



Optical Fibre Lease Agreement

This agreement made _____.

BETWEEN:

Coquitlam Optical Network Corporation

3000 Guildford Way
Coquitlam, British Columbia
V3B 7N2

("QNet")

AND:

ABC Corp

999 Street
ABC City, British Columbia
X0X 0X0

(the "Client")

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1 Defined Terms

“Additional One Time Costs” are any installation costs that the Client has agreed to pay as indicated on the Service Order;

“COLO” means co-location facilities provided by QNet to its clients for the purpose of connecting client-owned and maintained equipment to the Dark Fibre;

“Commencement Date” is the start of the lease term as indicated on the Service Order;

“Contract Expiry Date” defines the end of the lease term as indicated on the Service Order;

“Dark Fibre” means fibre optic cable strands within the Network not lit for use;

“Handover Date” is the date the Services are provisioned for the Client as indicated on the Service Order;

“Installation Fee” is a non-refundable one time fee charged by QNet to the Client as indicated on the Service Order;

“Lease Agreement” means this agreement;

“Lease Term” defines the term of the lease in years starting from the Commencement Date and ending with the Contract Expiry Date as indicated on the Service Order;

“Lit Fibre” means fibre optic cable strands within the Network lit for use by the Client;

“Network” means the Lit Fibre and Dark Fibre infrastructure owned and operated by QNet;

“Operating Manual” is a document provided by QNet that outlines the particulars of QNet’s current policies and procedures for the supply, installation and maintenance of the fibre optic cables and associated services and which is updated from time to time and posted on the QNet website;

“Order Date” defines the beginning of the Service Order;

“Service Order” means an agreement between the parties setting out the particulars for the supply and invoicing of Dark Fibre; and

“Services” means the provision of Dark Fibre and COLO by QNet to the Client as defined in this Lease Agreement.

2 Scope

- 2.1 QNet will provide the Services for the Client’s use pursuant to one or more Service Orders, all in accordance with the terms and conditions of this Lease Agreement.
- 2.2 The Client acknowledges that all right, title and interest in the Dark Fibre and COLO will remain with QNet and the Client’s sole right with respect thereto is to the use of the Dark Fibre and COLO for the duration and upon the terms and conditions set forth in this Lease Agreement and relevant Service Order.
- 2.3 The parties may enter into further Service Orders for the Client’s lease of additional Dark Fibre, which Service Orders will be covered by the terms and conditions of this Lease Agreement and, on entering into such additional Service Orders, this Lease Agreement will be deemed to be amended to include the additional Service Order.

- 2.4 The Client will comply with the terms and conditions of this Lease Agreement, the Operating Manual and one or more Service Orders, as the case may be, and all applicable laws and regulations.

3 Limitations of Use

- 3.1 The Client may use the Services within its normal business operations to supply telecommunications services to third parties, in accordance with the provisions of the Operating Manual and all applicable laws and regulations provided that such normal business operations do not include the sale, resale, exchange, lease or other transfer of rights in the Services.
- 3.2 Except as provided for in Section 14.2, the Client may not sublease any rights in the Services or make the Services available to third parties as Dark Fibre or COLO.

4 Permits and Approvals

- 4.1 In such cases where the Client controls access to premises into which the Dark Fibre is to be installed, the Client will do or cause to be done, at its expense, all acts reasonably necessary for QNet to obtain such registrations, permits or approvals as required by QNet to access the Client's premises and building fixtures therein, to install, maintain, repair and relocate the Dark Fibre and appurtenances as required.
- 4.2 If any permits or approvals required by QNet to provide the Dark Fibre are amended or cancelled and such amendment or cancellation causes or may cause substantial financial loss to QNet or interruption of QNet's provision of the Dark Fibre, QNet may at its sole discretion, and without incurring any liability to the Client:
- (i) supply the Client with Dark Fibre of similar quality to the Lit Fibre on other parts of the Network or on a third-party network; or
 - (ii) terminate the applicable Service Orders forthwith, provided that the amendment or cancellation of QNet's permit or approval was not caused by QNet.

5 Payment

- 5.1 The Client will pay QNet for the use of the Services in accordance with the amounts set out in the Service Order.
- 5.2 Installation Fees are non-refundable and payments for Installation Fees are due on the Commencement Date indicated on the Service Order.
- 5.3 Payments for Additional One Time Costs as specified on the Service Order are due on the Commencement Date indicated on the Service Order.
- 5.4 Payments for the Services are due at the start of the provision of Services as defined by the Commencement Date on the Service Order
- 5.5 The inflation rate adjustment specified on the Service Order is applied annually and will be added to the monthly lease amount starting on January 1st of each year of the lease.

- 5.6 Inflation rate adjustments will not be charged in the case of Service Orders that are pre-paid for the full term of the Service Order.
- 5.7 The Client will pay QNet invoices within 30 days of the date of the invoice.
- 5.8 QNet may charge the Client for its non-payment of the invoice by the due date, a late fee equal to 1.25% per month of that outstanding balance of the invoice calculated from the invoice date.

6 Delivery of Dark Fibre

- 6.1 QNet will undertake all reasonable best efforts to supply Dark Fibre in conformance with the functional requirements as set out in the Operating Manual.
- 6.2 Once the parties have entered into a Service Order, QNet will have ninety (90) days from the Order Date indicated on the Service Order to provision the Dark Fibre.
- 6.3 If QNet is unable to provision the Dark Fibre as per the procedures and technical specifications outlined in the Operating Manual within ninety (90) days from the Order Date, the Client may cancel the Service Order and the Client will have no financial obligations to QNet except for the Installation Fees specified on the Service Order.
- 6.4 Once QNet has provisioned the Dark Fibre to the Client as per the procedures outlined in the Operating Manual, the Handover Date on the Service Order will be updated accordingly.
- 6.5 The Commencement Date of the Service Order will be the first day of the month immediately following the Handover Date unless less than seven days separate the Handover Date from the Commencement Date in which case the Commencement Date will be the first day of the month immediately following the Handover Date plus one month.

7 Co-location of Equipment

- 7.1 QNet will provide the Client with a portion of a lockable equipment rack in a QNet COLO, up to one full rack for every forty-eight (48) strands of Dark Fibre leased by the Client.
- 7.2 Use of the COLO by the Client is restricted to Client owned and maintained equipment required by the Client to provide Lit Fibre services using the QNet Dark Fibre.
- 7.3 The maximum power consumption allowed per Client rack is two kilovolt-amps (2kVA).
- 7.4 The Client is not permitted to exceed the maximum power consumption allowed without the prior written consent of QNet and in such cases, additional charges may apply.

8 Quality Assurance

- 8.1 QNet agrees to support the Services and to provide the Client with access to COLO, twenty-four (24) hours per day, seven (7) days per week, year round.
- 8.2 QNet agrees to provide COLO designed for the safe operation of critical telecommunications and computer equipment including but not limited to, air

conditioning / cooling systems, uninterrupted power supplies, generator power backup systems and waterless fire protection systems.

- 8.3 QNet agrees to provide the Client with an Operating Manual that defines service level targets and operational procedures and to notify the Client within ninety (90) days of any changes to the Operating Manual.

9 Indemnity and Limitation of Liability

- 9.1 Subject to Sections 9.2 and 9.3 QNet will indemnify and save harmless the Client from liability whether under statute or contract that the Client may sustain, incur or suffer which arise out of or in connection with QNet's negligence.
- 9.2 QNet is not liable to the Client, or third party, for any indirect, unintentional, special, consequential or incidental damages or business revenue or profit loss arising out of or in connection with the use or inability to use the Services, any interruption in QNet's supply of the Services or QNet's inability to supply the Services including any loss or anticipated loss from the Client's, or third party's, unauthorized use or tampering of the Services, or any breach of any term of a Service Order or the Operating Manual, whether such damage or loss arises in contract, tort or otherwise.
- 9.3 Any and all claims which the Client has or hereafter may have against QNet, its servants, employees and representatives in respect of the Services, howsoever arising, whether in contract or in tort, is limited to the per annum value of the total amount of fees and costs for the Service Order.
- 9.4 The Client will indemnify and save harmless QNet and its employees, its servants and representatives from any damages, losses, liability, charges, fines, costs and expenses of any nature and kind whatsoever or howsoever arising, whether under statute or contract that QNet or its employees, servants and representatives may sustain, incur or suffer which arise out of or in connection with the Client's unauthorized use or tampering of the Services, or any breach of any term of the Service Order or Operating Manual.

10 Term

- 10.1 This Lease Agreement enters into force on signature by both parties and, subject to earlier termination pursuant to Section 11, will continue in force so long as one or more Service Orders remain in effect or such longer period as the parties may agree.
- 10.2 Each Service Order entered into under this Lease Agreement will remain in effect for the Lease Term set out in the Service Order, unless terminated in accordance with Section 11.
- 10.3 Unless stated otherwise on the Service Order, Service Orders renew automatically for additional terms of one year at the then current Monthly Lease Rate including annual inflation adjustments unless either party provides written notice not to renew the Service Order at least ninety (90) days prior to the Contract Expiry Date.
- 10.4 Upon the termination of this Lease Agreement, the terms and conditions of this Lease Agreement will continue in force and effect in respect of any Service Order entered into as a result of this Lease Agreement for the term of any such the Service Order.

11 Termination

- 11.1 Either party may, by written notice, terminate this Lease Agreement or Service Order for default if the other party breaches a material term of this Lease Agreement or Service Order, as the case may be, and fails to remedy such breach within thirty (30) business days, or such longer period as the parties may agree, after receipt of notice of termination.
- 11.2 QNet may terminate this Lease Agreement and associated Service Orders immediately if:
- (i) the Client is in default of payment of two successive invoices;
 - (ii) the Client acts in violation of Section 3.1 of this Lease Agreement; or
 - (iii) the Client is adjudged bankrupt, makes a general assignment for the benefit of creditors because of insolvency or if a receiver is appointed because of its insolvency and such proceeding is not lifted within twenty (20) days.
- 11.3 If the Client terminates this Lease Agreement or any Service Order for any reason other than the reasons specified in Section 11.1, the Client will pay to QNet:
- (i) all outstanding invoices in respect of any terminated Service Order due for Services provided before termination; and
 - (ii) one-half of the fees applicable for that portion of the unexpired term of any terminated Service Order.
- 11.4 The Client and QNet may terminate a Service Order by mutual consent without penalty providing both parties have agreed to the termination in writing.

12 Obligations on Termination

- 12.1 Upon expiration or termination of a Service Order, the Client will promptly remove all items, equipment and other materials belonging to the Client ("Client's Items") in respect of that Service Order from sites owned, leased or licensed by QNet and in no circumstances, later than thirty (30) days after such expiration or termination. The Client will be responsible for any damage to the Network or COLO caused by or resulting from the Client's removal of the Client's Items.
- 12.2 If the Client fails to remove the Client's Items as required in Section 12.1 within the 30-day period, the Client's Items remaining on QNet's sites will be deemed to be abandoned and QNet may, at its discretion, dispose of such Client's Items at the cost of the Client.

13 Confidentiality

- 13.1 The parties acknowledge that during the term of this Lease Agreement, in order to fulfil their obligations under this agreement, it may be necessary for the parties to have access to information related to the other party's business, process, technology, data or customers that is either proprietary or confidential information or both. Each party will take the same care to safeguard the other party's information that it takes to safeguard its own information including limiting access to the confidential information to only those

employees or contractors who require access to such information in the performance of their duties. Each party will cause its employees, agents and representatives having access to the other party's confidential information, to abide by the terms of this Section 13.

14 General

- 14.1 With the exception of the payment obligations assumed, neither party is liable for damages caused by delay in the performance of, or failure to perform, undertakings under the terms of this Lease Agreement when the delay or failure is due to acts of God, natural disasters, strikes, lockouts, labour disputes, acts or restraints of a governmental body or authority, power failure, destruction or damage to the Network, sabotage or vandalism, which cannot reasonably be foreseen or provided against.
- 14.2 The parties may not assign this Lease Agreement or any part thereof without the prior written consent of the other party, which consent may not be unreasonably withheld. The parties may assign this Lease Agreement to an affiliate at any time without consent from the other party.
- 14.3 QNet may subcontract the provision of its undertakings pursuant to this Lease Agreement to another party without the consent of the Client.
- 14.4 If any provision of this Lease Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the invalid portion will be severed from the Lease Agreement and will not affect the enforceability or validity of the remaining provisions. The parties will agree upon an amendment to be made to the section, subsection, sentence, clause or phrase previously found to be invalid and will do or cause to be done all acts reasonably necessary in order to amend this Lease Agreement so as to reflect its original spirit and intent.
- 14.5 This Lease Agreement constitutes the entire agreement between the parties and shall cancel all prior negotiations, representations or agreements either written or verbal except as specifically set out in this Lease Agreement.
- 14.6 The parties will do and cause to be done all things and execute and cause to be executed all documents reasonably necessary or appropriate to give proper effect to the provisions and intent of this Lease Agreement.
- 14.7 This Lease Agreement may be amended only by agreement in writing, signed by both parties.
- 14.8 The headings and sub-headings in this Lease Agreement are for convenience of reference only, do not constitute a part of this Lease Agreement and will not be taken into consideration in the interpretation of, construction of, or affect the meaning of, this Lease Agreement.
- 14.9 This Lease Agreement enures to the benefit of and binds the parties and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

14.10 No waiver by either party of any breach by the other party of any of its covenants, obligations and agreements will be a waiver of any subsequent breach or of any other covenant, obligation or agreement, nor will any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

14.11 The following provisions survive the termination or expiry of this Lease Agreement and continue in full force and effect: Section 9 (Indemnity and Limitation of Liability), Section 13 (Confidentiality), and this Section 14.11.

14.12 This Lease Agreement is governed by and is to be construed in accordance with the laws of British Columbia.

14.13 This Lease Agreement may be executed and delivered in counterparts and by facsimile.

IN WITNESS WHEREOF the parties have caused their duly authorized signatories to execute this Lease Agreement as of the date appearing on page one.

QNet Authorized Signature

Client Authorized Signature

Represented by:

Represented by:

Name

Name

Position

Position

Date

Date

Place

Place