

**MASTER TELECOMMUNICATIONS COLOCATION LICENSE AGREEMENT**  
**LCRA AND TAMUTAMU**  
**Master Agreement**

This Master Telecommunications Colocation License Agreement ("**MTCLA**") is entered into by Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas ("**TAMU**") and the Lower Colorado River Authority ("**LCRA**"), a political subdivision of the State of Texas, effective as of January 1, 2020 (the "**Effective Date**").

**RECITALS**

**WHEREAS**, LCRA owns and operates an electric generation and fiber-optic communications network wholly located in the State of Texas, which system includes communication lines and facilities installed on transmission lines, real property, and rights of way owned by, leased to, or under easement to LCRA;

**WHEREAS**, LCRA believes it is in the interest of its customers and the public to license reserve capacity to other utilities and communication service providers until such capacity is needed for LCRA use; and

**WHEREAS**, TAMU desires to use part of the reserve capacity, to install and operate its communications equipment on LCRA Premises, and to have LCRA provide to TAMU the ability to transport data within LCRA's fiber-optic and transport LIT network ("**LIT**") for communications and facilitate the interconnection of TAMU facilities with other telecommunications systems; and

**WHEREAS**, the parties hereto are entering into this MTCLA to establish the general terms and conditions pursuant to which TAMU (as licensee) will be able to utilize portions of the telecommunications system of the LCRA (as licensor) (including fiber optic cable or splice cans and LCRA owned data transport services) for transmission of data;

**WHEREAS**, in furtherance of this MTCLA, TAMU and LCRA shall enter into individual Site or Segment specific agreements in substantially the form hereto as **Exhibit A** (each, individually an "**SSO**" and collectively, "**SSOs**") which shall be subject to this MTCLA and establish certain rights and obligations of TAMU and LCRA with respect to each of the Sites and Segments; and

**NOW, THEREFORE**, in consideration of the mutual obligations and benefits of this MTCLA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**DEFINITIONS**

In addition to any terms defined herein, the following terms used in this MTCLA shall have the following meanings:

**AGREEMENT** - The totality of the agreements and understandings of the Parties, as evidenced by the Contract Documents.

**CONTRACT DOCUMENTS** – This MTCLA, the Service Level Agreement or “SLA” attached to this MTCLA as Addendum 1, and any applicable SSOs, and any attachments or amendments thereto.

**FACILITIES** – TAMU Facilities or LCRA Facilities, as appropriate.

**TAMU FACILITIES** - TAMU's communications facilities erected, constructed, or installed by TAMU (or by LCRA for TAMU's benefit, as provided for herein) necessary to connect to LCRA's Facilities within a Site or Segment, including, without limitation, communications shelters, utility supply lines, fiber-optic connecting cables, and electronic equipment.

**LCRA** - The Lower Colorado River Authority, a conservation and reclamation district created by the Legislature of the State of Texas, including, as applicable, LCRA Transmission Services Corporation (“**LCRA-TSC**”), a non-profit corporation and statutory instrumentality of the LCRA.

**LCRA FACILITIES** - fiber-optic cables, communications shelters, termination points, electronics and other facilities controlled or owned by LCRA or LCRA-TSC.

**LICENSEES; PRIOR LICENSEES; SUBSEQUENT LICENSEES** - Other communications licensees sharing a particular Site or Segment, as further described in Section V of this MTCLA, including TAMU as applicable.

**LIT** – Wavelengths or Lit Ethernet circuits provided over DWDM electronics.

**OUTAGE or EXCUSED OUTAGE** – is defined in Section 1.3(D).

**PARTY or PARTIES** – LCRA or TAMU, or all collectively (if the context allows).

**PREMISES** - The lands and rights of way, transmission support structures and substations, and other property controlled and owned by or under lease or easement to LCRA.

**RATES; REIMBURSEMENTS; AID-IN-CONSTRUCTION** - Payments as further described in Section II of this MTCLA.

**RATE SCHEDULE** - The applicable schedule of charges for LCRA's work and services provided for TAMU's benefit. LCRA's costs are amended from time to time.

**SEGMENT** - A particular portion of the route of telecommunications equipment as shown on communications systems maps and which is subject to this MTCLA, as more particularly set out in the SSO. The re-naming of any Segment or Site shall not invalidate any part of this MTCLA then in effect.

**SERVICE LEVEL AGREEMENT OR “SLA”** – The document setting forth the service levels and service level credits applicable to the LIT services provided pursuant to this MTCLA and attached hereto as Addendum 1.

**SITE** – The physical location where telecommunications equipment may be located, either on real property or within communication shelters and substations owned or operated by LCRA at the location.

**TERM** – The Initial Term along with any Renewal Terms indicating the length of time provided for any SSO.

**TERMINATION POINT** - The point at which the connecting telecommunications equipment from a Party's electronic equipment is connected into another Party's telecommunications equipment or patch panel.

**USAGE FEES** - The payments to LCRA for the rights under this MTCLA as set out in Section II of this MTCLA.

Other capitalized terms will have the meanings given to them as they appear in this MTCLA.

## **I. LICENSE**

### **1.0 MASTER LICENSE DESCRIPTION; LIT SERVICES.**

**1.0(A)** LCRA agrees to provide to TAMU, within LCRA's communications network, for the Term, the right to install, operate, maintain and remove TAMU Facilities at certain Termination Points within a Segment or Segments, as more particularly described on the SSO.

**1.0(B)** LCRA agrees to grant to TAMU a nonexclusive license to install, erect, maintain, operate, and remove its isolated and secure Facilities on the Premises, including cables, racks, electronics, and other Facilities within a Site or Sites as described on the SSO.

### **1.1 SITE/SEGMENT LICENSE DESCRIPTION.**

**1.1 (A)** Each SSO shall provide the particular rights and obligations for TAMU's use of the applicable Segment or Site on and after the SSO Commencement Date and be deemed to be effective as of the SSO Commencement Date regardless of when executed. The SSO Commencement Date, Facility descriptions, Facility locations at the Site, applicable Segment, and other terms applicable to TAMU's license shall be specified in the SSO.

**1.1 (B)** Each SSO will be prepared by and at the expense of LCRA with the assistance of TAMU. Each executed SSO is deemed to incorporate the terms of this MTCLA as a part thereof.

**1.1 (C)** If the Parties hereto desire to modify this MTCLA for individual Segments or Sites, then such modifications shall be clearly shown on the applicable SSO or in attached documentation signed by the authorized representatives of each Party hereto. In case of any conflict between the terms of this MTCLA and the terms of any duly executed SSO, the terms of such SSO shall control.

### **1.2 TERM.**

**1.2(A) MTCLA Term.** The initial term for this MTCLA shall begin on the Effective Date of this MTCLA and remain in full force and effect so long as any SSO executed in connection with this MTCLA is still in effect.

**1.2(B) SSO Initial Term.** Unless otherwise stated in the SSO, the initial license term for each SSO (the "**Initial Term**") shall commence on its applicable SSO Commencement Date and, unless renewed or earlier terminated, shall expire on the date that is ten (10) years thereafter.

**1.2(C) SSO Renewal Term.** Unless otherwise stated in the SSO, the term of each SSO may be automatically renewed for three (3) separate consecutive terms of five (5) years each (each, a "**Renewal Term**"), unless, except as otherwise provided this MTCLA, TAMU notifies LCRA in writing that it does not intend to renew the SSO at least six (6) months prior to the expiration of the Initial Term or the then current Renewal Term.

**1.2(D) Term.** The Initial Term together with any Renewal Term for any SSO shall be referred to as the "**Term**".

### **1.3 RIGHTS, PROVISIONS & SCOPE.**

#### **1.3(A) Communications Shelter.**

(i) As part of the consideration for this MTCLA, TAMU may occupy isolated space within the communications shelters at the location and area set out in the SSO. LCRA shall provide to TAMU space for distribution equipment inside the shelter at the price set out in the SSO. In each case, the space(s) provided by LCRA to TAMU shall comply with security specifications identified by TAMU and which LCRA deems acceptable, including but not limited to limiting access to such space(s) only to TAMU.

(ii) TAMU shall be solely responsible for the costs and expense of installation, construction, maintenance, and removal of its own Facilities, including any necessary permits or licenses. Such TAMU Facilities located at the Premises, whether installed overhead, above ground, or underground, shall remain the personal property of TAMU, and shall not be considered a fixture to the real estate.

(iii) LCRA shall supply to TAMU, at additional cost to TAMU, a conduit and fiber-optic connection for the TAMU Facilities at the Site from an applicable substation control house to the shelter or designated splice can.

(iv) LCRA shall supply to TAMU, at additional cost to TAMU, power backup and generator backup at the Site.

**1.3(B)** LCRA shall provide to TAMU LIT service on LCRA's network on the Segment set out in the SSO.

**1.3(C)** LCRA will furnish an optical hand-off to TAMU at the interconnection locations within the Sites specified in the SSO.

#### **1.3(D) Service Levels and Outages.**

(i) The Service Level Agreement attached to this MTCLA as Addendum 1 shall apply to all LIT services provided by LCRA hereunder.

(ii) For purposes of this MTCLA and the attached Service Level Agreement, the term "**Outage**" shall mean a total interruption in LIT service or degradation of LIT service below any of

the service levels set forth in the SLA, except for any interruption or degradation that is attributable to an Excused Outage. An "**Excused Outage**" shall mean any interruption, unavailability, delay, or other degradation of LIT service related to, associated with, or caused by (1) routine or non-routine maintenance events, provided that timely notice is provided under Section 1.3(L) below, (2) TAMU actions or inactions, (3) failure of TAMU provided power or equipment or other TAMU Facilities, (4) any third party, but excluding any such third party that is engaged by LCRA, (5) any outage of a circuit provided by a carrier other than LCRA, or (6) a Force Majeure event as described in Section X below.

(iii) The duration of any Outage affecting service level availability will commence upon the earlier of the time when TAMU reports an Outage to LCRA or the time when LCRA becomes aware of such Outage and will end when the Outage is repaired and the service meets the requirements set forth herein, and is otherwise operative and functioning.

(iv) For purposes of this MTCLA, the responsibility of servicing electronics shall begin and end at the stated Termination Points of the Facilities.

**1.3(E) Right of Premises Inspection.** TAMU and its engineers or qualified employees shall have the right to survey and inspect the surface of the Premises on which TAMU proposes to build Facilities, in order to understand the factors that may affect construction.

**1.3(F) Utility Services.** TAMU shall be responsible for arranging and paying for all utility hookups and services from the local retail providers through separate meters, unless otherwise supplied as specified herein. LCRA shall cooperate with utility providers in providing access for hookups.

**1.3(G) Termination Point Access.**

(i) Each Party shall have nonexclusive ingress and egress rights to its own Facilities at the Termination Points at all times for construction, installation, operation, inspection, maintenance, repair, and removal of such Party's Facilities. A Party's ingress and egress through the other Party's easements over private property shall be subject to the easement conditions for the specific locations and within the rights of way used by the Party holding the easement, as these rights of way may change from time to time. The Parties agree that TAMU's access to a communications shelter shall be through separate gates and separate doors. If separate gates and doors for TAMU Facilities cannot be provided, LCRA shall provide access through its gates and doors and shall provide escorts upon TAMU's reasonable request and at no cost to TAMU.

(ii) TAMU shall be responsible for road damage caused by it or its contractors, subcontractors, or suppliers, whether on private or public roads to access the Site, reasonable wear and tear excepted. TAMU shall promptly settle claims for such damage with private owners or governmental agencies responsible for county or municipal roads.

**1.3(H) Equipment Security.** Except for LCRA's obligations as set forth in Section 1.3(A), neither Party shall provide security for the other Party's Facilities and neither Party shall be liable for burglary, vandalism, losses or damage, unless due to the disclaiming Party's gross negligence or willful misconduct. The Parties agree that TAMU may take advantage of fencing and existing protections, if any, at LCRA Premises; provided, however, that LCRA shall not be liable for losses or damage to TAMU Facilities resulting from a failure of transmission towers or poles, substation

equipment, communications shelters, electric power, or other equipment located at a Site, unless such losses or damage is directly caused by LCRA's gross negligence or willful misconduct.

**1.3(I) Modifications to Facilities; Splicing; Relocation.**

(i) Any modifications to a Party's Facilities necessary to accommodate the other Party's proposed operations, shall be performed by the Party owning/operating the applicable Facility and paid for by the non-owning Party as Reimbursements; provided, however, that such Party shall be entitled to approve any such Reimbursements prior to incurring costs therefor. The Parties agree that, with LCRA's written consent, which shall not be unreasonably withheld, TAMU or its contractors may perform certain work on LCRA Facilities.

(ii) Notwithstanding 1.3(I)(i) above, TAMU's lateral or other fiber-optic cables beyond the Termination Points for the TAMU Facilities may be spliced into the TAMU Facilities at the Termination Points.

(iii) Notwithstanding 1.3(I)(i) above, if LCRA is required by TAMU Facilities to relocate or replace any of the LCRA Facilities used or required in accommodating TAMU Facilities, then TAMU shall bear the reasonable costs of the relocation, including, without limitation, fiber acquisition, splicing, and testing, including charges for overhead. LCRA, upon written request, shall deliver to TAMU updated record drawings with respect to any relocated portion of LCRA's Facilities upon request but no earlier than one hundred twenty (120) days following such relocation. LCRA shall have the right to determine the timing, means, method and extent of any relocation of its Facilities hereunder; provided however, that TAMU shall have the right to review the relocation plans thirty (30) days prior to any relocation affecting or accommodating TAMU's service or Facilities and shall have the right to have a representative present at the time of the relocation.

**1.3(J) Replacement & Repair of Facilities.** After the initial installation of a Party's Facilities, the Party installing the Facilities shall have the right to repair or replace such Facilities; provided, however the Parties shall coordinate the work in advance.

**1.3(K) Additional TAMU Facilities.** The Parties agree that TAMU shall have the right to install additional TAMU Facilities at a Site, if space is available, upon reasonable written notice to LCRA and subject to LCRA approval (which shall not be unreasonably withheld), technical staff coordination, any applicable regulatory approvals, expanded or additional fees and Reimbursements, and other applicable provisions of this MTCLA. Any additional TAMU Facilities added to a Site shall be reflected on an amendment to the SSO, whether or not such Facilities will require additional fees.

**1.3(L) Necessary Outages; Maintenance.**

(i) TAMU and LCRA acknowledge that occasional outages may be necessary for LIT equipment, fiber-optic cable or Termination Point maintenance and repairs, during which users of the affected Segment or Site may be required to power down or shut down equipment to facilitate such work. TAMU and LCRA agree to cooperate with each other and with other Segment or Site users to schedule and expedite these outages. Except for LCRA's obligation to provide service level credits and other remedies as expressly set forth in the Service Level Agreement, neither

Party, nor their customers or affiliates, shall be liable to any other Party for business interruption, loss of revenue or profit, or other consequences of any Outage.

- (ii) LCRA and TAMU shall be solely responsible for LIT service management, maintenance and repair on their respective networks. Maintenance will typically be performed between the hours of 11:59 p.m. and 6 a.m. local time. LCRA and TAMU shall plan and provide each other with reasonable and timely notification of maintenance that would be reasonably likely to impact LIT services in accordance with the following:

| <u>Type</u>                        | <u>Minimum Notification Prior to Event</u>  |
|------------------------------------|---|
| Scheduled Maintenance              | Fourteen (14) calendar days   |
| Planned Maintenance impacting TAMU | Fourteen (14) calendar days   |
| Emergency Maintenance              | As soon as possible, but not more than twenty-four (24) hours after the event causing the emergency |

**1.3(M) Approval & Inspection of Facilities.** All Facilities to be installed, modified, added or relocated at LCRA's Premises, including electric power hookups, surge protection, and other safety devices for equipment and personnel, shall conform to industry standards and LCRA's standards for construction and operation, and shall be subject to such LCRA's prior approval (which shall not be unreasonably withheld) and periodic inspection. Each Party reserves the right to intervene in any work or operations involving the installation or repair of the other Party's Facilities if unsafe practices or activities that may jeopardize such Party interests are observed. Each Party reserves the right, without liability but with reasonable notice and opportunity to cure, to shut down and remove any installations that do not substantially conform to the planning, licensing, and approval processes of this MTCLA.

**1.3(N) Underlying Easements or Leases; Owner Consent.**

(i) TAMU's right to use a Site or Segment that LCRA occupies under easements or leases from third-party landowners or which LCRA owns or leases jointly with other entities are contingent on easement or lease rights to accommodate TAMU's proposed usage and installations. Each Party shall use its best efforts to operate within such rights. If any dispute with an underlying landowner arises which prevents a Party from exercising its rights under this MTCLA or an SSO, such Party shall have the right to terminate this MTCLA or the applicable SSO as its sole remedy.

(ii) Notwithstanding anything to the contrary in this MTCLA, if any part of a Site or Segment is subject to an underlying easement or lease, the applicable SSO shall automatically terminate upon the termination of an underlying easement or lease for that Site or Segment.

(iii) Notwithstanding the foregoing, the SSO shall not terminate if the applicable underlying lease continues beyond expiration on a month-to-month or holdover basis to the extent such underlying lease expressly permits such a month-to-month or holdover tenancy.

(iv) Upon request, LCRA shall furnish copies of easements, owner consent agreements, or other documentation pertaining to underlying property rights affecting TAMU Facilities at an LCRA Premises.

#### **1.4 LCRA'S RESERVATIONS & RIGHT OF RECLAMATION.**

**1.4(A) Reservations.** LCRA reserves the right to license cable capacity, bandwidth, rack space, and ground space to other and several Licensees within the same Site or Segment and within the same fiber-optic cable, contingent on technical feasibility, available capacity, and business needs, and subject to the provisions of this MTCLA.

**1.4(B) Right Of Reclamation.** Notwithstanding any other provision of this MTCLA to the contrary, LCRA shall have the right to reclaim capacity within a Segment and Site space in LCRA-owned communications shelters at the end of the Initial Term and at the end of any Renewal Term if needed for LCRA internal use and without any liability to TAMU. In such an event, LCRA shall provide TAMU six months' notice and shall try to assist TAMU in finding other Sites and/or Segments and in relocating TAMU Facilities to other termination points, if available and acceptable to TAMU, in which case the Usage Fee and escalations for the replacement Site and/or Segment shall remain the same as for the reclaimed Site and/or Segment. TAMU Facilities shall not be subject to reclamation to accommodate other users at a Site or within a Segment but may be subject to reclamation to accommodate additions or modifications required by LCRA electric customers or electric utility companies, including LCRA-TSC, which may jointly own certain transmission structures or substations. If LCRA exercises any rights of reclamation under this section, TAMU may, by written notice to LCRA and, notwithstanding the six-month non-renewal notification requirement set forth in Section 1.2(C), terminate this MTCLA or the affected SSO as of the end of the applicable Initial Term or Renewal Term in which reclamation occurs.

#### **1.5 GOVERNMENT AUTHORIZATIONS; CONTINGENCIES.**

Each Party shall obtain and pay for any licenses, permits, approvals, and/or other relief required to establish communications line use or which are otherwise required for the installation or operation of the Party's Facilities (the "**Governmental Authorizations**"). The Parties will reasonably cooperate in applying for any Government Authorizations which require consent of the other Party.

#### **1.6 ELECTRICAL CLEARANCES FOR CABLE MAINTENANCE.**

Because certain LCRA Facilities are installed on or near energized electric transmission lines, LCRA's maintenance and repair of the Facilities may be delayed by the need for electrical clearances, by which electric transmission lines, substation buswork, and related equipment must be de-energized. Reliability of electric service and worker safety shall be paramount; clearance times shall be coordinated to accommodate these needs and may be scheduled during electric system off-peak times. LCRA shall use its best efforts to expedite the clearances for maintenance and repairs. However, because of varying electrical demand, it may not be possible to complete the work within a single clearance or within a single, continuous work session. Neither Party shall be liable to the other Party or its affiliates or customers for any loss of use, revenue, or lost profit in connection with the scheduling of clearances to facilitate such maintenance or repair.

#### **1.7 ELECTRICALLY-INDUCED NOISE.**



TAMU shall be responsible for designing and shielding TAMU Facilities to function properly in the presence of electric and magnetic fields and other electrically-induced noise and interference normally present in the proximity of electric utility installations. LCRA shall not be liable for nor shall LCRA be required to eliminate any noise or interference with TAMU Facilities resulting from the operations of electric utility installations or auxiliary equipment such as relay and control systems or telemetry systems. For purposes of the Interference provisions herein, this paragraph shall constitute LCRA's prior disclosure of the presence of electric utility installations on or near the Premises where TAMU Facilities may be installed. Where it is available LCRA will provide a location for TAMU to attach or bond to ground rings established around the perimeter of the substation.

## **II. FEES, CHARGES & REIMBURSEMENTS**

### **2.0 USAGE PAYMENTS.**

**2.0(A) Monthly Payment.** TAMU shall make the following payments to LCRA at its Accounts Receivable office in Austin, Texas: TAMU shall pay to LCRA the amounts specified on the SSO for each LIT fiber circuit utilized by TAMU. Payments shall be made by check, certified funds, or wire transfer each month, on or before the first day of each month of the Term beginning on the Commencement Date.

**2.0(B) Annual Payment Escalator:** Intentionally deleted.

**2.0(C) Expansion.** If, after the initial installation, TAMU intends to expand the scope of its operations, use additional capacity, or install additional equipment in such a way as to increase the space usage or burden on the LCRA Facilities, the Parties shall negotiate an amendment to the SSO.

### **2.0(D) Reimbursements.**

(i) TAMU shall reimburse LCRA for its reasonable out-of-pocket costs for materials, expenses, fully burdened employee costs, and administrative costs of any additional work that LCRA must perform to accommodate TAMU Facilities and operations, in accordance with LCRA's then prevailing Rate Schedule ("**Reimbursements**").

(ii) To the extent it is possible in a non-emergency situation, LCRA shall obtain TAMU's approval before proceeding with any work for TAMU's benefit. TAMU shall not be liable for costs or expenses attributable to other Licensees or other users. Reimbursements shall be invoiced along with itemized documentation as the work is performed and shall be due and payable within thirty (30) days after TAMU's receipt of the invoice.

**2.0(E) Aid-in-Construction.** If the expected costs of materials, labor, or other work for TAMU's benefit under an expansion request will be significant, LCRA may require an advance upfront payment, progress payments, and an invoicing and a payment schedule sufficient to cover LCRA's start-up cost and the costs of work in progress; provided, however, the Parties agree to use reasonable efforts to secure competitive prices.

### **2.0(F) Costs of Additional Property Rights.**

(i) If TAMU's proposed use of LCRA's Facilities requires more space than LCRA owns or will violate or exceed in scope any easements, leases, or ingress and egress rights, LCRA shall

request TAMU to obtain additional property rights to accommodate TAMU Facilities, and the Parties shall agree in advance on what rights are required. Additional property rights, whether in fee simple, lease or easement, shall be approved, negotiated, obtained, and owned by LCRA.

(ii) Before acquiring additional property rights on behalf of TAMU, LCRA will give TAMU an estimate of the expected cost of obtaining additional property rights including LCRA's expenses and costs. Such expenditures shall be subject to TAMU's prior approval. TAMU shall reimburse LCRA for any additional compensation to a landowner for additional rights to accommodate TAMU Facilities, and for LCRA's costs, expenses, and administrative costs in obtaining the additional rights.

## **2.1 BILLING & PAYMENT.**

LCRA shall invoice TAMU when the various fees and charges become due, and, unless otherwise provided herein or in the SSO, such invoice(s) shall be paid within thirty (30) days of receipt. Invoices will be sent through ordinary U.S. mails or electronic mail and, if mailed, shall be deemed received five (5) days after placement in the mail. If a particular fee or charge is not paid by the date specified in this MTCLA or the SSO, TAMU shall pay all past due amounts subject to interest on overdue payments in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

## **2.2 PUBLIC PURPOSE; TAXES.**

The use and purpose of this MTCLA is to further the public purpose of operating and maintaining the efficiency of the public power electric grid. Unless a Party provides a valid exemption or resale certificate exempting payment of such taxes, each Party shall pay all Federal, State, local, and other taxes, including excise, use, franchise, ad valorem, and property taxes, charged to or assessed against such Party for that Party's Facilities or as a result of the rights acquired under this MTCLA.

# **III. CONSTRUCTION & EQUIPMENT INSTALLATION**

## **3.0 PLANNING & ACCESS.**

TAMU and LCRA shall cooperate and coordinate in the planning, communications shelter access, Termination Points and other needs to implement this MTCLA.

## **3.1 LCRA TO INSTALL & MAINTAIN LCRA FACILITIES.**

Notwithstanding anything herein to the contrary, LCRA or its contractors shall, at LCRA's expense, procure, install, test, operate, maintain, and repair the fiber-optic cables and associated patch panels, support structures, termination point properties, and LCRA-owned communications shelters and all other LCRA Facilities in accordance with this MTCLA.

## **3.2 TAMU TO INSTALL & MAINTAIN TAMU FACILITIES.**

Notwithstanding anything herein to the contrary, TAMU shall at its expense procure, install, test, operate, maintain, repair, and remove TAMU Facilities on TAMU's side of a Termination Point including the connecting cables from TAMU's communications shelter to LCRA's jackfields or patch panels, testing the performance of TAMU Facilities, and installing and maintaining the AC power circuits to supply TAMU Facilities.

## **3.3 CONTRACTORS & SUBCONTRACTORS.**

**3.3(A) Right to Contract.** Each Party shall have the right to contract or subcontract installation work, testing, operations, maintenance and removal of such Party's Facilities. Before starting work on any LCRA Premises, contractors and subcontractors shall be required to show proof of the required liability insurance.

**3.3(B) Contractor Selection.** TAMU's selection of contractors and subcontractors must be approved by LCRA before work begins on LCRA Premises; approval shall not be unreasonably withheld, conditioned, or delayed. Each Party shall require all contractors and subcontractors to coordinate and cooperate with the other Party's staff for Facilities access and scheduling of installation and maintenance.

**3.3(C) Cleanup.** TAMU shall ensure that its crews, contractors, and subcontractors keep LCRA's Premises and surrounding areas clean and properly dispose of debris and any regulated waste materials resulting from their work in accordance with all laws and regulations. If debris is allowed to accumulate or is disposed of improperly, LCRA shall have the right to remove it and charge TAMU for the costs. TAMU shall pay any liabilities, fines or administrative penalties levied against it or LCRA on account of improper use, removal, transportation, or disposal of wastes by TAMU or its contractors.

#### **3.4 EQUIPMENT REMOVAL.**

Upon expiration or termination of this MTCLA, TAMU shall at its expense and within a reasonable time remove such its Facilities and restore LCRA's Premises to its original condition, except for reasonable wear and tear.

### **IV. REPRESENTATIONS**

#### **4.0 TAMU'S REPRESENTATIONS.**

**4.0(A)** TAMU has all the necessary power and authority to execute, deliver, and perform its obligations under this MTCLA.

**4.0(B)** The execution, delivery and performance by TAMU of this MTCLA does not conflict with any law, regulation, order, contract, or instrument to which TAMU is subject or by which TAMU is bound.

**4.0(C)** TAMU represents that TAMU Facilities including the equipment, software, communication signals and information content that TAMU will use in connection with this MTCLA do not and will not infringe on any patent, trademark, or copyright. TAMU agrees to the extent permitted by the Constitution and laws of the State of Texas, to defend claims and indemnify LCRA against losses, damages, or other expenses in connection with TAMU's violation of this provision.

**4.0(D)** All technical and regulatory information provided for the construction or installation of any TAMU Facilities shall be accurate and complete.

**4.0(E)** TAMU understands the location and nature of the LCRA Premises and is satisfied as to the condition of the LCRA Premises for the uses it contemplates. TAMU accepts the LCRA Premises in its present condition, "as is" and "where is". LCRA makes no representation as to the presence or absence of latent defects on the LCRA Premises.

#### **4.1 LCRA'S REPRESENTATIONS.**

**4.1(A)** LCRA has all the necessary power and authority to execute, deliver and perform its obligations under this MTCLA.

**4.1(B)** The execution, delivery and performance by LCRA of this MTCLA does not conflict with any law, regulation, order, contract or instrument to which LCRA is subject or by which LCRA is bound.

**4.1(C)** LCRA represents that the infrastructure and Facilities that LCRA will provide under this MTCLA do not and will not infringe on any patent, trademark or copyright.

**4.1(D)** LCRA shall make available relevant technical information pertaining to the Site or Segment and related LCRA Facilities to assist TAMU with planning and engineering, and such information shall, to the extent of LCRA's actual knowledge, be accurate and complete.

### **V. INTERFERENCE**

#### **5.0 DUTY OF NONINTERFERENCE.**

Each Party shall install, operate, and maintain its Facilities in a manner which will not physically or electronically interfere with or cause signal degradation to the other Party's Facilities, existing as of the Commencement Date, or with any Prior Licensees, provided LCRA has disclosed to TAMU the existence of (but not necessarily the identities of) and technical information relevant to the Prior Licensees. The Parties' duty to avoid interference in accordance with the terms of this MTCLA shall remain absolute throughout the Term, irrespective of favorable pre-installation analyses or varying operating conditions, provided the technical information supplied to such Party is accurate and complete.

#### **5.1 REMEDIES FOR INTERFERENCE.**

In the event that a Party's Facilities or operations interfere with the other Party's Facilities, existing as of the Commencement Date, or with any Prior Licensees, then upon written notice, the interfering Party shall at its own expense correct the interference within seventy-two (72) hours from notice, even if the interfering Facilities are operating in compliance with FCC regulations. If a Party fails to eliminate the interference within the required time, then after an additional twenty-four (24) hour grace period, the other Party shall be entitled to immediately enter the Premises and shut down Facilities causing the interference and require the interfering Party to immediately eliminate the cause of the interference.

#### **5.2 TECHNICAL DISAGREEMENTS.**

If various LCRA Licensees disagree on the existence, source or extent of interference, LCRA may engage an independent engineering firm to perform impartial analyses to determine the cause of the interference. LCRA shall be entitled to Reimbursement for the cost of such analyses by the Licensee or Licensees found to be causing the interference.

#### **5.3 PRIORITIES FOR RESOLVING INTERFERENCE.**

If analyses indicate interference among the operations of multiple users of a particular Site or Segment or users of multiple Sites or Segments, the requirements for eliminating interference shall be according to the following priorities:

**5.3(A)** A Party's systems and operations, including communications and electric utility installations, installed pursuant to this MTCLA shall have top priority;

**5.3(B)** A Party's Facilities and operations shall have priority over Subsequent Licensees within that Site or Segment, which shall mean other Licensees whose licenses for that Site or Segment were executed later than TAMU's usage;

**5.3(C)** A Party's Facilities and operations shall yield to Prior Licensees within that Site or Segment, which shall mean other Licensees whose licenses for that Site or Segment were executed earlier than a Party's usage, including their successors or assigns;

**5.3(D)** If, at a time later than the initial installation, TAMU (or another Licensee or LCRA) should modify its communication facilities or operations within a particular Site or Segment, and should these modifications or changes introduce interference (including interference affecting more than one Site or Segment), then TAMU (or another Licensee or LCRA) shall be treated as a Subsequent Licensee with respect to these modifications or changes, and shall yield to the other Site or Segment users. However, the original TAMU Facilities and operations (or original facilities and operations of another Licensee or LCRA) shall not lose their original priority, in the event the user reverses the changes and returns to the original mode of operation.

**5.3(E)** These same interference priorities shall apply to all Licensees within each Site or Segment, including LCRA, and shall be provisions in the agreements with the other Licensees.

#### **5.4 DISCLAIMER.**

LCRA shall use its best efforts to promptly enforce these priorities with respect to other Licensees, but shall not be liable to TAMU or its customers for damages or compensation for losses or extra expense due to outages, delay, inefficiency or time consumed in resolving technical disputes among Licensees.

### **VI. REMEDIES ON DEFAULT**

#### **6.0 DEFAULT DEFINED.**

A default is the failure of a Party to meet its substantive obligations under this MTCLA, including the accumulation of payments in arrears, even if late charges are being paid. Default shall include a material misrepresentation of facts or performance data or omission of pertinent data required requests or construction plans, or installation of equipment without adhering to the planning and approval processes of this MTCLA. Delay or impossibility of performance on account of Force Majeure conditions, as defined below, shall not constitute default.

#### **6.1 NOTICE REQUIREMENT.**

If a Party should be in default of any performance or payment obligation of this MTCLA, and, if the other Party has fully performed all of its obligations, the non-defaulting Party shall deliver written notice to the defaulting Party describing the default. If the default continues for more than thirty (30) days after the notice (or such time as necessary to correct the default with due diligence), the non-defaulting Party may pursue its available legal remedies as provided below.

## **6.2 LCRA'S REMEDIES.**

Upon default by TAMU and after the prescribed notice period, LCRA may, without prejudice to other rights and remedies, terminate this MTCLA or the applicable SSO. Upon termination of this MTCLA, all SSOs subject to it shall also terminate.

## **6.3 TAMU'S REMEDIES.**

Upon default by LCRA and after the prescribed notice period, TAMU may, without prejudice to other rights and remedies, terminate this MTCLA or the applicable SSO. Upon termination of this MTCLA, all SSOs subject to it shall also terminate. If TAMU should terminate the MTCLA or an SSO because of LCRA's failure to cure a default, an equitable refund of prorated Usage Fees and other charges TAMU has paid in advance to LCRA shall be made.

## **6.4 ALTERNATIVE DISPUTE RESOLUTION.**

In the event of a contract dispute or default, the Parties shall attempt in good faith to resolve disagreements through alternative means such as mediation, before resorting to litigation provided, however, that, notwithstanding the foregoing, pursuing any such alternative means shall not be a condition of either party hereto initiating litigation to enforce its respective rights hereunder.

## **6.5 ENFORCEMENT COSTS.**

If, after good faith efforts toward resolution through alternative means, a Party is obliged to file suit to enforce the terms and conditions of this MTCLA and then recover a judgment, the prevailing Party shall be entitled, to the extent permitted by the Constitution and laws of the State of Texas, to recover from the other Party reasonable and necessary costs, expenses, and attorneys' fees.

## **6.6 SURVIVAL.**

The provisions of this Section VI and the provisions of any of Section which by its sense and context were intended to survive termination or expiration of this MTCLA or any SSO will survive the termination or expiration of this MTCLA or any applicable SSO.

# **VII. CONFIDENTIALITY**

## **7.0 CONFIDENTIAL INFORMATION.**

The Parties agree that they and their employees have kept and will keep confidential any and all documents or information obtained for the other Party that is identified as confidential information ("**Confidential Information**"). Confidential Information shall include, but is not limited to, the pricing and competitive business provisions of this MTCLA, as well as technical data, summaries, reports or information acquired or developed during the negotiations and performance of the MTCLA. The Parties agree that they have not and will not (a) use the Confidential Information for any purpose other than to perform their respective obligations under this MTCLA or (b) reveal the Confidential Information to any persons not employed by the other Party except (i) at the written direction of such Party; (ii) in compliance with law including the Texas Public Information Act, in which event the Party required to disclose information shall promptly notify the other Party, if possible, prior to making any disclosure and shall seek lawful protection for the confidentiality of such information; (iii) as part of its normal reporting or review procedure to its parent company, auditors, regulators and attorneys; (iv) where such information is part of the public domain; (v) where such information was previously disclosed by the other

Party without any confidentiality restrictions; or (vi) to potential investors, insurers or financing entities or their agents, representatives or consultants, provided that such persons agree to be bound by the provisions of this Section 7.0. This confidentiality provision shall be effective during the Term and for two years after termination of the MTCLA; provided, however, that the receiving Party's obligations of confidentiality with respect to trade secrets disclosed by the disclosing Party shall last indefinitely.

## **VIII. LIMITATION OF LIABILITY & INDEMNIFICATION**

### **8.0 LIMITATION OF LIABILITY.**

To the extent permitted by the Constitution and laws of the State of Texas, NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS MTCLA, *NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES OR FOR ANY LOSS OF USE, REVENUE, OR PROFIT* SUFFERED BY THE OTHER PARTY OR ITS SUCCESSORS OR ASSIGNS, CUSTOMERS, OR AFFILIATES IN CONNECTION WITH ANY BREACH OF OBLIGATION OR DEFAULT UNDER THIS MTCLA OR ANY OUTAGE AFFECTING SERVICE OF A PARTY, EXCEPT WITH RESPECT TO THE FOLLOWING:

- a. Any indemnity obligation under this MTCLA including any such damages that may result from or be awarded in connection with a third party claim; or
- b. Violations of any of the confidentiality provisions of this MTCLA.

### **8.1 INDEMNIFICATION.**

#### **8.1(A) TAMU's Obligation.**

- (i) TAMU agrees to indemnify and hold harmless LCRA, its owners, officers, directors, employees, agents and affiliates from and against any and all claims, losses, penalties, forfeitures, damages, judgments, causes of action, suits, liabilities, costs and expenses, including reasonable expenses, costs and attorneys' fees, arising out of and to the extent of any negligent or willful act or omission of TAMU's personnel, agents, contractors or subcontractors of any tier that causes or contributes to bodily injury to or death of any person or damage to any property during the performance of this MTCLA.
- (ii) TAMU shall similarly indemnify LCRA against any claims from or judgments in favor of TAMU's customers, affiliates, or third parties claiming through TAMU as a result of cable or support structure failure, interference, signal degradation, or other service impairments.
- (iii) TAMU shall be liable for the cost of restoration, repair, or replacement of any LCRA or Facilities to the extent such Facilities are damaged or destroyed as a result of a grossly negligent or willful act of TAMU, its employees, contractors, or subcontractors.

- (iv) TAMU agrees to the indemnity terms in this Section 8.1 to the extent permitted by the Constitution and laws of the State of Texas.

**8.1(B) Indemnification Procedure.** A Party seeking indemnification against a claim, suit, or cause of action related to this MTCLA shall give the other Party prompt notice of the claim, suit, or cause of action. Both Parties shall cooperate in the defense, and the Party seeking indemnification shall have the right to assist and participate in the defense. In the case of TAMU, approval must be given by the Texas State Attorney General. If such claim, suit, or cause of action is covered by insurance, the above right of participation shall be superseded by the defense provisions of the Party's insurance policy to the extent they are inconsistent.

## **IX. INSURANCE**

### **9.0 TAMU'S COVERAGE.**

**9.0(A)** Throughout the Term, TAMU shall maintain sufficient liability insurance to protect both Parties from damages, claims, penalties, fees, suits, and/or judgments caused or claimed to have been caused by the sole or proportionate negligence of TAMU, its agents, employees, contractors or subcontractors of any tier or their agents or employees. . TAMU shall self-insure against any risk that may be incurred by TAMU as a result of its operations under this Agreement. Regardless of TAMU self-insuring against any risk that it may incur as a result of its operations under this Agreement , TAMU's contractors and subcontractors shall nevertheless be required to carry the specified insurance below while they perform work at any of the Premises:

- (i) Workers' Compensation: Coverage A - statutory; Coverage B - \$500,000 employer's liability.
- (ii) General Liability (occurrence form) including personal and bodily injury liability, broad form property damage, operations liability and contractual liability in a minimum amount of \$2,000,000.

**9.0(B)** TAMU shall furnish to LCRA an insurance provision letter evidencing the required coverages before any workers, equipment, or materials arrive on the Premises and otherwise upon request.

LCRA acknowledges that, because TAMU is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of TAMU or for injuries caused by conditions of tangible state property is provided solely by the provisions of the Texas Tort Claims Act (Texas Civil Practice and Remedies Code, Chapters 101 and 104), and that Workers' Compensation Insurance coverage for employees of TAMU is provided by TAMU as mandated by the provisions of Chapter 502, Texas Labor Code. As stated above, TAMU shall self-insure against any risk that may be incurred by TAMU as a result of its operations under this Agreement.

### **9.1 LCRA'S COVERAGE.**

LCRA shall be self-insured to protect from damages, claims, penalties, fees, suits, and/or judgments caused or claimed to have been caused by the sole or proportionate negligence of



LCRA, its agents, employees, contractors or subcontractors of any tier or their agents or employees and will maintain umbrella coverage for liabilities in excess of the self-insurance. Evidence of this coverage shall be furnished to TAMU upon request. LCRA shall not insure TAMU Facilities or operations against damage or loss from fire, windstorm, theft, vandalism, or other perils. If TAMU desires property damage insurance for TAMU Facilities or operations, TAMU shall be fully responsible for obtaining and paying for it.

## **9.2 INSURANCE FOR CONTRACTORS & SUBCONTRACTORS.**

All contractors and subcontractors who work on LCRA's Premises shall maintain the same levels and types of insurance required of TAMU. TAMU may either insure contractors and subcontractors under its own policies or require them to carry separate policies. TAMU shall, to the extent permitted by the Constitution and laws of the State of Texas, defend and indemnify LCRA against any loss or damages resulting from the failure of such contractors or subcontractors to be so insured. Upon LCRA's written consent, lower-level subcontractors may be allowed to carry lesser levels of general liability insurance; such consent shall not be unreasonably withheld or delayed.

## **X. FORCE MAJEURE & SITE OR SEGMENT OBSOLESCENCE**

### **10.0 FORCE MAJEURE.**

**10.0(A)** Neither Party shall be liable for delays, nonperformance, outages, damage, or losses due to causes beyond its reasonable control, including but not limited to severe weather, fires, floods, sabotage, government or regulatory action including delay in obtaining government authorizations (so long as such party uses good faith efforts to timely secure the same), embargoes, or delays beyond the control of vendors or contractors. ("*Force Majeure*").

**10.0(B)** A Party whose performance is hindered or delayed by a Force Majeure event shall use its best efforts to reduce the length of the delay and to mitigate the effects of it. If the delay extends or can be expected to extend beyond thirty (30) days, the other Party shall have the right to terminate any affected SSO or this MTCLA upon thirty (30) days written notice to the other Party, provided that services prior to termination shall be paid in full. LCRA agrees that if reasonably feasible at a specific Site, TAMU may operate out of a portable facility during recovery from a Force Majeure event, and LCRA shall use its best efforts to provide space for the portable facility during recovery.

## **XI. MISCELLANEOUS PROVISIONS**

### **11.0 COMPLIANCE WITH LAWS.**

The Parties shall comply with all applicable federal, state, and local laws, regulations, ordinances, and orders and shall cooperate with each other in verifying compliance.

### **11.1 WORKER CONDUCT & PUBLIC RELATIONS.**

TAMU's employees and contractors shall not encroach on private property, litter, use alcohol, drugs or weapons, exceed speed limits, drive recklessly, or otherwise disturb the peace while on LCRA's Premises. Violation of this provision shall be a material breach of this MTCLA, and LCRA may bar from the Premises any employee or contractor who violates this provision.

### **11.2 RIGHT OF ENTRY.**

Subject to the terms of this MTCLA and upon reasonable prior notice, TAMU shall have the right to enter LCRA's Premises at any reasonable time to inspect the installations, monitor operations and ensure that the terms and conditions of this MTCLA are being met. However, TAMU and its contractors will be required to comply with any reasonable security measures imposed by LCRA.

### **11.3 ASSIGNMENT & FINANCING.**

**11.3(A) TAMU's Assignment Rights.** TAMU shall have the right to assign or transfer its interests under this MTCLA to a parent company, subsidiary or affiliate, successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, provided that the assignee or transferee shall assume all of TAMU's obligations under this MTCLA.

**11.3(B) Approval for Assignment and Sublicensing.** Except as provided above, TAMU shall not assign, sublet, or delegate all or any part of its rights or obligations under this MTCLA or any SSO to any person or entity without the prior written approval of LCRA, which such approval shall not be unreasonably withheld. Any approved assignment or transfer shall only be for TAMU to provide telecommunications and/or radio services to its customers in the ordinary course of business and will remain fully subject to all provisions of this MTCLA and any applicable SSO. LCRA shall retain the same rights and remedies under this MTCLA against the assignee or transferee that they have against TAMU.

**11.3(C) TAMU's Financing Rights.** TAMU shall have the right to pledge or otherwise encumber TAMU Facilities including TAMU's rights under this MTCLA to a financing entity without invalidating this Agreement. Such pledges or encumbrances in favor of a financing entity shall be made only for the purpose of TAMU's obtaining financing; the pledges or encumbrances shall confer no rights on the financing entity other than to repossess TAMU Facilities in case TAMU defaults on its financing obligations and to assign TAMU's rights under this MTCLA, provided that the ultimate assignee or transferee intends to continue providing communications services similar to those provided by TAMU. In such an assignment or transfer, LCRA shall retain the same rights and remedies under this MTCLA against the financing entity or assignee or transferee that LCRA has against TAMU.

**11.3(D) LCRA's Assignment Rights.** LCRA shall have the right to assign or transfer its interests under this MTCLA provided that the assignee or transferee shall assume all of LCRA's obligations under this MTCLA. In such an assignment or transfer, TAMU shall retain the same rights and remedies under this MTCLA against the assignee or transferee that TAMU has against LCRA.

**11.3(E) Binding on Successors & Assigns.** Subject to the above conditions, this MTCLA shall be binding upon and inure to the benefit of the Parties and their successors, assigns, and transferees.

### **11.4 FIXTURES.**

All structural modifications to LCRA's communications shelters, support structures, and main cable supports shall become LCRA's property. Notwithstanding the foregoing, TAMU Facilities installed on LCRA's Premises, including racks, connecting cables, and hardware shall remain TAMU's personal property and shall not become fixtures, whether or not attached to the Premises.

#### **11.5 LIENS & ENCUMBRANCES.**

Each Party shall ensure that no mechanics' or materialmen's liens or any other encumbrances are imposed on the Facilities, Site, Segment, or Premises as a result of failure to pay for work performed or materials delivered. If a worker, supplier, contractor, or subcontractor should file such a lien or encumbrance, the Party responsible for the lien shall promptly take the necessary steps at its own expense to remove and discharge it.

#### **11.6 ENVIRONMENTAL CONDITIONS.**

**11.6(A)** Neither Party shall install or use lead-acid batteries (other than valve regulated lead acid (VRLA) batteries) or underground storage tanks on the Premises nor introduce any pollutants, hazardous substances, or hazardous wastes on the Premises ("**Hazardous Materials**"). Each Party shall, as applicable and to the extent allowed by law, indemnify the other Party against any fines, penalties, and other costs that arise out of the introduction or use of any Hazardous Materials by such Party, its contractors, subcontractors, or suppliers, including spills, leaks, or contaminations resulting from the mishandling of fuels, lubricants, or other substances, and shall be liable for the cost of any environmental cleanup required. This provision shall survive the Term of this MTCLA.

**11.6(B)** The above requirements shall appear in substantially the same form in agreements with all other Licensees utilizing a Party's Premises and shall be enforced for the protection of the other Party and its Licensees.

#### **11.7 NO THIRD-PARTY BENEFICIARIES; NO REAL PROPERTY RIGHTS.**

The terms and conditions of this MTCLA are intended for the sole benefit of LCRA and TAMU. Nothing in this MTCLA, express or implied, is intended to confer any benefits, rights, or remedies upon any third party. Nothing in this MTCLA or in its performance shall create or vest in a Party or its successors or assigns any title, ownership, easement, or any other real property rights in the Premises or Facilities of the other Party.

#### **11.8 NO PARTNERSHIPS.**

Each Party represents the relationship of the Parties to this MTCLA is not that of partners, joint ventures, or a principal-agency relationship.

#### **11.9 NO PUBLIC OFFERING.**

The use of LIT and communications equipment subject to this MTCLA is not intended and shall not be construed as a public offering of communications services but is intended only for services between the Parties pursuant to the terms of this MTCLA at the Sites and Segments specified. Nothing in this MTCLA shall be interpreted to characterize LCRA as a common carrier of communications services.

#### **11.10 LCRA ETHICS POLICY.**

The LCRA Ethics Policy prohibits LCRA directors and employees from accepting any gift, favor, or service that might influence him or her in the discharge of official duties or give the appearance of doing so, or engaging in any other activity that could create conflicts of interest. Compliance with this policy shall be a substantive obligation of this MTCLA, and TAMU shall ensure that its personnel and contractors are aware of and comply with the policy.

#### **11.11 ENTIRE AGREEMENT & MODIFICATIONS.**

This MTCLA, as evidenced by the Contract Documents, constitutes the entire agreement and understanding between the Parties and supersedes previous negotiations, understandings, discussions, correspondence and representations concerning the subject matter herein. Nothing in this MTCLA or any SSO shall be modified or changed except by a writing executed by all Parties. No oral representation of any negotiator, engineer, officer, employee, or agent of any Party shall vary the written terms of this MTCLA or any SSO. No waiver of any right under this MTCLA or any SSO shall be effective unless a writing signed by the Party grants such waiver. No other obligations not specifically set out herein shall be implied.

#### **11.12 WAIVER.**

No failure to exercise and no delay in exercising, on the part of either Party hereto, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either Party of a breach of any provision of this MTCLA or any SSO shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this MTCLA or any SSO unless and until agreed to in writing by both Parties.

#### **11.13 SEVERABILITY.**

If any term or provision of this MTCLA or any SSO is determined to be void, unenforceable, or contrary to law by a regulatory agency or court of competent jurisdiction, the remainder of the MTCLA or SSO shall remain in full force and effect. If the FCC or Public Utility Commission or any division thereof issues an order that any term or provision is contrary to FCC or Public Utility Commission rules or policies, and such order is not stayed, then whether or not such order is subject to review or reconsideration, such term or provision shall be void (except to the extent that such order is modified on review or reconsideration), but the remainder of this MTCLA shall remain in full force and effect.

#### **11.14 NOTICES.**

Official notices pertaining to this MTCLA shall be in writing and shall be deemed duly given if hand delivered, mailed by registered or certified mail return receipt requested, or sent by overnight courier or facsimile, addressed to the following:

TAMU: Texas A&M University  
Attn: Loretta Hayes  
3142 TAMU  
College Station, TX 77843-3142  
Facsimile: (979) 862-3971  
Phone: (979) 845-8421

LCRA: Telecommunications  
Manager Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220  
Facsimile: (512) 473-3346  
Phone: (512) 473-3200

Either party may change its address for notices by providing proper notice to the other party reflecting such change of address. Additional addresses may be provided in applicable SSOs.

#### **11.15 CHOICE OF LAW, JURISDICTION & VENUE.**

This MTCLA and any applicable SSOs shall be governed by and construed in accordance with the laws of the State of Texas, excluding its conflicts of law rules.

#### **11.16 COUNTERPARTS.**

The Contract Documents may be signed in several counterparts, each of which shall be an original for all purposes but all of which taken together shall constitute a single agreement. A signed copy of this MTCLA or any SSO delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this MTCLA or such SSO.

#### **11.17 HEADINGS; ATTACHMENTS; CONSTRUCTION OF TERMS.**

Headings used in this MTCLA are for convenience and shall not control the meaning or interpretation of this MTCLA. Documentation provided by either Party for construction purposes, including drawings, data, and attachments to SSOs, if any, are integral to this MTCLA and incorporated for all purposes into it. The terms and conditions of this MTCLA have been negotiated between the Parties and have been reviewed by each Party's legal counsel. The Parties intend that the general terms and conditions of this MTCLA not be construed against a Party on the grounds that the forms or documents originated with one Party.

### **XII. STATE CONTRACTING REQUIREMENTS.**

#### **12.0 PUBLIC INFORMATION.**

Both Parties acknowledges that the other party is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

#### **12.1 LOSS OF FUNDING.**

Performance by TAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMU will issue written notice to LCRA and TAMU may terminate this Agreement without further duty or obligation hereunder. LCRA acknowledges that appropriation of funds is beyond the control of TAMU.

#### **12.2 STATE AUDITOR'S OFFICE.**

LCRA understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. LCRA agrees to cooperate with the

Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested.

**12.3 NON-WAIVER.**

LCRA expressly acknowledges that TAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law. TAMU expressly acknowledges that LCRA is a political subdivision of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by LCRA of its right to claim such exemptions, privileges, and immunities as may be provided by law

[Signatures appear on next page]

The Parties have caused this Agreement to be executed, which may be in duplicate counterparts, each of which will be deemed to be an original instrument.

Texas A&M University (TAMU)

Lower Colorado River Authority (LCRA)

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

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

Printed Name: **ROBERT C. BOUNDS**  
DIRECTOR, PROCUREMENT SERVICES

Printed Name: \_\_\_\_\_

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

Title: VP, TRANS. STRATEGIC SVCS.

Date: 8 Aug 2019

Date: 1/16/2020



## ADDENDUM 1

### **SERVICE LEVEL AGREEMENT (SLA)**

#### 1.0 Operational Metrics for LIT Services.

#### 1.1 Mean Time to Repair ("MTTR")-

1.1.1 MTTR Measurement - LCRA will measure the average Time to Repair ("**TTR**") for TAMU-reported Outages.

1.1.2 The TTR is measured from the time TAMU identifies an Outage, via either its receipt of a customer report submitted pursuant to standard trouble reporting processes currently in place between the Parties or LCRA's proactive network surveillance until the Outage has ceased, minus any excluded time for an Excused Outage as defined in the MTCLA. Trouble reporting and any TTR calculations shall be conducted at the fiber or LIT service Level.

1.1.3 The MTTR shall not apply to troubles opened as information tickets, release tickets or test assists.

1.1.4 The MTTR shall be calculated by dividing the total number of Outage hours in a calendar month by the total number of Outages in the calendar month.

#### 1.1.5 MTTR Service Response Credits ("**SRC**")

If MTTR is greater than four (4) hours over the calendar month, then TAMU would be eligible for an SRC equal to a prorate amount of the MRC based on the down time of the individual LIT service that does not meet the four hour TTR as described above.

#### 1.2 LIT Service Circuit Availability.

1.2.1 "**LIT Service Circuit Availability**" refers to the percentage of time during a calendar month that a LIT service circuit is available for use by TAMU.

Available for use is defined as the time during which there is no Outage.

Unavailable means the time during which there is an Outage.

1.2.2 The LCRA threshold for LIT Service Circuit Availability will be: 99.99% per LIT service circuit.

1.2.3 LIT Service Circuit Availability is calculated on a per LIT service circuit basis as follows:

$$(1440 \times \text{number of days in the month}) - (\text{number of minutes of during the month}) / (1440 \times \text{number of days in the month})$$

1.2.4 LCRA will not round up the end result of the LIT Service Circuit Availability calculation to reach the assigned threshold.

#### 1.2.5 LIT Service Circuit Availability Service Response Credits ("**SRC**")

If the LIT Service Circuit Availability measurement for a calendar month is less than 99.99%, then LCRA will provide a credit equal to a prorate amount of the MRC for each affected circuit.



2.0 Performance Metrics for LIT Service(s) ("Performance Metrics").

2.1 Performance Metrics apply to LIT Services.

2.1.1 LCRA will provide, upon request, detailed monthly performance reports for each Operational (MTTR / TTR and Circuit Availability)

2.1.2 Such monthly reports, in addition to the above, will contain a monthly "Pass" or "Fail" flag for each LIT service circuit for each Operational listed in Sections 1.1 and 1.2. These monthly reports will be available on the first month after LIT service is turned up on any LIT service circuit governed by this MTCLA. Monthly reports will be available to TAMU upon request and no later than the 10<sup>th</sup> calendar day following the reporting month.

3.0 SLA Exclusions.

3.1 Notwithstanding any other provisions set forth in this Addendum 1, SLAs do not apply to the extent that an Excused Outage (as defined in the MTCLA) prevented LCRA from meeting such SLAs.

4.0 Ability to Address Chronic Trouble Segments.

4.1 TAMU shall have the right to terminate (by use of a disconnect order) without liability of any kind, including any early termination fee or other penalty, any or all LIT service circuits at a TAMU Site that experience any of the following conditions, subject to the exclusions described in Section 3.0 above:

4.1.1 LIT service circuits at a TAMU Site are out of service simultaneously for a period of twelve (12) consecutive hours.

4.1.2 LIT service circuits at a TAMU Site simultaneously do not meet monthly Circuit Availability as defined in Section 1.2 above in three (3) or more months during any period of twelve (12) consecutive months, or

4.1.3 LIT service circuits at a TAMU Site simultaneously do not meet the Per-Month Performance Metric in three (3) months during any period of six (6) consecutive months.

4.2 For purposes of clarification, the rights of termination set forth in this Section 4.0, shall not be subject to the rights of LCRA to cure a default under MTCLA.

**TELECOMMUNICATIONS SITE SEGMENT ORDER**  
**NO. TE-DE010-00036**  
**between**  
**LOWER COLORADO RIVER AUTHORITY TO**  
**Texas A&M University (TAMU)**  
**Description of LIT Service and Pricing**

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Commencement Date for this SSO: January 15, 2020.

Licensee: Texas A&M University

This Site Segment Order ("**SSO**") is made and entered into effective as of the Commencement Date written above, between the named Licensee and the Lower Colorado River Authority ("**LCRA**") and LCRA does hereby grant a license to Texas A&M University ("**TAMU**") to install, operate, maintain, and remove the communications equipment specified herein at the Site and to utilize the Segment, under the conditions specified below, and in accordance with the Master Telecommunications Colocation License Agreement (the "**MTCLA**") by and between Licensee and Licenser with an Effective Date of January 1, 2020.

Unless otherwise defined herein, all capitalized terms used but not defined herein have the meanings ascribed to them in the MTCLA. The terms of the MTCLA (as may be amended, modified, and supplemented from time to time) are hereby incorporated herein by reference and made a part of this SSO. Licenser and Licensee agree that except as specifically set forth herein, the terms and conditions of the MTCLA shall govern the relationship of the parties hereto with respect to the Site and Segments covered in this SSO. In the event of a conflict or inconsistency between the terms of the MTCLA and this SSO, the terms of this SSO shall govern and control.

Pricing: Beginning on the Commencement Date, TAMU shall pay to LCRA the amounts specified below for the LIT utilized by TAMU and the amounts specified below for the Equipment installed at the Site.

Equipment Fee: \$5,000.00 a one-time, non-recurring charge due on the Commencement Date.

Monthly License Fee Subtotal for LIT Services:                   \$ 1,500.00

Monthly License Fee Subtotal for Rack Unit Space:           \$ 0.00

Monthly License Fee Subtotal for Generator Services: \$ 0.00

Total Monthly License Fee:   \$ 1,500.00

Initial Term: 60 Months

Initial Term Expiration Date: January 15, 2024

Renewal Terms of SSO:

The term of this SSO shall automatically renew beyond the Initial Term for three (3) successive one (1) year renewal periods (each, a "**Renewal Term**"), unless either Party provides written notice to the other Party expressing its intent to not renew the term of the SSO at least one hundred and twenty (120) days prior to the expiration of the then current Renewal Term.

Service and Design Description: LCRA shall provide the LIT Service in accordance with the design configurations and equipment set forth below in this SSO and in accordance with the Service Level Agreement (**SLA**). Any modifications to this SSO must be agreed to in writing by TAMU and LCRA.

Special Conditions of Site License:

This SSO terminates and replaces all other existing Licenses between the parties for this Site and Segment, effective as of the Commencement Date.

Licensee's Address for Notices:

(If different than MTCLA)

List billing address and contacts:

TAMU

List contact names and phone numbers for Site emergencies:

TAMU NOC-  
WAN Help Desk: 979-845-8437  
Eric Laird

**Segment**

LCRA licenses to Licensee the use of the following described Segment at the Bit Rate provided:

| Type of Service / Circuit ID  | Bit Rate provided within Segment | Termination Points                         |
|-------------------------------|----------------------------------|--|
| DWDM Ethernet/ TE-DE010-00036 | 10 Gbps                          | Texas 1 to LCRA SOCC and handoff to UT NOC |

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Licensee Approved Equipment: As of the SSO Commencement Date, Licensee has the right to install, maintain, and operate the Licensee Equipment described below at the Site (as the same may be upgraded, modified or replaced) as provided in the MTCLA:

#### Equipment and Location

| Equipment | Power<br>(V/A) | Rack<br>Units | Location |
|-----------|----------------|---------------|----------|
| N/A       |                |               |          |
|           |                |               |          |

[Signatures on last page]

TAMU:

LICENSEE: \_\_\_\_\_

By (Print Name): \_\_\_\_\_

Signature: \_\_\_\_\_ **ROBERT C. BOUNDS** \_\_\_\_\_ Date: 8 Aug 2019  
DIRECTOR, PROCUREMENT SERVICES

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

LOWER COLORADO RIVER AUTHORITY:

By (Print Name): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: 1/16/2020

Title: VP, TRANS. STRATEGIC SVCS.

