

**WIRED TELECOMMUNICATIONS LICENSE AND
RIGHT-OF-WAY USE AGREEMENT BETWEEN
THE CITY OF GLENDALE
AND VEXUS FIBER, LLC D/B/A
METRONET**

This Wired Telecommunications License ("License") and Right-of-Way Use Agreement ("Agreement") is effective as of this _____, by and between the City of Glendale, an Arizona municipal corporation ("City") and VEXUS FIBER, LLC, a Delaware limited liability company d/b/a Metronet ("Licensee").

RECITALS

WHEREAS, City owns public street and alley right-of-way and public utility easements within the boundaries of the City of Glendale; and

WHEREAS, VEXUS FIBER, LLC has obtained from the Arizona Corporation Commission a certificate of convenience and necessity by Decision No. 78915 dated April 27, 2023 (the "CC&N"); and

WHEREAS, VEXUS FIBER, LLC desires the ability to be able to install future Facilities within the right- of-way and operate, maintain and repair existing Facilities within a portion of the right-of- way, subject to the requirements of this License and Agreement; and

WHEREAS, VEXUS FIBER, LLC has applied to City for permission to continue using the right-of-way to maintain its existing Fiber Optic Networks and provide Telecommunication Services; and

WHEREAS, City is authorized to regulate its streets, alley and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of such Facilities within the City's boundaries pursuant to City Charter, Glendale City Code, and by virtue of federal (47 U.S.C. § 253) and state statutes (including, but not limited to A.R.S. §§ 9-581, 9-582, and 9-583), by the City's police powers, its authority over public right-of-way, and its other governmental powers and authority; and

WHEREAS, City wants to reserve rights to construct and use and allow others to construct and use all manner of additional improvements in the right-of-way; and

WHEREAS, VEXUS FIBER, LLC agrees to provide and maintain accurate maps showing the location of all Facilities owned by VEXUS FIBER, LLC on public property including public utility easements within City, and to comply with such other mapping requirements as City may establish from time to time; and

WHEREAS, VEXUS FIBER, LLC will secure the appropriate licenses, encroachment and other permits required by the City Code for the placement of its Facilities placed in the City's boundaries; and

WHEREAS, VEXUS FIBER, LLC has agreed to comply with public property use requirements that City has established and may establish from time to time; and

NOW THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by VEXUS FIBER, LLC, and the covenants and agreements contained herein to be kept and performed by VEXUS FIBER, LLC, and for other good and valuable consideration, the City hereby grants to VEXUS FIBER, LLC a telecommunication license ("License") and permission to use the public right-of-way pursuant to the terms and conditions set forth herein.

SECTION 1. Definitions

ACC means the Arizona Corporation Commission.

A.R.S. means Arizona Revised Statutes.

Backbone means a high-speed network that interconnects smaller, independent networks and is the through-portion of a transmission network (not the spurs that branch off).

Cable Services and Cable System shall have the same meaning as defined in Chapter 10 of the Glendale City Code.

Call means the operations required to set up or establish, maintain, and terminate or release a connection through a telephone network in support of a communication between two or more stations. A call comprises a sequence of events that begins when an end user at an originating station initiates a call request to a switch that may work in conjunction with other switches to establish a connection to an end user at a destination station and concludes when one party (user) terminates the connection.

Claim(s) means and includes losses, claims, damages, suits, actions, payments, judgments, demands, reasonable expenses and costs, including, but not limited to, reasonable attorney's fees incurred through all appeals.

Coarse Wavelength Division Multiplexing ("CWDM") is a variation of WDM that carries four to eight wavelengths per fiber or more that is designed for short to medium-haul networks (regional and metropolitan areas).

Commercial Mobile Radio Services means two-way voice commercial mobile radio service as defined by the FCC in 47 U.S.C. § 157.

Common Carrier means a private company offering interstate or foreign communication by wire or radio or the interstate or foreign transmission of energy to the general public on a non-discriminatory basis.

Conduit means a pipe of either metal, ceramic or plastic that is designed to protect buried cables.

Conduit System means any combination of Ducts, Conduits, manholes and handholes joined to form an integrated whole.

Contractor means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that performs services or provides goods relating to this Agreement. Contractor shall include any subcontractor hired and/or used by VEXUS FIBER, LLC Contractors for the performance of services or provision of goods relating to this Agreement.

Dark Fiber means fiber optic strands that are not connected to transmission equipment.

Dense Wavelength Division Multiplex ("DWDM") is a variation of WDM but with much higher bandwidth and density. Using DWDM, up to 80 or more separate wavelengths or channels of data can be multiplexed on a single optical fiber. Each channel carries a time division multiplexed (TDM) signal. Since each channel can carry up to 2.5 Gbps, up to 200 billion bits per second can be delivered by the optical fiber simultaneously.

Duct means a single enclosed tube, pipe or channel for enclosing and carrying cables, wires, and other facilities.

Equipment means any tangible asset used to install, repair, or maintain Facilities in any ROW.

Facilities means the plant, equipment, and property used in the provision communication and telecommunication services and not owned by the City, including but not limited to poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under Public Highways.

FCC means the Federal Communications Commission.

Fiber Optic Network is a communication system consisting of an optical transmitter to convert an electrical signal into an optical signal to send into the optical fiber, a cable containing bundles of multiple optical fibers that is routed through underground conduits and buildings, multiple kinds of amplifiers, and an optical receiver to recover the signal as an electrical signal.

Information Service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.

Inner-Duct means a pathway created by subdividing a Duct into smaller channels.

Intrastate Call means a call that originates and terminates in a single state.

Interstate Call means a call that originates in one state and terminates in a different state (or country).

Interstate Telecommunications Services Provider means a Telecommunications Corporation that places underground or above ground Facilities in the Public Highway for interstate telecommunications services.

Interstate Traffic means a communication or transmission that originates in any state, territory, possession of the United States, or the District of Columbia and terminates in another state,

territory, possession, or the District of Columbia.

Manhole means an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating and maintaining cable and fiber in a Conduit.

Multichannel Video System includes:

- (a) A "cable system," as the term is defined in title VI of the federal Communications Act of 1934, providing service within the City;
- (b) An "Open Video System," as the term is defined in title VI of the federal Communications Act of 1934, 47 U.S.C. § 573 and implementing regulations (47 CFR § 76.1500), providing service within the City;
- (c) Any other system providing Multichannel Video Programming Services within the City, where the service is transmitted in whole or in part via wires or lines that are in or cross any ROW within the City. The preceding sentence shall apply whether the provider owns, leases or otherwise obtains the right to use the wires or lines, including wires or lines of a telecommunications provider used pursuant to tariff or otherwise for that purpose;
- (d) Any other system providing Multichannel Video Programming Services within the City where a license or similar permission or approval from the City is required under applicable law,

For purposes of this License, "Multichannel Video Programming Services" means multiple channels of video programming where some or all of the video programming is generally considered comparable to programming provided by a television broadcast station or by a direct to home satellite service. Multichannel Video Programming Services specifically includes, but is not limited to, "cable service" as the term is used in Title VI of the Federal Communications Act of 1934.

Parties shall collectively mean the City of Glendale and VEXUS FIBER, LLC of Arizona llc.

Point of Presence (POP) means a telecommunications facility where network equipment is located to be used to connect customers to a network backbone.

Provider means a Telecommunications Corporation that constructs, installs, operates or maintains telecommunications Facilities in the City Public highways.

Public Emergency means any condition which, in the opinion of City officials, poses an immediate threat to the lives or property of the citizens of Glendale or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc.

Public Highway means the roads, streets and alleys and all other dedicated public ROW and public utility easements of the City.

Public Service Corporation means a corporation engaged in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or engaged in collecting, transporting, treating, purifying and disposing of sewage through a system, for profit; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations

other than municipal, operating as common carriers. However, a message transmitting company is only a public service corporation if it is a common carrier.

Right-of-way ("ROW") shall have the same meaning as Public Highway.

Service Lateral means an underground facility that is used to transmit, distribute, or furnish communications from a common source to an end-use customer.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. However, the term does not include commercial mobile radio services, pay phone services, interstate services, cable services, information services, or the leasing of dark fiber for transmission purposes.

Telecommunications Corporation means any Public Service Corporation to the extent that it provides telecommunications services in this state.

Telecommunications Services means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

Wavelength Division Multiplexer ("WDM") means a device that combines optical signals from multiple different single-wavelength end devices onto a single fiber. WDM carries two to four wavelengths per fiber.

SECTION 2. Permission to Use Right-of-Way

2.1 Subject to the provisions of this Agreement, the Glendale City Code, the City Glendale Charter, and Arizona and federal law, City hereby grants to VEXUS FIBER, LLC permission to use the designated portions of the right-of-way ("ROW") pursuant to the terms and conditions of this License and Agreement.

2.2 VEXUS FIBER, LLC's use and occupation of the ROW shall in all respects conform to all and each of the following provisions:

2.2.1 **Permitted Uses.** VEXUS FIBER, LLC shall use the portions of the ROW solely for the uses allowed under this License and Agreement and shall conduct no other activity at or from those designated portions of the ROW as described on Exhibit A. The permitted uses are limited to the following:

2.2.1.1 Constructing, maintaining, repairing and operating the Facilities as described in this Agreement.

2.2.1.2 To the extent that any Fiber Optic Networks within the route within the City carry intrastate and/or interstate Calls as referenced by A.R.S. §§ 9-582 and 9-583, the City hereby grants VEXUS FIBER, LLC a revocable and nonexclusive Telecommunications License ("License") to run concurrently with the term of this Agreement.

2.2.1.3 VEXUS FIBER, LLC may locate its Fiber Optic Network in the ROW at the locations shown on the maps submitted to and approved by the City as part

of the City's permitting process and should be deemed critical infrastructure.

2.2.1.4 Such additional related uses for which City may give or retract consent from time to time. Such additional uses may only be conducted following City's giving to VEXUS FIBER, LLC notice of such consent. City may terminate or impose conditions and limitations on such consent from time to time in City's sole and absolute discretion.

2.3 All other uses of the ROW are prohibited. VEXUS FIBER, LLC may not allow third parties to use the Facilities for any use that VEXUS FIBER, LLC itself does not have the authority under this License and Agreement to use the Facilities for.

2.3.1 The Telecommunications License granted by this Agreement does not allow VEXUS FIBER, LLC to provide one-way transmissions by anyone directly to customers or any other type of video programming or other programming or transmission that may be subject to a cable television license or franchise. This License does not allow a Multichannel Video System and/or the providing of Multichannel Video Programming Services.

2.3.2 If VEXUS FIBER, LLC ever obtains or seeks federal, state or local approval to provide a cable system or open video system ("Video Services") over the Fiber Optic Networks, this License and Agreement shall remain in effect according to its terms and VEXUS FIBER, LLC shall continue to pay any fee required by this Agreement, regardless of any legal or regulatory provisions, permits or other processes or rules that might now or hereafter provide otherwise.

2.3.3 Without limiting the other amendment or waiver provisions of this License and Agreement, no change to or waiver of this Agreement's provisions regarding Video Services is effective without a formal amendment to this Agreement executed by City after approval by the City Council. City has not promised any such amendment or waiver. This Agreement does not prohibit the parties from entering into other agreements regarding the Fiber Optic Networks or Conduit Systems, should both parties desire to do so in their sole and absolute discretion.

2.4 The authority to install and construct any Conduit System and/or Fiber Optic Networks on City property granted herein authorizes VEXUS FIBER, LLC only to install such Fiber as is necessary to construct and operate the infrastructure described in this Agreement in order to provide the authorized Services and does not authorize VEXUS FIBER, LLC to install or construct any Facilities not expressly provided for in this Agreement.

2.5 To the extent that VEXUS FIBER, LLC uses the City's ROW to provide services other than the telecommunication services as defined by A.R.S. § 9-581, such use and/or occupation of the ROW is subject to the terms and conditions of this Agreement and any applicable fees, permits and laws.

2.6 VEXUS FIBER, LLC shall comply with all applicable laws as amended from time to time, including but not limited to, the Glendale City Code and the City Charter and Arizona and federal law in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for VEXUS FIBER, LLC to comply with any law or regulation of the FCC or the ACC to engage in the business activities anticipated by this Agreement, VEXUS FIBER, LLC shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this Agreement. Provided, however, no such law or regulation of the FCC or ACC shall enlarge or modify any of the rights or duties granted by this Agreement without a written modification to this Agreement.

SECTION 3. Non-Exclusive Rights/Priority Rights

3.1 This grant is not exclusive and nothing herein contained shall be construed to prevent City from granting other like or similar grants or privileges to any other person, firm or corporation, or to deny to or lessen the powers and privileges granted City under the Constitution and laws of the State of Arizona.

3.2 Any and all rights granted to VEXUS FIBER, LLC shall be subject to the prior and continuing right of City to use the ROW exclusively or concurrently, with any other person or persons, and to manage City's own Facilities. Any and all rights granted to VEXUS FIBER, LLC shall also be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this License shall be construed to grant, convey, create or vest a perpetual real property interest in land to VEXUS FIBER, LLC, including any fee or leasehold interest, easement, or any franchise rights.

3.3 Any right or privilege claimed pursuant to this Agreement by VEXUS FIBER, LLC for any use of any public ROW shall be subordinate to: A) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; B) any prior lawful occupancy or use thereof by any other person; C) and to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.

3.4 There is hereby reserved to City every right and power required pursuant to this Agreement to be herein reserved or provided by any lawful ordinance or the Charter of the City, and VEXUS FIBER, LLC by its execution of this Agreement agrees to be bound thereby and to comply with any lawful action or lawful requirements of the City in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of any Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of City.

3.5 By executing this Agreement, City does not waive any rights that it may have against any public utility or other property owner to require that such owners obtain prior approval from the City for such uses of their property or facilities, or that revenues received by any public utility or other property owner from VEXUS FIBER, LLC, by virtue of VEXUS FIBER, LLC's use of their property or facilities be included in the computation of any use agreement fees owed by such parties to the City.

3.6 Nothing in this Agreement shall be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining its Facilities and/or the ROW, and for that purpose to require VEXUS FIBER, LLC, at no expense to the City, to remove, relocate or abandon in place VEXUS FIBER, LLC's Facilities in order to accommodate the activities of the City. Such decision to ask VEXUS FIBER, LLC to remove, relocate or abandon in place VEXUS FIBER, LLC's Facilities in order to accommodate the activities of the City shall be thoughtfully considered and the City shall use reasonable efforts to avoid repeated impact on VEXUS FIBER, LLC's Facilities. The City shall not be liable for lost revenues sustained by VEXUS FIBER, LLC, however caused, because of damage, modification, alteration, or destruction of its Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and/or the ROW, provided that the activities

resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.

SECTION 4. Notice of Other Users

4.1 VEXUS FIBER, LLC may enter into contracts with unrelated third parties ("Users") in the ordinary course of VEXUS FIBER, LLC's business for use of the Conduit Systems and/or Fiber Optic Networks within the portions of the ROW subject to this Agreement. Such contracts ("User Contracts") shall be subject to all requirements and provisions of this Agreement and the following:

4.1.1 Such Users shall not perform any construction, maintenance, repair or other work of any kind in the ROW related to the Fiber Optic Networks or Conduit System(s) and the identity of such Users must be disclosed to the City upon request, but such information will be considered Confidential and Proprietary under Section 31.2.3. All User Contracts shall prohibit such Users from performing any construction, maintenance, repair or other work of any description in the ROW related to the Fiber Optic Networks or Conduit System(s), unless such Users have an agreement with the City.

4.1.2 In the event the User Contract provides for the User to construct, install, operate or maintain any portion of the Fiber Optic Networks or Conduit System(s) within the route in the ROW, no such arrangement shall proceed until the User enters into an Agreement with the City for use of the City's ROW.

4.2 VEXUS FIBER, LLC shall cause to comply with this Agreement all persons using the ROW through or under VEXUS FIBER, LLC or this Agreement. VEXUS FIBER, LLC is responsible for any violations of this Agreement by persons using the ROW through or under VEXUS FIBER, LLC or this Agreement.

SECTION 5. Description of the Services and Routes

5.1 VEXUS FIBER, LLC uses its Fiber Optic Network to offer voice, data, and internet services over fiber.

5.2 VEXUS FIBER, LLC's current initial planned routes for its Conduit Systems and Fiber Optic Networks are shown on Exhibit A. VEXUS FIBER, LLC has 0 linear feet of owned conduit in the ROW within the City.

SECTION 6. Regulatory Conditions Relating to Right-of-Way Usage

For purposes of this Agreement, whenever work is done in the ROW relating to any of the Facilities, VEXUS FIBER, LLC agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all of its Contractors and that the obligations of Sections 6 and 7 are imposed on both VEXUS FIBER, LLC and any of its Contractors, for whom VEXUS FIBER, LLC will be responsible. VEXUS FIBER, LLC will ensure that VEXUS FIBER, LLC and its Contractors comply with Public ROW use requirements as follows:

6.1 Registration. VEXUS FIBER, LLC agrees to register with the City by completing an application or renewal application form and the paying the applicable application fee.

6.2 Notice of Changes. VEXUS FIBER, LLC shall file a proposed amendment to the registration before it makes any change that would render the registration information incomplete or inaccurate. A change of VEXUS FIBER, LLC's name or address must be filed at least sixty (60) days prior to the date the change becomes effective; a change in the telephone number must be filed ten (10) days before the change becomes effective; and in the case of a change in the Facilities (by addition, subtraction or modification or movement), the change in Facilities must be filed at least sixty (60) days before work commences on the Facilities unless the relocation was ordered by the City. In the case of a change in the category of services offered, the change must be noticed thirty (30) days before the earlier of the date the service commences, or VEXUS FIBER, LLC begins marketing the service.

6.3 VEXUS FIBER, LLC is completely responsible for ensuring that its Facilities are constructed, installed, operated and/or maintained in accordance with the Glendale City Code and established practices with respect to such public ROW and easements such as the proper permits being applied for prior to commencing any work and that the terms and conditions of such permits are strictly followed.

6.4 VEXUS FIBER, LLC's use of the public ROW and easements under the control of the City shall be according to plans approved by the City Engineer, provided that such approval shall not be unreasonably withheld or delayed.

6.5 The Facilities to be constructed, installed, operated, maintained, upgraded and removed hereunder, shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses within said public ROW and easements. Any phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said Facilities shall be subject to regulation by the City Engineer.

6.6 VEXUS FIBER, LLC and its agents shall be subject to the City's exercise of such police, regulatory and other powers as it now has or may later obtain, and VEXUS FIBER, LLC may not waive the application of the same. City shall have continuing jurisdiction and supervision over any Facilities located within or on public ROW. Daily administrative, supervisory, and enforcement responsibilities shall be delegated and entrusted to the City Manager or designee to interpret, administer and enforce the provisions of this License and Agreement.

SECTION 7. Plan Approval, Permits, and Inspection

7.1 No Facilities shall be changed, installed, constructed, located on, or attached to any property within the City ROW, public utility easements and any other easements dedicated to the City until VEXUS FIBER, LLC has applied for and received approval for permits from the City Engineer. VEXUS FIBER, LLC shall be solely responsible for any and all acts, errors, omissions and negligence of its Contractor(s) who are involved in the installation, construction, maintenance, repair, location, relocation and any other activity involving VEXUS FIBER, LLC's Facilities subject to this License and Agreement. Additionally, VEXUS FIBER, LLC and its Contractor(s) shall comply with all other provisions of the Glendale City Code, including but not limited to Chapter 28 regarding off-site construction, Chapter 30 regarding streets and sidewalks, and other applicable City and/or Maricopa County regulations. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to VEXUS FIBER, LLC's use of the public ROW as may be deemed best for the public interest, safety, or welfare to the same extent that such restrictions and limitations are applied to all non-governmental users of the public ROW.

7.2 VEXUS FIBER, LLC shall submit the applicable Permit Application(s) together with the details, plans and specifications for City review and approval, and pay all applicable application, review and inspection fees prior to any and all construction work performed pursuant to the rights granted under this Agreement. VEXUS FIBER, LLC and/or its Contractor(s) shall abide by all stipulations of all licenses and permits issued. If VEXUS FIBER, LLC desires to change the location of any portion of the Conduit System(s) and/or Fiber Optic Network(s), including any related Facilities or equipment, from that set forth in the initial Permit Application, VEXUS FIBER, LLC shall apply for and obtain approval for an amendment to the permit prior to installation or construction.

7.3 The City may issue reasonable policy guidelines to all licensees/users to establish procedures for determining how to control issuance of engineering permits to multiple licensees/users for the same one mile segments of their Facilities. VEXUS FIBER, LLC agrees to cooperate with the City in establishing such policy and comply with the procedures established by the City Engineer or designee to coordinate the issuance of multiple engineering permits in the same one mile segments.

7.4 City will approve or deny such applications based on the availability of space at the location sought by VEXUS FIBER, LLC, safety and other considerations in accordance with the City's Code, applicable ROW construction regulations and other applicable law. VEXUS FIBER, LLC and/or its Contractor(s) agree to comply with the terms of any City-issued licenses and permits.

7.5 Any new Conduit or other Facilities placed in the ROW will be constructed using industry standard horizontal directional drilling, missile boring, and trenching construction methods. Other material placed in the ground may include concrete manholes, generally 4x4x4, pull boxes/handholes, utility boxes, and HDPE couplings and elbows, fiber optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. VEXUS FIBER, LLC and/or its Contractor(s) will install any new Conduit and access points (manholes/pull boxes) using industry standard practices and in full compliance with Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended hereinafter referred to as "MAG"), the City's supplements to MAG, and the City of Glendale Utility Permit and Construction Manual.

7.6 The City shall have the right to inspect all construction or installation work performed subject to the provisions of this License and to make such tests as it shall find necessary to meet City standards as set forth in the City of Glendale Utility Permit and Construction Manual and the MAG Uniform Standard Specifications and Details for Public Works Construction and the City of City Supplements thereto and to ensure compliance with the terms of this License and other pertinent provisions of law.

7.7 Any new Conduit system(s) and/or Fiber Optic Network(s) shall be installed in multiple phases as agreed upon by VEXUS FIBER, LLC and the City. If portions of this project will take place on the major arterial streets in City, VEXUS FIBER, LLC and City will work to minimize the inconvenience to the citizens of City and others who use those major arterial streets impacted by the project by developing segments of the project to be completed in sequence.

7.8 Any Conduit systems and/or Fiber Optic Network(s) to be constructed, installed, operated and maintained under this Agreement shall be located or relocated so as to interfere as little as possible with traffic, existing utilities or other authorized uses over, under or through said streets and public ways. VEXUS FIBER, LLC shall not install, operate, or allow the use of equipment, methodology or technology that may or would interfere with the optimum effective use or operation of City's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying receiving or transmitting equipment). If such interference should occur, VEXUS FIBER, LLC shall immediately discontinue

using the equipment, methodology or technology that causes the interference until VEXUS FIBER, LLC takes corrective measures to alter the Fiber Optic Network(s) to eliminate such interference. Any such corrective measures shall be made at no cost to City. VEXUS FIBER, LLC shall be responsible to ensure compliance with this Agreement by all persons using the ROW through or under VEXUS FIBER, LLC or this Agreement.

7.9 Co-location. VEXUS FIBER, LLC's installation of the Facilities shall be reasonably coordinated with other utilities and City to accommodate opportunities for common installation along with VEXUS FIBER, LLC's route as set forth in this Agreement. All installations of cable and/or fiber shall be in Conduit or innerduct as reasonably approved by the City Engineer. Provided, however, nothing herein shall require VEXUS FIBER, LLC to incur any material additional expense to accommodate common installations.

7.10 Although the exact placement and location of any additional Facilities shall be determined by City through the permit process, VEXUS FIBER, LLC has expressed its intent and City has expressed its desire to have any Facilities installed outside of the paved street areas whenever such location is feasible and reasonable. Further, if it is the intent and desire of VEXUS FIBER, LLC for the Conduit System to be placed by horizontal directional drilling under such streets when feasible and reasonable, bore profiles based on vacuum pothole information shall be part of the engineered plans submitted to the City. Arterial streets shall not be bored unless approved by the City Engineer. In the event that a street opening in new pavement or resurfaced pavement cannot be avoided, VEXUS FIBER, LLC agrees to pay a surcharge fee to cover damages and early deterioration will be assessed for cutting new or resurfaced pavements less than seven years old.

7.11 VEXUS FIBER, LLC shall also provide and identify a representative, such as a project manager, who shall be the contact person for the City during any construction periods.

7.12 Prior to the start of any construction work, VEXUS FIBER, LLC shall provide written notice to all adjacent or affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

7.12.1 If an emergency requires activity without such written notice, VEXUS FIBER, LLC shall use reasonable best efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property. Upon request, VEXUS FIBER, LLC shall promptly furnish to City documentation of such permission from such other affected property owner or tenant.

7.13 Whenever VEXUS FIBER, LLC or its Contractors shall cause any opening or alteration to be made for any purpose in any public streets, or public places, the opening or alteration shall be completed and restored with due diligence within seven (7) business days. VEXUS FIBER, LLC shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by VEXUS FIBER, LLC or its Contractors to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

7.14 Traffic Control.

7.14.1 All traffic shall be regulated in accordance with MAG; the City of Phoenix Barricade Manual, latest edition, available through the City of Phoenix Traffic

Engineering; the Manual on Uniform Traffic Control Devices (MUTCD); and any Special Provisions included herein.

7.14.2 At the time of the pre-construction conference, VEXUS FIBER, LLC shall designate an American Traffic Safety Services Association (ATSSA) certified individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to require that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. At the same time, the City shall designate a representative who will be responsible to see that all traffic control and traffic control alterations are implemented per these traffic control specifications.

7.14.3 VEXUS FIBER, LLC shall have the full responsibility and liability for traffic control for work performed by VEXUS FIBER, LLC or their Contractors. VEXUS FIBER, LLC shall submit a Traffic Control Plan to Traffic Engineering for approval one week prior to beginning work under this Agreement. It shall be noted that Traffic under this Agreement shall include all motor vehicles, bicyclists, and pedestrians. VEXUS FIBER, LLC shall not begin construction until the Traffic Control Plan is approved by the City. An approved Traffic Control Plan shall be maintained onsite during all phases of construction, otherwise construction will cease until the Traffic Control Plan is approved.

7.14.4 During construction it may be necessary to alter traffic control as approved by Traffic Engineering. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations"; the latest edition of the City of Phoenix Traffic Control Manual, latest edition. The most restrictive manual shall apply. VEXUS FIBER, LLC shall pay any and all applicable barricade fees.

7.14.5 City will make no payment for traffic control. The cost for any fees shall be VEXUS FIBER, LLC's responsibility.

7.14.6 In the event VEXUS FIBER, LLC or its Contractor(s) damages any traffic signal equipment, traffic signal conduit, loop detectors and/or circuits, it shall have them repaired immediately at its expense by an electrical Contractor that has had traffic signal experience which is pre-approved by the City. Any damage caused by VEXUS FIBER, LLC or its Contractor(s) that is repaired by the City will be billed to VEXUS FIBER, LLC at cost.

7.14.7 Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by Traffic Engineering.

7.14.8 Speed limits shall be strictly enforced.

7.14.9 For more information, please contact the City of Glendale Traffic Engineering.

7.15 Clean Up. VEXUS FIBER, LLC and/or its Contractor(s) shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public ROW in a safe, neat and clean condition.

7.16 Safety. VEXUS FIBER, LLC and VEXUS FIBER, LLC's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the infrastructure is being placed that are related to the work undertaken by VEXUS FIBER, LLC, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. VEXUS FIBER, LLC's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve VEXUS FIBER, LLC from compliance with these provisions.

7.17 Blue Stake. VEXUS FIBER, LLC and its Contractor(s) shall comply with A.R.S. §§ 40-360.21 through 40-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of VEXUS FIBER, LLC's Facilities upon receipt of a locate call or as promptly as possible, but in no event later than two working days. A copy of the agreement or proof of membership shall be filed with the City Engineer.

SECTION 8. Hazardous Substances

VEXUS FIBER, LLC's and its Contractor(s)' activities upon or about the ROW shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et. seq. the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et. seq. the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et. seq. or the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq. or any other federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances");

1. VEXUS FIBER, LLC and/or its Contractor(s) shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the ROW. The prohibitions of the preceding sentence only shall not apply to:
 - a. Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the ROW. Such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery.
 - b. Electric backup batteries.
2. VEXUS FIBER, LLC and/or its Contractor(s) shall dispose of any Toxic Substances away from the ROW as required by law and as reasonably required by City.
3. VEXUS FIBER, LLC and/or its Contractor(s) shall not use the ROW in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona

Department of Environment Quality or any other governmental agency. The preceding sentence does not prohibit ordinary permits for control of dust during construction permitted by this Agreement.

4. In addition to and without limitation of any other indemnities or obligations, VEXUS FIBER, LLC shall pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the portion of the ROW used that is attributable to or caused by VEXUS FIBER, LLC, its Contractor(s) or anyone using the ROW under this Agreement.
5. VEXUS FIBER, LLC and/or its Contractor(s) shall immediately notify City of any Toxic Substance at any time discovered or existing upon the ROW. VEXUS FIBER, LLC is not responsible for Toxic Substances that may exist at the ROW if VEXUS FIBER, LLC's Contractors and/or any other persons using the ROW under this Agreement did not do any of the following:
 - a. Knowingly participate in the Toxic Material coming to the ROW
 - b. Knowingly fail to immediately report the Toxic Material to City
 - c. Knowingly participate in spreading or otherwise disturbing the Toxic Material
 - d. Knowingly exacerbate the effects of the Toxic Material or the difficulty or cost of dealing with the Toxic Material
6. VEXUS FIBER, LLC understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. VEXUS FIBER, LLC acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Toxic substances containing materials.
7. Within twenty-four (24) hours after any violation by VEXUS FIBER, LLC and/or by its Contractor(s) of this Agreement pertaining to Toxic Substances, VEXUS FIBER, LLC shall give City notice reporting such violation.

SECTION 9. On-Call Assistance

VEXUS FIBER, LLC shall be available to staff employees of any City department having jurisdiction over VEXUS FIBER, LLC's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Network. City may contact by telephone the network control center operator at the following phone number 833-673-1215 regarding such problems or complaints, and may use that number in order to reach VEXUS FIBER, LLC at any time for any emergency matter. VEXUS FIBER, LLC shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. VEXUS FIBER, LLC shall make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence.

SECTION 10. Mapping Requirement

10.1 VEXUS FIBER, LLC shall maintain As-Built Drawings of its Facilities located within the ROW and furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current City electronic mapping format as specified by the City) and in hard copy form if requested by the City. Upon completion of new or relocation

construction of underground Facilities in the ROW, VEXUS FIBER, LLC shall create and maintain precise, up-to-date maps of any of its Conduit System and/or Fiber Optic Network routes and any above ground equipment located in the ROW and precise and verifiable horizontal and vertical location information and will make this information available to the City upon the installation of any new Facilities. VEXUS FIBER, LLC will also provide surface-location marking of any of VEXUS FIBER, LLC's Facilities that are located underground within any public ROW within ten (10) business days of installation.

10.2 If complete updates are not provided in a compatible format, VEXUS FIBER, LLC shall pay the actual, reasonable costs the City incurs to update the City's electronic mapping format due to the location or relocation of VEXUS FIBER, LLC's Facilities. However, before the City incurs any cost to convert updates provided by VEXUS FIBER, LLC, it will notify VEXUS FIBER, LLC that it cannot access the updates that had been provided. If within fourteen (14) days, VEXUS FIBER, LLC has not either provided compatible updates or provided the City an agreeable date by which such updates will be received by City, City will convert the incompatible updates unilaterally.

10.3 In the event VEXUS FIBER, LLC fails to supply records in the City specified format, and there is a cost to the City in converting VEXUS FIBER, LLC-provided files, VEXUS FIBER, LLC will be responsible for the conversion costs and will pay such costs within thirty (30) days of the date of the bill from the City invoicing the amount due. However, before the City incurs any cost to convert VEXUS FIBER, LLC-provided files, it will notify VEXUS FIBER, LLC that it cannot access the records that had been provided. If within fourteen (14) days, VEXUS FIBER, LLC has not either provided compatible records or provided the City an agreeable date by which such updates will be received by City, City will convert the incompatible updates unilaterally.

SECTION 11. Relocation

11.1 VEXUS FIBER, LLC shall relocate at no expense to the City any Facilities or other encroachment installed or maintained in, on or under any public place or ROW, as may be necessary to facilitate any public purpose any City project whenever directed to do so by City. The City will not exercise its right to require VEXUS FIBER, LLC Facilities to be relocated in an unreasonable or arbitrary manner. However, to the extent that the City receives funds from any third parties or government entities for a project that requires the relocation of Facilities owned, operated and/or maintained by the VEXUS FIBER, LLC, the City shall allocate such funds to the relocation of VEXUS FIBER, LLC's Facilities. If more than one licensee is required to relocate for the same project, and is eligible for reimbursement, any such funds shall be distributed on a pro rata basis based on the total relocation costs of each of the licensees eligible for such reimbursement. VEXUS FIBER, LLC shall not hold the City liable for failure to request or file a claim for any funds for the relocation of the VEXUS FIBER, LLC's Facilities. Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this Agreement and any applicable issued permits. VEXUS FIBER, LLC shall comply with any and all requirements of Chapter 10 of the Glendale City Code. Within ninety (90) days after service of notice by the City, VEXUS FIBER, LLC shall remove the designated portions of the Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the ninety-day period, VEXUS FIBER, LLC shall take reasonable steps to remove the Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost

and expense to the City.

11.2 VEXUS FIBER, LLC agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating or reconstructing of any portion of its Conduit System(s) or Fiber Optic Network(s) in the public ROW. Notwithstanding the foregoing, City understands and acknowledges there may be instances when VEXUS FIBER, LLC is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of the Facilities. VEXUS FIBER, LLC will maintain any annual permits required by the City for such maintenance and emergency repairs. VEXUS FIBER, LLC will notify City before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.

11.3 If the City needs to perform any part of the necessary relocation or removal work that has not been done within the time required by the City, it shall be entitled to seek payment for such relocation costs by drawing upon the letter of credit or security fund required by this Agreement pursuant to Section 25.

SECTION 12. Expansion or Extension of the Current Use Area

12.1 Any further expansion and/or extension of VEXUS FIBER, LLC's Fiber Optic Network and or empty Conduit placement outside the current route(s) in the ROW shall require written approval from the City Engineer, who may, refer the matter to the City Council for approval, provided that such consent, by either the City Engineer, or the City Council, shall not be unreasonably withheld or delayed.

12.2 VEXUS FIBER, LLC agrees that such further expansions and/or extensions beyond the current route(s) shall be at all times governed by the terms and conditions of this Agreement.

12.3 Requests for expansions and/or extensions should identify the route, number of conduits, size of conduits, and intended use (including whether there will be dark fiber available for sale or leasing to third parties).

SECTION 13. Damage to Public Property.

13.1 In addition to any indemnity obligation under this License and Agreement, whenever the installation, use, maintenance, removal, or relocation of any of VEXUS FIBER, LLC's Facilities is required or permitted under this Agreement, and such installation, removal or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance was caused. VEXUS FIBER, LLC, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. If VEXUS FIBER, LLC does not repair the damage or disturbance as just described, then City shall have the option, upon ten (10) days prior written notice to VEXUS FIBER, LLC, to perform or cause to be performed such reasonable and necessary work on behalf of VEXUS FIBER, LLC and to charge VEXUS FIBER, LLC the actual costs incurred by the City, including all administrative costs related to the work. Should VEXUS FIBER, LLC fail to pay the City within ten (10) business days of receipt of the invoice for the costs, the City will be entitled to deduct the amount of the invoice from VEXUS FIBER, LLC's letter of credit.

13.2 Notwithstanding the notice provision above, in the event of a Public Emergency, the City shall have the right to immediately perform, without prior written notice to VEXUS FIBER, LLC, such reasonable and necessary work on behalf of VEXUS FIBER, LLC to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The City shall provide written notice to VEXUS FIBER, LLC of the repairs as soon as practicable after the work has begun. VEXUS FIBER, LLC agrees that any severed City-owned Conduit and/or fiber must be completely repaired or replaced to the nearest splice point. If the City needs to perform any part of the necessary repairs, relocation and/or removal work, it shall be entitled to seek payment for such repairs, relocation and/or removal costs from VEXUS FIBER, LLC and may draw upon a bond and/or letter of credit or security fund required by this Agreement in full or partial satisfaction of such costs, if payment is not made by VEXUS FIBER, LLC as required by Section 13.3 below.

13.3 Upon the receipt of a demand for payment by City, VEXUS FIBER, LLC shall, within thirty (30) days, reimburse City for any undisputed costs.

13.4 For any pavement cuts by VEXUS FIBER, LLC, VEXUS FIBER, LLC agrees to restore the pavement and to reimburse the City for all costs arising from the reduction in the service life of any public road, in accordance with the provisions of the Glendale City Code and the fees established by the City pursuant thereto. VEXUS FIBER, LLC agrees to pay within thirty (30) days from the date of issuance of an invoice from City. Failure to do so shall entitle City to draw upon the letter of credit or security fund and/or performance bond.

SECTION 14. Public Emergency Disruption by City.

City shall have the right, because of a Public Emergency, to sever, disrupt, remove, tear out, dig-up or otherwise damage and/or destroy Facilities of VEXUS FIBER, LLC without any prior notice to VEXUS FIBER, LLC, if the action is deemed necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, or Public Works Director or designee. In such event, neither the City nor any agent, Contractor or employee of City shall be liable to VEXUS FIBER, LLC, its Contractors or its customers or their parties for any harm so caused to them or the Facilities. When practical and if possible, City will consult with VEXUS FIBER, LLC in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Fiber Optic Networks. City shall inform VEXUS FIBER, LLC of any actions taken. VEXUS FIBER, LLC shall be responsible for repair at its sole expense of any of its Facilities damaged pursuant to any such action taken by City.

SECTION 15. Public Safety/Public Emergency.

15.1 If any of VEXUS FIBER, LLC's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or outside of the route area(s), or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety and/or other public health, safety and welfare functions, then VEXUS FIBER, LLC shall immediately remedy the hazard, comply with City's request to secure the route area, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment.

15.2 In the event of a Public Emergency, neither the City nor any agent, Contractor or employee of the City shall be liable to VEXUS FIBER, LLC or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents,

Contractors or employees in responding to such public emergency. When practical and if possible, City will consult with VEXUS FIBER, LLC in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or the Facilities involved.

SECTION 16. Contractors

16.1 The specific independent Contractors identified and used by VEXUS FIBER, LLC for the construction activities to expand and extend VEXUS FIBER, LLC's Facilities and Service Area will need to be approved by the City Engineer or designee prior to issuance of each construction permit, such approval shall not be unreasonably withheld, delayed, conditioned or denied. Any Contractors performing construction work within the ROW or public easements shall comply with licensing requirements of the Arizona General Contractors.

16.2 All independent Contractors shall provide their own insurance policies or shall furnish separate certificates and endorsements for each. All coverages for independent Contractors shall be subject to all the requirements stated herein for VEXUS FIBER, LLC.

SECTION 17. Legal Worker Compliance

17.1 VEXUS FIBER, LLC hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to VEXUS FIBER, LLC's employment of its employees, and with the requirements of A.R.S. § 23-214(A).

SECTION 18. Effective Date and Validity of Agreement

18.1 This Agreement is effective upon signature by VEXUS FIBER, LLC and the execution of it by the Glendale City Council.

18.2 VEXUS FIBER, LLC shall acknowledge that as a condition of acceptance of this Agreement, VEXUS FIBER, LLC was required to be represented throughout the negotiations of the Agreement by its own attorneys and VEXUS FIBER, LLC had the opportunity to consult with its own attorneys about its rights and obligations regarding the Agreement. VEXUS FIBER, LLC has reviewed City's authority to execute and enforce this Agreement and has reviewed all applicable law, both federal and state, and, after considering same, VEXUS FIBER, LLC acknowledges and accepts the right and authority of City to execute this Agreement and to enforce the terms herein.

SECTION 19. Term of Agreement

19.1 The original term of this License and Agreement shall terminate 11:59 p.m. on the date prior to the date that is the tenth (10th) annual anniversary of this Agreement, which is the date of approval of this Agreement by the City Council, unless sooner terminated as set forth in this Agreement.

SECTION 20. Modification, Renewal, Extension

20.1 If VEXUS FIBER, LLC wishes to renew its License and continue using the ROW, then at least one hundred and eighty (180) days prior to the expiration of this License and Agreement, VEXUS FIBER, LLC shall apply to the City for a new License and Agreement in accordance with the then existing federal, state, and local laws.

20.2 VEXUS FIBER, LLC shall pay to City the applicable fee at the time of the submission of the application.

20.3 Upon renewal or extension of a telecommunications license with the City, City shall have the right to renegotiate any of the terms from a prior agreement. VEXUS FIBER, LLC understands that the City may adopt future code amendments and/or fee schedules relating to Facilities located within the ROW, which may replace in its entirety the current fees and other costs imposed upon VEXUS FIBER, LLC under this Agreement. VEXUS FIBER, LLC acknowledges the right of the City to adopt and implement lawful code amendments and/or fee schedules.

20.4 If VEXUS FIBER, LLC's Facilities remain in the ROW, and VEXUS FIBER, LLC continues to use such Facilities beyond the expiration of the license term and pay the annual fees, the License shall be considered to be in a "Holdover Term," subject to the terms and conditions of this Agreement. Such Holdover Term, however, shall not exceed 60 days beyond the expiration of the term, and no permits will be issued to VEXUS FIBER, LLC by the City until a new License has been approved by the City Council.

20.5 Failure by VEXUS FIBER, LLC to have a valid License and Agreement to use the ROW by the expiration of the Holdover Term may result in immediate withdrawal and revocation of any existing permits issued by the City to VEXUS FIBER, LLC. If, however, VEXUS FIBER, LLC has timely filed its application and is in active negotiations with the City prior to the expiration of the License and Agreement, the City may, in its discretion, grant, extend, or take no action on permits issued to VEXUS FIBER, LLC prior to the expiration of the Agreement.

SECTION 21. Payments

21.1 By entering into this Agreement, neither party waives any current or future rights reserved under the Telecommunications Act of 1996, including but not limited to, those rights set forth in Sections 253(c), reserving the City's right to manage the public ROW and to require fair, non-discriminatory and reasonable compensation from VEXUS FIBER, LLC for use of the public ROW.

21.2 VEXUS FIBER, LLC shall be solely responsible for payments to City as follows:

21.2.1 Application Fee - VEXUS FIBER, LLC shall pay City an application fee for the administrative costs involved in the issuance of a telecommunications license, which shall be due at the time of the submittal of the application.

21.2.2 Transaction Privilege Tax - VEXUS FIBER, LLC shall pay transaction privilege tax on any qualifying services under Glendale City Code.

21.2.3 ROW Usage Fee for Provision of Interstate Telecommunication Services
A Fiber Optic Network in the ROW that carries interstate traffic between and among VEXUS FIBER, LLC's interstate points of presence exclusive of the Fiber Optic Network used by the local network and the portion of the interstate network that carries intrastate calls is subject to an annual fee based on the number of linear feet of trench in the ROW. The annual fee is One Dollar and Ninety Six Cents (\$1.96) per linear foot, which shall be adjusted annually as provided in Section 21.2.3.1.

21.2.3.1 VEXUS FIBER, LLC asserts that under A.R.S. § 9-582, 100% of its route in Glendale is exempt from the ROW Usage Fee because the VEXUS FIBER, LLC network carries local exchange and intrastate traffic.

21.2.3.2 Should the nature of VEXUS FIBER, LLC's use change so that either a linear foot fee under Section 21.2.3 or Section 21.6 or a use fee under Section 21.2.4 is applicable, VEXUS FIBER, LLC agrees to pay such fees, subject to any right of offset under Section 22. Any such fees shall be calculated from the effective date of this Agreement and any retroactive amounts from the date of the change in circumstances that cause the fee to be due the City shall be payable within 30 days of written notification by the City to VEXUS FIBER, LLC of what amount is due.

21.2.3.1 Commencing on the anniversary date of this Agreement in 2023 and continuing through the fifth year of the term, the linear foot fee and ROW usage fee shall be escalated annually each July 1 based on the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, West Region for All Items (CPI). If there is no increase in the CPI, the fee shall remain what it was for the prior year.

21.2.3.2 As of the date of this Agreement, VEXUS FIBER, LLC does not provide interstate telecommunication services subject to this fee as defined in A.R.S. § 9-582-583.

21.2.3.3 Should VEXUS FIBER, LLC own, install, maintain, operate, or acquire Fiber Optic Networks that do qualify for the annual footage fee, VEXUS FIBER, LLC shall immediately notify the City in writing of the number of linear feet and the location, so that the annual fee may be calculated.

21.2.3.4 Any such annual fee shall be due and payable within 30 days of the receipt of an invoice from the City advising VEXUS FIBER, LLC of the amount due. Such a fee shall be prorated from the date of the invoice until the anniversary date of this Agreement. Thereafter, upon each anniversary of this Agreement, the annual fee will be adjusted as provided by Section 21.2.3.1 above.

21.2.4 Compensation for Use of ROW-In the event that VEXUS FIBER, LLC provides any services that are in addition to intrastate services as identified in its CC&N or occupies or uses the ROW for a use other than one that conforms to the definition of Telecommunication Services as defined in this Agreement and A.R.S. § 9-581-583, VEXUS FIBER, LLC agrees to pay fair and reasonable compensation for use of the ROW as authorized by law. Upon each anniversary of this Agreement, the compensation will be adjusted by the CPI as provided by Section 21.2.3.1 above, and payment made as required by Section 21.3.

21.3 For any annual payment(s) owed, VEXUS FIBER, LLC shall make such payment(s) to the City within five (5) business days of the effective date of this Agreement and/or by the anniversary of such effective date thereof for the duration of the term, whichever is applicable.

21.4 Permit Fees -VEXUS FIBER, LLC shall pay all applicable construction permit fees to place Facilities in the ROW, which includes charges for encroachment permit applications, issuance, inspection, testing, plan review and any other fees adopted by City and applicable to persons doing work and/or encroaching in the City's ROW pursuant to Glendale Development Fee Schedule. If, at the request of VEXUS FIBER, LLC, the needs of VEXUS FIBER, LLC's work requires after hours

or nighttime work outside of normal business hours, VEXUS FIBER, LLC shall reimburse the City according to the fee schedule in place.

21.5 Damage Fees- VEXUS FIBER, LLC shall pay any reasonable costs associated with any damage caused to the public ROW as provided by Glendale City Code.

21.6 Pro-rated Fees- Within thirty (30) days after the issuance of a permit for the installation of additional footage of Conduit(s), if such installation subjects VEXUS FIBER, LLC to an annual fee pursuant to Section 21.2.3 or Section 21.2.4 above (if applicable), VEXUS FIBER, LLC will pay a pro-rated portion of the annual fee, as adjusted, per linear foot for that section of its expanded route. The prorated annual fee shall be determined by multiplying the annual footage fee, as adjusted, for the year of payment, by a fraction, the numerator of which is the number of full months between the month of issuance of the permit and the next following anniversary date of this Agreement and the denominator of which is twelve (12).

21.7.1 In the event, VEXUS FIBER, LLC cancels or returns a permit and does not construct or install Facilities, which had been approved by such a permit, the footage fees previously paid for public ROW used or occupied by VEXUS FIBER, LLC shall be applied as a credit toward any annual fee or refunded to VEXUS FIBER, LLC by City.

21.8 Any checks should reference the contract number and be sent to:

City of Glendale
Engineering Department
5850 W Glendale Ave
Glendale, AZ 85301

21.9 VEXUS FIBER, LLC agrees that if it fails to pay any amounts owed to the City by the time prescribed for payment, VEXUS FIBER, LLC shall pay interest on the amounts owed, at the rate of one percent (1%) per month.

SECTION 22. In-Kind Payment as an Offset to Fees Owed

This agreement does not currently provide for any in kind payments by VEXUS FIBER, LLC, however, should fees be owed under Section 21 above, the Parties may agree in writing to an in kind payment of fiber(s) and/or conduit(s) to offset such fees or transaction privilege taxes owed through an addendum to this Agreement.

SECTION 23. Taxes

VEXUS FIBER, LLC shall pay any applicable city, county and state transaction privilege and use tax. Such taxes are in addition to any non-tax amounts owed by VEXUS FIBER, LLC pursuant to Section 21. VEXUS FIBER, LLC consents to the disclosure of any and all information reported on VEXUS FIBER, LLC's transaction privilege tax returns by authorizing and allowing the City's tax collector to release such information to the City Manager or designees.

SECTION 24. Performance Bond

24.1 Prior to receiving any permit to construct, install, maintain or perform any work on public property that requires a permit from the City pursuant to applicable City codes, VEXUS

FIBER, LLC shall cause to be filed and maintain until either completion of the construction or termination of this Agreement as determined by VEXUS FIBER, LLC, a faithful performance bond in favor of City in the sum of One Hundred Thousand Dollars (\$100,000.00) or the amount of the construction costs (whichever is greater) to guarantee that VEXUS FIBER, LLC shall observe, fulfill and perform each and every term of this Agreement. In case of any breach of any condition of this Agreement, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by VEXUS FIBER, LLC, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. City and VEXUS FIBER, LLC agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the security fund and/or letter of credit.

24.2 If VEXUS FIBER, LLC has completed the above construction and wants the bond released, the City will need to inspect and approve the construction prior to such release. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property.

SECTION 25. Security Fund

25.1 Upon application for continued use of the ROW, but no later than five (5) business days before this Agreement is submitted to the City Council for approval, VEXUS FIBER, LLC shall provide either a cash deposit or domestic irrevocable standby letter of credit to the City Engineer in the initial amount of Fifty Thousand Dollars (\$50,000.00) as a security fund that is in compliance with the standards and form set forth in Exhibit C or its equivalent. Said cash deposit or letter of credit shall be maintained with the City for the term of this Agreement as security for the faithful performance by VEXUS FIBER, LLC of all the provisions of this Agreement, and compliance with all lawful orders, permits and directions of any department or office of the City having jurisdiction over its acts or defaults under this Agreement and any permit issued pursuant thereto, and the payments by VEXUS FIBER, LLC of any fees, claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Facilities. City shall have the full power of withdrawal of funds from the cash deposit put into the security fund account or letter of credit except that all interest accrued on any cash deposit shall be payable to VEXUS FIBER, LLC on demand. No withdrawals shall be made from the security fund account without the prior written approval of the City Manager and prior written notice of intent to withdraw to VEXUS FIBER, LLC.

25.2 Within twenty (20) days after notice to VEXUS FIBER, LLC that any amount has been withdrawn by City from the security fund account or letter of credit, VEXUS FIBER, LLC shall deposit a sum of money sufficient to restore such security fund account to the original amount or present to the City an additional irrevocable letter of credit in said amount so that the total amount of funds available to the City is \$ 50,000.00.

25.3 If VEXUS FIBER, LLC fails, within ten (10) business days of a notice of intent to draw on either the security fund account or on the letter of credit, to either dispute the notice in writing; or pay City any taxes or fees due and unpaid; or fails to repay to City, within such ten (10) business days of such notice, any damages, costs or expenses which City shall be compelled to pay by reason of any act or default of VEXUS FIBER, LLC in connection with this Agreement; or fails, within thirty (30) days of such notice of failure by City to dispute the notice in writing, or comply with any provision of this Agreement which City reasonably determines can be remedied by an expenditure of funds from the cash deposit in the security fund account or letter of credit, City may immediately

withdraw the amount thereof, with interest from the security fund account. Upon such withdrawal, City shall notify VEXUS FIBER, LLC of the amounts and date thereof.

25.4 Any funds that City erroneously or wrongfully withdraws shall be returned to VEXUS FIBER, LLC, with interest of 1.0% per month, within thirty (30) business days of such a determination.

25.5 The rights reserved to City, with respect to the security fund account and/or letter of credit, are in addition to all other rights of City whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund account or letter of credit shall affect any other right City may have.

SECTION 26. Insurance

26.1 Minimum Limits of Insurance. VEXUS FIBER, LLC shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain for the mutual benefit of the City and VEXUS FIBER, LLC, commercial general liability insurance against claims for bodily injury, death or property damage, products/completed operations and personal and advertising injury, which insurance shall cover claims as may be occasioned by the operations, act, omission or negligence of VEXUS FIBER, LLC or its officers, agents, representatives, employees or servants during all times that this License and Agreement is in effect. Insurance limits are inclusive of umbrella coverage. VEXUS FIBER, LLC shall maintain limits no less than those stated herein for each type of insurance.

26.2 General Requirements. VEXUS FIBER, LLC's insurance of the types and amounts required in this section shall be from companies possessing a current A.M. Best, Inc. rating of A- VII, or better and legally authorized to do business in the State of Arizona.

26.2.1 All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement and may result in termination of this Agreement.

26.2.2 The insurance coverage, except workers' compensation and professional liability, required by this Agreement, shall name City, its agents, representatives, directors, officials, and employees, as additional insureds, and shall specify that insurance afforded VEXUS FIBER, LLC shall be primary insurance, and that any self-insured retention and/or insurance coverage carried by City or its employees shall not contribute to the coverages provided by VEXUS FIBER, LLC. This provision and the naming of the City as an additional insured shall not be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(ies).

26.2.3. The insurance policies shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials and employees.

26.2.4. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retention shall be assumed by and be for the account of, and at the sole risk of VEXUS FIBER, LLC who shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. City, at its option, may

require VEXUS FIBER, LLC to secure payment of such deductibles or self- insured retentions by a surety bond or an irrevocable letter of credit. Self-insured retentions of up to \$1,000,000 (One Million Dollars) shall be accepted.

26.2.5 All policies shall not be cancelled until at least thirty (30) days prior written notice has been given to City. VEXUS FIBER, LLC will ensure its policies will comply with the minimum requirements of Section 26 and notify the City if it cannot meet those requirements.

26.2.6 VEXUS FIBER, LLC shall be responsible for ensuring that the City is notified within thirty (30) days of the occurrence of any reduction in the insurance coverage amounts, cancellation or expiration of any of the policies as required by this License and Agreement.

26.2.7 VEXUS FIBER, LLC shall include all Contractors as additional insureds under its policies or shall provide separate certificates and endorsements for each Contractor. All coverages for Contractors shall be subject to all the requirements stated herein for VEXUS FIBER, LLC. Upon the request of VEXUS FIBER, LLC, the City may agree to lower insurance requirements for a Contractor. This change in insurance limits will be subsequent to a review by the City's Project Manager of the potential exposures and risks of the work being performed by the Contractor, and a determination that such a reduction to the insurance limits is warranted.

26.2.8 City reserves the right to periodically review said insurance limits to ensure coverage based on market and risk requirements throughout the effective term of this Agreement.

26.3. Proof of Insurance-Certificates of Insurance.

26.3.1. Prior to or upon execution of this Agreement, VEXUS FIBER, LLC shall furnish to City Certificates of Insurance issued by VEXUS FIBER, LLC's agent or broker, as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Engineering Division approval of such Certificates. Such certificate(s) shall include the endorsement listing the City as an Additional Insured pursuant to Section 26.2.2 and shall be attached as Exhibit B to this Agreement.

26.3.2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City ten (10) business days prior to the expiration date.

26.3.3. All Certificates of Insurance shall identify the policies in effect on behalf of VEXUS FIBER, LLC, their policy period(s), and limits of liability. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the Agreement documents. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance carrier or agent. Copies of the initial Certificate of Insurance and any and all subsequent renewals that are required under this Agreement shall be sent to:

City of Glendale
Engineering Department

5850 W. Glendale Ave.
Glendale, Arizona 85301

26.3.4. City reserves the right to request and to receive, within ten (10) business days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise VEXUS FIBER, LLC of any deficiencies in such policies and endorsements, and such receipt shall not relieve VEXUS FIBER, LLC from, or be deemed a waiver of City's right to insist on, strict fulfillment of VEXUS FIBER, LLC's obligations under this Agreement.

26.4 Required Coverage.

26.4.1 Such insurance shall protect VEXUS FIBER, LLC from claims set forth below that may arise out of or result from the operations of VEXUS FIBER, LLC under this Agreement and for which VEXUS FIBER, LLC may be legally liable, whether such operations be by VEXUS FIBER, LLC or by a consultant or Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts may be legally liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG 00 01 10 01 and CG 20 37 07 04 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

26.4.2 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the VEXUS FIBER, LLC's employees;

26.4.3 Claims for damages insured by usual personal and advertising injury liability coverage;

26.4.4 Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

26.4.5 Claims involving contractual liability insurance applicable to VEXUS FIBER, LLC's obligations under the Indemnification Agreement.

26.5 Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$5,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$5,000,000 per occurrence and an aggregate of \$10,000,000 in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISO) Additional Insured, Form B, CG 20 10 10 01 and CG 20 37 07 04, and shall include coverage for VEXUS FIBER, LLC'S completed operations and products.

26.6 Worker's Compensation and Employer's Liability.

VEXUS FIBER, LLC shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over VEXUS FIBER, LLC's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1 million for each accident, \$1 million disease coverage for each employee, and \$1 million disease policy limit. In case any work is subcontracted, VEXUS FIBER, LLC will require the Contractor to

provide Worker's Compensation and Employer's Liability to at least the same extent as required of VEXUS FIBER, LLC.

26.7. Automobile Liability.

If VEXUS FIBER, LLC owns and/or operates vehicles in Arizona, VEXUS FIBER, LLC shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$5 million each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the VEXUS FIBER, LLC's work. Coverage shall be at least as broad as coverage Symbol 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0001 0306, or any replacements thereof). If hazardous substances, materials or wastes are transported, insurance for VEXUS FIBER, LLC's Contractors shall include coverage for pollution for upset/overturn/collision of the automobile(s) and loading and offloading hazards if hazardous substances, materials, wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$ 5 million per accident for bodily injury and property damage.

SECTION 27. Indemnity.

27.1 VEXUS FIBER, LLC acknowledges that it has responsibility for any and all of its Facilities installed in the public ROW, its use of the ROW and for its exercise of its rights under this License and Agreement directly or through its Contractor(s), except for the intentional acts or gross negligence on the part of the City. To the fullest extent permitted by law, VEXUS FIBER, LLC, shall defend, indemnify and hold harmless the City, or its officials, boards, commissions, agents or employees, individually and collectively, from and against any and all Claims as defined in Section 1 arising out of or alleged to have resulted from or materially caused by the acts, errors, mistakes, and/or omissions of VEXUS FIBER, LLC, its employees, agents, or any tier of Contractors acting on behalf of VEXUS FIBER, LLC or any other person for whose acts, errors, mistakes, and/or omissions VEXUS FIBER, LLC may be legally liable. This defense and indemnification requirement includes any Claims or amounts arising or recovered under workers compensation laws or any other law, bylaw, or ordinance, order or decree caused by any failure on the part of VEXUS FIBER, LLC, its agents, employees or representatives to fulfill VEXUS FIBER, LLC's obligations under this Agreement, whether resolution of the above Claim(s) proceeds to judgment or not except to the extent such Claims resulted from or were caused by intentional acts or negligence on the part of the City or its agents. The provisions of this section shall survive termination of this Agreement. This section applies even if the party seeking damages makes a claim against the City or brings a claim against the City based on vicarious liability or non-delegable duty.

27.2 VEXUS FIBER, LLC further agrees to indemnify and hold harmless the City, its officers and its employees from and against all reasonable costs, damages, and expenses incurred by the City, its officers and its employees in the defense of any litigation brought by third parties challenging the right of the City to enter into this Agreement with VEXUS FIBER, LLC under the City Code or other applicable law.

27.3 In the event that a notice of claim is served on the City or litigation is commenced against the City, the City may, but is not required to, tender the defense of the litigation to VEXUS FIBER, LLC, who shall defend the litigation. If the City tenders the defense to VEXUS FIBER, LLC, VEXUS FIBER, LLC shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to VEXUS FIBER, LLC (and, where such terms directly obligate or affect the City, acceptable to the City). VEXUS FIBER, LLC agrees to keep the Glendale City Attorney's Office informed of the status and progress of all litigation involving the City that has been

tendered to VEXUS FIBER, LLC or its insurance carrier.

27.3.1 The parties shall promptly notify each other in writing of any claims, demands, or lawsuits which may involve the City and provide copies of all accident reports, incident reports, statements or other documents that are relevant to the claims, demands, or lawsuits, or which may lead to the discovery of relevant materials or information in the possession of the other party, its employees, agents, Contractors, and/or others.

27.3.2 Subject to any legal protections for privilege and/or confidentiality, both parties agree to cooperate with the other party to gather any relevant information relating to an incident which results in a claim, demand, or lawsuit.

27.4 It is the purpose of this section to provide maximum indemnification to the City under the terms and conditions expressed herein, and, in the event of a dispute, this section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by VEXUS FIBER, LLC against any and all claims, demands or lawsuits. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages either arose from the City's gross negligence or intentional acts or that the City was comparatively at fault for the damages. Only in this event may VEXUS FIBER, LLC then commence an action against the City for damages related to that portion judicially determined to be the City's fault.

27.5 The provisions of Section 27 shall not be dependent or conditioned upon the validity of this License but shall be and remain a binding right and obligation of the City and VEXUS FIBER, LLC, even if part or all of this License is declared null and void in a legal or administrative proceeding. It is the intent of VEXUS FIBER, LLC and the City upon the effective date of this License, that this Section serves as any such declaration and shall be a binding obligation of and inure to the benefit of VEXUS FIBER, LLC and the City and their respective successors and assigns, if any. Any failure by VEXUS FIBER, LLC shall be considered a material breach of this License and Agreement.

27.6. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section.

27.7 As a condition to Licensor's executing this Agreement, VEXUS FIBER, LLC specifically agrees that to the extent any provision of this Section is not fully enforceable against VEXUS FIBER, LLC for any reason whatsoever, the parties shall meet to negotiate the reformation of this Agreement, to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

SECTION 28. Limitation of Liability

28.1 The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to VEXUS FIBER, LLC or to its affiliates or customers for any interference with or disruption in the operations of VEXUS FIBER, LLC's Fiber Optic Networks or the provision of services, or for any Claim for damages arising out of or materially related to VEXUS FIBER, LLC's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the City, its officers, agents, elected or appointed officials, employees, departments, boards and commissions.

28.2 VEXUS FIBER, LLC also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages

arising out of or materially related to any provision or requirement of the City because of the enforcement of this License and Agreement or because of defects in this License or Glendale City Code.

28.3 VEXUS FIBER, LLC shall assume the risk of, and hereby relinquishes any claim against the City in connection with any final, non-appealable determination by a court of competent jurisdiction that the City lacked the current statutory authority under Arizona law to issue this License.

SECTION 29. Transferability of License and Agreement

29.1 This License is personal to VEXUS FIBER, LLC.

29.2 Except as otherwise provided in this Agreement, the rights, privileges and License granted herein shall not be sold, sublet, assigned, conveyed or otherwise transferred, nor shall any of the rights or privileges therein granted or authorized be leased, assigned, sold, conveyed or otherwise transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except VEXUS FIBER, LLC, either by act of VEXUS FIBER, LLC or operation of law, without the express written consent of the City, which consent shall not be unreasonably withheld or delayed. Prior to any proposed transfer of any kind becoming final, VEXUS FIBER, LLC shall seek the consent of the City to the proposed transfer. Approval by the City to a transfer does not constitute a waiver or release of any of the rights of the City under the Glendale City Code or this Agreement, whether arising before or after the date of transfer.

29.3 "Transfer" transactions shall mean all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

1. Any voluntary or involuntary assignment, conveyance or transfer of the ROW or any interest therein or any rights under this Agreement, in whole or in part.
2. Any assignment by VEXUS FIBER, LLC of any interest in this Agreement for the benefit of creditors, voluntary or involuntary.
3. Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting VEXUS FIBER, LLC'S rights to use the ROW (collectively "Liens") except that the City acknowledges VEXUS FIBER, LLC is permitted to pledge, lien, mortgage, and/or create a security interest in its network and associated rights and privileges in relation to any financing transaction of the company.
4. VEXUS FIBER, LLC's insolvency.
5. The occurrence of any of the foregoing with respect to any assignee or other successor to VEXUS FIBER, LLC.

29.4 The new Licensee as approved by the City shall be equally subject to all the obligations and privileges of the original License and Agreement, including any amendments, which will remain in full effect, as if the new Licensee were the original Licensee.

29.5 The approval of the change shall include an Assignment Agreement form (if there was an assignment) or Transfer form (if there was a stock acquisition, a merger, or other type of transfer of VEXUS FIBER, LLC'S assets) to be signed by Assignee, Assignor and the City.

29.6 Any assignment or other transfer of License and Agreement, including any amendments, shall be binding on the assignee or transferee as if the assignee or transferee had originally executed the Agreement for the full term and shall include the following:

29.6.1. The proposed assignee or transferee has read, accepts, and agrees to be bound by the terms of this Agreement; and

29.6.2. The proposed assignee or transferee assumes all obligations, liabilities and responsibility for the acts and omissions of VEXUS FIBER, LLC, known and unknown, for all purposes, and agrees that the assignment or transfer shall not permit it to take any position or exercise any right which VEXUS FIBER, LLC could not have exercised; and

29.6.3 VEXUS FIBER, LLC and the proposed transferee shall submit to City a description of the nature of the transfer.

29.6.4 VEXUS FIBER, LLC may execute a pledge or, hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of VEXUS FIBER, LLC's assets to a lender or creditor in the ordinary course of business provided that VEXUS FIBER, LLC has secured approval from the Arizona Corporation Commission, if required. In the event a lender assumes control of the assets and operation of VEXUS FIBER, LLC through a default of VEXUS FIBER, LLC in loan obligations, the Lender may assume the rights and obligations of VEXUS FIBER, LLC. The Lender may not transfer or change control of the Agreement without submitting the change to the City for approval. If the Lender does continue operation on any basis at any time, the Lender shall be subject to all provisions of the Agreement. No later than 30 days after assumption of control by the Lender, the Lender shall apply to the City for the right to continue assumption of control or to transfer the Agreement. Application by the Lender for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the City Council and shall not be unreasonably denied or upheld. A "Lender" as discussed herein shall not include a company, person or corporation or other entities that operate cable television systems or fiber optics telecommunications systems as a principal or important business. This paragraph is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the Agreement without City Council review and approval.

29.6.5 Notwithstanding the foregoing, prior notice, but not prior consent shall be required for a transfer of control of VEXUS FIBER, LLC to any company which is owned or controlled or under common control and with the same direct parent as VEXUS FIBER, LLC, and which is intended after such transfer to remain under the ownership or control of that parent or an entity under common control or with the same direct parent, provided that no transfer shall be valid unless VEXUS FIBER, LLC and the proposed transferee submit a binding agreement and warranty to the City stating that:

1. The proposed transferee has read, accepts and agrees to be bound by the License and Agreement.
2. The proposed transferee assumes all obligations, liabilities and responsibilities under the License and Agreement for the acts and omissions of VEXUS

FIBER, LLC, known and unknown, for all purposes, and agrees that the transfer shall not permit it to take any position or exercise any right which VEXUS FIBER, LLC could not have exercised; and

3. The transfer will not substantially diminish the financial resources available to VEXUS FIBER, LLC.

29.6.5.1 However, prior to completing the transfer described above, VEXUS FIBER, LLC must give prior notice to the City of the proposed transfer and describe the nature of the transfer and complete information regarding the effect of the transfer on the direct and indirect ownership and control of the License and Agreement.

29.7 **Transfer Remedies.** Any transfer without City's consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this License and Agreement. City may, in its sole discretion and in addition to all other lawful remedies available to City under this Agreement or otherwise, and in any combination, terminate this Agreement, collect any fees owed from VEXUS FIBER, LLC and/or declare the transfer to be void, all without prejudicing any other right or remedy of City under this Agreement. No cure or grace periods shall apply to transfers or assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive City's consent.

29.8 **Transfer Fee.** VEXUS FIBER, LLC shall pay to City in advance the sum of Two Thousand Dollars (\$ 2,000.00) as a nonrefundable fee for legal, administrative and other expenses related to every transfer (other than the sale of publicly traded stock) or to any request for a consent to transfer, whether or not City grants such request.

SECTION 30. No Third-Party Beneficiaries

No person or entity shall be a third-party beneficiary to this Agreement or shall have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, VEXUS FIBER, LLC's construction of improvements, VEXUS FIBER, LLC's negligence, VEXUS FIBER, LLC's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by VEXUS FIBER, LLC), or otherwise as a result of the existence of this Agreement.

SECTION 31. VEXUS FIBER, LLC's Records

31.1 **Recordkeeping.** During the negotiations preceding and the entire term of this License and Agreement, VEXUS FIBER, LLC shall keep records and provide information to City as required regarding the following:

1. The status of the construction, repair, location or relocation of VEXUS FIBER, LLC's Facilities.
2. Information relating to any Fiber Optic Networks on portions of the route that are not exempt from a fee imposed for occupation of the ROW.
3. Information relating to this License and Agreement and/or to City's or VEXUS FIBER, LLC's rights or obligations under this License and/or Agreement.

31.2 If necessary for the City to determine VEXUS FIBER, LLC's compliance with the terms of this License and Agreement or other applicable law, within ten (10) days of written notice by City of a request for disclosure, VEXUS FIBER, LLC shall provide relevant documentation as requested by City, respond to questions, and produce relevant books and records for the City's inspection and copying. Such records shall be available to City at VEXUS FIBER, LLC's offices in Maricopa County, Arizona. VEXUS FIBER, LLC shall also require its employees, agents, and accountants to give their full cooperation and assistance in connection with City's access to such records.

31.2.1 Such documentation can include information on the type of services VEXUS FIBER, LLC is offering its customers (but not necessarily information disclosing any particular service being provided to a specific customer) and/or the financial information used in calculating any payments or taxes due to the City under this Agreement. If VEXUS FIBER, LLC determines that in order to respond to City's request for documentation, it must reasonably provide Proprietary Information, VEXUS FIBER, LLC shall so mark such documentation as "Confidential."

31.2.2. Proprietary Information disclosed by VEXUS FIBER, LLC shall mean any document or material clearly identified as "Confidential." Such Proprietary Information shall include, but not be limited to any customer names and lists, financial information, technical information, other information clearly identified as "Confidential" pertaining to services provided to its customers, maps regarding network placement and equipment, with the exception of any map(s) attached to this Agreement.

31.2.3 Proprietary Information disclosed by VEXUS FIBER, LLC to the City, or its constituent departments shall be regarded as Proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify VEXUS FIBER, LLC of such request and allow VEXUS FIBER, LLC a reasonable opportunity to defend its information from disclosure.

31.2.4 Information that is already in the public domain shall not be considered Proprietary Information. If public domain information is included with Proprietary Information on the same document, the City shall only disclose those portions within the public domain.

31.2.5 Notwithstanding any provision in this License, VEXUS FIBER, LLC acknowledges and understands that the City is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 et seq).

31.3 Reports. Upon request and subject to any necessary confidentiality requirements, VEXUS FIBER, LLC shall provide to City copies of any communications and reports submitted by VEXUS FIBER, LLC to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this Agreement.

SECTION 32. Penalties for Violation of Terms

32.1 City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until VEXUS FIBER, LLC complies with the terms of the License, Agreement or the applicable law. Likewise, VEXUS FIBER, LLC may pursue any remedy at law, including but not limited to injunctive relief, at any time should the City fail to comply with local, state or federal law.

32.2 Such remedies are cumulative and may be pursued in the alternative.

SECTION 33. Liquidated Damages for Violations

33.1 VEXUS FIBER, LLC's obligation to pay liquidated damages does not in any way detract from VEXUS FIBER, LLC's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to VEXUS FIBER, LLC's obligation to pay liquidated damages.

33.2 VEXUS FIBER, LLC understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of Chapter 10 of the Glendale City Code will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance: therefore, the parties hereby agree to the liquidated damages specified below pursuant to the authority in Glendale City Code. The following amounts per day or part thereof may be chargeable to the letter of credit or security fund for the following concerns:

33.2.1 Each failure to properly restore the public ROW or to correct related violations of specifications, code ordinance or standards within fifteen (15) business days of having been notified by the City in writing to correct such defects-- \$500.00 per day. Such amount is in addition to any cost the City may incur to restore the ROW or correct the violation. Any such liquidated damage payments shall not be chargeable to VEXUS FIBER, LLC once the cure is commenced and diligently pursued.

33.2.2 Each failure to make VEXUS FIBER, LLC's books and records available as required by this Agreement that is not cured after five (5) business days' written notice-\$250.00 per day.

33.2.3 Any unauthorized partial or total transfer of this Agreement- \$4,000.00 per transfer.

33.2.4 Each instance of any action or non-action by VEXUS FIBER, LLC contrary to the terms of this Agreement that is not cured after ten (10) business days' notice - \$ 500.00 per day. This provision shall not apply if the City has already assessed a charge under Section 33.2.1 through 33.2.3 or 33.2.5.

33.2.5 Failure to provide a valid Certificate of Insurance as required by Section 26.3.1 that is not cured after five (5) business days' notice- \$ 50.00 per day.

33.3 Assessment. If the City Engineer concludes that VEXUS FIBER, LLC may be liable for liquidated damages, the City Engineer shall issue to VEXUS FIBER, LLC a written Notice of Intention to Assess Liquidated Damages. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. Such Notice must be issued, if at all, within no more than sixty (60) days after the City first notified VEXUS FIBER, LLC in writing of the alleged noncompliance. Within ten (10) business days of the receipt of the Notice, VEXUS FIBER, LLC shall either pay the amount or file a written appeal with the City Manager, who shall approve or deny or adjust the proposed assessment amount. If liquidated damages are imposed, VEXUS FIBER, LLC shall pay the liquidated damage amount within ten (10) business days of the receipt of the City Manager's decision. The City shall be allowed to deduct any liquidated damage amount from the letter of credit or security fund if VEXUS FIBER, LLC does not make payment within the required time period(s) set forth above.

33.3.1 If, however, the liquidated damages exceed Five Thousand Dollars (\$5,000.00), then the following shall apply:

33.3.2 VEXUS FIBER, LLC shall have thirty (30) days of receipt of such written notice to pay the liquidated damage amount or give City notice contesting the assertion of noncompliance.

33.3.3 In the event that VEXUS FIBER, LLC contests the City's assertion of violation or fails to respond to the City's notice of intent to assess liquidated damages, City shall schedule a public hearing to determine whether the liquidated damages were properly assessed. City shall provide VEXUS FIBER, LLC with at least (30) days' notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, VEXUS FIBER, LLC will be given the opportunity to be heard and present evidence. If the result of the hearing is that VEXUS FIBER, LLC is responsible for the liquidated damage amount, then the amount determined at the hearing will be due ten (10) days after the hearing decision is announced.

33.3.4 VEXUS FIBER, LLC may appeal the outcome of the hearing to an appropriate court, which shall have the power to review City's decision "de novo". Such appeal to the appropriate court must be taken within sixty (60) days after the issuance of City's hearing decision. Otherwise, the outcome of the hearing shall be final and conclusive.

SECTION 34. Revocation / Termination

34.1 The License granted hereunder may be revoked and/or the Agreement terminated prior to its date of expiration by the City for the following reasons:

34.1.1 VEXUS FIBER, LLC fails to comply with the material terms and conditions of the Agreement or applicable law, including but not limited to failing to maintain any insurance, security fund, letter of credit, and/or a performance bond.

34.1.2 VEXUS FIBER, LLC fails to make payments in the amounts and at the time specified in this Agreement after the appropriate notice.

34.1.3 VEXUS FIBER, LLC ceases doing business in the City.

34.1.4 VEXUS FIBER, LLC fails to provide current, accurate as-built plans and maps showing the location of all Facilities installed or constructed in the City.

34.1.5 VEXUS FIBER, LLC is or becomes insolvent or is a party to a voluntary or involuntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of the City, threaten the financial viability of VEXUS FIBER, LLC as a going concern, or if there is any similar action that affects VEXUS FIBER, LLC's capability to perform its obligations under this License and/or Agreement.

34.1.6 VEXUS FIBER, LLC fails to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW.

34.1.7 A court has issued an injunction that in any way prevents or restrains VEXUS FIBER, LLC's use of any portion of the ROW and remaining in force for a period of at least thirty (30) consecutive days.

34.1.8 VEXUS FIBER, LLC is unable to use any substantial portion of the ROW for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, flood, or other natural disaster or similar casualty and VEXUS FIBER, LLC seeks termination of the Agreement.

34.2 Before terminating the Agreement under Sections 34.1.1, 34.1.2, 34.1.4, and 34.1.6, the City Manager or a designee, shall give prior written notice to VEXUS FIBER, LLC of the defect in performance and give VEXUS FIBER, LLC sixty (60) days within which to cure the defect in performance.

34.3 The City need not provide a sixty (60) day cure period prior to termination if the City finds that the defect in performance under the Agreement is due to intentional misconduct, is a violation of criminal law, or is a part of a pattern of repeated and persistent violations where VEXUS FIBER, LLC has already had notice and opportunity to cure.

34.4 The City Manager has the authority to terminate, subject to VEXUS FIBER, LLC's right to notice and cure where provided, this License and/or Agreement.

34.5 Hearing Prior to Revocation of License. Prior to the revocation or refusal to renew the License, the City will hold a hearing if requested by VEXUS FIBER, LLC.

34.6 Termination by Mutual Agreement. This License and/or Agreement may be terminated prior to its date of expiration by VEXUS FIBER, LLC by providing the City with ninety (90) days written notice and only upon making arrangements satisfactory with the City Engineer to remove all VEXUS FIBER, LLC's Facilities from public property and the ROW, unless the City Engineer agrees in writing to allow VEXUS FIBER, LLC to abandon part or all of its Facilities in place. If the City Engineer agrees to allow VEXUS FIBER, LLC to abandon its Facilities in place, the ownership of such Facilities, including everything permitted by City to be abandoned in place, shall transfer to City and VEXUS FIBER, LLC shall cooperate to execute any documents necessary to accomplish such transfer within thirty (30) days of such allowance of abandonment.

34.7 Notwithstanding anything in Section 34.6 above, upon termination of this Agreement, VEXUS FIBER, LLC shall remove all of its optical repeaters, DWDM and CWDM multiplexers, antennae, fiber optic cables, wires, and related equipment within ninety (90) days.

SECTION 35. Non-use/Abandonment of the Facilities.

35.1 An "Abandoned Facility" will mean a Facility no longer in service or physically disconnected from a portion of the operating Facility or from any other Facility that is in use or still carries service. If VEXUS FIBER, LLC ceases to provide services or abandons use of any of its Facilities, upon cancellation or termination of the Agreement, VEXUS FIBER, LLC shall notify the City and may, subject to the City's approval, permanently abandon the Facilities in place. In such event, the City, at its option, may acquire ownership of the Facilities. In lieu of permanent abandonment, the City may require VEXUS FIBER, LLC, to the reasonable satisfaction of the City and without cost or expense to the City, to promptly remove the Facilities and to restore the public ROW to a reasonable condition under the supervision of the City.

35.2 Upon permanent abandonment, if the City does not require removal, VEXUS FIBER, LLC

shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities, which are not removed as required by the City within ninety (90) days of either such date of termination or cancellation or of the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City. VEXUS FIBER, LLC will notify the Arizona Blue Stake Center to record the Facilities that have been abandoned.

35.3 Title to any and all personal property installed by VEXUS FIBER, LLC upon the ROW that is not removed during the period set forth in Section 35.2 shall automatically vest in City.

35.4 Nothing in Section 35.1 shall be deemed to require VEXUS FIBER, LLC to remove Facilities that the VEXUS FIBER, LLC uses for the provision of services other than Telecommunications Services or Interstate Telecommunications Services, so long as such use of Facilities for the provisions of the ongoing other services is authorized by the City pursuant to this Agreement.

SECTION 36. Cancellation for Conflict of Interest.

Pursuant to A.R.S. § 38-511, City may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of City is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when VEXUS FIBER, LLC receives written notice of the cancellation, unless the notice specifies a later time.

SECTION 37. Gratuities.

City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a gratuity was offered or made by VEXUS FIBER, LLC or a representative of VEXUS FIBER, LLC to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision about Agreement performance. City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by VEXUS FIBER, LLC.

SECTION 38. Condemnation

The following shall govern any condemnation of any part of or interest in the area used and/or occupied by VEXUS FIBER, LLC and any conveyance to City or another condemner in avoidance or settlement of condemnation or a threat of condemnation:

1. Termination for Condemnation. This agreement shall terminate as to the portion taken on the date that is the earlier of the date title vests in the condemner, or the date upon which the condemner is let into possession.
2. Power to Condemn. VEXUS FIBER, LLC acknowledges that City and others from time to time may sue to condemn the area used by VEXUS FIBER, LLC or any interest therein or rights thereto.

- a. City reserves the right of condemnation or eminent domain over the area used

and/or occupied by VEXUS FIBER, LLC. City does not warrant that it will not condemn the area(s) used and/or occupied by VEXUS FIBER, LLC during the term of this Agreement, but City does not presently have intentions to condemn such area(s).

- b. City also reserves the right through its powers of eminent domain to acquire all or any portion of the Facilities owned by VEXUS FIBER, LLC in accordance with the applicable conditions set forth in the Arizona Revised Statutes. However, under no circumstances shall any valuation be made for any right or privilege granted by this Agreement should the City acquire the property of VEXUS FIBER, LLC.

SECTION 39. Notice

39.1 All notices, which shall or may be given pursuant to this Agreement, shall be in writing and transmitted through the U.S. certified or registered mail, postage prepaid, by means of prepaid private delivery systems, or by facsimile transmission showing a valid delivery receipt if a hard copy of the same is followed by delivery through the U.S. mail or by private delivery systems, addressed as follows:

CITY OF GLENDALE:

City of Glendale
Construction Engineering Manager
5850 W. Glendale Avenue
Glendale, AZ 85031

WITH COPIES TO:

City Attorney's Office
5850 W. Glendale Avenue
Glendale, AZ 85031

City Clerk's Office
5850 W. Glendale Avenue
Glendale, AZ 85031

VEXUS FIBER, LLC:

VEXUS FIBER, LLC
Vice President Regulatory Affairs
11800 College Blvd, Suite 100
Overland Park, KS 66210

With a copy to:

General Counsel
11800 College Blvd, Suite 100

Overland Park, KS 66210

39.2 Notices shall be deemed sufficiently given and served upon the other party if delivered personally or by facsimile transmission (provided with respect to facsimile or email that such transmissions are received on a business day during normal business hours), the first business day after deposit if sent by private delivery systems and the fifth business day after deposit in U.S. Mail.

39.3 Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

39.4 VEXUS FIBER, LLC shall notify the City within ten (10) business days of any change in mailing address.

SECTION 40. Governing Law

It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts located within Maricopa County, Arizona.

SECTION 41. Partial Invalidity

If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations, the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part adjudged to be invalid, unenforceable or preempted.

SECTION 42. No Warranty

42.1 The issuance of a license, permit or other authorization by the City is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation of warranty that a franchise is not required.

42.2 VEXUS FIBER, LLC ACKNOWLEDGES AND AGREES THAT CITY DOES NOT WARRANT THE CONDITION OR SAFETY OF ITS ROW OR THE PREMISES SURROUNDING THE SAME, AND VEXUS FIBER, LLC HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF ANY CITY ROW.

SECTION 43. Non-Waiver

VEXUS FIBER, LLC shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall constitute a waiver of either party's right to challenge any portion of this Agreement that is not in accordance with applicable federal, state and local laws.

SECTION 44. Remedies Not Exclusive

The remedies set forth in this License and Agreement are not exclusive. Election of one remedy does not preclude the use of other remedies.

SECTION 45. Force Majeure

With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon VEXUS FIBER, LLC, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by VEXUS FIBER, LLC and is beyond its reasonable control.

SECTION 46. Dispute Resolution

In the event of a dispute between the parties to this Agreement regarding a provision of this Agreement, a party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the parties will meet in good faith to attempt to resolve the dispute. If the parties fail to resolve the dispute, then the parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing parties, the disputing parties shall mutually agree upon the services of one (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a reasonable time, the disputing parties shall be free to use other remedies such as nonbinding arbitration or litigation to resolve the dispute.

SECTION 47. Exhibits

All Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

SECTION 48. Survival of Liability

All obligations of VEXUS FIBER, LLC and City hereunder and all warranties and indemnities of VEXUS FIBER, LLC hereunder shall survive termination of this Agreement.

(Signatures on the following page)

CITY OF GLENDALE, An
Arizona municipal corporation

Kevin R. Phelps, City Manager

ATTEST:

Julie K Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

VEXUS FIBER, LLC
a Delaware limited liability
company D/B/A Metronet

By: Jh Cyll
Print Name: John Campbell
Its: EVP & General Counsel
Date: 10/28/24