

TERMS OF USE AGREEMENT FOR DARK FIBER INFRASTRUCTURE

The following Terms of Use Agreement for Dark Fiber Optic Infrastructure govern the use of dark fiber infrastructure owned by Public Utility District No. 1 of Lewis County (hereinafter "District") by

_____, hereinafter referred to as "User."

The District deems it is in the public's best interest to make its dark fiber communications infrastructure available to certain third-party providers where doing so improves or increases high-speed technology systems available to users within the District's service territory. These terms and conditions as set forth and amended from time to time, at the discretion of the District, govern the use of the District's dark fiber infrastructure by third-party users.

1. Permitted Use of Dark Fiber Infrastructure. Subject to the terms set forth herein, User shall have access to the District's dark fiber optic communications infrastructure as described and depicted on the **initial service application**. Route length shall be measured by strand length from each end splice point or termination of the District's fiber line as determined by the District. User's use of infrastructure shall comply with all District rules, requirements, and policies governing use of dark fiber including, without limitation, the District's "Fiber Connection Standards", as they exist at the time of User's acceptance of these Terms of Use and as they are amended or supplemented thereafter. The District's policies are subject to revision and User shall be bound by any and all future amendments and changes in the District's rules and requirements.

2. Rates and Charges. In consideration for the use of the District's dark fiber infrastructure, User shall pay any fees and charges in accordance with the District's applicable "Rate Schedules" and policies as set forth and maintained by the District's Board of Commissioners.

All Monthly Reoccurring Charges (MRC) will be billed monthly in advance. Other charges will be billed in the next practicable monthly billing cycle following use, or as otherwise agreed upon.

All payments shall be paid to the District in full on or before the due date noted on the invoice. If payment is received after the due date noted on the invoice, a late fee will be assessed per the applicable schedule of charges and subject to disconnection.

Deposit amounts may be assessed prior to connection. Deposit, Non-Reoccurring Charges(NRC) or any other fees must be paid before connection.

3. Term and Duration. User's rights of use shall be effective and authorized immediately upon User's acceptance and execution of these Terms of Use and shall remain in effect until terminated by either party upon thirty (30) days' written notice to the other party. The District shall have the right to immediately terminate all User's rights of use of its infrastructure if determined that User's continued use of the District's infrastructure presents an immediate risk to the health, safety, or welfare of any individual(s) or presents a risk of substantial damage or harm (whether personal injury or

property damage) to the property of the District, any third-party user of the District's property or infrastructure, or any other individual.

4. Facilities and Ownership. The ownership of dark fiber made available to User in connection with this Agreement shall not be deemed to change as a result of this Agreement. User shall purchase and own all additional communications infrastructure necessary to utilize the dark fiber for its business purposes. User shall provide for the labor and materials to interconnect with the District's dark fiber in accordance with the District's fiber connection standards. On termination of this Agreement, the User shall, within 30 days, terminate its connection at User's Demarcation Point to User's System in accordance with the District's fiber connection standards.

5. No Guarantee of Availability of Service from the District. The District does not guarantee uninterrupted service and/or availability and shall not be liable to the User or any other person or third-party for any failure, whether temporary or permanent, of use of the District's fibers or delay or corruption of communication to be transmitted or attempted to be transmitted over the District's fiber infrastructure. In the event of interruption of service, the User shall not receive credit against the monthly lease payment in any way.

The District reserves the right at its sole discretion to temporarily suspend the availability of dark fiber for the purpose of performing preventive maintenance, repairs, and/or improvements to the District's infrastructure. When reasonably able; the District shall give User five (5) days' prior notice of the suspension.

6. Responsibility/Liability. Except as otherwise set forth in this agreement, nothing in these Terms of Use shall create or impose any liability on the District. No liability shall attach to the District for failure of dark fiber, User fiber/s, communication facilities, or failure to have dark fiber capacity available as set forth herein. The User shall be responsible for all damages or repairs arising out of or which relate to the acts of User, its employees, agents and/or contractors in connection with the rights provided by these Terms of Use.

7. Indemnification. User agrees to save, defend, indemnify and hold the District harmless from claims of personal injury, death, and/or property damage arising out of User's negligence in conjunction with its use of the District's infrastructure under this Agreement. In the event of suit based upon this indemnification, the prevailing party shall be entitled to its costs, including but not limited to reasonable attorney's fees.

8. Insurance. Throughout the life of this Agreement, User will maintain in full force and effect with a carrier or carriers selected by User and approved by the District:

- a. Worker's compensation for all User's employees as required by Washington State law;
- b. Bodily injury liability insurance with limits of \$1,000,000 per person and \$5,000,000 for each occurrence; and
- c. Property damage liability insurance with limits of \$1,000,000 in any one occurrence.

The insurance described in (b) and (c) above shall name the District as an additional insured and shall also provide contractual liability coverage satisfactory to the District with respect to liability assumed by User under this Agreement. Upon request from the

District the User shall provide the District evidence of such coverages in the form of a certificate of liability insurance. Written proof of compliance with the requirements of this section will be filed with and approved by the District prior to the User's use of the dark fiber leased to the User under this Agreement, and upon the renewal of each policy year thereafter.

9. Compliance with Law. User shall comply with all applicable federal, state and local laws, codes, rules, regulations, and all other obligations under law. This Agreement shall be governed and interpreted under the laws of the State of Washington. Should it be determined that the District does not have authority to enter into this Agreement, or that the District does not have authority to provide User with dark fiber capacity or services as set forth in this Agreement, this Agreement shall be deemed terminated with no liability or damages accruing to either party.

10. Default. The following shall constitute an event of default:

- a. User fails to pay any fee within thirty (30) days after it is due;
- b. User fails to comply with any term or condition, or fulfill any obligation of this Agreement, or any requirement or specification of the District;
- c. A proceeding under bankruptcy, reorganization, arrangement of debts, insolvency or receivership law or assignment of benefit of creditors is made by or against User;
- d. User becomes insolvent or fails to generally pay its debts as they become due;
- e. User voluntarily or involuntarily dissolves or is dissolved or terminates or is terminated.

In the event of default by User, the District shall have the right to exercise any or all the following remedies to the extent applicable:

- a. terminate this Agreement;
- b. proceed by court action to enforce performance of this Agreement;
- c. exercise any other right or remedy available at law or in equity; and/or
- d. disconnect dark fiber service.

11. Assignment. The District reserves the right to transfer all or part of the communications infrastructure supporting excess capacity from within the Electric System in order to create a separate and distinct District system for bonding or any other lawful purpose. Should this occur, all District rights and responsibilities under this Agreement may be reassigned to that new and separate District system.

User's dark fiber communication capacity under this Agreement is for the sole use of User. No assignment or resale of dark fiber may occur without the express written consent of the of the District and such consent may not reasonably be withheld. The User is permitted to sell bandwidth on fiber leased.

12. Jurisdiction/Venue. This Agreement shall be governed and interpreted under the laws of the State of Washington. Venue for any legal action shall be in Lewis County, Washington.

13. Notices. Any notice required or permitted under this Agreement must be in writing and be sent by first class mail to the following addresses or emailed to the email address below:

To District: Public Utility District No. 1 of Lewis County

Attn: _____
P.O. Box 330
Chehalis, WA 98532
Email: Telecommunications@lcpud.org

To User:

Attn: _____

Email: _____

A notification addressed to the above recipients shall be deemed delivered three (3) days after being mailed. Notification provided via email will be deemed delivered on the next business day.

14. Entire Agreement/Severability. This instrument embodies the entire Agreement of the District and User. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the District and User regarding the services described herein. If a provision of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

IN WITNESS WHEREOF, Public Utility District No. 1 of Lewis County and _____ have executed these Terms of Use for Dark Fiber Optic Infrastructure on _____.

Public Utility District No. 1 of Lewis County _____

By: _____

Its: _____

By: _____

Its: _____