

## Master Services Agreement

This **MASTER SERVICES AGREEMENT** ("MSA") is entered into by and between FiberLight, LLC, a Delaware limited liability company, on behalf of itself and its controlled affiliates (collectively, "FBL"), whose principal place of business is located at 3000 Summit Place, Suite 200, Alpharetta, Georgia 30009, and You ("Customer") (each a "Party" and, collectively, the "Parties"). Other capitalized or defined terms in this MSA shall be defined herein or within the Defined Terms Supplement (available at <https://www.fiberlight.com/terms-and-conditions/>).

The service(s) referenced in this MSA ("Service" or "Services") are offered to Customer by FBL. This MSA sets forth the legal rights and obligations governing FBL's offer, provisioning, and delivery of Services, and Customer's receipt and use thereof. Customer shall contract for, and order, Service on an FBL-designated order form. The Agreement shall consist of this MSA, the Defined Terms Supplement, any applicable Product Riders, and the Acceptable Use Policy ("AUP") (collectively, the "Agreement").

### ARTICLE 1 – SERVICES PROVIDED & ORDERING

**1.1** Customer may request Services from FBL. Each Service has Service-specific terms detailed on the applicable Product Rider attachment(s) ("Product Rider(s)"): (i) A- Ethernet Product Rider, (ii) B- Enhanced Dedicated Internet Access (DIA) Product Rider, (iii) C- Wavelength Product Rider, (iv) D- Dark Fiber Lease Product Rider, and (v) E- Cloud Connect Product Rider.

**1.2** Customer shall request the applicable Services by submitting a Customer-executed FBL-designated order form. An order form is pending until countersignature by FBL ("Order"). Upon an Order being fully executed, FBL will provide to Customer a Firm Order Commitment date ("FOC") in accordance with the intervals for the applicable Service.

**1.3** The offer, provisioning, and delivery of Services are subject to FBL receiving all required approvals or authorizations from regulatory agencies having jurisdiction over the Services or FBL.

### ARTICLE 2 – OBLIGATIONS/LIMITATIONS & SERVICE ACCEPTANCE

#### 2.1 Availability of Facilities.

(a) Service is offered and furnished subject to the availability of all necessary facilities, including those acquired by FBL from or through third parties. FBL may limit or allocate Service, if necessary, due to facility availability.

(b) Except as expressly provided otherwise, FBL, following the provision of reasonable notice to Customer, may: (i) alter the methods, processes, or suppliers by or through which it provides Service, (ii) discontinue supporting an application associated with Service, (iii) change the facilities used to provide Service, or (iv) substitute comparable Service to Customer.

(c) Except as expressly provided otherwise, any Third Party Facility used to provide Service will be of FBL's exclusive choosing. In no event will title to Third Party Facility vest in Customer or others.

(d) In the event Customer requires a Service from FBL to be routed through a third-party data center, which charges a fee to FBL based upon the connection of the receiving party, FBL shall pass through any Costs to Customer.

**2.2 Tariff Service.** This Agreement incorporates any applicable tariff affecting the Service being furnished to Customer in accordance with federal, state, or local law. Terms and conditions in this Agreement may supplement but not vary those established in a tariff. If an applicable tariff is cancelled during the term of this Agreement, the change in terms and conditions will be incorporated into and made part of this Agreement as of the effective date of cancellation.

#### 2.3 Resale of Services.

(a) Customer is the customer-of-record for Service(s) acquired. If Customer resells Service(s) or incorporates Service(s) into services it provides to its carrier customers or end users, Customer will be solely responsible for interfacing with its carrier customers or end users with respect to all matters pertaining to its services including, without limitation, service provisioning, billing and collection, dispute resolution, and crediting. FBL will have no

obligation to interact with Customer's carrier customers or end users, nor will FBL incur any liability to them for its performance under this Agreement. Customer is responsible for the payment of all charges for Service(s) furnished to it, its carrier customers, or their end users. This responsibility is not diminished or otherwise affected by any: (i) use, misuse, fraud, or abuse by Customer, its employees, its carrier customers, or its end users, or (ii) Customer inability to collect payments or charges from its carrier customers, their end users, or others.

(b) Customer is responsible for enforcing all applicable provisions of this Agreement on its end users, its carrier customers, and their end users, and any liability arising from a violation of a Customer obligation under this Agreement. If FBL discontinues providing Service(s) to Customer for any reason, Customer will be solely responsible for furnishing any required notice to its affected carrier customers or their end users.

**2.4 Access to Premises.** Customer will provide unrestricted access and, if necessary, escort FBL, its agents, or contractors to Customer and end user premises to allow FBL to provision, inspect, maintain, repair, service, or retrieve FBL Service-related equipment situated on Customer or end user premises, including within a designated building's phone closet(s) or telecommunications room ("Required Area"). If Customer does not hold access rights to the Required Area, Customer shall acquire such access rights or provide the necessary letter of authorization so FBL may timely perform its obligations. In the event FBL must assist Customer in acquiring access rights, Customer shall be responsible for any Costs FBL incurs during the procurement and continuation of said access rights. In the event of a technical malfunction or emergency, Customer shall ensure FBL unrestricted access to the Required Area. Customer's failure to cooperate or provide access shall release FBL from its obligations for any SLA in the applicable Product Rider. Customer shall cooperate with FBL throughout the term of the Order, including during installation process in which Customer shall provide FBL, in a timely and accurate manner, detailed demarcation information and onsite contact listings, complete technical questionnaires as necessary, and be physically present at the time of installation. Customer's failure to cooperate or provide access during the installation process shall release FBL from any SLA or installation guarantee, but it will not suspend the Service Date (defined in Section 2.6 below).

**2.5 Delays; Non-performance.** FBL shall not be liable to Customer for any delays in meeting a requested Service Date. The provisioning intervals for all Services shall be provided by FBL to the Customer on an individual case basis. With respect to any Services provided entirely on FBL-owned facilities ("FBL Facilities"), Customer shall have the right, upon written notice to FBL, to extend the FOC by up to thirty (30) calendar days. With respect to any Services provided in whole or in part on any Third Party Facility, Customer's ability to extend the FOC shall be determined in FBL's sole discretion and additional charges may apply.

**2.6 Service Delivery & Acceptance.** Prior to delivering Service(s) to Customer, FBL will perform testing procedures, as indicated in the

applicable Product Rider(s), to ensure the Service conforms to technical specifications. Except in instances defined in Section 2.7 below, FBL shall notify Customer when the Service has been successfully installed and is available for Customer's use ("Service Date"). Customer shall have five (5) calendar days to verify the Services ("Verification Period") and provide FBL with written notice of any rejection to [noc@fiberlight.com](mailto:noc@fiberlight.com). Failure by Customer to reject the Service within the Verification Period shall be deemed an automatic acceptance of the Service and FBL shall begin bill Customer for Services ("Billing Start Date"). Any use of a Service, other than for verification testing, shall constitute immediate acceptance and the Billing Start Date shall commence.

**2.7 Customer Not Ready ("CNR") Process.** In the event Customer, through no fault of FBL, failed to fulfill its obligations, either as noted in Section 2.4 above or otherwise that were necessary for FBL to successfully install and make Services available to Customer on the Service Date, FBL shall charge Customer a CNR Fee equal to one (1) month of the corresponding Order's MRC for each thirty (30) day period in which FBL must delay the Service Date ("CNR Fee"). For clarity, if the Service Date cannot occur as the result of Customer's actions or inactions, a CNR Fee shall apply. The CNR Fee shall not be pro-rated; i.e., a delay of forty-four (44) days shall be billed as though a sixty (60) day delay occurred. Upon written notice that Customer has completed its outstanding obligations delaying the Service Date, the CNR Fee shall cease, and FBL shall have thirty (30) days to provide Customer with a Service Date. The Parties agree to follow the process outlined in Section 2.6 upon the notification of a Service Date. The Parties agree the CNR Fee described in this Section 2.7 is a good faith estimate of FBL's actual damages and is not a penalty. Any CNR Fee shall be paid to FBL within thirty (30) days of receipt of an invoice.

## ARTICLE 3 - BILLING; PAYMENT; SPECIAL CONSTRUCTION

**3.1 Billing.** Customer shall be responsible for all Non-Recurring Charges ("NRC") and Monthly Recurring Charges ("MRC") as set forth on the Order. MRCs are billed one (1) month in advance and NRCs are billed NET30 from the Order date unless otherwise noted. If Service is made available on a day other than the first day of a monthly billing period, or if Service is discontinued on a day other than the last day of a monthly billing period, the MRC will be prorated for the monthly billing period. All invoices to Customer shall be at the address provided to FBL below. FBL reserves the right to bill Customer retroactively for any Services received by Customer, not previously billed to Customer, or any amounts billed in error.

**3.2 Customer Payment Obligation.** Except as provided in Section 3.7 below, Customer must pay all invoiced charges without deduction or setoff within thirty (30) days of the date of an invoice ("Payment Period"). Payment shall be made by check or electronically. Any restrictive endorsements or statements placed on checks and accepted by FBL will not be binding on FBL. If Customer's check is returned for non-payment, Customer shall be assessed a return check fee. FBL shall not accept payment by credit or debit card.

**3.3 Billing Remittance Information.** FBL shall send Customer all invoices related to this MSA to the address provided by Customer. Customer may change the billing address upon providing written notice to FBL (email to [billing@fiberlight.com](mailto:billing@fiberlight.com) being sufficient) of the new address.

**3.4 Late Payments.** Compounded interest at the rate of one and one-half percent (1.5%) or the maximum allowed by law, if less, per monthly billing period, may be charged on invoiced charges not paid within the Payment Period. In addition, Customer may be required to reimburse FBL for all reasonable costs incurred in connection with collection activities, including attorneys' fees and court costs.

**3.5 Consequences of Non-Payment.** If Customer does not make payment of invoiced charges in accordance with Article 3 and fails to correct such non-payment, including any applicable late fees, interest, and mailing charges, within ten (10) business days of receipt of written notice from FBL as described in Section 17, then FBL may, at its option, do one or more of the following: (i) refuse to accept additional Orders, (ii) without further notice, suspend Service furnished under this MSA or any other service agreement until Customer has paid all past due amounts owed, with interest, or (iii) offset unpaid balances with amounts FBL may owe Customer under any other agreement between the Parties. Following any suspension of Service for non-payment, Service may not be restored until Customer pays all charges then due, including any late fees, mailing charges, interest, collection costs, and reconnection fees, in full, and provides FBL with satisfactory assurances of its ability to pay during the remainder of the Service term, as set forth on the applicable Order.

**3.6 Credit Approval and Deposits.** Upon request, Customer shall provide FBL with credit information. FBL may require Customer to make a deposit as a condition of FBL's acceptance of any Service or continuation of any Service where Customer fails to timely make any payment due hereunder, or if FBL reasonably determines Customer has had an adverse change in financial condition. Failure to comply with a request for deposit may result in Service suspension. At FBL's sole discretion, deposits collected may be credited to Customer's account prior to or at discontinuation of Service and the balance, if any, will be refunded.

**3.7 Bill Disputes.** To dispute an invoice, Customer must submit a Billing Dispute/Credit Request Form (available at [www.fiberlight.com/additional-forms/](http://www.fiberlight.com/additional-forms/)). Upon submission of the completed Bill Dispute/Credit Request Form, Customer, in good faith, may withhold the disputed portion of the invoiced charges, but must pay the remainder of the invoice within the Payment Period. No charge may be disputed more than ninety (90) days after the date of the invoice on which a charge appears. Any Customer payment of a charge timely disputed and in the manner required will not deprive Customer of its right to dispute the charge. FBL shall promptly investigate Customer's claim and attempt to resolve the dispute within thirty (30) days of FBL's receipt of the Customer's notice. Following an investigation in which Customer co-operates with FBL, FBL may in good faith reject Customer's claim, in whole or in part, and shall advise Customer of the reason for its action. If the dispute is not resolved to Customer's satisfaction, the Parties may further address the dispute pursuant to Article 15 below.

**3.8 Bill Dispute Consequences.** If a disputed amount withheld is determined to have been a legitimate charge and disputed in bad-faith, interest at the rate of one and one-half percent (1.5%) may be charged on the amount not paid within the original Payment Period, and Customer must pay the total amount due within ten (10) business days of its receipt of the determination from FBL.

**3.9 Special Construction or Acquisition.** Notwithstanding anything to the contrary in this MSA, if FBL is required to specially construct or acquire a telecommunications facility from a third party to provide Service, and the costs thereof are not included in the MRC for the affected Service(s), the Parties will agree in writing on the estimated charges applicable to the construction or acquisition prior to the undertaking of the activity by FBL. If Customer cancels this MSA or any Order involving special construction or acquisition after the acceptance of an Order, but prior to the Service Date, Customer shall reimburse FBL for all unpaid costs and expenses incurred by FBL in connection with the special construction or acquisition up to the date of cancellation. This payment obligation is in addition to any other rights and remedies FBL may have at law, in equity, or as provided in this MSA.

**3.10 Consumer Price Adjustment.** Unless specifically limited within

the Order, the MRC for Services governed by the D – Dark Fiber Lease Product Rider shall be adjusted annually effective December 31st of each year by the greater of (i) four percent (4%) or (ii) the cumulative increase in the U.S. Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average, published by United States Department of Labor, Bureau of Labor Statistics (“CPI Adjustment”) for the preceding twelve (12) month period.

#### ARTICLE 4 – ASSESSMENTS, TAXES, AND EXCEPTIONS

**4.1 Applicability.** Customer shall be responsible for all applicable federal, state, or local use, excise, sales, value added or privilege taxes, duties, franchise, telecommunications fees, universal service fund fees, surcharges or any other taxes, fees, duties, charges, or surcharges imposed on or incident to the provision, sale or use of Services provided by FBL or as required of FBL based upon the filing of any applicable federal, state, or local tariff (“Assessments”). Additionally, Customer will be responsible for a pro-rata share of mandated statutory charges incurred by FBL for property taxes and right of way charges related to Services provided to Customer (“Recovery Fees”). MRCs and other Service charges do not include applicable Assessments or Recovery Fees and such charges will be shown separately on Customer’s invoice.

**4.2 Exemption Certificate.** If Customer believes itself to be exempt from Taxes, it may provide FBL with a valid exemption certificate. If the certificate is accepted, FBL shall cease imposing the applicable Assessments. No exemption shall be applied retroactively to any period prior to the date Customer provides such certificate. Additionally, if a Customer is (i) exempt from FED USF fees as defined by the Federal Communications Commission (“FCC”), (ii) has an active FCC Form 499-A, and (iii) completes the Annual Reseller Certification provided by FBL to Customer, then Customer shall not be required to pay the federal universal service fund fee.

**4.3 Survival.** Customer’s obligation to pay Assessments and Recovery Fees under this Article 4 will survive the expiration or early termination of the applicable Order.

#### ARTICLE 5 – TERM; TERMINATION; EARLY TERMINATION CHARGES

**5.1 Intentionally omitted.**

**5.2 Order Term.** Each Order shall set forth the term for the applicable Service. Each Order shall automatically renew for a twelve (12) month term at one-hundred and fifteen percent (115%) of the current rates if a new term is not negotiated by the Parties prior to the expiration of the Order term.

**5.3 Termination of an Order for Service.** If Customer terminates an Order for any reason, Customer must provide written notice, in compliance with Section 17 below, (i) clearly identifying the affected Service(s), including the circuit ID and its primary and secondary locations, and the requested date of termination, and (ii) confirming any third-party connection to FBL ports have been, or will be disconnected. Termination of any Order may not occur with less than ninety (90) days written notice. A purported termination will be ineffective, and Customer will remain fully obligated to FBL for the Services if Customer’s termination notice does not comply, either in form or in substance with the requirements above.

**5.4 Early Termination Liabilities.** If a Customer terminates an Order other than for cause, Customer shall be subject to an early termination liability equal to the MRC multiplied by the number of remaining months in the Order term, plus any waived/outstanding installation, third party provisioning, and/or construction charges (“ETL”). The Parties agree the ETL described in this Section 5.4 is a good faith estimate of FBL’s actual damages and is not a penalty. Any ETL shall be paid to FBL within thirty (30) days of receipt of an invoice.

#### ARTICLE 6 - WARRANTIES

Each Party represents and warrants it is duly organized, validly existing, in good standing under the laws of the place of its origin and possesses the authority necessary to fulfill its obligations under this Agreement. Customer represents and warrants all Customer traffic handled by FBL, and all Customer-furnished service to Customer’s end users, are compliant with applicable legal requirements and those established in this Agreement, and Customer possesses, and will maintain, all licenses, approvals, registrations, and certifications required by regulators or other third parties to furnish its services. **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED “AS IS,” AND NEITHER FBL NOR ANY AFFILIATE MAKES ANY WARRANTY, CONDITION, OR GUARANTEE WITH RESPECT TO THE SERVICES OR TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICES, UNDER THIS AGREEMENT OR OTHERWISE. THE SERVICES ARE PURCHASED WITH KNOWLEDGE OF THIS WARRANTY LIMITATION. FBL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. FBL DOES NOT MONITOR, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR, THE CONTENT OF ANY COMMUNICATION TRANSMITTED BY CUSTOMER OR OTHERS AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR UNAUTHORIZED USE OR MISUSE OF THE SERVICES.**

#### ARTICLE 7 - DEFAULT

**7.1 Default Events.** A default exists under this Agreement if:

- (a) A Party violates any of its representations or warranties,
- (b) Customer fails to pay amounts due under this Agreement and such failure is not cured by Customer within ten (10) business days after FBL’s written notice of such failure, or
- (c) either Party otherwise breaches a material provision of this Agreement and such breach is not cured within thirty (30) days after the non-breaching Party provides written notice of such breach (or such shorter period of time as required by this Agreement), provided that if the breach is of a nature that it cannot be reasonably cured within the cure period specified herein, a default will not occur, so long as the defaulting Party has commenced to cure within said cure period and thereafter diligently pursues such cure to completion.

**7.2 Service Credit Exception.** Unless otherwise provided, any failure of Service resulting in Service Outage credits, as defined in the applicable Product Rider(s), is not a default event entitling Customer to terminate the affected Order.

**7.3 Termination for Breach.** In addition to remedies available at law or in equity, the non-defaulting Party may terminate the impacted Order.

**7.4 Payment Default.** A payment default resulting in termination of an Order will entitle FBL to collect any ETL, including additional fees set forth in Section 3.5, from Customer in addition to pursuing other available remedies.

#### ARTICLE 8 - LIMITATION OF LIABILITY

**FBL’S ENTIRE LIABILITY, AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT (OTHER THAN FOR ANY FAILURE OF SERVICE), IS CAPPED AT SIX (6) TIMES THE MRC OF THE ORDER UNDER WHICH THE CLAIM ARISES.** The foregoing limitations apply to all causes of action and claims irrespective of their nature, including breach of contract, breach of warranty, strict liability, negligence, misrepresentation, or any other tort. Notwithstanding, the



Customer's sole remedy for any failure of Service is the right to receive Service Outage Credits, if applicable and as set forth in the applicable Product Rider(s).

#### ARTICLE 9 - CONFIDENTIAL INFORMATION

Each Party must protect the other Party's confidential or proprietary information disclosed in accordance with this Agreement, relating to such party's business and technology, including without limitation, its products, customer lists, pricing, development and marketing plans, and financial information, whether or not marked "Confidential", and whether in written or oral form, ("**Confidential Information**") with the same degree of care used to protect its own confidential information, but in no event less than a reasonable standard of care be used by either Party in connection with the preservation of the other Party's Confidential Information. Notwithstanding the foregoing, if the Parties have executed a Non-Disclosure Agreement ("**NDA**") either prior to the Effective Date of or contemporaneous with this Agreement, the Parties will comply with the terms and conditions thereof.

#### ARTICLE 10 - INDEMNIFICATION

**10.1 Indemnification.** Each Party will defend, indemnify, and hold harmless the other Party, its employees, directors, officers, and agents, from and against any suit, proceeding, or other claim brought by an entity (not a party to or an Affiliate of a party to this Agreement) that is caused by, arises from, or relates to: (i) damage to real or tangible personal property or personal injuries (including death), arising out of the negligence or willful act or omission of a Party in the provision, performance, or use of the Service, or (ii) a Party's violation of any of its representations or warranties.

**10.2 Intellectual Property.** If Service, by itself as provided by FBL, becomes the subject of a suit, proceeding, or other claim by an entity (not a party to or an Affiliate of a party to this Agreement), that the Service directly infringes U.S. patent, trademark, or copyright rights of such entity, FBL at its own expense and option will: (i) procure the right to continue to provide Service, (ii) modify or replace Service with a different one having substantially similar functionality, or (iii) discontinue the Service and, as appropriate, refund to Customer a pro-rata portion of charges paid by Customer through the date of Service discontinuance. Customer shall indemnify, defend, release, and hold harmless FBL and its indemnitees from, and against, any third-party claims based on infringement of copyright, patents, trade secrets, or other intellectual property brought against FBL and its indemnitees arising from, or in connection with, Customer's (or its end users') traffic on the Service.

**10.3 Procedure.** If a claim is made against FBL or Customer, the Party in receipt of the claim ("**Indemnified Party**") will notify the other Party ("**Indemnifying Party**") in writing no later than sixty (60) days after learning of a potential claim. The Indemnifying Party will be entitled to assume sole control of the defense of the claim and all related settlement negotiations. The Indemnified Party will provide assistance, information, and authority reasonably necessary to assist the Indemnifying Party. A Party may not settle a claim without the other's consent if the settlement would impose an obligation on, or require an admission by, the other Party. Failure of the Indemnified Party to provide notification of a claim will not relieve the Indemnifying Party of its obligations under this Agreement, except to the extent the delay prejudices the Indemnifying Party.

**10.4 Limitation and Survival.** Sections 10.1 and 10.2 above set forth the entire liability of FBL, and Customer's sole and exclusive remedies, with respect to any claim subject to indemnification under this Agreement. These indemnification obligations will survive this Agreement.

#### ARTICLE 11 – CONSEQUENTIAL DAMAGES

Neither Party is liable to the other for any consequential or special damages of any kind or nature whatsoever including, without limitation, any lost profits, or any other business loss including goodwill, and downtime costs, regardless of foreseeability or whether damages are caused by the negligence, willful misconduct, or wrongful act arising from or related to this Agreement.

#### ARTICLE 12 – ACCEPTABLE USE, MAINTENANCE, & FACILITIES

**12.1 Acceptable Use Policy.** Customer's use of FBL's Services or network may not include any material in violation of any law, regulation, or the AUP. The AUP may be modified by FBL without prior notice to Customer at any time. FBL will investigate all alleged violations of the AUP, and any violation of the AUP by Customer or any of Customer's end users may result in termination of this Agreement and subject Customer to liability for ETL.

**12.2 Protecting Customer Proprietary Network Information ("CPNI").** FBL may access, use, and disclose CPNI as permitted or required by applicable laws, rules, regulations, or this Agreement. FBL may disclose CPNI to representatives authorized by Customer via any means authorized by FBL, including, without restriction: (a) the Customer's email address(es) of record (if any) or other email addresses furnished by Authorized Customer Representatives, (b) telephone number(s) of record or other telephone numbers provided by Authorized Customer Representatives, (c) the Customer's postal (US Mail) address(es) of record or to other postal addresses furnished by Authorized Customer Representatives, or (d) FiberLight's online customer portals or other online communication mechanisms.

**12.3 Emergency Maintenance.** FBL shall be responsible for maintaining the Services under this Agreement as set forth in the applicable Product Rider. Unless otherwise authorized, Customer is prohibited from performing or accessing the FBL network to conduct maintenance or repairs without the prior express written authorization of FBL. With respect to Services provided on FBL Facilities, FBL will use all commercially reasonable efforts to: (i) repair network equipment within a MTTR of two (2) hours of when FBL's technical representative arrives on the applicable site where the equipment is located, not to exceed a total of four (4) hours from the time the Service Outage is reported, and (ii) have the first fiber on a cable cut restored within a MTTR of six (6) hours of when FBL's technical representative arrives on the applicable site where the cable cut is located, not to exceed a total of eight (8) hours from the time the Service Outage is reported. FBL will undertake repair efforts on equipment or fiber when FBL first becomes aware of the problem, or when notified by Customer and Customer has released all or part of the Service for testing, at which point a trouble ticket will be established. FBL maintains a twenty-four (24) hour Network Operation Center ("**NOC**") which Customer may contact by calling toll-free at **1-800-672-0181** or [noc@fiberlight.com](mailto:noc@fiberlight.com). FBL shall ensure that specific preparations are made to maintain the readiness and accessibility of the personnel, materials, and equipment required. The failure of FBL to meet MTTR shall not constitute a default, and FBL shall not be liable to pay Customer any penalties, damages, or credit any portion of the MRC or NRC.

**12.4 FBL Facilities, Equipment, and Software.** Nothing contained in this Agreement can be interpreted as conveying to Customer any right, title, or interest in the FBL Facilities, even if attached to or embedded in realty. Customer may not remove or conceal any identifying plates, tags, or labels affixed to FBL Facilities, nor may Customer alter, or attempt to alter, software furnished as part of the Service. FBL may substitute, modify, or rearrange the FBL Facilities so long as the quality of Service is not impaired by the changes. Upon termination of Service for any reason, FBL will retrieve the FBL Facilities from Customer premises or Customer, at

its expense, will return the FBL Facilities to FBL, in the same condition, normal wear and tear excepted, within thirty (30) days of Service termination. If Customer fails to return the FBL Facilities, or allow for the retrieval, Customer shall reimburse FBL, upon demand, for the replacement cost of the FBL Facilities as well as any costs incurred by FBL resulting from the Customer's failure to return the FBL Facilities.

**12.5 Routine and Planned Maintenance.** FBL shall use commercially reasonable efforts to notify Customer in advance of planned intrusive activities on the FBL System that may impair or eliminate signal continuity. Intrusive cable activities are those, which require FBL to directly handle a fiber, ribbon, or buffer tube and are normally scheduled during the "off-peak" hours, typically 6PM to 6AM local time. Non-intrusive cable activities and all other maintenance measures, which do not physically expose a buffer tube, ribbon, or fiber, may be performed during regular business hours without notice. Emergency repairs are not planned intrusive activities and are subject to Section 12.3 above. FBL will perform routine maintenance, excluding: (i) work necessitated by Customer's negligence or willful misconduct, (ii) Customer's elective maintenance or repair requests, and (iii) maintenance made necessary by natural disasters, impairment of the FBL System or other emergencies, including inspections or repair of the Manhole(s)/Handhole(s), pole footings, loose or damaged hardware, checking for code violations and change-outs, and/or general upkeep of the FBL System. FBL shall inspect the FBL System path annually. FBL maintains signposts along the FBL System path and these markers identify the route and are typically placed near splice locations, points where the route changes direction. FBL subscribes to local utility "one call" services for the FBL System. Unless specifically excluded in the relevant Order, Customer shall reimburse FBL for its proportionate share of the Costs related to any required relocation and for its proportionate share of any non-routine maintenance.

**12.6 Service Outage.** Unless defined otherwise in the applicable Product Rider(s), a Service Outage shall begin upon the earlier of: (i) FBL's actual knowledge, or (ii) Customer informing the FBL NOC of such Service Outage and shall end upon the correction of the loss of service. Service Outage(s) specially excludes any condition caused by: (i) Force Majeure, (ii) routine or planned maintenance, as described in Section 12.5 above, (iii) the negligence or willful misconduct of Customer, (iv) the failure or malfunction of Customer Equipment, or (v) Customer, its carrier customer, or end user continues to use the Services on an impaired basis. In the event FBL is impeded by either Customer or a non-FBL affiliated third party in correcting the Service Outage, including situations in which FBL is not given access to the FBL Facilities required to provide the Services, or to remedy any Service Outage, the duration of such impediment will not be included in the calculation for the duration of the Service Outage. Customer shall submit a Billing Dispute/Credit Request Form (available at [www.fiberlight.com/additional-forms/](http://www.fiberlight.com/additional-forms/)), and upon a determination by FBL of a Service Outage, a credit shall be applied against the Customer's MRC on the billing statement following the Service Outage ("**Service Outage Credit**"). In the event Customer has not reported the Service Outage to FBL within thirty (30) days from the date the Service was affected, no Service Outage Credit(s) will be provided to Customer. In no event shall Customer be entitled to a Service Outage Credit(s) greater than one hundred percent (100%) of the MRC in any given month. For clarity, in the event a Service Outage extends from one calendar month to the next, Customer will be entitled to a one-time credit as the event shall be considered a single Service Outage occurrence.

## ARTICLE 13 – DEMARCATION POINTS

**13.1 Within a Third-Party Data Center.** If Service delivery takes place within a third-party data center, FBL will deliver the Service at a Demarcation Point. Unless otherwise agreed, Customer will, at its own cost, provide, maintain, and operate the necessary wiring ("**Cross-Connect**") to connect to FBL's service at the indicated Demarcation Point. If Customer and FBL agree FBL shall provide such Cross-Connect, then FBL will provide such Cross-Connect as a fee indicated on the Order.

**13.2 Within an On-Net Building.** If Service delivery takes place On-Net, FBL will deliver the Service at a Demarcation Point. For an additional fee, FBL will provide the necessary wiring along the cable chase ("**Riser**") between the building entry and the indicated Demarcation Point. In the event the Customer determines it necessary to extend the Demarcation Point or minimum point of entry ("**MPOE**") through the provision of additional infrastructure, cabling, electronics, or other materials necessary to reach the Customer Location, FBL shall charge Customer for additional Costs not otherwise set forth in the Order.

**13.3 At an Off-Net Customer Location.** If Off-Net Services are being delivered to the Customer location through a third-party local loop, to be provisioned by FBL on behalf of Customer, the Parties agree the Order charges assume Service will terminate at a pre-established Demarcation Point or MPOE in the building housing the Customer Location as determined by the local access provider. In the event the local access provider determines it necessary to extend the Demarcation Point or MPOE through the provision of additional infrastructure, cabling, electronics, or other materials necessary to reach the Customer Location, FBL shall charge Customer additional NRC not otherwise set forth in the Order. It shall be the Customer's responsibility to allow access to the Customer Location to the local access provider, and coordinate any additional space and electricity determined by the local access provider to be necessary with property management, if applicable. FBL may provide budgetary estimates based on known Costs or typical, non-extraordinary installations by the local access provider for the extension of the Demarcation Point to the Customer Location within the Order. FBL will notify Customer of any additional Costs as soon as practicable in the event FBL is notified by the local access provider of such charges.

**13.4 Selected Third Party Facility Issues.** In the event FBL, in its sole discretion, is unable to provision Service through the Third Party Facility, FBL reserves the right, regardless of Order acceptance, to suspend provisioning of the Service or cancel the Order after providing Customer with written notice. In the event FBL elects to cancel the Service ordered, the affected Order will be cancelled without incurring cancellation or ETL liability.

## ARTICLE 14 - FORCE MAJEURE

FBL shall not be liable for any delay, failures to perform, damages, losses, or any consequence thereof, arising directly out of: (i) acts of God, such as fire, flood, earthquake, pandemic, epidemic, or other natural cause, (ii) terrorist events, riots, insurrections, war, or national emergency, (iii) strikes, boycotts, lockouts, or other third-party labor dispute, (iv) judicial order, legal prohibition, administrative ruling, or other action or inaction of any governmental authority, but only, in the case if the event is not the result of any negligent or intentionally wrongful act or omission of the affected Party, or its subcontractors, agents, or representatives, or to removable or remedial causes that the affected Party or its subcontractors, agents, or representatives fail to remove or remedy using reasonable efforts and within a reasonable period of time, (v) Permit delays caused by local, municipal, state, or federal agencies, or (vi) fiber cut caused by a third party without any negligence by FBL and such third party is not a subcontractor, agent, or representative of FBL ("**Force Majeure**").

## ARTICLE 15 - DISPUTE RESOLUTION

Except as otherwise provided in this Agreement, any dispute, controversy, or claim (individually and collectively, a "Dispute") arising under this Agreement shall be resolved in accordance with the procedures set forth herein. In the event of a Dispute, and upon the written request of either Party, each of the Parties shall appoint within five (5) business days after a Party's receipt of such request, a designated representative who has authority to settle the Dispute. The designated representatives shall meet as often as they reasonably deem necessary to discuss the Dispute and negotiate in good faith to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives. However, all reasonable requests for relevant information made by one party to the other shall be honored. If the Parties are unable to resolve issues related to a Dispute within thirty (30) days after a party's request is made for appointment of designated representatives, as set forth above, either Party may seek any relief to which it is entitled to under applicable law.

## ARTICLE 16 - ASSIGNMENT

FBL may transfer or assign its rights or delegate its obligations under this Agreement and specific Orders under this Agreement, provided the assignment of such Orders shall include the transfer of replicated terms and conditions of this Agreement to the assignee accepting assignment of such Orders, without the prior express written consent of Customer. Customer may transfer or assign its rights or delegate its obligations under this Agreement and specific Orders under this Agreement, provided the assignment of such Orders shall include the transfer of replicated terms and conditions of this Agreement to the assignee accepting assignment of such Orders, with the prior express written consent of FBL. If this Agreement is assigned to an entity that, prior to the assignment, had an agreement with FBL, the Service being provided will continue to be governed by that prior agreement, and the Service provided under this Agreement will be governed by this Agreement, each without reference to the other. Any transfer, assignment, or other action in violation of this Section shall constitute a material breach and be null and void.

## ARTICLE 17 - NOTICES

FBL may modify Service charges pursuant to notice requirements established in the applicable Product Rider(s) or Order per regulatory direction to do so. Except for the notice requirement in Section 3.7, all other notices under this Agreement, including any notice pertaining to termination of an Order, must be in writing and delivered via overnight delivery (i.e., Federal Express, Airborne Express, United Parcel Service, DHL, or Worldwide Express) or United States Postal Services Certified Mail to the business address specified above, charges prepaid, and notice is effective upon delivery as stated by the delivery service. Either Party may change its address and/or contact(s) by notifying the other Party in writing.

## ARTICLE 18 - MISCELLANEOUS

**18.1 Applicable Law and Venue.** This Agreement will be governed by the laws of the state of Georgia without regard to choice of law principles. Any action arising out of or relating to this Agreement must be brought exclusively in state courts located in Fulton County, Georgia, or in the United States District Court for the Northern District of Georgia. Customer waives any right or entitlement to bring an action in other venues.

**18.2 Agency, Partnership, and Third Parties.** Neither Party becomes the agent or legal representative of the other Party as a result of this Agreement, nor does it create a partnership or joint venture between the Parties. In addition, this Agreement confers no rights,

benefits, or remedies of any kind on third parties including, without limitation, Customer's carrier customers and any end users.

**18.3 Non-Waiver.** The failure of a Party to insist on the strict enforcement of any provision of this Agreement will not constitute a waiver of the provision or of either Party's rights or obligations under this Agreement. No waiver of any provision in this Agreement will be binding unless in writing and signed by both Parties.

**18.4 Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior offers, discussions, negotiations, representations, warranties, understandings, and any other agreements, whether oral or written, concerning the subject matter contained herein. The attachments, exhibits, and other documents to which reference has been made are integrated parts of this Agreement. In the event of an inconsistency between a term or condition between the Order and this Agreement, the order of priority, from the most to the least controlling, shall be the: (i) Order, including any properly incorporated amendments thereto, (ii) Product Rider(s), as defined in Article 1 above and (iii) this MSA. This Agreement shall be binding and any subsequent modifications or additional obligations by either Party to this Agreement, or any Order, must be evidenced in writing and signed by a duly authorized representative from both Parties. This Agreement may not be construed or interpreted against either Party.

**18.5 Severability and Non-Exclusivity.** If any provision of this Agreement is found to be invalid or unenforceable under applicable law, it will be ineffective only to the extent of its invalidity and will not affect the remaining provisions. This Agreement is non-exclusive and both Parties may enter similar arrangements with others, and FBL may actively market its services, as part of its normal business undertakings, in full and fair competition with Customer or its carrier customers.

**18.6 Publicity.** From time to time, FBL may issue a news release, public announcement, and/or advertisement relating to this Agreement or Services. FBL shall limit the use of Customer's name, or service marks for publicity purposes only, and all terms and conditions of the Order shall remain confidential unless Customer provides written consent for its disclosure. FBL does not claim to license any right to the trademarks, service marks, or copyrighted information, other than for use in the above-listed context.

**18.7 Survival.** The terms of this Agreement, which, by their usage and context, are intended to survive this Agreement, including, without limitation, the obligation to make payments for Service, will survive its expiration or termination.

**18.8 Headings.** The Article and Section headings in this Agreement, including incorporated documents, are for convenience only and may not be considered for interpretation.