



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

April 24, 2024

In reply refer to: FOIA BPA-2024-01291-F

**SENT VIA EMAIL ONLY TO:** PII [REDACTED]

Brian Hairston  
Infrastructure Access Specialist  
Public Service Electric and Gas (PSE&G)

Dear Mr. Hairston,

This communication concerns your Freedom of Information Act, 5 U.S.C. § 552 (FOIA) request sent to the Bonneville Power Administration (BPA). The agency received your FOIA request on February 28, 2024. The agency formally acknowledged your request via letter dated March 27, 2024. This communication is the agency's formal response to your information request.

### Request

Your request language, confirmed with you on February 28, 2024, was, "Public Service Electric and Gas (PSE&G) is in the process of researching how to develop pricing methodology for dark fiber leasing to third party customers (i.e., government and commercial); PSE&G are trying to determine the models and categories of fiber pricing, including how dark fiber is priced based on geographical areas (i.e. rural, suburban, urban areas). [I request, for the dates Jan 01, 2023, through the date of this request], 1) the [applicable] BPA non-disclosure agreements templates, and 2) the [applicable] BPA dark fiber lease agreements templates."

### Amended Request

Via April 2, 2024, email exchanges with the agency you expanded your request language. That expansion is, '3) Pricing models and or methodology that contain specific formulas for determining dark fiber lease prices.' The full request is: "[I request, for the dates Jan 01, 2023, through the date of this request], 1) the [applicable] BPA non-disclosure agreements templates, and 2) the [applicable] BPA dark fiber lease agreements templates. 3) Pricing models and or methodology that contain specific formulas for determining dark fiber lease prices.'"

### Response

BPA searched for and gathered the agency records and information you seek. Subject matter experts in the agency's Transmission Sales office gathered 62 pages of records responsive to your request. Those 62 pages accompany this communication with no redactions applied. Additionally, Public Utilities Specialist (Account Executive) personnel report that in 2010, BPA had a market analysis performed to determine whether BPA's fiber rates were in-line with the relevant market. Results of that analysis suggested that BPA's rates were below the market, and

as a result the agency increased rates to better align with the market. Since 2010, BPA has increased rates bi-annually, by 2%, which number value is below applicable inflation rates.

### **Fees**

There are no fees associated with processing your FOIA request.

### **Certification**

Pursuant to 10 C.F.R. § 1004.7, I am the individual responsible for the records search and release described above. Your FOIA request BPA-2024-01291-F is now closed, with the responsive agency records and information provided.

### **Appeal**

Note that the records release certified above is final. Pursuant to 10 C.F.R. § 1004.8, you may appeal the adequacy of the records search, and the completeness of this final records release, within 90 calendar days from the date of this communication. Appeals should be addressed to:

Director, Office of Hearings and Appeals  
HG-1, L'Enfant Plaza  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov), including the phrase "Freedom of Information Appeal" in the subject line. (The Office of Hearings and Appeals prefers to receive appeals by email.) The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Phone: 202-741-5770  
Toll-free: 1-877-684-6448

Fax: 202-741-5769

Questions about this communication may be directed to James King, FOIA Public Liaison, at [jjking@bpa.gov](mailto:jjking@bpa.gov) or at 503-230-7621.

Sincerely,

Candice D. Palen  
Freedom of Information/Privacy Act Officer

[Responsive agency records accompany this communication.](#)

**LICENSE AGREEMENT**  
executed by the  
**UNITED STATES OF AMERICA**  
**DEPARTMENT OF ENERGY**  
acting by and through the  
**BONNEVILLE POWER ADMINISTRATION**  
and  
«CUSTOMER LONG NAME»

**Index to Sections**

<b>Section</b>	<b>Description</b>	<b>Page</b>
1.	Definitions.....	2
2.	Term .....	3
3.	Exhibits.....	3
4.	Ownership and Access.....	3
5.	Duties of Customer.....	4
6.	Rights and Duties of BPA.....	6
7.	Outage Procedures .....	7
8.	Modification of the Cable.....	8
9.	Permits.....	8
10.	Taxes and Fees .....	8
11.	Environmental Compliance Activities .....	9
12.	Billing and Payment .....	9
13.	Representations and Warranties .....	10
14.	Insurance.....	11
15.	Termination and Renewal Procedures .....	14
16.	Decommissioning.....	14
17.	Cures and Remedies.....	15
18.	Liability .....	16
19.	Dispute Resolution.....	16
20.	Amendment of Agreement .....	17
21.	General Provisions .....	17
22.	Entire Agreement .....	19
23.	Signatures .....	19
	Exhibit A Fiber System Description, Term and Fees	
	Exhibit B Fiber Specifications	
	Exhibit C Acceptance Testing Standards	
	Exhibit D Notices	

This LICENSE AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and «CUSTOMER LONG NAME» (Customer). Both BPA and Customer may be referred to herein individually as “Party” and collectively as “Parties.”

## 1. DEFINITIONS

The following terms, when used in this Agreement, shall have the meanings set forth in this section:

- (a) “BPA Customer Vault” means a BPA owned vault, whether BPA installed or Customer installed, utilized for Customer Fiber interconnections to BPA’s fiber systems.
- (b) “BPA Facilities” means BPA Property and all BPA personal property associated with a Fiber System, including but not limited to buildings, access roads, Cable, splice enclosures, conduit, BPA Vaults, and BPA Customer Vaults (whether BPA or Customer installed).
- (c) “BPA Property” means BPA fee property and/or BPA easement right-of-way.
- (d) “BPA Vault” means a vault on BPA Property in which Cable is spliced and/or passes through.
- (e) “Cable” means the fiber optic cable owned by BPA and installed by BPA along each Fiber System.
- (f) “Customer Facilities” means Customer installed and maintained structures, hand holes, splice enclosures, innerduct, fiber optic cable or conduit connected to a BPA Customer Vault.
- (g) “Customer Fiber” means the dark (unlit) optical fibers within the Cable licensed to Customer under this Agreement.
- (h) “Emergency Restoration” means repairing and returning the damaged Cable to service following an unscheduled outage.
- (i) “Fiber System” means the location of a Cable that contains Customer Fiber.
- (j) “Land Use Agreement” means an agreement between Customer and BPA which details the terms and conditions associated with use of BPA Property.
- (k) “Planned Restoration” means a maintenance or repair task that is scheduled ahead of time, with advance written notice to Customer.
- (l) “Regenerator Building(s)” means the building(s) along the Fiber System that house the terminal and regenerator equipment owned and operated by

Customer, including any optronics or electronics required by Customer to make use of Customer Fibers.

- (m) “Site” means any real property owned by BPA or a third party upon which Customer installs Customer Facilities.

## 2. **TERM**

- (a) This Agreement shall become effective at 0000 hours on the Effective Date and shall continue in effect for the shorter of 10 years or as long as a license for any Fiber System remains in effect (see Exhibit A for Fiber Systems in effect and Effective Date) unless terminated sooner in accordance with Section 15 of this Agreement.
- (b) All obligations incurred and outstanding shall survive the expiration or early termination of this Agreement.

## 3. **EXHIBITS**

Exhibits A through D are attached hereto and made a part of this Agreement.

## 4. **OWNERSHIP AND ACCESS**

- (a) **BPA Facilities**  
Customer shall not have an ownership interest in BPA Facilities.
- (b) **Customer Facilities on BPA Property**  
Customer shall own Customer Facilities up to the demarcation point. Generally, the demarcation point is the first BPA Customer Vault on BPA Property.
- (c) **Customer Facilities Located Outside of BPA Property**  
Customer shall retain ownership of Customer Facilities installed outside of BPA Property.
- (d) **Customer Access**
  - (1) **Access to BPA Property**  
Before a Customer installs Customer Facilities on BPA Property, a Land Use Agreement is required. If a Land Use Agreement is executed, Customer will have the rights and obligations for access as specified in the Land Use Agreement, subject to the additional requirements of Section 5(b). Except in the case of an emergency, Customer shall give BPA 24 hours written notice of its intent to enter BPA Property, including its intent to enter Customer Facilities located on BPA Property. The notice must include the date and time Customer intends to enter BPA Property and/or BPA Facilities. BPA has the right to require that Customer be accompanied, at Customer’s expense, by a BPA employee or BPA-certified safety watcher, and has

the right to deny Customer permission to enter if BPA is unable to arrange for an employee or BPA-certified safety watcher to accompany Customer or if, in BPA's sole determination, entry by Customer at the date and time requested by Customer will interfere with BPA's use of BPA Property for its own communications needs or for the operation or maintenance of its transmission, or other electrical facilities.

(2) **Emergency Access to BPA Property**

In the case of an emergency where Customer is unable to provide 24 hours' written notice to access BPA Property or Customer Facilities located on BPA Property, Customer shall contact BPA's Network Operations Center (NOC) at (360) 418-8786 to arrange for a BPA employee or BPA-certified safety watcher to accompany the Customer if required by BPA.

(3) **Access to BPA Vaults**

BPA Vaults are to be accessed by BPA only.

(4) **Damage to BPA Property or BPA Facilities**

At Customer's expense, BPA shall repair any damage caused by Customer to any BPA Property or BPA Facilities.

(e) **BPA Access**

Customer shall provide BPA all access to Customer Facilities reasonably necessary for BPA to perform its obligations or enforce its rights under this Agreement.

(f) **Use of Facilities for Third Parties**

BPA has the right to enter and use, and to permit third parties to enter and use, Customer Facilities and all conduit, innerduct and hand holes located on BPA Property in order to facilitate the licensing of fiber to such third parties. Such use may include establishing connections between BPA's fiber and the third party's fiber to carry out the parties' rights and obligations under any license agreement for such fiber. BPA may not use Customer-installed hand holes for fiber slack storage or splice enclosures without prior consent of Customer. Except in the case of an emergency, in which case BPA shall make reasonable efforts to provide oral or written notice to Customer of its intent to enter or use Customer Facilities, BPA shall give Customer 24 hours' written notice of its intent to enter or use Customer Facilities. The notice will include the date and time BPA intends to enter or use Customer Facilities and the purpose of BPA's use.

## 5. DUTIES OF CUSTOMER

(a) **Approval for Construction and Modification of Customer Facilities**

Customer shall enter into a construction agreement with BPA before constructing or modifying Customer Facilities on BPA Property.

(b) **Procurement of Access and Use Rights**

Customer shall, at Customer's expense, obtain and maintain at all times during the term of this Agreement, all rights to property owned by third parties, if any, necessary for Customer to perform its obligations under this Agreement.

(1) **BPA Fee Property**

If the Site is located on BPA fee property, Customer must enter into a Land Use Agreement with BPA.

(2) **BPA Easement Right-of-Way**

If the Site is located on property owned by a third party, Customer must obtain from the fee owner of the property all necessary rights to access the Site and to locate, install, maintain and use Customer Facilities. At BPA's request, Customer shall provide BPA with written evidence of rights obtained. Customer must also enter into a Land Use Agreement with BPA for use of BPA's easement right-of-way.

If conflicts arise between a Land Use Agreement and this Agreement, this Agreement will control.

(c) **Maintenance of Customer Facilities**

Customer shall maintain Customer Facilities at all times in good working order and in a safe condition. Whenever Customer enters the Site to perform work or exercise its rights under this Agreement, Customer shall clear the Site of all overgrown brush and debris that results from Customer's work at the Site.

(d) **Utility Service**

Customer shall arrange for all utility service necessary for Customer Facilities, and must obtain any property rights necessary for the provision of such utility service.

(e) **Use of Adequately Trained Personnel**

Customer shall ensure that all of its representatives that access, construct, install, repair, replace, or otherwise handle Customer Facilities or any related materials or equipment are adequately trained and equipped to competently perform such work.

(f) **Documentation**

Customer shall provide BPA with the following documentation within 30 calendar days of the project completion date and shall provide updates of the documentation within 30 calendar days of any modification:

- (1) An as-built diagram or diagrams showing the location of all Customer Facilities located on BPA Property. The as-built diagram(s) must include the Global Position Satellite



coordinates of the physical site where the Optical Time Domain Reflectometer (OTDR) trace is taken.

- (2) OTDR trace from acceptance testing that provide the optical and physical distance, in meters, excluding launch cable if used, from the testing location to BPA's interconnection.

## 6. RIGHTS AND DUTIES OF BPA

### (a) **Maintenance and Repair of the Cable**

Customer acknowledges that Customer Fiber may go out of service at times and that BPA shall not be liable for any failure of Customer Fiber or other interruption of service to Customer that occurs without the fault of BPA.

BPA shall maintain BPA Facilities and the Cable in good working order and in a safe condition, in conformity with the specifications set forth in Exhibit B, provided that BPA shall not be obligated to maintain, repair, or restore any property or equipment if and to the extent, in BPA's sole determination, such activity would interfere with BPA's operation or maintenance of its transmission facilities or telecommunications facilities.

### (b) **Temporary Discontinuance or Loss of Service**

BPA has the right to require Customer to take Customer Fiber out of service or to discontinue service to Customer in order to construct, maintain, repair, or upgrade the Cable, BPA Facilities, BPA transmission or other electrical facilities (Planned Service Interruptions). BPA shall provide Customer with reasonable notice of Planned Service Interruptions and will endeavor to schedule such interruptions at mutually agreeable times. However, BPA reserves the right to schedule an outage at its sole determination, if a mutually agreeable schedule cannot be reached. Planned Service Interruptions shall be limited to the minimal amount of time reasonably needed to perform the construction, maintenance, repair or upgrade.

### (c) **Restoration of Property**

#### (1) **Planned Restoration**

Customer NOC shall notify BPA's NOC of any failure of, or damage to, property or equipment needed for Customer's use of Customer Fiber. Upon such notification, if the failure or damage does not result in immediate interruption in service to Customer, BPA shall conduct a Planned Restoration.

#### (2) **Emergency Restoration**

In the event of damage to or failure of the Cable that results in interruption of service to Customer or another BPA customer, or loss of BPA's telecommunication capability, BPA shall restore service as soon as reasonably possible, taking into account prudent utility

practice, availability of personnel (including any limitation on the use of personnel included in applicable BPA contracts), and the health and safety of BPA's and Customer's employees and agents.

If Customer declares an emergency, the NOC will provide updates as they become available, or every 4 hours.

## 7. OUTAGE PROCEDURES

- (a) Prior to contacting BPA's NOC to report an outage, Customer must verify that the source of the outage is not located on or within Customer Facilities, in accordance with Section 4(b) of this Agreement. Once Customer confirms that the source of outage is due to a failure or damage to BPA Facilities, Customer should contact BPA's NOC with the following information:
- (1) Customer's License Agreement Contract Number and OTDR trace of the location of the failure in meters, the time it occurred, and in pdf format emailed to [tnoc@bpa.gov](mailto:tnoc@bpa.gov);
  - (2) an OTDR trace, including the testing location address or GPS coordinates, as well as the distance from the OTDR testing location to the BPA demarcation point;
  - (3) whether Customer is declaring an emergency;
  - (4) a trouble ticket number to reference (if applicable); and
  - (5) the name and contact information (phone or email) of an individual designated as a single point of contact for updates and assistance.

BPA will require the above information before mobilizing personnel. During restoration, for the safety of BPA's crew, Customer must turn Customer's transmitting light off.

- (b) Once Customer receives a notice of restoration from BPA, Customer must, within one hour of receiving such notice, provide BPA's NOC with confirmation that service is restored and that any splicing performed meets the standards required under this Agreement.
- (c) BPA requires Customer participation during restoration activities whether restoration is performed under emergency circumstances or planned. Any delays caused by Customer non-responsiveness may result in additional charges to Customer and/or delays in Customer restoration.

## 8. MODIFICATION OF THE CABLE

If the Cable or any portion thereof requires relocation, modification, or replacement, the cost of such relocation, modification, or replacement shall be allocated as follows:

- (a) If the relocation, modification, or replacement is requested by Customer, Customer shall pay all such costs; provided, however, that BPA shall not be required to relocate, modify, or replace the Cable if and to the extent, in its sole determination, such activity would interfere with BPA's provision of economical and reliable electric transmission, BPA's needs for communications capabilities, or BPA's provision of fiber or communications service to third parties.
- (b) BPA may relocate, modify, or replace the Cable at any time at its expense upon written notification to Customer. BPA shall make reasonable efforts to maintain service to Customer during the pendency of the relocation, modification or replacement of the Cable. BPA shall consult with Customer regarding the timing of any Planned Service Interruption and make best efforts to schedule such modification at mutually agreeable times.
- (c) If Emergency Restoration is necessitated by a failure of the Cable not caused by any willful action or negligence of BPA, Customer shall pay BPA a percentage of the costs of such Emergency Restoration, which shall include actual costs plus applicable BPA overheads in effect at the time of the restoration, as follows:  $\text{Costs X (Number of Customer Fibers within the Cable) / total fibers within the Cable}$ .

## 9. PERMITS

At its expense, BPA shall acquire and maintain at all times during the term of this Agreement, all necessary permits and approvals for the Cable. Customer shall at Customer's expense, acquire and maintain at all times during the term of this Agreement all necessary permits and approvals for Customer Facilities. Customer shall provide BPA a copy of any environmental review conducted by state or local authorities within 30 calendar days after Customer receives a copy of the review. BPA must approve in writing the conditions, if any, required by such environmental review and may refuse to issue a license on any Fiber System if BPA concludes, in its sole determination, that any condition required by such environmental review or under any state or local permit for the Customer Facilities or for any property needed for the license is unacceptable.

## 10. TAXES AND FEES

Customer shall pay its own taxes, if any, as well as all franchise fees and other applicable fees related to its activities under this Agreement. Customer shall keep all Fiber Systems free from all liens and encumbrances resulting from its performance under this Agreement. If Customer does not pay a tax or fee which becomes due, and such nonpayment results in the imposition of a lien or encumbrance on a Fiber System, BPA shall have the right, but not the obligation, to pay all amounts due, and to discharge such lien or encumbrance, upon 30 calendar days written notice to Customer, and to bill Customer for the amount paid by BPA. Customer shall reimburse BPA upon demand, together with interest at eight percent (8%), compounded monthly, accruing from the date that BPA makes

payment discharging such liens or encumbrances until the date BPA receives full reimbursement from Customer. Customer shall reimburse BPA for any legal costs incurred to remove any such lien or encumbrance, including without limitation attorney fees, costs of investigation, and court costs before any administrative or judicial forum.

## 11. ENVIRONMENTAL COMPLIANCE ACTIVITIES

Customer shall pay the costs of any required cultural resources review or environmental review BPA performs under the National Environmental Policy Act (NEPA) or any other statute or regulation for activities related to this Agreement. If, after such review, BPA determines that mitigation measures should be undertaken, and such measures are necessary solely because of the licensing of fiber to Customer, BPA shall notify Customer in writing of the need for such mitigation and provide Customer an estimate of the cost associated with such mitigation. BPA shall undertake such mitigation measures at Customer's expense, unless Customer notifies BPA in writing within 10 business days after receiving notification of the need for mitigation that Customer elects not to pay for the mitigation measures. In such case, BPA shall have the right to terminate this Agreement on 30 days' notice.

## 12. BILLING AND PAYMENT

### (a) License Fee

BPA shall invoice and Customer shall pay the annual license fee for Customer Fiber licensed under Exhibit A of this Agreement, as it may be revised from time to time, by October 1 of each fiscal year (October 1 – September 30). Such annual license fee shall begin to accrue as of the date BPA notifies Customer in writing that it has completed the construction necessary to provide service to Customer under this Agreement or under any such revision, as the case may be. For each license of Customer Fiber, BPA shall invoice Customer for the annual license fee within a reasonable time after the date the fee begins to accrue. The first annual license fee due for the Customer Fiber licensed under this Agreement or under any revision to Exhibit A shall be prorated based on the percentage of the BPA fiscal year that remains after the date on which the fee begins to accrue.

### (b) Maintenance Fee

Customer shall pay an annual maintenance fee as specified in Exhibit A for maintenance and Planned Restoration, which shall accrue, be invoiced, and paid on the same schedule as the annual license fee above.

### (c) Escalation of all Annual Fees

All annual fees will be increased to the prevailing rates **on the 5 year anniversary of the Effective Date** (for 10-year term agreements) as reflected in Exhibit A, to this Agreement.

### (d) Emergency Restoration Costs

Customer shall pay BPA a percentage of the costs of Emergency Restoration, which shall include actual costs plus applicable BPA overheads in effect at

the time of such Emergency Restoration, as follows: Costs X (Number of Customer Fibers within the Cable/Total fibers within the Cable). BPA shall invoice Customer for such Emergency Restoration costs, if any, on an annual basis reflecting Emergency Restoration costs incurred during the year ending September 30<sup>th</sup>.

(e) **Payment**

Customer shall pay all bills electronically in accordance with instructions on the bill. Customer shall include the BPA contract number and invoice number in the description field of each payment. Payment of all bills must be received by the 20<sup>th</sup> day after the issue date of the bill (Due Date). If the 20<sup>th</sup> day is a Saturday, Sunday or federal holiday, the Due Date is the next day that is not a Saturday, Sunday or federal holiday.

(f) **Late Payments**

After the Due Date, a late payment charge, equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication, in the first issue published during the month in which payment was due), plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365 shall be applied each day to any unpaid balance.

(g) **Disputed Bills**

- (1) If Customer disputes any portion of a charge or credit on Customer's bill, Customer shall provide notice to BPA with a copy of the bill noting the disputed amounts. If any portion of the bill is in dispute Customer shall pay the entire bill by the Due Date. Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.
- (2) If the Parties agree, or if after dispute resolution, Customer is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

### 13. REPRESENTATIONS AND WARRANTIES

(a) **Customer's Authority**

Customer represents and warrants to BPA as follows:

- (1) Customer has full power and authority to execute, deliver, and perform its obligations under this Agreement. The execution and

delivery of this Agreement by Customer and the performance of the terms, covenants, and conditions contained herein will not violate the articles of incorporation or bylaws of Customer or any applicable law or regulation or any order of court or arbitrator, and will not conflict with or constitute a material breach of, or default under, the provisions of any contract by which Customer is bound. Except as otherwise stated herein, no approval, authorization, or other action by any governmental authority or filing with any such authority that has not been obtained or accomplished, is required in connection with the execution, delivery, and performance by Customer of this Agreement.

- (3) There are no known actions, suits, or proceedings pending or overtly threatened against Customer before any court or administrative agency that would materially impair Customer's performance of its obligations under this Agreement.

(b) **BPA's Authority**

BPA represents and warrants to Customer as follows:

- (1) BPA has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Neither the execution and delivery of this Agreement, nor performance by BPA of its obligations hereunder, constitutes a material breach of or a default under any constitutional provision, or any law or administrative regulation, or violates any judgment, decree, or other instrument, or any other contract to which BPA is a party.
- (2) BPA has sufficient interests in the real property along each Fiber System to construct, maintain, and operate the Cable and carry out its obligations under this Agreement.

(c) **Warranties**

In procuring and obtaining materials, each Party shall use reasonable efforts to obtain from the vendors and suppliers, for the mutual benefit of the Parties, warranties that such materials are:

- (1) of the kind and quality described in the purchase order or supply contract;
- (2) free of defects in workmanship, material, design and title;
- (3) of good and merchantable quality.

## 14. INSURANCE

(a) **General**

Within 30 calendar days of the execution of this Agreement, Customer shall provide BPA with a certificate of insurance executed by an authorized

representative of the insurer(s) evidencing that Customer has the insurance required by this section, or with evidence of self-insurance that satisfies the requirements of this Section 14. If Customer is self-insured, Customer will provide documentation to BPA for approval, describing the coverage and the limits included in the self-insurance program and a statement that Customer's self-insurance program complies with this section. With respect to services or operations performed by contractors or subcontractors on behalf of Customer, Customer may satisfy the requirements of this section by providing BPA with a certificate of insurance executed by an authorized representative of the insurer(s) evidencing that Customer's contractors and subcontractors have the insurance required by this section.

- (b) **Notice of Cancellation, Reduction, or Material Change in Coverage**  
Customer shall provide written notice to BPA not less than 30 calendar days prior to cancellation, reduction, or material change in coverage by a third-party insurer. If insurance coverage is canceled, reduced, or materially changed, Customer shall, prior to the effective date of such cancellation, reduction, or material change, obtain the coverage required under this section and provide to BPA documentation evidencing such coverage that satisfies the requirements of this Section 14. If Customer has not obtained such insurance prior to such date, Customer shall be responsible for the costs of any damage, liability, or injury that occurs while such insurance is canceled, reduced, or subject to a material change to the extent that such damage, liability, or injury is not otherwise covered by insurance.
- (c) **Qualifying Insurers**  
Any third-party insurance policies obtained by Customer in satisfaction of its obligations under this section shall be issued by companies that hold a current policyholder's alphabetic and financial size category rating of not less than A- according to Best's Insurance Report, or a similar rating from another recognized rating agency.
- (d) **Insurance Required**  
Customer shall maintain at least the following insurance coverage and shall ensure that Customer's contractors and subcontractors maintain the Workers' Compensation/Employer's Liability Insurance coverage stated in paragraph (3) below.
  - (1) **Liability**  
Commercial general liability insurance for bodily injury (including death) and property damage of not less than \$5 million per occurrence.
    - (A) Coverage included shall be:
      - (i) premises and operations;
      - (ii) broad form property damage;
      - (iii) products and completed operations;

- (iv) blanket contractual liability;
- (v) personal injury liability; and
- (vi) cross-liability and severability of interests.

(B) Coverage shall be endorsed to include the following:

- (i) inclusion of BPA, its officers, representatives, agents, and employees as an additional insured with respect to liability arising out of the services or operations performed by or on behalf of Customer in connection with this Agreement; and
- (ii) a stipulation that Customer's insurance is primary insurance to the extent that Customer is required to indemnify BPA under the terms of this Agreement, and that BPA will not be called upon to contribute to a loss.

(2) **Business Automobile Liability Insurance**

Business Automobile Liability Insurance for bodily injury (including death) and property damage of not less than \$2 million combined single limit per occurrence to all owned, non-owned, and hired vehicles. Non-owned vehicles include any vehicles of Customer's contractors and subcontractors.

(3) **Workers' Compensation/Employer's Liability Insurance**

Statutory Workers' Compensation and Employer's Liability Insurance with limits of not less than \$1 million for all employees engaged in services or operations under this Agreement. The policy shall include all other States' coverage.

(e) **Excess / Umbrella Liability Insurance**

Customer shall provide excess/umbrella liability insurance on an occurrence basis in excess of the Commercial General Liability, Employers Liability and Automobile Liability underlying insurance identified above. The excess/umbrella liability insurance shall have limits in the amount of \$5,000,000 for any one occurrence and annual aggregate. The policy shall name BPA, its officials, officers, employees and agents, as additional insureds with respect to the Customer's performance of services under the contract. Customer's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA.

(f) **Special Provisions**

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Customer, and any approval of said insurance by BPA or Customer, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Customer pursuant to



this Agreement. Furthermore, Customer, with BPA written approval may self-insure the foregoing requirements.

## 15. TERMINATION AND RENEWAL PROCEDURES

### (a) Termination

Either Party may terminate this Agreement in accordance with Section 17 of this Agreement, for breach of this Agreement by the other Party, and/or immediately upon written notice to the other Party in the event that Customer's use of Customer Fiber in accordance with this Agreement is restrained or enjoined (temporarily or permanently) by order of a court of competent jurisdiction. In addition, BPA may terminate this Agreement or any number of Customer Fibers on two-years' written notice if, in BPA's sole determination, Customer Fibers are needed for reliable operation of BPA's transmission system. If BPA terminates this Agreement for a reason other than breach of the Agreement by Customer, BPA shall refund a pro rata portion of any prepaid annual license and maintenance fees for the period beginning from the date of termination through the end of the annual license term.

### (b) Equipment Restoration

Upon termination of this Agreement, Customer is responsible for the restoration of all BPA Facilities to its original condition and any cost associated with the restoration.

### (c) Renewal

If Customer elects to renew its license on any Fiber System, Customer must request in writing an extension of the license for such Fiber System no later than one year before the expiration of the existing license for such Fiber System. BPA is not obligated to renew the license on any Fiber System. If a renewal notice is not provided prior to entering into the last year of Customer's term, receipt acknowledged by BPA, the licensed fibers will be released back into BPA inventory upon the expiration date of the existing license. Renewals on each Fiber System shall be on terms and conditions agreed to by BPA and Customer at the time of renewal.

## 16. DECOMMISSIONING

### (a) Removal of Customer Owned Fiber Interconnection Facilities on BPA Property and Restoration of Site

#### (1) Removal by Customer

Within 90 calendar days after termination of this Agreement or expiration of the Agreement without further renewal, Customer will remove from the Site, Customer Facilities (except as directed by BPA, in writing) and will restore the Site to the condition it was in before execution of the Agreement. Customer is responsible for all costs associated with BPA disconnecting the Customer Fiber and splicing the Customer Fiber back into BPA's fiber system. Customer will be

considered to have fulfilled its responsibility to restore the Site only after BPA certifies in writing that the Site has been restored to its prior condition. If BPA determines that the Site has not been fully restored, BPA will notify Customer of the work that must be done to fully restore the Site and Customer will perform such work within 45 calendar days of receiving such notice. If after 45 calendar days of receiving such notice the Site has not been fully restored, BPA will remove and dispose of Customer Facilities and restore the Site at Customer's expense.

(2) **Customer's Entry onto Site for Decommissioning**

Customer will provide BPA 45 calendar days' written notice stating the date and time it intends to enter the Site for removal of Customer Facilities or restoration of the Site. If BPA is unable to have a BPA employee or BPA-certified safety watcher present at the Site at such date and time, BPA may require Customer to remove equipment or Customer Facilities or perform restoration of the Site at another mutually agreeable date and time at which BPA can have a BPA employee or BPA-certified safety watcher present.

**17. CURE AND REMEDIES**

(a) **Breaching Party's Right to Cure for Breach or Default Other than Non-Payment**

The breaching Party shall have the right to cure any breach or default under this Agreement within 30 calendar days after the receipt by the breaching Party of written notice of such breach or default. In the event that any such breach or default cannot be cured within 30 calendar days, and the breaching Party can demonstrate that the breaching Party is diligently pursuing appropriate action to cure the breach or default, the Parties may agree to an extended cure period, provided however, that in no event shall such cure period exceed 120 calendar days from the date of receipt of written notification of the breach or default.

(b) **Non-breaching Party's Remedies**

If the time allowed the breaching Party to cure any breach or default has expired without the cure having been completed, the non-breaching Party shall have the right to:

- (1) terminate this Agreement; or
- (2) cure any breach or default of the breaching Party to preserve the non-breaching Party's rights that may be prejudiced as a result of such breach or default.

The non-breaching Party shall also have the right to exercise and pursue all other rights and remedies available to it under applicable law.

(c) **Rights and Remedies Cumulative**

Any right or remedy afforded to either Customer or BPA under any provision of this Agreement on account of breach or default by the other is in addition to, and not in lieu of, all rights or remedies afforded either Customer or BPA under any other provision of this Agreement, by law or otherwise.

**18. LIABILITY**

BPA shall not be responsible for injuries to Customer personnel or damage to Customer property or facilities associated with work performed pursuant to this Agreement unless resulting from BPA negligence or intentional misconduct. Within the limitations of the Federal Tort Claims Act and the Agreement Limiting Liability among Western Interconnected Systems, BPA shall be responsible for injuries and damages directly caused by its negligence or intentional misconduct associated with work performed pursuant to this Agreement.

Customer shall not be responsible for injuries to BPA personnel or damage to BPA property or facilities associated with work performed pursuant to this Agreement unless resulting from Customer negligence or intentional misconduct. Within the limitations of the Agreement Limiting Liability among Western Interconnected Systems, Customer shall be responsible for injuries and damages directly caused by its negligence or intentional misconduct associated with work performed pursuant to this Agreement.

In no event shall either Party be liable to the other Party for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental, or indirect losses or damages (in tort, contract, or otherwise) under or with respect to this Agreement or any failure or performance related hereto howsoever caused, whether or not arising from any Party's sole, joint, or concurrent negligence.

**19. DISPUTE RESOLUTION**

- (a) Pending resolution of a disputed matter, the Parties shall continue performance of their respective obligations hereunder.
- (b) Either Party shall notify the other Party in writing of the existence of a dispute arising under this Agreement. The Parties will meet within 30 calendar days after receipt of the notice by the second Party, or within such other time mutually agreed to by the Parties, to attempt in good faith to negotiate a resolution of the dispute. The meeting will be attended by individuals with decision-making authority regarding the dispute. If within 30 calendar days after such meeting the Parties have not succeeded in resolving the dispute, either Party may pursue available legal remedies.

**20. AMENDMENT OF AGREEMENT**

No amendment of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

## 21. GENERAL PROVISIONS

### (a) **Uncontrollable Forces**

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force.

“Uncontrollable Force” means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party’s reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (1) strikes or work stoppage;
- (2) floods, earthquakes, fire, or other natural disasters, terrorist acts, epidemics, pandemics; and
- (3) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with Exhibit D.

### (b) **Assignment**

This Agreement is binding on any successors and assigns of the Parties. Neither Party may transfer or assign this Agreement, in whole or in part, without the other Party's written consent, which shall not be unreasonably withheld; provided, however, that Customer may, upon written notification to BPA, assign its rights and responsibilities under this Agreement to a corporate parent, subsidiary or commonly owned affiliate without the consent of BPA.

- (c) **Subleasing**  
Customer may sublease only upon prior written consent from BPA. In the event that Customer subleases to another entity, Customer shall continue to serve as a single point-of-contact to BPA for all activities relating to this Agreement.
- (d) **Governing Law**  
This Agreement shall be governed by and construed in accordance with Federal law.
- (e) **Waivers**  
No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.
- (f) **Confidentiality**  
If any information or documents furnished by one Party to the other Party are confidential or proprietary and are conspicuously marked as such, the receiving Party shall take reasonable steps to protect against the unauthorized use or disclosure of such information or documents; provided that this section shall not apply to information or documents in the public domain and provided further that BPA may release any such information to comply with Federal law, including the Freedom of Information Act, 5 U.S.C. § 552.
- (g) **No Third-Party Beneficiaries**  
This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

**22. ENTIRE AGREEMENT**

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

**23. SIGNATURES**

This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The Parties have executed this Agreement as of the last date indicated below.

«CUSTOMER LONG NAME»

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

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

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

Title: \_\_\_\_\_

Title: Transmission Account Executive

If opting out of the electronic signature:

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

Name: \_\_\_\_\_  
*(Print/Type)*

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
FIBER SYSTEM DESCRIPTION, TERM AND FEES**

**1. FIBER SYSTEM**

BPA licenses (#) xxx fibers on the Fiber System Fiber System to Customer for the term of (##) xx years, commencing Month Day, Year (Effective Date).

Substation	Distance (light path miles)	Licensed Fiber	Glass Type
		# of ##	SMF 28 / Dispersion Glass
<b>Total</b>			

<b>Total All Fiber Fiber Systems</b>	####
--------------------------------------	------

**2. FIBER PAYMENTS**

(a) **Annual License Fee** = Rate x Fiber x Miles x 12 months, or \$#### per year.

**Rate** = \$#### per fiber per mile per month

**Fiber** = Number of licensed fiber: ##

**Miles** = Number of light path miles of licensed fiber: ###

(b) **Annual Maintenance Fee** = Rate x Miles or \$#### per year.

**Rate** = \$#### per light path mile per year

**Miles** = Number of light path miles of licensed fiber: ###

**EXHIBIT B**  
**FIBER SPECIFICATIONS**  
**CORNING® SMF-28™ CPC6**  
**SINGLE-MODE OPTICAL FIBER**

**1. GENERAL**

Corning® SMF-28™ single-mode optical fiber (SMF-28 fiber) is considered the “standard” optical fiber for telephony, cable television, submarine, and private network applications in the transmission of data, voice, and/or video services. Corning SMF-28 fiber is manufactured to the most demanding specifications in the industry.

SMF-28 fiber is optimized for use in the 1310 nm wavelength region. The information- carrying capacity of the fiber is at its highest in this transmission window, and it is also where dispersion is the lowest. SMF-28 fiber can also be effectively used in the 1550 nm wavelength region.

Corning’s enhanced, dual layer acrylate CPC6 (CPC6) coating provides excellent fiber protection and is easy to work with. CPC6 can be mechanically stripped and has an outside diameter of 245 µm. CPC6 is optimized for use in many single and multi-fiber cable designs including loose tube, ribbon, slotted core, and tight buffer cables.

SMF-28 fiber is manufactured using the Outside Vapor Deposition (OVD) process, which produces a totally synthetic, ultra-pure fiber. As a result, SMF-28 has consistent geometric properties, high strength, and low attenuation. SMF-28 fiber can be counted on to deliver excellent performance and high reliability, reel after reel.

**2. FEATURES AND BENEFITS**

- Versatility in 1310 nm and 1550 nm applications.
- Outstanding geometrical properties for low splice loss and high splice yields.
- OVD manufacturing reliability and product consistency.
- Optimized for use in ribbon, loose tube, and other common cable designs.



### 3. OPTICAL SPECIFICATIONS

#### Attenuation

Uncabled Fiber Attenuation Cells	
	Attenuation Cells (dB/km)
Wavelength (nm)	Standard
1310	≤ 0.40
1550	≤ 0.30

#### Point Discontinuity

No point of discontinuity greater than 0.10 dB at either 1310 nm or 1550 nm.

#### Attenuation at the Water Peak

The attenuation at  $1383 \pm 3$  nm shall not exceed 2.1 dB/km.

Attenuation vs. Wavelength		
Range (nm)	Ref. $\lambda$ (nm)	Max Increase $\alpha$ (dB/km)
1285-1330	1310	0.05
1525-1575	1550	0.05

← The attenuation in a given wavelength range does not exceed the attenuation of the reference wavelength ( $\lambda$ ) by more than the value  $\alpha$ .

Attenuation With Bending			
Mandrel Diameter (mm)	Number of Turns	Wavelength (nm)	Induced Attenuation (dB)
32	1	1550	≤ 0.50
75	100	1310	≤ 0.05
75	100	1550	≤ 0.10

← The induced attenuation due to fiber wrapped around a mandrel of a specified diameter.

- **Cable Cutoff Wavelength ( $\lambda_{ccf}$ )**  
 $\lambda_{ccf} < 1260$  nm
- **Mode-Field Diameter**  
9.20 ± 0.40  $\mu$ m at 1310 nm  
10.40 ± 0.8  $\mu$ m at 1550 nm
- **Dispersion**  
Zero Dispersion Wavelength ( $\lambda_o$ ): 1302.5 nm ≤  $\lambda_o$  ≤ 1322 nm  
  
Zero Dispersion Slope ( $S_o$ ): ≤ 0.092 ps/(nm<sup>2</sup> • km)  
  
Fiber Polarization Mode Dispersion Coefficient (PMD): ≤ 0.5 psec/ $\sqrt{km}$

<b>Dispersion Calculation</b>	
$\text{Dispersion} = D(\lambda) \approx \frac{S}{4} \left[ \frac{\lambda^4}{\lambda^3} \right] \text{ps} / (\text{nm} \cdot \text{km}), \text{ for } 1200 \text{ nm} \leq \lambda \leq 1600 \text{ nm}$	$\lambda = \text{Operating Wavelength}$

**4. ENVIRONMENTAL SPECIFICATIONS**

<b>Environmental Test Condition</b>	<b>Induced Attenuation (dB/km)</b>	
	1310 nm	1550 nm
Temperature Dependence -60° to +85°C	≤ 0.05	≤ 0.05
Temperature-Humidity Cycling -10°C to +85°C, up to 98% RH	≤ 0.05	≤ 0.05
Water Immersion, 23°C	≤ 0.05	≤ 0.05
Heat Aging, 85°C	≤ 0.05	≤ 0.05

Operating Temperature  
Range -60°C to +85°C

**5. DIMENSIONAL SPECIFICATIONS**

**Standard Length (km/reel):** 2.2 - 25.0

**Glass Geometry**

Fiber Curl: ≥ 2.0 m radius of curva  
Cladding Diameter: 125.0 ± 1.0 μm  
Core-Clad Concentricity: ≤ 0.8 μm  
Cladding Non-Circularity: 1.0%

**Coating Geometry**

Coating Diameter: 245 ± 10 μm  
Coating-Cladding Concentricity: 12 μm

Defined as:  $\left[ 1 - \frac{\text{Min. Cladding Diameter}}{\text{Max. Cladding Diameter}} \right] \times 100$

## 6. MECHANICAL SPECIFICATIONS

### **Proof Test:**

The entire length of fiber is subjected to a tensile proof stress  $\geq 100$  kpsi (0.7 GN/m<sup>2</sup>)

## 7. PERFORMANCE CHARACTERIZATIONS

*Characterized parameters are typical values.*

### **Core Diameter:**

8.2  $\mu\text{m}$

### **Refractive Index Difference:**

0.36%

### **Numerical Aperture:**

0.14

NA was measured at the one percent power angle of a one-dimensional far-field scan at 1310 nm.

### **Effective Group Index of Refraction ( $N_{\text{eff}}$ ):**

1.4677 at 1310 nm

1.4682 at 1550 nm

### **Zero Dispersion Wavelength ( $\lambda_0$ ):**

1313 nm

### **Fatigue Resistance Parameter ( $n_d$ ):**

$\geq 20$

### **Zero Dispersion Slope ( $S_0$ ):**

0.086 ps/(nm<sup>2</sup>•km)

### **Coating Strip Force:**

Dry: 0.7 lbs. (3.2 N)

Wet: 14 days room temperature: 0.7 lbs. (3.2 N)

**EXHIBIT C**  
**ACCEPTANCE TESTING STANDARDS**

BPA shall meet and maintain, at a minimum, the standards set forth below.

**1. Design Criteria**

The number of cable splices at the time of original construction will be designed to maximize reel lengths between splices. Due to cable cuts, project changes and cable relocation, additional splices may be necessary and are allowed. The number of splices will be monitored to insure that attenuation and reflection tolerances are maintained.

**2. Construction**

Cable will be constructed in accordance with sound commercial practices. BPA requirements will in general be more stringent however. The National Electric Code shall be followed as a minimum.

**3. Typical Fiber Cable Information**

Single mode fiber specifications may vary, depending on the fiber manufacturer. Typical concatenated levels of 0.40 dB per km @ 1310nm (for Corning SMF-28) and 0.25 per km @ 1550 nm (for Corning SMF-28).

**4. Span Requirements**

Span loss measurements will be performed using the two following methods: OTDR and insertion loss (stabilized light source and power meter) measurement in each direction at 1550 nm wavelength. Insertion loss testing will not be completed until Customer Fiber has been terminated at each site.

- (a) Maximum dB/km loss must not exceed 0.35 dB/km at 1550 nm including splice losses.
- (b) In no case shall a fiber show a point discontinuity greater than 0.1dB. Discontinuities (known as steps, splices, or attenuation non-uniformities) shall be measured with an OTDR to determine the loss of the localized attenuation. The least squares fit method of measurement must be used to determine the magnitude of the loss of a point discontinuity.
- (c) Preliminary power meter testing consisting of a mechanical fiber coupler, stabilized light source and a power meter (to assure that no transposed fibers are spliced) may be completed within 60 calendar days of the completion of construction.
- (d) Test data including OTDR trace data in hard copy or electronic format must be submitted to Customer within 60 calendar days of BPA's receipt of a written request for this data. This data will not be available until after construction is complete.

In the event the measured span values exceed the calculated values, BPA will perform corrective maintenance as required to restore the Customer Fiber to the tolerances noted in this exhibit.

**5. Splice Loss**

The bi-directional splice loss average shall be 0.10 dB or less over the span. All splicing will be performed by the proprietor pursuant to the Agreement. All fiber splicing must be fusion type.

**6. Compliance**

Customer, at its discretion, may choose to physically monitor any or all testing associated with acceptance of the Customer Fiber. If requested in writing test data including OTDR trace data in hard copy or electronic form must be submitted to Customer for review. Customer has the option to waive any specifications and/or requirements listed in the technical specification criteria by providing written notice to BPA.

**EXHIBIT D  
NOTICES**

**1. ADMINISTRATIVE CONTACTS**

Any notice or other communication related to this Agreement shall be delivered in person, or with proof of receipt by email, facsimile, First Class mail or overnight delivery service. Notices are effective on the date received. Either Party may change the contact information by providing notice of such change to the following person and address:

**To «Customer Long Name»:**

Street Address  
P.O. Box  
City, State, Zip  
Attention: Contact  
Name  
Title:  
Phone:  
Fax:  
Email:

**To Bonneville Power Administration:**

Attention: Transmission Account Executive  
for the Fiber Program – TSE/TPP-2  
Phone: (360) 619-6016  
Fax: (360) 619-6940  
Email: [txsalescontracts@bpa.gov](mailto:txsalescontracts@bpa.gov)

**First Class Mail:**

Bonneville Power Administration  
P.O. Box 61409  
Vancouver, WA 98666-1409

**Overnight Delivery Service:**

Bonneville Power Administration  
905 NE 11<sup>th</sup> Avenue  
Portland, OR 97232

**2. NOTICES OF AN OPERATING NATURE**

Any notice, request, or demand of an operating nature by BPA or Customer shall be made either orally or with proof of receipt by email, facsimile, First Class mail or overnight delivery service. Notices are effective on the date received. When contacting BPA's Network Operations Center (NOC) Customer must reference the License Agreement Contract Number. Either Party may change the contact information by providing notice of such change to the administrative contacts above.

**To «Customer Long Name»:**

Street Address  
City, State, Zip  
Attention: Contact Name  
Title:  
Phone:  
Email:

**To Bonneville Power Administration:**

Attention: Network Operations Center 24/7  
5411 NE Highway 99  
Vancouver, WA 98666  
Phone: (360) 418-8786  
Email: [tnoc@bpa.gov](mailto:tnoc@bpa.gov)

**LICENSE AGREEMENT**  
executed by the  
**UNITED STATES OF AMERICA**  
**DEPARTMENT OF ENERGY**  
acting by and through the  
**BONNEVILLE POWER ADMINISTRATION**  
and  
«CUSTOMER LONG NAME»  
**Index to Sections**

<b>Section</b>	<b>Description</b>	<b>Page</b>
1.	Definitions.....	2
2.	Term .....	3
3.	Exhibits.....	4
4.	Ownership and Access.....	4
5.	License .....	5
6.	Duties of Customer.....	5
7.	Rights and Duties of BPA.....	7
8.	Outage Procedures.....	8
9.	Modification of the Cable.....	8
10.	Permits.....	8
11.	Taxes and Fees .....	9
12.	Environmental Compliance Activities .....	10
13.	Billing and Payment .....	10
14.	Representations and Warranties .....	12
15.	Insurance.....	13
16.	Termination and Renewal Procedures .....	15
17.	Decommissioning.....	16
18.	Cures and Remedies.....	17
19.	Liability .....	17
20.	Dispute Resolution.....	18
21.	Amendment of Agreement .....	18
22.	General Provisions .....	18
23.	Entire Agreement .....	20
24.	Signatures .....	20
	Exhibit A Fiber System Description, Term and Fees	
	Exhibit B Fiber Specifications	
	Exhibit C Acceptance Testing Standards	
	Exhibit D Notices	

This LICENSE AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and «CUSTOMER LONG NAME» (Customer). Both BPA and Customer may be referred to herein individually as “Party” and collectively as “Parties.”

## 1. DEFINITIONS

The following terms, when used in this Agreement, shall have the meanings set forth in this section:

- (a) “BPA Customer Vault” means a BPA owned vault, whether BPA installed or Customer installed, utilized for Customer Fiber interconnections to BPA’s Fiber systems.
- (b) “BPA Facilities” means BPA Property and all BPA personal property associated with a Fiber System, including but not limited to buildings, access roads, Cable, splice enclosures, conduit, BPA Vaults, and BPA Customer Vaults (whether BPA or Customer installed).
- (c) “BPA Property” means BPA fee property and/or BPA easement right-of-way.
- (d) “BPA Vault” means a vault on BPA Property in which Cable is spliced and/or passes through.
- (e) “Cable” means the fiber optic cable owned by BPA and installed by BPA along each Fiber System.
- (f) “Customer Facilities” means Customer installed and maintained structures, hand holes, splice enclosures, innerduct, fiber optic cable or conduit connected to a BPA Customer Vault.
- (g) “Customer Fiber” means the dark (unlit) optical fibers within the Cable licensed to Customer under this Agreement as identified under Exhibit A.
- (h) "Economic Development" means the facilitating of timely and increased communication services and solutions to diversify economic, educational, social, quality of life, environmental and cultural objectives. Communications for such purposes, except in the Washington Enterprise Communities and/or Oregon Enterprise Zones, must originate or terminate in a Rural Area.”
- (i) “Emergency Restoration” means repairing and returning the damaged Cable to service following an unscheduled outage.
- (j) “Fiber System” means the location of a Cable that contains Customer Fiber.



- (k) "Land Use Agreement" means an agreement between Customer and BPA which details the terms and conditions associated with use of BPA Property.
- (l) "Participants" means, at a minimum, public or co-operative utilities, Federal, State or local governments or subdivisions thereof; Tribal governments; and non-profit associations of local public or private utilities, and may include for-profit entities.
- (m) "Planned Restoration" means a maintenance or repair task that is scheduled ahead of time, with advance written notice to Customer.
- (n) "Public Benefits Fiber" means optical fiber within the Cable designated for use by schools; hospitals; emergency services; museums; libraries; Federal, state and local governments and subdivisions thereof; public, co-operative and municipal utilities; Tribal governments; and for Economic Development in Rural Areas or within Washington Enterprise Communities or the Oregon Enterprise Zones, as defined by the laws of those respective states.
- (p) "Rural Area" means any county along the Fiber System with a population density of less than 2,500 persons according to the 2010 Census Urban and Rural Classification and Urban Area Criteria by the U. S. Bureau of the Census.
- (q) "Site" means any real property owned by BPA or a third party upon which Customer installs Customer Facilities.

## **2. TERM**

- (a) This Agreement shall become effective at 0000 hours on the Effective Date and shall continue in effect for the shorter of # years or as long as a license for any Fiber System remains in effect (see Exhibit A for Fiber Systems in effect and Effective Date) unless terminated sooner in accordance with Section 15 of this Agreement.
- (b) All obligations incurred and outstanding shall survive the expiration or early termination of this Agreement.

## **3. EXHIBITS**

Exhibits A through D are attached hereto and made a part of this Agreement.

#### 4. OWNERSHIP AND ACCESS

(a) **BPA Facilities**

Customer shall not have an ownership interest in BPA Facilities.

(b) **Customer Facilities on BPA Property**

Customer shall own Customer Facilities up to the demarcation point. Generally, the demarcation point is the first BPA Customer Vault on BPA Property.

(c) **Customer Facilities Located Outside of BPA Property**

Customer shall retain ownership of Customer Facilities installed outside of BPA Property.

(d) **Customer Access**

(1) **Access to BPA Property**

Before a Customer installs Customer Facilities on BPA Property, a Land Use Agreement is required. If a Land Use Agreement is executed, Customer will have the rights and obligations for access as specified in the Land Use Agreement, subject to the additional requirements of Section 6(b). Except in the case of an emergency, Customer shall give BPA 24 hours written notice of its intent to enter BPA Property, including its intent to enter Customer Facilities located on BPA Property. The notice must include the date and time Customer intends to enter BPA Property and/or BPA Facilities. BPA has the right to require that Customer be accompanied, at Customer's expense, by a BPA employee or BPA-certified safety watcher, and has the right to deny Customer permission to enter if BPA is unable to arrange for an employee or BPA-certified safety watcher to accompany Customer or if, in BPA's sole determination, entry by Customer at the date and time requested by Customer will interfere with BPA's use of BPA Property for its own communications needs or for the operation or maintenance of its transmission, or other electrical facilities.

(2) **Emergency Access to BPA Property**

In the case of an emergency where Customer is unable to provide 24 hours' written notice to access BPA Property or Customer Facilities located on BPA Property, Customer shall contact BPA's Network Operations Center (NOC) at (360) 418-8786 to arrange for a BPA employee or BPA-certified safety watcher to accompany the Customer if required by BPA.

(3) **Access to BPA Vaults**

BPA Vaults are to be accessed by BPA only.

(4) **Damage to BPA Property or BPA Facilities**

At Customer's expense, BPA shall repair any damage caused by Customer to any BPA Property or BPA Facilities.

- (e) **BPA Access**  
Customer shall provide BPA all access to Customer Facilities reasonably necessary for BPA to perform its obligations or enforce its rights under this Agreement.
- (f) **Use of Facilities for Third Parties**  
BPA has the right to enter and use, and to permit third parties to enter and use, Customer Facilities and all conduit, innerduct, and hand holes located on BPA Property in order to facilitate the licensing of fiber to such third parties. Such use may include establishing connections between BPA's fiber and the third party's fiber to carry out the parties' rights and obligations under any license agreement for such fiber. BPA may not use Customer-installed hand holes for fiber slack storage or splice enclosures without prior consent of Customer. Except in case of emergency, in which case BPA shall make reasonable efforts to provide oral or written notice to Customer of its intent to enter or use Customer Facilities, BPA shall give Customer 24 hours' written notice of its intent to enter or use Customer Facilities. The notice will include the date and time BPA intends to enter or use Customer Facilities and the purpose of BPA's use.

## 5. LICENSE

BPA hereby grants to Customer the right to use the Customer Fiber, which is designated as and is limited to use by Participants as Public Benefits Fiber, for the term including any extensions thereof.

*[Applicable only to Economic Development in Rural Areas]* This grant of use is expressly conditioned upon Customer installing and maintaining at least one point of presence for purposes of interconnecting with Rural Areas in each county along the Customer Fiber System. Customer shall provide equipment at these points of presence that are compatible with Rural Area rings with a minimum capacity at each point of presence of two (2) DS3's or equivalent successor technology level. Such points of presence shall be installed and capable of activation within twenty-four (24) months from the Effective Date of the license on a Fiber System segment, whether acquired by Customer or its predecessor in interest on a portion of the Fiber System and shall be made available at a not-for-profit cost based rate.

## 6. DUTIES OF CUSTOMER

- (a) **Approval for Construction and Modification of Customer Facilities**  
Customer shall enter into a construction agreement with BPA before constructing or modifying Customer Facilities on BPA Property.
- (b) **Procurement of Access and Use Rights**  
Customer shall, at Customer's expense, Customer shall obtain and maintain at all times during the term of this Agreement, all rights to property owned by third parties, if any, necessary for Customer to perform its obligations under this Agreement.

- (1) **BPA Fee Property**  
If the Site is located on BPA fee property, Customer must enter into a Land Use Agreement with BPA.
- (2) **BPA Easement Right-of-Way**  
If the Site is located on property owned by a third party, Customer must obtain from the fee owner of the property all necessary rights to access the Site and to locate, install, maintain and use Customer Facilities. At BPA's request, Customer shall provide BPA with written evidence of rights obtained. Customer must also enter into a Land Use Agreement with BPA for use of BPA's easement right-of-way.

If conflicts arise between a Land Use Agreement and this Agreement, this Agreement will control.

- (c) **Maintenance of Customer Facilities**  
Customer shall maintain Customer Facilities at all times in good working order and in a safe condition. Whenever Customer enters the Site to perform work or exercise its rights under this Agreement, Customer shall clear the Site of all overgrown brush, and debris that results from Customer's work at the Site.
- (d) **Utility Service**  
Customer shall arrange for all utility service necessary for Customer Facilities, and must obtain any property rights necessary for the provision of such utility service.
- (e) **Use of Adequately Trained Personnel**  
Customer shall ensure that all of its representatives that access, construct, install, repair, replace, or otherwise handle Customer Facilities or any related materials or equipment are adequately trained and equipped to competently perform such work.
- (f) **Documentation**  
Customer shall provide BPA with the following documentation within 30 days of the project completion date and shall provide updates of the documentation within 30 days of any modification:
  - (1) An as-built diagram or diagrams showing the location of all Customer Facilities located on BPA Property. The as-built diagram(s) must include the Global Position Satellite coordinates of the physical site where the Optical Time Domain Reflectometer (OTDR) trace is taken.
  - (2) OTDR trace from acceptance testing that provide the optical and physical distance, in meters, excluding launch cable if used, from the testing location to BPA's interconnection.

## 7. RIGHTS AND DUTIES OF BPA

### (a) **Maintenance and Repair of the Cable**

BPA shall maintain BPA Facilities and the Cable in good working order and in a safe condition, in conformity with the specifications set forth in Exhibit B, provided that BPA shall not be obligated to maintain, repair, or restore any property or equipment if and to the extent, in BPA's sole determination, such activity would interfere with BPA's operation or maintenance of its transmission facilities or telecommunications facilities.

### (b) **Temporary Discontinuance or Loss of Service**

Customer recognizes that Customer Fiber may go out of service at times and that BPA shall not be liable for any failure of Customer Fiber or other interruption of service to Customer that occurs without the fault of BPA. In addition, BPA has the right to require Customer to take Customer Fiber out of service or to discontinue service to Customer in order to construct, maintain, repair, or upgrade the Cable, BPA Facilities, or BPA transmission, or other electrical facilities (Planned Service Interruptions). BPA shall provide Customer with reasonable notice of Planned Service Interruptions and will endeavor to schedule such interruptions at mutually agreeable times. However, BPA reserves the right to schedule an outage at its sole determination, if a mutually agreeable schedule cannot be reached. Planned Service Interruptions shall be limited to the minimal amount of time reasonably needed to perform the construction, maintenance, repair, or upgrade.

### (c) **Restoration of Property**

#### (1) **Planned Restoration**

Customer NOC shall notify BPA's NOC of any failure of, or damage to, property or equipment needed for Customer's use of Customer Fiber. Upon such notification, if the failure or damage does not result in immediate interruption in service to Customer, BPA shall conduct Planned Restoration.

#### (2) **Network Outage Coordination Procedures**

Prior to contacting BPA's NOC, Customer must verify the failure or damage is not located on or within Customer Facilities in accordance with Section 4(b) of this Agreement. When contacting the NOC, Customer must reference this License Agreement Contract Number and provide OTDR shots of the location of the failure.

(3) **Emergency Restoration**

In the event of damage to or failure of the Cable that results in interruption of service to Customer or another BPA customer, or loss of BPA's telecommunication capability, BPA shall restore service as soon as reasonably possible, taking into account prudent utility practice, availability of personnel (including any limitation on the use of personnel included in applicable BPA contracts), and the health and safety of BPA's and Customer's employees and agents.

If Customer declares an emergency, the NOC will provide updates as they become available, or every 4 hours.

**8. OUTAGE PROCEDURES**

- (a) Prior to contacting BPA's NOC to report an outage, Customer must verify that the source of the outage is not located on or within Customer Facilities, in accordance with Section 4(b) of this Agreement. Once Customer confirms that the source of outage is due to a failure or damage to BPA Facilities, Customer should contact BPA's NOC with the following information:
- (1) Customer's License Agreement Contract Number and OTDR trace of the location of the failure in meters, the time it occurred, and in pdf format emailed to [tnoc@bpa.gov](mailto:tnoc@bpa.gov);
  - (2) an OTDR trace, including the testing location address or GPS coordinates, as well as the distance from the OTDR testing location to the BPA demarcation point;
  - (3) whether Customer is declaring an emergency;
  - (4) a trouble ticket number to reference (if applicable); and
  - (5) the name and contact information (phone or email) of an individual designated as a single point of contact for updates and assistance.

BPA will require the above information before mobilizing personnel. During restoration, for the safety of BPA's crew, Customer must turn Customer's transmitting light off.

- (b) Once Customer receives a notice of restoration from BPA, Customer must, within one hour of receiving such notice, provide BPA's NOC with confirmation that service is restored and that any splicing performed meets the standards required under this Agreement.
- (c) BPA requires Customer participation during restoration activities whether restoration is performed under emergency circumstances or planned. Any delays caused by Customer non-responsiveness may result in additional charges to Customer and/or delays in Customer restoration.

**9. MODIFICATION OF THE CABLE**

If the Cable or any portion thereof requires relocation, modification, or replacement, the cost of such relocation, modification, or replacement shall be allocated as follows:

- (a) If the relocation, modification, or replacement is requested by Customer, Customer shall pay all such costs; provided, however, that BPA shall not be required to relocate, modify, or replace the Cable if and to the extent, in its sole determination, such activity would interfere with BPA's provision of economical and reliable electric transmission, BPA's needs for communications capabilities, or BPA's provision of fiber or communications service to third parties.
- (b) BPA may relocate, modify, or replace the Cable at any time at its expense upon written notification to Customer. BPA shall make reasonable efforts to maintain service to Customer during the pendency of the relocation, modification or replacement of the Cable. BPA shall consult with Customer regarding the timing of any Planned Service Interruption and make best efforts to schedule such modification at mutually agreeable times.
- (c) If Emergency Restoration is necessitated by a failure of the Cable not caused by any willful action or negligence of BPA, Customer shall pay BPA a percentage of the costs of such Emergency Restoration, which shall include actual costs plus applicable BPA overheads in effect at the time of the restoration, as follows:  $\text{Costs X (Number of Customer Fibers within the Cable) / total fibers within the Cable}$ .

**10. PERMITS**

At its expense, BPA shall acquire and maintain at all times during the term of this Agreement, all necessary permits and approvals for the Cable. Customer shall at Customer's expense, acquire and maintain at all times during the term of this Agreement all necessary permits and approvals for Customer Facilities. Customer shall provide BPA a copy of any environmental review conducted by state or local authorities within 30 days after Customer receives a copy of the review. BPA must approve in writing the conditions, if any, required by such environmental review and may refuse to issue a license on any Fiber System if BPA concludes, in its sole determination that any condition required by such environmental review or under any state or local permit for the Customer Facilities or for any property needed for the license is unacceptable.

**11. TAXES AND FEES**

Customer shall pay its own taxes, if any, as well as all franchise fees and other applicable fees related to its activities under this Agreement. Customer shall keep all Fiber Systems free from all liens and encumbrances resulting from its performance under this Agreement. If Customer does not pay a tax or fee which becomes due, and such nonpayment results in the imposition of a lien or encumbrance on, a Fiber System, BPA shall have the right, but not the obligation, to pay all amounts due, and to discharge such lien or encumbrance, upon 30 calendar days written notice to Customer, and to bill Customer for the amount paid by BPA. Customer shall reimburse BPA upon demand, together with interest at eight percent (8%), compounded monthly, accruing from the date that BPA makes

payment discharging such liens or encumbrances until the date BPA receives full reimbursement from Customer. Customer shall reimburse BPA for any legal costs incurred to remove any such lien or encumbrance, including without limitation attorney fees, costs of investigation, and court costs before any administrative or judicial forum.

## 12. ENVIRONMENTAL COMPLIANCE ACTIVITIES

Customer shall pay the costs of any required cultural resources review or environmental review BPA performs under the National Environmental Policy Act (NEPA) or any other statute or regulation for activities related to this Agreement. If, after such review, BPA determines that mitigation measures should be undertaken, and such measures are necessary solely because of the licensing of fiber to Customer, BPA shall notify Customer in writing of the need for such mitigation and provide Customer an estimate of the cost associated with such mitigation. BPA shall undertake such mitigation measures at Customer's expense, unless Customer notifies BPA in writing within 10 days after receiving notification of the need for mitigation that Customer elects not to pay for the mitigation measures. In such case, BPA shall have the right to terminate this Agreement on 30 days' notice.

## 13. BILLING AND PAYMENT

### (a) License Fee

BPA shall invoice and Customer shall pay the annual license fee for Customer Fiber licensed under Exhibit A of this Agreement, as it may be revised from time to time, by October 1 of each fiscal year (October 1 – September 30). Such annual license fee shall begin to accrue as of the date BPA notifies Customer in writing that it has completed the construction necessary to provide service to Customer under this Agreement or under any such revision, as the case may be. For each license of Customer Fiber, BPA shall invoice Customer for the annual license fee within a reasonable time after the date the fee begins to accrue. The first annual license fee due for the Customer Fiber licensed under this Agreement or under any revision to Exhibit A shall be prorated based on the percentage of the BPA fiscal year that remains after the date on which the fee begins to accrue.

### (b) Maintenance Fee

Customer shall pay an annual maintenance fee as specified in Exhibit A for maintenance and Planned Restoration, which shall accrue, be invoiced, and paid on the same schedule as the annual license fee above.

### (c) Escalation of all Annual Fees

All annual fees will be increased to the prevailing rates **on the 5 year anniversary of the Effective Date, (for 10-year term agreements)** as reflected in Exhibit A to this Agreement.

### (d) Emergency Restoration Costs

Customer shall pay BPA a percentage of the costs of Emergency Restoration, which shall include actual costs plus applicable BPA overheads in effect at



the time of such Emergency Restoration, as follows: Costs X (Number of Customer Fibers within the Cable/Total fibers within the Cable). BPA shall invoice Customer for Emergency Restoration costs, if any, on an annual basis reflecting Emergency Restoration costs incurred during the year ending September 30<sup>th</sup>.

(e) **Payment**

Customer shall pay all bills electronically in accordance with instructions on the bill. Customer shall include the BPA contract number and invoice number in the description field of each payment. Payment of all bills must be received by the 20<sup>th</sup> day after the issue date of the bill (Due Date). If the 20<sup>th</sup> day is a Saturday, Sunday or federal holiday, the Due Date is the next day that is not a Saturday, Sunday or federal holiday.

(f) **Late Payments**

After the Due Date, a late payment charge, equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication, in the first issue published during the month in which payment was due), plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365

shall be applied each day to any unpaid balance.

(g) **Disputed Bills**

- (1) If Customer disputes any portion of a charge or credit on Customer's bill, Customer shall provide notice to BPA with a copy of the bill noting the disputed amounts. If any portion of the bill is in dispute Customer shall pay the entire bill by the Due Date. Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute BPA's agreement that a valid claim under contract law has been stated.
- (2) If the Parties agree, or if after dispute resolution, Customer is entitled to a refund of any portion of the disputed amount, then BPA shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

## 14. REPRESENTATIONS AND WARRANTIES

### (a) **Customer's Authority**

Customer represents and warrants to BPA as follows:

- (1) Customer has full power and authority to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement by Customer and the performance of the terms, covenants, and conditions contained herein will not violate the articles of incorporation or bylaws of Customer or any applicable law or regulation or any order of court or arbitrator, and will not conflict with or constitute a material breach of, or default under, the provisions of any contract by which Customer is bound. Except as otherwise stated herein, no approval, authorization, or other action by any governmental authority or filing with any such authority that has not been obtained or accomplished, is required in connection with the execution, delivery, and performance by Customer of this Agreement.
- (2) There are no known actions, suits, or proceedings pending or overtly threatened against Customer before any court or administrative agency that would materially impair Customer's performance of its obligations under this Agreement.

### (b) **BPA's Authority**

BPA represents and warrants to Customer as follows:

- (1) BPA has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Neither the execution and delivery of this Agreement, nor performance by BPA of its obligations hereunder, constitutes a material breach of or a default under any constitutional provision, or any law or administrative regulation, or violates any judgment, decree, or other instrument, or any other contract to which BPA is a party.
- (2) BPA has sufficient interests in the real property along each Fiber System to construct, maintain, and operate the Cable and carry out its obligations under this Agreement.

(c) **Warranties**

In procuring and obtaining materials, each Party shall use reasonable efforts to obtain from the vendors and suppliers, for the mutual benefit of the Parties, warranties that such materials are:

- (1) of the kind and quality described in the purchase order or supply contract;
- (2) free of defects in workmanship, material, design and title;
- (3) of good and merchantable quality.

**15. INSURANCE**

(a) **General**

Within 30 days of the execution of this Agreement, Customer shall provide BPA with a certificate of insurance executed by an authorized representative of the insurer(s) evidencing that Customer has the insurance required by this section, or with evidence of self-insurance that satisfies the requirements of this Section 15. With respect to services or operations performed by contractors or subcontractors on behalf of Customer, Customer may satisfy the requirements of this section by providing BPA with a certificate of insurance executed by an authorized representative of the insurer(s) evidencing that Customer's contractors and subcontractors have the insurance required by this section.

(b) **Notice of Cancellation, Reduction, or Material Change in Coverage**

Customer shall provide written notice to BPA not less than 30 calendar days prior to cancellation, reduction, or material change in coverage by a third-party insurer. If insurance coverage is canceled, reduced, or materially changed, Customer shall, prior to the effective date of such cancellation, reduction, or material change, obtain the coverage required under this section and provide to BPA documentation evidencing such coverage that satisfies the requirements of this Section 15. If Customer has not obtained such insurance prior to such date, Customer shall be responsible for the costs of any damage, liability, or injury that occurs while such insurance is canceled, reduced, or subject to a material change to the extent that such damage, liability, or injury is not otherwise covered by insurance.

(c) **Qualifying Insurers**

Any third-party insurance policies obtained by Customer in satisfaction of its obligations under this section shall be issued by companies that hold a current policyholder's alphabetic and financial size category rating of not less than A- according to Best's Insurance Report, or a similar rating from another recognized rating agency.

(d) **Insurance Required**

Customer shall maintain at least the following insurance coverage and shall ensure that Customer's contractors and subcontractors maintain the Workers' Compensation/Employer's Liability Insurance coverage stated in paragraph (3) below.

(1) **Liability**

Commercial general liability insurance for bodily injury (including death) and property damage of not less than \$5 million per occurrence.

(A) Coverage included shall be:

- (i) premises and operations;
- (ii) broad form property damage;
- (iii) products and completed operations;
- (iv) blanket contractual liability;
- (v) personal injury liability; and
- (vi) cross-liability and severability of interests.

(B) Coverage shall be endorsed to include the following:

- (i) inclusion of BPA, its officers, representatives, agents, and employees as an additional insured with respect to liability arising out of the services or operations performed by or on behalf of Customer in connection with this Agreement; and
- (ii) a stipulation that Customer's insurance is primary insurance to the extent that Customer is required to indemnify BPA under the terms of this Agreement, and that BPA will not be called upon to contribute to a loss.

(2) **Business Automobile Liability Insurance**

Business Automobile Liability Insurance for bodily injury (including death) and property damage of not less than \$2 million combined single limit per occurrence to all owned, non-owned, and hired vehicles. Non-owned vehicles include any vehicles of Customer's contractors and subcontractors.

(3) **Workers' Compensation/Employer's Liability Insurance**  
Statutory Workers' Compensation and Employer's Liability Insurance with limits of not less than \$1 million for all employees engaged in services or operations under this Agreement. The policy shall include all other States' coverage.

(e) **Excess / Umbrella Liability Insurance**  
Customer shall provide excess/umbrella liability insurance on an occurrence basis in excess of the Commercial General Liability, Employers Liability and Automobile Liability underlying insurance identified above. The excess/umbrella liability insurance shall have limits in the amount of \$5,000,000 for any one occurrence and annual aggregate. The policy shall name BPA, its officials, officers, employees and agents, as additional insureds with respect to the customer's performance of services under the contract. Customer's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA.

(f) **Special Provisions**  
The foregoing requirements as to the types and limits of insurance coverage to be maintained by Customer, and any approval of said insurance by BPA or Customer, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Customer pursuant to this Agreement. Furthermore, Customer may, with BPA written approval, self-insure any of the foregoing requirements hereunder.

## 16. TERMINATION AND RENEWAL PROCEDURES

(a) **Termination**  
Either Party may terminate this Agreement in accordance with Section 17 of this Agreement, for breach of this Agreement by the other Party, and/or immediately upon written notice to the other Party in the event that Customer's use of Customer Fiber in accordance with this Agreement is restrained or enjoined (temporarily or permanently) by order of a court of competent jurisdiction. In addition, BPA may terminate this Agreement or any number of Customer Fibers on two-years' written notice if, in BPA's sole determination, Customer Fibers are needed for reliable operation of BPA's transmission system. If BPA terminates this Agreement for a reason other than breach of the Agreement by Customer, BPA shall refund a pro rata portion of any prepaid annual license and maintenance fees for the period beginning from the date of termination through the end of the annual license term.

(b) **Equipment Restoration**  
Upon termination of this Agreement, Customer is responsible for the restoration of all BPA Facilities to its original condition and any cost associated with the restoration.

(c) **Renewal**

If Customer elects to renew its license on any Fiber System, Customer must request in writing an extension of the license for such Fiber System no later than one year before the expiration of the existing license for such Fiber System. BPA is not obligated to renew the license on any Fiber System. If a renewal notice is not provided prior to entering into the last year of Customer's term, receipt acknowledged by BPA, the licensed fibers will be released back into BPA inventory upon the expiration date of the existing license. Renewals on each Fiber System shall be on terms and conditions agreed to by BPA and Customer at the time of renewal.

**17. DECOMMISSIONING**

(a) **Removal of Customer Owned Fiber Interconnection Facilities on BPA Property and Restoration of Site**

(1) **Removal by Customer**

Within 90 days after termination of this Agreement or expiration of the Agreement without further renewal, Customer will remove from the Site, Customer Facilities (except as directed by BPA, in writing) and will restore the Site to the condition it was in before execution of the Agreement. Customer is responsible for all costs associated with BPA disconnecting the Customer Fiber and splicing the Customer Fiber back into BPA's fiber system. Customer will be considered to have fulfilled its responsibility to restore the Site only after BPA certifies in writing that the Site has been restored to its prior condition. If BPA determines that the Site has not been fully restored, BPA will notify Customer of the work that must be done to fully restore the Site and Customer will perform such work within 45 days of receiving such notice. If after 45 days of receiving such notice the Site has not been fully restored, BPA will remove and dispose of Customer Facilities and restore the Site at Customer's expense.

(2) **Customer's Entry onto Site for Decommissioning**

Customer will provide BPA 45 days' written notice stating the date and time it intends to enter the Site for removal of Customer Facilities or restoration of the Site. If BPA is unable to have a BPA employee or BPA-certified safety watcher present at the Site at such date and time, BPA may require Customer to remove equipment or Customer Facilities or perform restoration of the Site at another mutually agreeable date and time at which BPA can have a BPA employee or BPA-certified safety watcher present.

**18. CURE AND REMEDIES**

(a) **Breaching Party's Right to Cure for Breach or Default Other than Non-Payment**

The breaching Party shall have the right to cure any breach or default under this Agreement within 30 calendar days after the receipt by the breaching

Party of written notice of such breach or default. In the event that any such breach or default cannot be cured within 30 calendar days, and the breaching Party can demonstrate that the breaching Party is diligently pursuing appropriate action to cure the breach or default, the Parties may agree to an extended cure period, provided however, that in no event shall such cure period exceed 120 calendar days from the date of receipt of written notification of the breach or default.

(b) **Non-breaching Party's Remedies**

If the time allowed the breaching Party to cure any breach or default has expired without the cure having been completed, the non-breaching Party shall have the right to:

- (1) terminate this Agreement; or
- (2) cure any breach or default of the breaching Party to preserve the non-breaching Party's rights that may be prejudiced as a result of such breach or default.

The non-breaching Party shall also have the right to exercise and pursue all other rights and remedies available to it under applicable law.

(c) **Rights and Remedies Cumulative**

Any right or remedy afforded to either Customer or BPA under any provision of this Agreement on account of breach or default by the other is in addition to, and not in lieu of, all rights or remedies afforded either Customer or BPA under any other provision of this Agreement, by law or otherwise.

**19. LIABILITY**

BPA shall not be responsible for injuries to Customer personnel or damage to Customer property or facilities associated with work performed pursuant to this Agreement unless resulting from BPA negligence or intentional misconduct. Within the limitations of the Federal Tort Claims Act and the Agreement Limiting Liability among Western Interconnected Systems, BPA shall be responsible for injuries and damages directly caused by its negligence or intentional misconduct associated with work performed pursuant to this Agreement.

Customer shall not be responsible for injuries to BPA personnel or damage to BPA property or facilities associated with work performed pursuant to this Agreement unless resulting from Customer negligence or intentional misconduct. Within the limitations of the Agreement Limiting Liability among Western Interconnected Systems, Customer shall be responsible for injuries and damages directly caused by its negligence or intentional misconduct associated with work performed pursuant to this Agreement.

In no event shall either Party be liable to the other Party for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental, or indirect losses or damages (in tort, contract, or otherwise) under or with respect to this Agreement or any failure or performance related hereto howsoever caused,

whether or not arising from any Party's sole, joint, or concurrent negligence.

## 20. DISPUTE RESOLUTION

- (a) Pending resolution of a disputed matter, the Parties shall continue performance of their respective obligations hereunder.
- (b) Either Party shall notify the other Party in writing of the existence of a dispute arising under this Agreement. The Parties will meet within 30 days after receipt of the notice by the second Party, or within such other time mutually agreed to by the Parties, to attempt in good faith to negotiate a resolution of the dispute. The meeting will be attended by individuals with decision-making authority regarding the dispute. If within 30 days after such meeting the Parties have not succeeded in resolving the dispute, either Party may pursue available legal remedies.

## 21. AMENDMENT OF AGREEMENT

No amendment of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

## 22. GENERAL PROVISIONS

### (a) Uncontrollable Forces

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force.

“Uncontrollable Force” means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party's reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (1) strikes or work stoppage;
- (2) floods, earthquakes, fire, or other natural disasters; terrorist acts; epidemics, pandemics; and
- (3) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.



If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with Exhibit D.

(b) **Assignment**

This Agreement is binding on any successors and assigns of the Parties. Neither Party may transfer or assign this Agreement, in whole or in part, without the other Party's written consent, which shall not be unreasonably withheld; provided, however, that Customer may, upon written notification to BPA, assign its rights and responsibilities under this Agreement to a corporate parent, subsidiary or commonly owned affiliate without the consent of BPA.

(c) **Subleasing**

Customer may sublease only upon prior written consent from BPA. In the event that Customer subleases to another entity, Customer shall continue to serve as a single point-of-contact to BPA for all activities relating to this Agreement.

(d) **Governing Law**

This Agreement shall be governed by and construed in accordance with Federal law.

(e) **Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

(f) **Confidentiality**

If any information or documents furnished by one Party to the other Party are confidential or proprietary and are conspicuously marked as such, the receiving Party shall take reasonable steps to protect against the unauthorized use or disclosure of such information or documents; provided that this section shall not apply to information or documents in the public domain and provided further that BPA may release any such information to comply with Federal law, including the Freedom of Information Act, 5 U.S.C. § 552.

(g) **No Third-Party Beneficiaries**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or

indirect beneficiary of this Agreement.

**23. ENTIRE AGREEMENT**

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

**24. SIGNATURES**

This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The Parties have executed this Agreement as of the last date indicated below.

«CUSTOMER LONG NAME»

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By:

\_\_\_\_\_

By:

\_\_\_\_\_

Title:

\_\_\_\_\_

Title:

AE Title \_\_\_\_\_

If opting out of the electronic signature:

By:

\_\_\_\_\_

Name:

\_\_\_\_\_  
*(Print/Type)*

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

**EXHIBIT A  
FIBER SYSTEM DESCRIPTION, TERM AND FEES**

**1. FIBER SYSTEM**

BPA licenses (#) xxx fibers on the Fiber System Fiber System to Customer for the term of (##) xx years, commencing Month Day, Year (Effective Date).

Substation	Distance (light path miles)	Licensed Fiber	Glass Type
		# of ##	SMF 28 / Dispersion Glass
<b>Total</b>			

<b>Total All Fiber Fiber Systems</b>	####
--------------------------------------	------

**2. FIBER PAYMENTS**

(a) **Annual License Fee** = Rate x Fiber x Miles x 12 months, or \$#### per year.

Where:

**Rate** = \$#### per fiber per mile per month  
**Fiber** = Number of licensed fiber: ##  
**Miles** = Number of light path miles of licensed fiber: ###

(b) **Annual Maintenance Fee** = Rate x Fiber x Miles x 12 months, or \$#### per year.

Where:

**Rate** = \$#### per light path mile per year  
**Miles** = Number of light path miles of licensed fiber: ###

**EXHIBIT B**  
**FIBER SPECIFICATIONS**  
**CORNING® SMF-28™ CPC6**  
**SINGLE-MODE OPTICAL FIBER**

**1. GENERAL**

Corning® SMF-28™ single-mode optical fiber (SMF-28 fiber) is considered the “standard” optical fiber for telephony, cable television, submarine, and private network applications in the transmission of data, voice, and/or video services. Corning SMF-28 fiber is manufactured to the most demanding specifications in the industry.

SMF-28 fiber is optimized for use in the 1310 nm wavelength region. The information-carrying capacity of the fiber is at its highest in this transmission window, and it is also where dispersion is the lowest. SMF-28 fiber can also be effectively used in the 1550 nm wavelength region.

Corning’s enhanced, dual layer acrylate CPC6 (CPC6) coating provides excellent fiber protection and is easy to work with. CPC6 can be mechanically stripped and has an outside diameter of 245 µm. CPC6 is optimized for use in many single and multi-fiber cable designs including loose tube, ribbon, slotted core, and tight buffer cables.

SMF-28 fiber is manufactured using the Outside Vapor Deposition (OVD) process, which produces a totally synthetic, ultra-pure fiber. As a result, SMF-28 has consistent geometric properties, high strength, and low attenuation. SMF-28 fiber can be counted on to deliver excellent performance and high reliability, reel after reel.

**2. FEATURES AND BENEFITS**

- Versatility in 1310 nm and 1550 nm applications.
- Outstanding geometrical properties for low splice loss and high splice yields.
- OVD manufacturing reliability and product consistency.
- Optimized for use in ribbon, loose tube, and other common cable designs.

### 3. OPTICAL SPECIFICATIONS

#### Attenuation

Uncabled Fiber Attenuation Cells	
Wavelength (nm)	Attenuation Cells (dB/km)
1310	Standard
1550	≤ 0.40
	≤ 0.30

#### Point Discontinuity

No point of discontinuity greater than 0.10 dB at either 1310 nm or 1550 nm.

#### Attenuation at the Water Peak

The attenuation at  $1383 \pm 3$  nm shall not exceed 2.1 dB/km.

Attenuation vs. Wavelength		
Range (nm)	Ref. $\lambda$ (nm)	Max Increase $\alpha$ (dB/km)
1285-1330	1310	0.05
1525-1575	1550	0.05

← The attenuation in a given wavelength range does not exceed the attenuation of the reference wavelength ( $\lambda$ ) by more than the value  $\alpha$ .

Attenuation With Bending			
Mandrel Diameter (mm)	Number of Turns	Wavelength (nm)	Induced Attenuation (dB)
32	1	1550	≤ 0.50
75	100	1310	≤ 0.05
75	100	1550	≤ 0.10

← The induced attenuation due to fiber wrapped around a mandrel of a specified diameter.

- **Cable Cutoff Wavelength ( $\lambda_{ccf}$ )**  
 $\lambda_{ccf} < 1260$  nm
- **Mode-Field Diameter**  
9.20 ± 0.40  $\mu$ m at 1310 nm  
10.40 ± 0.8  $\mu$ m at 1550 nm
- **Dispersion**  
Zero Dispersion Wavelength ( $\lambda_o$ ): 1302.5 nm ≤  $\lambda_o$  ≤ 1322 nm  
  
Zero Dispersion Slope ( $S_o$ ): ≤ 0.092 ps/(nm<sup>2</sup> • km)  
  
Fiber Polarization Mode Dispersion Coefficient (PMD): ≤ 0.5 psec/ $\sqrt{km}$

<b>Dispersion Calculation</b>	
$\text{Dispersion} = D(\lambda): \approx \frac{S}{4} \left[ \frac{\lambda^4}{\lambda^3} \right] \text{ps} / (\text{nm} \cdot \text{km}), \text{ for } 1200 \text{ nm} \leq \lambda \leq 1600 \text{ nm}$	$\lambda = \text{Operating Wavelength}$

**4. ENVIRONMENTAL SPECIFICATIONS**

Environmental Test Condition	Induced Attenuation (dB/km)	
	1310 nm	1550 nm
Temperature Dependence -60° to +85°C	≤ 0.05	≤ 0.05
Temperature-Humidity Cycling -10°C to +85°C, up to 98% RH	≤ 0.05	≤ 0.05
Water Immersion, 23°C	≤ 0.05	≤ 0.05
Heat Aging, 85°C	≤ 0.05	≤ 0.05

Operating Temperature  
Range -60°C to +85°C

**5. DIMENSIONAL SPECIFICATIONS**

**Standard Length (km/reel):** 2.2 - 25.0

**Glass Geometry**

Fiber Curl: ≥ 2.0 m radius of curva  
 Cladding Diameter: 125.0 ± 1.0 μm  
 Core-Clad Concentricity: ≤ 0.8 μm  
 Cladding Non-Circularity: 1.0%

**Coating Geometry**

Coating Diameter: 245 ± 10 μm  
 Coating-Cladding Concentricity: 12 μm

Defined as:  $\left[ 1 - \frac{\text{Min. Cladding Diameter}}{\text{Max. Cladding Diameter}} \right] \times 100$

**6. MECHANICAL SPECIFICATIONS**

**Proof Test:**

The entire length of fiber is subjected to a tensile proof stress  $\geq 100$  kpsi (0.7 GN/m<sup>2</sup>)

**7. PERFORMANCE CHARACTERIZATIONS**

*Characterized parameters are typical values.*

**Core Diameter:**

8.2  $\mu$ m

**Refractive Index Difference:**

0.36%

**Numerical Aperture:**

0.14

NA was measured at the one percent power angle of a one-dimensional far-field scan at 1310 nm.

**Effective Group Index of Refraction (N<sub>eff</sub>):**

1.4677 at 1310 nm

1.4682 at 1550 nm

**Zero Dispersion Wavelength ( $\lambda_0$ ):**

1313 nm

**Fatigue Resistance Parameter (n<sub>d</sub>):**

$\geq 20$

**Zero Dispersion Slope (S<sub>0</sub>):**

0.086 ps/(nm<sup>2</sup>•km)

**Coating Strip Force:**

Dry: 0.7 lbs. (3.2 N)

Wet: 14 days room temperature: 0.7 lbs. (3.2 N)

**EXHIBIT C**  
**ACCEPTANCE TESTING STANDARDS**

BPA shall meet and maintain, at a minimum, the standards set forth below.

**1. Design Criteria**

The number of cable splices at the time of original construction will be designed to maximize reel lengths between splices. Due to cable cuts, project changes and cable relocation, additional splices may be necessary and are allowed. The number of splices will be monitored to insure that attenuation and reflection tolerances are maintained.

**2. Construction**

Cable will be constructed in accordance with sound commercial practices. BPA requirements will in general be more stringent however. The National Electric Code shall be followed as a minimum.

**3. Typical Fiber Cable Information**

Single mode fiber specifications may vary, depending on the fiber manufacturer. Typical concatenated levels of 0.40 dB per km @ 1310nm (for Corning SMF-28) and 0.25 per km @ 1550 nm (for Corning SMF-28).

**4. Span Requirements**

Span loss measurements will be performed using the two following methods: OTDR and insertion loss (stabilized light source and power meter) measurement in each direction at 1550 nm wavelength. Insertion loss testing will not be completed until Customer Fiber has been terminated at each site.

- (a) Maximum dB/km loss must not exceed 0.35 dB/km at 1550 nm including splice losses.
- (b) In no case shall a fiber show a point discontinuity greater than 0.1dB. Discontinuities (known as steps, splices, or attenuation non-uniformities) shall be measured with an OTDR to determine the loss of the localized attenuation. The least squares fit method of measurement must be used to determine the magnitude of the loss of a point discontinuity.
- (c) Preliminary power meter testing consisting of a mechanical fiber coupler, stabilized light source and a power meter (to assure that no transposed fibers are spliced) may be completed within 60 calendar days of the completion of construction.
- (d) Test data including OTDR trace data in hard copy or electronic format must be submitted to Customer within 60 calendar days of BPA's receipt of a written request for this data. This data will not be available until after construction is complete.



In the event the measured span values exceed the calculated values, BPA will perform corrective maintenance as required to restore the Customer Fiber to the tolerances noted in this exhibit.

**5. Splice Loss**

The bi-directional splice loss average shall be 0.10 dB or less over the span. All splicing will be performed by the proprietor pursuant to the Agreement. All fiber splicing must be fusion type.

**6. Compliance**

Customer, at its discretion, may choose to physically monitor any or all testing associated with acceptance of the Customer Fiber. If requested in writing test data including OTDR trace data in hard copy or electronic form must be submitted to Customer for review. Customer has the option to waive any specifications and/or requirements listed in the technical specification criteria by providing written notice to BPA.

**EXHIBIT D  
NOTICES**

**1. ADMINISTRATIVE CONTACTS**

Any notice or other communication related to this Agreement shall be delivered in person, or with proof of receipt by email, facsimile, First Class mail or overnight delivery service. Notices are effective on the date received. Revisions made solely to change contact information may be made without additional signatures by the Parties. Either Party may change the contact information by providing notice of such change to the following person and address:

**To «Customer Long Name»:**

Street Address  
P.O. Box  
City, State, Zip  
Attention: Contact Name  
Title:  
Phone:  
Fax:  
Email:

**To Bonneville Power Administration:**

Attention: Transmission Account Executive for  
the Fiber Program – TSE/TPP-2  
Phone: (360) 619-6016  
Fax: (360) 619-6940  
Email: [txsalescontracts@bpa.gov](mailto:txsalescontracts@bpa.gov)

**First Class Mail:**

Bonneville Power Administration  
P.O. Box 61409  
Vancouver, WA 98666-1409

**Overnight Delivery Service:**

Bonneville Power Administration  
905 NE 11<sup>th</sup> Avenue  
Portland, OR 97232

**2. NOTICES OF AN OPERATING NATURE**

Any notice, request, or demand of an operating nature by BPA or Customer shall be made either orally or with proof of receipt by email, facsimile, First Class mail or overnight delivery service. Notices are effective on the date received. When contacting BPA's Network Operations Center (NOC) Customer must reference the License Agreement Contract Number. Either Party may change the contact information by providing notice of such change to the administrative contacts above.

**To «Customer Long Name»:**

Street Address  
City, State, Zip  
Attention: Contact Name  
Tile:  
Phone:  
Email:

**To Bonneville Power Administration:**

Attention: Network Operations Center 24/7  
5411 NE Highway 99  
Vancouver, WA 98666  
Phone: (360) 418-8786  
Email: [tnoc@bpa.gov](mailto:tnoc@bpa.gov)



## FY 2024 Bonneville Power Administration Fiber Lease Rates<sup>1</sup>

### Unrestricted Use Fiber<sup>2</sup> Rates:

Annual License Fee = Rate x Fiber x Miles x 12

**Rate** = License rate is \$44.15 per fiber per mile per month  
**Fiber** = Number of Commercial Use Fibers  
**Miles** = Number of light path miles of Commercial Use Fiber

Annual Maintenance Fee = Rate x Miles

**Rate** = Annual maintenance rate is \$511.49 per mile per year  
**Miles** = Number of light path miles of Commercial Use Fiber

### Public Benefits Fiber<sup>3</sup> Rates:

Annual License Fee = Rate x Fiber x Miles x 12

**Rate** = License rate is \$26.93 per fiber per mile per month  
**Fiber** = Number of Public Benefit Fibers  
**Miles** = Number of light path miles of Public Benefit Fiber

Annual Maintenance Fee = Rate x Fiber x Miles x 12

**Rate** = Annual maintenance rate is \$3.24 per fiber per mile per month  
**Fiber** = Number of Public Benefit Fibers  
**Miles** = Number of light path miles of Public Benefit Fiber

### Allston-Longview Loop:

Annual License Fee = Rate x Fiber x Miles x 12

**Rate** = License rate is \$65.68 per fiber per mile per month  
**Fiber** = Number of Commercial Use Fibers  
**Miles** = Number of light path miles of Commercial Use Fiber

Annual Maintenance Fee = Rate x Miles

**Rate** = Annual maintenance rate is \$731.15 per mile per year  
**Miles** = Number of light path miles of Commercial Use Fiber

---

<sup>1</sup>All fiber rates are subject to a bi-annual escalation.

<sup>2</sup>Unrestricted Use Fiber means the portion of optical fiber within the Cable which is not restricted.

<sup>3</sup>Public Benefits Fiber is defined as optical fiber within the Cable designated for use by schools; hospitals; emergency services; museums; libraries; Federal, state and local governments and subdivisions thereof; public cooperative and municipal utilities; Tribal governments; and for Economic Development in Rural Areas or within Washington Enterprise Communities or the Oregon Enterprise Zones, as defined by the laws of those respective States.

**CONFIDENTIALITY AGREEMENT**

**executed by the**

**UNITED STATES OF AMERICA**

**DEPARTMENT OF ENERGY**

**acting by and through the**

**BONNEVILLE POWER ADMINISTRATION**

**and**

**«CUSTOMER LONG NAME»**

This CONFIDENTIALITY AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and «Customer Long Name» («Customer Short Name»). BPA and «Customer Short Name» are sometimes referred to individually as “Party” and collectively as “Parties.” The Party providing confidential, proprietary, and commercially sensitive information under this Agreement is referred to as the “Disclosing Party” and the Party receiving such information is referred to as the “Receiving Party.”

**RECITALS**

The Parties want to enter into confidential discussions and negotiations related to telecommunications facilities within certain rights of way that concern the Parties (Project);

The Parties want to prevent the unauthorized disclosure and inappropriate use of confidential, proprietary, and commercially sensitive information.

The Parties therefore agree as follows:

**1. TERM AND TERMINATION**

The term of this Agreement is three (3) years from the date of the last Party signing this Agreement; however, either Party may terminate this Agreement for any reason after giving the other Party at least 30 calendar days’ prior written notice of its intent to do so.

**2. CONFIDENTIAL INFORMATION**

"Confidential Information" means any non-public information, including proprietary and commercially sensitive information, as designated by the Disclosing Party, and includes all written and oral information furnished by the Disclosing Party to the Receiving Party during the term of this Agreement that is marked or designated confidential, except that Confidential Information does not include the following:

- (a) information that at the time of disclosure by the Disclosing Party is public, or information that later becomes public through no act or omission of the Receiving Party;
- (b) information that the Receiving Party can demonstrate was in its lawful possession prior to disclosure by the Disclosing Party;
- (c) information received by the Receiving Party from a nonparty who, to the best of the Receiving Party's knowledge, did not acquire such information on a confidential basis either directly or indirectly from the Disclosing Party; or
- (d) information that the Receiving Party can demonstrate was independently developed by it or for it and that was not obtained, in whole or in part, from the Disclosing Party.

**3. NONDISCLOSURE AND USE OF CONFIDENTIAL INFORMATION**

To the extent allowed under the Freedom of Information Act (5 U.S.C. § 552 *et seq.*) and any other applicable laws, each Party will keep confidential all Confidential Information and will not, without the other Party's prior written consent, disclose to any nonparty such Confidential Information. The Parties will limit the disclosure of the Confidential Information to only those officers, employees, and agents of the Parties reasonably necessary to evaluate the Project. Each Party will use the Confidential Information only for the purpose of its internal evaluation of the Project. No Party will make any other use, in whole or in part, of any Confidential Information without the prior written consent of the other Party. Each Party will use the same means it uses to protect its own confidential proprietary information, but in any event not less than reasonable means, to comply with the confidentiality obligations under this Agreement. Each Party is responsible for any breach of this Agreement by its respective representatives.

**4. EXCEPTIONS FOR COMPELLED DISCLOSURE**

If any Party is requested by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, or demand in any legal proceeding to disclose any Confidential Information, the Party will provide immediate notice of such request(s) to the other Party and will use reasonable efforts to resist disclosure if the other Party gives notice that it does not want such Confidential Information disclosed. The other Party, at its own expense, has the right to seek an appropriate protective order to prevent disclosure of the requested Confidential Information. If, in the absence of a protective order or waiver, the Party is legally required to disclose such Confidential Information, the Party will give notice to the other Party and may disclose such Confidential Information without liability under this Agreement.

**5. DISPOSAL OF INFORMATION**

Upon expiration or termination of this Agreement under section 1, the Receiving Party will, to the extent permitted by applicable law, return, or destroy if so requested, all Confidential Information, including all copies, recordings, or any other form thereof, within 14 business days of expiration or termination.

**6. REMEDIES**

Each Party acknowledges that the interests of the other Party in Confidential Information may be irreparably injured by disclosure of such Confidential Information. Therefore, either Party may seek damages or other allowable remedies if a Party breaches this Agreement; however, the Parties will first seek to resolve any dispute regarding disclosure arising under this Agreement by mutual agreement. Customer Short Name acknowledges that equitable relief is not available against BPA, and that, notwithstanding the lack of mutuality of remedies, Customer Short Name accepts these terms and is further estopped from asserting the lack of mutuality in any forum.

**7. SURVIVAL OF OBLIGATIONS**

All obligations and liabilities incurred under this Agreement will be preserved until satisfied, irrespective of expiration or termination of this Agreement under section 1, including without limitation any obligation of the Receiving Party to dispose of all Confidential Information pursuant to section 5 of this Agreement.

**8. WHISTLEBLOWER PROTECTION ENHANCEMENT ACT STATEMENT**

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

**9. AMENDMENT**

No amendment of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

**10. ASSIGNMENT**

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not unreasonably be withheld.

**11. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

**12. NO THIRD PARTY BENEFICIARIES**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

**13. GOVERNING LAW**

This Agreement is governed by and construed in accordance with federal law.

**14. NO REPRESENTATION OR WARRANTIES**

The Disclosing Party makes no representations or warranties as to the accuracy, completeness or fitness for a particular purpose of any information, including but not limited to Confidential Information, it furnishes or otherwise discloses to the Receiving Party for the purpose of evaluating the Project. Neither Party has any liability or responsibility to any other Party (except as pursuant to this Agreement) or to any other person or entity resulting from the use of any information so furnished or otherwise provided. Neither this Agreement, nor the transfer of Confidential Information under this Agreement, will be construed as granting any license or rights to any information or data owned or controlled by a Party to any other Party and all such Confidential Information remains the property of such Disclosing Party.

**15. WAIVERS**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

**16. SIGNATURES**

This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The Parties have executed this Agreement as of the last date indicated below.

«CUSTOMER LONG NAME»

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

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

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

Title: \_\_\_\_\_

Title: Transmission Account Executive

If opting out of the electronic signature:

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

Name: \_\_\_\_\_  
*(Print/Type)*

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
NOTICES**

**NOTICES RELATING TO PROVISIONS OF THIS AGREEMENT**

Any notice or other communication related to this Agreement, shall be in writing and deemed to have been received if delivered in person, by email, by facsimile, by First Class mail or sent by overnight delivery service. Either Party may change its contact information by providing notice of such change to the other Party by any of the methods listed in this Exhibit. BPA shall revise this Exhibit upon such notice. Revisions made solely to change contact information may be made without additional signatures by the Parties.

**To «Customer Long Name»:**

#### Street Address  
City, State #####  
Attention: External Contact  
Title: Title  
Phone: (###) ###-####  
Email:

**To Bonneville Power Administration:**

Attention: Transmission Account Executive  
for the Fiber Program – TSE/TPP-2  
Phone: (360) 619-6016  
Fax: (360) 619-6940  
Email: [txsalescontracts@bpa.gov](mailto:txsalescontracts@bpa.gov)

**First Class Mail:**

Bonneville Power Administration  
P.O. Box 61409  
Vancouver, WA 98666-1409

**Overnight Delivery Service:**

Bonneville Power Administration  
905 NE 11<sup>th</sup> Avenue  
Portland, OR 97232



<b>Annual License CPI Unrestricted Rate</b>	<b>Annual Maintenance CPI Unrestricted Rate</b>	<b>Annual License CPI Public Benefits Rate</b>	<b>Annual Maintenance CPI Unrestricted Rate</b>
10/1/2018 - 09/30/2020 2% increase      \$42.44	10/1/2018 - 09/30/2020 2% increase      \$491.63	10/1/2018 - 09/30/2020 2% increase      \$25.88	10/1/2018 - 09/30/2020 2% increase      \$3.11
10/1/2020 - 09/30/2022 2% increase      \$43.29	10/1/2020 - 09/30/2022 2% increase      \$501.46	10/1/2020 - 09/30/2022 2% increase      \$26.40	10/1/2020 - 09/30/2022 2% increase      \$3.17
10/1/2022 - 09/30/2024 2% increase      \$44.15	10/1/2022 - 09/30/2024 2% increase      \$511.49	10/1/2022 - 09/30/2024 2% increase      \$26.93	10/1/2022 - 09/30/2024 2% increase      \$3.24
10/1/2024 - 09/30/2026 2% increase      \$45.04	10/1/2024 - 09/30/2026 2% increase      \$521.72	10/1/2024 - 09/30/2026 2% increase      \$27.46	10/1/2024 - 09/30/2026 2% increase      \$3.30
10/1/2026 - 09/30/2028 2% increase      \$45.94	10/1/2026 - 09/30/2028 2% increase      \$532.16	10/1/2026 - 09/30/2028 2% increase      \$28.01	10/1/2026 - 09/30/2028 2% increase      \$3.37
10/1/2028 - 09/30/2030 2% increase      \$46.86	10/1/2028 - 09/30/2030 2% increase      \$542.80	10/1/2028 - 09/30/2030 2% increase      \$28.57	10/1/2028 - 09/30/2030 2% increase      \$3.43
10/1/2030 - 09/30/2032 2% increase      \$47.79	10/1/2030 - 09/30/2032 2% increase      \$553.66	10/1/2030 - 09/30/2032 2% increase      \$29.15	10/1/2030 - 09/30/2032 2% increase      \$3.50