

3. **Scope of Services.** Subject to this Addendum, Fibertown DC, LLC will render Services to County as described in Exhibit A; and in accordance with the requirements and specifications of TIPS Contract #230302.
4. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. Fibertown DC, LLC may submit invoice(s) electronically in a form acceptable to County via: apauditor@fortbendcountytexas.gov. If County disputes charges related to the invoice submitted by Fibertown DC, LLC, County shall notify Fibertown DC, LLC no later than twenty-one (21) days after the date County receives the invoice. If County does not dispute the invoice, then County shall pay each such approved invoice within thirty (30) calendar days. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.
5. **Limit of Appropriation.** Fibertown DC, LLC clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Sixty-One Thousand, Nine Hundred Twenty dollars and 00/100 (\$61,920.00) annually plus applicable escalation, specifically allocated to fully discharge any and all liabilities County may incur. Fibertown DC, LLC does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Fibertown DC, LLC may become entitled to and the total maximum sum that County may become liable to pay to Fibertown DC, LLC shall not under any conditions, circumstances, or interpretations thereof exceed Sixty-One Thousand, Nine Hundred Twenty dollars and 00/100 (\$61,920.00) for the purpose of satisfying the County's obligations for the initial twelve (12) month appropriation, under the terms and provisions of this Agreement. In no event will the amount paid by the County for all Services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties. Additional funding for months thirteen (13) through sixty (60) of this Agreement is contingent upon future appropriations from the County's Commissioners Court. Any additional appropriations from the County's Commissioners Court will require amendment(s) to this Agreement to increase the Limit of Appropriation as provided by this Section.
6. **Public Information Act and Open Meetings Act.** Fibertown DC, LLC expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE

ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Fibertown DC, LLC shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement and this Addendum are not proprietary or confidential information.

Fibertown DC, LLC expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.

7. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Fibertown DC, LLC for any reason are hereby deleted.
8. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Fibertown DC, LLC in any way associated with the Agreement.
9. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Fibertown DC, LLC hereby verifies that Fibertown DC, LLC and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
 - a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by

the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

- b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Fibertown DC, LLC does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
- c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Fibertown DC, LLC does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
- d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Fibertown DC, LLC does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

10. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

11. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, FIBERTOWN DC, LLC ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

12. **Use of Customer Name.** Fibertown DC, LLC may use County's name without County's prior written consent only in any of Fibertown DC, LLC's customer lists, any other use must be approved in advance by County.

13. **Performance Warranty.** Fibertown DC, LLC warrants to County that Fibertown DC, LLC has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Fibertown DC, LLC will

apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

Fibertown DC, LLC warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A, and TIPS Contract #230302.

14. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls to the extent of the conflict. In the event there is a conflict between this Addendum and the terms and conditions of TIPS Contract #230302, then the terms and conditions of TIPS Contract #230302 controls to the extent of the conflict.
15. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
16. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
17. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
18. **County Data.** Nothing in this Agreement will be construed to waive the requirements of § 205.009 of the Texas Local Government Code. For the avoidance of doubt, County owns all right and title to its data under this Agreement. Upon termination of this Agreement or upon request(s) by County, the County will be able to retrieve a copy of County data from Fibertown DC, LLC in a standard industry format, at no additional cost to County. Nothing in this Agreement will be construed to waive the requirements of any record retention laws applicable to County.
19. **Assignment and Delegation.**
 - 19.1. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

- 19.2. Neither party may delegate any performance under this Agreement.
- 19.3. Any purported assignment of rights or delegation of performance in violation of this Section is void.
- 19.4. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County.
20. **Successors and Assigns.** County and Fibertown DC, LLC bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.
21. **Compliance with Laws.** Fibertown DC, LLC shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Fibertown DC, LLC shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
22. **Confidential Information.** Fibertown DC, LLC acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Fibertown DC, LLC or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Fibertown DC, LLC shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Fibertown DC, LLC) publicly known or is contained in a publicly available document; (b) is rightfully in Fibertown DC, LLC's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Fibertown DC, LLC who can be shown to have had no access to the Confidential Information.

Fibertown DC, LLC agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Fibertown DC, LLC uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or

use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Fibertown DC, LLC shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Fibertown DC, LLC shall advise County immediately in the event Fibertown DC, LLC learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Fibertown DC, LLC will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Fibertown DC, LLC against any such person. Fibertown DC, LLC agrees that, except as directed by County, Fibertown DC, LLC will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Fibertown DC, LLC will promptly turn over to County all documents, papers, and other matter in Fibertown DC, LLC's possession which embody Confidential Information.

Fibertown DC, LLC acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Fibertown DC, LLC acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

Fibertown DC, LLC in providing all Services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

23. Termination.

- 23.1. Termination for Convenience. County may terminate this Agreement at any time upon thirty (30) days written notice and is subject to a termination liability equal to the remaining balance of the current year appropriation.
- 23.2. Termination for Default. County may terminate the whole or any part of this Agreement for cause in the following circumstances: (a). If Fibertown DC, LLC fails to timely perform Services pursuant to this Agreement or any extension thereof granted by the County in writing; (b). If Fibertown DC, LLC materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in

any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

- 23.3. If, after termination, it is determined for any reason whatsoever that Fibertown Holdings was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with § 23.1 above.
- 23.4. Upon termination of this Agreement, County shall compensate Fibertown DC, LLC in accordance with § 4, above, for those Services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Fibertown DC, LLC' final invoice for said Services will be presented to and paid by County in the same manner set forth in § 4 above.
- 23.5. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Fibertown DC, LLC.
- 23.6. If County terminates this Agreement prior to the termination date, County shall not be subject to any early termination fee or other penalty.
- 23.7. Upon termination of this Agreement for any reason, County will remove its property from the premise within 5 business days, if Fibertown DC, LLC has any property in its possession belonging to County after 5 business days, Fibertown DC, LLC will account for the same, and dispose of it in a commercially reasonable fashion.
24. **Independent Contractor.** In the performance of work or services hereunder, Fibertown DC, LLC shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Fibertown DC, LLC or, where permitted, of its subcontractors. Fibertown DC, LLC and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
25. **Further Assurances.** Each party further agrees that it shall take any and all necessary steps and sign and execute any and all necessary documents or agreements required to implement the terms of the Agreement of the parties contained in this contract, and each party agrees to refrain from taking any action, either expressly or impliedly, which would have the effect to prohibiting or hindering the performance of the other party to this Agreement.

26. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
27. **Remote Access.** As applicable, if Fibertown DC, LLC requires remote access to County Systems for support, installation, integrations, configurations, and/or maintenance of Fibertown DC, LLC's Services, except as otherwise agreed by the parties and approved by the County's Director of Information Technology and Chief Information Officer in writing, the below requirements must be met before Fibertown DC, LLC is granted remote access to County Systems:
- (A). Fibertown DC, LLC will adhere to the restricted and monitored channels that are provided by the County, or other technologies approved in advance in writing by the County's Director of Information Technology and Chief Information Officer.
 - (B). Fibertown DC, LLC will neither implement nor deploy a remote access solution which bypasses and/or is designed to bypass County provided or approved controls. Fibertown DC, LLC will not access County Systems via unauthorized methods.
 - (C). Fibertown DC, LLC's remote access to County Systems will only be requested and activated on as-needed basis and disabled when not in use.
 - (D). Remote access is restricted only to County Systems necessary for Fibertown DC, LLC to conduct their services and/or provide Services to County pursuant to this Agreement.
 - (E). Fibertown DC, LLC will allow only its Workforce approved in advance by County to access County Systems. Fibertown DC, LLC will promptly notify County whenever an individual member of Fibertown DC, LLC's Workforce who has access to County Systems leaves its employ or no longer requires access to County Systems. Fibertown DC, LLC will keep a log of access when its Workforce remotely accesses County Systems. Fibertown DC, LLC will supply County with evidence of access logs concerning remote access to County Systems upon written request from County. Such access logs will be provided to County, within three business days from the date of County's request. These requests may be used to confirm compliance with these terms and/or to investigate a security incident.
 - (F). If any member(s) of Fibertown DC, LLC's Workforce is provided with remote access to County Systems, then Fibertown DC, LLC's Workforce will not remotely log-in to County Systems from a public internet access device (e.g., airport computer terminal, or Internet café). This is due to the possibility of sensitive information being monitored by video or computer surveillance in public areas.
 - (G). Failure of Fibertown DC, LLC to comply with this Section may result in Fibertown DC, LLC and/or Fibertown DC, LLC's Workforce losing remote access to County

Systems. County reserves the right at any time to disable remote access to protect County Systems.

- (H). For purposes of this Section, "Workforce" means employees, agents, subcontractors (where permitted), and/or other persons whose conduct, in the performance of work for Fibertown DC, LLC, is under the direct control of Fibertown DC, LLC, whether or not they are paid by Fibertown DC, LLC and who have direct or incidental access to County Systems.
- (I). For purposes of this Section, "Systems" means any: (i.) computer programs, including, but not limited to, software, firmware, application programs, operating systems, files and utilities; (ii.) supporting documentation for such computer programs, including, without limitation, input and output formats, program listings, narrative descriptions and operating instructions; (iii.) data and/or media; (iv.) equipment, hardware, servers, and/or devices; and/or (v.) network(s).

28. Notices.

28.1. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

28.2. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Information Technology Department
Attn: Information Technology Director
301 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County
Attn: County Judge
301 Jackson Street
Richmond, Texas 77469

Contractor: Fibertown DC, LLC
Attn: Business Office
2501 N Earl Rudder Freeway South, Suite 100
College Station, Texas 77845

28.3. A Notice is effective only if the party giving or making the Notice has complied with subsections 28.1 and 28.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

28.3.1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

28.3.2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

FIBERTOWN DC, LLC

Nancy Finney

Nancy Finney (Nov 26, 2024 10:12 CST)

KP George, County Judge

Authorized Agent – Signature

Nancy Finney

Date

Authorized Agent- Printed Name

CRO

ATTEST:

Title

Nov 26, 2024

Laura Richard, County Clerk

Date

REVIEWED:

Robyn Douglas

Information Technology Department

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A: Fibertown DC, LLC's Master Services Agreement

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ADDENDUM TO FIBERTOWN DC, LLC'S AGREEMENT

Contract #25-IT-100185



Exhibit A



Fibertown DC, LLC Master Services Agreement

THIS MASTER SERVICES AGREEMENT (“Agreement” or “MSA”) by and between **FIBERTOWN DC, LLC**, a Texas Limited Liability Company (“Fibertown”) and **Fort Bend County** (“Customer”), consists of and is subject to the general terms and conditions set forth in this MSA and includes all Service Orders (each as defined below). The Policies that are attached to this MSA or are subsequently entered into by the parties hereto (collectively, the “MSA”). Fibertown and Customer are sometimes referred to in this MSA collectively as “Parties” and individually as a “Party.”

1. Services, Service Orders

a. Fibertown provides the services (the “Services”), in accordance with the general terms and conditions set forth in this MSA, as well as the terms and conditions set forth on the Service Order form referencing this MSA, and attached hereto or executed hereafter. This Agreement shall apply to all Services provided to Customer by Fibertown.

b. Fibertown will perform the Services specified in any written order between Fibertown and Customer that is signed by both parties (each, a “Service Order”). Each Service Order shall identify the Services to be provided by Fibertown to Customer, the recurring charges and any non-recurring charges for such Services and the term during which such Services are to be provided. Service Orders under this MSA may be entered into and performed by Fibertown and/or any of its Affiliates (as defined below). As used herein, “Affiliate” shall mean any entity controlled by, controlling or under common control with the applicable Party.

2. Customer Equipment and Responsibility

a. Customer Equipment. In consideration of the fees and charges set out in this MSA and the representations and covenants made by Customer herein, Fibertown hereby grants to Customer a limited license to install, operate, and maintain certain equipment which is not provided to Customer by Fibertown (the “Customer Equipment”) in the “Colocation Space”. Customer’s license to occupy the Colocation Space shall commence on the Service Commencement Date and shall expire on the date the last Service Order then in effect expires or is terminated. A termination of this MSA shall terminate all Service Order(s). Fibertown hereby reserves all rights not specifically granted to Customer, including, without limitation, the right to: (1) access and use the Premises, other than the Colocation Space, for its own use and for the use of its agents and licensees and (2) grant additional licenses to other users for portions of the Premises other than the Colocation Space. Fibertown grants to Customer an exclusive right to access and use the Colocation Space and, except as provided in this MSA, Fibertown shall not allow entry into the Colocation Space by anyone not requested or authorized by Customer, including but not limited to, employees, contractors and subcontractors of Fibertown.

b. Responsibility for Customer Equipment and Colocation Space. Customer shall be solely responsible for the Customer Equipment, Customer Software, and data stored thereon (the “Stored Information”). Unless otherwise specifically agreed in writing, Fibertown shall have no duty to monitor, maintain or care for the Customer Equipment, Customer Software, or Stored Information.

c. Use of Electrical Capacity. All power whips furnished to the customer's space will be rate limited at 80% of the breaker rating load and each A/B power whip that is provided to the Customer's space is rate limited to 80% of a single whip breaker rating. If the total available power delivered to the customer space is not listed on the Service Order Form, it will be limited to 120 watts per square foot. Fibertown will notify Customer if the breaker, total available power limit, or watts per square foot limitations are exceeded, and Customer will reduce their power usage or purchase additional power capacity within 30 days. Customer understands that in accordance with the facility design, all Customer equipment must have dual power supplies connected to A and B power. In the event that the Customer elects to use single corded equipment, Customer must furnish an A-B automatic transfer switch connected to both A and B power. Failing to comply with the dual power supply or A-B transfer switch provisions of this paragraph will forfeit all Customer remedies allowed in the Service Level Agreement.



d. Use of Internet Connectivity. To be eligible for SLA remedies, Customer is responsible for appropriate configuration of Customer equipment for operation in a redundant environment. For purposes of the MSA, Internet Connectivity does not include the situation where Customer obtains Internet Access from a third party service provider.

“Internet Connectivity” also does not apply to the cross-connect provided by Fibertown that connects Customer Equipment to Fibertown’s Internet access point within the premises, the Internet access point of a third-party provider within the building, or cross-connects between Customer and another occupant in the premises via an interconnection point.

e. Third Party Services Fibertown is not responsible, nor will Fibertown’s SLA remedies apply, for any Third Party Services. If Third Party Services are contracted through Fibertown, SLA remedies will be passed through from the Third Party as applicable. No additional SLA remedies will be provided by Fibertown.

3. Right to Modify Services/Policies

a. Fibertown reserves the right to modify its practices, network and facilities used to provide cross-connects, Facility Environment, and Power Services for any purpose, including but not limited to accommodating evolving technology and increased network demand and providing additional, supplemental or other services. Fibertown shall maintain a current statement of its practices, network and facilities used to provide cross-connects, Facility Environment, and Power Services in its Facility Rules and Regulations via Fibertown’s website under “Resources”.

4 Fees and Billing

a. Fees. Customer will pay Fibertown the fees listed in the applicable Service Order for the provision of the Colocation Space and the Services.

i. Annual Escalator. Notwithstanding anything in this MSA to the contrary, all fees for any and all Services and Products in the Service Order, Amendments, and Renewals will be subject to an Annual Escalator, listed in the Service Order, after twelve (12) months and every twelve (12) months thereafter, except where a change in Fibertown’s direct electrical supply costs exceeds the Annual Escalator value listed in the Service Order, then Fibertown may change the fee for power Services by such increased cost.

ii. Third Party Services. When an increase in Fibertown’s Third Party Service cost occurs, Fibertown may change the fee for said Third Party Service by a pro-rata amount.

b. Billing. All amounts payable under the Agreement shall be payable in full within forty five (45) days of the date of invoice (the “Grace Period”). In the case of a late payment, Customer will be charged a one hundred dollar (\$100) administrative fee and the late payment will accrue interest at the rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. All non-recurring fees shall be payable net 30 as invoiced by Fibertown. All payments shall be made in U.S. dollars. In addition, upon expiration of the Grace Period, Fibertown reserves the right to, without limitation, suspend the performance of the Service(s), restrict Customer’s access to the Customer Space (and Customer’s equipment therein), refuse to provide any new Service(s) requested by Customer, and/or exercise any termination rights it has under this MSA. The failure to pay amounts owed under a Service Order when due shall be considered a material breach of the MSA.

c. Legal Intervention. If collection proceedings require legal intervention, an administrative fee of \$1,000 will be charged to Customer.

d. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount before the expiration of the Grace Period and submit written notice of the disputed amount, within thirty (30) days of the date of the disputed invoice (with details of the nature of the dispute and the Service(s) and invoice(s) disputed). If the dispute is resolved against Customer, Customer shall pay the disputed amount plus interest from the date originally due.

e. Taxes. As applicable, Customer shall pay all taxes, fees or assessments and other charges required to be collected by Fibertown by any governmental agency that may result from the Customer’s use of the



Colocation Space. Customer shall also be liable for and shall pay all taxes levied against the Customer Equipment located on or about the Colocation Space in a timely manner.

f. Collections. Customer shall be responsible for all costs of collection incurred by Fibertown in connection with the Agreement, as well as all costs incurred by Fibertown in enforcing its rights, and Customer's obligations, hereunder, including, without limitation, reasonable legal fees and expenses.

5. Term, Renewal and Termination

a. Term. This MSA shall commence on the Service Commencement Date and shall continue for the minimum term set forth in the applicable Service Order (the "Term"). The foregoing notwithstanding, in no event shall Customer's right to occupy the Colocation Space extend beyond the Term.

b. Renewal. This Agreement shall not automatically renew, but may be subsequently renewed in writing upon agreement of the parties.

c. Termination. Fibertown or Customer may terminate Services before the end of the Term in any of the following three (3) options (i, ii, or iii).

i. Fibertown may suspend or terminate Services on written notice to Customer ("Fibertown Termination Notice") in the event that Customer has breached any obligation, representation, or warranty under this MSA and such breach is not cured within twenty (20) days after written notice thereof. Customer will be subject to a termination liability equal to the remaining balance of the current year appropriation.

ii. Customer may terminate Services without penalty on written notice to Fibertown ("Customer Termination Notice") in the event: (1) of the insolvency of Fibertown or the institution of voluntary or involuntary proceedings in bankruptcy or under any other insolvency law, or an arrangement with creditors or receivership; or (2) that Fibertown has breached any obligation, representation, or warranty under this MSA, and such breach or inaccuracy is not cured within twenty (20) days after written notice thereof.

iii. Customer may terminate Services at any time and is subject to a termination liability equal to the remaining balance of the current year appropriation.

iv. Upon termination or expiration of this MSA, Customer shall remove all Customer Equipment, except fixtures, within five (5) business days from the date of such termination or expiration of this MSA ("Removal Period"). Any items and/or Customer Equipment remaining after the removal periods may, at Fibertown's discretion, be removed, stored, or disposed of, and such removal or disposal shall be undertaken in a commercially reasonable fashion. Customer shall be responsible for all reasonable costs associated with removal, storage, and/or disposal of the items and/or Customer Equipment and for the cost of restoration of the Colocation Space. The provisions of this Section shall survive the expiration or earlier termination of this MSA for one (1) year.

v. Customer shall return to Fibertown at the end of the Removal Period, all access key cards and other security devices that have been provided to Customer.

6. Representations and Warranties

a. Customer Warranties. Customer represents and warrants to Fibertown: (i) that it owns or has the legal right and authority, and will continue to own or maintain the legal right and authority during the Term, to place and use the Customer Equipment in the Colocation Space; (ii) that Customer's services, products, materials and the Customer Equipment do not and will not operate in any manner that would violate any applicable law or regulation or the Fibertown Rules and Regulations and will not interfere electrically, or in any other manner whatsoever, with the equipment or operations of Fibertown or with any other customer or tenant.

b. Fibertown Warranties. Fibertown warrants to Customer that it owns or has the legal right and authority, and will continue to own or maintain the legal right and authority during the Term to place and use the



Fibertown-Provided Equipment in the Colocation Space and to provide the related Services to Customer. Fibertown represents and warrants that the Services shall be performed in a professional, efficient, prompt, economical, skillful and careful manner, in accordance with the methods, standards and practice currently prevailing among leading firms in the field of data services; and it owns and has the legal right and authority, and will continue to own and maintain the legal right and authority during the Term, to allow Customer access to the Colocation Space. Should Customer order Third Party Services through Fibertown, Fibertown makes no representations or warranties, nor does Fibertown SLA pertain to such Third Party Services. All warranties or SLAs for Third Party Services will be obtained from Third Party.

c. Disclaimers by Fibertown. **THE COLOCATION SPACE AND THE SERVICES ARE PROVIDED “AS IS” AND FIBERTOWN DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FIBERTOWN DOES NOT WARRANT THAT THE COLOCATION SPACE AND/OR THE SERVICES WILL BE AVAILABLE UNINTERRUPTED, ERROR-FREE OR IN A COMPLETELY SECURE BASIS. CUSTOMER HEREBY WAIVES ALL RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE TO MAKE REPAIRS TO THE COLOCATION SPACE OR THE PREMISES AT FIBERTOWN’S EXPENSE.**

d. Compliance with Laws and Regulations. Both Fibertown and Customer shall comply at all times with all applicable federal, state, and local laws, rules, regulations, ordinances, and other requirements relating to its provision of or use of the Colocation Space and will obtain all required permits, licenses, or similar approvals or registrations pertaining to the obligations in this MSA. Customer shall also comply with Fibertown’s general Rules and Regulations available on the Fibertown’s website under “Resources”, relating to the Premises.

7. Indemnity and Limitation of Liability.

a. Fibertown Liability. Customer agrees, to the extent not prohibited by law, that Fibertown, Fibertown affiliates, and each of their owners, partners, shareholders, officers, directors, representatives, successors, assigns, agents, servants, employees, or contractors (collectively referred to in this Paragraph 7 as “Fibertown”) shall not be liable, except as provided in any applicable Service Level Agreement, for any claim involving, concerning or related to the loss or destruction of Customer data or any portion thereof or for any damage either to person or property sustained by Customer or by other persons due to the Premises or Colocation Space or any part thereof becoming out of repair or due to the happening of any accident or event in or about the Premises or Colocation Space or due to the act or neglect of any occupant of the Premises or of any other person, including, but not limited to injury or damage caused by gas, electricity, interruption of service or power, snow, frost, steam, sewage, sewer gas or odors, fire, water or the bursting or leaking of pipes, faucets, sprinklers and plumbing fixtures (collectively, “excluded liability”), unless such excluded liability arose as the result of intentional misconduct or gross negligence by Fibertown.

b. Waiver of Liability and Indemnification. **NOTWITHSTANDING ANY PROVISION OF THIS MSA TO THE CONTRARY, EXCEPT AS PROVIDED IN AN APPLICABLE SERVICE LEVEL AGREEMENT, OR TO THE EXTENT CAUSED BY ITS OWN WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, LOSS OF PROFITS OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY’S FAILURE TO PERFORM ITS OBLIGATIONS, OR A BREACH OF ITS REPRESENTATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO, DAMAGE OR LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE), OR CLAIMS OF CUSTOMERS. ALL CLAIMS WITH RESPECT TO SUCH SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARE HEREBY SPECIFICALLY WAIVED.**



c. **CUSTOMER EXPRESSLY ACKNOWLEDGES THAT FIBERTOWN INTENDS TO ALLOW OTHER CUSTOMERS OR LICENSEES TO INSTALL EQUIPMENT NEAR THE COLOCATION SPACE. CUSTOMER EXPRESSLY AGREES THAT FIBERTOWN SHALL HAVE NO LIABILITY FOR ANY DAMAGES, COSTS, OR LOSSES INCURRED BY CUSTOMER CAUSED BY SUCH OTHER CUSTOMERS' OR LICENSEES' ACTS, EQUIPMENT, OR FAILURE TO ACT. ADDITIONALLY, IN NO EVENT SHALL FIBERTOWN BE LIABLE TO CUSTOMER FOR LOSS OF USE OR OTHER DAMAGE OF ANY NATURE ARISING OUT OF THE LOSS, DESTRUCTION OR DAMAGE TO THE COLOCATION SPACE OR ANY PORTION THEREOF, OR TO EQUIPMENT LOCATED THEREON DUE TO WINDSTORM, FIRE, THEFT, VANDALISM, FLOOD OR ANY OTHER CASUALTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, FIBERTOWN SHALL NOT ALLOW ANY OTHER CUSTOMER TO USE OR HAVE UNESCORTED ACCESS THE PREMISES.**

d. Customer shall indemnify, defend and hold harmless Fibertown from and against any and all third party claims, demands, actions, lawsuits, causes of action, damages, losses, liability, judgments, expenses and costs (including but not limited to reasonable attorneys' fees) arising from (i) Customer's, and its agents, contractors and invitees infringement or misappropriation of intellectual property rights, defamation, libel, slander, obscenity, pornography, or violation of rights of privacy or publicity, or Customer's spamming, or any other offensive, harassing or illegal conduct; (ii) any breach by Customer of any covenant or obligation hereunder, (iii) any injury to or death of any person or damage to any property occurring upon the, Colocation Space, the Premises, and/or the building or the land of which the Premises are a part, arising out of (or in connection with) negligence or willful misconduct, or (iv) the violation of any law or regulation by Customer. Customer has additional indemnification obligations related to Hazardous Materials detailed in the Rules and Regulations. THIS INDEMNITY SHALL APPLY TO ALL SUCH LIABILITIES, CLAIMS, DEMANDS, AND CAUSES OF ACTION EVEN IF THEY ARISE FROM FIBERTOWN'S OWN NEGLIGENCE (WHETHER SOLE OR CONCURRENT AND WHETHER ORDINARY OR GROSS) OR OTHER FAULT, WHETHER SUCH IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE.

e. **Limitation** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS MSA, FIBERTOWN'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER RELATED TO OR ARISING UNDER THIS MSA WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO FIBERTOWN PURSUANT TO THIS MSA FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM.

8. Liens

a. Customer shall indemnify Fibertown against and hold Fibertown and the Colocation Space free and clear of and from all mechanics' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work done by or on behalf of Customer. If any such lien is filed at any time against the Colocation Space, or any part thereof, Customer shall cause such lien to be discharged of record within ten (10) days after the filing thereof, except that if Customer desires to contest such lien, it will furnish Fibertown, within such ten-day period, security reasonably satisfactory to Fibertown in the form of a bond or other security of at least one hundred percent 100% of the amount of the claim, plus estimated costs and interest. If a final judgment establishing the validity or existence of a lien for any amount is entered, Customer shall pay and satisfy the same without delay. If Customer fails to pay any charge for which a mechanics' lien has been filed, and has not given Fibertown security as described above, Fibertown may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such lien, will be immediately due from Customer to Fibertown. Nothing contained in this MSA shall be deemed to constitute a consent or MSA of Fibertown to subject the Colocation Space to liability under any mechanics' or other lien law. If Customer receives notice that a lien has been or is about to be filed against the Colocation Space, or any action affecting title to the Colocation Space has been commenced on account of work done by or on behalf of, or materials furnished to or for Customer, it will immediately give Fibertown notice of such filing. Fibertown shall have the right to post notices of non-responsibility or similar notices on the Colocation Space in order to protect the Colocation Space against any such liens.

9. Insurance

a. Without limiting a Party's liability or indemnification obligations, both Fibertown and Customer, at their own



cost, will carry and maintain the insurance coverage listed below with insurers having a minimum "Best's" rating of A-VII at all times during the Service Term. Customer will require its subcontractors and agents who have access to the Premises to maintain the same insurance.

b. Commercial General Liability insurance must cover claims for bodily injury, death, personal injury or property damage (including loss of use) occurring or arising out of the license, use or occupancy of the Premises by the Insuring Party, including coverage for operations of the Premises or products, and contractual liability coverage, such coverage to include insuring against the perils of fire, vandalism and malicious mischief, and sprinkler leakage Coverage limits will be USD \$2,000,000 per occurrence, \$4,000,000 in the aggregate, provided these limits may be achieved through a combination of primary and excess policies.

c. Workers' Compensation insurance with statutory limits as required in the state(s) of operation must cover any employee of the Insuring Party entering the Premises, even if not required by statute. Employer's Liability or "Stop Gap" insurance must have limits of no less than one million dollars (\$1,000,000) for each incident.

d. The Insuring Party will provide evidence to the other Party of such insurance upon execution of this MSA and upon any renewal of insurance during the Term. The evidence of insurance will provide that coverage is primary and not in excess of, or contributory with, any other valid and collectible insurance purchased or maintained by the other Party All the insurance required of Customer under this MSA shall contain an endorsement requiring thirty (30) days written notice from the insurance company to both parties before cancellation or material reduction in the coverage, scope or amount of any policy. Each liability insurance policy shall list as additional insured (1) FIBERTOWN DC, LLC, its officers, directors, and employees, and (2) Fibertown's Landlord, if any, and its officers, directors, and employees. Governmental agencies may self-insure the types and amounts of insurance listed above if the Insuring Party's program of self-insurance providing protections to the other Party is no less than those set forth above.

e. Each Party agrees to carry and maintain "All Risk" property insurance with respect to its real property, personal property or equipment owned in the Premises for its full replacement value. Notwithstanding anything in this MSA to the contrary, each Party waives all rights of recovery, claim, action or cause of action against the other, its agents (including partners, both general and limited), trustees, officers, directors, agents and employees, for any loss or damage that may occur to the Premises, or any improvements to the Premises, or any property of such Party in the Premises, arising from any cause covered by any insurance carried by such Party, including negligence of the other Party.

f. In the event coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance required above, Customer shall make commercially reasonable efforts to pursue such claim with its carrier.

10. Confidentiality

a. Neither Party shall divulge or otherwise disclose any Confidential Information to any third Party without the prior written consent of the other Party, except that either Party may make disclosure to those required for the implementation of this MSA, but only if the recipient agrees to be bound by the Confidentiality provisions in this Section. Either Party may disclose the terms of this MSA to purchasers and prospective purchasers, auditors, attorneys, financial advisors, lenders and prospective lenders, investors and prospective investors, and Fibertown's Landlord, if any, provided that in each case the recipient agrees to be bound by the Confidentiality provisions in this Section.

b. Neither Party grants the other Party the right to use its trademarks, service marks, trade names, copyrights, other intellectual property rights or other designations in any promotion, publication or press release without the prior written consent of the other Party in each case. Notwithstanding this Section 11, either Party may publicly use the other Party's name and logo to refer to the other Party as a vendor or customer as the case may be, such use to comply with any applicable usage guidelines that are published or made available by the other Party upon request.

c. Each Party and recipient agrees to maintain the confidentiality of the Confidential Information, to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this



MSA. Upon request of either Party or on termination or expiration of this MSA, each Party shall return the Confidential Information of the other Party then in its possession. Nothing in this MSA shall prohibit or limit either Party's use of information which (a) is now, or hereafter becomes, publicly known or available through lawful means; (b) was already rightfully in Receiving Party's possession, as evidenced by Receiving Party's records; (c) is disclosed to the Receiving Party without confidential or proprietary restriction by a third party who rightfully possesses and rightfully discloses the information; (d) is independently developed by the Receiving Party without any breach of this MSA; or (e) is the subject of a written permission to disclose provided by the Disclosing Party

d. Either Party may make disclosure as required by a court order or as otherwise required by law or in any legal or arbitration proceeding relating to this MSA. If either Party is required by law or by interrogatories, requests for information or documents, warrants, subpoenas, civil investigative demands or similar process to disclose the provisions of this MSA, it will provide the other Party with prompt prior notice of such request or requirement (if not prohibited by the document/information demand) so that such Party may seek an appropriate protective order and/or waive compliance with this Section. The Party whose consent to disclose information is requested shall respond to such request, in writing, within five (5) working days of the request by either authorizing the disclosure or advising of its election to seek a protective order, or if such Party fails to respond within the prescribed period the disclosure shall be deemed approved. Fibertown's practices and policies regarding treatment of warrants, subpoenas, civil investigative demands or similar process requiring access to or disclosure of Customer Equipment or Stored Information are contained in the Facility Rules and Regulations posted on Fibertown's website under "Resources".

11. General Provisions

a. No Third-Party Beneficiary. It is the explicit intention of the parties hereto, that no person or entity other than the parties and their respective successors and assigns has or shall accrue any rights under or by virtue of this MSA or be entitled to bring any action to enforce any provision of this MSA against either of the parties.

b. Relationship of the Parties. Customer and Fibertown are, and shall remain, independent contractors. Neither Party will have the authority to make any representations, claims or warranties of any kind on behalf of the other Party or on behalf of such Party's licensors or supplier.

c. Force Majeure. Except with respect to any payment obligations, neither Party will be liable for any failure or delay in its performance under the Agreement due to causes beyond its reasonable control. In the event that Fibertown is not able to deliver any Service(s) as a result of a force majeure event, Customer shall not be obligated to pay Fibertown for the affected Service(s) for so long as Fibertown is unable to deliver the affected Service(s).

d. Notices. All notices hereunder shall be delivered personally or emailed, and shall be sent to the parties at the following addresses (or at such other address for a Party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof).

Notices to Fibertown:

FIBERTOWN DC, LLC

2501 Earl Rudder Freeway South, Suite 100
College Station, TX 77845

Attention: Business Office
Telephone: 979-393-9100
Email: info@fibertown.com

Notices to Customer:

Fort Bend County Information Technology
Department

301 Jackson Street
Richmond, Texas 77469

Attention: Information Technology Director
Telephone: 281-341-4588
Email: clay.elliott@fortbendcountytexas.gov





i. Such notice will be effective, (a) if sent by email on the date of transmission unless transmitted after normal business hours, in which case on the following date; or (b) as of the date delivered, if personally delivered.

e. Waiver. Any waiver of any right or default hereunder shall be effective only if given in writing and shall not operate as or imply a waiver of any similar or other right or default on any subsequent occasion.

f. Severability and Reformation. The Parties intend to make this MSA severable. If any clause, provision, section, sentence, or other portion of this MSA is found to be inapplicable, invalid, void, unconstitutional, illegal, contrary to public policy, or unenforceable by law to any circumstance or person, the Parties intend that the remainder of this MSA will nonetheless continue to be in full effect, provided that the purpose of this MSA is not impacted in a manner that is adverse to either Party. In the event that any term or clause in this MSA is regarded as inapplicable, invalid, void, unconstitutional, illegal, contrary to public policy, or unenforceable by law to any circumstance or person, the Parties shall attempt to negotiate in good faith to revise the MSA to impact its purpose in such a way that it will be as acceptable to both parties as possible.

g. Governing Law/Venue. This MSA shall be governed by and construed in accordance with the laws of the State of Texas, without reference to choice of laws or conflict of laws principles that might otherwise refer construction or interpretation of this MSA to the substantive law of another jurisdiction. Any claim or action arising out of or relating to this MSA shall be filed only in the courts of Brazos County, Texas. The Parties agree and consent to the exercise of personal jurisdiction of the federal and state courts located therein and expressly waive any right they might otherwise have to challenge any such proceeding on the basis of forum non-convenience.

h. IP Address Ownership. Fibertown shall maintain and control ownership of all IP addresses and addresses that may be assigned to Customer by Fibertown. Fibertown shall not change or remove any such IP numbers or addresses without the written consent of Customer, which shall not be unreasonably withheld.

i. Intellectual Property. Both parties represent and warrant to the other that their actions under this MSA shall not knowingly infringe the intellectual property or other proprietary rights of the other Party or any third party. Customer further acknowledges that all right, title and interest in any and all technology provided by Fibertown to Customer, including the software that is part of or provided with the Services, and any trademarks or service marks of Fibertown (collectively, "Fibertown Intellectual Property") is vested in Fibertown and/or in Fibertown's licensors. Fibertown acknowledges that Customer business and Customer information and Customer software and technology and Customer claimed trademark, patent and copyrights (collectively, the "Customer Intellectual Property") shall remain the property of Customer and are not transferred or licensed hereunder. Unless otherwise specifically provided in this MSA, neither Party shall have right, title, claims or interest in or to the other Party's Intellectual Property and may not copy, modify or translate the other Party's Intellectual Property or related documentation, or decompile, disassemble or reverse engineer such Intellectual Property.

i. Unless otherwise specifically provided in this MSA, both parties are not authorized to distribute or to authorize others to distribute the other Party's Intellectual Property in any manner without the prior written consent; provided, however, that nothing in this sentence would preclude from using the other's Intellectual Property as incorporated in the Services. This Section shall not operate to extinguish, restrict, vary, waive or affect in any manner whatsoever any right, title or interest which Customer may now have or hereafter acquires in, or in relation to, the third-party software that is part of or provided with the Services solely to the extent such third-party licensors publicly provide such rights, title or interest in the third-party software to Customer.

j. Entire MSA. The MSA, Rules and Regulations, Acceptable Use Policy, Privacy Policy, Service Order(s), and Incorporated Terms referenced herein and made a part of this MSA constitute the entire MSA between the Parties pertaining to the subject matter hereof and supersedes all prior or contemporaneous, written or oral negotiations, MSAs, negotiations, correspondence and understandings between the parties respecting the subject matter of this MSA. Service Orders may be modified only by an instrument in writing duly executed by both parties. The Section headings in this MSA are inserted for convenience of reference only and shall not be used in interpreting this MSA.



k. Survival. The rights and obligations of the parties in this MSA that would by their nature or context be intended to survive the expiration or termination of this MSA shall so survive, even if not so designated in this MSA.

l. Subordination. Customer's rights under this MSA shall be subordinate to any bona fide mortgages, loans, deeds of trust, or any other encumbrance upon the real or personal property that may be incurred by Fibertown. Customer shall sign any such reasonable documents as are necessary to satisfy any lender, private or institutional, to reflect said subordination.

m. Attorney's Fees. If either Party commences an action against the other Party arising out of or concerning this MSA, the prevailing Party in such litigation shall be entitled to reasonable attorney's fees and costs in addition to such other relief as may be awarded.

n. Leasing Agent Commissions. Fibertown shall not be responsible for the payment of commissions to any broker or agent in the absence of any written agreement binding Fibertown to do so.

o. Subcontracting and Transfer. Fibertown may permit any other Fibertown Affiliate, independent contractor or other third party, to perform any of Fibertown's obligations hereunder, provided that Fibertown remains primarily liable for the performance of its obligations. Fibertown may transfer this Agreement or any of its rights and obligations hereunder with notice to Customer. Customer may transfer this Agreement or any of its rights and obligations hereunder to an Affiliate or to an entity which is acquiring all or substantially all of Customer's business or assets with prior notice to Fibertown, and in all such events the person or entity to whom this Agreement is assigned by Customer must agree in writing to be bound by all of the terms of this Agreement. This Agreement will be binding upon and inure to the benefit of all successors and permitted transferees of the Parties, who will be bound by all of the obligations of their predecessors or transferors.



IN WITNESS WHEREOF, the parties hereto have executed this MSA on the date indicated below.

FIBERTOWN DC, LLC

Nancy Finney

By: [Nancy Finney \(Nov 26, 2024 10:12 CST\)](#)

Name: Nancy Finney
Title: CRO

Date: Nov 26, 2024

Fort Bend County

By: _____

Name: KP George
Title: County Judge

Date:



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Exhibit A

	FIBERTOWN DC, LLC Data Center 110 N Main St Bryan, TX 77803 Service Order
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Fees and Charges

Fibertown shall provide the following Services and equipment, and Customer agrees to pay the fees and charges set forth below:

Colocation

Qty	Description	Total NRC Fee	MRC Each	Total MRC
3	Oversized cabinet in shared colocation (not to exceed 24" width x 48" depth)	\$1,500.00		Included
1	New Customer Discount	\$(1,500.00)		
Total		\$0.00		0.00

Electrical

Qty	Description	Total NRC Fee	MRC Each	Total MRC
16	kW Electrical Allowance and Utilization	\$1,500.00	\$260.00	\$4,160.00
3	A-B Basic PDU pairs	\$1,500.00	Included	Included
1	New Customer Discount	\$(3,000.00)	-	-
Total		\$0.00		\$4,160.00

Telecommunications

Qty	Description	Total NRC Fee	MRC Each	Total MRC
1	1 Gbps Multi Peer Bandwidth	-	\$500.00	\$500.00
1	/29 IP Block	-	Included	Included
Total		\$0.00		\$500.00

Total NRC	\$0.00	Total MRC	\$4,660.00
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Fees & Surcharges

Fibertown reserves the right to recover electrical fuel surcharges or reasonable costs associated with operating on generator power or special cooling other than normal utility power, standard designed cooling components or other services to maintain the SLA's or other Fibertown obligations under the MSA.

When an increase in Fibertown's Third Party Service cost occurs, Fibertown may change the fee for said Third Party Service by such increased cost.

Term

Term will be 60 months following the Service Commencement Date.

Service Commencement Date: January 1, 2025





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Annual Escalator: 3% after twelve (12) months and every twelve (12) months thereafter except where a change in Fibertown’s direct electrical supply costs exceeds the Annual Escalator value listed above, then Fibertown may change the fee for power Services by such increased cost.

Customer Contact Information:

	<u>Name</u>	<u>E-mail</u>	<u>Phone #</u>
Technical	Clayton Elliott	clay.elliott@fortbendcountytexas.gov	281-341-4588
Accounting	IT Accounting	It_invoices@fortbendcountytexas.gov	281-341-4590

Additional Services

Mutually agreed upon, contracted project-based services are available at a rate of \$125 per hour.

Special Conditions

If one (1) additional PDU pair is required for the initial service, Fibertown will include at no additional cost.

Fibertown is a TIPS Awarded Vendor, TIPS Member ID: 9124 - Fibertown Holdings, LLC – Contract #230302, Data Center Hosting, Sales, and Service.

APPROVED:

FIBERTOWN DC, LLC

By: *Nancy Finney*
Nancy Finney (Nov 26, 2024 10:12 CST)
Name: Nancy Finney
Title: CRO
Date: Nov 26, 2024

Fort Bend County

By: _____
Name: KP George
Title: County Judge

Date: _____



Definitions

The following Definitions apply to this Master Services Agreement:

“Colocation” refers to any data center space with secured access, raised floor, redundant power, specialized cooling and other facility infrastructure operated by Fibertown.

“Colocation Space” shall refer to the Fibertown’s location set for Customer Equipment.

“Confidential Information” means any information owned or disclosed by or on behalf of a Party or any of its affiliates (the “Disclosing Party”) that: (a) is marked as confidential, proprietary, or with a similar legend; (b) is otherwise confirmed to be confidential or proprietary; or (c) the Party or its affiliate receiving the information (the “Receiving Party”) should reasonably believe to be confidential based upon its content, including, without limitation, network configurations or maps, trade secrets, technical solutions, or specifications, business or marketing strategies or plans, pricing or other terms, methodologies, information pertaining to other FIBERTOWN customers, employees or consultants, the existence of this MSA, the provisions of this MSA and/or other such specific information disclosed during the course of negotiations or the conduct of business between the parties. Confidential Information will include information of a third party that the Disclosing Party may disclose only under a confidentiality MSA.

“Cross-Connect” is a physical, hardwired cable that provides a direct connection between two different termination locations within the data center premises. For purposes of this MSA a cross-connect can be used to connect Customer’s Equipment to Fibertown or a third-party’s equipment within the premises. The physical cross-connect can be fiber, coaxial or copper. Cross-connects will be provided only in conformance with industry standard and in particular ANSI/TIA-568.0-D, Generic Telecommunications Cabling for Customer Premises, ANSI/TIA-568.1-D, Commercial Building Telecommunications Cabling Standard, ANSI/TIA-568-C.2, Balanced Twisted-Pair Telecommunication Cabling and Components Standard, ANSI/TIA-568.3-D, Optical Fiber Cabling And Components Standard and/or NSI/TIA-568-C.4, Broadband Coaxial Cabling and Components Standard, as applicable to the particular cross-connect desired by the Customer and its intended use. Each cross-connect will be extended to one or more Interconnection Points in the premises,

“Customer” shall refer to the Customer set forth in the MSA introduction and cover page along with its contractors, vendors, representatives, employees, subcontractors, agents, invitees and users. Depending on context it may also refer to other licensees or occupants.

“Customer Equipment” or “Equipment” shall refer to Equipment installed at the Premises not provided to Customer by Fibertown.

“Customer Software” shall refer to software stored on the Customer Equipment.

“Contact” refers to an approved Contact person listed on the Contact Form for a particular Colocation facility user.

“Equipment” Hardware and associated software and any transmission up to the point of demarcation between the center and third-party transmission providers.

“Facility” refers to the Colocation and Mission Critical Workspace.

“Facility Environment” shall refer to the temperature and humidity levels maintained in the Colocation Space, more fully described in a Service Level MSA.

“Fibertown” shall refer to the Fibertown set forth in the MSA introduction and cover page, and may, depending on context, also refer to Fibertown’s personnel, contractors, Vendors, subcontractors, agents, and invitees when acting within the scope of their authority.



“Force Majeure” shall mean and refer to any cause or reason beyond the reasonable control of the Party obligated to perform hereunder, including, but not limited to, strike, labor trouble, judicial decision, governmental rule, regulations, ordinance, statute or interpretation, or fire, earthquake, storm, flood, civil commotion or failure or disruption of a utility’s services.

“Hazardous Materials” shall mean any explosives, radioactive materials, hazardous wastes, or hazardous substances, including without limitation substances defined as “hazardous substances” in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C § 9601-9657; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801-1819; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901-6987; or any other federal, state, or local statute, law ordinance, code rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials waste, or substances now or at any time hereafter in effect. “Hazardous Materials” shall not include diesel fuel stored on the premises for generator operation, fire suppression extinguishing agents, batteries or other materials used or stored in the normal course of operation of the data center.

“Intellectual Property” shall refer to creations of the mind, such as inventions, configurations, designs and symbols, names and images created by a Party to the MSA, not to be infringed upon by the other Party.

“Interconnection Point” is a location in the premises where connecting hardware for the purpose of facilitating the direct connection of one cable to another cable is available. The interconnection method can be manual or electronic.

“Internet Connectivity” is Internet access provided to the Customer by Fibertown.

“Landlord” shall refer to the Party that owns the Premises managed by Fibertown.

“Mission Critical Workspace” refers to any area within FIBERTOWN that houses, controls, operates, or supports the Colocation space or tenant space critical facilities and Colocation areas.

“MRC” or “Monthly Recurring Charge” shall refer to the monthly charges for Services described within this MSA, fully detailed in the Service Order.

“MSA” shall mean this Colocation License Master Services Agreement and all schedules, exhibits, riders, amendments, and addenda to this MSA.

“NRC” or “Non Recurring Charge” shall refer to the non-recurring, one time charges for Services described within this MSA, fully detailed in the Service Order.

“Order” shall mean a written request or MSA for one or more specific services, including but not limited to the original Service Order, that has been accepted in writing by both parties.

“Party” or “Parties” shall refer to a person, company or entity subscribing to and bound by this MSA.

“Policies” shall include all Rules and Regulations, Acceptable Use Policy, Privacy Policy and any other additional policies incorporated by reference and are posted on Fibertown’s website under Resources./Incorporated Terms

“Premises” shall mean and refer to the Fibertown location set forth in the MSA.

“Rules and Regulations” shall refer to the listing of practices, policies, rules and regulations listed set out in the Facility Rules and Regulations posted on Fibertown’s website under “Resources.”

“Service Commencement Date” shall refer to the date Customer’s service is to begin pursuant to the stated term in the applicable Service Order.



“Service Level Agreement” or “SLA” shall refer to the applicable Service Level Agreement, describing the levels of service Fibertown shall provide to Customer.

“Service Order Form” shall refer to the form attached as Exhibit A that will be used to create an effective Service Order. An effective Service Order will include any necessary purchase order number, detail the Services Fibertown is to provide to Customer, include fees and charges for such Services, state the Term of the MSA, include any special contract provisions to be noted and contain the signatures of both Parties.

“Services” shall refer to all colocation, connectivity and related services provided to Customer by Fibertown within the scope of this MSA.

“Stored Information” shall refer to data stored on the Customer Equipment, located at the Premises.

“Term” shall mean and refer to the period described in the applicable Service Order.

“Termination Liability” shall be equal to any and all outstanding balances for Services contracted with Fibertown and/or third parties associated with this MSA and 100% of the Monthly Recurring Charges for any and all terminated Service(s) multiplied by the number of full months remaining in the Term commitment and is due upon termination.

“Third Party Services” shall refer to any service provided by a third party to Customer. Fibertown does not provide any warranty for such pass-through type services.

“Vendor” refers to all Customer or Fibertown hired personnel, contractors, subcontractors, agents, and invitees.