



NTIA and Grant Update - 4/18/11

Communications with NTIA over the last couple of weeks have focused on these issues:

1. Getting approval for the change in our FTTP technology.
2. Getting approval for our budget revisions.
3. Preparing our revised Environmental Assessment.

FTTP Technology – The official paperwork requesting NTIA approval of the technology change has been filed and we are still waiting for official approval. The informal feedback was that this request will be approved. We may have final approval prior to Wednesday's meeting.

Budget Revisions – Both NTIA and Grants and Contracts wanted some changes made to the original paperwork. Those changes have been made and Grants and Contracts now has the revisions. Once they approve them they will be resubmitted to NTIA

Revised EA – On Sunday I submitted the narrative and maps for the revised Environmental Assessment to our NTIA program officer for his review and approval before they are submitted to the environmental staff. Once he has approved them, our consultant will deal with the various agencies that must sign off on our revised routes.

Construction Update – Shive-Hattery will submit their 100% drawings for the University construction area and their 95% drawings for the two cities this week. The plan is to still release the three bid packages at the same time with the same due date, but the target date is now May 2nd.

Bob and I met with IDOT last Friday afternoon, and they have provided a draft IRU agreement for the UC2B fiber that they will be using. They would like this IRU agreement to be an amendment to the permits that we have requested from IDOT. I explained that we are not prepared to begin negotiating IRU agreements yet.

As the two cities are the recipients of the permits, it may make sense for me to get out of the middle of these discussions and have the Public Works departments of both cities work on this with IDOT. I had no forewarning that they were going to request the IRU amendments before the meeting, and I have not yet had time to read what they provided. It is attached to this report.

FTTP Electronics RFP – No update from the State Procurement Office.

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ARTICLE I. DEFINITIONS.

Capitalized terms and phrases used in this Agreement have the following meanings:

1 "Acceptance" means as defined in Section 5.4 below.

1.2 "Acceptance Date" means as defined in Section 5.4 below.

1.3 "Affiliates" means, with respect to any entity, an entity controlling, controlled by, or under common control with such entity by means of direct or indirect majority equity ownership.

1.4 "Agreement" means as defined in the foregoing recitals and shall include all amendments hereto, Exhibits and Schedules hereto, and instruments and documents appended hereto or incorporated herein by reference. Words such as "herein," "hereinafter," "hereof," "hereto," "hereby" and "hereunder" when used with reference to this Agreement, refer to this Agreement as a whole unless the context otherwise requires.

5 "As-Built Drawings" means drawings of the Constructed System as described and in accordance with the Permit.

1.6 "Cable" means fiber optic cable, and the fibers contained therein, which shall include the IDOT Fibers, along with fibers of UC2B and/or others constructed or installed in the System by UC2B, and associated splicing connections, patch panels, splice boxes, vaults.

1.7 "Charged Maintenance Commencement Date" means as defined in Section 10.2.

1.8 "Conduit" means a casing or encasement for wires or Cables.

1.9 "Connecting Point" means a point where the network or facilities of IDOT will connect to the IDOT Fibers.

1.10 "Construct," "Construction" and other capitalized terms of like derivation, mean the activity of digging a trench along the ROW, laying Conduits and Cables forming the System within such trench or laying the Cable along the ROW by means of overhead installation, plowing in, drilling, jacking, boring, attaching to bridges or other means, fabricating and positioning associated handholes, manholes, buildings and facilities which support the Operation of the System..

1. 11 [Reserved]

1.12 "Cure Period" means as defined in Section 13.5.

1.13 "Customers" mean parties purchasing, either for their own use or for resale, wholesale fiber optic transport capacity and/or telecommunications services from UC2B on the System during the Term of this Agreement.

1.14 "Damages" means as defined in Section 14.1

1.15 "Dark Fibers" means optical fiber provided without electronics or optronics, and which is not "lit" or activated.

1.16 "Event of Default" means as defined in Section 13.5.

1.17 "Facility Owners/Lenders means any entity (other than UC2B or IDOT), (A) , owning any portion of the System or any property or security interest therein, or (6)that is a lender with respect to UC2B or any Affiliates of UC2B.

1.18 "Fibers" means any optical fibers contained in the System including the IDOT Fibers, the fibers of UC2B and the fibers of any third party in the System.

1.19 "Force Majeure" means as defined in Section 21.6

1.20 "Indefeasible Right of Use" or "IRU" means an exclusive and irrevocable right to use optical fiber(s); provided that the granting of the same does not convey legal title to such fiber(s).

1.21 "Indemnified Persons" means as defined in Section 14.1

1.22 "Initial Cable" means as defined in Section 2.1

1.23 "Install," "Installation" and other capitalized terms of like derivation, means the attachment, addition or application of electronics, optronics, software or other devices or technologies to the Constructed Cable in order for data to be transmitted through the Cable and for the System to be Operational.

1.24 "Law" or "Laws" means any statute, law, ordinance, regulation, order, decree, determination, legal interpretation or ruling, formal or informal, of general or specific applicability, and however promulgated, of any Federal, state or local governmental or quasi-governmental: (A) legislature; (B) administrative, regulatory or other agency, authority or instrumentality; (C) court or tribunal; or (D) other legal body of any type or description having legal authority and/or jurisdiction over the subject matter hereof or the activities to be conducted pursuant hereto, currently existing on the date hereof or coming into existence during the term hereof.

1.25 "Maintain," "Maintenance" and other capitalized terms of like derivation, means the activity of assuring continuing Operational status of the System through repair, replacement or otherwise, but excluding Relocation.

1.26 "IDOT" is an acronym for the Illinois Department of Transportation as defined in the foregoing recitals.

1.27 "IDOT Equipment" means optronic (opto-electrical), electronic, or optical equipment, or materials, facilities, or other equipment owned, possessed, or utilized by IDOT in connection with the IDOT Fibers other than the System. ,

1.28 "IDOT Fibers" means those certain Dark Fibers in which IDOT shall be granted an IRU hereunder as defined in Section 2.1.

1.29 " IDOT IRU" means as defined in Section 2.1

1.30 " IDOT Transaction Documents" means as defined in Section 8.2.1.

1.31 "Non-Routine Maintenance" means as defined in Section 10.1

1.32 "Notice of Default" means as defined in Section 13.5.

1.33 "Operate," "Operational" and other capitalized terms of like derivation, mean the activity or status involving the fully-functioning use of the System or IDOT Fibers, as applicable, in accordance with the Specifications and includes, without limitation, support and troubleshooting activities.

1.34 "Permit" means as defined in the foregoing recitals

1.35 [Reserved]

1.36 "Relocate," "Relocation" and other capitalized terms of like derivation, means the future reconstruction or removal of the System after the "project completion date" (as defined in the Permit) through excavations, physical movement, retrenching and reburying of all or part of the Cable and/or Conduits as necessary, in order (A) to accommodate Construction within the ROW, (B) to assure the continuing Operational status of the System or (C) for any other permitted purpose hereunder.

1.37 "Required Rights" means all easements, consents or other rights or interests from owners of fee interests or other interest owners along the Non-fee Portion of the ROW as necessary to allow UC2B to Construct, Install, Operate, Maintain, repair, replace and remove the System in the ROW.

1.38 "ROW" means the right-of-way granted IDOT by various landowners to locate, Operate, Construct, reconstruct and Maintain that portion of that Federal interstate highway commonly designated "1-270" or "Route 270" and "1-55" or "Route 55" within the borders of Illinois.

1.39 [Reserved]

1.40 "Routine Maintenance" means as defined in Section 10.1

1.41 "Scheduled Delivery Date" means the date defined in Section 3.4 below

1.42 "Segment" means a discrete portion of the System and may refer to a span (a portion of the System between two Transmission Sites or between a Transmission Site and a point of presence or System end point), a portion between two points of presence or a point of presence and a System end point as referenced in Exhibit "A", or a specific portion of the System affected by a Relocation or other circumstance.

1.44 "Specifications" mean those certain specifications for the IDOT Fibers as set forth in Exhibits "B" and "C".

1.45 "State" means the State of Illinois and shall include any agency, political subdivision or instrumentality thereof.

1.46 "System" means the fully Constructed and Operational fiber optic Telecommunications System along the right-of-way described in the Permit and along such additional routes depicted in Exhibit "A" attached hereto.

1.47 [Reserved]

1.48 "Telecommunications" means, for purposes of this Agreement, the transmission of voice, video, data or other information, including interactive services.

1.49 "Term" means the term of this Agreement as defined in section 7.1.

1.50 "Test Documentation" means as defined in Section 5.1.

1.51 "Transmission Sites" means the optical amplifier, regenerator, and junction sites along the ROW associated with the Cable.

1.52 "UC2B " means URBANA-Champaign Big Broadband.

1.53 " UC2B Transaction Documents" means as defined in Section 8.1.2.

1.54 "UAP" means those rules of IDOT set forth at 93 Ill. Adm. Code 530.

ARTICLE 2. CONVEYANCE OF IRU.

2.1 Grant of IRU. UC2B represents that it has been granted a permit for the initial Construction, initial Installation, Operation and Non-Routine Maintenance of the System which is to consist of one (1) Conduit of two inch (2.0") inside diameter or less, one of which shall contain a single Cable consisting of 288 fiber strands including the IDOT Fibers, as hereafter defined (the "Initial Cable"). Effective as of the Acceptance Date, UC2B hereby grants to IDOT (i) an exclusive indefeasible Right of Use, for the purposes described herein, in four (4) specific strands of dark Fibers in the Cable as specifically designated by UC2B (the "IDOT Fibers"); and (ii) an associated, non-exclusive Indefeasible Right of Use, for the purposes described herein, in the tangible and intangible property needed for the Operation of the IDOT Fibers, including, without limitation, cable sheathing, troughing, pedestals, slack containers and related equipment, but excluding any electronic or optronic equipment, buildings, building structures and/or any space therein (the rights granted in (i) and (ii) are collectively referred to herein as the "IDOT IRU").

Notwithstanding any other provision hereof to the contrary, the grant of the IDOT IRU does not convey any legal title to any real or personal property, including the IDOT Fibers, the Cable, or the System, and the IDOT IRU does not include the right to use any of UC2B's electronic or optronic equipment to transmit capacity over or "light" the IDOT Fibers.

ARTICLE 3. CONSTRUCTION

3.1 In General. UC2B shall Construct the System in accordance with the, terms and conditions of the Permit and this Agreement and hereby specifically agrees to:

(A) Construct the System, blow or pull the Cable and splice the IDOT Fibers such that the IDOT Fibers will operate in accordance with the Specifications.

(B) Perform all necessary surveying and mapping for the System, including, without limitation:

(i) A complete locations survey of the ROW, in accordance with standard telecommunication engineering practices; and

(ii) Survey of Transmission Sites.

(C) Acquire and Construct all Transmission Sites in accordance with the terms hereof.

3.2 Construction Standards. UC2B shall comply in all material respects with any and all applicable building, Construction and safety codes for the Construction of the System as well as any and all applicable federal, State and local laws, codes, ordinances, statutes and regulations.

3.3 Scheduled Delivery Date. Subject to extension for delays described in Section 21.6 and to extension or delay as otherwise permitted or provided in this Agreement or the Permit, the "Scheduled Delivery Date" for completion of all Construction, testing and hand-over of the IDOT Fibers to IDOT, is such time as the System is available for use by UC2B .

ARTICLE 4. IDOT FIBERS TERMINATION; CONNECTION TO THE SYSTEM.

4.1 IDOT Fibers Termination; Access for IDOT Equipment. The IDOT Fibers shall terminate and UC2B shall hand off the IDOT Fibers to IDOT in handholes at each location identified on the permit plans. IDOT, its agents and subcontractors, shall be allowed access to such handholes at any time.

IDOT shall bear all costs associated with connection of the IDOT Equipment to the IDOT Fibers which may be performed by IDOT or by contractors hired by IDOT. IDOT shall have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of the IDOT Fibers, so long as such does not materially interfere with or limit the use of or present a material risk of damage to any portion of the System.

4.2 Limitation on Responsibilities. Neither party hereto is supplying or is obligated to supply to the other party any optronics or electronics or optical or electrical equipment or other facilities, including without limitation, generators, batteries and monitoring and testing equipment, nor is either party responsible for performing any work other than as specified in this Agreement.

ARTICLE 5. ACCEPTANCE AND TESTING OF FIBERS.

5.1 Fiber Acceptance Testing. UC2B shall perform Fiber Acceptance testing of the IDOT Fibers in accordance with the procedures specified in Schedule 5.1 to ensure that the IDOT Fibers are Operating in accordance with the Specifications. After the conclusion of any testing of the IDOT Fibers conducted by UC2B in any given Segment of the System, UC2B shall provide IDOT with a copy of the test results and, if the test results so justify, a certification, executed by a responsible officer of UC2B , that the IDOT Fibers meet the Specifications (collectively, the "Test Documentation").

5.2 Review of Test Results by IDOT. If, within fifteen (15) business days after receipt by IDOT from UC2B of the test results referred to above or of the results of re-testing as set forth below, IDOT reasonably determines that such test results show that the IDOT Fibers do not meet the Specifications, IDOT shall, within such fifteen (15) business day period, notify UC2B of such determination.

5.3 Deficiencies. In the event IDOT notifies UC2B within the time periods set forth in Section 5.2 that the IDOT Fibers for any particular Segment of the System are not Operating in accordance with the Specifications, UC2B shall expeditiously take such action as shall be reasonably necessary to conform such portion of the IDOT Fibers to the Specifications after which the IDOT Fibers shall be re-tested in accordance with the provisions of this Article. Additionally, within fifteen (15) business days after receipt of the Test Documentation, IDOT may elect to perform its own tests at its sole cost and expense; provided, however, that any such tests shall be subject to the supervision of UC2B and shall be performed in accordance with UC2B's standard

testing procedures or other testing procedures standard in the telecommunications industry. UC2B shall not charge IDOT for supervision by UC2B personnel of IDOT's testing as described in the preceding sentence. After taking such actions and re-testing of the IDOT Fibers, the testing party shall provide the other party with a copy of the new test results and IDOT shall again have all rights provided in this Article with respect to such new test results. The cycle described above of testing, taking corrective action and re-testing shall take place as many times as necessary until Acceptance by IDOT in accordance with the terms hereof to ensure that the IDOT Fibers Operate within the parameters of the Specifications.

5.4 Acceptance. IDOT's notice to UC2B accepting the results of any testing of the IDOT Fibers or its failure to object to the results of any of UC2B's or IDOT's own testing of the IDOT Fibers within the time period specified in Section 5.2 shall constitute IDOT's acceptance ("Acceptance") of the IDOT Fibers covered by such test results. The date of IDOT's Acceptance of the IDOT Fibers under this Section 5.4 for the last Segment of the System to be tested shall be the "Acceptance Date" of the IDOT Fibers.

ARTICLE 6. USE OF THE SYSTEM.

6.1 State's Rights Exclusive. Subject to Article 12 of this Agreement, the State of Illinois and its permitted assignees and users may use the IDOT Fibers for any lawful purpose. Neither the State of Illinois nor any permitted assignees or users of the IDOT Fibers shall use the IDOT Fibers for any unlawful or illicit purpose. The State's right to use the IDOT Fibers shall be exclusive, and UC2B shall have no right to use the IDOT Fibers during the Term of this Agreement.

6.2 Notice of Damage. IDOT shall promptly notify UC2B upon becoming aware of any damage to the System. UC2B shall promptly notify IDOT of any matters pertaining to any damage or impending damage to or loss of the IDOT Fibers that are known to it.

6.3 Avoiding Adverse Effect on System. IDOT shall not, in use of the IDOT Fibers, employ equipment, technologies, or methods of Operation that materially interfere in any way with or adversely affect the System or the use of the System by UC2B or third parties or their respective Fibers, equipment or facilities associated therewith. UC2B shall not, in use of the System, employ equipment, technologies, or methods of Operation that materially interfere in any way with or adversely affect the IDOT Fibers or the use of the IDOT Fibers by IDOT and its equipment or facilities associated therewith.

6.4 Tie-Ins. IDOT may tie together fibers from other fiber optics telecommunications systems to the IDOT Fibers.

ARTICLE 7. TERM; CONVEYANCE OF THE SYSTEM.

7.1 Term. The "Term" of this Agreement shall commence upon the issuance of the Permit and shall continue for the duration of the Permit. IDOT shall have the option to terminate this Agreement without penalty or further obligation upon thirty (30) days' written notice to UC2B (a "Termination for Convenience"), in which event (i) IDOT shall have no further right to use the IDOT Fibers, (ii) the right to use the IDOT Fibers shall revert to UC2B and (iii) UC2B shall have no further obligations to IDOT under this

Agreement. A Termination for Convenience shall not affect UC2B's rights under the Permit.

7.2 Conveyance of the System. Upon such time as the Permit is terminated or revoked, UC2B shall, if permitted by applicable law and if requested by IDOT and IDOT, hand over, transfer, convey and deliver the IDOT Fibers to IDOT. UC2B shall execute and deliver any bill of sale or any other document or documents that may be required by any statute or law applying thereto to convey good title to the IDOT Fibers to IDOT at the time of delivery thereof.

ARTICLE 8. [RESERVED]

ARTICLE 9. CONDITIONS PRECEDENT.

Execution and delivery by UC2B and IDOT of the Permit, and satisfaction of all conditions precedent to UC2B's right to enter the ROW shall be conditions precedent to the parties' obligations hereunder.

ARTICLE 10. OPERATION, MAINTENANCE, AND REPAIR OF THE SYSTEM.

10.1 Maintenance. During the Term, UC2B shall perform all required Routine Maintenance and Non-Routine Maintenance. "Non-Routine Maintenance" means maintenance and repair work that UC2B is obligated to provide under this Agreement and described in Exhibit "C" other than the work specifically identified as Routine Maintenance in Exhibit "C". "Routine Maintenance" means maintenance and repair specifically identified as Routine Maintenance in Exhibit "C" . IDOT shall have the right to have a representative present at any time Maintenance for repairs are performed which may affect the IDOT Fibers.

10.2 Charges for Routine and Non-Routine Maintenance. UC2B shall provide all Routine Maintenance and Non-Routine Maintenance at no charge.

10.3 Right to Subcontract. UC2B may subcontract for testing, Maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder or may have the underlying Facility Owner or its contractor perform such obligations.

10.4 Maintenance of IDOT Equipment Excluded. UC2B shall have no obligation under this Agreement to Maintain, repair, or replace IDOT Equipment.

10.5 No Unauthorized Access to System. Except as provided in Section 4.1, IDOT shall not access any part of the System without the prior written consent of UC2B, which consent shall not be unreasonably withheld, and then only upon the terms and conditions specified by UC2B as reasonably necessary to protect the safety, security and physical integrity of the Constructed System. The parties expressly agree that the preceding sentence shall not be construed to restrict or limit IDOT's access to the ROW over and around the System but only to that portion of the System not constituting the IDOT Fibers.

ARTICLE 11. RELOCATION.

11.1 IDOT's Share of Relocation Costs. In the event UC2B is required to relocate the System under the terms and conditions set forth in the Permit, UC2B shall

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ARTICLE 12. COMPETITION.

IDOT hereby covenants and agrees that IDOT shall not itself, nor shall it allow its assignees or other users of the IDOT Fibers to, market and/or sell any of the IDOT Fibers or any of its fiber optic transport capacity obtained through activation of IDOT Fibers for the use of or service to commercial consumers of such capacity. IDOT warrants that it shall not enter into any agreement with a third party with the intent of circumventing the preceding restriction and that the use of the IDOT Fibers shall be for public purposes. Notwithstanding the foregoing, nothing in this Agreement shall prevent IDOT from using the IDOT Fibers in accordance with 20 ILCS 4051405-270, as existing on the date of execution of this Agreement and as recited in Exhibit "E" (the "Telecom Statute"). Uses exceeding those permitted by the Telecom Statute as recited in Exhibit "E shall be permitted only with the written consent of UC2B.

ARTICLE 13. DEFAULT AND REMEDIES.

13.1 Default Under the Permit. Any failure by UC2B to follow the terms and conditions of the Permit shall constitute an Event of Default under this Agreement by UC2B. Any Event of Default by UC2B under this Agreement shall constitute grounds for revocation of the Permit by IDOT, in which event IDOT may elect to revoke the Permit in accordance with the UAP

13.2 Illegality Determination. If any court or administrative agency having jurisdiction over the parties, their business activities and/or the Design, Construction, Installation, Operation, Maintenance or use of the System or the parties' respective Fibers therein, shall find that any conduct of UC2B or IDOT pursuant hereto is illegal or unlawful, which finding shall be final and unappealable, and shall have a material adverse impact upon the other party, the System and/or the transactions contemplated herein, such finding shall constitute a default under this Agreement by such violating party.

13.3 Bankruptcy. At any time during the term of this Agreement, the occurrence of any of the following events shall constitute a default hereunder: (A) the appointment of a receiver for any part of UC2B's property which is not dismissed within sixty (60) days; (B) the making by UC2B of an assignment for the benefit of creditors; (C) the filing by UC2B of a voluntary petition in bankruptcy or a petition or an answer seeking reorganization, or an arrangement with creditors; or (D) the entering against UC2B of a court order approving a petition filed against it under the Federal bankruptcy laws, which order shall not have been stayed, vacated or set aside or otherwise terminated within sixty (60) days; or (E) the cessation of UC2B's business.

13.4 Breach of Terms of Agreement. Any material breach of any of the terms of this Agreement by either party shall constitute a default by such party under this Agreement.

13.5 Notification of Default; Right to Cure. Except with respect to the defaults described in Sections 13.1 or 13.3 above, the non-defaulting party shall promptly notify the defaulting party in writing (the "Notice of Default") of the occurrence of a material default under this Agreement. The defaulting party shall have a period of thirty (30) days from the date of receipt of the Notice of Default in which to effect a cure of any such material default; provided that where such default cannot reasonably be cured within such thirty (30) day period, if the defaulting party proceeds promptly to cure the same and prosecutes such curing with due diligence, the defaulting party shall have such period of time to cure the default as may be necessary to complete such curing (the "Cure Period"). Any such material default other than defaults described in Sections 13.1 or 13.3 which shall not have been cured within the applicable Cure Period, or any default under the terms of Section 13.1 and 13.3, shall constitute an event of default ("Event of Default") under this Agreement.

13.6 Remedies of Both Parties Upon an Event of Default. Upon an Event of Default by either party, then, in addition to any other rights granted under this Agreement, the non-defaulting party may: (A) terminate this Agreement but only if so provided under Article 16; and/or (B) pursue any legal remedies it may have under applicable law or principles of equity relating to such Event of Default. Pursuit of any single remedy by a party shall not preclude such party from pursuing any other remedies provided herein or available at law or in equity and the parties' rights to pursue such remedies shall survive expiration or termination of this Agreement subject to applicable statutory limitations periods.

13.7 Notice to IDOT. Upon an Event of Default by UC2B, IDOT may give notice of such default to IDOT. perform and be solely responsible for such Relocation of the System, including the IDOT Fibers, at its sole cost and expense. Services performed by UC2B on IDOT cable loop from the UC2B main cable to the IDOT manholes in connection with the Relocation of the IDOT Fibers, if needed, shall be billed on a time and materials basis by separate agreement, at UC2B's best rate, and in accordance with the Illinois Procurement Code. Any such Relocation shall be performed by UC2B in accordance with all applicable terms and conditions of the Permit.

ARTICLE 14. INDEMNIFICATION; LIMITATION OF LIABILITY.

14.1 In General. UC2B shall indemnify, defend and hold harmless IDOT, its successors and permitted assigns and its representatives, agents, servants, and employees and the State, its permitted assigns, and its representatives, agents, servants, and employees (collectively, "Indemnified Persons") from and against any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses including, without limitation, interest, penalties, court costs and reasonable attorneys', consultants' and experts' fees and expenses and other costs of defense (collectively, "Damages") asserted against, resulting to, imposed upon or incurred by the Indemnified Persons, or any of them, arising from: (A) any contract, arrangement or understanding with any person or firm which may result in the obligation of UC2B or

IDOT to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated herein; (B) the issues identified for UC2B indemnification elsewhere in this Agreement; or (C) Damages for which UC2B otherwise assumes liability under this Agreement.

14.2 Conditions of Indemnification for Third-Party Claims. The obligations and liabilities of UC2B as indemnifying party pursuant to Section 14.1 to the Indemnified Persons with respect to claims for Damages made by third parties shall be subject to the following terms and conditions:

14.2.1 Notice. The Indemnified Persons shall give UC2B prompt notice of any such claim for Damages, and UC2B shall have the right to undertake the defense thereof by representatives chosen by it to the extent allowed by law.

14.2.2 Failure to Defend. If UC2B, within a reasonable time after notice of any such claim for Damages, fails to defend such claim for Damages, the indemnified Person shall (upon further notice to UC2B) have the right to undertake the defense, compromise or settlement of such claim for Damages on behalf of and for the account and risk of UC2B subject to the right of UC2B to assume the defense of such claim for Damages at any time prior to settlement, compromise or final determination thereof.

14.2.3 Right of indemnified Persons to Assume Defense. Anything in this Section 14.2 to the contrary notwithstanding, if there is a reasonable probability that a claim for Damages may materially and adversely affect the indemnified Person other than as a result of money damages or other money payments, the indemnified Person shall have the right, at its own cost and expense, to defend, compromise or settle such claim for Damages; provided, however, that if such claim for Damages is settled without UC2B's consent (which consent shall not be unreasonably withheld), the indemnified Person shall be deemed to have waived all rights hereunder against UC2B for money damages arising out of such claim for Damages.

14.2.4 No Waiver. Notwithstanding any provision herein to the contrary, failure of the indemnified Person to give notice required by this Section shall not constitute a waiver of the indemnified Person's right to indemnification hereunder, except to the extent that such failure has prejudiced the ability of UC2B to defend such claim for Damages.

14.3 Limitation of Liability. Notwithstanding any provision hereof to the contrary, except as set forth in ARTICLE 14.4, neither party shall be responsible or liable to the other for special, punitive, exemplary, incidental or consequential losses or damages as a result of the performance or nonperformance of its obligations under this Agreement, or its acts or omissions related to this Agreement, whether or not arising from sole, joint or concurrent negligence, intentional conduct, strict liability, violation of law, breach of contract, breach of warranty or from any other source whatsoever. IDOT assumes no liability for actions of UC2B and is unable to indemnify or hold UC2B harmless for claims based on this Agreement or use of UC2B provided supplies or services. Unless provided by law, UC2B is not eligible for indemnity under the State Employee Indemnification Act (5 ILCS 35011 et seq.). Any liability for damages that the State

might have is expressly limited by and subject to the provisions of the Illinois Court of Claims Act (705 ILCS 50511) and to the availability of suitable appropriations.

14.4 Incorporation of UAP Indemnity and Insurance Provisions. Notwithstanding any provision hereof to the contrary, UC2B shall provide the indemnity and insurance required by the UAP.

ARTICLE 15. CREDITORS' RIGHTS.

Notwithstanding any provision of this Agreement to the contrary, UC2B may collaterally pledge or assign some or all of its rights hereunder to _____ in connection with its construction financing of UC2B's national fiber optic network, subject to the rights of IDOT hereunder. In addition, _____ may further collaterally pledge or assign such rights to other successor or participating lenders; provided that such lenders are also involved in the financing of UC2B's national fiber optic network. Notwithstanding any such assignment, UC2B shall remain fully responsible for the performance of all obligations hereunder. Nothing in the foregoing shall interfere with or in any way limit IDOT's rights hereunder or quiet enjoyment of the IDOT IRU; provided that IDOT has not incurred an Event of Default hereunder. Any pledge or assignment shall contain clause requiring the assignee to obtain a replacement or amended permit from IDOT.

ARTICLE 16. TERMINATION.

This Agreement may be terminated at any time:

16.1 Mutual Consent. By mutual consent of UC2B and IDOT.

16.2 Event of Default. By either party, upon written notice to the other party at any time after the occurrence of an Event of Default by such other party under this Agreement, except for an Event of Default arising from a default described in Section 13.4.

16.3 Termination of Permit. By either party, upon written notice to the other, upon the termination of the Permit.

16.4 Happenings Upon Termination; Title to System. Except as set forth in ARTICLE 7, upon termination of this Agreement, UC2B shall have no further obligations to IDOT with respect to the IDOT fibers or the System and the parties respective rights with respect to the System shall be governed by the terms of the Permit, the UAP and ARTICLE 7.

16.5 Liability on Termination; Survival. Termination of this Agreement shall not adversely affect the survival of any causes of action accruing prior to the date of, or as a result of, such termination for breach of representations, covenants or agreements hereunder, all of which shall remain enforceable for the applicable limitation periods.

16.6 Availability of Appropriations (30 ILCS 500/20-60). IDOT shall use its best efforts to secure sufficient appropriations to fund this Agreement. However, the IDOT's

obligations hereunder shall cease immediately, without penalty or further payment being required, if the Illinois General Assembly or federal funding source fails to make an appropriation sufficient to pay such obligation. IDOT shall determine whether amounts appropriated are sufficient. IDOT shall give UC2B notice of insufficient funding as soon as practicable after it becomes aware of the insufficiency. UC2B's obligation to perform shall cease upon receipt of the notice.

ARTICLE 17. TAXES.

17.1 In General. It shall be the responsibility of UC2B to ascertain the existence of and pay any and all local subdivision tax (sometimes called an occupation tax), sales and use tax, wage tax, income tax, franchise tax or excise tax on the operations of UC2B. UC2B also agrees to indemnify, defend and hold harmless the Indemnified Persons from all liability for the collection and payment of all taxes assessed and levied by duly constituted authority upon UC2B, its agents, employees and/or representatives in connection with the Design, Construction, Installation, Operation, Maintenance or Relocation of the System, and all Damages related thereto.

17.2 Attempted Taxation of IDOT Interests. Notwithstanding the foregoing, in the event that UC2B is assessed for any taxes or fees not based on income related to IDOT's interest in, or use of, the IDOT Fibers, and UC2B makes a good faith determination that such taxes or fees are required to be paid and that IDOT is not exempt from such taxes or fees, UC2B shall, within thirty (30) days after receipt of an invoice therefore, provide information and documentation to IDOT sufficient to demonstrate the basis for the tax or fee and the amount and due date for payment of the tax or fee. Upon receipt of such notice, IDOT shall either pay the tax or fee, or contest same; provided that IDOT shall give UC2B notice of such contest. In the event IDOT fails to pay or give notice of such contest within forty-five (45) days or, if longer, any other period under applicable Law, after receipt of the above-described notice from UC2B, then UC2B shall have the right to pay such tax and be reimbursed by IDOT, to the extent permitted by law. UC2B agrees to provide reasonable assistance to IDOT in applying for a refund of any taxes or fees, including filing in the name of UC2B, if required, with the applicable government authority, at IDOT's cost and expense, along with any request for refund or protest of such tax or any other documentation deemed reasonably necessary by IDOT for the refund of such tax. IDOT's Illinois tax exemption number is E9989-0046-01.

ARTICLE 18. PATENTS AND COPYRIGHTS.

If UC2B employs any design, device, material or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner prior to their use. UC2B shall indemnify, defend and hold harmless the indemnified Persons from any and all Damages arising from the use of any such patented design, device, material, process or any trademark or copyright and shall indemnify the indemnified Persons for any Damages which they may incur by reason of any infringement at any time during this Agreement or after the completion of the work.

ARTICLE 19. WARRANTIES.

19.1 Conformity with Specifications. Subject to the terms of Articles 10 and 11 above which set forth UC2B's obligations with respect to Maintenance, repair and Relocation of the IDOT Fibers and IDOT's obligations to pay for the same, UC2B warrants that during the term hereof the IDOT Fibers will conform to the Specifications.

19.2 Title. UC2B hereby represents and warrants that it has good and marketable 'title to the System (excluding any real property interests) free of any restrictions or encumbrances which would prevent or interfere with the use of the IDOT IRU pursuant to the terms of this Agreement. In the event title to the System (excluding any real property interests) is contested, or if any third party or government authority contests IDOT's rights to use the IDOT IRU for the purposes set forth in this Agreement (excluding any contests relating to real property interests or lack thereof), UC2B shall proceed to take all necessary steps to perfect such title at its sole cost, and expense including, but not limited to, contesting the claims of any such third party or government authority. Notwithstanding any provision in this Section to the contrary, the parties agree that this Section is not intended to refer to or apply to real property interests and shall be limited to UC2B's interests in personal property contained within the System. Permit.

19.3 Good and Workmanlike Performance. UC2B hereby represents and warrants that all supplies will be provided and all services will be performed hereunder in a good and workmanlike manner.

19.4 Disclaimer of Warranties. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, UC2B MAKES NO WARRANTY TO IDOT OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE CONSTRUCTION, INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE IDOT FIBERS, THE SYSTEM OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

19.5 No Third-party Warranties. No Facility Owners/Lenders have made any representation or warranty of any kind, express or implied, to IDOT concerning UC2B, the IDOT Fibers, the Cable, or the System.

19.6 Manufacturer's Warranties. In the event any necessary Maintenance or repairs to the System or the IDOT Fibers are covered by a warranty made by any manufacturer, UC2B shall pursue any remedies it may have against such manufacturer and shall reimburse IDOT for any Maintenance or repair costs that IDOT has incurred as a result of any such breach of warranty to the extent the manufacturer has paid such costs; provided that UC2B: (a) shall be entitled to reduce such amount by legal and collection costs incurred; and (b) shall have the right to prorate such payment among itself, IDOT and other Facility Owners in the System, based on IRU or fiber ownership.

ARTICLE 20. CONFIDENTIALITY.

20.1 In General. If either party hereto provides proprietary confidential information to the other in writing which is identified as such or, if during the course of performing under this Agreement, a

party learns confidential information regarding the facilities or plans of the other identified in writing by the other party as such, then the receiving party shall protect the confidential information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information; provided, however, that the parties shall each be entitled to provide such confidential information to their respective directors, officers, members, managers, employees, agents, contractors, consultants, attorneys or affiliates in each case whose access is reasonably necessary. Each such recipient of confidential information shall be informed by the party disclosing confidential information of its confidential nature, and shall be directed to treat such information confidentially and to abide by these provisions. In any event, each party shall be responsible for any breach of this provision by any person to , whom that party discloses confidential information. The parties agree that this Agreement does not constitute confidential information under this Article 20.

20.2 Limitation on Confidentiality Obligation. Notwithstanding any other provision herein to the contrary, neither party shall be required to hold confidential any information that: (A) is required to be disclosed by IDOT pursuant to applicable Laws including, without limitation, "sunshine," "public records" or "right-to-know" Laws; (B) becomes publicly available other than through the recipient; (C) is required to be disclosed by a governmental, regulatory authority or judicial order, rule or regulation or proceedings; (D) is independently developed by the disclosing party; (E) becomes available to the disclosing party without restriction from a third party; or (F) is required by its lender and is given to such lender on a confidential basis.

20.3 Promotions. Except as required by the Illinois Freedom of Information Act, neither party shall use the name, trade name, servicemark or trademark of the other or the existence of this Agreement in any promotional or advertising material without the prior written consent of the other.

ARTICLE 21. MISCELLANEOUS.

21.1 Entire Agreement. This Agreement and the Exhibits and Schedules referred to herein (collectively, the "IRU Documents") contain the entire understanding of UC2B and IDOT with respect to their subject matter and supersede all prior understandings, whether oral or written. The IRU Documents are part of the Permit. The terms and conditions of the IRU Documents are subject to the terms and conditions of the Permit and applicable law. To the extent of any inconsistencies between the IRU Documents, the Permit and applicable law, the order of constructive priority shall be applicable law (including, without limitation, 605 ILCS 519-113 and the UAP), the Permit and then this Agreement.

21.2 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given on the date delivered, if delivered personally, on the third business day after being mailed by registered or certified mail (postage prepaid, return receipt requested) or on the next business day after being sent by reputable overnight courier (delivery prepaid), in each case, to the parties at the following addresses, or on the date sent and confirmed by facsimile transmission to the telecopier number specified below (or at such other address or telecopier number for a party as shall be specified by notice given in accordance with this Section):

21.2.1 To UC2B. If to UC2B:

21.2.2 To IDOT. If to IDOT:

Illinois Department of Transportation
Region 3/District 5
Telecopier No. (217) 524-0755

21.3.1 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto. As used herein, a permitted successor or assign to IDOT shall mean any successor or assign permitted or directed by applicable law. IDOT may not otherwise assign or transfer its rights hereunder without the prior consent of UC2B.

21.3.2 By UC2B. Notwithstanding any other provision hereof to the contrary, UC2B shall have the right, without IDOT's consent, to sell, lease, or otherwise transfer interests in or rights to use the System and/or facilities contained therein or associated therewith to third parties so long as UC2B retains ownership of the System or any substantial portion thereof. Notwithstanding any such sale, lease or other transfer, UC2B shall at all times be primarily liable to IDOT for complying with the terms of this Agreement and performing the obligations set forth for it hereunder. In addition to the rights granted under the preceding paragraph and notwithstanding any other provision of this Agreement to the contrary, UC2B shall have the right, without IDOT's consent, to assign or otherwise transfer this Agreement to any parent, subsidiary or affiliate of UC2B or to any person, firm or corporation that shall control, be under the control of or be under common control with UC2B, or any corporation into which UC2B may be merged or consolidated or that purchases all or substantially all of the assets of UC2B; provided, however, that: (A) any such assignment or transfer shall be subject to IDOT's rights under this Agreement and any assignee or transferee shall continue to perform UC2B's obligations to IDOT under the terms and conditions of this Agreement; (B) such assignee or transferee shall agree in writing with IDOT to be bound and abide by this Agreement; and (C) UC2B shall remain liable for performance of all of its obligations hereunder. Any transfer or assignment of this Agreement by UC2B not described in the preceding paragraphs in this Section 21.3.2 shall be subject to the prior written consent of IDOT which consent shall not be unreasonably withheld, delayed or conditioned so long as the net worth and technical expertise of any such transferee or assignee is substantially similar to or greater than UC2B's.

21.4 Waiver. Any failure to exercise or delay in exercising any right, power, privilege or remedy herein contained, or any failure or delay at any time to require the other party's performance of any obligation under this Agreement, shall not affect the right to subsequently exercise that right, power, privilege or remedy or to require performance of that obligation. A waiver of any of the provisions of this Agreement shall not be deemed, nor shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver. A waiver shall not be binding unless executed in writing and delivered to the other party.

21.5 Third-Party Beneficiaries. The parties hereto are all the parties to this Agreement, and no third-party beneficiaries hereto, other than the State of Illinois, are intended or should be inferred from the terms hereof.

21.6 Force Majeure. Whenever a period of time is provided for in this Agreement for either party to do or perform any act or obligation, neither party shall be liable for any

delays or inability to perform due to causes beyond the reasonable control of said party including, but not limited to, causes such as cable cuts by third parties, war, embargo, terrorist acts, acts of piracy, riot, insurrection, rebellion, strike, lockout, unavoidable casualty, fire, flood, storm, earthquake, tornado or any act of nature or of God, inability to obtain any required governmental consent or approval required to Construct, Install or Maintain the System, any other act of any governmental entity (other than actions by IDOT, or their respective permitted successors or assigns in lawfully enforcing its or their rights under and in accordance with this Agreement or the Permit), shortage of or inability to obtain materials provided that such materials were timely ordered, or inability to obtain Required Rights provided UC2B diligently pursued acquisition thereof in accordance with this Agreement and continue so to pursue during any time extension (collectively, "Force Majeure").

21.7 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law and if appropriate such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the parties hereto and to the intended economic benefits of the parties.

21.8 Headings. The headings contained in this Agreement are included for convenience of reference only and shall in no way affect the construction or interpretation of any of the terms or provisions of this Agreement.

21.9 Governing Law. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Illinois. Any litigation hereunder against UC2B shall be filed and pursued only in such courts within the State of Illinois having jurisdiction over Springfield, Illinois. Any litigation hereunder against the State of Illinois shall be filed and pursued only in the Illinois Court of Claims.

21.10 Amendment. This Agreement may not be modified or amended except in a writing signed by both parties.

21.11 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original instrument, and all of which taken together shall constitute one and the same agreement.

21.12 Independent Contractors. By granting the rights hereunder to IDOT, UC2B is not hereby establishing any joint undertaking, joint venture or partnership with IDOT, its agents, or subcontractors and nothing contained in this Agreement shall be deemed , to constitute a partnership or agency agreement between them for any purposes, including, but not limited to Federal income tax purposes. The relationship between the parties shall not be that of partners, agents or joint ventures for one another, and the parties, in performing any of their obligations hereunder, shall be independent contractors of independent parties and shall discharge their contractual obligations at their own risk.

21.13 Time of the Essence. Time shall be of the essence with respect to each obligation of either UC2B or IDOT under this Agreement which obligation is required to be performed by a specific date, or within a certain number of days, specified herein.

21.14 Survival of Certain Provisions. Notwithstanding any provision hereof to the contrary, the provisions of ARTICLE 20 shall survive termination of this Agreement for a period of two (2) years.

21.15 IDOT Authority; Reliance on Representatives. To the extent that any provision of this Agreement requires any action to be taken by, or any consent, approval or agreement to be obtained from IDOT, UC2B shall be entitled to rely on such action taken by, or consent, approval or agreement obtained from, each of IDOT representatives listed on Schedule 21.15 attached hereto and incorporated herein by reference, but only with respect to the specific provisions listed opposite such representative's name in said Schedule. If no IDOT representative is listed with respect to a specific provision hereof requiring any action, consent, approval or agreement of or by IDOT, it shall be conclusively presumed that such provision may only be satisfied by official action of IDOT. In such circumstances, UC2B shall be entitled to rely upon any written communication of such official IDOT action signed or executed by the Director of IDOT. IDOT may change the representatives listed on Schedule 21.15 from time to time by giving written notice of designated replacement representatives to UC2B.

21.16 UC2B Authority; Reliance on Representatives. To the extent that any provision of this Agreement requires any action to be taken by, or any consent, approval or agreement to be obtained from, UC2B, IDOT shall be entitled to rely on such action taken by, or consent, approval or agreement obtained from, each of the UC2B representatives listed on Schedule 21.16 attached hereto and incorporated herein by reference, ' but only with respect to the specific provisions listed opposite such representative's name in said Schedule. If no UC2B representative is listed with respect to a specific provision hereof requiring any action, consent, approval or agreement of or by the UC2B, it shall be conclusively presumed that such provision may only be satisfied by written communication executed by the President or any Vice-President of UC2B. UC2B may change the representatives listed on Schedule 21.16 from time to time by giving written notice of designated replacement representatives to IDOT. .

21.17 Attorney Fees. In any dispute between the parties or action to enforce the provisions hereof, the parties agree that the prevailing party shall be entitled to an award of its reasonable costs and attorneys' fees.

21.18 Conflicts of Interest, UC2B covenants that it has disclosed, and agrees it is under a continuing obligation to disclose to IDOT, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest under Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or which may conflict in any manner with UC2B's obligations under this Agreement. UC2B further covenants that it shall not employ any person with a conflict to perform under this Agreement. UC2B further covenants that no person has an interest in UC2B or in this Agreement that would violate Illinois law, including 30 ILCS 500150-13.

21.19 Audit/Retention of Records (30 ILCS 500120-65). UC2B and its subcontractors shall maintain books and records related to performance of this Agreement or subcontract and necessary to support amounts charged to the State in accordance with applicable law, terms and conditions of this Agreement, and generally accepted accounting practice. UC2B shall maintain these books and records for a minimum of three (3) years after the completion of the Agreement, final payment, or completion of any Agreement audit or litigation, whichever is later. All books and records shall be available for review or audit by IDOT, its representatives, the

Illinois Auditor General, and other governmental entities with monitoring authority upon reasonable notice and during normal business hours. UC2B agrees to cooperate fully with any such review or audit. If any audit indicates overpayment to UC2B, or subcontractor, IDOT shall adjust future or final payments otherwise due. If no payments are due and owing to UC2B, or if the overpayment exceeds the amount otherwise due, UC2B shall immediately refund all amounts which may be due to IDOT. Failure to maintain the books and records required by this Section shall establish a presumption in favor of IDOT for the recovery of any funds paid by IDOT under this Agreement for which adequate books and records are not available to support the purported disbursement.

21.20 Certifications. UC2B makes the certifications set forth in "Exhibit D."