

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

ADDENDUM TO SUBSCRIPTION AND SERVICES AGREEMENT

THIS AMENDMENT is entered into by and between Fort Bend County, (hereinafter "Customer"), a body corporate and politic, and SkyFiber, Inc., (hereinafter "SkyFiber"), a company authorized to conduct business in the State of Texas.

THAT, WHEREAS, the parties have executed and accepted that certain Subscription and Services Agreement and the related Order Forms, (hereinafter the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

1. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, Customer cannot enter into an agreement whereby Customer agrees to indemnify or hold harmless another party; therefore, all references of any kind to defending, indemnifying, holding or saving harmless for any reason are hereby deleted. The penalties and remedies provided by agreement do not limit common law remedies of tort, contract, or equity, including a suit for damages, injunction, or mandamus.
2. **Attorney Fees.** Customer does not agree to pay any and/or all attorney fees incurred by SkyFiber in any way associated with the Agreement.
3. **Payment.** Payment shall be made by Customer within thirty (30) days of receipt of invoice.
4. **Taxes.** Customer, 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.
5. **Confidential Information.** SkyFiber expressly acknowledges that Customer 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, Customer 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 Customer by SkyFiber 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.
6. **Applicable Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas. Venue shall lie in Fort Bend County, Texas, for any suit regarding the Agreement.
7. **Non-appropriation.** 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.

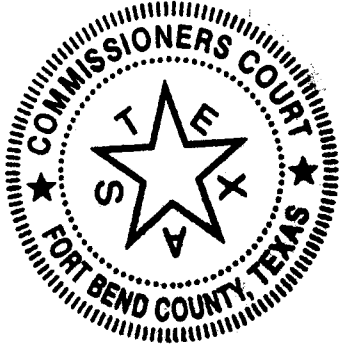
8. **Insurance.** Prior to commencement of the services, SkyFiber shall furnish Customer with evidence of all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to Customer. SkyFiber shall maintain such insurance coverage from the time services commence until services are completed. SkyFiber shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas.
- a. SkyFiber shall obtain such insurance of the following types and minimum limits:
 - i. Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - ii. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 - iii. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - iv. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
 - b. Customer and the members of Commissioners Court shall be named as additional insured to all required coverage. All Liability policies written on behalf of SkyFiber shall contain a waiver of subrogation in favor of Customer and members of Commissioners Court.
 - c. If required coverage is written on a claims-made basis, SkyFiber warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

SKYFIBER, INC.

By:


Authorized Agent – Signature

MARK A. DOUCET
Authorized Agent – Printed Name



Title: Mike J. Rouse, CTO
Date: 2/24/2011

FORT BEND COUNTY

By: Robert E. Hebert
Robert E. Hebert, County Judge

Date: March 1, 2011

ATTEST:

Dianne Wilson
Dianne Wilson, County Clerk
FORT BEND
COUNTY

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 55,000.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant
Robert Ed Sturdivant, County Auditor

EXHIBIT A



Subscription and Services Agreement

This Subscription and Services Agreement (the "**Agreement**") is entered into and effective as of the ____ day of _____, 2011 (the "**Effective Date**") by and between SkyFiber, Inc., a Delaware corporation, having its principal place of business at 3125 South Texas Ave., Suite 1900, Bryan, Texas 77802 ("**SkyFiber**"), and Fort Bend County, a county government entity, having its principal place of business at 301 Jackson St., Richmond, TX 77469 ("**Customer**").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

- 1.1 "Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the Customer entity signing this Agreement. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.2 "Customer Data"** means all hardcopy or electronic data or information submitted by Customer to the Service.
- 1.3 "Delivery Date"** means the date set forth in an applicable Order Form.
- 1.4 "Installation Service"** means the installation services provided by SkyFiber as described more fully in an applicable Order Form and Statement of Work.
- 1.5 "Network Design Service"** means certain consulting, implementation and technical services provided by SkyFiber as described more fully in an applicable Order Form and Statement of Work.
- 1.6 "Order Form"** means an ordering document executed by the parties that specifies the Service and the Professional Services purchased by Customer under this Agreement. Each Order Form shall incorporate this Agreement by reference.
- 1.7 "Premium Support Service"** means certain services in addition to Support Services provided by SkyFiber as described more fully in an applicable Order Form and Statement of Work.
- 1.8 "Professional Services"** means the Installation Service, Network Design Service, Premium Support Service, Support Service, and Training Service as outlined in this Agreement. Professional Services shall not include the Service or Travel Expenses.
- 1.9 "Service"** means the delivery of bandwidth through SKYFIBER equipment allowing distribution of voice and data transmission. The Service shall not include the Professional Services.
- 1.10 "SkyFiber's Equipment"** means the equipment provided by SkyFiber used to provide the Service.
- 1.11 "SkyFiber Materials"** means any materials that SkyFiber provides to Customer as part of, or in the course of providing, the Service or the Professional Services. Customer agrees that SkyFiber's Materials are SkyFiber's Confidential Information, as defined in Section 6. Customer shall use the SkyFiber Materials only as expressly permitted in this Agreement, or the applicable Order Form or Statement of Work.
- 1.12 "Spare Units"** means a single CST and a single OLU manufactured by SKYFIBER and the related accessories thereto, to be used solely as replacement parts in their existing SkyFiber production environment and not as new network production or expansion installation.
- 1.13 "Statement of Work"** means a document executed by the parties that describes the Network Design Service, Training Service, Premium Support Service, and Support Service purchased by Customer under this Agreement pursuant to the applicable Order Form. Each Statement of Work shall incorporate this Agreement by reference.
- 1.14 "Subscription Term"** means the period identified in the Order Form during which Customer is authorized to use or access the Service pursuant to the terms set forth in this Agreement, unless earlier terminated as set forth in Section 10 herein.

1.15 "Support Service" means the support services provided by SkyFiber as described more fully in an applicable Order Form and Statement of Work.

1.16 "Training Service" means education and training services provided by SkyFiber as described more fully in an applicable Order Form and Statement of Work.

2. Service.

2.1 Provision of Service. SkyFiber shall make the Service available to Customer pursuant to this Agreement and all Order Forms during the Subscription Term, solely for Customer's own internal business purposes. Customer agrees that its purchase of the Service or the Professional Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SkyFiber with respect to future functionality or features.

2.3 Customer Affiliates. Customer Affiliates may use the Service and Professional Services subject to the terms of this Agreement by executing Order Forms or Statements of Work, as applicable, hereunder.

3. Mutual Rights and Responsibilities.

3.1 Customer's Responsibilities. Unless Customer purchases the applicable Professional Services from SkyFiber or a SkyFiber Certified Partner, Customer is responsible for the installation and set up of SkyFiber's Equipment, the support, maintenance, repair of SkyFiber's Equipment, and the training of the Customer's staff to use and operate SkyFiber's Equipment. Customer shall comply with all applicable laws in using the Service. Customer shall provide SkyFiber with remote access to SkyFiber's equipment for a period of sixty (60) calendar days after the commencement of service so that SkyFiber may monitor the performance of the service. Upon the termination of this Agreement, Customer shall return SkyFiber's Equipment to SkyFiber in good working order subject only to normal wear from normal usage.

3.2 SkyFiber's Responsibilities. SkyFiber shall: (i) deliver SkyFiber's Equipment to Customer F.O.B. at Customer's destination; and (ii) provide any Professional Services purchased by domestic Customer pursuant to this Agreement, Order Form, and Statement of Work. International shipments shall be addressed in the Statement of Work.

3.3 Use Guidelines. Customer shall use the Service solely for its own internal business purposes during the Subscription Term as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign (except as permitted in 11.6), distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than to its employees or as otherwise contemplated by this Agreement; (ii) use the Service to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) use the Service to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third-party privacy rights; (iv) upload to the Service or use the Service to send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs (collectively, "Malicious Code"); (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.

3.4 Publicity. Either party may issue press releases relating to this Agreement with the other party's prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors and indicate the specific release of the Service purchased by Customer.

3.5 SkyFiber's Equipment.

3.5.1 Title to Equipment. SkyFiber shall retain title to all of SkyFiber's Equipment.

3.5.2 No Encumbrances. Customer agrees not to pledge or encumber any of SkyFiber's Equipment. Customer shall notify any and all landlords, and lenders that hold general security interests against the Customer's personal property, that the Customer earns no interest in SkyFiber's Equipment, even though SkyFiber's Equipment is located and maintained in and on Customer's properties and facilities. In the event that any of the Customer's creditors claim a lien against SkyFiber's Equipment, Customer agrees to cooperate in defending SkyFiber's title.

3.5.3 Removal of Equipment. Upon the termination of this Agreement, Customer shall return SkyFiber's Equipment in good working order subject only to normal wear from normal usage. SkyFiber will be granted access to the Customer's properties and facilities in order to disassemble and remove all of SkyFiber's Equipment. Customer will cooperate with SkyFiber in the removal of this Equipment.

3.5.4 Customer's Risk of Loss. Customer assumes the risk of loss to SkyFiber's Equipment, and agrees to indemnify and hold SkyFiber harmless, in the event of (i) an act of God; (ii) acts of vandalism and or theft by third

parties; (iii) adjustments, modifications, maintenance, and or repairs to SkyFiber's Equipment performed by Customer's employees, agents, representatives, invitees, and guests (iv) casualty caused by the negligence, gross negligence, or intentional acts of the Customer; and (v) acts of vandalism and or theft by the Customer's employees, agents, representatives, invitees, and guests.

3.5.5 Spare Parts. SkyFiber shall make Spare Units available to Customer pursuant to the appropriate Order Forms during the Subscription Term, solely for Customer's convenience, in order to permit the Customer to efficiently replace parts as needed, at the sole cost and expense of Customer or based upon the level of support purchased by Customer. Upon the termination of this Agreement, Customer shall return SkyFiber's Spare Units in good working order subject only to normal wear from normal usage.

4. Fees and Payment.

4.1 Fees. Customer shall pay all fees specified in all Order Forms and Statements of Work executed by the parties hereunder. Except as otherwise specified herein or in any Order Form or Statement of Work, all fees are quoted and payable in United States dollars in Dallas, Texas, payment obligations are non-cancelable, and fees paid are non-refundable. Fees for the Service are based on Subscriptions purchased and not actual usage. The number of Subscriptions purchased cannot be decreased during a Subscription Term.

4.2 Invoicing and Payment. Except as otherwise specified in an Order Form or Statement of Work, all fees and charges under this Agreement will be invoiced in advance and are due net thirty (30) days from the invoice date. Customers located outside of the U.S. shall submit payment to SkyFiber via wire transfer. Customer is responsible for providing complete and accurate billing address and contact information to SkyFiber. If Customer believes a particular invoice is incorrect, Customer must contact SkyFiber in writing within sixty (60) days of such invoice date to be eligible to receive an adjustment or credit.

4.3 Overdue Payments. Any payment not received by SkyFiber by the due date and not subject to a reasonable and good faith dispute may accrue, at SkyFiber's option, late charges at the lesser of 1.0% of the outstanding balance per month, or the maximum rate permitted by law, from the date such payment was due until the date paid.

4.4 Suspension of Service. If Customer's account is thirty (30) days or more overdue (except for charges then under reasonable and good faith dispute), then, in addition to any of its other rights or remedies, SkyFiber reserves the right to suspend Customer's access to the Service, without liability to Customer, until such amounts are paid in full. Upon ten (10) days notice, Customer at its sole expense shall return and ship to SkyFiber all of SkyFiber's Equipment in good working order. In the event that Customer fails to return SkyFiber's Equipment, then SkyFiber is hereby granted the right of entry and access to uninstall and retrieve all of SkyFiber's Equipment.

4.5 Taxes. Unless otherwise stated, SkyFiber's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on SkyFiber's net income or property. If SkyFiber has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides SkyFiber with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. Proprietary Rights.

5.1 License. Subject to the terms of this Agreement and the applicable Order Form, SkyFiber grants Customer a nonexclusive, nontransferable license to access and use the Service during the Subscription Term solely for Customer's internal business purposes. For its part, Customer grants SkyFiber a nonexclusive, nontransferable license to access and use the Customer Data to provide the Service to Customer and its Subscribers.

5.2 Reservation of Rights. Except for the limited rights expressly granted to Customer hereunder, SkyFiber reserves all rights, title and interest in and to the Service, SkyFiber's Equipment, the SkyFiber Materials, and the Professional Services, including all related intellectual property rights inherent therein. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement.

5.3 Restrictions. Customer shall not (i) modify, copy, display, republish or create derivative works based on the Service or SkyFiber's Equipment; (ii) modify, copy or create derivative works of the SkyFiber Materials; (iii) frame, scrape, link to or mirror any content forming part of the Service, other than on Customer's own intranets or otherwise for its own internal business purposes; (iv) reverse engineer the Service or the SkyFiber's Equipment; or (v) access the Service in order to (A) build a competitive product or service, (B) build a product using similar ideas, features, functions or graphics of the Service or SkyFiber's Equipment, or (C) copy any ideas, features, functions or graphics of the Service or SkyFiber's Equipment.

5.4 Customer Data. As between SkyFiber and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer Data is deemed the Confidential Information of Customer under this Agreement. SkyFiber shall not access Customer's Subscriber accounts, including Customer Data, except to respond to service or technical problems, confirm compliance with the terms of this Agreement to provide the Service or Professional Services under this Agreement, or otherwise at Customer's direction or request. SkyFiber shall not be responsible or liable for the deletion, alteration, destruction, damage, loss or failure to store any Customer Data.

5.5 Suggestions. SkyFiber shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer relating to the features, functionality or operation of the Service, or the Professional Services.

6. Confidentiality.

6.1 Definition of Confidential Information. As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms and Statements of Work hereunder), the Customer Data, the Service, the SkyFiber Materials, and each party's respective business and marketing plans, technology and technical information, product designs, and business processes. The obligations in this Section 6 shall not apply to any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality; (iii) was independently developed by the Receiving Party without the use of or reference to the Confidential Information of the Disclosing Party; or (iv) is lawfully received from a third party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality.

6.2 Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

6.3 Protection. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

6.4 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure, to the extent legally permitted, and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6.5 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7. Warranties and Disclaimers.

7.1 Limited Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. SKYFIBER represents that SKYFIBER's Equipment is free from defects in materials or workmanship under normal use. SKYFIBER warrants the optical lens unit and the communication service terminal of SkyFiber's Equipment for the Subscription Term. SKYFIBER does not warrant the fiber or CAT5 cable purchased from SKYFIBER. This limited Warranty extends only to SkyFiber's Equipment purchased from SKYFIBER. This limited Warranty also does not extend to any SkyFiber Equipment that has been damaged or rendered defective (a) as a result of accident, misuse, or abuse; (b) as a result of an act of God, accident, fire, or hazard; (c) by operation outside the usage parameters stated in the Product's User's Guide; (d) by the use of parts not manufactured or sold by SKYFIBER; (e) by modification of the Product, or (f) as a result of an installation and/or service by anyone other than SKYFIBER's authorized agents. SkyFiber warrants that SkyFiber's Equipment will perform materially in accordance with SkyFiber's user guide under normal use and circumstances. Other than as stated herein, this Limited warranty does not create a warranty of merchantability or warranty of suitability for a specific purpose.

7.2 Remedies. Customer's exclusive remedy and SkyFiber's entire liability for a breach of the warranties set forth in Section 7.1 above shall be as follows: (i) for a breach of the warranty of good workmanship regarding the Professional Services, SkyFiber shall re-perform the applicable Professional Services, or if SkyFiber is unable to perform such Professional Services as warranted, Customer shall be entitled to recover the fees paid for the

nonconforming Professional Services; and (II) for a breach of the warranty that the Equipment is free from defects in materials and workmanship, Customer shall be entitled to have the Equipment repaired, or if SkyFiber is unable to satisfactorily repair the Equipment, then SkyFiber shall replace the Equipment.

7.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SKYFIBER MAKES NO WARRANTIES OF ANY KIND WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT (A) THE SERVICE DOES NOT CONSTITUTE THE PROVISION OF LEGAL ADVICE OR SERVICES IN ANY MANNER; (B) THE SERVICE DOES NOT ENSURE CUSTOMER'S COMPLIANCE WITH ALL APPLICABLE LABOR OR EMPLOYMENT LAWS; AND (C) CUSTOMER IS SOLELY RESPONSIBLE FOR ITS COMPLIANCE WITH ALL APPLICABLE LAWS.

8. Indemnification.

8.1 Indemnification by SkyFiber. Subject to this Agreement, SkyFiber shall defend, indemnify and hold Customer harmless against any loss, damage, liability or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits or proceedings ("Claims") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder directly infringes a U.S. patent, copyright, or trademark of a third party or misappropriates such third party's trade secrets. Upon receiving notice of a Claim, Customer shall (a) give SkyFiber prompt written notice of the Claim; (b) give SkyFiber sole control of the defense and settlement of the Claim (provided that SkyFiber may not settle or defend any claim unless it unconditionally releases Customer of all liability); and (c) provide to SkyFiber, at SkyFiber's cost, all reasonable assistance in the defense or settlement of such Claim. SkyFiber's indemnification obligation shall be offset to the extent its ability to defend or settle a claim is jeopardized by Customer's failure to comply with the preceding sentence. SkyFiber shall have no indemnification obligation for claims arising from any infringement arising from the combination of the Service with any of Customer's products, services, hardware or business processes or use of the Service by Customer other than in accordance with this Agreement or SkyFiber's online user guide.

If the Service is held or likely to be held infringing, SkyFiber shall have the option, at its expense to (i) replace or modify the Service as appropriate, (ii) obtain a license for Customer to continue using the Service, (iii) replace the Service with a functionally equivalent service; or (iv) terminate the Service and refund any prepaid, unused fees applicable to the terminated Service, if any. This Section 8.1 states SkyFiber's entire liability and Customer's exclusive remedy for any claim of intellectual property infringement.

8.2 Indemnification by Customer. Subject to this Agreement, Customer shall defend, indemnify and hold SkyFiber harmless against any loss, damage, liability or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against SkyFiber by a third party alleging that the Customer Data, or Customer's use of the Service in violation of this Agreement, infringes or otherwise violates such third party's property, privacy or other rights. Promptly upon receiving notice of a Claim, SkyFiber shall (a) give Customer prompt written notice of the Claim; (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases SkyFiber of all liability); and (c) provide to Customer, at Customer's cost, all reasonable assistance in the defense or settlement of such Claim. Customer's indemnification obligation shall be offset to the extent its ability to defend or settle a claim is jeopardized by SkyFiber's failure to comply with the preceding sentence. Customer shall defend, indemnify, and hold SkyFiber harmless against any loss, damage, liability, or cost resulting from an event described in Section 3.5.4 of this Agreement.

9. Limitation of Liability.

9.1 Limitation of Liability. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 3.3, 4.1, or 5.3, EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS IN SECTION 6, OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 8.1 AND 8.2 ABOVE, IN NO EVENT SHALL EITHER PARTY'S OR ITS LICENSORS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

9.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Term and Termination.

10.1 Term of Agreement. This Agreement commences on the Effective Date and continues until expiration of all subscriptions that are incorporated herein by an applicable Order Form.

10.3 Termination for Cause. A party may terminate this Agreement, an Order Form or a Statement of Work for cause: (i) if the other party is in material breach under this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice of such material breach from the non-breaching party; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors and such proceeding is not favorably resolved within sixty (60) days. This Agreement constitutes an executory contract in accordance with Section 365 of the U.S. Bankruptcy Code. If Customer files or has filed against it by a third party any petition under the U.S. Bankruptcy Code, Customer must either assume or reject this Agreement. Upon an assumption, Customer shall comply with 11 U.S.C. § 365(b)(1); upon a rejection, all of Customer's rights hereunder will terminate. Upon any termination for cause by Customer, SkyFiber shall refund to Customer any prepaid fees covering the remainder of the Subscription Term after the date of termination. Upon any termination for cause by SkyFiber, Customer's right to access or use Customer Data in the Service immediately ceases.

10.4 Outstanding Fees. Termination shall not relieve Customer of its obligation to pay any fees accrued or payable to SkyFiber relating to the Service or the Professional Services prior to the effective date of termination, and Customer shall immediately pay to SkyFiber all such fees upon the effective date of termination.

10.5 Surviving Provisions. The following provisions shall survive any termination or expiration of this Agreement: Sections 1, 3.3, 4.1, 4.2, 4.3, 4.5, 5.2, 5.3, 6, 7.1, 7.2, 7.3, 8, 9, 10.4, and 11.

11. General Provisions.

11.1 Export Control. Customer shall not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations that may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business, such as the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce, trade and economic sanctions maintained by the United States Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the United States Department of State.

11.2 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, and fiduciary or employment relationship between the parties.

11.3 Notice. All notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) the date sent by confirmed facsimile, (ii) on the date it was delivered by courier, or (iii) if by certified mail return receipt requested, on the date received, to the addresses set forth above and, if to SkyFiber, to the attention of President, and, if to Customer, to the attention of the signatory of this Agreement, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

11.4 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in full force and effect.

11.6 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms and Statements of Work), without the consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.7 Governing Law. This Agreement shall be governed exclusively by the internal laws of the state of Texas, without regard to conflicts of laws rules.

11.8 Venue; Waiver of Jury Trial. The state and federal courts governing Brazos County, Texas shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts and waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. Each party also hereby waives

any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

11.9 Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Order Forms and Statements of Work, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form or Statement of Work, the terms of such exhibit, addendum, Order Form or Statement of Work shall prevail. No terms or conditions set forth on any purchase order, preprinted form or document shall add to or vary the terms and conditions of this Agreement, and all such terms or conditions shall be null and void.

11.10 Counterparts. This Agreement and any Order Form or Statement of Work executed hereunder may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this Agreement as of the Effective Date:

SKYFIBER, INC.

By: _____

Print Name: _____

Title: _____

Date: _____

FORT BEND COUNTY

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT A



SKYFIBER

Order Form
SKYFIBER, INC.
3125 S. Texas Ave, Suite 1900
Bryan, TX 77802

Account Number: _____
Customer Name: Fort Bend County
Account Executive: Erik Mignault
Order Date: 02/10/2011

SF Project Number: 1110-130
Order Type: Subscription
Install Date: TBD
Subscription Term: 60 Months
Initial Payment Amount: _____

Bill To Name: Fort Bend County
Contact Name: Charles King
Bill To Address: 301 Jackson St.
Richmond, TX 77469
Email Address: charles.king@co.fort-bend.tx.us
Telephone: (281) 341-4584
Fax Number: _____
Invoice Method: Mail

Ship To Name: _____
Contact Name: _____
Ship To Address: _____
Payment Method: Purchase Order
Payment Terms: Net 30

LINK 2 - Travis Building to County Jail

SKYFIBER to provide Customer two (2) 100m SkyLINK-PLUS links for connectivity from the Travis Building to County Jail and County Jail to the OEM Building. Customer to purchase one (1) link pursuant to the Subscription & Services Agreement and the Purchase Terms listed below. The terms described below apply only to products being purchased under this Order Form.

- SKYFIBER agrees to waive the Standard Installation Fee* of \$3500.00, subject to the 60-Day Cancellation Clause described more fully below.
- For a period of 60 calendar days, commencing on the installation completion date, Customer may elect to cancel the service. Customer agrees to pay the installation Fee, plus Travel & Expenses, if service is cancelled during the 60-day period AND the Success Criteria, as defined below, are met. If Customer elects to cancel the service within the 60-day period AND the Success Criteria are not met, Customer is not liable for paying the Standard Installation Fee.
- For a period of 60 days, beginning on the installation completion date, SKYFIBER will waive the monthly subscription fee for this link. Unless Customer cancels the service within the 60-Day period, SKYFIBER will begin billing for this link at the rates defined below.
- Upon meeting the success criteria as defined below, Customer agrees to SKYFIBER's issuance of a press release relating to the deployment of the SkyLINK product to Customer at the end of the 60-Day period. Additionally, Customer agrees to provide information related to the deployment for purposes of SKYFIBER creating a White Paper for SKYFIBER's use. Customer reserves the right to review and approve any language contained in the press release or whitepaper prior to release.

Success Criteria:

- > Minimum of 95% of the advertised bandwidth available on the SkyLINK
- > 99.999% link availability at advertised bandwidth (allowing for proper failover to the RF backup link)
- > Seamless, automatic failover to the RF backup link when the OWB link is down or degraded
- > Seamless, automatic recovery to the OWB link when conditions improve
- > Automatic notification of changes in link connection (switch to RF backup or OWB link)

**Standard Installation does not include material, hardware, specialized labor/tools, which may be required to complete the installation. Upon completion of the site survey, SKYFIBER will communicate to Customer any "non-standard" charges that may be required.*

**SKYFIBER**

Order Form
SKYFIBER, INC.
3125 S. Texas Ave. Suite 1900
Bryan, TX 77802

<u>Item Number</u>	<u>Description</u>	<u>Qty.</u>	<u>Unit Price</u>	<u>TOTAL</u>
S-100MPLUS-60M	SkyLINK-PLUS 100M, Monthly Subscription, 60 Month Term	1	\$450.00**	\$450.00***
**SKYFIBER will waive the monthly subscription fee on the 2 nd link for a period of 60 days				
***includes current promo offer of 10% off of purchase if purchased before 2/15/2011.				
Monthly Subscription Total>>				\$450.00

<u>Item Number</u>	<u>Description</u>	<u>Qty.</u>	<u>Non-Recurring</u>	<u>TOTAL</u>
InstallLink	SkyLINK Standard Installation Fee Plus Travel & Expenses	1	See above	See Above

By checking this box, the customer acknowledges they are declining the spare part option. ☒

SKYFIBER or one of SKYFIBER's certified installation partners will perform installation.

Subscriptions and/or hardware ordered above shall be governed by the SKYFIBER Subscription and Services Agreement agreed to between the Customer and SKYFIBER upon commencement of service. Prices shown do not include any taxes that may apply. Any such taxes are the responsibility of the Customer.

SKYFIBER, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

FORT BEND COUNTY

Signature: _____
Printed Name: _____
Title: _____
Date: _____

**SKYFIBER**

Order Form
SKYFIBER, INC.
3125 S. Texas Ave, Suite 1900
Bryan, TX 77802

Account Number: _____
Customer Name: Fort Bend County
Account Executive: Erik Mignault
Order Date: 02/10/2011

SF Project Number: 1110-130
Order Type: Subscription
Install Date: TBD
Subscription Term: 60 Months
Initial Payment Amount: _____

Bill To Name: Fort Bend County
Contact Name: Charles King
Bill To Address: 301 Jackson St.

Ship To Name: _____
Contact Name: _____
Ship To Address: _____

Richmond, TX 77469

Email Address: charles.king@co.fort-bend.tx.us

Telephone: (281) 341-4584

Fax Number: _____

Invoice Method: Mail

Payment Method: Purchase Order

Payment Terms: Net 30

LINK 1 - County Jail to OEM Building

SKYFIBER to provide Customer two (2) 100m SkyLINK-PLUS links for connectivity from the Travis Building to County Jail and County Jail to the OEM Building. Customer to purchase one (1) link pursuant to the Subscription & Services Agreement and the Purchase Terms listed below. The terms described below apply only to products being purchased under this Order Form.

- Customer agrees to pay the applicable Installation Charges associated with this link at the end of the 60-Day period. If the success criteria, as defined below, is not met, Customer is not liable for paying the installation charge.
- For a period of 60 calendar days, commencing on the installation completion date, Customer may elect to cancel the service. Customer agrees to pay the Installation Fee, plus Travel & Expenses, if service is cancelled during the 60-day period AND the Success Criteria, as defined below, are met. If Customer elects to cancel the service within the 60-day period AND the Success Criteria are not met, Customer is not liable for paying the Standard Installation Fee.
- Upon meeting the success criteria as defined below, Customer agrees to SKYFIBER's issuance of a press release relating to the deployment of the SkyLINK product to Customer at the end of the 60-Day period. Additionally, Customer agrees to provide information related to the deployment for purposes of SKYFIBER creating a White Paper for SKYFIBER's use. Customer reserves the right to review and approve any language contained in the press release or white paper prior to release.

Success Criteria:

- > Minimum of 95% of the advertised bandwidth available on the SkyLINK
- > 99.999% link availability at advertised bandwidth (allowing for proper failover to the RF backup link)
- > Seamless, automatic failover to the RF backup link when the OWB link is down or degraded
- > Seamless, automatic recovery to the OWB link when conditions improve
- > Automatic notification of changes in link connection (switch to RF backup or OWB link)

**Standard Installation does not include material, hardware, specialized labor/tools, which may be required to complete the installation. Upon completion of the site survey, SKYFIBER will communicate to Customer any "non-standard" charges that may be required.*



SKYFIBER

Order Form
SKYFIBER, INC.
3125 S. Texas Ave, Suite 1900
Bryan, TX 77802

<u>Item Number</u>	<u>Description</u>	<u>Qty.</u>	<u>Unit Price</u>	<u>TOTAL</u>
S-100MPLUS-60M	SkyLINK-PLUS 100M, Monthly Subscription, 60 Month Term	1	\$450.00**	\$450.00
**includes current promo offer of 10% off of purchase if purchased before 2/15/2011.				
Monthly Subscription Total>>				\$450.00

<u>Item Number</u>	<u>Description</u>	<u>Qty.</u>	<u>Non-Recurring</u>	<u>TOTAL</u>
InstallLink	SkyLINK Standard Installation Fee	1	See above	See Above

By checking this box, the customer acknowledges they are declining the spare part option. ☒

SKYFIBER or one of SKYFIBER's certified installation partners will perform installation.

Subscriptions and/or hardware ordered above shall be governed by the SKYFIBER Subscription and Services Agreement agreed to between the Customer and SKYFIBER upon commencement of service. Prices shown do not include any taxes that may apply. Any such taxes are the responsibility of the Customer.

SKYFIBER, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

FORT BEND COUNTY

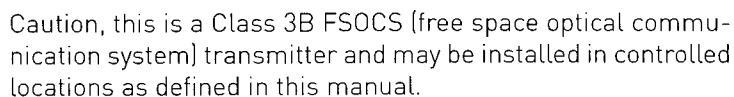
Signature: _____
Printed Name: _____
Title: _____
Date: _____

When discussing potential laser eye safety hazards, accessibility to any laser device is the most important factor. For example, the common laser pointer poses a much greater risk for causing eye damage than any SKYFIBER laser device. Our systems are not installed where they are easily accessible by the public, as is the case of a laser pointer which is used in close proximity to people and often at eye level. In fact, it would be a difficult task for most people to gain access to the common SKYFIBER system because the units are often mounted on rooftops or other difficult-to-reach places to prevent communication interruption from anyone or anything, including maintenance personnel.

- **Shutters** -The CST is equipped with shutters on the adapter that block radiation emitting from the CST when the ICC Fiber is removed. This provides additional safety for the installation team.
- **CST Safety Lock** - A clamp, requiring specialized tools to remove, is placed over the ICC Fiber connection at the CST to prevent end users from accidentally or intentionally looking directly into the laser source.
- **OLU Back Plate** - A back plate, covering the access to the ICC Fiber connection at the OLU requires a special tool to remove. It prevents end users from accidentally or intentionally looking directly into the laser source.

The International Electrotechnical Commission (IEC) standard insists on clear labeling of the Optical Wireless Broadband device to warn of laser usage and any potential eye-safety concerns in both the SkyLINK Users Guide and Implementation Guide and on the product itself. The label and warning requirements of the IEC standards are included below.

Class 3B lasers are hazardous to the eye when viewed directly, even when taking aversion responses to light into account. However, scattered light is typically safe to the eye. Higher power 3B lasers are a hazard to the skin, but the natural aversion response to localized heating typically prevents skin burns. Consider UV eye protection when working with 3B Lasers.



Part 2 - Installation Process

Chapter 5	CST Installation	28
	Install the CST Mount	28
	Place the CST	29
	Run Power to the CST Mount	29
	Ground the CST	29
	Cable Management	29
Chapter 6	System Turn-Up	31
	Begin a Terminal Session With Logging	31
	Connecting to the CLI with a Craft Cable	33
	Verify Auto-Tracking	34
	Activate System Laser	34
	Verify X & Y Coordinates	35
	Verify Laser Output	36
Chapter 7	OLU Mount Installation	38
	Assemble the Mount	38
	Fasten Mount to the Structure (Penetrating Mounts)	38
	Apply Roof Protection (Non Penetrating Mounts)	38
	Apply Ballast (Non Penetrating Mounts)	38
	Level the Mount	38
	Attach the Universal Pipe Adapter	39
Chapter 8	OLU Attachment and Coarse Alignment	41
	Attach the OLU	41
	Ground the OLU	41
	Remove Shipping Stabilizers	41
	Coarse Alignment Techniques	42
	Coarse Alignment Process	43
	Mount Assessment	43
Chapter 9	ICC Installation	45
	Pull the ICC	45
	Clean the ICC Fiber	45
	Test the ICC Fiber	46
	Test the ICC CAT5e	47
	ICC Labeling	48
	Field Termination	48
	Cable Management	48