

Vermont Agency of Transportation  
Request for Proposal

Leasing Interstate and other State Highway  
Rights of Way for the Design, Construction,  
and Management of Fiber Optic  
Telecommunications Facilities



Contract Administration  
1 National Life Drive  
Montpelier, Vermont 05633-5001

Response Due Date  
November 7, 2016

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## 1.0 Introduction

The Vermont Agency of Transportation (VTrans) seeks to enter into a Fiber Optic Shared Resources Agreement (SRA) or Public Private Partnership (P3) to deploy fiber optic facilities longitudinally along all or a portion of VTrans’ interstate rights of way (ROWs). The Fiber Optic SRA or P3 (Project) will be in the form of a lease, under which VTrans will make its interstate ROWs available to the lessee (Provider) for the installation and operation of fiber optic facilities. VTrans may also consider making other highway ROWs available to the Provider under the terms of the lease, or under other arrangements available or to be made available to telecommunications providers generally for the use of these non-interstate ROWs.

The interstate lease will include best value compensation to VTrans in the form of conduit, fiber, access points along the installation route(s), and connections to VTrans’ signals and other facilities, including VTrans’ Intelligent Transportation System (ITS) devices, such as Road Weather Information Stations (RWIS), Variable Message Signs (VMS), and Weigh in Motion

Stations (WIMS). The lease will include fixed base rent for the non-exclusive use of the interstate ROW by the Provider of communication services for its current and anticipated client base. VTrans will also consider accepting revenue sharing arrangements over and above a fixed base rent, to the extent the Provider is clear about how revenue sharing will be transparently and readily defined, monitored, and documented. Best value consideration will also be given to proposals that minimize the Provider's impact to future maintenance and reconstruction of VTrans' infrastructure. The Provider will be fully responsible for the design, construction, and management of the telecommunications facilities over the term of the lease, which is anticipated to be twenty years.

The Provider will be expected to enter into a lease that complies with state and Federal requirements, including standard contracting provisions. The lease shall be in a form substantially similar to the sample lease document attached as Appendix C. VTrans will not consider changes to the Standard State Provisions for Contracts and Grants included in the attached template. However, VTrans will consider specific and reasonable proposed alternatives to the template's other terms and conditions if they maximize benefit to VTrans and the Vermont public, are straightforward to implement and administer, and fully meet State and Federal obligations that apply.

This is a Request for Proposal(s), not a Request for Bid. Responses will be evaluated on the basis of the relative merits of the proposal(s). (See Section 4.1 below.) In addition to best value of offerings of fiber infrastructure, services, and minimized impact (both to the environment and VTrans' infrastructure), VTrans will evaluate proposals on the basis of monetary consideration, which may include either a fixed flat fee or a combination of a fixed flat fee plus revenue sharing. VTrans may be willing to accept a reduced rental rate in the early years of the lease to help the Provider finance the Project. VTrans will consider the Provider's willingness to accept the Standard State Provisions for Contracts and Grants. VTrans will also consider the Provider's willingness to accept VTrans' other proposed lease terms or the Provider's specific and reasonable proposed alternatives that indicate the Provider's capacity to enter into a lease agreement with VTrans. In addition, VTrans will consider the extent of the interstate ROW that the Provider is interested in leasing along with other considerations demonstrating the Provider's capacity to expand and improve telecommunications in the State of Vermont.

VTrans intends to select one or more P3 partners (Respondent) that can provide the most favorable terms to VTrans, while meeting the requirements of VTrans. The winning Respondent will be required to negotiate final design, specifications, costs, project schedule and P3 terms and conditions with VTrans.

## **1.1 Background Information**

This initiative is being led by VTrans and is intended primarily to support communications requirements for ITS devices along its interstate ROW corridors while simultaneously promoting deployment of broadband facilities to unserved and underserved areas of the state per the Vermont Department of Public Service's Office of Connectivity (DPS). The Goals and Objectives of the Project are summarized as follows:

**Goal #1:** Facilitate deployment of fiber optic infrastructure along VTrans' interstate ROW.

**Objectives:**

1. Address VTrans' ITS communications requirements in a cost-effective manner.
2. Collect reasonable revenue for the use of the interstate rights of way as a telecommunications corridor pursuant to 19 V.S.A. § 26a(b) and 23 C.F.R. § 710.401(d).
3. Facilitate access to broadband communication in unserved and underserved areas of the state per DPS.
4. Complement Vermont's broadband initiative to improve communications infrastructure statewide per DPS.

**Goal #2:** Maintain the integrity of VTrans' interstate ROW consistent with State and Federal requirements. **Objectives:**

1. Comply with Federal Highway Administration (FHWA) requirements. See Appendix A.
2. Comply with FCC requirements articulated in the Telecommunications Act of 1996.
3. Comply with US Army Corps of Engineers permitting requirements.
4. Comply with State permitting and other legal requirements. See Appendix A
5. Minimize safety & environmental impacts through collocation/co-build requirements.
6. Minimize the impact to existing transportation infrastructure and the future costs of relocation of proposed fiber optic infrastructure for future roadway, bridge, culvert, rest area, and sign rehabilitation and reconstruction.

Public properties that will be included in the program are the interstate and potentially other state highway ROWs that are connected to the interstates, as well as other state owned or controlled properties adjacent to these ROWs for the installation of above-ground fiber optic support facilities (above-ground installations to be approved on a site-by-site basis). VTrans expects any fiber installation along the interstate ROWs to be sub-surface. In addition to providing longitudinal access to the interstates (I-89, I-189, I-91, and I-93), other limited access facilities (VT 179, VT 289, etc.) and connected state highway (US 2, 4, 5, 7, 9, 14, 15, 100, 302, etc.) corridors, VTrans will provide the following:

- *Ortho-photography and lidar of available interstate ROW,*
- *GIS location and size of culverts, with the understanding that there may still be unknown culverts that exist and with the caveat that culvert locations are not necessarily plan quality and shouldn't be solely relied on for construction activities,*
- *Locations of VTrans' facilities and ITS devices along each interstate and highway ROW to which VTrans wants connectivity,*
- *Use of VTrans' facilities to house equipment such as electronics to light the fiber on an as-needed and approved-by-VTrans basis, where and only where VTrans makes sole determination that such use is compatible with VTrans' core functions, and*

- *Cooperation with the Provider in complying with Federal and State requirements, and in applying for all required permits (ANR, Army Corps of Engineers, Act 250, Public Service Board, etc.).*

***It should be understood that in general, every roadway crossing under the Interstate (whether State or Town Highway) may introduce a conflict for buried lines if bridge attachments are not utilized for the new longitudinal fiber installations. It is also possible that some permitted utility crossings of the Interstate could pose a conflict to a longitudinal installation, and it is VERY likely that VTrans will have no as-built information for such crossings. The Contractor will be responsible for locating and mitigating actual hazards and potential conflicts in the field.***

VTrans seeks to develop this Project through a one-time procurement process with a single window of opportunity during the initial procurement. Subsequent procurements will be considered on an as-needed basis to address VTrans requirements and accommodate vendor needs where possible.

In order to most efficiently and effectively meet both the National Environmental Policy Act (NEPA) and Army Corps of Engineers permitting requirements, VTrans prefers to have the I-89, I-189, I-91, and I-93 corridors developed through one contract; VTrans will also consider separating this into three or more major projects as dictated by vendor interest in the program. Proposals for minor installations along interstate ROWs will not be accepted by VTrans. Because of significant terrain restrictions, clear zone restrictions, and environmental considerations, VTrans desires to limit the program to one-time installations along each major corridor for the foreseeable future. However, if the Provider can show good cause for obtaining permitting on limited segments of interstate ROWs, VTrans will take such a proposal into consideration.

In addition to the fiber optics installed for the use of VTrans and that for the use of the Respondent, VTrans encourages installation of extra capacity for possible use by third parties as part of the shared resource goal. Administration of any such sub-lease(s) to third parties would be the responsibility of the selected Respondent.

To address legal requirements, the selected Provider will be required to advertise a co-build opportunity during the initial installation and require installation of excess capacity (a minimum of four 1 1/4 inch to 2-inch diameter conduits) in addition to VTrans' and the selected Provider's conduits. The selected Provider will also be required to sub-lease excess capacity on a neutral and non-discriminatory basis in accordance with requirements of the Telecommunications Act of 1996. All leases and sub-leases of excess capacity and/or new fiber must be reviewed and approved by FHWA (pursuant to 23 C.F.R. Part 710) and VTrans.

The selected Provider will be required to enter a long-term lease agreement with VTrans that specifies the terms of occupation. It is anticipated that the lease agreement will be for an initial term of 20 years, with opportunities for renewal. The lease agreement will specify installation requirements, ROW access for operations and maintenance, maintenance requirements, and other key terms and conditions, including for example, relocation requirements and post agreement rights and responsibilities. The lease agreement will be developed in accordance with the Vermont Agency of Administration Bulletin 3.5, Contracting Procedures (July 1, 2016), and all addendums thereto. The sample lease document attached as Appendix C is

intended to serve as a general illustration of the form and general parameters of agreement sought by VTrans; VTrans may be open to additional or different possibilities (than the specifics in that template) if they maximize benefit to VTrans and the Vermont public, are straightforward to implement and administer, and fully meet State and Federal obligations that apply.

Providers are hereby placed on notice that the insurance specifications in the portion of Appendix C (sample lease) that is denoted as subsection “Attachment C” within Appendix C are standard State minimums, and that there is a distinct possibility that the State may require types and amounts of insurance above those minimums for something of the scale of Project, and that insurance details may likely need to be finalized following State’s receipt of specific proposals.

## **1.2 Compensation**

For the lease agreement, VTrans will request fiber optic infrastructure, services, connections, and monetary compensation in exchange for interstate ROW access pursuant to 19 V.S.A. § 26a. (Section 26a was amended by section 14 of H.117 (Act 41) in 2015. Infrastructure may include, for example conduit(s), access points (hand holes), fiber optic cable (144 strands for VTrans use), equipment shelters/cabinets, and equipment to light the fiber. Specific compensation requirements will be determined on a project or corridor basis. Minimum compensation requirements will be established based on VTrans’ ITS telecommunications needs, with consideration given to historical valuations for similar transactions. In addition to minimum compensation requirements, VTrans will expect vendors to submit proposals that will go through a competitive process to determine which proposal will provide best value to VTrans. To comply with State and Federal requirements, VTrans expects fair market value for the Provider’s use of VTrans’ ROWs.

Minimum non-monetary compensation requirements for the I-89, I-189, I-91, and I-93 corridors include dedicated conduit, multi-strand fiber optic cable, fiber access points and connections to VTrans’ facilities and ITS devices along the proposed installation route, equipment to light the fiber, equipment shelters, system infrastructure maintenance, and electrical power. Minimum monetary compensation includes base rent. Base rent may be combined with additional monetary and non-monetary compensation as sub-leases are granted if the Provider clearly explains in its response how revenue sharing will operate in a transparent and verifiable manner that is straightforward for VTrans to administer.

Monetary compensation will be payed yearly as reasonable compensation for use and occupancy of the interstate ROW. See Sample A for suggested payment schedule.

VTrans will determine fair and reasonable compensation for interstate ROW access and manage access in a neutral and non-discriminatory manner, consistent with the requirements of the Telecom Act and all applicable Federal and State laws.

## **2.0 Information Being Requested**

### **2.1 Summary of this RFP**

The intent of this RFP is to insure the Project is developed within legal and regulatory constraints and affords both VTrans and the selected Provider(s) with the best opportunity for success.

### **2.2 Detail**

In developing a response to this RFP, please consider the following points and respond directly to any or all as appropriate. Specific responses to the vision of the program structure and approach described in Section 1 above are also requested.

1. Additional comments and/or plans to meet program goals outlined in Section 1.
2. Plans for competitive solicitation for sub-leases.
3. Design and construction plans including scheduling, permitting, trenching, boring and bridge attachments.
4. Maintenance agreement activities including repair response timeframes post construction.
5. Contingency plans for future VTrans' work on ROW, i.e. ROW realignment, bridge replacement, etc.
6. Network performance measures and monitoring post construction.
7. Any proposed revisions or alternatives to the proposed program structure and approach provided above to better meet VTrans' overall program objectives.
8. Other VTrans' limited access ROW or roadways to be included as part of any procurement that might result from this process.
9. Information or past experience on similar programs that the Provider was involved in.
10. A copy of a lease or license agreement for a previous public agreement for similar activities that the Provider was involved in. An outline will also suffice.
11. In addition to the references identified in Appendix A, additional information needed to respond to this RFP.
12. The total value of the proposal to the State, including both non-monetary and monetary compensation per Section 1.2, along with an explanation of why the proposed compensation reflects a reasonable charge and fair market value.

13. Respondent should provide the expected annual revenue (minus any expected maintenance, operations, and capital costs) to be generated by the Respondent's conduit over the proposed term of lease.
14. Based on the expected annual revenue provided, the Respondent should propose what amount of revenue generated (if any) would be shared with VTrans. Respondent should include the relevant timing of any revenue share, proposed percentage of total revenue generated that would be shared with VTrans, and expected shared revenue to be received by VTrans on an annual basis.

### **3.0 Instructions for Responding to this RFP**

#### **3.1 Who May Respond**

VTrans welcomes responses from vendors that have an interest in leasing VTrans' interstate ROW and participating in VTrans' Fiber Optic SRA/P3. Proposals that show practical knowledge and experience with fiber optic accommodation along limited access ROW and can provide examples and/or references are highly desirable. In addition to experience, proposals meeting the Project goals and objectives, monetary and non-monetary compensation, and best construction schedule and time line are also desired. However, that being said, all factors in meeting the goals of the Fiber Optic Project will be reviewed objectively to see which response provides the best value to VTrans.

VTrans is seeking clear project proposals. Specific details that link the specific rights of way to be leased, the telecommunications facilities to be installed, and the monetary and non-monetary compensation to be paid to VTrans, along with any other information that will minimize contract negotiation, will be given greater weight than abstract proposals. VTrans will also give weight to responses that demonstrate the financial capacity to proceed with the clear project presented.

#### **3.2 How to Respond**

Ten hard copies and one electronic copy of your response in PDF format on a CD should be sent to the following address:

Vermont Agency of Transportation  
Contract Administration  
Attn: Molly Perrigo  
1 National Life Drive  
Montpelier, Vermont 05633-5001  
Molly.Perrigo@vermont.gov

Responses to this RFP must be received at VTrans no later than 2:00 PM US Eastern Time on November 7, 2016. All communication regarding this RFP should be sent to the contacts listed in paragraph 3.8 below.

### **3.3 RFP Response Contact**

Companies responding to this RFP shall designate a single point of contact within that company for receipt of all subsequent information regarding this RFP and potential future Requests for Proposals.

### **3.4 Format of RFP Responses**

The following outline is offered to assist in the development of your response. You should include:

- A cover letter -- the cover letter should introduce your company and your interest in the program. Please also indicate if additional documentation is included in your response.
- A list of references and examples of similar programs you have participated in, if any.
- The response itself, covering any or all of the areas of information requested by this RFP.

Though there is not a formal page limit, we ask that you please try to limit your response to the RFP to ten (10) double sided pages, plus supporting documentation as appropriate. If you consider this supporting documentation to be necessary, please indicate which portions of the supporting documentation is relevant to which parts of the main response.

### **3.5 Copyrighted Material**

VTrans requests that copyrighted material be excluded from the RFP response. Any material received is treated as a public document.

By responding to this RFP and submitting material, submitters agree and represent and authorize VTrans and the State of Vermont to rely upon their representation that materials submitted are not subject to copyright unless documents are clearly, individually, marked otherwise

If copyrighted material is sent in response to this RFP then a statement waiving that copyright for use by VTrans is required and a limited waiver of copyright that allows VTrans to make up to twenty (20) copies for review purposes is required. See Appendix B for a template for this copyright waiver.

### **3.6 Proprietary and Confidential Information**

VTrans requests and prefers that you refrain from including proprietary and confidential material in your RFP response; however, if you are compelled to do so, only one copy should be provided in a separately sealed envelope clearly labeled as confidential and proprietary information.

Submitters should be aware of the fact that the State of Vermont has and is subject to an access to public records law that generally tends to favor public access to documents upon request.

Exceptions from public disclosure do exist in statute and court decisions for trade secrets and matters that give competitive advantage. VTrans offers to try to work in good faith with submitters to try to protect sub-parts of submittals that are sealed and marked as confidential and proprietary, but can make no assurance of how a court might decide a particular matter if someone makes a formal demand for certain information. VTrans reserves the right not to defend against the disclosure of any information provided in response to this RFP.

**Submissions that are marked confidential in their entirety are unacceptable and may be summarily rejected by VTrans.**

**Submitters, by submitting information, acknowledge that they understand the previous paragraph, and agree to hold VTrans and the State of Vermont harmless for any disadvantage that may occur, or be claimed to occur, if any information that has been submitted is disclosed.**

### **3.7 Reimbursement**

VTrans will not reimburse submitters for any costs in conjunction with their responses to this RFP.

### **3.8 Procurement Point of Contact**

VTrans' sole Point of Contract (POC) for this RFP shall be Molly Perrigo. The VTrans POC is the only individual authorized to discuss this RFP and will only communicate with the Bidder's Authorized Representative. All communications with the VTrans POC regarding the Project or this RFP shall be in writing via email, as required by applicable provisions of this RFP.

All questions regarding this RFP should be directed in writing to:

Vermont Agency of Transportation  
Contract Administration  
Attn: Molly Perrigo  
1 National Life Drive  
Montpelier, Vermont 05633-5001  
Molly.Perrigo@vermont.gov

## **4.0 Response Review Process and Schedule**

### **4.1 Review Process**

This RFP is issued with the intent to obtain information that provides best value of leasing VTrans' interstate ROW and for guidance in the selection of a vendor(s) to perform and meet the Fiber Optic Project goals. VTrans will assemble a review committee composed of representatives from VTrans and other State entities including, but not limited to, the Department of Information and Innovation and DPS. This committee will rank proposals based on the best value to meet VTrans' Fiber Optic Project goals, with consideration given to broadband expansion to unserved and underserved areas of the State.

All proposals will be reviewed, scored and ranked based on the following:

- Proposed fiber optic infrastructure (20%)
- Schedule (10%)
- Monetary and non-monetary compensation (30%)
- Technical approach, including applicable tools, templates and processes (10%)
- Corporate/company experience with similar work, and personnel experience, skills, and competencies (10%)
- Risk management processes / safety protocols (5%)
- Financial stability (10%)
- References for similar work (5 %)

### **4.2 Clarification**

To fully comprehend the information contained within a response to this RFP, the reviewing committee may seek further clarification on that response. This clarification may be requested in the form of brief verbal communication by telephone; written communication; electronic communication; and/or in-person meeting.

### **4.3 RFP Response Presentations**

VTrans reserves the option, but is under no obligation, to invite RFP responders to present their responses to VTrans. The purpose of this presentation would be to seek clarification of information contained within the response (as noted above); to further explore issues and alternatives suggested in the response; or to further meet the goals of the RFP.

#### **4.4 Schedule**

The schedule for responding to this RFP is as follows. Please note that early responses are encouraged.

RFP issued:	October 7, 2016
Question period	October 21, 2016
Questions Addressed:	October 26, 2016
RFP responses due:	November 7, 2016
Review of RFP responses:	November 15, 2016

## Appendix A      References

### Federal Requirements

- 66 Fed. Reg. 6753, Guidance on Longitudinal Telecommunications Installations on Limited Access Highway Rights of Way, Federal Highway Administration.

[http://www.fhwa.dot.gov/real\\_estate/right-of-way/policy\\_and\\_guidance/guidutil\\_a.cfm](http://www.fhwa.dot.gov/real_estate/right-of-way/policy_and_guidance/guidutil_a.cfm)

- National Environmental Policy Act (NEPA) Requirements (23 C.F.R. Part 771).

<https://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0771.htm>

- Applicable Federal Permits (Section 404, Section 7, etc.).

- 23 C.F.R. Part 710, relating to property management requirements for Federal-aid ROWs.

[https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/program\\_administration/lpa\\_guide/ch20.cfm](https://www.fhwa.dot.gov/real_estate/uniform_act/program_administration/lpa_guide/ch20.cfm)

- 23 C.F.R. Part 645, relating to the accommodation of utilities (Subpart B).

<http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0645a.htm>

- The Manual on Uniform Traffic Control Devices (MUTCD).

<http://mutcd.fhwa.dot.gov/>

- 1996 Telecommunications Act.

<https://www.fcc.gov/general/telecommunications-act-1996>

### State Requirements

- Vermont Agency of Transportation, Location and Design Standards (“Utility Accommodation Plan”).

[http://vtrans.vermont.gov/sites/aot/files/highway/documents/rightofway/UandPUtility\\_Accommodation\\_Plan\\_March\\_-\\_2012\\_\(2\).pdf](http://vtrans.vermont.gov/sites/aot/files/highway/documents/rightofway/UandPUtility_Accommodation_Plan_March_-_2012_(2).pdf)

- Vermont Agency of Transportation, Strategy for Accommodation of Fiber Optics Facilities Along VTrans Limited Access Highway Rights-of-Way.

[http://vtrans.vermont.gov/sites/aot/files/highway/documents/rightofway/UandPUtility\\_Accommodation\\_Plan\\_March\\_-\\_2012\\_\(2\).pdf](http://vtrans.vermont.gov/sites/aot/files/highway/documents/rightofway/UandPUtility_Accommodation_Plan_March_-_2012_(2).pdf)

- Vermont Statutes, Act 250, Chapter 151 of Title 10; the specific criteria that projects are evaluated under are set out in detail at 10 V.S.A. Section 6086

<http://www.nrb.state.vt.us/lup/publications/statutes/statute%2007-01-12.pdf>

<http://law.justia.com/codes/vermont/2012/title10/chapter151/section6086>

- Vermont Agency of Administration, Bulletin No. 3.5, Contracting Procedures, dated July 1, 2016, including Attachment C (Standard State Provisions for Contracts and Grants), also dated July 1, 2016:

<http://aoa.vermont.gov/bulletins/3point5>

[http://bgs.vermont.gov/sites/bgs/files/pdfs/purchasing/ATTACHMENT\\_C\\_July.1.16.pdf](http://bgs.vermont.gov/sites/bgs/files/pdfs/purchasing/ATTACHMENT_C_July.1.16.pdf)

- 19 V.S.A. § 26a. (Section 26a was amended by section 14 of H.117 (Act 41) in 2015.

[http://www.wwwvermont.org/cgi-bin/vt\\_legis/fullsection.cfm?form\\_access\\_date=20151022&Title=19&Chapter=001&Section=0026a](http://www.wwwvermont.org/cgi-bin/vt_legis/fullsection.cfm?form_access_date=20151022&Title=19&Chapter=001&Section=0026a)

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT041/ACT041%20As%20Enacted.pdf>

## Appendix B      Template for Copyright Waiver

[respondent insert date here]

Vermont Agency of Transportation  
Contract Administration  
1 National Life Drive  
Montpelier, Vermont 05633-5001  
802-828-2089 (phone)  
802-828-5545 (fax)

This letter constitutes a limited license to use certain materials copyrighted by the undersigned. We understand that the Copyrighted Material identified below is being submitted to VTrans as part of a response to the identified Request for Proposal (RFP), for use in connection with a VTrans process that may result in subsequent Requests for Proposal.

Source of Copyrighted  
Material:

Copyrighted Material to be  
submitted to VTrans:

Submitter(s):

RFP Doc.-Title

We hereby grant VTrans the right to make twenty (20) copies of the Copyrighted Material for review purposes only as part of the RFP review process.

We represent and warrant that we have the authority to waive any intellectual property rights, and agree to hold VTrans and the State of Vermont harmless in the event of any dispute regarding same.

Regards,

[respondent insert name here]

**INTERSTATE FIBER OPTIC  
SHARED RESOURCE MANAGEMENT LEASE  
BETWEEN  
THE STATE OF VERMONT  
AND**

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**THIS LEASE** (Lease) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **STATE OF VERMONT** (State), a sovereign state, acting through its Agency of Transportation, with an office at National Life Building, 1 National Life Drive, Montpelier, Vermont 05633-5001 (VTrans), and \_\_\_\_\_, a \_\_\_\_\_ Company, with its principal place of business located at \_\_\_\_\_ (Provider) (the State and Provider also hereinafter referred to individually as a Party and together as the Parties).

**WITNESSETH:**

**WHEREAS**, VTrans is the executive agency of the State responsible for planning, designing, constructing, and operating the State’s transportation system, including its interstate highways; and

**WHEREAS**, the State owns the Interstate Highway System and its rights of way in the State, including I-89, I-91, I-93, and I-189 (all segments of the Interstate Highway System that the State owns hereinafter referred to as the ROW); and

**WHEREAS**, the State deploys fiber optic technology as part of its Intelligent Transportation System (ITS), which includes such facilities as road weather information stations, variable message signs, and weigh-in motion stations; and

**WHEREAS**, the State desires to advance its mission to expand and upgrade high quality broadband telecommunications facilities throughout the State and desires further to expand and upgrade its ITS and other telecommunications functions and to advance other transportation-related projects; and

**WHEREAS**, interstate rights of way represent opportune corridors for the installation of fiber-optic infrastructure; and

**WHEREAS**, Provider provides engineering, design, project management, and consulting services in the fields of telecommunications and information technology; and

**WHEREAS**, the State and Provider desire to enter into a lease to establish the terms and conditions for Provider to manage the State’s Interstate Fiber Optic Shared Resources Program (Program) and to provide the State with rent, including monetary payments and telecommunications

capacity, in exchange for the use of the ROW and revenues that the Program generates during the Lease term, all as more fully described herein.

## TERMS AND CONDITIONS

**NOW, THEREFORE**, the Parties, intending to be legally bound, agree to the following terms and conditions:

### I. PURPOSES

**1. Telecommunications and Transportation Objectives.** This Lease is intended to expand and upgrade high quality broadband telecommunications facilities in the State, to expand and upgrade the State's ITS and other telecommunications functions, and to generate revenues for the State to advance other transportation-related projects.

**2. Public-Private Partnership.** This Lease establishes a public-private partnership to share the resources and benefits connected with marketing, designing, constructing, installing, operating, and maintaining fiber optic facilities throughout the State's Interstate Highway System. As set forth herein, Provider shall manage the Program and provide the State with rental payments, including fiber optic capacity, in exchange for access to the ROW and the Program's revenues.

**3. Shared Resource Management.** Provider shall perform its duties and responsibilities under this Lease as the State's Shared Resource Manager. As Shared Resource Manager, Provider shall have full oversight of the Program and shall be fully responsible for all tasks necessary and appropriate for the success of the Program.

#### **4. Telecommunications Facilities.**

- a. Scope of Program.** In particular, and as set forth in greater detail herein, Provider shall market, design, construct, install, operate, and maintain a longitudinal multiple-duct conduit system throughout the full length of the State's Interstate Highway System. This conduit system shall consist of six 1.25-inch conduits and appurtenant handholds and splice vaults. Provider shall provide two of these conduits to the State for the State's exclusive use. Provider shall market the remaining four conduits to telecommunications providers.
- b. Sharon to Hartford.** Provider's design, construction, and installation responsibilities with respect to conduit shall not extend to the segments of I-89 and I-91 between Sharon and Hartford, Vermont that already contain six conduits, all of which the State owns, and three of which the State reserves for its exclusive use. One of the conduits reserved for the State's exclusive use already contains one 144-strand fiber optic cable. Another of the conduits reserved for the State's exclusive use has been leased to Teljet Longhaul, LLC (Teljet) for a period of twenty years, beginning June 28, 2012. Provider shall interconnect all six of these existing conduits with the six conduits that Provider shall design, construct, and install. Provider's responsibilities to market, operate, and maintain encompass all three existing conduits that are not reserved for the State's exclusive use, and Provider's responsibilities to operate and maintain include the conduits that are reserved for the State's exclusive use.

## II. TELECOMMUNICATIONS FACILITIES AND SERVICES

The State authorizes Provider to market, design, construct, install, operate, and maintain a multiple-duct telecommunications conduit system in the ROW, and Provider agrees to do so, as set forth below:

### 1. Program Management.

- a. **Turnkey Facilities.** Provider shall oversee and manage the Program on a turnkey basis: Provider shall ensure that the telecommunications facilities it installs in the Interstate Highway System pursuant to this Lease (the Facilities) represent a complete product ready for immediate use by the State and the telecommunications providers that rent the remaining Facilities, with no additional conduit work required. Provider shall provide the management, supervision, labor, equipment, materials, and all other products and services to implement the Program.
- b. **Independent Development and Deployment.** Provider shall operate as an independent development and deployment management company willing to work with telecommunications providers interested in renting or that have in fact rented the Facilities to effectively implement the Program. To avoid potential conflicts of interest, Provider shall not operate as a communications carrier in North America during the term of this Lease.
- c. **Program Team.** Within thirty (30) days after the commencement of this Lease, Provider shall establish a Program Team, and Provider shall maintain the Program Team throughout the term of this Lease. Provider shall staff the Program Team with individuals with knowledge and experience in the design and deployment of large complex projects and with the qualifications necessary to effectively manage the Program. In particular, members of the Program Team shall have strong backgrounds and experience in fiber network design, network construction management and implementation, and asset marketing. The Program Team, under the leadership of a Program Manager, shall be responsible for managing and overseeing all aspects of the Program, including but not limited to the following:
  - Sales and marketing.
  - Lease negotiations, drafting, execution, and management with prospective users.
  - Engineering and design.
  - Construction.
  - Schedule and budget management.
  - Program tracking and reporting.
  - Permitting and compliance.

Provider shall cover all staffing functions necessary to oversee the Program. Provider shall make adjustments to the Program Team as reasonably necessary to carry out the purposes of this Lease.

### 2. Sales and Marketing.

**a. Marketing Activities.** Provider shall be fully responsible for marketing the Facilities. Provider's marketing activities shall include negotiating and coordinating with telecommunications providers across the country and internationally to ensure maximum value to the State from Provider's the use of the ROW to expand and upgrade telecommunications throughout the State, and to Provider from the revenues that the Facilities generate. The Program Team shall actively market conduit to all potential users on a carrier-neutral and nondiscriminatory basis. Provider's marketing activities shall include but not necessarily be limited to the following:

- Advertising the Program in trade publications.
- Leveraging Provider's existing contracts with major telecommunications carriers.
- Developing new contacts with local and regional carriers, Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) grant awardees, and other prospective users of the Facilities.
- Conducting a market study and appraisal of the Interstate Highway System's value to telecommunications providers.

Provider's goal shall be one hundred percent occupancy of the Facilities on rental terms providing the maximum benefit and value to Provider and the State.

**b. Third-Party Lease Agreements.**

- 1) Solicitation, Negotiation, and Preparation.** Four of the six conduits that Provider shall construct and maintain shall be available to Provider to sub-lease to telecommunications providers, which shall install, maintain, and light fiber in the leased conduits pursuant to the terms and conditions of their leases. Provider shall solicit prospective users of the Facilities, prepare lease agreements between Provider and prospective users of the Facilities, and negotiate the rent. Lease agreements shall include provisions for lateral connections to the ROW, including junction and connection boxes, for electrical supplies needed to light the fiber and to provide service connections to the provider's customers. Provider shall negotiate with prospective users, coordinate sales and marketing of the Facilities, and draft lease terms designed to minimize the number of lateral service connections to the extent the objectives of the Program practicably allow. Provider shall negotiate, prepare, and execute lease agreements with lessees as expeditiously as practicable in view of Provider's sales and marketing strategies.
- 2) Length of Leases.** The terms of the leases that Provider enters into with providers shall not exceed the remaining term of this Lease.
- 3) Standard Terms and Conditions.** Lease agreements shall require providers to comply with all applicable state and Federal laws and international treaties, including but not limited to right-of-way access permitting pursuant to 19 V.S.A. § 1111, and all relevant terms and conditions of this Lease, and the State may require all lessees to comply with any terms and conditions of this Lease that the State deems relevant as a condition of their access permits.

**4) Collections and Disputes.** Provider shall be responsible for collecting delinquent rent from lessees and other contractors and for resolving through cooperation, negotiation, or litigation any and all other disputes that its leases and other contracts may engender. Provider shall be solely responsible for paying any and all expenses and damages incurred as a result of collections and lease and contract disputes.

- c. Sharon to Hartford.** Provider's sales and marketing responsibilities, including but not limited to Provider's responsibility to provide the State with lit fiber optic strands, shall encompass the entire Interstate Highway System, with the understanding that the segment of I-89 and I-91 between Hartford and Sharon, Vermont already contains a six-duct conduit system. The State has reserved three of those ducts for its own use, and one of those three ducts contains 144 strands of fiber. Of the remaining two ducts reserved for the State's exclusive use in this Segment of the Interstate Highway System, the State reserves the right to lease or license one of them to any person or persons throughout the term of this Lease. The State leased this duct to Teljet for a twenty-year term beginning June 28, 2012. As part of its lease with the State, Teljet agreed to light two of the 144 existing strands in one of the other conduits reserved for the State's exclusive use. Provider shall be responsible for marketing and leasing the remaining three ducts under the terms and conditions set forth in this Lease, provided however that Provider shall not be responsible for providing the State with fiber optic strands in the existing conduit between Sharon and Hartford that already contains fiber optic strands. Provider shall incorporate the existing unlit strands into the 144 lit fiber optic strands that Provider shall construct and maintain throughout the Interstate Highway System for the State.
- d. Quarterly Progress Reports.** Provider shall provide the State with quarterly reports on its progress in marketing for the first three years of this Lease, and thereafter, at such reasonable intervals as may be required by State.

**3. Design.** Provider shall design a six-duct conduit system throughout the Interstate Highway System, except for the segment of I-89 between Sharon and Hartford, Vermont, which already includes a six-duct conduit system. Provider shall design a six-duct conduit system to meet each end of the existing six-duct conduit system on I-89 between Sharon and Hartford. Each of the six conduits in Provider's design shall be 1.25 inches in diameter. The Facilities shall include the installation of handholds and splice vaults as reasonably necessary to make the Facilities marketable to telecommunications providers on a turnkey basis. In the course of designing the Facilities, Provider shall meet with the State to develop basic design parameters, including access points, right-of-way limitations and restrictions, permit requirements, and construction standards. Provider shall design the Facilities for sub-surface construction methods. Provider shall establish network construction standards for the Facilities, including allowable placement methods, depth of cover, and allowable deviations. Construction standards shall be consistent with standard industry practices, modified as may be appropriate to address specific State, Federal Highway Administration, United States General Services Administration, United States Custom and Border Protection, International Boundary Commission, Presidential Permits, and other applicable requirements. Provider shall consult with the VTrans Project Manager for this Program throughout the design process. Design shall account for the border crossing facilities in Highgate and Derby, Vermont, and the parts of the Interstate Highway System owned or leased by the United States in these areas. Provider shall consult with the State on proposed construction work in the Interstate Highway System, including but not limited to the crossing areas in Highgate and Derby, where

construction is proposed, and Provider shall design the Facilities to avoid interfering with or interference by proposed construction projects. Design shall include locating the conduit system at state and international borders for efficient connection with existing or reasonably anticipated future conduit systems in other states and Canada. The Facilities shall be connection-ready at the border crossings in Highgate and Derby, Vermont. Final design shall include the following:

- a. Permitting.** During the engineering/design phase, Provider shall identify Program permitting requirements, including but not limited to the following:

    - Permitting authorities.
    - Application and approval processes.
    - Application fees.
    - Application timeframes.
  - b. Field Engineering and Survey Drawings.** Provider shall prepare drawings and documentation necessary to support field survey activities.
  - c. Field Surveys.** Provider shall conduct field surveys of the Interstate Highway System to obtain pertinent engineering and design information, including running lines, distances, obstructions, permit requirements, construction methods, and other information needed to effectively engineer the route.
  - d. Design Drawings.** Provider shall incorporate survey data into design drawings.
  - e. State Review and Approval.** Upon completing its route surveys, Provider shall create a design review package for presentation to the State. Provider shall review the design with the State to ensure the design satisfies all applicable standards. Provider shall note and correct any shortcomings or deficiencies prior to completing the final design.
  - f. Construction Drawings.** Following the State's approval of the design, Provider shall prepare construction drawings for each route segment.
  - g. Design Completion.** Provider shall complete its design of the Facilities within twelve (12) months after the commencement of this Lease.
  - h. Complete Engineering Plans.** Provider shall provide the State with complete copies of all engineering plans for the Project promptly after the completion of these plans. The State shall have the right to use these plans in any manner not inconsistent with this Lease, and the State shall have the right to use these plans in any manner once this Lease terminates.
- 4. Construction and Installation.** Provider shall oversee and shall be responsible for all aspects of construction.
- a. Bid Specifications.** Provider shall develop the construction and bidding specifications for route construction and present these documents to the State for review and approval, which

the State shall not unreasonably withhold. Upon the State's approval, Provider shall select contractors to perform the work.

- b. Construction Contracts.** Provider shall enter into construction contracts directly with the selected contractors. Provider shall expressly make all construction contracts subject to applicable permitting requirements, including but not limited to access permitting pursuant to 19 V.S.A. § 1111.
- c. Preliminary Conference.** Prior to the State's issuance of a notice to proceed to Provider, the State and Provider shall hold a preliminary conference in VTrans' Montpelier offices at a mutually agreed upon time for the purpose of discussing this Lease, the scope of the work relating to the construction and installation of the Facilities, the method for maintaining and protecting traffic and the highway infrastructure, materials to be ordered, equipment to be used, the Program construction schedule, and all essential matters pertaining to the satisfactory completion of the construction and installation of the Facilities.
- d. Logistics.** Provider shall provide the materials management and logistics support required to implement the Program. Provider shall order all necessary equipment and materials, monitor and track equipment and materials orders, and provide for the inventory, warehousing, and distribution of Program equipment and materials.
- e. Permits.** Provider shall prepare all required permit applications and submit them to the permitting authority for approval and prosecute and defend all permitting appeals as reasonably necessary to advance the Program. Provider shall monitor the permitting process to help ensure that permitting is consistent with the Program schedule. Provider shall provide the State with bi-weekly reports on permitting.
- f. Inspection of Construction Work.** Throughout the construction phase of the Program, Provider shall monitor and inspect construction activities to ensure compliance with all applicable standards. For in-progress work, Provider shall work directly with construction crews to resolve any deficiencies. Provider shall note deficiencies in completed work on a punch list that Provider shall provide and regularly review with the contractor. After a contractor has corrected a deficiency, Provider shall re-inspect the work for compliance and acceptance or for further correction, as may be appropriate.
- g. Claims.** Provider shall be responsible for resolving all contractor claims and for any and all litigation with contractors. Provider shall be solely responsible for paying any and all expenses and damages incurred as a result of contractor claims and disputes. Provider shall pay any and all costs reasonably incurred by the State in defending any such claims or liens. Settlement agreements or compromises related to contracts must be approved by the State prior to acceptance by Provider.
- h. Progress Monitoring and Reporting.** Prior to beginning construction activities, Provider shall establish a Program construction schedule outlining project milestones and tasks and their associated timelines. Provider shall submit the Program construction schedule to the State at least thirty (30) days prior to beginning construction and prior to the State's issuance of a notice to proceed to Provider. As the Program progresses, Provider shall closely monitor

progress against the construction schedule to ensure that Program goals are met. In the event of schedule variances, Provider shall develop and implement strategies to minimize the specific delay at issue and to further minimize any disruptions to the overall Program. At the end of each week, Provider shall publish a weekly progress report that summarizes construction progress, schedule variances, and mitigation strategies and promptly submit the report to the State.

- i. As-Built Drawings.** Provider shall prepare and maintain field-redline drawings depicting the final as-built condition of the Facilities. At the completion of construction, Provider shall incorporate the field-redline drawings into formal as-built drawings for the Program and provide a complete set of as-built drawings to the State.
- j. Construction Completion.** Provider shall complete construction of the Facilities, including but not limited to 144 lit strands for the exclusive use of the State, within thirty (30) months after the commencement of this Lease. The date on which Provider gives written notice to the State of the completion of the construction, installation, and final testing of the Facilities, whether on the scheduled completion date or otherwise, shall be deemed the completion date of construction.
- k. Sharon to Hartford.** Provider's responsibilities and authorization to construct and install conduit throughout the Interstate Highway System does not extend to the segment of the Interstate Highway System between Sharon and Hartford that already contains a six-duct conduit system. However, Provider's responsibilities shall include connecting the Facilities it constructs to the existing conduits between Sharon and Hartford.
- l. Border Crossings.** Subject to paragraphs I.4.c. and II.2.e, above, Provider's responsibilities include making the Facilities ready for connection to Canada at the border crossings in Highgate and Derby, Vermont.

## **5. Operations and Maintenance.**

- a. Responsibilities.** Provider shall operate and maintain the Facilities in a manner consistent with the Program goals. Provider's responsibilities shall include timely inspection, testing, troubleshooting, repair, and restoration of the Facilities and shall not only encompass the six-duct system that Provider shall design and construct pursuant to this Lease, but also extend to the existing six-duct conduit system between Sharon and Hartford and any six-duct system that the State installs in the segment of I-89 that the United States owns in Highgate. Operation and maintenance shall include the following:
  - 1) Management and Supervision.** Provider shall provide the necessary management and supervision resources to oversee the daily operations of the conduit network. The management team shall control, plan, allocate, deploy, coordinate, and monitor network personnel and resources for the safe and efficient operation and management of the network.
  - 2) Technical Resources.** Provider shall furnish the necessary technical resources to operate and maintain the network.

3) **Repair and Restoration.** Provider shall develop specific plans and procedures to efficiently repair and restore damaged Facilities, including any catastrophic network failure. These plans shall include notification and escalation procedures as well as on-call construction and splicing contractors to perform the required repairs.

b. **Providers.** Providers shall monitor, maintain, and repair their own facilities. However, Provider shall coordinate provider activities that require access to the conduit system to protect and maintain the integrity of the Facilities and the Interstate Highway System and to ensure the safety of state and Federal employees and contractors and the traveling public. Provider shall serve as the single point of contact for providers requiring service of the Facilities.

## 6. Telecommunications Capacity for the State.

a. **Exclusive Use.** Of the two conduits that Provider shall reserve for the State's exclusive use, the State intends to keep one as a spare for future capacity. The State intends to use the other for ITS and other transportation needs and to use any excess capacity beyond the State's ITS and other transportation needs for other functions of State Government, as the State may determine in its sole discretion. The State reserves three of the existing six conduits between Sharon and Hartford, Vermont in portions of I-89 and I-91. The State has leased one of these existing conduits to a third party, and the State reserves the right to continue to lease this conduit to a third party of the State's sole choosing and on terms and conditions in the State's sole discretion. The State intends to keep another existing conduit as a spare for the State's exclusive use. The State intends to use the third existing conduit for ITS and other transportation needs and to use any excess capacity beyond the State's ITS and other transportation needs for other functions of State Government, as the State may determine in its sole discretion. The State's rights to use the excess capacity beyond the State's needs for ITS and transportation in the conduits that the State has reserved for its exclusive use extends to any excess capacity in the 144 fiber optic strands that Provider shall install and/or maintain for the State and any additional strands that the State installs or causes to be installed in the other conduits reserved for the State's exclusive use. The State's right to use excess capacity in any of the conduits reserved for its exclusive use shall be limited to the conduct of State business, which may include but not necessarily be limited to business performed by any state agency, department, board, commission, or authority. (Any state agencies that acquire any excess capacity beyond VTrans' ITS and transportation needs will need to relinquish some or all of that capacity back to VTrans in the event that VTrans determines that its ITS or other transportation needs so require.)

b. **General Scope of Provider's Responsibilities.** No later than thirty (30) months after the commencement of this Lease, Provider shall install 144 strands of fiber throughout the entire Interstate Highway System within the conduit that the State intends to deploy for its own use, along with a sufficient number of circuits to light these 144 strands of fiber throughout the entire Interstate Highway System. Within this time frame, Provider shall install, light, and maintain these 144 strands in one of the six conduits that Provider shall construct pursuant to this Lease and light and maintain the existing 144 strands in one of the existing conduits that the State has previously constructed between Sharon and Hartford along portions of I-89 and

I-91. Provider shall not be entitled to any payment, commission, percentage, or any other remuneration from the State for the provision of these lit strands, which shall constitute part of the rent Provider pays to the State as set forth in this Lease. Provider's provision and maintenance of 144 lit strands to the State throughout the entire Interstate Highway System within thirty (30) months after the commencement of this Lease is an essential and material component of this Lease and shall remain Provider's responsibility throughout this Lease's term.

**c. Service.**

- 1) Coverage.** Provider's responsibilities to provide 144 lit fiber optic strands for the exclusive use of the State shall extend from the State's TMC at the National Life Building in Montpelier, Vermont to each and every point of the conduit network in the Interstate Highway System (including the entire lengths of I-89, I-189, I-91, and I-93). In the event the State relocates its TMC during the term of this Lease, Provider shall transfer service from the existing TMC to the new TMC as part of Provider's responsibility to provide telecommunications capacity to the State. The State has previously installed 144 strands from its TMC to its building at 132 State Street in Montpelier, Vermont. Provider shall connect the 144 strands of fiber in the Interstate Highway System to the existing strands at 132 State Street and maintain these existing strands as necessary to maintain the State's interstate telecommunications network. The State shall provide Provider with reasonable access to the TMC in the National Life Building and to 132 State Street.
- 2) Electronics.** Provider shall provide and maintain all electronics at the TMC necessary to light all 144 fiber optic strands. Further, Provider shall provide and maintain all electronics necessary to regenerate the strands. The electronics that Provider shall provide to light and regenerate the strands shall include but not be limited to transponders, add/drop multiplexers, de-multiplexers, and amplifiers as necessary to complete a network with the ability to support dense wavelength division multiplexing (DWDM). Provider shall provide additional electronics as may be necessary throughout the term of the Lease to support new technologies that the State may choose to deploy in any or all of the 144 strands that Provider shall install and maintain for the State's exclusive use.
- 3) Lateral Connections.** Provider's responsibility to maintain 144 lit strands for the exclusive use of the State throughout the Interstate Highway System and throughout the term of this Lease includes promptly constructing splices for lateral connections and meet-me handholds at the edge of the right of way in such number and locations and at such times as the State shall specify, in its sole discretion, throughout the term of this Lease.
- 4) Monitoring.** Provider shall monitor the State's interstate telecommunications network twenty-four hours per day, seven days per week.
- 5) Alarms and Loss of Connectivity.** Provider shall immediately notify the State of all alarms or loss of connectivity by email to VTrans' ITS Administrator. Provider shall respond to any alarm or loss of connectivity within two hours of the event and restore any loss of connectivity within six hours of the lost connection.

**d. Lease Agreements with Providers.** Provider may negotiate with a prospective provider or prospective providers to obtain fiber and electronics for this conduit as a partial or total offset to their monetary rent to Provider. The offset shall represent comparable value to the monetary rent that the provider or providers would otherwise have to pay Provider. The lease agreement or agreements between Provider and the telecommunication provider or providers that install and light the fiber in the State's conduit shall ensure that the provider or providers maintain the fiber and electronics in a fully functional capacity throughout the term of the lease agreement or agreements between the provider or providers and Provider and throughout the balance of the term of this Lease.

**7. Public Benefits.** As part of the Facilities and services that Provider has agreed to provide the State, Provider agrees to provide appropriate public benefits of a kind contemplated by 30 V.S.A. § 227b(b)(3) in the form of providing improved telecommunications capacity to the areas served by the Facilities.

### **III. RELOCATION OF AUTHORIZED FACILITIES**

The State and Provider shall coordinate in planning and siting the Facilities to minimize the need to move them in the future to accommodate the expansion, maintenance, and/or incorporation of any transportation infrastructure that the State may undertake in its sole discretion. In the event the State's or the United States' use or expansion of the Interstate Highway System necessitates moving of any of the Facilities, including conduits and all appurtenant handholds, splice vaults, and any other equipment, Provider shall promptly, in a reasonable period of time according to the needs of the State or the United States, relocate the Facilities. Any such relocation must be undertaken in accordance with all applicable provisions of this Lease and shall be at the sole cost and expense of Provider, for which cost and expense Provider shall hold the State harmless. However, sub-leases with providers shall require lessees to pay Provider's reasonable costs of moving the Facilities as the State may require. Provider shall not be required to move the existing telecommunications conduits between Sharon and Hartford. However, the State retains the right to move these facilities or to require any lessee or licensee of these facilities to move them, as the State deems necessary or appropriate, in its sole discretion.

### **IV. ACCESS PERMITTING**

**1. Requirement.** Provider shall not commence any work in the ROW prior to receiving an access permit from the State pursuant to 19 V.S.A. § 1111 that expressly authorizes the proposed work. Provider must also obtain an access permit prior to relocating authorized Facilities pursuant to Article III, above, and prior to removing any previously authorized Facilities. Further, Provider must obtain an access permit prior to engaging in any maintenance of any Facilities in the ROW. The State, in its sole discretion, and upon proper application from Provider, may issue comprehensive maintenance access permits with annual terms or terms of such other length as the State deems practicable to cover all authorized Facilities or certain categories of authorized Facilities. Provider's access permits will address the conditions under which Provider may conduct routine and emergency repair work. Among other conditions, access permitting shall require compliance with the Manual on Uniform Traffic Control Devices (commonly referred to as the MUTCD).

**2. Additional Obligations.** This Lease is in addition to, but does not supersede, the requirement, which Provider acknowledges, that Provider obtain and comply with a permit from the State under 19 V.S.A. § 1111 for all work performed in the ROW. Provider acknowledges and agrees that any such 1111 permit may create obligations by Provider in addition to and beyond this Lease, but shall not be interpreted to create any rights in or for Provider that extend in either scope or duration beyond the term of this Lease.

## V. RENT, PROGRAM REVENUES, AND FUNDING

**1. Rent.** In addition to the telecommunications capacity that Provider agrees to provide and the public benefits that Provider agrees to provide, Provider shall pay the State annual rent in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_ .00) per year. Each rental year shall begin on the date of commencement of this Lease. Rental payments shall be due no later than the first day of each rental year, provided however, that annual rental payments shall be deferred until thirty (30) months after the date of commencement of this Lease (half way through the third rental year) and shall be pro-rated thereafter as follows: The first rental payment shall be in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (covering the second half of the third rental year plus a prorated amount). Thereafter, annual rental payments in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) shall be due and payable on each annual anniversary date after the commencement of this Lease (the first of such payments due three years after the commencement of this Lease, with each payment covering one rental year plus a prorated amount). All payments shall be in the form of a certified check, money order, or bank draft payable to the State of Vermont and delivered to the Secretary of Transportation in the manner and at the address set forth in paragraph XII.2.a, below.

**2. Consumer Price Index.** The amount of the first rental payment shall be adjusted to reflect any increase in the Consumer Price Index—All Urban Consumers (CPI-U) during the first thirty (30) months of this Lease. Thereafter, at the end of each rental year, the amount of annual rent at that time shall be adjusted to reflect any increase in the CPI-U since the previous rental payment due date, and that rate shall be used for the next year. The value of the other consideration that Provider shall provide the State pursuant to this Lease (telecommunications capacity, market study and appraisal, and public benefits) shall not be adjusted by the CPI-U or otherwise accounted for in determining the amount of rent that Provider shall pay the State.

**3. Interest on Past Due Rent.** In the event of past due rent, the State may assess interest on the overdue amount in accordance with the maximum legal rate of interest.

**4. Invoices.** The State, in its sole discretion, may choose to invoice Provider for rent due. Any decision on the part of the State not to invoice Provider, or any oversight on the part of the State to invoice Provider, for any rental payment, shall not excuse or relieve Provider from paying rent in a timely manner or from any other term or condition of this Lease.

**5. Program Funding.** The Program shall not require any monetary investment by the State. Funding for the Program shall be Provider's sole responsibility. Provider shall be financially responsible for all the expenses it incurs in fulfilling its responsibilities under this Lease and shall not be entitled to any additional payment beyond the Program revenues that Provider may generate through its leases with providers.

## VI. LEASE TERM

**1. Lease Term.** This Lease shall commence upon execution by both Parties. Unless terminated sooner pursuant to the provisions of Articles VII or XIII, below, the termination date of this Lease shall be twenty (20) years from the date of execution.

**2. Holding Over.** If Provider shall continue in possession of the ROW beyond the term named in this Lease without objection by the State, then the holding over by Provider shall be deemed to create a renewal of this Lease for 5 years, subject always to termination at any time during such renewal or extended term in accordance with Article VII (Termination) of this Lease.

## VII. TERMINATION

**1. Ownership of Facilities; Abandonment; Restoration of State Property.** All authorized Facilities (including but not limited to conduit, manholes, hand-holds, pedestals, risers, and any other associated improvements used in or useful to the Program covered by this Lease) located within the real estate owned by the State, and all materials and equipment placed in the ROW by Provider's lessees, shall, subject to the State's right to require Provider to remove all or any portion of such Facilities, materials, and equipment and restore the real estate to the same condition, to the State's satisfaction, as prior to installation of such Facilities, materials, and equipment, be the property of the State and shall remain without disturbance, molestation, or injury at the expiration or earlier termination of this Lease. Should the State elect that any or all Facilities, materials, or equipment be removed upon the expiration or earlier termination of this Lease, and/or should Provider fail to remove all or any portion of such Facilities, materials, or equipment, the State shall have the right to cause all or any portion of such improvements to be removed at Provider's sole cost and expense. Provider hereby agrees to reimburse the State for the cost of such removal together with the cost of repairing any damage resulting there from, and the cost of restoring the leased lands and other State-owned or -leased properties to their same condition as prior to installation of the improvements. Approximately sixty (60) days prior to Provider's scheduled vacation of the ROW, the State and Provider shall meet to review what items shall be removed from the ROW and other State-owned or -leased properties and what items shall remain, as the State may determine what Facilities, materials, and equipment will continue to be used or useful by the State in the State's own operations. In the event Provider fails to remove the improvements designated by the State for removal prior to the expiration of the Lease term and/or fails to make such repairs and/or restoration as specified in this Lease, the State may cause the removal, repair, and/or restoration to be performed at Provider's sole expense.

### 2. State's Lien.

- a. If Provider breaches any of the terms or conditions of this Lease, the State shall have a lien to the extent of the breach and any continuation of the breach upon all revenues, income, rents, earnings, and profits from the leased lands. This lien shall be superior to the right of Provider and of any of its creditors or assignees, or any trustee or receiver appointed for Provider's property, or any other person claiming under Provider.
- b. Upon the State's termination of this Lease by reason of Provider's default, all such revenues, income, rents, earnings, and profits derived or accruing from the leased lands from the date of such termination by the State shall become the property of the State. The same is hereby

declared to be a trust fund for the exclusive benefit of the State and shall not constitute any asset of Provider's or any trustee or receiver appointed for Provider's property. The provisions of this paragraph shall be effective without the State's re-entry or repossession of the leased lands and without any judicial determination that Provider's interest under this Lease has been terminated.

- c. The State may enforce its lien by directing any subtenant to remit rental payments directly to the State. Provider shall include in its third-party leases a provision requiring each subtenant to make such payments to the State upon the State giving notice of its lien.
- d. Upon or at any time after termination of this Lease by reason of Provider's default, the State reserves the right to terminate any or all of Provider's third-party leases without liability to Provider or any tenant.

**3. Automatic Termination.** This Lease shall automatically terminate on the last day of the term.

**4. Breach; Default; Termination.** In the event of breach or default of any of the terms and provisions herein, the State may terminate this Lease or any part thereof unless cured within thirty (30) days of written notice of such termination. The State further reserves the right to terminate this Lease at any time if the Facilities, or if the leased lands due to the Facilities, do not meet state or Federal laws, regulations, guidelines, standards, or requirements applicable to communications equipment, without compensation to Provider.

**5. Unpaid Rent.** If any rental payment to the State shall be unpaid and in default for thirty (30) days after the State's notice to Provider specifying the default and demanding compliance, the State may terminate of this Lease.

**6. Bankruptcy.** If Provider files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or if an involuntary petition in bankruptcy is filed against Provider, or if there shall be appointed a receiver or trustee of all or substantially all of the property of Provider, or if Provider shall make an assignment for the benefit of creditors, the State may terminate this Lease at any time without additional notice or cure period.

**7. Unsuccessful Marketing.** The State may terminate this Lease after twelve (12) months from the date of execution if the State determines, in its sole discretion, that Provider's marketing efforts have not been successful; provided however, that the State must provide Provider with written notice of the State's intent to terminate this Lease pursuant to this paragraph no later than thirteen (13) months after the date of execution. The State retains the absolute authority to terminate this Lease pursuant to this paragraph, with or without cause, and Provider hereby acknowledges and agrees that any decision by the State to terminate this Lease pursuant to this paragraph shall not require the State to reimburse Provider for any of its expenses and shall not give rise to a cause of action against the State for any reason or in any jurisdiction.

**8. Re-Entry and Possession.** The State reserves the right to terminate this Lease at any time for failure to comply with the terms and conditions of this Lease, including but not limited to failure to pay rent. Notice to terminate shall be thirty (30) days. The State may then re-enter and take possession of the leased lands and every part thereof, either by force or otherwise without being liable to prosecution or

damages, and have and enjoy the real estate as of its former estate, free, clear, and discharged of this Lease and of all rights of Provider.

**9. Acceptance of fees.** No acceptance by the State of rentals, fees, charges, or other payments, in whole or in part, for any period or periods after a default of any of the terms and conditions to be performed, kept, or observed by Provider shall be deemed a waiver of any right on the part of the State to terminate this Lease for any violation by Provider.

**10. No Refund; Damages to Lessees.** In the event of termination, the State shall not be obligated to refund any rental payments, services, or telecommunications equipment that Provider has made or provided, and Provider shall be solely responsible for any and all claims and damages arising from or related to its leases with providers.

**11. Fees and Expenses.** If the State terminates this Lease due to any breach or default by Provider of any of the terms and conditions of this Lease, Provider shall be responsible for all damages, attorneys' fees, and expenses directly or indirectly caused by the default and termination.

## VIII. CONSTRUCTION AND MAINTENANCE

**1. Right of Access.** Subject to the terms and conditions of this Lease, the State grants Provider the right to travel over the ROW by the shortest practical distance to its construction sites, the same to be used by Provider, its employees, or contractors under the direction of representatives of the State for the purpose of constructing and maintaining approved Facilities, within the ROW.

**2. Authorized Facilities; Notice of Intent.** Prior to installing any Facilities in the ROW, Provider, in all cases, except in emergencies, where it is impossible to do so, shall provide at least thirty (30) working days' notice to the State.

**3. Materials and Workmanship.** The material used by and workmanship completed by Provider shall be in accordance with the best modern practice for similar work as determined by the State, in its sole discretion. Wherever the plans, drawings, or documentation fail to note the quality of materials or workmanship, the interpretation shall be for the best quality of materials and work. To the extent commercially reasonable, a component part common to equipment or units shall be the product of the same manufacturer unless otherwise approved by the State. Provider shall be responsible for securing the required inspections of materials, equipment, fixtures, and accessories and shall submit to the State, for approval, all certificates of inspection. All fees required for such inspections shall be the responsibility of Provider. All material, equipment, fixtures, and accessories shall comply with the revised applicable standards and regulations of the UL, National Board of Fire Underwriters, NEMA, ANSI, and the Institute of Electrical and Electronics Engineers. The State, in its sole discretion, may reject any and all material, equipment, fixtures, and accessories that are not in accordance with the specific standards and requirements.

**4. Construction Facilities.** Provider shall be responsible for providing whatever temporary facilities (water, power, telephone, sanitary facilities, work/storage sheds, fences, parking, etc.) are necessary for the performance of the construction work. Where State facilities exist, the State shall provide reasonable access. However, Provider shall be responsible for any utility connection costs. No

construction facilities, including trailers used for construction offices, shall be allowed on any State property without prior approval by the State.

**5. General Conditions.** Provider agrees that all construction work within the ROW shall be subject to the following general conditions:

- a.** No construction work in the ROW shall begin without the prior written approval of the State.
- b.** The facilities in the ROW shall be installed and maintained by and at the expense of Provider to the reasonable satisfaction of the State. Any additional costs for servicing and maintaining the State's personal or real property that are due to the presence or the installation of the Facilities shall be Provider's responsibility.
- c.** Provider shall at all times be obligated to promptly maintain, relocate, repair, renew, or remove the Facilities as reasonably necessary and appropriate, and shall, upon notice in writing from the State requiring it to do so, promptly fulfill such obligation as the State may require. If Provider fails to fulfill any such obligation, then the State may perform such work or cause the same to be performed at the cost and expense of Provider.
- d.** All work herein or to be contemplated, of whatever nature, and for whatever purpose, shall be done and performed by or under the supervision of Provider and at such time and in such manner as shall be approved by the State, provided, however, that nothing contained in this paragraph 5.d shall limit or restrict the right of the State to perform the work contemplated in paragraph 5.c, above, in the event of Provider's failure to do so.
- e.** Provider shall furnish plans and contracts for all proposed work to the State prior to construction for the State's approval, and the work shall be performed in accordance with the approved plans and contracts.
- f.** If the State deems it advisable, in its reasonable discretion, to engage an engineering consultant to review any work proposed by Provider, the State may do so, with prior notification to Provider. Provider agrees to reimburse the State for the reasonable costs of such an engineering consultant within thirty (30) days of receiving an invoice from the State.
- g.** Provider shall have in its possession on the job site the plans, contracts, and permits for all construction work.
- h.** Provider shall perform all work in a manner that safeguards the traveling public and the property of the State and the United States.
- i.** Any and all approvals required under the terms of this Article shall not be unreasonably withheld.
- j.** Provider shall have the sole responsibility for the maintenance and repair of the Facilities, its personal property, and any other improvements. Provider shall keep the Facilities, its personal property, and any other improvements in a safe condition and in good repair in

accordance with industry standards and all applicable Federal and state laws and regulations, including without limitation those pertaining to safety and emissions standards and any applicable permits or licenses. Provider shall perform all work in a good and workmanlike manner and in as prompt, efficient, and continuous manner as reasonably possible. Provider shall provide to the State, on an annual basis, a certification that the Facilities are installed, operated, and maintained in a good and workmanlike manner and in accordance with applicable industry standards and Federal and state laws and regulations.

- k. Provider shall not leave or allow any of its contractors, agents, or employees to leave any trash or rubbish in the highway right of way. Provider shall, with minimal interference to the State and the right of way, clean up all refuse, rubbish, scrap materials and debris caused by its operations (to the extent practicable, on a daily basis), so that the construction site presents a neat, orderly, and workmanlike appearance. At the completion of construction and installation, Provider shall remove and dispose of all surplus materials and debris resulting from the work that Provider has performed. The cleanup work shall meet the reasonable approval of the State.

**6. Permits, Rules, and Regulations.** Provider shall construct, maintain, relocate, repair, renew, operate, and remove all of the Facilities in the Interstate Highway System in accordance with Federal and state statutes and regulations in effect at the time, including but not limited to safety and emissions standards and applicable permits and licenses. Provider shall, at its own expense, obtain and maintain all permits and licenses (including a Section 248 Certificate of Public Good or an Act 250 permit and any other permits required for the Program), and Provider shall not violate the terms or conditions of any of those permits and licenses. All construction, installation, and operation in connection with the Facilities shall meet with the Federal Telecommunications Act of 1996 and all applicable rules and regulations of the Federal Communications Commission (FCC). Provider has the sole responsibility for carrying out the terms of all FCC requirements and any FCC license (if required) with respect to the Facilities. Provider shall provide the State with copies of all permits and licenses obtained by Provider in connection with this Lease. No site preparation work or construction may take place without first obtaining all necessary permits and licenses. Provider acknowledges in particular that this Lease and all third-party leases are subject to the requirements of 23 C.F.R. Part 710, Subpart D—Real Property Management and to the requirements of the most current version of the State’s Utility Accommodation Plan.

## **7. Security.**

- a. Where necessary, as determined by Provider in its discretion, Provider shall install security devices to restrict access to the Facilities, provided that such devices do not interfere with use or safety of the Interstate Highway System, the ROW, or other State-owned or -leased property by the State or by other licensees or lessees, and further provided that the State has a means of overriding any security devices in the event of an emergency or immediate threat to public health or public safety.
- b. In cases where the State provides keys, security devices, or codes for accessing the ROW or other State-owned or -leased property, Provider agrees not to duplicate such keys or disclose such devices or codes to anyone other than authorized representatives of Provider without the State’s advance written permission. Provider shall provide written notice to the State prior to

and immediately following each entry into a State-owned or -leased secured facility. Provider consents to a background investigation for security purposes of any person it provides with a key or authorizes to enter a secured State facility. Provider shall notify the State immediately in the event of any compromise to the security of a State-owned or -leased facility.

**8. Use of Approved Contractors.** Within the Interstate Highway System, the ROW, or other State-owned or -leased property, all of Provider's equipment and materials must be of a type and design approved in advance by the State. Any installation or other excavation work within the Interstate Highway System, the ROW, or other State-owned or -leased property must be performed by Provider's own forces or by a contractor designated by Provider and approved in advance by the State. Under no circumstances shall Provider allow any contractor other than a State-approved contractor to work within the Interstate Highway System, the ROW, or other State-owned or -leased property.

**9. Equipment Identification.** To the extent that the Facilities within the Interstate Highway System, the ROW, or other State-owned or -leased property are visible, they shall have visible identification labels attached which show Provider's corporate identity, address, call sign, frequency and telephone number of person and organization responsible for maintenance work. All transmission lines, including internal jumpers, but not short lengths of interconnect cabling, shall be uniquely identified with identification labels or by numbered tags with an accompanying paper or electronic log of tags available to the State.

**10. Protecting State Property.** In the exercise of its rights under this Lease, Provider, at its sole cost, shall promptly refill any holes or depressions made by it, its agents or contractors in the Interstate Highway System, including the ROW, and regrade, restore, and revegetate the area to substantially the same condition as existed prior to any such excavation. Such restoration shall include, but not be limited to, any necessary regrading and replanting of any grass areas or landscaping items and paving any paved areas. Such restoration shall be subject to written approval of the State, which approval shall not be unreasonably withheld or delayed. Provider shall notify the State at least thirty (30) days prior to commencing any restoration. All restoration work shall be performed in a workmanlike manner and will be subject to the State's written approval, which will not be unreasonably withheld. Provider shall at all times perform its responsibilities under this Lease in such a manner to ensure the least interference with traffic within the Interstate Highway System and the ROW.

**11. Damage to State Property.** Provider shall at all times exercise special precautions to avoid damaging State or United States property, including, but not limited to, the ROW, and the property and equipment of others thereon. Provider assumes all liability for any and all loss from such damage caused by Provider and any sub-contractors, its use or misuse of the Interstate Highway System, the ROW, or Provider's equipment. Provider shall immediately report to the State the occurrence of any damage to State or United States property or the property or equipment of others thereon caused by Provider and shall make all necessary repairs. If the damage interferes with the use of the property by the State or the United States or by others authorized by the State, the State may at its own election, after notice to Provider, repair any damage to the property caused by Provider, and Provider shall reimburse the State for its expenses in making such repairs within thirty (30) days of invoice therefor. If the damage does not interfere with the use of the property by the State or the United States or by others authorized by the State or the United States, nor create an emergency situation or threat to public health or safety, the State shall notify Provider, in writing, of such obligation, and Provider shall have a period of thirty (30) days after receipt of such notice to undertake and complete such repairs; provided however, that if the nature

of such repairs require more than thirty (30) days to complete, the Parties shall agree to such longer period as may be reasonably necessary to complete such repairs. If the damage creates an emergency situation or threat to public health or safety, the State may rectify the situation without notice, and Provider shall reimburse the State for its expenses in making such repairs within thirty (30) days of invoice therefor.

## **IX. AVOIDANCE OF COST OR LIABILITY TO THE STATE**

Provider acknowledges that its existing and proposed uses or occupancies of the ROW are for the advantage of Provider and do not involve the State's performance of any duties to the public. Provider further acknowledges that its existing and proposed uses or occupancies of the Interstate Highway System, the ROW, and other State-owned or -leased property may expose the State to additional liability to which the State would not otherwise be exposed. Accordingly, Provider hereby agrees that the State and FHWA shall be fully protected and kept free of all avoidable interference and that the State will not incur any costs or liabilities whatsoever as a result of its granting the use of the real estate described herein, including but not limited to Provider's leases with providers and any action or inaction of these providers, or the presence of any obstacle or obstruction resulting from Provider's use or occupancy of the Interstate Highway System, the ROW, and other State-owned or -leased property. In accordance with paragraph 6 of Article XIII, Provider shall defend and indemnify the State against any and all suits, whether threatened, pending or filed, arising from or related to any and all leases and other contracts that Provider enters into pursuant to this Lease.

## **X. BINDING EFFECT; CONSENT TO ASSIGNMENT**

This Lease is binding on the Parties hereto and their respective successors and assigns. However, Provider may not assign this Lease, or any part thereof, without the prior written approval of the State and the Federal Highway Administration (FHWA). Provider shall not lease or license or authorize any other person or entity to co-locate equipment at the Interstate Highway System, the ROW, or other State-owned or -leased property or to use the Interstate Highway System, the ROW, or other State-owned or -leased property in any way without the prior written approval of the State and FHWA. Provider may assign this Lease to a subsidiary or affiliate of Provider where an affiliate means any party controlling, controlled by, or under common control with Provider. Approval shall be required for any assignments undertaken as part of a sale of substantially all assets of Provider to an unaffiliated entity.

## **XI. TAXES**

This Lease does not exempt Provider from any taxes or assessments levied by any Federal, state, or local government. In the event that Provider's property or activities in the Interstate Highway System, the ROW, or other State-owned or -leased property give rise to any tax obligations (of any sort or nature) to any governmental unit, Provider shall be solely responsible to pay such taxes, and shall hold the State harmless from any obligation associated with such taxes.

## **XII. MISCELLANEOUS**

**1. Topic Headings.** The topic headings of the articles, sections, or paragraphs in this Lease are for reference and convenience only and in no way define or limit the scope and contents of this Lease or in any way affect its provisions.

**2. Notice.** Any notice or other communication in connection with this Lease shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and delivered by hand or sent either (a) by registered or certified mail (return receipt requested) with the United States Postal Service; or (b) by Federal Express or similar overnight courier furnishing evidence of receipt to the sender, at the following addresses:

a. As to the State: Secretary of Transportation  
Vermont Agency of Transportation  
National Life Building  
One National Life Drive  
Montpelier, VT 05633-5001

With copy to: Assistant Attorney General  
Vermont Agency of Transportation  
National Life Building  
One National Life Drive  
Montpelier, VT 05633-5001

b. As to Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any Party may change the address at which notices are to be received by notice given as set forth above.

**3. Dispute Resolution.** The Parties agree that they will attempt, in the first instance, to resolve any disputes that may arise under this Lease by direct negotiations, with the State represented by VTrans' Director of Operations. In the event that Provider is aggrieved by the decision of the Director of Operations, then Provider, within thirty (30) days of the Director's decision, may appeal in writing to the Secretary of Transportation through the Director of Operations, requesting a hearing. The notice of appeal shall completely outline the nature and extent of the question or questions appealed and shall provide copies of any supporting documentation. The decision of the Secretary of Transportation may be appealed to the Vermont Transportation Board, as provided in 19 V.S.A. § 5(d)(4).

**4. Waiver.** Any waiver at any time by any Party hereto of its rights with respect to a default under this Lease, or with respect to any other matter arising in connection with this Lease, shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay, short of the statutory period of limitations, in asserting or enforcing any right under this Lease shall be deemed to be a waiver of such right.

**5. Subordination to Other Permits, Licenses, Leases, Grants, and Agreements.** This Lease is subject and subordinate to any and all permits, licenses, leases, grants, and agreements heretofore made and now in effect upon the real estate over which the Facilities are to be installed, as well as any and all other permits, licenses, leases, grants, and agreements that may be made hereafter by the State during the term of this Lease which do not materially interfere with Provider's exercise of the rights hereunder.

**6. Attorney's Fees.** In case the State shall bring suit to compel performance of, or to recover for breach of, any covenant, agreement, or condition contained in this Lease, or if it becomes necessary for the State to institute suit for eviction and/or for damages on account of rental arrears or violation of the terms of this Lease, if the State prevails, then Provider shall pay to the State reasonable attorney's fees in addition to the amount of judgment and costs, which fees and costs Provider hereby covenants and agrees to pay.

**7. Interpretation of Lease.** If an ambiguity or question of intent arises with respect to any provision of this Lease, the Lease will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of authorship of any of the provisions of this Lease.

**8. Property Rights.** This Lease is not intended, and shall not be construed, to create or vest in Provider any ownership or property rights in the ROW or any other State-owned or -leased properties and does not provide Provider with any basis to compel the State to maintain the ROW (including any access) or any other properties.

**9. Non-Exclusivity.** This Lease shall be non-exclusive, and the State expressly reserves the right to lease or license the ROW or any part thereof to any person for any purpose, including but not limited to the installation of telecommunications facilities in the ROW; provided, however, that Provider shall have the exclusive right to market, design, construct, install, operate, and maintain the Facilities and to its share of the lease revenues generated by four of the conduits included within these Facilities as provided herein for the term of this Lease. The State, in its sole discretion, may use either or both of the additional two conduits that Provider must construct and maintain pursuant to this Lease for the State's exclusive use, including all or any portion of the fiber that either or both of these conduits may contain, for any function of State Government. Notwithstanding any of the foregoing, Provider shall have the exclusive right to market only three of the existing conduits between Sharon and Hartford in the right of way for I-89, as provided by this Lease; provided however that the State, in its sole discretion, may lease or license to any person one of the additional three conduits between Sharon and Hartford, and the State may use two of these additional three conduits, including all or any portion of the fiber that either or both of these conduits may contain, for any function of State Government. Provider agrees to provide technical information to the State and to any prospective licensee or lessee of the ROW.

**10. Public Information.** Provider agrees that this Lease shall be public information under the State's access to records laws. Provider and the State shall issue a joint press release after this Lease is fully executed. In the event that the State determines that any additional public announcement of this Lease is warranted, the State shall afford Provider the opportunity to review and comment on the public announcement prior to its release.

**11. Access Prior to installation.** Prior to installation of any Facilities, Provider and its authorized representatives shall have the right to enter upon the ROW or other State-owned or -leased property at reasonable times as coordinated with and agreed to in advance by the State for the purpose of taking measurements or conducting studies, tests, and inspections required for the installation and operation of the Facilities.

**12. Liability.** Neither the State nor FHWA shall be liable to Provider for loss of or damage to the ROW, access to the ROW, interruption of service, or for any other matter arising under this Lease.

**13. Insurance.** Prior to signing this Lease, Provider shall certify that it has obtained insurance that meets the requirements of this Lease, including the insurance requirements of the Standard State Provisions for Contracts and Grants in Article XIII, below, with coverage extending to both VTrans and FHWA. Provider's certificate of insurance shall be incorporated into this Lease as Attachment A and made a part hereof.

**14. Responsibility for Non-Transportation Permits and Approvals.** Provider shall be responsible for determining the need for any permits (such as land use or other environmental permits) that may be needed from any governmental entities, and if needed, for procuring such permits. Without limiting the foregoing or any other provision of this Lease, Provider agrees to indemnify the State from any costs of seeking such permits and to defend, indemnify, and hold harmless the State from any costs of any sort associated with any asserted or alleged failure to obtain or comply with any such permits associated with the Project.

**15. Security Interest.** Provider shall not cause or allow any person or organization to hold a security interest in the ROW, in any other State-owned or -leased property, or in any property that Provider or any of Provider's lessees, contractors, agents, or assigns installs in the ROW or in any other State-owned or -leased property.

**16. Liens.** Provider shall, at its own cost and expense, cause any mechanics lien or other lien, charge, or order for the payment of money filed against the State's property as a result of any alleged act or omission of Provider to be discharged within ninety (90) days after Provider has received notice of the filing in any public records or court in accordance with governing law.

**17. Signage.** No signage shall be installed other than as specifically authorized in advance by the State.

**18. Force Majeure/Repairs to State Property.** The State shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed for purposes hereof to mean any cause beyond the control of the State including but not limited to failure of the ROW, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor stoppage, sabotage, and restraint by court order or public authority, which the State could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome.

If the State needs to access or modify the ROW or other State-owned or -leased property in order to repair or maintain it in good and safe condition for the its primary purpose, and such work by the State renders it reasonably unavoidable that the Facilities be taken out of service on an interim or permanent basis, the State shall have the right, without liability to Provider, to require Provider to cease use of the ROW or other State-owned or -leased property for as long as is required by the State.

In such instances, the State shall work with Provider, in good faith, to attempt to find a suitable location for installation by Provider of temporary communications facilities at a location on or near the ROW or any other State-owned or -leased property involved that is suitable for maintaining its network until the repair or maintenance work is complete, provided that the State shall have the right to reject the

installation of a temporary facility that would unduly interfere with the State's operation or would fail to comply with state or Federal requirements.

**19. Suitability of Property.** Acceptance of this Lease by Provider shall be prima facie evidence that Provider accepts the suitability of the leased property for its purposes, and the use thereof by Provider shall attest to such suitability.

**20. Buildings and Structures.** No other equipment, buildings, or structures shall be erected or used in the ROW or any other State-owned or -leased property by Provider other than those specifically authorized in this Lease.

**21. Herbicides; Hazardous Waste.**

- a. Provider shall not use herbicides, other pesticides, growth inhibitors, or other toxic chemicals in the ROW or other State-owned or -leased property without the prior written approval of the State.
- b. Should Provider or any of its contractors or lessees spill or place any hazardous wastes, as defined under Vermont or Federal statutes or regulations, onto or in the ROW or other State-owned or -leased property, Provider shall promptly notify the State, promptly clean up and remove the hazardous wastes, and Provider shall indemnify and hold the State harmless from all related actions.
- c. Provider shall be able to store and use hazardous substances in the ROW of such types and in such amounts as are detailed in its applications for access permits pursuant to 19 V.S.A. § 1111, and in any event in accordance with all applicable laws.

**22. Vegetation.** No trees or other vegetation may be removed from or added to the ROW or any other State-owned or -leased property without prior approval from the State.

**23. Employees; Subcontractors.** Provider shall employ only competent and reliable employees and shall conduct its operations to minimize danger to its employees and all other personnel working on the Program. Provider shall keep the Program under its own control, and it shall be Provider's responsibility to see that the work is properly supervised and carried on faithfully and efficiently, and in accordance with the Program documentation. The intent of this Lease is to secure the services of Provider because of its competency to do the work. Therefore, Provider shall not sublet, subcontract, sell, transfer, assign, or otherwise dispose of this Lease or any portion hereof, or its rights, title, or interest herein, without the prior written consent of the State. The Parties expect that Provider will subcontract work with the State's approval of subcontractors, which approval will not be unreasonably withheld. However, no subcontract or transfer shall, in any case, release Provider of its total liability under this Lease, and Provider shall be liable to the State for any and all actions or inactions of any subcontractor that Provider retains.

**24. Accident Prevention and Reporting.** If at any time during the term of this Lease, Provider's personnel or subcontractors engage in practices that the State regards as unsafe, the State shall notify Provider, which shall suspend all affected activity until Provider has taken or caused its subcontractor to have taken satisfactory remedial action. All safeguards during the Program shall comply with applicable state and Federal requirements. Provider shall take any and all action, on its own initiative or as the State

reasonably directs, reasonably necessary to protect the life, health, and general welfare of all personnel working on the Program and highway users. Provider shall report promptly, in writing to the State, all accidents arising out of or in connection with the performance of the Program, whether on or adjacent to the Interstate Highway System, the ROW, or any other State-owned or -leased property, which causes death, personal injury, or property damage. If death or serious personal injury connected with the Program occurs, Provider shall immediately report the incident to the State. If any third person makes any claim against Provider or any of its subcontractors or any of their representatives on account of any accident, Provider shall promptly report the fact in writing to the State, giving full details of the claim.

**25. Review, Acceptance, and Approval.** The Parties understand and agree that the review, approval, and acceptance of any documents submitted to the State, including but not limited to plans, drawings, schedules, etc. of whatever nature, will be made on the basis of limited, general inspections. Therefore, because of the limited nature of such reviews, the ultimate responsibility for the satisfactory completion of the Program rests solely with Provider. Thus, Provider shall bear the ultimate responsibility for the quality of all workmanship, the completeness and accuracy of all schedules, the quality of all materials provided, and compliance with all terms and conditions of this Lease.

**26. Data Provided by the State.** Throughout negotiations and the course of the Program, the State has provided or may provide certain information to Provider to assist Provider in its efforts. The Parties understand that in providing such information to Provider, the State has used or will use its best efforts to provide the information requested but that the information may not be complete and that such information does not constitute a positive representation of any condition that Provider may encounter in the field. Said information is not part of this Lease, and there is no expressed or implied agreement that the information set forth in any document or any data provided by the State is correct. Provider shall not rely on this information, but shall assume the possibility that conditions affecting the cost and/or difficulty of the work to be performed may differ from those indicated on any data provided by the State.

**27. Reporting.** Provider shall fulfill all reporting requirements associated with the Program, including, without limitation, contacting the Dig Safe System to report all underground construction activities.

**28. Labor and Material.** Provider shall perform all of its work and labor in the best and most workmanlike manner. The materials and labor shall be in strict and entire conformity, in every respect, with the specifications and drawings and shall be subject to the inspection and approval of the State and/or FHWA. If the State rejects any of the material or labor as defective or unsuitable, then Provider shall remove and replace the defective or unsuitable materials with other approved materials and do the labor anew, to the satisfaction and approval of the State, at the cost and expense of Provider.

**29. Extra Work or Materials; Claims.** Provider understands and agrees that the State shall not allow any claim for extra work or materials. Provider's sole compensation shall be its share of rental revenues under third-party leases provided for in this Lease.

**30. Lease Modifications.** Any modifications or amendments to this Lease must be in writing and executed by the authorized representatives of the Parties.

### XIII. Standard State Provisions

Attachment C - Page 1 of 6

#### ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS REVISED JULY 1, 2016

**1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

**B. Internal Controls:** In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

**C. Mandatory Disclosures:** In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired

in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and

liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

**24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**25. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**27. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**29. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**30. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**31. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**32. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions)

**IN WITNESS WHEREOF**, the **STATE OF VERMONT** has caused this instrument to be subscribed, this \_\_\_ day of \_\_\_\_\_, 2016, by Chris Cole, its Secretary of Transportation and duly authorized agent.

**STATE OF VERMONT  
(STATE)**

By: \_\_\_\_\_  
Chris Cole  
Its Secretary of Transportation and  
Duly Authorized Agent

STATE OF VERMONT                    )  
WASHINGTON COUNTY, ss.        )

At Montpelier, this \_\_\_ day of \_\_\_\_\_, 2016, personally appeared Chris Cole and he acknowledged the foregoing instrument, by him as Secretary of Transportation and duly authorized agent of the **STATE OF VERMONT** subscribed, to be his/her free act and deed and the free act and deed of the **STATE OF VERMONT**.

Before me,

\_\_\_\_\_  
Notary Public  
(My commission expires \_\_\_\_\_)

APPROVED AS TO FORM:

DATED: \_\_\_\_\_

\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

AUTHORIZATION PURSUANT TO 19 V.S.A. § 1706:

\_\_\_\_\_  
Peter Shumlin, Governor

\_\_\_\_\_  
(Date)

AUTHORIZATION PURSUANT TO 19 V.S.A. § 26(b):

JOINT TRANSPORTATION COMMITTEE

By: \_\_\_\_\_

\_\_\_\_\_  
(Date)

SAMPLE

**IN WITNESS WHEREOF**, \_\_\_\_\_ has caused this instrument to be subscribed this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, its \_\_\_\_\_ and duly authorized agent.

\_\_\_\_\_  
**(PROVIDER)**

By: \_\_\_\_\_, Its  
\_\_\_\_\_ and  
Duly Authorized Agent

STATE OF VERMONT            )  
\_\_\_\_\_ COUNTY, ss.        )

At \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2016, personally appeared \_\_\_\_\_ and he/she acknowledged the foregoing instrument, by him/her as \_\_\_\_\_ and duly authorized agent of \_\_\_\_\_ subscribed, to be his/her free act and deed and the free act and deed of \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public  
(My commission expires \_\_\_\_\_)