
**Telecommunications System Development
Agreement**

Among

Oklahoma Turnpike Authority

Oklahoma Department of Transportation

and

Indian Nations Fiberoptics, Inc.

COMPOSITE AGREEMENT

TELECOMMUNICATIONS SYSTEM DEVELOPMENT AGREEMENT

THIS TELECOMMUNICATIONS SYSTEM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this 5th day of October, 1998 (the "Effective Date"), by and among the Oklahoma Turnpike Authority, an instrumentality of the State of Oklahoma ("OTA"), the Oklahoma Department of Transportation, an agency of the State of Oklahoma ("ODOT"), and Indian Nations Fiberoptics, Inc., an Oklahoma Corporation ("INF"). OTA and ODOT are sometimes individually referred to herein as an "Agency" and collectively as the "Agencies".

RECITALS

A. Each Agency is the owner of certain Rights-of-Way (as hereinafter defined), by fee, license, grant or other interest, within certain real property in the State of Oklahoma upon which it operates its facilities.

B. INF desires to acquire from each Agency certain nonexclusive licenses (as hereinafter defined) in, on, upon, over, under, across and through certain portions of each Agency's Rights-of-Way (as hereinafter defined), as necessary and convenient to permit and enable INF to design, survey, engineer, construct, install, operate, maintain, repair, remove and replace the Telecommunications System (as hereinafter defined).

C. The Agencies desire to acquire from INF certain rights and privileges (as hereinafter defined) in and with respect to certain dark fibers and conduit (as hereinafter defined) which shall be installed by INF on certain portions of the Agencies' Rights-of-Way (as hereinafter defined) concurrently with the installation of the Telecommunications System (as hereinafter defined).

D. In consideration of the grant of such nonexclusive licenses by each Agency, INF hereby grants to each Agency, on the terms and subject to the conditions and limitations of this Agreement, an exclusive right to use the said dark fibers and conduit.

E. In consideration of the grant of such rights and privileges by INF, each Agency hereby grants to INF, on the terms and subject to the conditions and limitations of this Agreement, a nonexclusive license to use the said portions of the Agencies' Rights-of-Way (as hereinafter defined).

F. In order to effectuate the intent of the forgoing, INF and the Agencies desire to enter into a contractual relationship, realizing that close cooperation and good faith in the implementation of this Agreement are critical to the success of their respective operations, and each will work diligently to achieve their common objectives.

AGREEMENT

IN CONSIDERATION OF THE FOREGOING RECITALS AND THE RESPECTIVE COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

1.1 **Defined Terms.** Unless otherwise defined, capitalized terms used herein shall have the following meanings:

a) “**Agency Open Appearances**” shall mean collectively the Telecommunications System (as hereinafter defined) access locations identified and described in Section 3.3 of Article 3 of this Agreement that shall be made available by INF, when the Telecommunications System (as hereinafter defined) has been installed, for the exclusive use of the Agencies.

b) “**Agency Conduit**” shall mean collectively the conduit identified and described in Section 3.2 of Article 3 of this Agreement that shall be made available by INF, when the Telecommunications System (as hereinafter defined) has been installed, for the exclusive use of the Agencies.

c) “**Agency Fibers**” shall mean collectively the dark fibers identified and described in Section 3.1 of Article 3 of this Agreement that shall be made available by INF, when the FOC has been installed, for the exclusive use of the Agencies.

d) “**Agency’s Representative**” shall mean the person or persons designated by each Agency to receive notices under this Agreement when any notice to an Agency’s Representative is required by any term or provision of this Agreement. Each Agency may designate different representatives to receive notices for different purposes, as determined from time to time by each Agency; but each designated representative and each successor representative shall be identified by each Agency in a written notice to INF.

e) “**Agency System**” shall mean collectively the Agency Conduit, Agency Fibers, and Agency Open Appearances.

f) “**Approved System Segments**” shall mean collectively the segments, sections or portions of the Rights-of-Way (as hereinafter defined) on which the Telecommunications System (as hereinafter defined) will be installed, identified in Section 2.1 of Article 2 of this Agreement, Section 2.2 of Article 2 of this Agreement, and Section 2.3 of Article 2 of this Agreement.

g) “**Breach**” shall mean the failure by either party to perform its obligations under this Agreement in the time and manner herein provided.

h) “**FOC**” shall mean the fiber optic cable to be installed by INF on, upon, over, under, across or through each of the Approved System Segments, on the terms and subject to the conditions of this Agreement.

i) “**INF System**” shall mean the telecommunications transmission system installed by INF on, upon, over, under, across or through each of the Approved System Segments, including the FOC and such number of Regenerator Sites and all electronics and other equipment, which INF deems appropriate to create a fiber optic communications transmission system; provided, however, that the INF System shall not include any part of the Agency System.

j) “**Maps**” shall mean maps of the Rights-of-Way (as hereinafter defined) and plan and profile drawings, engineering and architectural data regarding bridges, terminals and other obstacles previously and hereafter compiled by an Agency pertaining to its Rights-of-Way (as hereinafter defined).

k) “**Optional Construction Segments**” shall mean collectively the Rights-of-way OTA-Chickasha-Lawton, ODOT-Lawton, OTA-Lawton-Randlett, ODOT-Randlett-Texas, ODOT-MacArthur-Sara, and ODOT-I35-H51 (as hereinafter defined).

l) “**Regenerator Site**” shall mean a facility in which equipment is located which receives, regenerates and retransmits an opti/electronic telecommunications transmission signal, together with all attendant equipment and structures appurtenant thereto, including power sources.

m) “**Rights-of-Way**” shall mean the real property and rights thereto utilized by the Agencies for the highway, interstate and turnpike facilities described in Section 2.1 of Article 2 of this Agreement, Section 2.2 of Article 2 of this Agreement, and Section 2.3 of Article 2 of this Agreement which are owned, operated, leased or controlled by the Agencies pursuant to existing grants, easements, leases, franchises, licenses or other agreements or arrangements. The nonexclusive use of the Rights-of-Way will be restricted to a six-foot wide strip, 3 feet on each side of a centerline, identified in the Working Plans (as hereinafter defined) and approved by the appropriate Agency.

n) “**Telecommunications System**” shall mean collectively the INF System and the Agency System.

1.2 **Other Defined Terms.** The following capitalized terms shall have the meanings given to them in the corresponding Articles set forth below:

<u>Terms</u>	<u>Section</u>
Agency	Introduction
Agencies	Introduction

Agreement	Introduction
Approved Plans	Section 5.3 of Article 5
Change	Section 5.4(a) of Article 5
Effective Date	Introduction
INF	Introduction
ODOT	Introduction
ODOT-ETN-NE4 Fibers	Section 3.1 of Article 3
ODOT-I35-H51	Section 2.1 of Article 2
ODOT-I40-I44	Section 2.1 of Article 2
ODOT-I40-I240 Fibers	Section 3.1 of Article 3
ODOT-I40-MacArthur	Section 2.1 of Article 2
ODOT-I40-MacArthur Fibers	Section 3.1 of Article 3
ODOT-I40-NE4	Section 2.2 of Article 2
ODOT-I40-SH66	Section 2.2 of Article 2
ODOT-I40-SH66 Fibers	Section 3.1 of Article 3
ODOT-I40-SW89	Section 2.1 of Article 2
ODOT-I240-SW89 Fibers	Section 3.1 of Article 3
ODOT-Lawton	Section 2.1 of Article 2
ODOT-Lawton-Randlett	Section 2.1 of Article 2
ODOT-MacArthur-Sara	Section 2.1 of Article 2
ODOT-MacArthur-Sara Fibers	Section 3.1 of Article 3
ODOT-NE4-RenoHub Fibers	Section 3.1 of Article 3
ODOT-New-I40-I44	Section 2.1 of Article 2
ODOT-Randlett-Texas	Section 2.1 of Article 2
ODOT-RenoHub-I40 Fibers	Section 3.1 of Article 3
ODOT-SH74	Section 2.1 of Article 2
ODOT-SH74 Fibers	Section 3.1 of Article 3
ODOT-Spare-Conduit-I40-NE4	Section 2.2 of Article 2
ODOT-Spare-Conduit-I40-SH66	Section 2.2 of Article 2
ODOT-Stillwater Fibers	Section 3.1 of Article 3
ODOT-SW89-HEB	Section 2.1 of Article 2
Optional Construction Term	Section 6.3.2.1 of Article 6
OTA	Introduction
OTA-Chickasha-Lawton	Section 2.1 of Article 2
OTA-Chickasha-Lawton Fibers	Section 3.1 of Article 3
OTA-JKT	Section 2.1 of Article 2
OTA-JKT Fibers	Section 3.1 of Article 3
OTA-Lawton-Texas Fibers	Section 3.1 of Article 3
OTA-New-JKT	Section 2.2 of Article 2
OTA-New-JKT Fibers	Section 3.1 of Article 3
OTA-OKC-Chickasha	Section 2.1 of Article 2
OTA-OKC-Chickasha Fibers	Section 3.1 of Article 3
OTA-Spare-Conduit	Section 2.2 of Article 2
System Materials	Section 6.1(a) of Article 6
Working Drawings	Section 5.3 of Article 5

ARTICLE 2

GRANT OF LICENSES TO INF

2.1 Use of Rights-of-Way. Each Agency hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use certain Rights-of-Way for the following purposes consistent with the terms of this Agreement: to design, survey, engineer, construct, install, operate, maintain, repair, remove and replace the INF System; and, in connection therewith to install, maintain, repair, remove and replace the Agency System. INF hereby accepts the grant of such nonexclusive license from the Agencies for such purposes.

a) ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of I-235 and 4th Street, Oklahoma City, Oklahoma, going south on I-235 to I-40, Oklahoma City, Oklahoma, going west on I-40 to I-44, Oklahoma City, Oklahoma ("ODOT-I40-I44"). In the event that a new section of I-40 is built between the intersection of I-235 and I-40, Oklahoma City, Oklahoma and the intersection of I-40 and I-44, Oklahoma City, Oklahoma, ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way along such section of I-40 for the purpose of transferring the Telecommunications System to such section of I-40 ("ODOT-New-I40-I44"). INF may utilize ODOT-I40-I44 and ODOT-New-I40-I44 concurrently.

b) ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of I-40 and I-44, Oklahoma City, Oklahoma, going west on I-40 to the intersection I-40 and MacArthur, Oklahoma City, Oklahoma ("ODOT-I40-MacArthur").

c) ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of I-40 and MacArthur, Oklahoma City, Oklahoma, going west on I-40 to the intersection I-40 and Sara Road, Oklahoma City, Oklahoma ("ODOT-MacArthur-Sara").

d) ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of I-40 and I-44, Oklahoma City, Oklahoma, going south on I-44 to the intersection of I-44 and Southwest 89th Street, Oklahoma City, Oklahoma ("ODOT-I40-SW89").

e) ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of I-44 and Southwest 89th Street, Oklahoma City, Oklahoma, going south on I-44 to the H.E. Bailey Turnpike located at mile marker 107.5 on I-44 ("ODOT-SW89-HEB").

f) OTA hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the H.E. Bailey

Turnpike located at mile marker 107.5 on I-44, going south on I-44 to the Chickasha Toll Plaza, Chickasha, Oklahoma, located at mile marker 77.8 on I-44 ("OTA-OKC-Chickasha").

g) OTA hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the Chickasha Toll Plaza, Chickasha, Oklahoma located at mile marker 77.8 on I-44, going south on I-44 to mile marker 46.11 ("OTA-Chickasha-Lawton").

h) ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at mile marker 46.11 on I-44, going south on I-44 to mile marker 30.5 ("ODOT-Lawton").

i) OTA hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at mile marker 30.5 on I-44, going south on I-44 to mile marker 5.49 ("OTA-Lawton-Randlett").

j) ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at mile marker 5.49 on I-44, going south on I-44 to the Texas stateline ("ODOT-Randlett-Texas").

k) ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of I-44 and State Highway 74, Oklahoma City, Oklahoma, going north on State Highway 74 to the John Kilpatrick Turnpike, Oklahoma City, Oklahoma ("ODOT-SH74").

l) OTA hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of State Highway 74 and the John Kilpatrick Turnpike, Oklahoma City, Oklahoma, going east on the John Kilpatrick Turnpike to the intersection of the John Kilpatrick Turnpike and I-35, Oklahoma City, Oklahoma ("OTA-JKT").

m) ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of the John Kilpatrick Turnpike and I-35, Oklahoma City, Oklahoma, going north on I-35 to State Highway 51, going east on State Highway 51 to Stillwater, Oklahoma ("ODOT-I35-H51").

2.2 Use of Agency Conduits. Each Agency hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use certain conduits for the following purposes consistent with the terms of this Agreement: to design, survey, engineer, construct, install, operate, maintain, repair, remove and replace the INF System; and, in connection therewith to install, maintain, repair, remove and replace the Agency System. INF hereby accepts the grant of such nonexclusive license from the Agencies for such purposes.

a) ODOT grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use one 2" conduit ("ODOT-Spare-Conduit-I40-SH66").

including splice boxes, beginning at the intersection of I-44 and I-40, Oklahoma City, Oklahoma, going north approximately 3.5 miles to the intersection of I-44 and State Highway 66, Oklahoma City, Oklahoma ("ODOT-I40-SH66").

b) ODOT grants to INF, during the term of this Agreement and each renewal term hereof, an exclusive license to use one 2" conduit ("ODOT-Spare-Conduit-I40-NE4"), including splice boxes, beginning at the intersection of Northeast 4th Street and I-235, Oklahoma City, Oklahoma, going south approximately 1 mile to the intersection of I-40 and I-235, Oklahoma City, Oklahoma ("ODOT-I40-NE4").

c) ODOT shall be permitted to grant other and additional rights of use, licenses of use or occupation of ODOT-Spare-Conduit-I40-SH66 by one or more persons or entities; provided, however, that any right of use, license of use or occupation of ODOT-Spare-Conduit-I40-SH66 hereafter granted by ODOT shall not interfere with, obstruct or impair the license granted to INF under this Agreement and INF shall be the sole contractor for installing fiber optic cable in ODOT-Spare-Conduit-I40-SH66 at the then prevailing market rates.

d) OTA grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use one 2" conduit ("OTA-Spare-Conduit"), including splice boxes beginning at the intersection of State Highway 74 and the John Kilpatrick Turnpike, Oklahoma City, Oklahoma, going west approximately 16 miles to the intersection of the John Kilpatrick Turnpike and Southwest 15th Street, Oklahoma City, Oklahoma ("OTA-New-JKT"). OTA's grant of a nonexclusive license to use OTA-Spare-Conduit is subject to the completion of the John Kilpatrick Turnpike and installation of the conduit on Rights-of-Way OTA-New-JKT. OTA shall be permitted to grant other and additional rights of use, licenses of use or occupation of the OTA-Spare-Conduit by one or more persons or entities; provided, however, that any right of use, license of use or occupation of the OTA-Spare-Conduit hereafter granted by OTA shall not interfere with, obstruct or impair the license granted to INF under this Agreement and INF shall be the sole contractor for installing fiber optic cable in the OTA-Spare-Conduit at the then prevailing market rates.

2.3 Use of OTA's Conduit. OTA grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use one 2" conduit ("OTA-Spare-Conduit"), including splice boxes beginning at the intersection of State Highway 74 and the John Kilpatrick Turnpike, Oklahoma City, Oklahoma, going west approximately 16 miles to the intersection of the John Kilpatrick Turnpike and Southwest 15th Street, Oklahoma City, Oklahoma ("OTA-New-JKT"). OTA's grant of a nonexclusive license to use OTA-Spare-Conduit is subject to the completion of the John Kilpatrick Turnpike on Rights-of-Way OTA-New-JKT. OTA shall be permitted to grant other and additional rights of use, licenses of use or occupation of the OTA-Spare-Conduit by one or more persons or entities; provided, however, that any right of use, license of use or occupation of the OTA-Spare-Conduit hereafter granted by OTA shall not interfere with, obstruct or impair the license granted to INF under this Agreement and INF shall be the sole contractor for installing fiber optic cable in the OTA-Spare-Conduit at the then prevailing market rates.

ARTICLE 3

GRANT OF RIGHTS TO THE AGENCIES

3.1 Agency Fibers. INF hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, as hereinafter specifically provided with respect to each Agency, an exclusive right to use certain dark fibers in the FOC, as and when the said fibers have been installed by INF in accordance with the terms of this Agreement.

a) INF hereby grants to OTA, during the term of this Agreement and each renewal term hereof, an exclusive right to use 12 dark fibers (the "OTA-OKC-Chickasha Fibers") from the Education Television Network building, 13th & Phillips, Oklahoma City, Oklahoma to the Chickasha Toll Plaza, Chickasha, Oklahoma located at mile marker 77.8 on I-44 via the Rights-of-Way ODOT-I40-I44, ODOT-I40-SW89, ODOT-SW89-HEB, and OTA-OKC-Chickasha.

b) INF hereby grants to OTA, during the term of this Agreement and each renewal term hereof, an exclusive right to use 12 dark fibers (the "OTA-Chickasha-Lawton Fibers") from the Chickasha Toll Plaza, Chickasha, Oklahoma located at mile marker 77.8 on I-44 to Lawton, Oklahoma via the Rights-of-Way OTA-Chickasha-Lawton and ODOT-Lawton. INF will provide 4 fibers spliced from the OTA-Chickasha-Lawton Fibers to a patch panel in the ODOT Survey Office, Lawton, Oklahoma. INF will provide 4 fibers from the patch panel in the ODOT Survey Office, Lawton, Oklahoma spliced to the OTA-Chickasha-Lawton Fibers to provide a continuous 4-fiber loop. INF will splice the OTA-Chickasha-Lawton Fibers to the OTA-OKC-Chickasha Fibers.

c) INF hereby grants to OTA, during the term of this Agreement and each renewal term hereof, an exclusive right to use 12 dark fibers (the "OTA-Lawton-Texas Fibers") from Lawton, Oklahoma to the Texas stateline via the Rights-of-Way OTA-Lawton-Randlett and ODOT-Randlett-Texas. INF will splice the OTA-Lawton-Texas Fibers to the OTA-Chickasha-Lawton Fibers.

d) INF hereby grants to OTA, during the term of this Agreement and each renewal term hereof, an exclusive right to use 16 dark fibers (the "OTA-JKT Fibers") from the intersection of State Highway 74 and the John Kilpatrick Turnpike, Oklahoma City, Oklahoma to the Turnpike Authority building located on the east side of the intersection of the John Kilpatrick Turnpike and I-35, Oklahoma City, Oklahoma via the Rights-of-Way OTA-JKT. INF will splice 8 of the OTA-JKT Fibers to the ODOT-SH74 Fibers.

e) INF hereby grants to OTA, during the term of this Agreement and each renewal term hereof, an exclusive right to use 16 dark fibers (the "OTA-New-JKT Fibers") from the intersection of State Highway 74 and the John Kilpatrick Turnpike, Oklahoma City, Oklahoma to the intersection of the John Kilpatrick Turnpike and Southwest 15th Street, Oklahoma City, Oklahoma via the Rights-of-Way OTA-New-JKT. INF will splice 8 of the

OTA-New-JKT Fibers to the OTA-JKT Fibers and INF will splice 8 of the OTA-New-JKT Fibers to the ODOT-MacArthur-Sara Fibers at the intersection of the John Kilpatrick Turnpike and I-40, Oklahoma City, Oklahoma.

f) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 24 dark fibers (the “ODOT-ETN-NE4 Fibers”) from the Education Television Network building, 13th & Phillips, Oklahoma City, Oklahoma to the intersection of Northeast 4th Street and I-235, Oklahoma City, Oklahoma.

g) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 120 dark fibers (the “ODOT-NE4-RenoHub Fibers”) from the intersection of Northeast 4th Street and I-235, Oklahoma City, Oklahoma to the ODOT Reno Hub Site located on Reno Street approximately .3 miles West of the intersection of I-40 and I-235, Oklahoma City, Oklahoma via Rights-of-way ODOT-I40-I44. INF will splice 24 of the ODOT-NE4-RenoHub fibers to the ODOT-ETN-NE4 fibers. ODOT-NE4-RenoHub Fibers will be placed in existing ODOT conduit.

h) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 48 dark fibers (the “ODOT- RenoHub-I40 Fibers”) from the ODOT Reno Hub Site located on Reno Street approximately .3 miles West of the intersection of I-40 and I-235, Oklahoma City, Oklahoma to the intersection of I-40 and I-44, Oklahoma City, Oklahoma via Rights-of-way ODOT-I40-I44. ODOT-RenoHub-I40 Fibers will be placed in Agency conduit granted to ODOT in section 3.2 of Article 3 in this Agreement.

i) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 24 dark fibers (the “ODOT-I40-MacArthur Fibers”) from the intersection of I-40 and I-44, Oklahoma City, Oklahoma to the intersection of I-40 and MacArthur, Oklahoma City, Oklahoma via the Rights-of-Way ODOT-I40-MacArthur. INF will splice 16 of the ODOT-I40-MacArthur Fibers to the ODOT-RenoHub-I40 Fibers.

j) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 12 dark fibers (the “ODOT-MacArthur-Sara Fibers”) from the intersection of I-40 and MacArthur, Oklahoma City, Oklahoma to the intersection of I-40 and Sara Road, Oklahoma City, Oklahoma via the Rights-of-Way ODOT-MacArthur-Sara. INF will splice 12 of the ODOT-MacArthur-Sara Fibers to the ODOT-I40-MacArthur Fibers.

k) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 24 dark fibers (the “ODOT-I40-I240 Fibers”) from the intersection of I-40 and I-44, Oklahoma City, Oklahoma to the intersection of I-44 and I-240, Oklahoma City, Oklahoma via the Rights-of-Way ODOT-I40-SW89. INF will splice 16 of the ODOT-I40-I240 Fibers to the ODOT-RenoHub-I40 Fibers.

l) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 12 dark fibers (the “ODOT-I240-SW89 Fibers”)

from the intersection of I-240 and I-44, Oklahoma City, Oklahoma to the intersection of I-44 and Southwest 89th Street, Oklahoma City, Oklahoma via the Rights-of-Way ODOT-I40-SW89. INF will splice 12 of the ODOT-I240-SW89 Fibers to the ODOT-I40-I240 Fibers.

m) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 24 dark fibers (the "ODOT-I40-SH66 Fibers") from the intersection of I-40 and I-44, Oklahoma City, Oklahoma to the intersection of I-44 and State Highway 66, Oklahoma City, Oklahoma via the Rights-of-Way ODOT-I40-SH66. INF will splice 16 of the ODOT-I40-SH66 Fibers to the ODOT-RenoHub-I40 Fibers.

n) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 12 dark fibers (the "ODOT-SH74 Fibers") from the intersection of I-40 and State Highway 74, Oklahoma City, Oklahoma to the intersection of State Highway 74 and the John Kilpatrick Turnpike, Oklahoma City, Oklahoma via the Rights-of-Way ODOT-SH74. INF will splice the ODOT-SH74 Fibers to the ODOT-I40-SH66 Fibers.

o) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 12 dark fibers (the "ODOT-Stillwater Fibers") from the Turnpike Authority building located on the east side of the intersection of the John Kilpatrick Turnpike and I-35, Oklahoma City, Oklahoma to the Oklahoma State University Telecommunications Fiber building, Stillwater, Oklahoma via the Rights-of-Way ODOT-I35-H51. INF will splice the ODOT-Stillwater Fibers to the OTA-JKT Fibers.

3.2 Agency Conduit. INF hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, as hereinafter specifically provided with respect to each Agency, an exclusive right to use certain conduits, as and when the said conduits have been installed by INF in accordance with the terms of this Agreement.

a) INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use two – 1 ¼" interducts in the INF System along the Rights-of-Way ODOT-I40-I44, ODOT-I40-MacArthur, ODOT-SH74, and ODOT-I40-SW89.

b) INF hereby grants to OTA, during the term of this Agreement and each renewal term hereof, a right to use a 3" conduit from the intersection of State Highway 74 and the John Kilpatrick Turnpike, Oklahoma City, Oklahoma to the Turnpike Authority building located on the east side of the intersection of the John Kilpatrick Turnpike and I-35, Oklahoma City, Oklahoma via the Rights-of-Way OTA-JKT.

3.3 Agency Open Appearances. INF hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, as hereinafter specifically provided with respect to each Agency, an exclusive right to use certain open appearances in the INF System. INF shall allow each Agency access to the Agency Fibers and Agency Conduit at these locations; provided, however, that such access shall be subject to INF supervision on not less than forty-eight (48) hours' prior notice to INF.

a) INF shall provide 30 open appearances for the Agency Fibers in buried hand holes at locations specified by the Agencies along Rights-of-Way ODOT-I40-I44, ODOT-I40-MacArthur, and ODOT-I40-SW89. The ground boxes for these 30 open appearances shall be provided and installed by ODOT.

b) INF shall provide 10 open appearances for the Agency Fibers in buried hand holes at locations specified by the Agencies along Rights-of-Way OTA-OKC-Chickasha.

c) INF shall provide 12 open appearances for the Agency Fibers in buried hand holes at locations specified by the Agencies along Rights-of-Way OTA-Chickasha-Lawton and ODOT-Lawton.

d) INF shall provide 10 open appearances for the Agency Fibers in buried hand holes at locations specified by the Agencies along Rights-of-Way OTA-Lawton-Randlett and ODOT-Randlett-Texas.

e) INF shall provide 16 open appearances for the Agency Fibers in buried hand holes at locations specified by the Agencies along Rights-of-Way ODOT-SH74.

f) INF shall provide 12 open appearances for the Agency Fibers in buried hand holes at locations specified by the Agencies along Rights-of-Way OTA-JKT.

g) INF shall provide 25 open appearances for the Agency Fibers in buried hand holes at locations specified by the Agencies along Rights-of-Way ODOT-I35-H51.

h) INF shall provide 6 open appearances for the Agency Fibers in buried hand holes at locations specified by the Agencies along Rights-of-Way ODOT-MacArthur-Sara.

3.4 Rights for ODOT-New-I40-I44. INF hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, on Rights-of-Way ODOT-New-I40-I44 the same rights granted to the Agencies on Rights-of-Way ODOT-I40-I44 to provide a continuous Telecommunications System along I-40 from the intersection of I-40 and I-235, Oklahoma City, Oklahoma to the intersection of I-40 and I-44, Oklahoma City, Oklahoma.

3.5 Right to Use Fibers and Conduit. The Agencies shall each have an unrestricted right to use their respective fibers and conduit in the Agency System for any lawful purpose without approval or consent from any of the other parties to this Agreement.

3.6 License to Use Fibers and Conduit. INF shall have an unrestricted license to use the fibers and conduit in the INF System for any lawful purpose without approval or consent from any of the other parties to this Agreement.

ARTICLE 4

NONEXCLUSIVITY

The license granted by the Agencies under this Agreement, with respect to the use by INF of the Approved System Segments, shall be a nonexclusive license. Each Agency shall continue to use its respective Rights-of-Way and shall be permitted to grant other and additional rights of use, licenses of use or occupation in its respective Rights-of-Way by one or more persons or entities; provided, however, that any right of use, license of use or occupation hereafter granted by either Agency in its respective Rights-of-Way shall not interfere with, obstruct or impair the license granted to INF under this Agreement.

ARTICLE 5

ROUTE DESIGNATION, INSPECTION, SURVEYS WORKING DRAWINGS, APPROVED PLANS AND SCHEDULES

5.1 Agency Information. To facilitate INF's planning of the route within the Approved System Segments, each Agency shall allow INF to view, at the Agency's principal location, available Maps, charts, engineering rights-of-way, steam tunnels, pipeline documents and other engineering data and documentation pertaining to the Approved System Segments and the physical condition thereof, including the location and nature of all power stations, substations and other improvements, as well as all relevant engineering data and plans relating thereto. INF may request and obtain, at its sole cost and expense, copies of such information. Each Agency shall allow INF to view, at the Agency's principal location, available title documentation with respect to the Approved System Segments and/or restrictions on the license to use and to occupy the same for the purposes intended by this Agreement. INF may request, at its sole cost and expense, copies of such title documentation; provided, however, that the availability of such title documentation to INF shall not alter, affect or diminish the Agencies' warranties to INF with respect to the Rights-of-Way. Each Agency shall make available to INF, as soon as practicable, any relevant available information on pending highway, interstate or turnpike relocation or improvement projects by an Agency along the Approved System Segments. All requested copies of the documents referred to above pertaining to the Approved System Segments, including but not limited to title documentation, shall be provided by each Agency to INF at a cost that does not exceed the actual cost of reproduction incurred by the Agency, plus reasonable overhead expense, if any.

5.2 Joint Inspection and Surveys by INF. Each Agency agrees to participate with INF or its agents in a joint inspection of the Approved System Segments situated within its Rights-of-Way prior to commencement of construction for the purpose of identifying problem areas and defining the final route for the FOC. Agency personnel accompanying INF on the inspection shall have the knowledge and authority to generally guide the detailed routing in a manner to minimize interference with Agency operations. INF shall, at its sole cost and expense, survey and submit the preliminary route to the appropriate Agency marked on a Map. Following each submission of the preliminary route, such Agency shall approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in reasonable detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any Agency objections to the preliminary route, INF may modify the proposed route with respect to which such objections were noted by making appropriate changes thereto and resubmit the same to the Agency for its approval or objection as aforesaid. Approval of the preliminary route by the Agencies and INF shall serve as the basis for INF to initiate formal engineering to design the detailed route and construction plan. INF shall have no obligation under this Agreement to initiate engineering until the Agencies and INF have approved the preliminary route for the FOC. In the event that INF and the Agencies are unable to agree on the

preliminary route, as aforesaid, INF shall have the right to terminate this Agreement by giving written notice of termination to each Agency.

5.3 Preparation of Working Drawings. INF shall, at its sole cost and expense, prepare and submit to the appropriate Agency construction plans ("Working Drawings") for construction of the Telecommunications System on the Approved System Segments. Following each submission of the Working Drawings, the Agency shall approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any Agency objections to the Working Drawings, INF shall correct the Working Drawings with respect to which such objections were noted by making appropriate changes thereto and resubmit the same to the Agency for its approval or objection as aforesaid. The approved Working Drawings are hereinafter referred to as the "Approved Plans." INF shall have no obligation under this Agreement to commence construction or installation of the FOC, Agency Conduit or the Agency Open Appearances until the Agencies and INF have approved the Working Drawings. In the event that INF and the Agencies are unable to agree on the Working Drawings, as aforesaid, INF shall have the right to terminate this Agreement by giving written notice of termination to each Agency.

5.4 Changes to Approved Plans.

a) During the initial construction, INF may make changes in its work hereunder, consisting of modifications or other changes within the general scope of this Agreement (a "Change"); provided, however, that (i) any Change in the route of the FOC which is outside the perimeter of the Approved System Segment, (ii) any additional excavation, or (iii) any relocation of a Regenerator Site shall, in any such event, be subject to the review and approval of the Agency that approved the Approved Plans.

b) When INF becomes aware of a Change for which the consent of an Agency is required hereunder, INF shall, at its sole cost and expense, promptly prepare and submit to the appropriate Agency an explanation of the basis therefor, and shall inform the Agency whether such Change should result in an adjustment to the Approved Plans or any other provision of this Agreement. A written change order describing the Change, its effect, if any, on the Approved Plans and any other provision of this Agreement, which is affected, shall be entered into by the parties in order for the Change to be effective.

5.5 Construction Schedule. Upon approval by the Agencies of the Working Drawings, INF may enter the Rights-of-Way for the purpose of commencing installation of the Telecommunications System. Prior to entry, INF shall provide to the Agencies a schedule for construction activities, including estimated progress dates and locations.

ARTICLE 6

CONSTRUCTION OF SYSTEM

6.1 Construction of System.

a) INF, at INF's sole cost and expense, shall furnish all necessary materials, parts, components, equipment and structures to accomplish this Agreement. Any and all property constructed and/or installed by INF, including all fiber optic cable, conduit, carrier pipe, repeaters, power sources and all other attachments (collectively, the "System Materials") shall be and remain at all times the property of INF, and shall at no time be deemed to be the property of any Agency, regardless of the manner or method of attachment to or installation in, on, upon, over, under, across and through the Rights-of-Way.

6.2 Conditions of Construction.

6.2.1 Roadway. Where cable is buried near the edge of pavement, INF shall take particular care to avoid damaging the pavement. All crossings under pavement, including but not limited to the main roadway, entry ramps, and exit ramps are to be bored and conduit installed, as approved by the appropriate Agency.

6.2.2 Construction Corridor. INF shall be granted the use of a 24-foot wide construction corridor, where available, to be determined by the appropriate Agency, along the planned construction routes. Construction equipment must stay within this corridor unless unforeseen obstacles necessitate deviations.

6.2.3 Temporary Installation Facilities.

a) INF shall maintain all temporary facilities, material and equipment in a safe and adequate manner and remove them with reasonable promptness upon completion of the work requiring their presence.

b) During construction of the Telecommunications System, INF shall erect, at its expense, temporary fencing where reasonably required or deemed necessary by the Agency.

6.2.4 Excavating, Trenching and Plowing.

a) The use of explosives shall not be allowed without prior authorization of the Agency.

b) Damage to banks and ditches caused by the equipment shall be immediately repaired to the satisfaction of the Agency.

c) Conduit/Cable trenching and plowing shall consist of a trench or cut. The minimum depth of the trench or cut on OTA Rights-of-Way shall be thirty-six (36) inches. The minimum depth of the trench or cut on ODOT Rights-of-Way shall be in accordance with ODOT standards. The trench or cut shall be neat and clean cut without disturbing any of the adjacent soil or ground cover. The FOC must be placed in pipe or conduit as approved by the appropriate Agency.

d) INF shall promptly repair any damage to fences, lawns, trees, shrubbery and any other property damaged during construction.

6.2.5 Boring. The pavement shall not be disturbed and the location of boring and pushing pits are subject to approval of the appropriate Agency. Excessive use of water such that pavement might be undermined or subgrade softened shall not be permitted. The FOC crossing under roadways shall be at a location and depth as determined by state or local conditions, laws, regulations or orders of public authorities and shall be encased in pipe or conduit as approved by the appropriate Agency.

6.2.6 Vaults and Pull Boxes. The tops of the vault and pull boxes are to be constructed in such a manner that the tops are flush with the adjacent ground line. The locations of vault and pull boxes are subject to approval of the appropriate Agency.

6.3 Completion of Construction and Installation. All work on the Telecommunications System shall be completed based on the schedule identified in this Article.

6.3.1 Mandatory Construction Schedule. The Telecommunications System along Rights-of-Way ODOT-I40-I44, ODOT-I40-SW89, ODOT-I40-MacArthur, ODOT-SW89-HEB and OTA-OKC-Chickasha shall be completed within 365 calendar days, beginning on the date of the Approved Plans. The Telecommunications System along Rights-of-Way ODOT-I40-SH66, ODOT-SH74, and OTA-JKT shall be completed within 730 calendar days from the Effective Date of the Agreement. The Telecommunications System along Rights-of-Way OTA-New-JKT shall be completed before the opening, in whole or in part as determined by the Agency, of the John Kilpatrick Turnpike extension.

6.3.2 Optional Construction.

6.3.2.1 Completion of Optional Construction. INF will have the sole option to complete construction of the Optional Construction Segments for a period of five years ending on the fifth anniversary of the Effective Date (the "Optional Construction Term"). Upon approval of the Working Plans for an Optional Construction Segment, in whole or in part, INF shall complete such Optional Construction Segment within 365 calendar days from the date of such Approved Plans. When the Optional Construction Term has expired, the licenses granted to INF for the uncompleted Optional Construction Segments will be terminated.

6.3.2.2 Optional Construction Continuous System. INF will have the sole option to complete all or part of the Optional Construction Segments, during the Optional Construction Term; provided, however, that the Optional Construction Segments will

be completed in sequence and spliced to the Telecommunications System to provide a continuous FOC.

6.3.2.3 Optional Construction Lawton. If INF utilizes any part of the Rights-of-Way ODOT-Lawton, INF agrees to install the Agency Fibers to the ODOT Survey Office, Lawton, Oklahoma, as identified in Section 3.1 of Article 3, as part of such Optional Construction Segment.

6.3.2.4 Agencies Request for Optional Construction. The Agencies may request in writing during the Optional Construction Term that one or more Option Construction Segments are completed within 365 calendar days beginning on the date of such Approved Plans. INF shall have 30 days following receipt of the written request to respond to the Agencies, in writing, notifying the Agencies that INF shall complete such Optional Construction Segments within 365 calendar days from the date of such Approved Plans. If INF fails to respond to such request or INF does not agree to build such Optional Construction Segments, INF will then relinquish the license to use the Rights-of-Way defined in such Optional Construction Segments.

6.4 Standards and Warranty. Any and all work by INF, its contractors or agents shall be done in a good and workmanlike manner and so as not to interfere with any of the Agency operations. All installations must meet or exceed applicable standards and specifications of the State of Oklahoma and the United States of America in effect at that time and shall further be in compliance with all existing federal, state or local laws, ordinances and regulations and INF, at its expense, shall obtain all permits and approvals required to implement the work required to be performed by it under this Agreement. In no case shall any part of the Telecommunications System be located in a manner that will interfere with any operations of the Agency, its existing permits, licenses or lessees.

6.5 INF License to Attach. With prior written approval from the appropriate Agency, INF may use an Agency's available cable conduit, bridge attachments and similar facilities in its installation and construction of the Telecommunications System, subject to terms and conditions that maybe imposed by the Agency.

6.6 Other Public Utilities. The FOC crossing over or under other existing public utilities shall be located and installed in accordance with local conditions, laws, orders of public authorities, and such requirements as may be stipulated by the public authority. If in the conduct of such work, any changes or alterations in pipelines, sewers, drains, conduits, fences, power, signal or communication lines or other utilities are necessary (either temporary or permanent), such changes shall be made at INF's sole cost and expense.

6.7 Restoration of Rights-of-Way. Upon completion of the installation or any replacement, repair or relocation of the Telecommunications System, INF shall promptly return the ground to the same condition to that which existed prior to such work, in a manner satisfactory to the affected Agency's Representative.

6.8 Delivery of As-Built Drawings. Within 90 days after completion of the installation of the Telecommunications System on each Approved System Segment, INF shall, at its sole cost and expense, prepare and submit to each Agency "as-built" prints showing the location of the Telecommunications System within such Agency's Rights-of-Way.

ARTICLE 7

PERMITS

7.1 General Responsibilities. INF, at its sole cost and expense, shall secure and maintain in effect all federal, state, and local permits and licenses required for the design, construction, installation, repair, maintenance and operation of the Telecommunications System, including, without limitation, zoning, building, health, environmental or communication permits or licenses, and INF shall indemnify and hold harmless the Agencies against any loss, cost or expense therefor and against any fines or penalties that may be levied for failure to procure or to comply with such permits or licenses as well as any remedial cost to cure violations thereof. Each Agency agrees to cooperate with INF in securing on a timely basis all necessary approvals, permits and licenses from all governmental authorities and/or other parties having jurisdiction or approval rights in respect of the use and occupation of the Rights-of-Way. If INF, after reasonable effort and diligence, is unable to obtain all of the necessary permits and licenses from federal, state and local government authorities for the design, construction, installation or operation of the Telecommunications System on any Approved System Segment, INF may terminate, at the option of INF, the obligations of INF under this Agreement with regard to the design, construction, installation or operation of the Telecommunications System on such Approved System Segment by giving written notice thereof to the Agencies. The parties acknowledge and agree that the exercise of "reasonable effort and diligence" by INF with respect to any required permit or license, as such phrase is used herein, shall not require that INF (a) commence or prosecute any litigation or any administrative proceeding of an adversarial nature in any court or before any administrative agency against any governmental authority or any other person or entity or (b) expend an amount for costs and expenses which is unreasonable when compared to the costs and expenses generally required to obtain a similar permit or license from a particular governmental authority. Any other term, condition or provision of this Agreement to the contrary notwithstanding, the Agencies and INF acknowledge and expressly agree that this Agreement and the respective obligations of the parties hereunder are and shall be subject to the acquisition by INF of all necessary permits, licenses, consents and approvals from ODOT for the design, construction, installation and operation of the Telecommunications System on right-of-way owned or controlled by ODOT, to the extent that the use of ODOT owned or controlled right-of-way is contemplated or required by this Agreement, including but not limited to all controlled access highway right-of-way and all interstate highway right-of-way.

ARTICLE 8

INF's LICENSE TO ENTER

The licenses granted to INF in Section 2.1 of Article 2 of this Agreement, Section 2.2 of Article 2 of this Agreement, and Section 2.3 of Article 2 of this Agreement shall include the license for INF to enter the Rights-of-Way with its employees, agents and contractors in order to exercise INF's license under this Agreement, subject to the following requirements:

8.1 Notice Required. Except for emergency situations, whenever INF or its employees, agents or contractors desire to enter upon the Rights-of-Way in connection with any activities related to the Telecommunications System, INF shall notify the Agency, in writing, forty-eight (48) hours in advance and the notice must explain the scope and estimated duration of the anticipated entry. INF shall receive written approval from the Agency's Representative prior to entry. If such scope and duration changes, additional notice shall be given and approval solicited.

8.2 Emergency Situations. In the event of any emergency impacting upon the Telecommunications System, or any portion thereof, INF shall verbally or by facsimile give the appropriate Agency's Representative advance notice prior to entry upon the affected portion of the Rights-of-Way.

8.3 Entry on the Turnpikes. OTA shall provide reasonable access to the Oklahoma Turnpikes during engineering, construction and installation of the Telecommunications System. After completion of engineering, construction and installation, ingress and egress to the Oklahoma Turnpikes shall be at the then prevailing OTA rates.

ARTICLE 9

FACILITY LOCATION SIGNS

INF, at its sole cost and expense, shall furnish, erect and thereafter maintain signs identifying all INF underground facilities. Such signs shall be placed along the outermost Right-of-Way lines in accordance with industry standards of the telecommunications industry and as approved by the Agency's Representative.

ARTICLE 10

MAINTENANCE OF SYSTEM

10.1 General Maintenance. Upon completion of the Telecommunications System and during the term hereof and each renewal term hereof, INF shall, at its sole cost and expense, be responsible for the maintenance and repair of the Telecommunications System including replacement of individual fibers and any maintenance as is necessary for the operation of the Telecommunications System; provided, however, if any Agency Fibers are damaged or should require repair or replacement as a result of (a) damage caused during installation or maintenance of the electronics on the Agency Fibers, (b) any intentional misconduct by or on the part of an Agency or any agent, servant or employee of an Agency or (c) any defect in or any malfunction of any electronics connected to the Agency Fibers constituting a part of the Agency System, INF shall have no obligation to repair or replace the damaged Agency Fibers and the Agencies shall have no right to use the damaged Agency Fibers, unless the Agencies agree in writing to reimburse INF the reasonable costs of repairing or replacing the damaged Agency Fibers. INF may, at its option, subcontract for maintenance and restoration services hereunder.

10.2 Agency Maintenance. Each Agency agrees to cooperate with INF to restore damaged or malfunctioning portion(s) of the Telecommunications System as soon as reasonably possible. Each Agency acknowledges the critical importance to INF of the uninterrupted operation of the INF System, and to each Agency the uninterrupted operation of the Agency System, and INF agrees to arrive at the site within four hours after receiving notice of the existence of a problem.

10.3 Certain Notices to INF. Each Agency will use its best efforts to give forty-eight hours prior notice to INF if the Agency has knowledge that any person will be digging or trenching on any part of the Rights-of-Way within thirty feet of the FOC; provided, however, that neither Agency shall be responsible or liable to INF or any other person for any loss, injury or damage caused by or resulting from any failure to give such forty-eight hour notice or any other prior notice; and, provided further, that INF shall not be responsible or liable to the Agencies or any other person for any loss, injury or damage caused by or resulting from an failure to act on such notice given by either Agency.

ARTICLE 11

INF UTILITY REQUIREMENTS

At each Regenerator Site, INF may have the requirement for utilities such as auxiliary and primary power sources. If the installation of such utilities was omitted from the Working Drawings, and thereby not approved by the appropriate Agency, the installation of such utilities and route of access shall be subject to approval of the Agency's Representative.

ARTICLE 12

RELOCATION

12.1 Relocation.

a) Subsequent to initial construction of the Telecommunications System, if INF determines that the Telecommunications System or the location thereof must be changed or altered within the Approved System Segments because of INF operations or planned operations, or INF desires to renew, replace, repair or alter any of its structures, properties, facilities or appurtenances or to construct new ones, INF shall, at its sole cost and expense, promptly submit such plans, in writing, to the appropriate Agency. Only upon written consent by the appropriate Agency shall INF proceed with such plans. The Agency may deny such request for changes or alteration without cause. If such plans are approved by the Agency, INF, at its sole cost and expense, shall protect or move the affected System Materials in a manner satisfactory to the Agency's Representative as soon as reasonably practicable.

b) If an Agency determines that any part of the Telecommunications System or the location thereof must be changed or altered because of Agency operations or planned operations, or an Agency desires to renew, replace, repair or alter any of its bridges, culverts, structures, roads, properties, facilities or appurtenances or to construct new ones, such Agency shall notify INF of such plans. INF, at INF's expense, shall protect or move the affected parts of the Telecommunications System in a manner satisfactory to the Agency's Representative as soon as reasonably practicable.

ARTICLE 13

TRAFFIC REGULATIONS

13.1 Access. All use of the Rights-of-Way shall be designed, made, and maintained in accordance with Chapter IV of the current "Manual on Uniform Traffic Control Devices: U.S. Department of Transportation" and Oklahoma Department of Transportation Standard Specifications, Edition of 1988 and any subsequent revisions. It is agreed upon that INF shall not permit its vehicles and personnel to stop in the traffic lanes, center medians or paved shoulders of the highways, interstates, or turnpikes.

13.2 Traffic Area. INF shall keep traffic lanes, center medians, paved shoulders or other traffic areas free of excavated material, installation equipment, conduit, and other materials and equipment unless the traffic areas have been appropriately marked and closed, which such closings must be approved, in advance, by the appropriate Agency.

13.3 Traffic Control. INF shall be responsible for the placement and cost of all traffic control devices, required by the Agency, and shall comply with the current manual of Uniform Traffic Control Devices and Oklahoma Department of Transportation Standard Specifications, Edition of 1988 and any subsequent revisions.

13.4 Highway Safety. INF shall operate to avoid, to the extent practicable, actions that could endanger the Telecommunications System or the operation of an Agency. INF shall use all precautions to not interfere with Agency operations in the Rights-of-Way. An Agency may, at its option, request that employees, agents and contractors of INF who are or will be involved in the engineering, construction, installation, operation or maintenance of the Telecommunications System be trained in highway safety matters via courses or materials to be offered or provided by the Agency at the cost of the Agency.

ARTICLE 14

INSURANCE

14.1 Required Coverage. Throughout the term of this Agreement and each renewal term hereof:

a) INF shall procure and maintain in force, at its own cost and expense, Commercial General Liability insurance, including Automobile/Vehicle Liability for owned non-owned and hired automobiles, covering liability assumed by INF under this Agreement, including a contractual liability coverage endorsement referring to this Agreement, coverage for contractors, premises operations, explosion, collapse and underground hazard, products liability, completed operations, personal and bodily injury, and broad form commercial general property damage, with a combined single limit of not less than \$10,000,000 for bodily and personal injury (including death) and property damage per occurrence.

b) INF shall also procure and maintain in force Worker's Compensation Insurance in compliance with statutory requirements and with statutory limits, including an "All States" endorsement, and Employer's Liability Insurance with limits of not less than \$1,000,000.

14.2 No Waiver of Liability. The maintenance of the insurance hereinabove specified shall not limit INF's liability under this Agreement, but shall be additional security therefor.

14.3 General Conditions.

a) All insurance required hereunder shall be effected by valid and enforceable policies issued by insurers licensed to do business in the State of Oklahoma.

b) To the extent reasonably obtainable, all the policies required hereunder shall contain agreements by the insurers that (a) no act or omission to act by an additional insured shall impair or affect the rights of the insured to receive and collect the proceeds of such policy, and (b) except in respect of cancellation for non-payment of premium, such policies shall not be canceled or materially changed upon less than 30 days prior written notice to the Agencies.

c) Prior to commencing work hereunder on any Approved System Segment, and at any other time upon the request of an Agency, INF shall furnish to the requesting Agency certificates of insurance or other evidence thereof attesting that the insurance required under Article 14 of this Agreement is in effect.

d) Nothing in Article 14 of this Agreement shall be construed to prevent INF from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies, which meets or exceeds the requirements hereof.

LIENS AND ENCUMBRANCES

15.1 Liens and Encumbrances. INF shall not permit the creation of any mortgage, pledge, security, interest, lien or encumbrance on or pertaining to the Rights-of-Way or any other property or rights of the Agencies, including without limitation tax liens or liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Telecommunications System; provided, however, that the existence of such liens or encumbrances shall not constitute a violation of this sentence if payment with respect thereto is not yet due and payable; and provided further that INF may, after written notice to the Agencies, contest the same or the validity thereof in good faith by appropriate proceedings which shall operate to prevent the enforcement of such lien or encumbrance so contested against any property or rights of an Agency. Nothing in this Agreement shall prevent or prohibit INF from financing the construction and installation of the Telecommunications System with loans from one or more lenders on terms satisfactory to INF or prevent or prohibit INF from securing the repayment of such loans with any mortgage, security agreement or other security document creating one or more consensual liens or security interests in or with respect to the INF System and the licenses of INF under this Agreement, including but not limited to the nonexclusive license of INF to use the Approved System Segments for the purposes of this Agreement; provided, however, that any such lien or security interest shall expressly exclude and shall not encumber the Agency System or any part of the Agency System, during the term of this Agreement and each renewal term hereof, the Rights-of-Way or any other rights or property of the Agencies hereunder.

15.2 Ownership of INF FOC and Conduit. Nothing in this Agreement shall be deemed to give, and each Agency hereby expressly waives any claim of, ownership in any part of the FOC or conduit installed by INF. Each Agency hereby agrees that no portion of the FOC or conduit installed by INF shall be or become subject to or collateral under any mortgages, bonds or other indentures of such Agency.

ARTICLE 16

TERM OF AGREEMENT

16.1 Term of Agreement. The term of this Agreement shall commence at 12:01 a.m. on the Effective Date hereof and shall terminate at 12:01 a.m. on the twentieth anniversary of the Effective Date, unless renewed pursuant to Paragraph 16.2 hereof or sooner terminated pursuant to Paragraph 16.3 hereof. Upon completion of the term of this Agreement and each renewal term hereof the ownership of the FOC and Agency System shall immediately and automatically transfer to the Agencies.

16.2 Renewal. INF shall have the option to renew this Agreement for two additional 5-year terms. The first renewal shall commence at 12:01 a.m. on the twentieth anniversary of the Effective Date and the second renewal shall commence at 12:01 a.m. on the twenty-fifth anniversary of the Effective Date; provided, however, that the right to renew shall be available to INF only if INF is not in default under any of the provisions of this Agreement as of the beginning date of each renewal term. Each option shall be exercisable by INF giving written notice of extension to the Agencies 90 days prior to the end of the term or renewal term, and each renewal term shall be on the same terms and conditions as set forth herein except this option to renew.

16.3 Termination. This Agreement shall terminate upon the happening of any of the following events;

a) Complete abandonment in place of the Telecommunications System by INF. At such time and in such event, the ownership of the Telecommunications System shall transfer to the Agencies.

-b) Written mutual agreement of the parties hereto.

c) Breach, pursuant to Section 17.1 of Article 17 of this Agreement.

d) In the event of mutual termination by the parties hereto, INF shall, at INF's sole cost and expense, at the option of the appropriate Agency, either remove INF facilities and restore the Approved System Segments to a condition and in a manner satisfactory to the Agency or abandon the same in place.

16.4 Effect on Obligations. Termination of this Agreement pursuant to Article 16 of this Agreement shall terminate all obligations of the parties hereunder and this Agreement shall become void and have no effect without any liability on the part of any party, except for the obligations under Article 21 of this Agreement.

16.5 Partial Abandonment. Upon partial abandonment in place of the Telecommunications System by INF the ownership of such abandoned segments of the Telecommunications System shall transfer to the Agencies.

ARTICLE 17

BREACH, REMEDIES

17.1 Breach.

a) In the event of a Breach of this Agreement by either party, INF and the Agencies each agree that neither shall proceed against the other by litigation before the offending party has had written notice of and reasonable time, not to exceed 30 calendar days, to respond and cure such Breach or defect; provided, however, neither party shall be required to give the other time to respond and cure if any such delay will cause irreparable harm.

b) For purposes of this Article, any substantial noncompliance or repeated noncompliance which of itself might be considered minor or singular, shall constitute a Breach by either party.

17.2 Remedies. Remedies available to each party upon the occurrence of a Breach hereunder shall include: 1) specific performance in equity; and/or 2) litigation for damages and costs; and/or 3) termination.

a) Any waiver by any party at any time of any of its rights or licenses as to anything herein contained shall not be deemed to be a waiver of any Breach of covenant or other matter subsequently occurring.

ARTICLE 18

REPRESENTATIONS AND WARRANTIES

18.1 Representations of INF. INF represents and warrants to the Agencies that (a) it has full right and authority, including any requisite corporate, governmental and third party approvals, to enter into and to perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject; and (c) no litigation or governmental proceeding is pending or, to the knowledge of INF, is threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or the rights of the parties hereunder.

18.2 Representations of Agencies. Each Agency represents to INF that (a) it has full right and authority to enter into and perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate (i) its charter or by-laws, (ii) any rule, order or regulation applicable to such Agency which has not been waived, or (iii) to its knowledge, without having conducted any independent investigation, any license, permit, property interest conveyance, franchise or right-of-way which may adversely affect INF's use of the Rights-of-Way or its right to grant the privileges herein provide for; (c) no litigation or government action or proceeding is pending or, to its knowledge threatened, which might adversely affect this Agreement, the transactions contemplated herein or the rights of the parties hereunder; and (d) to its knowledge, without having conducted any independent investigation, the Agencies collectively own all requisite right, title and interest (by fee, license, grant or other interest) in and to the Rights-of-Way, free and clear of any applicable lien, charge, mortgage, pledge, security interest, restrictions or other encumbrance of any kind, in order to grant INF such privileges and to perform all of their other obligations under this Agreement.

ARTICLE 19

RECORDING, TAXES AND OTHER CHARGES

INF agrees that if it is determined by any state or local government authority that the sale, acquisition, license, grant, transfer or disposition from the Agencies to INF of any part or portion of the property or rights herein described requires the payment of any tax, (including sales or use tax) under any state or federal statute, regulation or rule, INF shall pay the same, plus any penalty or interest thereon, directly to said taxing authority and shall hold the Agencies harmless therefrom. INF shall pay all annual or periodic taxes levied or assessed upon the INF System or on account of the existence or use of the INF System, and shall indemnify the Agencies against the payment thereof.

ARTICLE 20

INDEPENDENT CONTRACTOR STATUS

The Agencies and INF acknowledge and agree that they reserve no control whatsoever over the employment, discharge, compensation of or services rendered by the employees or contractors of the other party, notwithstanding the ability of the parties under this Agreement to exercise certain rights to enforce the various standards and specifications agreed upon pursuant to this Agreement. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship or as creating or implying any partnership or joint venture between INF and an Agency.

ARTICLE 21

LIABILITY, INDEMNITY

21.1 Liability and Indemnity.

a) INF, as a further consideration and as a condition without which this Agreement would not have been executed and delivered by the Agencies, agrees to indemnify, defend and save harmless the Agencies, their respective officers, employees and agents and to assume all responsibility and liability for death of, or injury to any persons, including but not limited to, officers, employees, agents, patrons, invitees or licensees of the parties hereto and for loss, damage or injury to any property, including but not limited to, that belonging to the Agencies, together with all liability for any expenses, attorneys' fees and costs incurred or sustained by the Agencies, arising from or growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from any neglect, negligence by or on the part of INF, its officers, employees or agents in connection with the grant or exercise of the privileges hereunder to INF or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of the Telecommunications System or of any structure incident thereto or any activity conducted by or on behalf of INF on or in the vicinity of the Rights-of-Way.

b) Anything in this Agreement to the contrary notwithstanding, INF shall release and indemnify and save harmless the Agencies, their respective officers, employees and agents, for any damage to the property of INF, including the Telecommunications System or any of INF's facilities and all appurtenances thereto or property of INF's officers, employees, agents, contractors or subcontractors, arising from or growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from the grant or exercise of the privileges hereunder to INF or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of any structure incident thereto or from any activity conducted by or on behalf of INF or the Agencies on or in the vicinity of the Rights-of-Way; provided, however, that this release and indemnification shall not release, indemnify or otherwise protect the Agencies from any gross negligence or intentional misconduct by or on the part of either Agency or its officers, employees or agents. The Agencies make no representations concerning the structural integrity or suitability of any of their respective property or facilities to be used by INF hereunder and INF accepts such property and facilities in their present "as-is" condition and it is expressly understood that INF uses said facilities at its own risk.

c) At the election of the Agencies, INF, upon receipt of notice to that effect, shall assume or join in the defense of any claim based on allegations purporting to bring said claim within the coverage of this Article.

ARTICLE 22

ENVIRONMENTAL MATTERS

22.1 Notice Requirements. Upon learning of any hazardous or toxic waste conditions within an Approved System Segment or any other portion of the Rights-of-Way which would adversely affect or interfere with the exercise of INF's licenses hereunder, each party agrees to promptly inform the other of the existence of such hazardous or toxic waste condition.

22.2 Alternate Locations. Upon learning of any such hazardous or toxic waste condition on Rights-of-Way areas within which the Telecommunications System is intended to be or is located, the applicable Agency shall, to the extent available to it, offer INF, without payment of any additional consideration therefor, alternate contiguous areas within which the Telecommunications System may be relocated to avoid such hazardous or toxic waste areas.

ARTICLE 23

MISCELLANEOUS

23.1 Entire Agreement. This Agreement sets forth the entire agreement between the parties with regard to the subject matter of this Agreement. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter of this Agreement are contained in this Agreement and the documents referred to or implementing the provisions of this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of this Agreement. This is an integrated agreement.

23.2 Governing Law and Choice of Forum. The validity, construction and performance of this Agreement, and any action arising out of or relating to this Agreement shall be governed by the laws, without regard to the Laws as to choice or conflict of laws, of the State of Oklahoma.

23.3 Waiver and Amendment. This Agreement may be amended, supplemented, modified and/or rescinded only through an express written instrument signed by all parties or their respective successors and permitted assigns.

23.4 Assignment. The obligations of the parties under this Agreement shall not be assigned without the written approval of the other parties.

23.5 Successors and Assigns. Each of the terms, provisions and obligations of this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties and their respective legal representative, successors and permitted assigns.

23.6 Notices.

a) Unless otherwise provided herein, all notices and communications concerning this Agreement shall be addressed to the other party as follows:

If to INF:

Indian Nations Fiberoptics, Inc.
124 West Vinita
Sulphur, OK 73086

If to the Agencies:

Oklahoma Turnpike Authority
3500 Martin Luther King Ave.
Oklahoma City, OK 73111

or at such other address as may be designated in writing to the other party.

b) Unless otherwise provided herein, notices shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, and shall be deemed served or delivered to the addressee or its office on the date of return receipt acknowledgment or, if postal claim notices are given, on the date of its return marked "unclaimed,"; provided, however, that upon receipt of a returned notice marked "unclaimed," the sending party shall make reasonable effort to contact and notify the other party by telephone.

23.7 Severability.

a) This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law or regulations.

b) Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall have no effect upon the validity or enforceability of each and every other separate division herein contained, or any other combination thereof.

23.8 Further Action. Each party agrees to perform any further acts and to execute and delivery an other documents which may be reasonable necessary to effect the provisions of this Agreement.

23.9 Warranty of Authority. Each of the individuals signing this Agreement on behalf of a party warrants and represents that such individual is duly authorized and empowered to enter into this Agreement and bind such party.

23.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

INDIAN NATIONS FIBEROPTICS, INC.

By: _____

Title: _____

AS TO FORM

OKLAHOMA TURNPIKE AUTHORITY

OTA Legal Counsel

By: _____

Title: _____

AS TO FORM

OKLAHOMA DEPARTMENT OF
TRANSPORTATION

ODOT Legal Counsel

By: _____

Title: _____

***Indian Nations Fiberoptic
Telecommunications System Development
Agreement #2***

Between

Oklahoma Department of Transportation



and

Indian Nations Fiberoptic, Inc.

INDIAN NATIONS FIBEROPTIC TELECOMMUNICATIONS SYSTEM DEVELOPMENT AGREEMENT #2

THIS INDIAN NATIONS FIBEROPTIC TELECOMMUNICATIONS SYSTEM DEVELOPMENT AGREEMENT #2 (this "Agreement") is made and entered into as of this 25th day of September 2000 (the "Effective Date"), by and between the Oklahoma Department of Transportation, an agency of the State of Oklahoma ("ODOT"), and Indian Nations Fiberoptic, Inc., an Oklahoma Corporation ("INF").

RECITALS

A. ODOT is the owner of certain Rights-of-Way (as hereinafter defined), by fee, license, easement or other interest, within certain real property in the State of Oklahoma upon which it operates its facilities.

B. INF desires to acquire from ODOT certain nonexclusive licenses in, on, upon, over, under, across and through certain portions of the ODOT Rights-of-Way (as hereinafter defined), as necessary and convenient to permit and enable INF to design, survey, engineer, construct, install, operate, maintain, repair, remove and replace the Telecommunications System (as hereinafter defined).

C. ODOT desires to acquire from INF certain rights and privileges (as hereinafter defined) in and with respect to certain dark fibers which shall be installed by INF on certain portions of the ODOT Rights-of-Way (as hereinafter defined) concurrently with the installation of the Telecommunications System (as hereinafter defined).

D. In consideration of the grant of such nonexclusive licenses by ODOT, INF hereby grants to ODOT, on the terms and subject to the conditions and limitations of this Agreement, an exclusive right to use the said dark fibers.

E. In consideration of the grant of such rights and privileges by INF, ODOT hereby grants to INF, on the terms and subject to the conditions and limitations of this Agreement, a nonexclusive license to use the said portions of the ODOT Rights-of-Way (as hereinafter defined).

F. In order to effectuate the intent of the forgoing, INF and ODOT desire to enter into a contractual relationship, realizing that close cooperation and good faith in the implementation of this Agreement are critical to the success of their respective operations, and each will work diligently to achieve their common objectives.

AGREEMENT

IN CONSIDERATION OF THE FOREGOING RECITALS AND THE RESPECTIVE COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

1.1 **Defined Terms.** Unless otherwise defined, capitalized terms used herein shall have the following meanings:

- a) **"Breach"** shall mean the material failure by either party to perform its obligations under this Agreement in the time and manner herein provided.
- b) **"Cross Connect Site"** shall mean a facility in which equipment is located which bridges fiber optic cables and networks together.
- c) **"FOC"** shall mean the fiber optic cable to be installed by INF on, upon, over, under, across or through each of the Rights-of-Way (as hereinafter defined), on the terms and subject to the conditions of this Agreement.
- d) **"INF System"** shall mean the telecommunications transmission system installed by INF on, upon, over, under, across or through each of the Rights-of-Way (as hereinafter defined), including the FOC, Open Appearances, and such number of Regenerator Sites (as hereinafter defined) and all electronics and other equipment, which INF deems appropriate to create a fiber optic communications transmission system; provided, however, that the INF System shall not include any part of the ODOT System.
- e) **"Maps"** shall mean maps of the Rights-of-Way (as hereinafter defined) and plan and profile drawings, engineering and architectural data regarding bridges, terminals and other obstacles previously and hereafter compiled by ODOT pertaining to its Rights-of-Way (as hereinafter defined).
- f) **"ODOT Fibers"** shall mean collectively the dark fibers identified and described in Section 3.1 of Article 3 of this Agreement that shall be made available by INF, when the FOC (as hereinafter defined) has been installed, for the exclusive use of ODOT.
- g) **"ODOT's Representative"** shall mean the person or persons designated by ODOT to receive notices under this Agreement when any notice to ODOT's Representative is required by any term or provision of this Agreement. ODOT may designate different representatives to receive

notices for different purposes, as determined from time to time by ODOT; but each designated representative and each successor representative shall be identified by ODOT in a written notice to INF.

h) "**ODOT System**" shall mean collectively ODOT Fibers and ODOT Open Appearances.

i) "**Open Appearances**" shall mean buried hand holes at locations along the Rights-of-Way (as hereinafter defined) used to provide access to the FOC.

j) "**Regenerator Site**" shall mean a facility in which equipment is located which receives, regenerates, retransmits, adds or drops an opti/electronic telecommunications transmission signal, together with all attendant equipment and structures appurtenant thereto, including power sources.

k) "**Rights-of-Way**" shall mean the real property and rights thereto utilized by ODOT for the highway and interstate facilities described in Section 2.1 of Article 2 of this Agreement which are owned, operated, leased or controlled by ODOT pursuant to existing grants, easements, leases, franchises, licenses or other agreements or arrangements. The nonexclusive use of the Rights-of-Way will be restricted to a four-foot wide strip, 2 feet on each side of a centerline, identified in the Working Plans (as hereinafter defined) and approved by ODOT.

l) "**SMF-28**" shall mean a single-mode optical fiber cable meeting the specifications set forth in the Corning Optical Fiber product specifications PL1044, issued April 1996.

m) "**Telecommunications System**" shall mean collectively the INF System and ODOT System.

1.2 **Other Defined Terms.** The following capitalized terms shall have the meanings given to them in the corresponding Articles set forth below:

<u>Terms</u>	<u>Section</u>
Agreement	Introduction
Approved Plans	Section 5.3 of Article 5
Change	Section 5.4 of Article 5
Effective Date	Introduction
INF	Introduction
I35 Fibers	Section 3.1 of Article 3
ODOT	Introduction
ODOT-I35	Section 2.1 of Article 2
ODOT Open Appearances	Section 3.3 of Article 3
Perry Fibers	Section 3.2 of Article 3
System Materials	Section 6.1 of Article 6
Working Drawings	Section 5.3 of Article 5

ARTICLE 2

GRANT OF LICENSES TO INF

2.1 Use of Rights-of-Way. ODOT hereby grants to INF, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use certain Rights-of-Way for the following purposes consistent with the terms of this Agreement: to design, survey, engineer, construct, install, operate, maintain, repair, remove and replace one INF System; and, in connection therewith to install, maintain, repair, remove and replace the ODOT System. This Agreement authorizes INF to install one Telecommunications System using a single trench or cut in the Rights-of-Way. The Telecommunications System will not exceed the installation of six conduits and/or interducts. All conduits, interducts, and FOC must be installed in such single trench or cut. INF hereby accepts the grant of such nonexclusive license from ODOT for such purposes.

a) ODOT grants to INF, during the term of this Agreement, a nonexclusive right to use the following rights-of-way ("ODOT-I35") beginning at the Oklahoma-Kansas border, going south on Interstate 35 to the intersection of Interstate 35 and State Highway 51. ODOT will allow INF to place a maximum of 200 INF System Open Appearances on the ODOT-I35 Rights-of-Way. ODOT will allow INF to egress from such Open Appearances only in a lateral direction from 20 of these Open Appearances. The location and specifications of the Telecommunications System will be submitted in the Working Drawings and approved by ODOT.

b) ODOT grants to INF, during the term of this Agreement, a nonexclusive right to use one approximately 50-foot by 50-foot portion of the ODOT-I35 Rights-of-Way for the placement of a Regenerator Site facility. INF will recommend a desired location for placement of a Regenerator Site on the ODOT-I35 Rights-of-Way. The location and specifications of the Regenerator Site will be submitted in the Working Drawings and approved by ODOT. At the sole option and in the sole discretion of INF, and subject to the acquisition of all necessary permits from all local authorities, INF may design, construct, install and maintain the Regenerator Site. The exact location and ingress and egress to such Regenerator Site will be subject to ODOT approvals prior to constructing such Regenerator Site. INF is responsible for all construction and maintenance costs including the buildings, driveways, drainage, utilities, fencing and insurance. ODOT is not responsible for any damages incurred to the buildings or contents.

c) ODOT grants to INF, during the term of this Agreement, a nonexclusive right to use one approximately 75-foot by 75-foot portion of the Rights-of-Way at the intersection of Interstate 40 and Interstate 44, Oklahoma City, Oklahoma, for the placement of a Cross Connect Site (the "INF Cross Connect"). The specifications, exact location and ingress and egress to such Cross Connect Site will be submitted in the Working Drawings and approved by ODOT. INF is responsible for all construction and maintenance costs including the buildings, driveways, drainage, utilities, fencing and insurance. ODOT is not responsible for any damages incurred to the buildings or contents; provided, however, ODOT will be responsible for any ODOT equipment located in the Cross Connect Site.

ARTICLE 3

GRANT OF RIGHTS TO ODOT

3.1 **ODOT I35 Fibers.** INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use certain dark fibers in the Telecommunications System, as and when the said Telecommunications System has been installed by INF in accordance with the terms of this Agreement. INF grants to ODOT an exclusive right to use 12 SMF-28 or equivalent fibers (the "I35 Fibers") in the FOC from the Oklahoma-Kansas border to the intersection of Interstate 35 and State Highway 51 via the ODOT-I35 Rights-of-Way. INF will provide 24 fibers spliced from the I35 Fibers to a patch panel in the ODOT Division Office, Perry, Oklahoma. INF will perform the necessary splices and connections to provide an uninterrupted 12 fiber network using the I35 Fibers. INF will splice the I35 Fibers to existing ODOT Fibers located at the intersection of Interstate 35 and State Highway 51 as specified by ODOT.

3.2 **ODOT Perry Fibers.** INF grants to ODOT an exclusive right to use 12 SMF-28 or equivalent fibers (the "Perry Fibers") in the FOC from the intersection of Interstate 35 and Highway 412 to a patch panel in the ODOT Division Office, Perry, Oklahoma. INF will perform the necessary splices and connections to provide an uninterrupted 12 fiber network using the Perry Fibers.

3.3 **ODOT Open Appearances Provided By INF.** INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use certain Open Appearances in the Telecommunications System. INF shall allow ODOT access to ODOT Fibers at these locations (the "ODOT Open Appearances"); provided, however, that such access shall be subject to INF supervision on not less than twenty-four (24) hours' prior notice to INF. INF shall provide 25 ODOT Open Appearances for the I35 Fibers in hand holes at locations specified by ODOT. INF will provide, during the installation of the FOC, a 100ft coil of the I35 Fibers in ODOT Open Appearances. The specifications and installation procedures for the Open Appearances will be identified in the Working Drawings and approved by ODOT. INF will perform the necessary splices and connections requested by ODOT during the term of this Agreement and each renewal term hereof, to provide an uninterrupted fiber network using the I35 Fibers.

3.4 **Additional Fibers.** INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 12 additional dark fibers in the Telecommunications System beginning with the installation of the second and each additional FOC, as and when the said FOC has been installed by INF in accordance with the terms of this Agreement. INF will perform the necessary splices and connections to provide an uninterrupted fiber network for such additional dark fibers. INF will provide, during the installation of such additional dark fibers, a 100 foot coil of the dark fibers in the ODOT Open Appearances.

3.5 **ODOT Cross Connect.** INF hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use a 10' X 12' environmentally conditioned space for the storage of ODOT electronics in INF's Cross Connect Site. ODOT will be responsible for providing electrical service to the ODOT equipment in INF's Cross Connect Site. INF

will terminate existing fibers located at the intersection of Interstate 40 and Interstate 44, Oklahoma City, Oklahoma, in a patch panel in the INF Cross Connect Site, as specified by ODOT.

3.6 ODOT Right to Use Fibers. ODOT shall each have an unrestricted right to use their respective fibers in the ODOT System for any lawful purpose without approval or consent from any of the other parties to this Agreement. ODOT may donate, trade, barter, lease, or sell the ODOT System or any portion thereof to any person or entity, including but not limited to, for-profit telecommunication providers for the purpose of transporting traffic. ODOT hereby agrees that no portion of the FOC installed by INF shall be or become subject to or collateral under any mortgages, bonds or other indentures of ODOT.

3.7 INF License to Use Fibers and Conduit. INF shall have an unrestricted license to use the FOC and conduit in the INF System for any lawful purpose without approval or consent from any of the other parties to this Agreement. INF may donate, trade, barter, lease, or sell the INF System or any portion thereof to any person or entity; provided, however, INF shall not assign the rights granted to INF in this Agreement to any person or entity without the written approval from ODOT.

ARTICLE 4

NONEXCLUSIVITY

The license granted by ODOT under this Agreement, with respect to the use by INF of the Rights-of-Way, shall be a nonexclusive license. ODOT shall continue to use its respective Rights-of-Way and shall be permitted to grant other and additional rights of use, licenses of use or occupation in its respective Rights-of-Way by one or more persons or entities; provided, however, that any right of use, license of use or occupation hereafter granted by ODOT in its respective Rights-of-Way shall not interfere with, obstruct or impair the license granted to INF under this Agreement.

ARTICLE 5

ROUTE DESIGNATION, INSPECTION, SURVEYS WORKING DRAWINGS, APPROVED PLANS AND SCHEDULES

5.1 ODOT Information. To facilitate INF's planning of the route within the Rights-of-Way, ODOT shall allow INF to view, at ODOT's principal location, available Maps, charts, engineering rights-of-way, steam tunnels, pipeline documents and other engineering data and documentation pertaining to the Rights-of-Way and the physical condition thereof, including the location and nature of all power stations, substations and other improvements, as well as all relevant engineering data and plans relating thereto. INF may request and obtain, at its sole cost and expense, copies of such information.

ODOT shall allow INF to view, at ODOT's principal location, available title documentation with respect to the Rights-of-Way and/or restrictions on the license to use and to occupy the same for the purposes intended by this Agreement. INF may request, at its sole cost and expense, copies of such title documentation. ODOT shall make available to INF, as soon as practicable, any relevant available information on pending highway or interstate relocation or improvement projects by ODOT along the Rights-of-Way. All requested copies of the documents referred to above pertaining to the Rights-of-Way, including but not limited to title documentation, shall be provided by ODOT to INF at a cost that does not exceed the actual cost of reproduction incurred by ODOT, plus reasonable overhead expense, if any.

5.2 Joint Inspection and Surveys by INF. ODOT agrees to participate with INF or its agents in a joint inspection of the Rights-of-Way prior to commencement of construction for the purpose of identifying problem areas and defining the final route for the FOC. ODOT personnel accompanying INF on the inspection shall have the knowledge and authority to generally guide the detailed routing in a manner to minimize interference with ODOT operations. INF shall, at its sole cost and expense, survey and submit the preliminary route to ODOT marked on a Map. Following each submission of the preliminary route, ODOT shall approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in reasonable detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any ODOT objections to the preliminary route, INF may modify the proposed route with respect to which such objections were noted by making appropriate changes thereto and resubmit the same to ODOT for its approval or objection as aforesaid. Approval of the preliminary route by ODOT and INF shall serve as the basis for INF to initiate formal engineering to design the detailed route and construction plan. INF shall have no obligation under this Agreement to initiate engineering until ODOT and INF have approved the preliminary route for the FOC. In the event that INF and ODOT are unable to agree on the preliminary route, as aforesaid, INF shall have the right to terminate this Agreement by giving written notice of termination to ODOT.

5.3 Preparation of Working Drawings. INF shall, at its sole cost and expense, prepare and submit to ODOT construction plans ("Working Drawings") for construction of the Telecommunications System on the Rights-of-Way. Following each submission of the Working Drawings, ODOT shall approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any ODOT objections to the Working Drawings, INF shall correct the Working Drawings with respect to which such objections were noted by making appropriate changes thereto and resubmit the same to ODOT for its approval or objection as aforesaid. The approved Working Drawings are hereinafter referred to as the "Approved Plans." INF shall have no obligation under this Agreement to commence construction or installation of the Telecommunications System until ODOT and INF have approved the Working Drawings. In the event that INF and ODOT are unable to agree on the Working Drawings, as aforesaid, INF shall have the right to terminate this Agreement by giving written notice of termination to ODOT.

5.4 Changes to Approved Plans. During the initial construction, INF may make changes in its work hereunder, consisting of modifications or other changes within the general scope of this Agreement (a "Change"); provided, however, that (i) any Change in the route of the FOC which is

outside the perimeter of the Rights-of-Way, (ii) any additional excavation, or (iii) any relocation of a Regenerator Site shall, in any such event, be subject to approval by ODOT. When INF becomes aware of a Change for which the consent of ODOT is required hereunder, INF shall, at its sole cost and expense, promptly prepare and submit to ODOT an explanation of the basis thereof, and shall inform ODOT whether such Change should result in an adjustment to the Approved Plans or any other provision of this Agreement. A written change order describing the Change, its effect, if any, on the Approved Plans and any other provision of this Agreement, which is affected, shall be entered into by the parties in order for the Change to be effective.

5.5 Construction Schedule. Upon written approval by ODOT of the Working Drawings, INF may enter the Rights-of-Way for the purpose of commencing installation of the Telecommunications System. Prior to entry, INF shall provide to ODOT a schedule for construction activities, including estimated progress dates and locations.

ARTICLE 6

CONSTRUCTION OF SYSTEM

With respect to the Rights-of-Way granted to INF in Section 2.1 of Article 2 of this Agreement for the construction and maintenance of the Telecommunications System, INF agrees to the terms and conditions for constructing the Telecommunications System identified in this Article 6 of this Agreement.

6.1 Construction of System. INF, at INF's sole cost and expense, shall furnish all necessary materials, parts, components, equipment and structures to accomplish this Agreement. Any and all property constructed and/or installed by INF, including all fiber optic cable, conduit, carrier pipe, repeaters, power sources and all other attachments (collectively, the "System Materials") shall be and remain at all times the property of INF, and shall at no time be deemed to be the property of ODOT, regardless of the manner or method of attachment to or installation in, on, upon, over, under, across and through the Rights-of-Way.

6.2 Roadway. Where cable is buried near the edge of pavement, INF shall take particular care to avoid damaging the pavement. All crossings under pavement, including but not limited to the main roadway, entry ramps, and exit ramps are to be bored and conduit installed, as approved by ODOT.

6.3 Construction Corridor. INF shall be granted the use of a 24-foot wide construction corridor, where available, to be determined by ODOT, along the planned construction routes. Construction equipment must stay within this corridor unless unforeseen obstacles necessitate deviations.

6.4 Temporary Installation Facilities. INF shall maintain all temporary facilities, material and equipment in a safe and adequate manner and remove them with reasonable promptness upon completion of the work requiring their presence. During construction of the Telecommunications

System, INF shall erect, at its expense, temporary fencing where reasonably required or deemed necessary by ODOT.

6.5 Excavating, Trenching and Plowing. Conduit/Cable trenching and plowing shall consist of a single trench or cut. The minimum depth of the trench or cut on ODOT Rights-of-Way shall be in accordance with ODOT standards. The trench or cut shall be neat and clean cut without disturbing any of the adjacent soil or ground cover. The FOC must be placed in pipe or conduit as approved by ODOT. Damage to banks and ditches caused by the equipment shall be immediately repaired to the satisfaction of ODOT. INF shall promptly repair any damage to fences, lawns, trees, shrubbery and any other property damaged during construction. INF shall not remove any trees or shrubbery unless approved by ODOT's Representative.

6.6 Boring. The pavement shall not be disturbed and the location of boring and pushing pits are subject to approval by ODOT. Excessive use of water such that pavement might be undermined or subgrade softened shall not be permitted. The FOC crossing under roadways shall be at a location and depth as determined by state or local conditions, laws, regulations or orders of public authorities and shall be encased in pipe or conduit as approved by ODOT.

6.7 Vaults and Pull Boxes. The tops of the vault and pull boxes are to be constructed in such a manner that the tops are below grade, unless otherwise specified by ODOT. The locations of vault and pull boxes are subject to approval by ODOT.

6.8 Completion of Construction and Installation. All work on the Rights-of-Way shall be completed within 365 calendar days following the signing of this agreement.

6.9 Standards and Warranty. Any and all work by INF, its contractors or agents shall be done in a good and workmanlike manner and so as not to interfere with any of the ODOT operations. All installations must meet or exceed applicable standards and specifications of the State of Oklahoma and the United States of America in effect at that time and shall further be in compliance with all existing federal, state or local laws, ordinances and regulations and INF, at its expense, shall obtain all permits and approvals required to implement the work required to be performed by it under this Agreement. In no case shall any part of the Telecommunications System be located in a manner that will interfere with any operations of ODOT, its existing permits, licenses or lessees.

6.10 INF License to Attach. With prior written approval from ODOT, INF may use ODOT's available cable conduit, bridge attachments and similar facilities in its installation and construction of the Telecommunications System, subject to terms and conditions that maybe imposed by ODOT.

6.11 Other Public Utilities. The FOC crossing over or under other existing public utilities shall be located and installed in accordance with local conditions, laws, orders of public authorities, and such requirements as may be stipulated by the public authority. If in the conduct of such work, any changes or alterations in pipelines, sewers, drains, conduits, fences, power, signal or communication lines or other utilities are necessary (either temporary or permanent), such changes shall be made at INF's sole cost and expense.

6.12 Restoration of Rights-of-Way. Upon completion of the installation or any replacement, repair or relocation of the Telecommunications System, INF shall promptly return the ground to the same condition to that which existed prior to such work, in a manner satisfactory to ODOT's Representative.

6.13 Delivery of As-Built Drawings. Within 90 days after completion of the installation of the Telecommunications System, INF shall, at its sole cost and expense, prepare and submit to ODOT "as-built" prints showing the location of the Telecommunications System within the ODOT Rights-of-Way. INF will submit to ODOT three copies of the "as-built" prints. INF will submit to ODOT all of the "as-builts" in an electronic format as specified by ODOT.

ARTICLE 7

PERMITS

INF, at its sole cost and expense, shall secure and maintain in effect all federal, state, and local permits and licenses required for the design, construction, installation, repair, maintenance and operation of the Telecommunications System, including, without limitation, zoning, building, health, environmental or communication permits or licenses, and INF shall indemnify and hold harmless ODOT against any loss, cost or expense thereof and against any fines or penalties that may be levied for failure to procure or to comply with such permits or licenses as well as any remedial cost to cure violations thereof. ODOT agrees to cooperate with INF in securing on a timely basis all necessary approvals, permits and licenses from all governmental authorities and/or other parties having jurisdiction or approval rights in respect of the use and occupation of the Rights-of-Way. If INF, after reasonable effort and diligence, is unable to obtain all of the necessary permits and licenses from federal, state and local government authorities for the design, construction, installation or operation of the Telecommunications System, INF may terminate, at the option of INF, the obligations of INF under this Agreement by giving written notice thereof to ODOT. The parties acknowledge and agree that the exercise of "reasonable effort and diligence" by INF with respect to any required permit or license, as such phrase is used herein, shall not require that INF (a) commence or prosecute any litigation or any administrative proceeding of an adversarial nature in any court or before any administrative agency against any governmental authority or any other person or entity or (b) expend an amount for costs and expenses which is unreasonable when compared to the costs and expenses generally required to obtain a similar permit or license from a particular governmental authority. Any other term, condition or provision of this Agreement to the contrary notwithstanding, ODOT and INF acknowledge and expressly agree that this Agreement and the respective obligations of the parties hereunder are and shall be subject to the acquisition by INF of all necessary permits, licenses, consents and approvals from ODOT for the design, construction, installation and operation of the Telecommunications System on right-of-way owned or controlled by ODOT, to the extent that the use of ODOT owned or controlled right-of-way is contemplated or required by this Agreement, including but not limited to all controlled access highway right-of-way and all interstate highway right-of-way.

ARTICLE 8

INF's LICENSE TO ENTER

The licenses granted to INF in Section 2.1 of Article 2 of this Agreement shall include the license for INF to enter the Rights-of-Way with its employees and contractors in order to exercise INF's license under this Agreement. Except for emergency situations, whenever INF or its employees or contractors desire to enter upon the Rights-of-Way in connection with any activities related to the Telecommunications System, INF shall notify ODOT, in writing, forty-eight (48) hours in advance and the notice must explain the scope and estimated duration of the anticipated entry. INF shall receive written approval from ODOT's Representative prior to entry. If such scope and duration changes, additional notice shall be given and approval solicited. In the event of any emergency impacting upon the Telecommunications System, or any portion thereof, INF shall verbally or by facsimile give ODOT's Representative advance notice prior to entry upon the affected portion of the Rights-of-Way.

ARTICLE 9

FACILITY LOCATION SIGNS

INF, at its sole cost and expense, shall furnish, erect and thereafter maintain signs identifying all INF underground facilities. Such signs shall be placed along the outermost Right-of-way lines in accordance with industry standards of the telecommunications industry and as approved by ODOT's Representative. Such signs shall indicate the offset distances to the Telecommunications System from the Rights-of-Way boundary.

ARTICLE 10

MAINTENANCE/RELOCATION OF SYSTEM

10.1 General Maintenance. Upon completion of the Telecommunications System and during the term hereof and each renewal term hereof, INF shall, at its sole cost and expense, be responsible for the maintenance and repair of the Telecommunications System including replacement of individual fibers and any maintenance as is necessary for the operation of the Telecommunications System; provided, however, if any ODOT Fibers are damaged or should require repair or replacement as a result of (a) damage caused during installation or maintenance of the electronics on ODOT Fibers, (b) any intentional misconduct by or on the part of ODOT or any agent, servant or employee of ODOT or (c) any defect in or any malfunction of any electronics connected to ODOT Fibers constituting a part of the ODOT System, INF shall have no obligation to repair or replace the damaged ODOT Fibers and ODOT

shall have no right to use the damaged ODOT Fibers, unless ODOT agrees in writing to reimburse INF the reasonable costs of repairing or replacing the damaged ODOT Fibers. INF may, at its option, subcontract for maintenance and restoration services hereunder.

10.2 ODOT Maintenance. ODOT agrees to cooperate with INF to restore damaged or malfunctioning portion(s) of the Telecommunications System as soon as reasonably possible. ODOT acknowledges the critical importance to INF of the uninterrupted operation of the INF System, and to ODOT the uninterrupted operation of ODOT System, and INF agrees to arrive at the site within four hours after receiving notice of the existence of a problem.

10.3 Certain Notices to INF. ODOT will use its best efforts to give twenty-four hours prior notice to INF if ODOT has knowledge that any person will be digging or trenching on any part of the Rights-of-Way within thirty feet of the FOC; provided, however, that ODOT shall not be responsible or liable to INF or any other person for any loss, injury or damage caused by or resulting from any failure to give such notice or any other prior notice.

10.4 INF Requires Relocation. Subsequent to initial construction of the Telecommunications System, if INF determines that the Telecommunications System or the location thereof must be changed or altered within the Rights-of-Way because of INF operations or planned operations, or INF desires to renew, replace, repair or alter any of its structures, properties, facilities or appurtenances or to construct new ones, INF shall, at its sole cost and expense, promptly submit such plans, in writing, to ODOT. Only upon written consent by ODOT shall INF proceed with such plans. ODOT may deny such request for changes or alteration without cause. If such plans are approved by ODOT, INF, at its sole cost and expense, shall protect or move the affected System Materials in a manner satisfactory to ODOT's Representative as soon as reasonably practicable.

10.5 ODOT Requires Relocation. If ODOT determines that any part of the Telecommunications System or the location thereof must be changed or altered because of ODOT operations or planned operations, or ODOT desires to renew, replace, repair or alter any of its bridges, culverts, structures, roads, properties, facilities or appurtenances or to construct new ones, ODOT shall notify INF of such plans. INF, at INF's expense, shall protect or move the affected parts of the Telecommunications System in a manner satisfactory to ODOT's Representative as soon as reasonably practicable.

ARTICLE 11

TRAFFIC REGULATIONS

11.1 Access. All use of the Rights-of-Way shall be designed, made, and maintained in accordance with Chapter IV of the current "Manual on Uniform Traffic Control Devices: U.S. Department of Transportation" and Oklahoma Department of Transportation Standard Specifications, Edition of 1988 and any subsequent revisions. It is agreed upon that INF shall not permit its vehicles

and personnel to stop in the traffic lanes, center medians or paved shoulders of the highways or interstates.

11.2 Traffic Area. INF shall keep traffic lanes, center medians, paved shoulders or other traffic areas free of excavated material, installation equipment, conduit, and other materials and equipment unless the traffic areas have been appropriately marked and closed, which such closings must be approved, in advance, by ODOT.

11.3 Traffic Control. INF shall be responsible for the placement and cost of all traffic control devices, required by ODOT, and shall comply with the current manual of Uniform Traffic Control Devices and Oklahoma Department of Transportation Standard Specifications, Edition of 1988 and any subsequent revisions.

11.4 Highway Safety. INF shall operate to avoid, to the extent practicable, actions that could endanger the Telecommunications System or the operation of ODOT. INF shall use all precautions to not interfere with ODOT operations in the Rights-of-Way. ODOT may, at its option, request that employees, agents and contractors of INF who are or will be involved in the engineering, construction, installation, operation or maintenance of the Telecommunications System be trained in highway safety matters via courses or materials to be offered or provided by ODOT at ODOT's expense.

ARTICLE 12

INSURANCE

12.1 Required Coverage. Throughout the term of this Agreement and each renewal term hereof:

a) INF shall procure and maintain in force, at its own cost and expense, Commercial General Liability insurance, including Automobile/Vehicle Liability for owned non-owned and hired automobiles, covering liability assumed by INF under this Agreement, including a contractual liability coverage endorsement referring to this Agreement, coverage for contractors, premises operations, explosion, collapse and underground hazard, products liability, completed operations, personal and bodily injury, and broad form commercial general property damage, with a combined single limit of not less than \$10,000,000 for bodily and personal injury (including death) and property damage per occurrence.

b) INF shall also procure and maintain in force Worker's Compensation Insurance in compliance with statutory requirements and with statutory limits, including an "All States" endorsement, and Employer's Liability Insurance with limits of not less than \$1,000,000.

12.2 General Conditions. The maintenance of the insurance hereinabove specified shall not limit INF's liability under this Agreement, but shall be additional security thereof.

12.3 General Conditions.

a) All insurance required hereunder shall be effected by valid and enforceable policies issued by insurers licensed to do business in the State of Oklahoma.

b) To the extent reasonably obtainable, all the policies required hereunder shall contain agreements by the insurers that (a) no act or omission to act by an additional insured shall impair or affect the rights of the insured to receive and collect the proceeds of such policy, and (b) except in respect of cancellation for non-payment of premium, such policies shall not be canceled or materially changed upon less than 30 days prior written notice to ODOT.

c) Prior to commencing work hereunder on the Rights-of-Way, and at any other time upon the request of ODOT, INF shall furnish certificates of insurance or other evidence thereof attesting that the insurance required under Article 12 of this Agreement is in effect.

d) Nothing in Article 12 of this Agreement shall be construed to prevent INF from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies, which meets or exceeds the requirements hereof.

ARTICLE 13

LIENS AND ENCUMBRANCES

INF shall not permit the creation of any mortgage, pledge, security, interest, lien or encumbrance on or pertaining to the Rights-of-Way or any other property or rights of ODOT, including without limitation tax liens or liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Telecommunications System; provided, however, that the existence of such liens or encumbrances shall not constitute a violation of this sentence if payment with respect thereto is not yet due and payable; and provided further that INF may, after written notice to ODOT, contest the same or the validity thereof in good faith by appropriate proceedings which shall operate to prevent the enforcement of such lien or encumbrance so contested against any property or rights of ODOT. Nothing in this Agreement shall prevent or prohibit INF from financing the construction and installation of the Telecommunications System with loans from one or more lenders on terms satisfactory to INF or prevent or prohibit INF from securing the repayment of such loans with any mortgage, security agreement or other security document creating one or more consensual liens or security interests in or with respect to the INF System and the licenses of INF under this Agreement, including but not limited to the nonexclusive license of INF to use the Rights-of-Way for the purposes of this Agreement; provided, however, that any such lien or security interest shall expressly exclude and shall not encumber the ODOT System or any part of the ODOT System, during the term of this Agreement and each renewal term hereof, the Rights-of-Way or any other rights or property of ODOT hereunder.

ARTICLE 14

TERM OF AGREEMENT

14.1 Term of Agreement. The term of this Agreement shall commence at 12:01 a.m. on the Effective Date hereof and shall terminate at 12:01 a.m. on the twentieth anniversary of the Effective Date, unless renewed pursuant to Paragraph 14.2 hereof or sooner terminated pursuant to Paragraph 14.3 hereof. Upon completion of the term of this Agreement and each renewal term hereof the ownership of the Telecommunications System shall immediately and automatically transfer to ODOT.

14.2 Renewal. INF shall have the option to renew this Agreement for two additional 5-year terms. The first renewal shall commence at 12:01 a.m. on the twentieth anniversary of the Effective Date and the second renewal shall commence at 12:01 a.m. on the twenty-fifth anniversary of the Effective Date; provided, however, that the right to renew shall be available to INF only if INF is not in default under any of the provisions of this Agreement as of the beginning date of each renewal term. Each option shall be exercisable by INF giving written notice of extension to ODOT 90 days prior to the end of the term or renewal term, and each renewal term shall be on the same terms and conditions as set forth herein except this option to renew.

14.3 Termination. This Agreement shall terminate upon the happening of any of the following events;

- a) Complete abandonment in place of the Telecommunications System by INF. At such time and in such event, the ownership of the Telecommunications System shall transfer to ODOT.
- b) Written mutual agreement of the parties hereto.
- c) Breach, pursuant to Section 15.1 of Article 15 of this Agreement.
- d) In the event of mutual termination by the parties hereto, INF shall, at INF's sole cost and expense, at the option of ODOT, either remove INF facilities and restore the Rights-of-Way to a condition and in a manner satisfactory to ODOT or abandon the same in place.

14.4 Effect on Obligations. Termination of this Agreement pursuant to Article 14 of this Agreement shall terminate all obligations of the parties hereunder and this Agreement shall become void and have no effect without any liability on the part of any party, except for the obligations under Article 19 of this Agreement.

14.5 Partial Abandonment. Upon partial abandonment in place of the Telecommunications System by INF the ownership of such abandoned segments of the Telecommunications System shall transfer to ODOT.

ARTICLE 15

BREACH, REMEDIES

15.1 Breach. In the event of a Breach of this Agreement by either party, INF and ODOT each agree that neither shall proceed against the other by litigation before the offending party has had written notice of and reasonable time, not to exceed 30 calendar days, to respond and cure such Breach or defect; provided, however, neither party shall be required to give the other time to respond and cure if any such delay will cause irreparable harm. For purposes of this Article, any material noncompliance or series of regularly repeated noncompliance events which individually might be considered immaterial shall constitute a Breach by either party.

15.2 Remedies. Remedies available to each party upon the occurrence of a Breach hereunder shall include: 1) specific performance in equity; and/or 2) litigation for damages and costs; and/or 3) termination. Any waiver by any party at any time of any of its rights or licenses as to anything herein contained shall not be deemed to be a waiver of any Breach of covenant or other matter subsequently occurring.

ARTICLE 16

REPRESENTATIONS AND WARRANTIES

16.1 Representations of INF. INF represents and warrants to ODOT that (a) it has full right and authority, including any requisite corporate, governmental and third party approvals, to enter into and to perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject; and (c) no litigation or governmental proceeding is pending or, to the knowledge of INF, is threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or the rights of the parties hereunder.

16.2 Representations of Agencies. ODOT represents to INF that (a) it has full right and authority to enter into and perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate (i) its charter or by-laws, (ii) any rule, order or regulation applicable to ODOT which has not been waived, or (iii) to its knowledge, without having conducted any independent investigation, any license, permit, property interest conveyance, franchise or right-of-way which may adversely affect INF's use of the Rights-of-Way or its right to grant the privileges herein provide for; (c) no litigation or government action or proceeding is pending or, to its knowledge threatened, which might adversely affect this Agreement, the transactions contemplated herein or the rights of the parties hereunder; and (d) to its knowledge, without having conducted any independent investigation, ODOT owns all requisite right, title and interest (by fee, license, grant or other interest) in and to the Rights-of-Way, free and clear of any applicable lien, charge, mortgage, pledge, security interest, restrictions or

other encumbrance of any kind, in order to grant INF such privileges and to perform all of their other obligations under this Agreement.

ARTICLE 17

RECORDING, TAXES AND OTHER CHARGES

INF agrees that if it is determined by any state or local government authority that the sale, acquisition, license, grant, transfer or disposition from ODOT to INF of any part or portion of the property or rights herein described requires the payment of any tax, (including sales or use tax) under any state or federal statute, regulation or rule, INF shall pay the same, plus any penalty or interest thereon, directly to said taxing authority and shall hold ODOT harmless thereof. INF shall pay all annual or periodic taxes levied or assessed upon the Telecommunications System or on account of the existence or use of the Telecommunications System, and shall indemnify ODOT against the payment thereof.

ARTICLE 18

INDEPENDENT CONTRACTOR STATUS

ODOT and INF acknowledge and agree that they reserve no control whatsoever over the employment, discharge, compensation of or services rendered by the employees or contractors of the other party, notwithstanding the ability of the parties under this Agreement to exercise certain rights to enforce the various standards and specifications agreed upon pursuant to this Agreement. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship or as creating or implying any partnership or joint venture between INF and ODOT.

ARTICLE 19

LIABILITY, INDEMNITY

a) INF, as a further consideration and as a condition without which this Agreement would not have been executed and delivered by ODOT, agrees to indemnify, defend and save harmless ODOT, their respective officers, employees and agents and to assume all responsibility and liability for death of, or injury to any persons, including but not limited to, officers, employees, agents, patrons, invitees or licensees of the parties hereto and for loss, damage or injury to any property, including but not limited to, that belonging to ODOT, together with all liability for any expenses, attorneys' fees and

costs incurred or sustained by ODOT, arising from or growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from any neglect, negligence by or on the part of INF, its officers, employees or agents in connection with the grant or exercise of the privileges hereunder to INF or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of the Telecommunications System or of any structure incident thereto or any activity conducted by or on behalf of INF on or in the vicinity of the Rights-of-Way.

b) Anything in this Agreement to the contrary notwithstanding, INF shall release and indemnify and save harmless ODOT, their respective officers, employees and agents, for any damage to the property of INF, including the Telecommunications System or any of INF's facilities and all appurtenances thereto or property of INF's officers, employees, agents, contractors or subcontractors, arising from or growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from the grant or exercise of the privileges hereunder to INF or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of any structure incident thereto or from any activity conducted by or on behalf of INF or ODOT on or in the vicinity of the Rights-of-Way. ODOT makes no representations concerning the structural integrity or suitability of any of their respective property or facilities to be used by INF hereunder and INF accepts such property and facilities in their present "as-is" condition and it is expressly understood that INF uses said facilities at its own risk.

c) At the election of ODOT, INF, upon receipt of notice to that effect, shall assume or join in the defense of any claim based on allegations purporting to bring said claim within the coverage of this Article.

ARTICLE 21

MISCELLANEOUS

21.1 Entire Agreement. This Agreement sets forth the entire agreement between the parties with regard to the subject matter of this Agreement. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter of this Agreement are contained in this Agreement and the documents referred to or implementing the provisions of this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of this Agreement. This is an integrated agreement.

21.2 Environmental Matters. Upon learning of any hazardous or toxic waste conditions within the Rights-of-Way, which would adversely affect or interfere with the exercise of INF's licenses hereunder, each party agrees to promptly inform the other of the existence of such hazardous or toxic waste condition. Upon learning of any such hazardous or toxic waste condition on Rights-of-Way areas within which the Telecommunications System is intended to be or is located, ODOT shall, to the extent available to it, offer INF, without payment of any additional consideration thereof, alternate contiguous

areas within which the Telecommunications System may be relocated to avoid such hazardous or toxic waste areas.

21.3 Governing Law and Choice of Forum. The validity, construction and performance of this Agreement, and any action arising out of or relating to this Agreement shall be governed by the laws, without regard to the Laws as to choice or conflict of laws, of the State of Oklahoma.

21.4 Waiver and Amendment. This Agreement may be amended, supplemented, modified and/or rescinded only through an express written instrument signed by all parties or their respective successors and permitted assigns.

21.5 Assignment. The obligations of the parties under this Agreement shall not be assigned without the written approval of the other parties.

21.6 Successors and Assigns. Each of the terms, provisions and obligations of this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties and their respective legal representative, successors and permitted assigns.

21.7 Notices.

a) Unless otherwise provided herein, all notices and communications concerning this Agreement shall be addressed to the other party as follows:

If to INF:

Indian Nations Fiberoptic, Inc.
124 West Vinita
Sulphur, OK 73086

If to ODOT:

Oklahoma Transportation Authority
3500 Martin Luther King Ave.
Oklahoma City, OK 73111
Attn: Director of Information Technology

or at such other address as may be designated in writing to the other party.

b) Unless otherwise provided herein, notices shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, and shall be deemed served or delivered to the addressee or its office on the date of return receipt acknowledgment or, if postal claim notices are given, on the date of its return marked "unclaimed,"; provided, however, that upon receipt of a returned notice marked "unclaimed," the sending party shall make reasonable effort to contact and notify the other party by telephone.

21.8 Severability. This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law or regulations. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall have no effect upon the validity or enforceability of each and every other separate division herein contained, or any other combination thereof.

21.9 Further Action. Each party agrees to perform any further acts and to execute and deliver any other documents that may be reasonably necessary to effect the provisions of this Agreement.

21.10 Warranty of Authority. Each of the individuals signing this Agreement on behalf of a party warrants and represents that such individual is duly authorized and empowered to enter into this Agreement and bind such party.

21.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

21.12 Section Headings. Section headings herein are for convenience of reference only and shall not be used in the interpretation or construction hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

INDIAN NATIONS FIBEROPTIC, INC.

By: *Jachatter*
Title: President 9/12/2000

AS TO FORM

OKLAHOMA DEPARTMENT OF
TRANSPORTATION

[Signature]
ODOT Legal Counsel
Assist. Gen. Counsel

By: *[Signature]*
Title: *Deputy Director*