of the state of its formation and is duly authorized and qualified to perform this Master Lease within the state(s) where any portion of the Leased Assets is located; and (iii) neither this Master Lease nor any other document executed or to be executed in connection herewith constitutes a material breach of any other agreement of such Party.

(b) Tenant warrants that it has not had any contact or dealings with any Person or real estate broker which would give rise to the payment of any fee or brokerage commission in connection with this Master Lease, and Tenant shall indemnify, protect, hold harmless and defend Landlord from and against any liability with respect to any fee or brokerage commission arising out of any act or omission of Tenant.

(c) Landlord warrants that it has not had any contact or dealings with any Person or real estate broker which would give rise to the payment of any fee or brokerage commission in connection with this Master Lease, and Landlord shall indemnify, protect, hold harmless and defend Tenant from and against any liability with respect to any fee or brokerage commission arising out of any act or omission of Landlord.

### **6.2 Compliance with Legal and Insurance Requirements.**

(a) Subject to Section 6.3 regarding permitted contests, Tenant, at its expense, shall promptly (and shall cause Tenant's Subsidiaries to promptly): (i) comply in all material respects with all Legal Requirements and Insurance Requirements regarding the use, operation, maintenance, repair and restoration of the Leased Assets and Tenant Assets; and (ii) procure, maintain and comply in all material respects with all Legal Requirements, Permits, Access

Agreements and other authorizations required for the use of the Leased Assets and Tenant Assets. Without limiting the foregoing, Tenant shall (and shall cause Tenant's Subsidiaries) to comply in all material respects with all Legal Requirements with respect to: (y) the standards for the construction, maintenance and operation of the fiber optics communication systems, and (z) all environmental laws and regulations.

(b) In an emergency or in the event of a breach by Tenant of its obligations under this Section 6.2 which is not cured within any applicable cure period, Landlord may, but shall not be obligated to, enter upon the Leased Assets and take such reasonable actions and incur such reasonable costs and expenses to effect such compliance as it deems advisable to protect its interest in the Leased Assets at Tenant's cost and expense.

### **6.3 Compliance with Ground Leases.**

(a) This Master Lease is subject and subordinate to all of the terms and conditions of any and all Ground Leases solely to the extent affecting any Leased Assets (the "**Ground Leased Assets**"). Tenant hereby acknowledges that Tenant has reviewed and agreed to all of the terms and conditions of the applicable Ground Leases. Tenant hereby agrees that Tenant shall not do, or fail to do, anything that would cause any violation of the Ground Leases. Without limiting the foregoing: (i) to the extent Landlord is required to obtain the written consent of the lessor or other grantor of any interest under any Ground Lease (a "**Ground Lessor**") to alterations of or the subleasing of all or any portion of the Ground Leased Assets pursuant to such Ground Lease, Tenant shall likewise obtain such Ground Lessor's written consent to the same; and (ii) Tenant shall carry and maintain general liability, automobile liability, property and casualty, worker's compensation and employer's liability insurance in amounts and with policy provisions, coverages and certificates as required of Landlord as tenant under such Ground Lease.

(b) In the event of cancellation or termination of any Ground Lease prior to the expiration date of this Master Lease, then, at the Ground Lessor's option, Tenant shall make full and complete attornment to Ground Lessor with respect to the obligations of Landlord in connection with such Ground Leased Assets for the balance of the term of such Ground Lease (notwithstanding the cancellation or termination of such Ground Lease). Tenant shall evidence such attornment, within thirty (30) days after request by Ground Lessor, by a written agreement providing that the Tenant is in direct privity of contract with such Ground Lessor (i.e., that all obligations previously owed to Landlord under this Master Lease with respect to such Ground Lease or such Ground Leased Assets shall be obligations owed to such Ground Lessor for the balance of the term of this Master Lease, notwithstanding cancellation or termination of such Ground Lease) and which shall otherwise be in form and substance reasonably satisfactory to such Ground Lessor. Absent Tenant's execution of such an attornment, nothing in this Master Lease shall create, or be construed as creating, any privity of contract or privity of estate between any Ground Lessor and Tenant.

Nothing contained in this Master Lease amends, or shall be construed to amend, any provision of any Ground Lease.<sup>5</sup>

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<sup>5</sup> NTD: To be included if any of the Leased Assets are leased from a third party by Landlord.

**6.4 Permitted Contests.** Tenant, upon prior Notice to Landlord, at its sole cost and expense, may contest in good faith and with due diligence the amount, validity or application, in whole or in part Additional Charge (other than an Additional Charge payable to Landlord in which case Section 3.3 shall apply), Legal Requirement, Insurance Requirement, Lien, Encumbrance, charge, or other claim; provided, however, that Tenant's contest does not implicate: (a) the sale, forfeiture, attachment, or other loss of the Leased Assets or any Capital Improvement thereto, the Rent, or any part or interest in either thereof; (b) civil or criminal liability of Tenant and/or Landlord; (c) a potential loss in excess of \$[●]; or (d) any amount collectable against Landlord, unless such amount is suspended pending the permitted context. Additionally: (w) Tenant shall give such reasonable security as may be required by Landlord to insure the ultimate payment of the claims contested and to prevent any sale or forfeiture of the Leased Assets or any Capital Improvement thereto or the Rent by reason of such non-payment or noncompliance; (x) coverage required by Article XI shall be maintained; (y), Tenant shall keep Landlord reasonably informed as to the status of the proceedings; and (z) if such contest resolves against Landlord or Tenant, Tenant shall promptly pay the required amount, together with all interest and penalties accrued thereon, and/or comply with the applicable Legal Requirement or Insurance Requirement. Landlord, at Tenant's request and sole expense, shall reasonably cooperate with Tenant in connection with Tenant's exercise of any contest rights under this Section 6.3 (including, without limitation, any audit and appeal rights of Tenant and refunds sought by Tenant) and shall execute and deliver to Tenant such authorizations and other documents as may reasonably be required in any such contest. Landlord may join as a party in any such contest at Landlord's sole discretion, or as required by the Legal Requirements.

**6.5 [\*\*\*No Ground Leases.<sup>6</sup>** Tenant represents and warrants that there exists no Ground Leases required to operate or maintain the Leased Assets, or in any other way required under this Agreement. Tenant hereby agrees that Tenant shall take no action, or permit any other Person to take such action, that would necessitate the obtainment of any such Ground Leases for the purposes of this Master Lease, without Landlord's prior written consent. In the event any such Ground Lease or other similar property right is required for such purpose and Landlord consents to the same, Tenant agrees that Tenant shall not do, or fail to do, anything that would cause any violation of any such Ground Lease or other agreement evidencing said property right, and Tenant shall be solely responsible for any obligations regarding said Ground Lease or agreement, including, but not limited to, any obligations for which Landlord may otherwise be responsible.\*\*\*]

## **ARTICLE VII: OPERATION AND MAINTENANCE**

### **7.1 Maintenance and Repair.**

(a) During the Term of this Master Lease, Tenant, at its expense, shall maintain the Leased Assets, and every portion thereof: (i) in accordance with Prudent Industry Practices; and (ii) in a manner which complies with all Legal Requirements. Without limiting the foregoing, Tenant, at its sole expense, shall be responsible for: (w) coordinating with local, state or federal governmental authorities to execute moves and relocations of the Leased Assets required by such local, state or federal governmental authorities; (x) complying with any other requirements

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<sup>6</sup> NTD: To be included only if Section 6.3 is not applicable.

instituted by such authorities in order to allow the Parties to operate the Leased Assets; (y) repairing fiber and copper cuts with respect to the Leased Assets on a timely basis; and (z) replacing, or causing to be replaced, poles, conduits and such other components of the Leased Assets as may be reasonably required from time to time in order to comply with its obligations hereunder.

(b) Tenant shall perform the maintenance obligations hereunder with reasonable promptness and make all reasonably necessary and appropriate repairs thereto of every kind and nature[, including those necessary to ensure continued operability of Landlord Retained Assets], whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising due to a condition existing prior to the Commencement Date. All repairs shall be at least equivalent in quality to the original work, and in no event shall Tenant remove (except in the case of a replacement authorized under this Master Lease) any portion of the Leased Assets without Landlord's prior consent. Tenant will not take or omit to take any action which could reasonably be expected to materially impair the value or the usefulness of the Leased Assets. Tenant shall provide, at its expense, periodic reports (no less than monthly) to Landlord, as reasonably requested by Landlord from time to time, on operational matters in sufficient detail to enable Landlord to confirm that Tenant is discharging its maintenance and other obligations under this Master Lease. Each report shall include, at a minimum:

- (i) All relevant actions taken by Tenant;
- (ii) Explanation of the reasons and/or necessity for such actions;
- (iii) All costs associated with said actions;
- (iv) All vendors and equipment manufacturers engaged for such actions;
- (v) All equipment installed, including any applicable identification numbers; and
- (vi) The location of all such actions.

(c) Landlord shall not under any circumstances be required to: (i) build or rebuild any improvements on the Leased Assets; (ii) make any repairs, replacements, alterations, upgrades, restorations or renewals of any nature to the Leased Assets, or to make any expenditure whatsoever with respect thereto; or (iii) maintain the Leased Assets in any way. Tenant hereby waives, to the extent permitted by law, the right to make repairs at the expense of Landlord pursuant to any law in effect at the time of the execution of this Master Lease or hereafter enacted.

(d) Nothing contained in this Master Lease and no action or inaction by Landlord shall be construed as: (i) constituting the consent or request of Landlord, expressed or implied, to any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair or demolition of or to the Leased Assets, any Capital Improvement thereto or any part thereof; or (ii) giving Tenant any right, power or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit any claim against Landlord in respect thereof or to make any

agreement that may create, or in any way be the basis for, any right, title, interest, claim or other Encumbrance upon the estate of Landlord in the Leased Assets, or any portion thereof or upon the estate of Landlord in any Capital Improvement thereto.

(e) Tenant acknowledges and agrees that all system maps and records for the Leased Assets are the property of Landlord and shall be maintained by Tenant within Tenant's engineering systems and records during the Term. Tenant shall promptly provide Landlord with electronic access to the system maps and records for the Leased Assets and copies of such system maps and records, in each case, pursuant to an arrangement mutually acceptable to both Parties.

(f) Without limiting Tenant's obligations to maintain the Leased Assets and Tenant Assets under this Master Lease, within thirty (30) days after the end of each calendar year (commencing with the calendar year ending [ ● ]), Tenant shall provide Landlord with evidence satisfactory to Landlord that Tenant has in such calendar year spent, with respect to the Leased Assets, an aggregate amount equal to at least \$[ ● ] for such calendar year on installation or restoration and repair of the Leased Assets and/or Capital Improvements, which installations, restorations and repairs and other improvements are capitalized in accordance with GAAP with an expected life of not less than three (3) years. If Tenant fails to make at least the above amount of expenditures in any calendar year and fails within sixty (60) days after receipt of a written demand from Landlord to either: (i) cure such deficiency; or (ii) obtain Landlord's written approval of a repair and maintenance program satisfactory to cure such deficiency, then the same shall be deemed an Event of Default hereunder.

## **7.2 Access Agreements.**

(a) Tenant, at its sole expense, shall: (i) maintain, perform, and enforce, and renew or replace as necessary, all Access Agreements; (ii) promptly notify Landlord of any default or violation by Tenant of the Access Agreements; (iii) subject to Section 6.3 relating to permitted contests and Article XIII relating to transfers, pay all costs, fees, charges and rents due under the Access Agreements; and (iv) not terminate, cancel, surrender or allow to expire any Access Agreements without Landlord's prior written consent. Tenant shall upon request promptly furnish evidence to Landlord confirming payment of such amounts (together with back-up calculation and information reasonably necessary to support the determination of any payment).

(b) In the event any Access Agreements not identified on Schedule 7.2 are required for any reason (the "**Supplemental Access Agreements**"), Tenant shall, at its sole expense, execute such Supplemental Access Agreements in a form approved by Landlord. Tenant shall provide commercially reasonable Notice to Landlord of Tenant's intent to enter into any Supplemental Access Agreement in order for Landlord to review such request. If approved by Landlord, then upon such execution, the applicable Supplemental Access Agreement shall constitute an Access Agreement as that term is defined and used in this Master Lease and Schedule 7.2 shall be modified accordingly.

## **ARTICLE VIII: CAPITAL IMPROVEMENTS**

### **8.1 Capital Improvements.**

(a) Tenant shall make all Capital Improvements necessary for Tenant to comply with its obligations under Section 7.1. Tenant shall make all Capital Improvements in accordance with the terms of this Article VIII.

(b) Annual Capital Improvement Plan. No later than November 15th of each calendar year, Tenant shall furnish to Landlord a report of Capital Improvements planned for each Leased Asset for the immediately following calendar year (such report, the “**Annual Capital Improvement Plan**”) setting forth in reasonable detail the plans, specifications, budget, the amount of financing that Tenant requires for such Capital Improvements, along with the construction and/or acquisition schedule for such Capital Improvements. No later than twenty (20) days following Landlord’s receipt of the Annual Capital Improvement Plan, Landlord and Tenant shall cause their representatives (including a Financial Officer and an engineer for each of Landlord and Tenant) to meet at Landlord’s office in order to discuss the Annual Capital Improvement Plan (each, an “**Annual Capital Improvement Meeting**”).

(c) Periodic Capital Improvements. If the Leased Assets, or any portions thereof, require periodic Capital Improvements that arise without sufficient prior notice to enable Tenant to include said Capital Improvements in the Annual Capital Improvement Plan, Tenant shall notify Landlord in writing of the same (the “Periodic Capital Improvement Notice”). Tenant may not make any such Capital Improvements to the Leased Assets without first procuring the prior consent of Landlord to such Capital Improvement, which consent shall be requested by Tenant not less than twenty (20) Business Days prior to the commencement thereof.

(d) Landlord’s Right to Fund or Finance any Capital Improvement. Landlord shall have the right, but not the obligation, to fund or finance any Capital Improvement.

(i) If Landlord wishes to exercise Landlord’s right to fund or finance the Capital Improvement, then within fifteen (15) Business Days of delivery of the Annual Capital Improvement Plan or Periodic Capital Improvement Notice to Landlord, Landlord shall deliver notice (“**Landlord’s Capital Improvement Finance Notice**”) to Tenant of Landlord’s intention to exercise its right of funding with respect to any Capital Improvement described in the Annual Capital Improvement Plan or the Periodic Capital Improvement Notice. Landlord’s Capital Improvement Finance Notice shall set forth all proposed financing terms, including the term, rate and amortization;

(ii) If Landlord does not so notify Tenant within the fifteen (15) business day period, then Tenant shall be free to finance the Capital Improvement described in the Capital Improvement Notice with anyone to whom Tenant desires on terms reasonably acceptable to Landlord subject to the requirements of this Agreement. Notwithstanding anything to the contrary contained herein, Landlord must elect to exercise its right of financing, if at all, with respect to all of the Capital Improvements offered by Tenant to Landlord at any particular time, and Landlord may not elect to finance only a portion thereof; and

(iii) If Landlord provides Tenant the applicable Landlord’s Capital Improvement Finance Notice, Tenant shall either accept the proposed financing terms, negotiate in good faith with Landlord for mutually acceptable financing terms, or reject the

proposed financing terms and seek other means of financing the related Capital Improvements. If Tenant rejects the proposed financing terms, prior to proceeding with any other means of financing the Capital Improvement Tenant shall provide Landlord the right, and Landlord shall be entitled, to within fifteen (15) Business Days from receipt of such alternative from Tenant: (x) match any bona fide alternative terms of financing obtained by Tenant or (y) refuse to match said terms, and allow Tenant to proceed with the alternative financing terms; and

(iv) If Landlord funds or finances any Capital Improvement in accordance with the terms of this Section 8.1, then such Capital Improvement shall be deemed a part of the Leased Assets for all purposes and Tenant shall promptly provide Landlord with: (w) any information, certificates, licenses, new Permits or Access Agreements or documents reasonably requested by Landlord which are necessary to confirm that Tenant will be able to use the Capital Improvement upon completion thereof in accordance with the intended use of said Capital Improvement, including all required federal, state or local government licenses and approvals; (x) an amendment to this Master Lease (and any development or funding agreement agreed to in accordance with this Section 8.1), in a form reasonably agreed to by Landlord and Tenant, which may include, among other things, an increase in the Rent in amounts as agreed upon by the Parties pursuant to the agreed funding proposal terms described above, updated insurance requirements, and other provisions as may be necessary or appropriate; (y) upon written request to Tenant, the right to audit and obtain billing statements, invoices, certificates, endorsements, opinions, site assessments, surveys, resolutions, ratifications, lien releases and waivers and other instruments and information required by Landlord that are attributable to the Capital Improvements funded by Landlord; and (z) following the completion of such construction, “as built” drawings of the Capital Improvement so constructed, certified as accurate by the architect or engineer that supervised the work.

(e) Capital Improvements Funded by Tenant. Subject to Landlord’s rights to fund all Capital Improvements under Section 8.1(d) above, Tenant shall have the right to make Capital Improvements: (i) which are reasonably anticipated to beneficially replace, improve, alter or modify any portion of the Leased Assets, so long as the Capital Improvement is of equal or better quality than the portion of said Leased Assets; (ii) the Capital Improvement is constructed in accordance with the Engineering Standard; (iii) the Capital Improvement does not have an adverse effect on the structure or integrity of any existing Leased Assets; and (iv) Tenant has provided Landlord, at least fifteen (15) Business Days prior to the commencement of construction, plans and specifications for such Capital Improvement prepared in a high-grade, professional manner that adequately demonstrate compliance with clauses (i) – (iii) above. All Capital Improvements are subject to Landlord’s review and approval, and Landlord may in its sole discretion deny the request, perform the Capital Improvement itself, or require Tenant to submit the request as part of the next Annual Capital Improvement plan set forth in Section 8.1(b). Any time Tenant submits information to Landlord in order to make a Capital Improvement, Landlord reserves the right to require Tenant submit the additional information in reasonable detail, such as a general description of the proposal, the projected cost of construction, the proposed uses of the Capital Improvements, the impact, if any, on current and forecasted gross revenues and operating income attributable thereto, and such plans and specifications, permits, licenses, contracts and other information concerning the proposal as Landlord may reasonably request. As an illustration

of the foregoing, but without any limitation intended, Landlord may reasonably condition its approval of any Capital Improvement as follows: (1) such construction must conform to detailed plans and specifications for the Capital Improvements approved by Landlord pursuant hereto; (2) Tenant must conduct construction under the supervision of a licensed architect or engineer selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld; (3) Landlord's receipt, from the general contractor and, if reasonably requested by Landlord, all major subcontractor(s) of a performance and payment bond for the full value of such construction, which such bond shall name Landlord as an additional obligee and otherwise be in form and substance and issued by a Person reasonably satisfactory to Landlord; and (4) in the case of a Tenant Capital Improvement, such construction shall not be undertaken unless Tenant demonstrates to the reasonable satisfaction of Landlord the financial ability to complete the construction without adversely affecting its cash flow position or financial viability.

(f) If Tenant constructs a Capital Improvement that is not funded or financed by Landlord (a "**Tenant Capital Improvement**"), then, except with respect to any routine maintenance, repairs, extensions, upgrades, additions, replacements or overbuild to the Leased Assets that do not meet the threshold for the definition of "Capital Improvement", which shall automatically become part of the Leased Assets upon completion, or as may otherwise be expressly provided in this Master Lease: (i) during the Term, such Tenant Capital Improvement shall not be deemed part of the Leased Assets and shall not increase the Rent payable hereunder; and (ii) following expiration or termination of the Term, such Tenant Capital Improvement shall, at the option of Landlord, be purchased by Landlord for Fair Market Value, or otherwise shall be removed by Tenant at Tenant's sole cost.

(g) Tenant shall not make any improvements, additions, overbuilds, repairs, extensions, upgrades, alterations or replacements, including but not limited to Capital Improvements, that would result in the Leased Assets becoming a "limited use" property for purposes of United States federal income taxes.

**8.2 Construction Requirements for All Capital Improvements.** Whether or not Landlord's review and approval is required, for all Capital Improvements:

(a) Tenant shall comply with the applicable regulations with respect to the construction of the applicable Capital Improvement and shall have procured and paid for all municipal and other governmental permits and authorizations required for such Capital Improvement, and Landlord shall join in the application for such permits or authorizations whenever such action is necessary; provided, however,: (i) any such joinder shall be at Tenant's sole cost and expense; and (ii) Landlord has the right to pre-approve any plans required to be filed in connection with any such application; and

(b) All work done in connection with such construction: (i) shall be done in all material respects with all Legal Requirements and in accordance with Prudent Industry Practice; and (ii) shall be completed in all respects once undertaken by Tenant, or otherwise Tenant must restore all affected property, real or otherwise, to its original condition prior to undertaking said work.

(c) No later than fifteen (15) days of the end of each month, Tenant shall provide to Landlord a “**Monthly Construction Summary**,” which shall be in form and substance satisfactory to Landlord and which shall include at a minimum the following: (i) reports on all changes and/or repairs to the Leased Assets, including but not limited to, the Capital Improvements completed during the prior calendar month; (ii) a reconciliation of all such Capital Improvements with the Annual Capital Improvement Plan established for such calendar year (or for the previous calendar year with respect to the Quarterly Construction Summary due February 1st); (iii) a pictorial representation of each Leased Asset illustrating which portions of the Leased Asset are, as applicable, Tenant Assets, Landlord Retained Assets, and/or Leased Assets; (iv) a written description containing sufficient detail to provide a clear demarcation between Tenant Assets[, Landlord Retained Assets] and the Leased Assets; and (v) a report at Tenant’s cost from a nationally recognized accounting firm that confirms, based upon an agreed-upon procedures review, the accuracy of the Monthly Construction Summary and that the Capital Improvements have not degraded the structural integrity of the Leased Assets. Tenant shall select such nationally recognized accounting firm, subject to the approval of Landlord. If, because of such report, Landlord determines that a Capital Improvement has impaired the structural integrity or value of the Leased Assets or that a Capital Improvement has been improperly designated as Tenant Assets, Landlord may require Tenant to remediate the problems noted by Landlord to the satisfaction of Landlord.

8.3 **Monthly Outage Information.** No later than fifteen (15) days of the end of each month, Tenant shall provide to Landlord a “**Monthly Outage Report**,” which shall be in form and substance satisfactory to Landlord and which shall include at a minimum the following: (i) a description of all outages or similar incidents for the prior month (overall, by category (e.g., enterprise, consumer, kinetic), and by severity (critical, high, medium, low)); (ii) a description of all fiber “cuts” or similar incidents relating to the Leased Assets (overall and by category and severity); and (iii) a description of each outage or similar incident disclosed in accordance with clause (i) that was not planned or was caused by or directly related to human error. With respect to each incident described in the Monthly Outage Report, Tenant shall also include the mean time to repair (MTTR), whether it was on-net or off-net, and each customer’s outage minutes and other relevant information in a format reasonably requested by Landlord. At the time such Monthly Outage Report is delivered to Landlord, Tenant shall also present or provide access to the underlying data in Tenant’s systems used to compile the Monthly Outage Report. If, because of such report, Landlord determines that the structural integrity or value of the Leased Assets has been adversely impacted by such event and/or Tenant’s resolution of such incident, Landlord may require Tenant to remediate the problems reasonably noted by Landlord to the satisfaction of Landlord.

## **ARTICLE IX: CONDEMNATION**

### **9.1 Condemnation.**

(a) **Total Taking.** If any Leased Asset is totally and permanently taken by Condemnation (a “**Taking**”), this Master Lease shall terminate with respect to such Leased Assets as of the day before the Date of Taking for such Leased Asset. If only a portion of any is taken by Condemnation, this Master Lease shall remain in effect, including with respect to such Leased Asset.

(b) **Restoration.** If a partial Taking of the Leased Assets (or any Capital Improvements thereto) occurs, then Landlord shall transmit to Tenant the portion of the Award applicable to restoration of the Leased Assets (provided that the Leased Assets is restored in a manner reasonably satisfactory to Landlord), and Tenant shall accomplish all necessary restoration whether or not the amount provided by the Condemnor for restoration is sufficient and the Rent shall, to the extent that Landlord has received and retained any portion of the Award, be reduced by a function of the imputed return on investment received by Landlord under this Master Lease, as applicable, to the portion of the Award received and retained by Landlord. Tenant shall restore such Leased Assets (including any Capital Improvements) to the condition as such Leased Assets existed immediately prior to such Taking, whether or not the funds provided to Tenant hereunder are sufficient for such purpose and Tenant shall pay all such excess amounts.

**9.2 Award Distribution.** Except as set forth below (and to the extent provided in Section 9.1(b)), the entire Award shall belong to and be paid to Landlord. Tenant shall, however, be entitled to pursue its own claim with respect to the Taking for Tenant's lost profits value and moving expenses and, the portion of the Award, if any, allocated to any Tenant Property (subject to Tenant's restoring the Leased Assets not subject to a Taking in a manner reasonably satisfactory to Landlord) and Tenant Assets shall be and remain the property of Tenant free of any claim thereto by Landlord.

**9.3 Temporary Taking.** The taking of any Leased Asset, or any part thereof, shall constitute a taking by Condemnation only when the use and occupancy by the taking authority has continued for longer than 180 consecutive days. During any shorter period, all the provisions of this Master Lease shall remain in full force and effect and the Award allocable to the Term shall be paid to Tenant.

**9.4 Condemnation Awards Paid to Facility Mortgagee.** Notwithstanding anything herein to the contrary, in the event that any Facility Mortgagee is entitled to any Condemnation Award, or any portion thereof, under the terms of any Facility Mortgage or related financing agreement, such award shall be applied, held and/or disbursed in accordance with the terms of the Facility Mortgage or related financing agreement; provided that, subject to customary restrictions and conditions (which may include application of the entirety of such proceeds to the outstanding indebtedness under the Facility Mortgage in the event such proceeds exceed a threshold amount or restoration of the Leased Assets would be reasonably likely to exceed a specific time period), the terms of the Facility Mortgage shall provide that such award shall be made available to Tenant, in all instances, to repair or restore the Leased Assets to substantially the same condition as existed immediately prior to any Taking.

## ARTICLE X: INDEMNIFICATION

### 10.1 **General Indemnification.**

(a) In addition to the other indemnities contained herein, and notwithstanding the existence of any insurance carried by or for the benefit of Landlord or Tenant, and without regard to the policy limits of any such insurance, Tenant shall protect, indemnify, save harmless and defend Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including reasonable attorneys', consultants' and experts' fees and

expenses, and including with respect to any permitted contests under Section 6.3 (collectively, “**Claims**”), imposed upon or incurred by or asserted (including by third parties) against Landlord by reason of: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on or about the Leased Assets or adjacent areas used or controlled by Tenant; (ii) any use, misuse, non-use, condition, maintenance, or repair by Tenant or its Affiliate of the Leased Assets, or arising from Tenant’s use of the Leased Assets; (iii) any breach by Tenant of any terms of this Master Lease or any Guarantor of its obligations hereunder; (iv) any breach by Tenant of any terms of any sublease of the Leased Assets, or of any other agreement between Tenant and a customer thereof pertaining to or arising from the Leased Assets; (v) any breach of any terms of any subleases of the Leased Assets; (vi) any claim for malpractice, negligence or misconduct committed by Tenant or its Subsidiaries on or working from the Leased Assets, or by any Person acting on behalf of Tenant or its Subsidiaries to the same end; (vii) any claims or actions for trespass with respect to the Leased Assets; (viii) any Claims for encroachment with respect to the Leased Assets, including, but without limitation, the right of surface entry or any other provision of a lease or reservation of oil, gas, water, or other minerals; and (ix) any violation by Tenant of any Legal Requirement. Any amounts which become payable by Tenant under this Article X shall be paid within ten (10) days after liability therefor is determined by a final non-appealable judgment, settlement or other agreement of the Parties, and if not timely paid shall bear interest at the Overdue Rate from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord in connection with the Leased Assets as expressly set forth above in this Section 10.1; it being agreed and understood that in no event shall Landlord have the right to enter into any settlement with respect to any claim, action or proceeding for which Tenant has confirmed in writing that it will indemnify Landlord hereunder without obtaining Tenant’s prior consent, such consent not to be unreasonably withheld, conditioned, or delayed. For purposes of this Article X, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant.

(b) The Parties specifically acknowledge and agree that Landlord has, pursuant to the Acquisition Agreement, taken ownership of the Leased Assets as an assignee from Tenant or its Affiliates in accordance with the terms of said Acquisition Agreement. Accordingly, Tenant agrees that Landlord will in no way be liable for any Claims arising from or related to any obligations, duties, or responsibilities regarding the Leased Assets prior to the closing date of the Acquisition Agreement.

(c) In the event of an adverse final determination with respect to any Claim: (i) Landlord shall be entitled to obtain valid and effective waivers or settlements of all Claims; and (ii) Tenant shall make such changes in the Leased Assets and Capital Improvements, and take such other actions required as a result of such adverse final determination including, if necessary, the alteration of any of the Leased Assets as necessary to continue the operation of the Leased Assets substantially in the manner and to the extent operated prior to the assertion of such encroachment, violation or impairment.

## ARTICLE XI: INSURANCE

**11.1 General Insurance Requirements.** Tenant shall at all times during the Term keep the Leased Assets, Capital Improvements, [Landlord Retained Assets] and Tenant Assets insured with the kinds and amounts of insurance described below. Each element of insurance described in this Article XI shall be maintained with respect to each Leased Asset and Tenant Asset and operations thereon. Tenant may not maintain any self-insurance as a substitute for the requirements set forth herein unless expressly approved by Landlord in writing in its sole and absolute discretion. The insurance required hereunder shall be written by companies permitted to conduct business in the applicable State. All third-party liability type policies must name Landlord as an “additional insured.” All property policies shall name Landlord as “loss payee” for its interests in each Leased Asset. All business interruption policies shall name Landlord as “loss payee” with respect to Rent only. In addition, the policies, as appropriate, shall name as an “additional insured” or “loss payee” the holder of any mortgage, deed of trust or other security agreement (“**Facility Mortgagee**”) securing any indebtedness or any other Encumbrance placed on the Leased Assets (“**Facility Mortgage**”) in accordance with the provisions of Article XIV by way of a standard form of mortgagee’s loss payable endorsement. Except as otherwise set forth herein, any property insurance loss adjustment settlement shall require the written consent of Landlord, Tenant, and each Facility Mortgagee (to the extent required under the applicable Facility Mortgage Documents) unless the amount of the loss net of the applicable deductible is less than [ ● ] Dollars (\$[ ● ]) in which event no consent shall be required. Evidence of insurance shall be deposited with Landlord and, if requested, with any Facility Mortgagee(s). The insurance policies required to be carried by Tenant hereunder shall insure against all the following risks with respect to each Leased Asset:

(a) Loss or damage by fire, vandalism and malicious mischief, extended coverage perils commonly known as “All Risk,” and all physical loss perils normally included in such All Risk insurance, including, but not limited to, sprinkler leakage and windstorm in an amount not less than the insurable value on a Maximum Foreseeable Loss basis and including a building ordinance coverage endorsement; provided that in the event the premium cost of any or all of earthquake, flood, windstorm (including named windstorm) or terrorism coverages are available only for a premium that is more than 2.5 times the average premium paid by Tenant (or prior operator of Facilities) over the preceding three years for the insurance policy contemplated by this Section 11.1(a), then Tenant shall be entitled and required to purchase the maximum insurance coverage it deems most efficient and prudent to purchase and Tenant shall not be required to spend additional funds to purchase additional coverages insuring against such risks;

(b) Loss or damage by explosion of steam boilers, pressure vessels or similar apparatus, now or hereafter installed in each Leased Asset, in such limits with respect to any one accident as may be reasonably requested by Landlord from time to time;

(c) Flood (when any Leased Asset is located wholly or partially within a designated 100-year flood plain area) in an amount not less than the probable maximum loss of a 500-year event and such other hazards and in such amounts as may be customary for comparable properties in the area;

(d) Loss of rental value in an amount not less than twelve (12) months' Rent payable hereunder or business interruption in an amount not less than twelve (12) months of income and normal operating expenses, including 90-days ordinary payroll and Rent payable hereunder, with an extended period of indemnity coverage of at least ninety (90) days, necessitated by the occurrence of any of the hazards described in Sections 11.1(a), 11.1(b) or 11.1(c);

(e) Claims for personal injury or property damage under a policy of comprehensive general public liability insurance with amounts not less than [ ● ] Dollars (\$[ ● ]) each occurrence and [ ● ] Dollars (\$[ ● ]) in the annual aggregate; provided that such requirements may be satisfied through the purchase of a primary general liability policy and excess liability policies;

(f) Workers' compensation insurance and employers' liability insurance covering all persons employed in connection with the improvements in statutory limits, a completed operations endorsement to the commercial general liability insurance policy referred to above, builder's risk insurance, completed value form (or its equivalent), covering all physical loss, in an amount and subject to policy conditions satisfactory to Landlord, and such other insurance, in such amounts, as Landlord deems reasonably necessary to protect Landlord's interest in the Leased Assets from any act or omission of Tenant's contractors or subcontractors.

**11.2 Waiver of Subrogation.** All insurance policies carried by Tenant covering the Leased Assets or Tenant Assets, including, without limitation, contents, fire and liability insurance, shall expressly waive any right of subrogation on the part of the insurer against Landlord. Tenant shall pay any additional costs or charges for obtaining such waiver.

**11.3 Policy Requirements.** All the policies of insurance referred to in this Article XI shall be written in form reasonably satisfactory to Landlord and any Facility Mortgagee and issued by insurance companies with a minimum policyholder rating of "A-" and a financial rating of "VII" in the most recent version of Best's Key Rating Guide, or a minimum rating of "BBB" from Standard & Poor's or equivalent. If Tenant obtains and maintains the general liability insurance described in Section 11.1(e) on a "claims made" basis, Tenant shall provide continuous liability coverage for claims arising during the Term. In the event such "claims made" basis policy is canceled or not renewed for any reason whatsoever (or converted to an "occurrence" basis policy), Tenant shall either obtain (a) "tail" insurance coverage converting the policies to "occurrence" basis policies providing coverage for a period of at least three (3) years beyond the expiration of the Term, or (b) an extended reporting period of at least three (3) years beyond the expiration of the Term. Tenant shall pay all of the premiums therefor, and deliver certificates thereof to Landlord prior to their effective date (and with respect to any renewal policy, prior to the expiration of the existing policy), and in the event of the failure of Tenant either to effect such insurance in the names herein called for or to pay the premiums therefor, or to deliver such certificates thereof to Landlord, at the times required, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, in which event the cost thereof, together with interest thereon at the Overdue Rate, shall be repayable to Landlord upon demand therefor. Tenant shall obtain, to the extent available on commercially reasonable terms, the agreement of each insurer, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Landlord, that it will give to Landlord thirty (30) days' (or ten (10) days' in the case of non-payment of premium) Notice before the policy or policies in question shall be

altered, allowed to expire or cancelled. Upon written request by Landlord, Tenant shall provide Landlord copies of the property insurance policies when issued by the insurers providing such coverage.

**11.4 Increase in Limits.** If Landlord determines in the exercise of its reasonable judgment that the limits of the personal injury or property damage-public liability insurance carried pursuant to Section 11.1(e) are at any time insufficient, Landlord may require upon Notice to Tenant to obtain acceptable limits for the insurance to be carried; provided that in no event will Tenant be required to carry insurance in an amount which exceeds the product of (i) the amounts set forth in Section 11.1(e) hereof and (ii) the CPI Increase. Within ninety (90) days after the receipt of such Notice, Tenant shall ensure the insurance thereafter meets such acceptable limits.

**11.5 Blanket Policy.** Notwithstanding anything to the contrary contained in this Article XI, Tenant may meet its insurance obligations provided herein with a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided that the requirements of this Article XI (including satisfaction of the Facility Mortgagee's requirements and the approval of the Facility Mortgagee) are otherwise satisfied; provided further that Tenant maintains specific allocations acceptable to Landlord.

**11.6 No Separate Insurance.** Tenant shall not: (a) take out separate insurance policies concurrent in form or contributing in the event of loss with that required in this Article XI; or (b) increase the amounts of any then-existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Landlord and all Facility Mortgagees, are included therein as additional insureds and the loss is payable under such insurance in the same manner as losses are payable under this Master Lease. Notwithstanding the foregoing, nothing herein shall prohibit Tenant from insuring against risks not required to be insured hereby under terms and conditions acceptable to Tenant. Notwithstanding the foregoing, Tenant shall maintain such additional insurance upon notice from Landlord as may be reasonably required from time to time by any Facility Mortgagee.

**11.7 Property Insurance Proceeds.** All proceeds (except business interruption not allocated to rent expenses) payable by reason of any property loss or damage to the Leased Assets, or any portion thereof, under any Insurance Requirements shall be paid to Facility Mortgagee or Landlord and made available to Tenant upon request for the reasonable costs of preservation, stabilization, emergency restoration, business interruption, reconstruction and repair, as the case may be, of any damage to or destruction of the Leased Assets, or any portion thereof; provided, however, that the portion of such proceeds that are attributable to Tenant's obligation to pay Rent shall be applied against Rents due by Tenant hereunder; provided further that if the total amount of proceeds payable net of the applicable deductibles is \$[ ● ] or less, and, if no Event of Default has occurred and is continuing, then the proceeds shall be paid to Tenant and, subject to the limitations set forth in this Article XI, used for the repair of any damage to the Leased Assets; provided that the Leased Assets are rebuilt in a manner reasonably satisfactory to Landlord. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Leased Assets shall be provided to Tenant. All salvage resulting from any risk covered by insurance for damage or loss to the Leased Assets shall belong to Landlord. Tenant shall have the right to prosecute and settle insurance claims; provided Tenant shall consult with and involve

Landlord in the process of adjusting any insurance claims under this Article XI and any final settlement with the insurance company shall be subject to Landlord's consent, such consent not to be unreasonably withheld.

**11.8 Tenant's Obligations Following Casualty.** If a Leased Asset and/or any Capital Improvement is damaged, whether or not from a risk covered by insurance carried by Tenant:

(a) Tenant shall restore such Leased Asset in a manner reasonably satisfactory to Landlord, to substantially the same condition as existed immediately before such damage at Tenant's cost, regardless of the amount of proceeds from the insurance;

(b) if Tenant has not restored the affected Leased Assets and communications operations have not commenced by [ ● ] days after the date of any casualty, all remaining insurance proceeds and the unpaid deductibles shall be paid to and retained by Landlord free and together with interest on such amounts at the Overdue Rate from the date that the casualty occurred until paid, and Tenant waives any claim it may have regarding the same.

**11.9 Insurance Proceeds Paid to Facility Mortgagee.** Notwithstanding anything herein to the contrary, in the event that any Facility Mortgagee is entitled to any insurance proceeds, or any portion thereof, under the terms of any Facility Mortgage, such proceeds shall be applied, held and/or disbursed in accordance with the terms of the Facility Mortgage; provided that, subject to customary restrictions and conditions (which may include application of the entirety of such proceeds to the outstanding indebtedness under the Facility Mortgage in the event such proceeds exceed a threshold amount or restoration of the Leased Assets would be reasonably likely to exceed a specific time period), the terms of the Facility Mortgage shall provide that such proceeds shall be made available to Tenant, in all instances, to repair or restore the Leased Assets to substantially the same condition as existed immediately prior to any damage.

**11.10 Maximum Foreseeable Loss.** If Landlord reasonably believes that the Maximum Foreseeable Loss has increased at any time during the Term, it shall have the right to recalculate the Maximum Foreseeable Loss using an impartial national insurance company reasonably acceptable to both Parties (the "**Impartial Appraiser**"), or, if the Parties cannot in good faith agree on an Impartial Appraiser within fifteen (15) days of Landlord's request for an Impartial Appraiser (a "**Valuation Request Notice**"), then by Experts appointed in accordance with this Section 11.10. The determination of the Impartial Appraiser (or the Experts, as the case may be) shall be final and binding on the Parties hereto, and Tenant shall forthwith adjust the amount of the insurance carried pursuant to this Article XI to the amount so determined by the Impartial Appraiser (or the Experts, as the case may be), subject to the approval of the Facility Mortgagee, as applicable. Each Party shall pay one-half (1/2) of the fee, if any, of the Impartial Appraiser. If Landlord pays the Impartial Appraiser, fifty percent (50%) of such costs shall be Additional Charges hereunder and if Tenant pays such Impartial Appraiser, fifty percent (50%) of such costs shall be a credit against the next Rent payment hereunder. If Tenant has undertaken any structural alterations or additions to the Leased Assets having a cost or value more than \$[ ● ], Landlord may at Tenant's expense recalculate the Maximum Foreseeable Loss as per this Section 11.10 at any time after such improvements are made, regardless of when the Maximum Foreseeable Loss was last determined.

(a) If it becomes necessary to recalculate the Maximum Foreseeable Loss, and the Parties are unable to agree thereon, then both Tenant and Landlord shall select an Expert to act on each Party's behalf to recalculate the same. Each Party shall cause its Expert to, within forty-five (45) days after the applicable Valuation Request Notice (the "**Initial Valuation Period**"), determine the Maximum Foreseeable Loss as of the relevant date (giving effect to the impact, if any, of inflation from the date of the Expert's decision to the relevant date); provided, however, that if either Party fails to timely appoint its Expert, or if only one of the two timely appointed Expert determines such recalculation within the forty-five (45) day period, then the determination of such sole Expert shall be final and binding upon the Parties. For purposes of clarity, the "relevant date" with respect to any determination of the Maximum Foreseeable Loss shall be deemed to be the date on which Tenant must adjust the amount of insurance carried pursuant to this Article XI. Each Party must deliver a written report of its Expert to the other Party. The Parties intend this provision to be specifically enforceable and any determination hereunder shall be final and binding upon the Parties except as otherwise provided by applicable law.

(b) If the two Experts complete their determinations within the respective requisite periods set forth above and the difference between the amounts so determined do not exceed ten percent (10%) of the lesser of such amounts then the Maximum Foreseeable Loss shall be an amount equal to fifty percent (50%) of the sum of the amounts so determined. If the difference between the amounts so determined shall exceed ten percent (10%) of the lesser of such amounts, then such two Experts shall have ten (10) days to appoint a third Expert meeting the above requirements, but if such Experts fail to do so, then either Party may request the American Arbitration Association or any successor organization thereto to appoint an Expert meeting the above requirements (such Expert, the "**Third Expert**") within ten (10) days of such request, and both Parties shall be bound by any appointment so made within such ten (10) day period. If no such Expert shall have been appointed within such ten (10) days or within the Initial Valuation Period, whichever is earlier, either Landlord or Tenant may apply to any court having jurisdiction to have such appointment made by such court. Any Expert appointed by the original Experts, by the American Arbitration Association or by such court shall be instructed to determine the Maximum Foreseeable Loss within thirty (30) days (together with the Initial Valuation Period, the "**Valuation Period**") after appointment of such Expert.

(c) If a Third Expert is appointed in accordance with Section 11.10(b), then such Third Expert shall choose which of the determinations made by the other two (2) Experts shall be final and binding, and such chosen determination shall be final and binding upon Landlord and Tenant as the Maximum Foreseeable Loss.

(d) Landlord and Tenant shall each pay the fees and expenses of the Expert appointed by it and each shall pay one-half (1/2) of the fees and expenses of the Third Expert.

## **ARTICLE XII: DEFAULT AND TERMINATION AND EXPIRATION**

**12.1 Events of Default.** In addition to any other events specified in this Master Lease, any one or more of the following shall constitute an "**Event of Default**":

(a) Tenant shall:

(i) fail to pay any installment of Rent when due and such failure is not cured by Tenant within ten (10) Business Days after Notice from Landlord of Tenant's failure to pay such installment of Rent when due;

(ii) fail on any occasion to pay any installment of Rent within thirty (30) Business Days of when due;

(iii) fail to pay any Additional Charge within thirty (30) Business Days after Notice from Landlord of Tenant's failure to make such payment of such Additional Charge when due (and such notice of failure from Landlord may be given any time after such payment is more than one (1) Business Day late); or

(iv) default under any Lease Guaranty or other instrument executed by Tenant or an Affiliate of Tenant in favor of Landlord or an Affiliate of Landlord where the default is not cured within any applicable grace period set forth therein or, if no cure periods are provided, within thirty (30) days after notice from Landlord (or in the case of a breach of Paragraph 8 of the Lease Guaranty, the cure periods provided therein with respect to such action or omission);

(b) Tenant or any Guarantor shall:

(i) admit in writing its inability to pay its debts generally as they become due;

(ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act;

(iii) make an assignment for the benefit of its creditors;

(iv) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property; or

(v) file a petition or answer seeking reorganization or arrangement under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

(c) Tenant or any Guarantor is adjudicated as bankrupt or a court of competent jurisdiction enters an order or decree appointing, without the consent of Tenant or any Guarantor, a receiver of Tenant or any Guarantor or of the whole or substantially all of the Tenant's or said Guarantor's property, or approving a petition filed against Tenant or any Guarantor seeking reorganization or arrangement of Tenant or any Guarantor under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, and such judgment, order or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof;

(d) Tenant or any Guarantor is liquidated or dissolved (except that any Guarantor may be liquidated or dissolved into another Guarantor or the Tenant or so long as its assets are distributed following such liquidation or dissolution to another Guarantor or Tenant);

(e) the interest of Tenant in the Leased Assets or any part thereof is levied upon or attached in any proceeding relating to more than \$[ ● ] and the same is not vacated, discharged or stayed pending appeal (or bonded or otherwise similarly secured payment) within the later of ninety (90) days after commencement thereof or thirty (30) days after receipt by Tenant of Notice thereof from Landlord; provided, that such Notice shall be in lieu of and not in addition to any notice required under applicable law;

(f) any of the representations or warranties made by Tenant hereunder or by any Guarantor in a Lease Guaranty proves to be untrue when made in any material respect which materially and adversely affects Landlord;

(g) Tenant voluntarily ceases operations of the Leased Assets;

(h) any Permits or Access Agreements are at any time terminated, allowed to expire without a substitute Permit or Access Agreement, or revoked or suspended for more than thirty (30) days and such expiration, termination, revocation or suspension is not stayed pending appeal;

(i) except as otherwise expressly permitted in this Master Lease, the sale or transfer, without Landlord's consent, of all or any portion of any Permit relating to the Leased Assets;

(j) Tenant or any Guarantor defaults under any provision (to the extent Tenant has knowledge of such provision and Tenant's or such Guarantor's obligations with respect thereto) of any Facility Mortgage, related documents or obligations thereunder by which Tenant is bound in accordance with Section 14.3 or other provisions of this Master Lease, which default is not cured within the applicable time period (including any notice and cure periods), if the effect of such default is to cause, or to permit the holder or holders of that Facility Mortgage or Indebtedness secured by that Facility Mortgage (or a trustee or agent on behalf of such holder or holders), to cause, that Facility Mortgage (or the Indebtedness secured thereby) to become or be declared due and payable (or redeemable) prior to its stated maturity (excluding in any case any default related to the financial performance of Tenant or any Guarantor);

(k) (i) a breach by Tenant of Section 14.8(b)(ii) for two (2) consecutive Test Periods ending on the last day of two (2) consecutive Fiscal Quarters; or (ii) a breach of Section 14.9(b)(i);

(l) any event or condition occurs that: (i) results in any Material Indebtedness becoming due prior to its stated maturity; or (ii) enables or permits (with all applicable grace periods, if any, having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or exercise any other remedy (other than in the case of clauses (i) and (ii) any prepayment, repurchase, or redemption, arising out of or relating to a change of control or asset sale or any redemption, repurchase, conversion or settlement with respect to any Indebtedness convertible into Equity Interests pursuant to its terms unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event that would otherwise constitute an Event of Default; provided

that failure to consummate any such required prepayment, redemption, repurchase, conversion or settlement under any Material Indebtedness shall constitute an Event of Default); or (iii) Tenant or any Guarantor shall fail to pay the principal of any Material Indebtedness at the stated final maturity thereof (provided that this clause (m) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is not prohibited hereby and under the documents providing for such Indebtedness);

(m) if Tenant fails to observe or perform any other term, covenant or condition of this Master Lease and such failure is not cured by Tenant within thirty (30) days after Notice thereof from Landlord, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not constitute an Event of Default so long as Tenant promptly and with due diligence cures the failure and diligently completes the curing thereof within one hundred twenty (120) days after such Notice from Landlord; provided, however, that such Notice shall be in lieu of and not in addition to any notice required under applicable law;

(n) if Tenant or any Guarantor fails to pay, bond, escrow or otherwise similarly secure payment of one or more final judgments aggregating more than the product of: (i) \$[\_\_\_\_\_]; and (ii) the CPI Increase (and only to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of forty-five (45) consecutive days; and

(o) an assignment of Tenant's interest in this Master Lease (including pursuant to a Change in Control) occurs without the consent of Landlord if required under Article XIII or Tenant is otherwise in default of the provisions set forth in Article XIII.

No Event of Default (other than a failure to make payment of money) shall be deemed to exist under this Section 12.1 during any time the curing thereof is prevented by an Unavoidable Delay; provided that upon the cessation of the Unavoidable Delay, Tenant remedies the default without further delay.

## **12.2 Certain Remedies.**

(a) If an Event of Default shall have occurred and be continuing, Landlord may take any or all of the following actions:

(i) terminate this Master Lease by giving Tenant no less than ten (10) days' Notice of such termination and the Term shall terminate and all rights of Tenant under this Master Lease shall cease;

(ii) seek damages as provided in Section 12.3 hereof;

(iii) require Tenant to immediately surrender to Landlord possession of all or any portion of the Leased Assets (including any Capital Improvements), and/or

(iv) exercise any other right or remedy at law or in equity available to Landlord as a result of any Event of Default.

(b) Tenant shall pay as Additional Charges all costs and expenses actually incurred by or on behalf of Landlord, including reasonable attorneys' fees and expenses, because of any Event of Default hereunder. In the event Landlord chooses the option set forth in Section 12.2(a)(iii) above, Tenant agrees that damages suffered by Landlord would be difficult or impossible to calculate, and accordingly Landlord may, to the extent permitted by law (including applicable Communications Regulations), enter upon and repossess such Leased Assets (including any Capital Improvement thereto) by reasonable force, summary proceedings, ejectment or otherwise, and, to the extent permitted by law (including applicable Communications Regulations), may remove Tenant and all other Persons and any Tenant Assets from such Leased Assets (including Capital Improvements thereto). If Landlord initiates judicial proceedings or terminates this Master Lease pursuant to this Article XII, Tenant waives, to the extent permitted by applicable law: (i) any right of redemption, re-entry or repossession; and (ii) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt.

**12.3 Damages.** Subject to Landlord's option to receive liquidated damages under this Section 12.3, none of: (v) the termination of this Master Lease; (w) the repossession of the Leased Assets (including any Capital Improvements to any Leased Asset); (x) the failure of Landlord to relet the Leased Assets or any portion thereof; (y) the reletting of all or any portion of the Leased Assets; or (z) the inability of Landlord to collect or receive any rentals due upon any such reletting, shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive any such termination, repossession or reletting. Landlord and Tenant agree that Landlord shall have no obligation to mitigate Landlord's damages under this Master Lease. If any termination of this Master Lease occurs (whether or not Landlord terminates Tenant's right to possession of the Leased Assets), Tenant shall forthwith pay to Landlord all Rent due and payable under this Master Lease through and including the date of such termination in any of the formats set forth in this Section 12.3 at Landlord's option, as and for liquidated and agreed current damages for the occurrence of an Event of Default.

(a) The sum of:

(i) the worth at the time of award of the unpaid Rent due and payable by the time of termination; *plus*

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been due and payable after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; *plus*

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; *plus*

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Master Lease or which in the ordinary course of things would be likely to result therefrom;

provided that, as used in clauses (i) and (ii) above, the “worth at the time of award” shall be computed by allowing interest at the Overdue Rate. As used in clause (iii) above, the “worth at the time of award” shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of New York at the time of award plus one percent (1%) and reducing such amount by the portion of the unpaid Rent that Tenant proves could be reasonably avoided.

or

(b) if Landlord chooses not to terminate Tenant’s right to possession of the Leased Assets (whether or not Landlord terminates the Master Lease), the amount of each installment of said Rent and other sums payable by Tenant to Landlord under this Master Lease as the same becomes due and payable, together with interest at the Overdue Rate from the due date until paid, and Landlord may enforce, by action or otherwise, any other term or covenant of this Master Lease (and Landlord may at any time thereafter terminate Tenant’s right to possession of the Leased Assets and seek damages under subparagraph (a) hereof, to the extent not already paid for by Tenant under this subparagraph (b)).

**12.4 Receiver.** Upon the occurrence and continuance of an Event of Default, and upon commencement of proceedings to enforce the rights of Landlord hereunder, but subject to any limitations of applicable law, Landlord shall be entitled, as a matter of right, to the appointment of a receiver or receivers acceptable to Landlord of the Leased Assets and of the revenues, earnings, income, products and profits thereof, pending the outcome of such proceedings, with such powers as the court making such appointment shall confer.

**12.5 Application of Funds.** Any payments received by Landlord under any of the provisions of this Master Lease during the existence or continuance of any Event of Default which are made to Landlord rather than Tenant due to an Event of Default shall apply to Tenant’s obligations in any order reasonably determined by Landlord or as otherwise required by Legal Requirements.

**12.6 No Abatement.** Except as otherwise specifically provided in this Master Lease, Tenant shall remain bound by this Master Lease in accordance with its terms and has no right to any abatement, deduction, deferment or reduction of Rent, or set-off against the Rent, nor any right to seek the same. Except as may be otherwise specifically provided in this Master Lease, the respective obligations of Landlord and Tenant shall not be affected by reason of: (a) any damage to or destruction of the Leased Assets or any portion thereof from whatever cause or any Condemnation of the Leased Assets (or any Capital Improvement thereto); (b) the lawful or unlawful prohibition of, or restriction upon, Tenant’s use of the Leased Assets (or any Capital Improvement thereto), or the interference with such use by any Person or by reason of eviction by paramount title; (c) any claim that Tenant has or might have against Landlord by reason of any default or breach of any warranty by Landlord hereunder or under any other agreement between Landlord and Tenant or to which Landlord and Tenant are parties; (d) any bankruptcy, insolvency, reorganization, consolidation, readjustment, liquidation, dissolution, winding up or other proceedings affecting Landlord or any assignee or transferee of Landlord; or (e) for any other cause, whether similar or dissimilar to any of the foregoing, other than a discharge of Tenant from any such obligations as a matter of law. Except as otherwise specifically provided in this Master Lease, Tenant hereby specifically waives all rights arising from any occurrence whatsoever which

may now or hereafter be conferred upon it by law: (i) to modify, surrender or terminate this Master Lease or quit or surrender the Leased Assets or any portion thereof, or (ii) which may entitle Tenant to any abatement, reduction, suspension or deferment of the Rent or other sums payable by Tenant hereunder except in each case as may be otherwise specifically provided in this Master Lease. The obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements and the Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Master Lease. Tenant's agreement under item (b) above is not intended to discharge or diminish any obligation of any insurer under any policy of title or other insurance and, to the extent the recovery thereof is not necessary to compensate Landlord for any damages incurred by any such eviction, Tenant shall be entitled to a credit for any sums recovered by Landlord under any such policy of title or other insurance up to the maximum amount paid by Tenant to Landlord under this Section 12.6.

**12.7 Risk of Loss.** The risk of loss or decrease in the enjoyment and/or beneficial use of the Leased Assets, as a consequence of damage thereto or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or as a consequence of foreclosures, attachments, levies or executions (other than by Landlord and Persons claiming from, through or under Landlord), is assumed by Tenant, and except as otherwise provided herein, no such event shall entitle Tenant to any abatement of Rent.

**12.8 Holding Over.** If Tenant remains in possession of the Leased Assets of a Leased Asset after the expiration or termination of the Term with respect to such Leased Asset without Landlord's consent (except as provided in Section 12.12), Tenant's possession shall constitute a month-to-month tenancy and Tenant shall pay Rent at a monthly rate equal to two hundred percent (200%) of the Rent applicable during the last rental period of the applicable Term pursuant to this Master Lease. During such period of month-to-month tenancy, Tenant shall perform and observe all the terms, covenants and conditions of this Master Lease, but shall have no rights hereunder other than the right, to the extent given by law to month-to-month tenancies, to continue its occupancy and use of the Leased Assets (and any Capital Improvement thereto). Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the expiration or earlier termination of this Master Lease.

**12.9 Acceptance of Surrender.** No surrender to Landlord of this Master Lease or of any Leased Assets or any part thereof, or of any interest therein, shall be valid or effective unless agreed to and accepted in writing by Landlord, and no act by Landlord or any representative or agent of Landlord, other than such a written acceptance by Landlord, shall constitute an acceptance of any such surrender.

**12.10 Obligations Upon Expiration or Termination.** Tenant shall, upon the expiration or earlier termination of the Term: (a) vacate and surrender the Leased Assets to Landlord in the condition in which such Leased Assets were originally received from Landlord, except for ordinary wear and tear permitted hereunder; and (b) provide an electronic copy of (or mutually acceptable access arrangement for) all system maps and records for the Leased Assets to Landlord.

### **12.11 Transfer of Tenant Assets and Operational Control of the Leased**

**Assets.** Upon: (a) Tenant's election or deemed election not to extend the Master Lease (a "**Non-Renewal Event**"); (b) the expiration of the final Renewal Term (the "**Final Lease Expiration**"); or (c) the delivery by Landlord of a Notice (a "**Lease Termination Notice**") to Tenant exercising Landlord's right to terminate this Master Lease or repossess the Leased Assets in accordance with the terms of this Master Lease, then Tenant shall transfer (or cause to be transferred), upon such expiration or earlier termination of the Term or as soon thereafter as Landlord shall request, the Tenant Assets to a successor lessee or operator, which may be Landlord or an Affiliate of Landlord (the "**Successor Tenant**"), designated pursuant to Section 12.12 for consideration to be received by Tenant from the Successor Tenant in an amount equal to the Fair Market Value of the Tenant Assets (the "**Tenant Assets FMV**") as either: (i) negotiated and agreed to in writing by Tenant and the Successor Tenant (the "**Negotiated Tenant Assets FMV**") in accordance with Section 12.12(c)(i); or (ii) if: (A) the Tenant and Successor Tenant have not agreed in writing on the Tenant Assets FMV by the date that is ninety (90) days prior to the expiration of the Term (other than in connection with the Final Lease Expiration); or (B) a Lease Termination Notice has been delivered to Tenant and remains in effect or the Final Lease Expiration shall have occurred, then such Tenant Assets FMV shall be determined, and Tenant's transfer of the Tenant Assets to a Successor Tenant in consideration for a payment in such amount shall be determined and transferred, in accordance with the provisions of Section 12.12. Notwithstanding the foregoing, in the event: (x) the Credit Agreement Agent has notified Landlord that a default or event of default (beyond all applicable notice and cure periods) has occurred and is continuing under the Credit Agreement or the transfer of the Tenant Assets would constitute a sale of all or substantially all of the assets on a consolidated basis of Tenant and any other borrowers under the Credit Agreement that would accelerate Indebtedness under such Credit Agreement (each a "**Credit Agreement Agent Trigger Event**"); (y) the Successor Tenant is a Person other than the Credit Agreement Agent (acting on behalf of the lenders under the Credit Agreement) or its designee; and (z) the Negotiated Tenant Assets FMV is less than the Credit Agreement Payoff Amount of which Landlord receives notice from the Credit Agreement Agent, then Tenant and Successor Tenant shall be deemed to not have agreed on the Tenant Assets FMV and the Tenant Assets FMV shall be determined in accordance with Section 12.12. In the event the procedures set forth for Section 12.11(c) are initiated as a result of Landlord delivering a Landlord Termination Notice and Landlord has exercised, or may exercise, its rights to acquire certain Tenant Assets pursuant to the Tenant Property Security Agreement (the "**Pledged Assets**"), the Tenant Assets FMV shall include the Fair Market Value of such Pledged Assets and, in connection with the transfer by Tenant of Tenant Assets to the Successor Tenant, Landlord shall transfer to the Successor Tenant any Tenants Assets Landlord obtained as a result of exercising its rights under the Tenant Property Security Agreement in exchange for consideration from the Successor Tenant equal to the Fair Market Value assigned to such Pledged Assets. Accordingly, and as appropriate for Section 12.12, Tenant Assets shall be deemed to include the Pledged Assets.

### **12.12 Determination of Successor Lessee and Communications Assets FMV.**

(a) **General.** The determination of the Tenant Assets FMV and the transfer of the Tenant Assets to a Successor Tenant shall be effected by: (i) *first*, determining the Successor Tenant Rent in accordance with Section 2.5(b) in the case of a Non-Renewal Event or Section 2.5(b)(i) in the case of a Final Lease Expiration or a termination of this Master Lease; (ii) *second*, identifying and designating in accordance with the terms of Section 12.12(b), a pool of qualified

potential Successor Tenants (each, a “**Qualified Successor Tenant**”) prepared to lease the Leased Assets at the Successor Tenant Rent and to bid for the Tenant Assets; and (iii) *third*, subject to and in accordance with the terms of Section 12.12(c)(ii), determining the highest price a Qualified Successor Tenant would agree to pay for the Tenant Assets and setting such highest price as the Tenant Assets FMV in exchange for which Tenant shall be required to transfer such Tenant Assets. Landlord will enter into a lease with such Qualified Successor Tenant on substantially the same terms and conditions of this Master Lease (except that: (x) the term shall be for a minimum of the lesser of ten (10) years and the maximum reasonable period permitted under both GAAP and U.S. federal tax laws for the Master Lease to qualify as a lease under respective “true lease” analyses; and (y) the rent shall be the Successor Tenant Rent).

(b) Designating Potential Successor Tenants. Landlord will select three (3) (one of which will be Landlord or an Affiliate of Landlord) and Tenant will select four (4) (one of which will be the Credit Agreement Agent or its designee) (for a total of up to seven (7)) potential Qualified Successor Tenants prepared to lease the Leased Assets for the Successor Tenant Rent, each of whom must meet the criteria established for a Discretionary Transferee (and none of whom may be Tenant or an Affiliate of Tenant). Landlord and Tenant must designate their proposed Qualified Successor Tenants within one hundred eighty (180) days prior to the expiration of the Term or, in the case of a termination of this Master Lease, within thirty (30) days after delivery of the Lease Termination Notice. In the event that Landlord or Tenant fails to designate such party’s allotted number of potential Qualified Successor Tenants, the other party may designate additional potential Qualified Successor Tenants such that the total number of potential Qualified Successor Tenants does not exceed seven (7); provided that in the event the total number of potential Qualified Successor Tenants is less than seven (7), the transfer process will still proceed as set forth in Section 12.12(c) below.

(c) Determining Tenant Assets FMV.

(i) Tenant will have a three (3) month period to enter into a definitive agreement specifying the Negotiated Tenant Assets FMV and all other terms and conditions for the sale of the Tenant Assets with one of the Qualified Successor Tenants (such agreement, a “**Tenant Assets Sale Agreement**”), which three (3) month period will commence immediately upon the conclusion of the steps set forth above in Section 12.12(b); provided, however, that: (x) if Landlord is notified by the Credit Agreement Agent that a Credit Agreement Agent Trigger Event exists, unless the Successor Tenant is the Credit Agreement Agent (acting on behalf of the lenders under the Credit Agreement) or its designee, such Negotiated Tenant Assets FMV shall be not less than the Credit Agreement Payoff Amount of which Landlord receives notice from the Credit Agreement Agent; and (y) notwithstanding the foregoing, if a Lease Termination Notice has been delivered to Tenant or the Final Lease Expiration shall have occurred, Landlord and Tenant shall immediately engage a Qualified Third Party Auctioneer and the following clause (ii) shall instead be applicable (in lieu of any such three (3) month period).

(ii) If: (A) Tenant does not enter into a Tenant Assets Sale Agreement in accordance with the terms set forth in Section 12.12(c)(i); or (B) a Lease Termination Notice has been delivered to Tenant or the Final Lease Expiration shall have occurred, Landlord and Tenant shall engage a Qualified Third Party Auctioneer to conduct an auction for the Tenant Assets among the seven (7) potential Qualified Successor Tenants in a manner reasonably designed to

maximize the value of the Tenant Assets and, subject to the terms of this Section 12.12(c)(ii), Tenant (and Landlord, if applicable) will be required to transfer the Tenant Assets to the Qualified Successor Tenant submitting the highest Qualified Bid. Except for a bid submitted by the Credit Agreement Agent (or its designee), which may be in the form of a “credit bid” of the indebtedness and other obligations outstanding under the Credit Agreement, if the Credit Agreement Agent has notified Landlord that a Credit Agreement Agent Trigger Event exists, all bids shall provide the purchase price proposed to be paid for the Tenant Assets, and at least seventy-five percent (75%) of such purchase price must consist of cash or cash equivalents (each such bid, a “**Qualified Bid**”). Tenant shall select the highest Qualified Bid for the sale of the Tenant Assets within fifteen (15) days after receipt of the Qualified Bids (the “**Selection Period**”); provided that in the event: (x) the Credit Agreement Agent has notified Landlord that a Credit Agreement Agent Trigger Event exists; and (y) Tenant desires to select a Qualified Bid as the highest bid that offers cash or cash equivalents in an amount less than the Credit Agreement Payoff Amount that has been identified by the Credit Agreement Agent in a Notice to Landlord, then Tenant shall be deemed to designate the Credit Agreement Agent to make such selection. Notwithstanding the foregoing, if the Credit Agreement Agent has been designated by Tenant to select the highest Qualified Bid pursuant to the immediately preceding sentence and the Credit Agreement Agent fails to make such selection within the Selection Period, then the Credit Agreement Agent shall be deemed to have waived its right to select the highest Qualified Bid and Tenant shall select the highest Qualified Bid within the five (5) day period that immediately follows the Selection Period.

(d) Notwithstanding anything to the contrary in this Section 12.12, the transfer of the Tenant Assets will be conditioned upon the approval of the applicable regulatory agencies of the transfer of the applicable Licenses, Pole Agreements, Easements and Permits and any other assets to the Successor Tenant and/or the issuance of new licenses as required by applicable Communications Regulations and the relevant regulatory agencies both with respect to operating and suitability criteria, as the case may be.

### **12.13 Operation Transfer.**

(a) If Landlord designates a Successor Tenant, Tenant shall reasonably cooperate and take all actions reasonably necessary (including providing all reasonable assistance to Successor Tenant) to effectuate the transfer of operational control of the Leased Assets to Successor Tenant in an orderly manner to minimize to the maximum extent possible any disruption to the continued orderly operation of the Leased Assets.

(b) If the transfer of the Tenant Assets and operational control of the Leased Assets by Tenant to Landlord or a Successor Tenant is not completed by the expiration or earlier termination of the Term, Landlord has the option of requiring Tenant to execute an agreement (the “**Management Agreement**”) in a form reasonably acceptable to both Parties pursuant to which Tenant shall agree to continue to maintain and operate the Leased Assets in accordance with all Legal Requirements and to maintain and not allow waste of the Tenant Assets, and on such other customary terms in exchange for payment of all reasonable operating costs (which operating expenses may include, without limitation, an allocable share of overhead and administrative costs) and reasonable capital expenditures incurred by Tenant to continue operating and maintaining the Leased Assets and Tenant Assets for a term commencing upon the expiration or earlier termination of the Term and ending on the date that Tenant transfers the Tenant Assets and operational control

of the Leased Assets to a Successor Tenant or Landlord (or Tenant and Landlord agree on an alternative arrangement); it being agreed and understood that: (i) unless Landlord and Tenant arrange for Tenant to enjoy the continued operations of the Leased Assets under the Management Agreement, Tenant shall not be obligated to pay Rent during the term of the Management Agreement; (ii) Landlord or the Successor Tenant shall be responsible for all costs and expenses relating to operation and maintenance of the Leased Assets except as otherwise set forth in the Management Agreement; (iii) Landlord and the Successor Tenant shall have the sole right and responsibility to obtain and administrate arrangements with any third party customers other than Tenant for use of the Leased Assets; and (iv) all profits, rents and revenues relating to the Leased Assets from and after the expiration or earlier termination of the Term shall belong to Landlord (except for Landlord's obligation to pay the management fee described above).

(c) Upon the expiration or earlier termination of the Term, Tenant and Landlord (or the Successor Tenant) shall cooperate with one another for a reasonable period in order to ensure that: (i) the Leased Assets and Tenant Assets are fully operational when transferred to Landlord or the Successor Tenant; and (ii) any necessary authorizations, and legal title to Permits and/or Access Agreements not previously transferred to Landlord have been transferred to Landlord or Successor Tenant; it being agreed that Tenant shall enter into a "Transition Services Agreement" for a reasonable term and otherwise consistent with the terms described in the attached Exhibit B promptly following Landlord's (or Successor Tenant's) request in connection therewith. Upon expiration or earlier termination of the Term and following Landlord's request, Tenant shall promptly deliver copies of all of Tenant's books and records relating to the Access Agreements.

### ARTICLE XIII: TRANSFERS OF INTERESTS IN ASSETS

**13.1 Subletting and Assignment.** Tenant shall not, without Landlord's prior written consent as provided herein voluntarily or by operation of law assign (which term includes any transfer, sale, encumbering, pledge or other transfer or hypothecation) this Master Lease, sublet all or any part of the Leased Assets (including, without limitation, any rights granted by Tenant through a dark fiber agreement, a dim fiber agreement or a collocation agreement) or engage the services of any Person (other than an Affiliate of Tenant that is also a Guarantor) for the management or operation of any Leased Asset except as contractor or agent of Tenant (each of the aforesaid acts being referred to herein as a "**Transfer**"), provided that the foregoing shall not restrict a transferee of Tenant from retaining a manager necessary for such transferee's satisfying the requirement set forth in clause (a)(i) of the definition of "Discretionary Transferee". Tenant acknowledges that Landlord is relying upon the expertise of Tenant in the operation of the Leased Assets and that Landlord entered this Master Lease with the expectation that Tenant (or Tenant's Subsidiaries that are Guarantors on behalf of Tenant) would remain in and operate such Leased Assets during the entire Term and for that reason, except as set forth herein, Landlord retains sole and absolute discretion in approving or disapproving any assignment or sublease. Any Change in Control shall constitute an assignment of Tenant's interest in this Master Lease within the meaning of this Article XIII and the provisions requiring consent contained herein shall apply. [Nothing herein shall restrict, nor be construed to restrict, Landlord's exclusive and unrestricted use of the Landlord Retained Assets (and nonexclusive use of the same where coterminous with the Leased Assets).]

**13.2 Permitted Assignments.** Notwithstanding the foregoing, and subject to Section 15.1, Tenant may:

(a) with Landlord's prior written consent, which consent shall not be unreasonably withheld, allow to occur or undergo a Change in Control (including without limitation a transfer or assignment of this Master Lease to any third party in conjunction with a sale by Tenant of all or substantially all of Tenant's assets relating to the Leased Assets);

(b) without Landlord's prior written consent:

(i) assign this Master Lease or sublease the Leased Assets to any of Tenant's Subsidiaries provided that: (w) in the case of a sublease, such Subsidiary becomes a party to the Lease Guaranty as a Guarantor and in the case of an assignment of this Master Lease, becomes party to and bound by this Master Lease; (x) Tenant remains fully liable hereunder; (y) the use of the Leased Assets continues to comply with the requirements of this Master Lease; and (z) Landlord approves, in its reasonable discretion, the form and content of all documents for such assignment or sublease and receives an executed counterpart thereof;

(ii) undergo a Change in Control of the type referred to in clause (iii) of the definition of Change in Control ("**Tenant COC**") if: (y) such Person acquiring such beneficial ownership or control is a Discretionary Transferee; and (z) the Parent Company of such Discretionary Transferee has become a Guarantor and provided a Lease Guaranty on terms reasonably satisfactory to Landlord or, if such Discretionary Transferee does not have a Parent Company, such Discretionary Transferee has become a Guarantor and provided a Lease Guaranty on terms reasonably satisfactory to Landlord;

(iii) assign this Master Lease to any Person in an assignment that does not constitute an assignment-in-lieu of foreclosure to any Person (any such assignment, a "**Foreclosure Assignment**") if: (x) such Person is a Discretionary Transferee; (y) such Discretionary Transferee agrees in writing to assume the obligations of the Tenant under this Master Lease without amendment or modification other than as provided below; and (z) the Parent Company of such Discretionary Transferee, if any, has become a Guarantor and provided a Lease Guaranty on terms reasonably satisfactory to Landlord or, if such Discretionary Transferee does not have a Parent Company, such Discretionary Transferee has become a Guarantor and provided a Lease Guaranty on terms reasonably satisfactory to Landlord; and/or

(iv) pledge or mortgage Tenant's estate in and to the Leased Assets (the "**Leasehold Estate**"); provided that no such Change in Control or assignment referred to in this Section 13.2(b) shall be permitted without Landlord's prior written consent unless, and in which case such consent shall not be unreasonably withheld: (y) the use of the Leased Assets at the time of such Change in Control or assignment and immediately after giving effect thereto is permitted by Section 5.2; and (z) Landlord in its reasonable discretion has approved the form and content of all documents for such assignment and assumption and received an executed counterpart thereof; provided no such approval shall be required in the case of a Tenant COC, so long as: (A) Tenant remains obligated under

the Master Lease and the Lease Guaranty remains in effect except with respect to any release of Tenant's Parent permitted thereunder; (B) the requirements for a Lease Guaranty from the Parent Company or Discretionary Transferee, as applicable, are met; and (C) any modifications to this Master Lease required pursuant to the next succeeding paragraph are made.

(c) Upon any Change in Control or assignment permitted by this Section 13.2, such Discretionary Transferee or the Parent Company of such Discretionary Transferee, as applicable, and Landlord shall make such amendments and other modifications to this Master Lease as are reasonably requested by either Party to give effect to such Change in Control or assignment and such technical amendments as may be necessary or appropriate in the reasonable opinion of such requesting Party in connection with such Change in Control or assignment including, without limitation, changes to the definition of Change in Control to include Parent Company (or, if the Discretionary Transferee does not have a Parent Company, the Discretionary Transferee) and in the provisions of this Master Lease regarding delivery of financial statements and other reporting requirements with respect to Tenant and the delivery of a Lease Guaranty by any Guarantor.

### **13.3 Permitted Sublease Agreements and Usage Arrangements.**

Notwithstanding the provisions of Section 13.1, but subject to compliance with the provisions of this Section 13.3 and of Section 15.1, Tenant may enter into any sublease agreement in the normal course business (including, but not limited to, any rights granted by Tenant or any of its Subsidiaries that are Guarantors through a dark fiber agreement, a dim fiber agreement, or a collocation agreement) without the prior written consent of Landlord; provided that Landlord shall have the right to reasonably approve the identity of any subtenants under this Section 13.3 to ensure that all are adequately capitalized and competent and experienced for the operations they will be conducting; and provided further that if any such sublease may expire by its own terms, including possible extensions and renewals granted thereunder, after the Initial Term of this Master Lease, Tenant must provide Landlord notice of the same and obtain from Landlord permission prior to Tenant's execution of said sublease. The Parties specifically acknowledge and agree that the provisions of this Article XIII concerning permitted assignments and subleases have been negotiated in light of all relevant known facts disclosed by Tenant and relied upon by Landlord. To that end, Tenant represents and warrants that no leases exist in effect as of the Commencement Date which constitute part of the Leased Assets with respect to which Tenant is as sublessor.

**13.4 Landlord Collection of Sublease Rent.** Upon occurrence and during the continuance of an Event of Default, Landlord shall have the right to collect all rents, profits and charges under any sublease (including, but not limited to, any rights granted by Tenant or any of its Subsidiaries through a dark fiber agreement, a dim fiber agreement, or a collocation agreement) to the extent permitted by applicable Legal Requirements and apply the net amount collected to the Rent, but no such collection shall be deemed: (a) a waiver by Landlord of any of the provisions of this Master Lease; (b) an acceptance by Landlord of such subtenant or party as a tenant; or (c) a release of Tenant from the future performance of its obligations hereunder. If reasonably requested by Tenant in connection with a sublease permitted under Section 13.2(b)(iii), Landlord and such sublessee shall enter into a subordination, non-disturbance and attornment agreement with respect to such sublease in a form reasonably satisfactory to Landlord (and if a Facility

Mortgage is then in effect, Landlord shall use reasonable efforts to cause the Facility Mortgagee to enter into such subordination, non-disturbance and attornment agreement).

**13.5 Required Assignment and Subletting Provisions.** Any assignment and/or sublease permitted under this Article XIII must meet the following conditions:

(a) in the case of a sublease, it shall be subject and subordinate to all the terms and conditions of this Master Lease;

(b) the use of the applicable Leased Assets (or portion thereof) shall not conflict with any Legal Requirement or any other provision of this Master Lease;

(c) except as otherwise provided herein, no subtenant or assignee shall be permitted to further sublet all or any part of the applicable Leased Assets or assign this Master Lease or its sublease except insofar as the same would be permitted if it were a sublease by Tenant under this Master Lease;

(d) in the case of a sublease, in the event of cancellation, surrender or termination of this Master Lease for any reason whatsoever prior to the expiration date of such sublease, including extensions and renewals granted thereunder, then, at Landlord's option, the subtenant shall make full and complete attornment to Landlord for the balance of the term of the sublease, which attornment shall be evidenced by a commercially reasonable attornment agreement acceptable to Landlord and which the subtenant shall execute and deliver within fifteen (15) days after request by Landlord and the subtenant shall waive the provisions of any law now or hereafter in effect which may give the subtenant any right of election to terminate the sublease or to surrender possession in the event any proceeding is brought by Landlord to terminate this Master Lease;

(e) in the event the subtenant receives a written notice from Landlord stating that this Master Lease has been cancelled, surrendered or terminated, then the subtenant shall thereafter be obligated to pay all rentals accruing under said sublease directly to Landlord (or as Landlord shall so direct); all rentals received from the subtenant by Landlord shall be credited against the amounts owing by Tenant under this Master Lease; and

(f) the term of the sublease shall expire no later than the day preceding the expiration date of the then current Term (absent permission from Landlord pursuant to Section 13.3).

**13.6 Costs.** Tenant shall reimburse Landlord for Landlord's reasonable and actual out-of-pocket costs and expenses incurred in conjunction with the processing and documentation of any assignment, subletting, or other proposed transfer including, but without limitation, its reasonable attorneys', architects', engineers', valuation experts' or other consultants' fees, regardless of the consummation of such sublease, assignment or other proposed transfer.

**13.7 No Release of Tenant's Obligations; Exception.** No assignment (other than a permitted transfer pursuant to Section 13.2(b)(ii), Section 13.2(b)(iii)(x), or Section 13.2(b)(iii)(z), in connection with a sale or assignment of the Leasehold Estate), subletting or management agreement shall relieve Tenant of its obligation to pay the Rent and to perform any

of Tenant's other obligations under the Master Lease. No liability of Tenant and any immediate and remote successor in interest of Tenant (by assignment or otherwise), and the due performance of Tenant's obligations under this Master Lease, shall in any way be discharged, released or impaired by any: (a) stipulation which extends the time within which an obligation under this Master Lease is to be performed; (b) waiver of the performance of an obligation required under this Master Lease that is not entered into for the benefit of Tenant or such successor; or (c) failure to enforce any of the obligations set forth in this Master Lease.

**13.8 Public Offering.** Notwithstanding anything that may be to the contrary in this Article XIII, this Master Lease shall not restrict any Transfer of any stock of Tenant as a result of a public offering of Tenant's stock which: (a) constitutes a bona fide public distribution of such stock pursuant to a firm commitment underwriting or a plan of distribution registered under the Securities Act of 1933; and (b) results in such stock being listed for trading on the American Stock Exchange, the New York Stock Exchange, or any other recognized stock exchange whether within or outside of the United States or authorized for quotation on the NASDAQ National Market immediately upon the completion of such public offering. In addition, so long as such stock of Tenant is listed for trading on any such exchange or authorized for quotation on such market, the transfer or exchange of such stock shall not be deemed a Transfer hereunder unless such a transfer or exchange constitutes a Change in Control.

**13.9 Sale of the Leased Assets.** Subject to the terms of Section 13.10 and Article XIV, Landlord may, without the consent or approval of Tenant, sell all (and not less than all) of the Leased Assets to a single buyer who is not a Competitor. In connection with such sale, Landlord and the buyer shall execute an assignment and assumption agreement by which Landlord assigns to such buyer all its rights, title and interest under this Master Lease, and the buyer assumes, and agrees to perform, all the obligations, terms, covenants and conditions of Landlord hereunder from and after the effective date of the sale. For the avoidance of doubt, each entity comprising Landlord must assign 100% of its right, title and interest under this Master Lease to the buyer under any assignment pursuant to this Section 13.9.

**13.10 Restrictions on Transfers by Landlord.** Subject to the rights of a Foreclosure Purchaser under Article XIV, Landlord shall not, without Tenant's prior written consent: (a) sell or otherwise transfer any Equity Interests in Landlord that results in a Competitor (whether directly or through Subsidiaries of Competitor and whether in a single transaction or in a series of unrelated or related transactions) acquiring beneficial ownership and control of ten percent (10%) or more of the Equity Interests in Landlord; (b) sell any or all of Landlord's assets relating to the Leased Assets to a Competitor (whether directly or through Subsidiaries of the Competitor and whether in a single transaction or in a series of unrelated or related transactions); (c) merge or consolidate with or into a Competitor (whether directly or through Landlord's Subsidiaries); or (d) sell or otherwise transfer any Equity Interests in any entity comprising Landlord that would result its ultimate parent company not being the beneficial owner, whether directly or indirectly, of one hundred percent (100%) of the Equity Interests in such entity unless the Equity Interests that are sold or transferred are convertible into Equity Interests in such parent company.<sup>7</sup>

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<sup>7</sup> NTD: To be conformed based on identity of Landlord in Uniti corporate structure.

**13.11 No Merger.** The fee title to the Leased Assets and the Leasehold Estate of Tenant therein created by this Master Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise. There shall be no merger of this Master Lease or of the leasehold estate created hereby because the same Person may acquire, own or hold, directly or indirectly: (a) this Master Lease or the leasehold estate created hereby or any interest in this Master Lease or such leasehold estate; or (b) the fee estate in the Leased Assets.

**13.12 Conveyance by Landlord.** If Landlord or any successor owner of the Leased Assets conveys the Leased Assets pursuant to this Master Lease other than as security for a debt, and the grantee or transferee expressly assumes all obligations of Landlord arising after the date of the conveyance, then Landlord or such successor owner, as the case may be, shall automatically be released from all liabilities and obligations of the Landlord under this Master Lease arising or accruing from and after the date of such conveyance and all such future liabilities and obligations shall thereupon be binding upon the new owner.

#### **ARTICLE XIV: FINANCING**

**14.1 Landlord's Financing.** Without the consent of Tenant but subject to the terms of this Article XIV, Landlord may from time to time, directly or indirectly, create or otherwise cause to exist any Facility Mortgage upon the Leased Assets or any portion thereof or interest therein; provided, however, that if Tenant has not consented to any such Facility Mortgage entered into by Landlord after the Commencement Date, Tenant's obligations with respect thereto shall be subject to the limitations set forth in Section 14.3. This Master Lease is and at all times shall be subject and subordinate to any such Facility Mortgage which may now or hereafter affect the Leased Assets or any portion thereof or interest therein and to all renewals, modifications, consolidations, replacements, restatements and extensions thereof or any parts or portions thereof; provided, however, that the subjection and subordination of this Master Lease and Tenant's leasehold interest hereunder to any Facility Mortgage shall be conditioned upon the execution by the holder of each Facility Mortgage and delivery to Tenant of a non-disturbance and attornment agreement (the "NDA") substantially in the form attached hereto as Exhibit C (or in a form otherwise reasonably acceptable to the Facility Mortgagee or prospective Facility Mortgagee, as the case may be), and executed by Tenant as well as Landlord, which will bind such holder of such Facility Mortgage and its successors and assigns as well as any person who acquires any portion of the Leased Assets in a foreclosure or similar proceeding or in a transfer in lieu of any such foreclosure or a successor owner of the Leased Assets (each, a "Foreclosure Purchaser") and which provides that so long as there is not then any outstanding and continuing an Event of Default under this Master Lease, the holder of such Facility Mortgage, and any Foreclosure Purchaser shall disturb neither Tenant's leasehold interest or possession of the Leased Assets in accordance with the terms hereof, nor any of its rights, privileges and options, and shall give effect to this Master Lease (as if such Facility Mortgagee or Foreclosure Purchaser were the landlord under this Master Lease (it being understood that the exercise of any rights and remedies by the Facility Mortgagee or Foreclosure Purchaser shall be subject to the terms and provisions of this Master Lease if an Event of Default has occurred and is continuing at the time such Party acquires any portion of the Leased Assets in a foreclosure or similar proceeding or in a transfer in lieu)). Except for the documents described in the preceding sentences, this provision shall be self-operative and no further instrument of subordination shall be required to give it full force and effect. In connection

with the foregoing and at the request of Landlord, Tenant shall promptly execute a subordination, non-disturbance and attornment agreement, in form and substance substantially in the form of Exhibit C or otherwise reasonably satisfactory to the Facility Mortgagee or prospective Facility Mortgagee, as the case may be, which will incorporate the terms set forth in the preceding sentence. If, in connection with obtaining any Facility Mortgage for the Leased Assets or any portion thereof or interest therein, a Facility Mortgagee or prospective Facility Mortgagee shall request: (a) reasonable cooperation from Tenant, Tenant shall provide the same at no cost or expense to Tenant, it being understood and agreed that Landlord shall be required to reimburse Tenant for all reasonable costs and expenses so incurred by Tenant, including, but not limited to, its reasonable attorneys' fees; or (b) reasonable amendments or modifications to this Master Lease as a condition thereto, Tenant hereby agrees to execute and deliver the same so long as any such amendments or modifications do not: (i) increase Tenant's monetary obligations under this Master Lease; (ii) adversely increase Tenant's non-monetary obligations under this Master Lease in any material respect; or (iii) diminish Tenant's rights under this Master Lease, and/or Tenant's access or use of the Leased Assets, in any material respect.

**14.2 Attornment.** If Landlord's interest in the Leased Assets or any portion thereof or interest therein is sold, conveyed or terminated upon the exercise of any remedy provided for in any Facility Mortgage Documents (or in lieu of such exercise), or otherwise by operation of law, and subject to Tenant's receipt of the NDA: (a) at the request and option of the new owner or superior lessor, as the case may be, Tenant shall attorn to and recognize the new owner or superior lessor as Tenant's "landlord" under this Master Lease or enter into a new lease substantially in the form of this Master Lease with the new owner or superior lessor, and Tenant shall take such actions to confirm the foregoing within ten (10) days after request; and (b) the new owner or superior lessor shall not be: (i) liable for any act or omission of Landlord under this Master Lease occurring prior to such sale, conveyance or termination; (ii) subject to any offset, abatement or reduction of rent because of any default of Landlord under this Master Lease occurring prior to such sale, conveyance or termination; (iii) bound by any previous modification or amendment to this Master Lease or any previous prepayment of more than one month's Rent, unless such modification, amendment or prepayment shall have been approved in writing by such Facility Mortgagee, or, in the case of such prepayment, such prepayment of rent has actually been delivered to such new owner or superior lessor or in either case, such modification, amendment or prepayment occurred before Landlord provided Tenant with notice of the Facility Mortgage and the identity and address of the Facility Mortgagee; or (iv) liable for any security deposit or other collateral deposited or delivered to Landlord pursuant to this Master Lease unless such security deposit or other collateral has actually been delivered to such new owner or superior lessor.

**14.3 Compliance with Facility Mortgage Documents.**

(a) Tenant acknowledges that any Facility Mortgage Documents executed by Landlord or any Affiliate of Landlord may impose certain obligations on the "borrower" or other counterparty thereunder to comply with or cause the operator and/or lessee of a Leased Asset to comply with all representations, covenants and warranties contained therein relating to such Leased Asset and the operator and/or lessee of such Leased Asset, including covenants relating to: (i) the maintenance and repair of such Leased Asset; (ii) maintenance and submission of financial records and accounts of the operation of such Leased Asset and related financial and other information regarding the operator and/or lessee of such Leased Asset and such Leased Asset

itself; (iii) the procurement of insurance policies with respect to such Leased Asset; and (iv) without limiting the foregoing, compliance with all applicable Legal Requirements relating to such Leased Asset and the operation of the Business thereof. For so long as any Facility Mortgages encumber the Leased Assets or any portion thereof or interest therein, Tenant covenants and agrees, at its sole cost and expense and for the express benefit of Landlord, to operate each applicable Leased Asset in strict compliance with the terms and conditions of the Facility Mortgage Documents (other than payment of any indebtedness evidenced or secured thereby) and to timely perform all of the obligations of Landlord relating thereto, or to the extent that any of such duties and obligations may not properly be performed by Tenant, Tenant shall cooperate with and assist Landlord in the performance thereof (other than payment of any indebtedness evidenced or secured thereby). If any new Facility Mortgage Documents to be executed by Landlord or any Affiliate of Landlord would impose on Tenant any obligations under this Section 14.3(a), Landlord shall provide copies of the same to Tenant for informational purposes (but not for Tenant's approval) prior to the execution and delivery thereof by Landlord or any Affiliate of Landlord; provided, however, that neither Landlord nor its Affiliates shall enter into any new Facility Mortgage Documents imposing obligations on Tenant with respect to impounds that are more restrictive than obligations imposed on Tenant pursuant to this Master Lease.

(b) Without limiting or expanding Tenant's obligations pursuant to Section 14.3(a), during the Term of this Master Lease, Tenant acknowledges and agrees that, except as expressly provided elsewhere in this Master Lease, it shall undertake at its own cost and expense the performance of any and all repairs, replacements, capital improvements, maintenance items, and all other requirements relating to the condition of a Leased Asset that are required by any Facility Mortgage Documents or by any Facility Mortgagee, and Tenant hereby covenants to fund and maintain any and all impound, escrow or other reserve or similar accounts required under any Facility Mortgage Documents as security for or otherwise relating to any operating expenses of a Leased Asset, including any capital repair or replacement reserves and/or impounds or escrow accounts for taxes or insurance premiums (each a "**Facility Mortgage Reserve Account**"); provided, however, that any amounts which Tenant is required to fund into a Facility Mortgage Reserve Account with respect to satisfaction of any repair or replacement reserve requirements imposed by a Facility Mortgagee or Facility Mortgage Documents shall be credited on a dollar for dollar basis against the mandatory expenditure obligations of Tenant for such applicable Leased Assets under Section 7.1(f). During the Term of this Master Lease and provided that no Event of Default shall have occurred and be continuing hereunder, Tenant shall, subject to the terms and conditions of such Facility Mortgage Reserve Account and the requirements of any Facility Mortgagee thereunder (and the related Facility Mortgage Documents), have access to and the right to apply or use (including for reimbursement) to the same extent as Landlord all monies held in each such Facility Mortgage Reserve Account for the purposes and subject to the limitations for which such Facility Mortgage Reserve Account is maintained, and Landlord agrees to reasonably cooperate with Tenant in connection therewith. Landlord hereby acknowledges that funds deposited by Tenant in any Facility Mortgage Reserve Account are the property of Tenant and Landlord is, subject to the rights of any lenders under the Facility Mortgage Documents, obligated to return the portion of such funds not previously released to Tenant within fifteen (15) days following the earlier of: (i) the expiration or earlier termination of this Master Lease with respect to such applicable Leased Asset; (ii) the maturity or earlier prepayment of the applicable Facility Mortgage and obligations secured thereby; or (iii) an involuntary prepayment or deemed prepayment arising out of the acceleration of the amounts due to a Facility Mortgagee or secured

under a Facility Mortgage as a result of the exercise of remedies under the applicable Facility Mortgage or Facility Mortgage Documents; provided, however, that the foregoing shall not be deemed or construed to limit or prohibit Landlord's right to bring any damage claim against Tenant for any breach of its obligations under this Master Lease that may have resulted in the loss of any impound funds held by a Facility Mortgagee.

**14.4 Leasehold Mortgages.** Tenant represents and warrants that there exist no Leasehold Mortgages affecting the Leased Assets. Tenant hereby agrees that Tenant shall take no action that would result in, or permit any other Person to take such action, the creation of a Leasehold Mortgage affecting the Leased Assets without Landlord's approval, and any conditions thereto, which may be withheld or determined in Landlord's sole discretion.

**14.5 Landlord's Right to Cure Tenant's Default.** If Tenant fails to make any payment or perform any act required by this Master Lease within any cure period provided for herein, Landlord, without waiving or releasing any obligation or default, may, but shall be under no obligation to, make such payment or perform such act for the account and at the expense of Tenant, and may, to the extent permitted by law, enter upon the Leased Assets for such purpose and take all such action thereon as, in Landlord's reasonable opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Tenant. Except as may be specifically provided to the contrary in this Master Lease, Tenant shall pay to Landlord, within thirty (30) days following delivery by Landlord to Tenant of statements therefor sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of this Section 14.5.

**14.6 Landlord's Right to Cure Debt Agreement Default.** Tenant agrees that every agreement related to Material Indebtedness and any Debt Agreement (or the principal or controlling agreement relating to such Material Indebtedness or series of related Debt Agreements) will include a provision requiring the lender or lenders thereunder (or the Debt Agreement Representative of such lenders) to provide a copy to Landlord of any notices issued by such lenders or the Debt Agreement Representative of such Lenders to Tenant of a Specified Debt Agreement Default. In addition, Tenant agrees to ensure that any such agreement related to Material Indebtedness and any Debt Agreement (or the principal or controlling agreement relating to such Material Indebtedness or series of related Debt Agreements) includes a provision with the effect that should Tenant fail to make any payment or to perform any act required to be made or performed under an agreement related to Material Indebtedness or under the Debt Agreement when due or within any cure period provided for therein (if any), Landlord may, subject to any applicable Communications Regulations and the terms hereof, cure any such default by making such payment to the applicable lenders or Debt Agreement Representative or otherwise performing such acts within the cure period thereunder (if any) for the account of Tenant, to the extent such default is susceptible to cure by Landlord; provided that Landlord's right to cure such default shall not be any greater than the rights of the obligors under such Material Indebtedness or Debt Agreement to cure such default. Landlord and Tenant agree that all sums so paid by Landlord and all costs and expenses, including reasonable attorneys' fees and expenses, so incurred, together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid or incurred by Landlord, shall be paid by Tenant to Landlord on demand as an Additional Charge.

**14.7 Memorandum of Lease.** Upon Tenant's request, Landlord and Tenant shall enter one or more short form memoranda of this Master Lease, in form suitable for recording in each county or other applicable location in which the Leased Assets is located. Tenant shall pay all costs and expenses of recording any such memorandum and shall fully cooperate with Landlord in removing from record any such memorandum upon the expiration or earlier termination of the Term with respect to the applicable Leased Asset.

**14.8 Officer's Certificates and Financial Statements.**

(a) **Officer's Certificate.** Each Party shall, upon receipt of not less than ten (10) Business Days' prior written request from the other Party, furnish an Officer's Certificate certifying: (i) that this Master Lease is unmodified and in full force and effect, or that this Master Lease is in full force and effect as modified and setting forth the modifications; (ii) the Rent and Additional Charges payable hereunder and the dates to which the Rent and Additional Charges have been paid; (iii) that the address for notices to be sent to the Party furnishing such Officer's Certificate is as set forth in this Master Lease (or, if such address for notices has changed, the correct address for notices to such Party); (iv) whether or not, to its actual knowledge, the other Party is in compliance in all material respects with the covenants, agreements and conditions contained in this Master Lease (together with back-up calculation and information reasonably necessary to support such determination; (v) that Tenant is in possession of the Leased Assets; and (vi) responses to such other questions or statements of fact as such other Party shall reasonably request; provided that such questions or statements of fact are included in the written notice requesting the Officer's Certificate. Either Party's failure to deliver such statement within such time shall constitute an acknowledgement by such failing Party that the matters set forth in such request, if any, are true and correct. Notwithstanding the foregoing, unless an Event of Default has occurred and is continuing, in no event shall Landlord or Tenant be required to deliver an Officer's Certificate under this Section 14.8(a) more than two (2) times in any calendar year. Any such certificate furnished pursuant to this Section 14.8(a) may be reasonably relied upon by the receiving Party and any current or prospective Facility Mortgagee, ground or underlying landlord or purchaser of the Leased Assets. Each Guarantor or Tenant, as the case may be, shall deliver a Notice to Landlord within two (2) Business Days of obtaining knowledge of the occurrence of any material default hereunder. Such Notice shall include a detailed description of the default and the actions such Guarantor or Tenant has taken or shall take, if any, to remedy such default.

(b) **Statements.** Tenant shall furnish the following statements (each a "**Financial Statement**") and collectively the "**Financial Statements**") to Landlord:

(i) as soon as available and in no event later than ninety (90) days after the end of each Fiscal Year, a copy of its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by an independent public accounting firm of recognized national standing reasonably acceptable to Landlord (without any qualification, exception or similar language as to the scope of such audit or as to a going concern) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Tenant and its consolidated Subsidiaries in accordance with GAAP and the applicable requirements of Regulation S-X;

(ii) as soon as available and in no event later than forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such Fiscal Quarter and the then elapsed portion of the Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all certified by a Financial Officer of Tenant as presenting fairly in all material respects the financial condition and results of operations of Tenant and its consolidated Subsidiaries in accordance with GAAP and the applicable requirements of Regulation S-X, subject to normal year-end audit adjustments and the absence of footnotes;

(iii) concurrently with any delivery of financial statements under clause (i) or (ii) above, a certificate of a Financial Officer of Tenant certifying: (x) as to whether a default has occurred and if the same is continuing under this Master Lease; (y) a calculation of the financial covenants set forth in Section 14.11 in reasonable detail; and (z) if a default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto; and

(iv) within sixty (60) days after the beginning of each Fiscal Year, a detailed consolidated budget for such Fiscal Year (including a projected consolidated balance sheet and related statements of projected operations and cash flows as of the end of and for such Fiscal Year and setting forth the assumptions used in preparing such budget) and, promptly when available, any significant revisions of such budget approved by the board of directors of Tenant;

(v) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by Tenant or any of its Subsidiaries with the SEC or with any national securities exchange, or distributed by Tenant to its shareholders generally, as the case may be; and

(vi) Promptly after the commencement thereof (and Tenant's receipt of Notice of the same), Notice to Landlord of any action, suits, investigations, litigation or proceedings by any governmental authority affecting Tenant or any complaint against Tenant to such governmental authority reasonably likely to initiate any of the foregoing (any of which is called a "**Proceeding**"), the result of which Proceeding would reasonably be expected to be to revoke or suspend or terminate or modify in a way adverse to Tenant, or fail to renew or fully continue in effect, any license or certificate or operating authority pursuant to which Tenant carries on all or any portion of the Leased Assets.

(c) Other than postings on the SEC's website, any financial statement or other materials required to be delivered pursuant to Section 14.8(b) shall be deemed to have been delivered on the date on which such information is posted on Tenant's website on the Internet or by Landlord on an IntraLinks or similar site to which Landlord has been granted access or shall be available on the SEC's website on the Internet at [www.sec.gov](http://www.sec.gov); provided that Tenant shall give Notice of any such posting to Landlord, and Tenant shall deliver paper copies of any such documents to Landlord if Landlord requests Tenant to deliver such paper copies. Notwithstanding anything contained herein, in every instance Tenant shall be required to provide paper copies of any certificate required by Section 14.8(b)(iii) to Landlord. If any Financial Statement or other

materials required to be delivered under this Master Lease shall be required to be delivered on any date that is not a Business Day, such information may be delivered to Landlord on the next succeeding Business Day after such date; and

(d) Tenant further agrees to provide the financial and operational reports to be delivered to Landlord under this Master Lease in such electronic format(s) as may reasonably be required by Landlord from time to time in order to: (i) facilitate Landlord's financial and reporting requirements; and (ii) permit Landlord to calculate any rent, fee or other payments due under any Pole Agreements or Permits. Tenant also agrees that Landlord shall have audit rights with respect to such information to the extent required to confirm Tenant's compliance with the Master Lease terms (including, calculation of Net Income).

(e) To the extent that at such time Tenant is subject to the requirements of Section 404 of the Sarbanes-Oxley Act of 2002, a report of such independent public accountants as to the Tenant's internal controls required under Section 404 of the Sarbanes-Oxley Act of 2002, in each case certified in a manner to which Landlord has not objected, together with a certificate of such accounting firm to Landlord (but only to the extent the internal policies of such accounting firm allow such certificate to be provided) stating that in the course of the regular audit of the business of Tenant, which audit was conducted by such accounting firm in accordance with generally accepted auditing standards, such accounting firm has obtained no knowledge that an Event of Default has occurred and is continuing, or if, in the opinion of such accounting firm, an Event of Default has occurred and is continuing, a statement as to the nature thereof; provided that, in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Parent shall also provide a reconciliation of such financial statements to GAAP. Additionally, upon request of Landlord with reasonable advance notice to Tenant, Tenant shall provide such additional information that Landlord reasonably requires to comply with its reporting and filing obligations pursuant to said Act, including, but not limited to:

(i) preparation of the narrative(s) for processes determined to materially impact Landlord's Financial Statements;

(ii) access during reasonable business hours to Tenant management (including Tenant internal audit management) responsible for activities outlined in the narrative(s);

(iii) incur reasonable efforts to design control activities for all key internal controls over financial reporting, associated information technology general controls and other entity-level controls (collectively "**Key Internal Controls**") (as required to maintain compliance with the Sarbanes-Oxley Act of 2002);

(iv) incur reasonable efforts to enable Landlord and its external auditors to test the operating effectiveness of the Key Internal Controls over financial reporting identified; and

(v) incur reasonable efforts to attempt to remediate, within a reasonable amount of time prior to each calendar year end, any deficient controls identified by Landlord or its external auditors and to work with Landlord and its external auditors to

identify compensating or mitigating controls which can be tested by Landlord and its external auditor and deemed to be operating effectively for the same period of time as the deficient control operated.

(f) Both Parties acknowledge and agree that Tenant will charge Landlord for Tenant's reasonable costs to perform the obligations set forth in Section 14.8(b), Section 14.8(c), Section 14.8(d), and Section 14.8(e), including its out-of-pocket costs and reasonable allocations for internal labor.

(g) Notwithstanding the foregoing, Tenant shall not be obligated (1) to provide information or assistance that could give Landlord or its Affiliates a competitive advantage with respect to markets in which Tenant or Tenant's Subsidiaries might be competing at any time (it being understood that Landlord shall retain audit rights with respect to such information to the extent required to confirm Tenant's compliance with the Master Lease terms (and Landlord's compliance with the SEC, Internal Revenue Service and other legal and regulatory requirements) and provided that appropriate measures are in place to ensure that only Landlord's auditors and attorneys (and not Landlord) are provided access to such information) or (2) to provide information that is subject to the quality assurance immunity, if any, or is subject to attorney-client privilege or the attorney work product doctrine.

(h) Tenant shall maintain adequate books and records of all Permits, Easements and Pole Agreement and all payments (and supporting documentation relating to such payments) made thereunder for no less than three (3) years after the end of each Fiscal Year with respect to the books and records maintained during such Fiscal Year. Tenant's books and records for the Permits, Easements and Pole Agreements shall be maintained in a manner consistent with the other books and records maintained by Tenant. Landlord shall have the right from time to time (but in no event more than [twice] every twelve (12) calendar months) during normal business hours upon at least seventy-two (72) prior written notice to Tenant to examine and audit such books and records at the office of Tenant or other Person maintaining such books and records and to make such copies or extracts thereof as Landlord shall desire.

(i) Notwithstanding anything to the contrary contained herein, Tenant agrees that upon request of Landlord, it shall from time to time provide such information that Landlord reasonably requires in order for Landlord to comply with its reporting and filing obligations with the SEC (including, without limitation, any requirements imposed by Regulation S-X (including, to the extent necessary, obtaining a consent from Tenant's external audit firm for inclusion of their report on Tenant's financial statement in Landlord's SEC filings)) and further agrees that Landlord may include such information in its filings and submissions to the SEC.

#### **14.9 Confidentiality; Public Offering Information.**

(a) The Parties recognize and acknowledge that they may receive certain Confidential Information of the other Party. Subject to Section 14.10, each Party agrees that neither it nor any of its Debt Agreement Representatives shall, until five (5) years after the term of the termination or expiration of this Master Lease, directly or indirectly use any Confidential

Information of the other Party or disclose Confidential Information of the other party to any person for any reason or purpose whatsoever, except as otherwise provided herein.

(b) In the event that a Party or any of its Debt Agreement Representatives is requested or required (pursuant to any legal, governmental, administrative or regulatory order, authority or process) to disclose any Confidential Information of the other Party other than disclosures required by Landlord under Section 14.10(c), said Party will, to the extent reasonably practicable and not prohibited by law, provide the Party owning such Confidential Information prompt written notice of the existence, terms or circumstances of such event so that the owning Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Section 14.9. In the event that such protective order or other remedy is not obtained or the owning Party waives compliance with this Section 14.9, the Party compelled to disclose such Confidential information will furnish only that portion of the Confidential Information or take only such action as, based upon the advice of your legal counsel, is legally required and will use commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished. The Party compelled to disclose the Confidential Information shall cooperate with any action reasonably requested by the owning Party to obtain a protective order or other reliable assurance that the Confidential Information will remain confidential.

(c) Tenant agrees that, except as required by law, Tenant shall not issue any press release relating to the terms of this Master Lease without the prior written approval of Landlord, which approval may be granted or withheld in such Party's sole discretion, or as may have been previously disclosed by Landlord in its sole discretion.

#### **14.10 Agreements with Respect to Certain Information.**

(a) Notwithstanding anything to the contrary in Section 14.9 and without limiting the disclosures by Landlord permitted under Section 14.10(b), Tenant specifically agrees that Landlord may include financial information and such information concerning the operation of the Leased Assets: (i) which is publicly available; or (ii) the inclusion of which is approved by Tenant in writing, which approval may not be unreasonably withheld, in offering memoranda or prospectuses or confidential information memoranda, or similar publications or marketing materials, rating agency presentations, investor presentations or disclosure documents in connection with syndications, private placements or public offerings of Landlord's or its Subsidiaries' securities or loans, and any other reporting requirements under applicable federal and state laws, including those of any successor to Landlord; provided that to the extent such information is not publicly available, the recipients thereof shall be obligated to maintain the confidentiality thereof pursuant to Section 14.9 or pursuant to confidentiality provisions substantially similar thereto and to comply with all federal, state and other securities laws applicable with respect to such information. Unless otherwise agreed by Tenant, Landlord shall not revise or change the wording of information previously publicly disclosed by Tenant and furnished to Landlord or any its Subsidiaries pursuant to Section 14.9 or this Section 14.10 and Landlord's Form 10-Q or Form 10-K (or supplemental report filed in connection therewith) shall not disclose the operational results of the Leased Assets prior to Tenant's or its Affiliate's public disclosure thereof so long as Tenant or such Affiliate reports such information in a timely manner consistent with historical practices and SEC disclosure requirements. Tenant agrees to provide

such other reasonable information and, if necessary, reasonable participation in road shows and other presentations at Landlord's sole cost and expense, with respect to Tenant and its Leased Assets to facilitate a public or private debt or equity offering or syndication by Landlord or its Subsidiaries to satisfy Landlord's SEC disclosure requirements or the disclosure requirements of any of its Subsidiaries. In this regard, Landlord shall provide to Tenant a copy of any information prepared by Landlord to be published, and Tenant shall have a reasonable period of time (not to exceed three (3) Business Days) after receipt of such information to notify Landlord of any corrections.

(b) Landlord may share Confidential Information of Tenant contained in the Financial Statements with its Subsidiaries and their respective officers, employees, directors, Facility Mortgagee, agents and lenders party to material debt instruments entered into by Landlord or its Subsidiaries, actual or prospective arrangers, underwriters, investors or lenders with respect to Indebtedness or Equity Interests that may be issued by Landlord or its Subsidiaries, rating agencies, accountants, attorneys and other consultants (the "**Landlord Representatives**"); provided that: (i) such Landlord Representative is not a Competitor and is advised of the confidential nature of such information and agrees, to the extent such information is not publicly available, to maintain the confidentiality thereof pursuant to Section 14.9 or pursuant to confidentiality provisions substantially similar thereto and to comply with all federal, state and other securities laws applicable with respect to such information; and (ii) neither it nor any Landlord Representative may engage in any transactions with respect to the stock or other equity or debt securities or syndicated loans of Tenant based on any such non-public information provided by or on behalf of Landlord or its Subsidiaries; provided that this provision shall not govern the provision of information by Tenant.

(c) In addition to the foregoing, Landlord agrees that, upon request of Tenant, it shall from time to time provide such information as may be reasonably requested by Tenant with respect to Landlord's capital structure and/or any financing secured by this Master Lease or the Leased Assets in connection with Tenant's review of the treatment of this Master Lease under GAAP. In connection therewith, Tenant agrees to maintain the confidentiality of any such non-public information; provided, however, Tenant shall have the right to share such information with Tenant's Subsidiaries and their respective officers, employees, directors, agents and lenders party to material debt instruments entered into by Tenant or Tenant's Subsidiaries, actual or prospective arrangers, underwriters, investors or lenders with respect to Indebtedness or Equity Interests that may be issued by Tenant or Tenant's Subsidiaries, rating agencies, accountants, attorneys and other consultants (the "**Tenant Representatives**") so long as such Tenant Representative is advised of the confidential nature of such information and agrees, to the extent such information is not publicly available: (i) to maintain the confidentiality thereof pursuant to Section 14.9 and to comply with all federal, state and other securities laws applicable with respect to such information; and (ii) not to engage in any transactions with respect to the stock or other equity or debt securities or syndicated loans of Landlord or its Subsidiaries based on any such non-public information provided by or on behalf of Tenant or Tenant's Subsidiaries, provided that this provision shall not govern the provision of information by Landlord.

#### **14.11 Financial Covenants.**

(a) Tenant shall, on a consolidated basis with respect to all the Leased Assets and determined as of the last day of any fiscal quarter on a cumulative basis for the preceding Test Period (commencing with the Test Period ending on [ ● ]):

- (i) maintain a Consolidated Adjusted EBITDA to Rent Ratio of at least [ ● ]:1;
- (ii) maintain a Leverage Ratio of no greater than [ ● ]:1; and
- (iii) [ADDITIONAL FINANCIAL COVENANTS DEPEND ON IDENTITY OF TENANT].

(b) In the event that Tenant does not satisfy at any time the financial covenants set forth in this Section 14.11, then neither Tenant nor Tenant's Parent Company shall be permitted to make any Restricted Payment until Tenant complies with such ratios in a subsequent period. Tenant or Tenant's Parent Company attempt to make any Restricted Payment prohibited by the foregoing sentence shall constitute an Event of Default.

(c) In addition to any other remedies available to Landlord for Tenant's breach of any financial covenants required herein, Landlord may require Tenant to:

- (i) maintain an amount of surplus Cash not less than [ ● ] for the purpose of securing Tenant's obligations hereunder, by delivering such funds directly to a Cash collateral account designated Landlord (a "**Cash Collateral Account**"); or
- (ii) to the extent Tenant elects not to satisfy the prepayment condition set forth in Section 14.11(c)(i) above, Tenant shall thereafter, for each calendar month until Tenant cures its breach or breaches of any financial covenants, cause, on or prior to the date which is fifteen (15) Business Days following the end of each such calendar month, to be delivered directly to a Cash Collateral Account one-hundred percent (100%) of Tenant's excess cash flow with regard to the Leased Assets for each such calendar month (such payments constituting "**Cash Sweep Payments**"); provided, that Tenant shall, together with each such Cash Sweep Payment, deliver to Landlord a detailed, Tenant-certified calculation of its excess cash flow for the most-recently-ended calendar month.

(d) Tenant hereby agrees: (i) that each Cash Collateral Account established pursuant to Section 14.11(c) shall be an account held by Landlord in Tenant's name using Tenant's tax identification number; (ii) that Landlord shall have exclusive control with respect to each such Cash Collateral Account, including, without limitation, the exclusive right of withdrawal with respect to funds held therein in order to ensure Tenant's obligations under this Master Lease; and (iii) to execute and deliver to Landlord any such account agreements or designations or other documentation reasonably requested by Landlord in order to open, maintain and/or control each such Cash Collateral Account in accordance with the terms of this Master Lease. Cash Collateral Accounts may or may not (at the option of Landlord) be interest-bearing; provided, that all interest, if any, earned from time to time on funds deposited in any Cash Collateral Account shall be retained in the account as Cash collateral held pursuant to the terms of this Master Lease. Tenant hereby grants to Landlord, for the purpose of securing all of Tenant's obligations hereunder, a security interest in each Cash Collateral Account established pursuant to the terms of this Master

Lease and all funds from time to time held therein. Landlord shall have all of the rights and remedies of a secured part under the Legal Requirements with respect to each Cash Collateral Account and the funds from time to time held therein.

**14.12 Accounting Changes.** In the event of any Accounting Change (as defined below) resulting in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Parties agree negotiate in good faith any amendments required to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Tenant's or Relevant Party's financial condition (including the requirements and restrictions associated with the provisions of this Agreement applicable thereto) shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until the execution of such amendment by Landlord and Tenant, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred.

**14.13 Liens.** Subject to the provisions of Section 6.3 relating to permitted contests, Tenant will not (and will not permit any of its Subsidiaries to) directly or indirectly create or allow to remain and will promptly discharge at its expense any Encumbrance upon the Leased Assets, other Leased Assets, or any Capital Improvement thereto, or any Encumbrance in respect of the Rent, excluding, however: (a) this Master Lease; (b) restrictions and other Encumbrances which are consented to in writing by Landlord; (c) liens for Impositions which Tenant or its Subsidiaries are not required to pay hereunder; and (d) subleases (including, but not limited to, any rights granted by Tenant or any of its Subsidiaries pursuant to a dark fiber agreement, a dim fiber agreement or a collocation agreement) permitted by Section 6.3; provided that Tenant has provided appropriate reserves as required under GAAP and any foreclosure or similar remedies with respect to such Impositions have not been instituted and no notice as to the institution or commencement thereof have been issued except to the extent such institution or commencement is stayed no later than the earlier of: (i) ten (10) Business Days after such notice is issued; or (ii) five (5) Business Days prior to the institution or commencement thereof; (f) liens of mechanics, laborers, materialmen, suppliers or vendors for sums either disputed or not yet due; provided that: (i) the payment of such sums shall not be postponed under any related contract for more than sixty (60) days after the completion of the action giving rise to such lien unless being contested in accordance with Section 6.3 and such reserve or other appropriate provisions as shall be required by law or GAAP shall have been made therefor and no foreclosure or similar remedies with respect to such liens have been instituted and no notice as to the institution or commencement thereof have been issued except to the extent such institution or commencement is stayed no later than the earlier of: (y) ten (10) Business Days after such notice is issued; or (z) five (5) Business Days prior to the institution or commencement thereof; or (ii) any such liens are in the process of being contested as permitted by Section 6.3; (g) liens on Tenant Capital Improvements which are used or useful in Tenant's business related to equipment leases or equipment financing for such Tenant Capital Improvements; provided that the payment of any sums due under such equipment leases or equipment financing shall either: (i) be paid as and when due in accordance with the terms thereof; or (ii) be in the process of being contested as permitted by Section 6.3; (h) any liens created by Landlord; and (j) Easements, Pole Agreements, Permits, rights-of-way, restrictions (including zoning restrictions), covenants, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Leased Assets, in each case

whether now or hereafter in existence, not individually or in the aggregate materially interfering with the conduct of either Party's business on the Leased Assets, taken as a whole.

**14.14 Pledge of Tenant's Assets.**<sup>8</sup> Notwithstanding any other provision of this Master Lease to the contrary, Tenant shall pledge certain Tenant Assets more particularly identified in Schedule 14.14, and in accordance with the terms and conditions set forth in the "Tenant Property Security Agreement" attached hereto as Exhibit D.

**14.15 No Financing Arrangement.** Landlord and Tenant intend that the Master Lease is not an attempt by Landlord or Tenant to evade the operation of any aspect of the law applicable to any of the Leased Assets. Except as otherwise required by Legal Requirements, Landlord and Tenant hereby acknowledge and agree that this Master Lease shall be treated as an operating lease for all purposes and not as a synthetic lease, financing lease or loan and that Landlord shall be entitled to all the benefits of ownership of the Leased Assets, including depreciation for all federal, state and local tax purposes. If any court of competent jurisdiction finds that this Master Lease is a financing arrangement, this Master Lease shall be considered a secured financing agreement and Landlord's title to the Leased Assets shall constitute a perfected first priority lien in Landlord's favor on the Leased Assets to secure the payment and performance of all the obligations of Tenant hereunder (and to that end, Tenant hereby grants, assigns and transfers to the Landlord a security interest in all right, title or interest in or to any and all of the Leased Assets, as security for the prompt and complete payment and performance when due of Tenant's obligations hereunder). Tenant authorizes Landlord, at the expense of Tenant, to make any filings or take other actions as Landlord reasonably determines are necessary or advisable in order to effect fully this Master Lease or to more fully perfect or renew the rights of the Landlord. At any time and from time to time upon the request of the Landlord, and at the expense of the Tenant, Tenant shall promptly execute, acknowledge and deliver such further documents and do such other acts as the Landlord may reasonably request in order to effect fully this Master Lease or to more fully perfect or renew the rights of the Landlord with respect to the Leased Assets. Upon the exercise by the Landlord of any power, right, privilege or remedy pursuant to this Master Lease which requires any consent, approval, recording, qualification or authorization of any governmental authority, Tenant will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that Landlord may be required to obtain from Tenant for such consent, approval, recording, qualification or authorization.

## **ARTICLE XV: REIT PROTECTION**

### **15.1 REIT Protection.**

(a) The Parties hereto intend that Rent and other amounts paid by Tenant hereunder will qualify as "rents from real property" within the meaning of Section 856(d) of the

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<sup>8</sup> NTD: Such pledge shall include all personal property (now or later acquired) relating to the Leased Assets, including optronics and similar equipment used to "light" fiber within the Leased Assets, and customer relationships served by the Leased Assets. Tenant will be required to retain and maintain such pledged assets in the ordinary course.

Code, or any similar or successor provision thereto and this Agreement shall be interpreted consistent with this intent.

(b) Anything contained in this Master Lease to the contrary notwithstanding, Tenant shall not without Landlord's advance written consent (which consent shall not be unreasonably withheld): (i) sublet, assign or enter into a management arrangement for the Leased Assets on any basis such that the rental or other amounts to be paid by the subtenant, assignee or manager thereunder would be based, in whole or in part, on either: (A) the income or profits derived by the business activities of the subtenant, assignee or manager; or (B) any other formula such that any portion of any amount received by Landlord would fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto; (ii) sublet, assign or enter into a management arrangement for the Leased Assets to any Person (other than a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of Landlord) in which Landlord owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Code); or (iii) sublet, assign or enter into a management arrangement for the Leased Assets in any other manner which could cause any portion of the amounts received by Landlord pursuant to this Master Lease or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto, or which could cause any other income of Landlord to fail to qualify as income described in Section 856(c)(2) of the Code. The requirements of this Section 15.1 shall likewise apply to any further subleasing by any subtenant.

(c) Anything contained in this Master Lease to the contrary notwithstanding, the Parties acknowledge and agree that Landlord, in its sole discretion, may assign this Master Lease or any interest herein to another Person (including without limitation, a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code)) in order to maintain Landlord's status as a "real estate investment trust" (within the meaning of Section 856(a) of the Code); provided, however, that Landlord shall be required to (i) comply with any applicable legal requirements related to such transfer, (ii) comply with any restrictions set forth in Section 13.8 with respect to a sale of the Leased Assets and (iii) give Tenant Notice of any such assignment; and provided, further, that any such assignment shall be subject to all of the rights of Tenant hereunder.

(d) Anything contained in this Master Lease to the contrary notwithstanding, upon request of Landlord, Tenant shall cooperate with Landlord in good faith and at no cost or expense to Tenant, and provide such documentation and/or information as may be in Tenant's possession or under Tenant's control and otherwise readily available to Tenant as shall be reasonably requested by Landlord in connection with verification of Landlord's "real estate investment trust" (within the meaning of Section 856(a) of the Code) compliance requirements. Anything contained in this Master Lease to the contrary notwithstanding, Tenant shall take such reasonable action as may be requested by Landlord from time to time in order to ensure compliance with the Internal Revenue Service requirement that Rent allocable for purposes of Section 856 of the Code to personal property, if any, at the beginning and end of a calendar year does not exceed fifteen percent (15%) of the total Rent due hereunder as long as such compliance does not (i) increase Tenant's monetary obligations under this Master Lease or (ii) materially and adversely increase Tenant's nonmonetary obligations under this Master Lease or (iii) materially diminish Tenant's rights under this Master Lease.

**ARTICLE XVI: MISCELLANEOUS**

**16.1 No Waiver.** No delay, omission or failure by Landlord to insist upon the strict performance of any term hereof or to exercise any right, power or remedy hereunder and no acceptance of full or partial payment of Rent during the continuance of any default or Event of Default shall impair any such right or constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Master Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach. No waiver of any rights under this Agreement will be effective unless made in writing by the Party waiving such rights.

**16.2 Remedies Cumulative.** To the extent permitted by law, each legal, equitable or contractual right, power and remedy of Landlord now or hereafter provided either in this Master Lease or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by Landlord of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Landlord of any or all of such other rights, powers and remedies.

**16.3 Notices.** Any notice, request or other communication to be given by any Party hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid and return receipt requested, by hand delivery or express courier service or by an overnight express service to the following address:

To Tenant: [ ● ]

With a copy to [ ● ]  
(that shall not  
constitute notice):

To Landlord: [ ● ]

With copy to [ ● ]  
(which shall not  
constitute notice):

or to such other address as either Party may hereafter designate. Notice shall be deemed to have been given on the date of delivery if such delivery is made on a Business Day, or if not, on the first Business Day after delivery. If delivery is refused, Notice shall be deemed to have been given on the date delivery was first attempted.

**16.4 Attorneys' Fees.** If Landlord or Tenant brings an action or other proceeding against the other to enforce or interpret any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Master Lease, or due to any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding and any appeal thereupon shall be paid all its costs and reasonable outside attorneys' fees incurred therein. In addition to the foregoing and other provisions of this Master Lease that specifically require Tenant to reimburse,

pay or indemnify against Landlord's attorneys' fees, Tenant shall pay, as Additional Charges, all of Landlord's reasonably outside attorneys' fees incurred in connection with the enforcement of this Master Lease (except to the extent provided above), including reasonable attorneys' fees incurred in the connection with the review, negotiation or documentation of any subletting, assignment or management arrangement or any consent requested in connection therewith, and the collection of past due Rent.

#### **16.5 Anti-Terrorism Representations.**

(a) Tenant hereby represents and warrants that neither Tenant, nor, to the knowledge of Tenant, any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are: (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on "List of Specially Designated Nationals and Blocked Persons" published by OFAC (collectively, "**Prohibited Persons**"). Tenant hereby represents and warrants to Landlord that no funds tendered to Landlord by Tenant under the terms of this Master Lease are or will be directly or indirectly derived from activities that may contravene U.S. federal, state or international laws and regulations, including anti-money laundering laws. If the foregoing representations are untrue at any time during the Term and Landlord suffers actual damages as a result thereof, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant.

(b) Tenant will not during the Term of this Master Lease knowingly engage in any transactions or dealings, or knowingly be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Leased Assets. A breach of the representations contained in this Section 16.5 by Tenant which causes Landlord to suffer actual damages shall constitute a material breach of this Master Lease and shall entitle Landlord to all remedies available hereunder, or at law or in equity.

**16.6 Survival.** Anything contained in this Master Lease to the contrary notwithstanding, all claims against, and liabilities and indemnities of Tenant or Landlord arising prior to the expiration or earlier termination of the Term shall survive such expiration or termination.

**16.7 Severability.** If any term or provision of this Master Lease or any application thereof shall be held invalid or unenforceable, the remainder of this Master Lease and any other application of such term or provision shall not be affected thereby.

**16.8 Non-Recourse.** Tenant specifically agrees to look solely to the Leased Assets for recovery of any judgment from Landlord (and Landlord's liability hereunder shall be limited solely to its interest in the Leased Assets, and no recourse under or in respect of this Master Lease shall be had against any other assets of Landlord whatsoever). It is specifically agreed that no constituent partner in Landlord or officer or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. The

provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord, or any action not involving the personal liability of Landlord. Furthermore, except as otherwise expressly provided herein, in no event shall Landlord or Tenant ever be liable to the other party for any indirect, special, punitive or consequential damages suffered by Tenant or Landlord, as applicable, from whatever cause.

**16.9 Successors and Assigns.** This Master Lease shall be binding upon Landlord and its successors and assigns and, subject to the provisions of Article XIII, upon Tenant and its successors and assigns.

**16.10 Governing Law.** THIS MASTER LEASE WAS NEGOTIATED IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. ACCORDINGLY, IN ALL RESPECTS THIS MASTER LEASE (AND ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT ALL PROVISIONS HEREOF RELATING TO THE CREATION OF THE LEASEHOLD ESTATE AND ALL REMEDIES SET FORTH IN ARTICLE XII RELATING TO RECOVERY OF POSSESSION OF THE LEASED ASSETS OF ANY LEASED ASSET (SUCH AS AN ACTION FOR UNLAWFUL DETAINER, IN REM ACTION, OR OTHER SIMILAR ACTION) SHALL BE CONSTRUED AND ENFORCED ACCORDING TO, AND GOVERNED BY, THE LAWS OF THE COUNTY OF THE STATE IN WHICH THE LEASED ASSET IS LOCATED.

**16.11 Waiver of Trial by Jury.** EACH OF LANDLORD AND TENANT ACKNOWLEDGES THAT IT HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY UNDER THE CONSTITUTION OF THE UNITED STATES AND THE STATE. EACH OF LANDLORD AND TENANT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION: (i) ARISING UNDER THIS MASTER LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF); OR (ii) IN ANY MANNER CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF LANDLORD AND TENANT WITH RESPECT TO THIS MASTER LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; EACH OF LANDLORD AND TENANT HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY, AND THAT EITHER PARTY MAY FILE A COPY OF THIS SECTION WITH ANY COURT AS CONCLUSIVE EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

**16.12 Entire Agreement.** This Master Lease and the Exhibits and Schedules hereto constitute the entire and final agreement of the Parties with respect to the subject matter hereof, and may not be changed or modified except by an agreement in writing signed by the Parties and, with respect to the provisions set forth in Section 15.1, no such change or modification shall be effective without the explicit reference to such section by number and paragraph. Landlord and Tenant hereby agree that all prior or contemporaneous oral understandings, agreements or negotiations relative to the leasing of the Leased Assets are merged into and revoked by this Master Lease.

**16.13 Headings.** All titles and headings to sections, subsections, paragraphs or other divisions of this Master Lease are only for the convenience of the Parties and shall not be construed to have any effect or meaning with respect to the other contents of such sections, subsections, paragraphs or other divisions, such other content being controlling as to the agreement among the Parties hereto.

**16.14 Counterparts.** This Master Lease may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

**16.15 Interpretation.** Both Landlord and Tenant have been represented by counsel and this Master Lease and every provision hereof has been freely and fairly negotiated. Consequently, all provisions of this Master Lease shall be interpreted according to their fair meaning and shall not be strictly construed against any party.

**16.16 Time of Essence.** TIME IS OF THE ESSENCE OF THIS MASTER LEASE AND EACH PROVISION HEREOF IN WHICH TIME OF PERFORMANCE IS ESTABLISHED.

**16.17 Further Assurances.** The Parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Master Lease. In addition, Landlord agrees to, at Tenant's sole cost and expense, reasonably cooperate with all applicable regulatory authorities in connection with the administration of their regulatory jurisdiction over Tenant and Tenant's Subsidiaries, including the provision of such documents and other information as may be requested by regulatory authorities relating to Tenant or any of Tenant's Subsidiaries or to this Master Lease and which are within Landlord's reasonable control to obtain and provide.

**16.18 Communications Regulations.** Notwithstanding anything to the contrary in this Master Lease or any agreement formed pursuant to the terms hereof, each of Tenant, Landlord, and each of Tenant's or Landlord's successors and assigns agrees to cooperate with any regulatory authority in connection with the administration of their regulatory jurisdiction over the Parties hereto, including, without limitation, the provision of such documents or other information as may be requested by any such regulatory authorities relating to Tenant, Landlord, Tenant's or Landlord's successors and assigns or to this Master Lease or any agreement formed pursuant to the terms hereof.

**16.19 Dispute Resolution.** Other than with respect to remedies available to Landlord with respect to Tenant's failure to make payment of Rent or Additional Charges, or a

portion thereof, the following procedures shall be used to resolve any dispute arising out of or in connection with this Master Lease (each, a “**Dispute**”):

(a) Following the written request of either Landlord or Tenant (a “**Request**”), the VP Representatives of each of Landlord and Tenant shall meet in person to attempt to resolve the Dispute that is the subject of the Request no later than twenty (20) days after the date of such Request. If, for any reason, the VP Representatives do not resolve the Dispute at their meeting, then the SVP Representatives of each of Landlord and Tenant shall meet in person to attempt to resolve the Dispute no later than twenty-five (25) days after the date of the VP Representatives’ meeting. A meeting date and place shall be established by mutual agreement of Landlord and Tenant. However, if the Parties are unable to agree, the meeting shall take place at Landlord’s offices.

(b) If a Request is delivered by either Landlord or Tenant, the Parties agree to make a diligent, good-faith attempt to resolve the Dispute that is the subject of such Request during the forty-five (45) day period described in Section 16.19(a).

(c) All negotiations in connection with the Dispute shall be conducted in strict confidence, non-binding and without prejudice to the rights of the Parties in any future legal proceedings.

(d) If the Parties are unable to resolve such Dispute within such forty-five (45) day period described in clause (a) above, then either party may pursue any remedy it may have hereunder or at law or in equity.

**16.20 No Third-Party Beneficiaries.** Landlord and Tenant hereby acknowledge that they do not intend for any other Person to constitute a third-party beneficiary hereof, except for any permitted successors and/or assigns.

SIGNATURES ON FOLLOWING PAGE