

For the purposes of this bid or contract, a

- A. New York State business enterprises shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the Authority in this contract and which are substantially manufactured, produced or assembled in New York State or, likewise services which are sought by the Authority in this contract and which are to be substantially performed within New York State.
- B. New York State resident shall mean a natural person who maintains a fixed, permanent and principal home located within New York State and to which such person, whenever temporarily located, always intends to return.
- C. Foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by the Authority and which are substantially produced outside New York State or services sought by the Authority and which are substantially performed outside New York State.

BID/CONTRACTS \$1 MILLION OR GREATER

On all Authority Contracts, whether goods, services, or construction, when total bid, or contract, amount is greater than \$1 million: The Omnibus Procurement Act of 1992 requires that by signing this bid proposal, or contract, the bidder or contractor certifies that:

- 1. The bidder/contractor shall, as supplement to their bid, document their efforts to encourage the participation of New York State Business Enterprises as suppliers and/or subcontractors on this Authority project or contract. A checklist (OMNIBUS PROCUREMENT CHECKLIST TO DETERMINE "REASONABLE" EFFORT BY BIDDERS/CONTRACTORS FOR CONTRACTS) is provided for your assistance, however the bidder is not limited to only those methods of notification, nor are the seven listed items required to be completed at the time of the submission of this proposal;
- 2. The contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- 3. The contractor has, or agrees to, make and document their efforts to provide notification to New York State residents of employment opportunities on this Authority project or contract through listing any such positions with the JOB SERVICE DIVISION of the NYS Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements;

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4. The contractor shall submit any post-award reports, and/or any other documentation if and when requested reflecting its efforts, both pre-award as well as post-award, to utilize New York State Business Enterprises or NYS residents on this Authority project or contract.

If the successful bidder or contractor is a Foreign Business Enterprise, as defined above under the Omnibus Procurement Act of 1992, its name and contact person, as well as the particulars of the proposed contract will be forwarded to the NYS Department of Economic Development, as required by the statute, in an effort to enhance the bidder's/contractor's efforts to maximize the opportunities for the participation of both New York State Business Enterprises and New York State residents as suppliers, subcontractors and employees on this contract. Such contact with the Department of Economic Development will count toward the requirement that the contractor encourage and cooperate in the utilization of New York State businesses and residents.

The bidder/contractor acknowledges notice hereunder that New York State, through cooperation with the Authority and the successful contractor, may seek to obtain offset credits from foreign countries as a result of this Authority Contract, and the bidder/contractor agrees to cooperate with the State and the Authority in their efforts to obtain such credits.

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APPENDIX C

AFFIRMATIVE ACTION PROGRAM

Definitions - For the purpose of this proposal the following definitions shall apply:

1. **Minority Business Enterprise** - Any business enterprise which is at least fifty-one percent owned by or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by, citizens or permanent resident aliens who are:
 - (a) Black persons having origins in any of the black African racial groups not of Hispanic origin;
 - (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, central or South American or either Indian or Hispanic origin, regardless of race;
 - (c) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
 - (d) American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification;and such ownership interest is real, substantial and continuing. The minority and women-owned ownership must have and exercise the authority to independently control the business decision of the entity.
2. **Women-Owned Business Enterprise** - Any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by citizens or permanent resident aliens who are women, and such ownership is real, substantial and continuing.

AFFIRMATIVE ACTION PROGRAM

Contractors awarded Thruway Authority consultant/service contracts are required to make every good faith effort to participate in an acceptable Affirmative Action Program through the following methods:

1. Solicit minority and women-owned businesses to supply quotations for materials and subcontractors' quotations for applicable trades involved in the contract work.
2. Make every effort to employ minorities and woman trade persons.

3. When applicable, make every effort to provide local minority and woman-owned business persons the opportunity to participate in the contract.
4. When applicable, participate in apprentice training programs through the union crafts employed and continue to pursue these training programs vigorously.
5. Designate a member of the firm to be responsible for the affirmative action program and reporting requirements in the areas described above.
6. When applicable, encourage subcontractors to make every effort to employ minority and women trade persons, and use minority and women-owned business enterprises in the purchase of materials relative to the performance of the respective contract.
7. Actively pursue minority and women's groups from within the area seeking minority and women employees from these groups, as a further outreach effort.
8. Keep on file a list of Minority and Women-Owned subcontractors and suppliers and all minority and female applications for employment and work actively from these lists, in an attempt to utilize minority and women-owned firms to hire minority and female employees.



**AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY
REQUIREMENTS FOR PERSONAL SERVICES CONTRACT**

POLICY STATEMENT

The Thruway Authority recognizes the need to take affirmative action to promote the employment of minority group members and women and ensure that Minority and Women-Owned Business Enterprises are given the opportunity to participate in the performance of the Thruway Authority's contracting program. This opportunity for full participation in our free enterprise system by traditionally, socially and economically disadvantaged persons is essential to obtain social and economic equality and improve the functioning of the State economy.

Pursuant to revisions to the New York State Executive Law Article 15A, all established voluntary MBE/WBE participation goals have been declared mandatory and compliance with such goals and the good-faith efforts provisions therein will be a determining factor in the award of a contract.

Executive Law (Article 15-A, Section 310, et seq)

Requires all state contracts and all documents soliciting bids or proposals for state contracts to contain or make references to a provision, among others, that the contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Further, requires service providers to make good-faith efforts to solicit active participation by minority or women-owned business enterprises.

It is the intention of the Thruway Authority to fully execute the mandate of Executive Order #21 and provide Minority and Women-Owned Business Enterprises, with equal opportunity to bid on contracts awarded by the Thruway Authority.

The service provider, by bidding on a Thruway Authority contract, acknowledges an understanding of the social policy herein stated and pledges to cooperate with the Thruway Authority in the implementation of this policy, and further pledges to exert best efforts in soliciting and obtaining the participation of minority and woman businesses.

The Affirmative Action Goals for New York State Thruway Authority subcontracts performed pursuant to a final agreement is 15% Minority-Owned Business Enterprise (MBE) and 2% Women-Owned Business Enterprise (WBE).

MBE/WBE Utilization Plan

A Proposer is required to include in its technical proposal a description of its MBE/WBE utilization plan. The MBE/WBE Utilization Plan contained in the technical proposal shall include, 1) a statement that the Proposer will achieve the MBE/WBE goals as specified in this Appendix and shall indicate the name, address and federal identification or social security number and federal identification or social security number of the certified minority and woman-owned businesses the Proposer will use if awarded this contract, 2) a description of the services/work to be performed by each MBE/WBE and, 3) the percentage of contract work to be performed by each such firm.

The cost proposal shall include the dollar value and cost breakdown of each subcontract for each certified MBE/WBE identified in the technical proposal.

The Authority may also require that the Contractor, upon request, submit additional documentation and information concerning Contractor's performance in meeting the MBE/WBE goals.



APPENDIX D

**OMNIBUS PROCUREMENT
CHECKLIST TO DETERMINE "REASONABLE" EFFORT
BY BIDDERS/CONTRACTORS FOR CONTRACTS**



	YES	NO
1. Bidder/contractor has copy of the NYS <u>Directory of Certified Minority and Women-Owned Business Enterprises?</u>	<u> x </u>	_____
2. Bidder/contractor has solicited quotes from firms listed in the Directory?	<u> x </u>	_____
3. Bidder/contractor has contacted the NYS Dept. of Economic Development to obtain listings of NYS subcontractors and suppliers for products and services currently purchased from out-of-state/foreign firms?	<u> x </u>	_____
4. Bidder/contractor has utilized other sources to identify NYS subcontractors and suppliers (such as Thomas Register, in-house vendor list)?	<u> x </u>	_____
If yes, please identify source: <u> THOMAS REGISTER/IN HOUSE VENDOR LISTS </u>		
5. Bidder/contractor has placed advertisements in NYS newspaper(s)?	<u> x </u>	_____
6. Bidder/contractor has participated in vendor outreach conferences?	<u> x </u>	_____
7. Bidder/contractor has provided, or will provide, New York State residents notice of new employment opportunities resulting from this contract through listing any such positions with the Job Service Division of the NYS Department of Labor, or providing such notification by another method?	<u> x </u>	_____

[Handwritten signature]
01/20/16

APPENDIX E

MacBride Fair Employment Principles

Certification

Bidder must check either box A or box B

By signing and submitting this proposal to the Authority, and/or ultimately accepting the award of this contract, the bidder (contractor) certifies that:

1. the contractor (bidder), as well as any individual legal entity in which the contractor holds a ten (10%) percent or greater ownership; and/or
2. any individual or legal entity that holds a ten (10%) percent or greater ownership interest in the contractor (bidder); either
 - A. have no business operations in Northern Ireland; or, to the contrary,
 - B. if they do, that they shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles.

In accordance with Chapter 807 of the Laws of 1992 and as detailed therein, the MacBride principles shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity in Northern Ireland, and the signing of this certification shall permit independent monitoring of any such business operations in Northern Ireland by the Authority or its agents, if applicable.

The bidder shall check any of the above boxes which apply. If the bidder checks off box B, it shall give the details as to both the ownership interests and the type of business carried on, as well as contact information; such information to be included with this proposal.



Signature

28 SEPTEMBER 1995
Date

Kevin P. Moersch

President & CEO

Official Title



APPENDIX F

**CONSENT TO ASSIGNMENT
OF
MONIES**

**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES**



**CONSENT TO ASSIGNMENT
OF
MONIES**

**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES**

THIS CONSENT TO ASSIGNMENT AGREEMENT made this 10th day of October, 1995, among the New York State Thruway Authority (Authority or Assignor) having its principal place of business at 200 Southern Boulevard, Albany, New York 12201, MFS Network Technologies (MFSNT or First Assignee) having its principal place of business at Suite 1300, 1200 Landmark Center, Omaha, Nebraska 68102 and the New York State Office of General Services (OGS) or Second Assignee) having its principal place of business at the Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242.

WHEREAS, the Assignor has entered into a Contract with the First Assignee for provision of Authority Telesystem Services relating to the Design, Construction, Marketing and Maintenance/Operation of a Fiber Optic Infrastructure Along the New York State Thruway Authority Rights of Way under which Second Assignee will be provided services in connection with certain New York State Government Dedicated Fibers for specified consideration, all as fully described in the Contract to which this Assignment of Monies is attached.



NOW WITNESSETH that the Assignor by these presents does hereby assign, transfer and set over unto the First Assignee all right, title and interest in the direct receipt of payments to MFSNT referenced in such Agreement to be made by OGS, the Second Assignee, for the New York State Government Dedicated Fibers to be provided under this Contract.

NOW WITNESSETH that the Assignor by these presents does hereby assign, transfer and set over unto the Second Assignee all right, title and interest in direct remittance of payment referenced in such Agreement by OGS to MFSNT for the New York State Government Dedicated Fibers under this Contract.

The First Assignee and Second Assignee hereby acknowledge, assume and accept the transfer of the obligation to remit and accept payments for NYS Fibers on a direct basis. The parties, the Authority, MFSNT and OGS, shall in writing provide the names of each of their representatives for the term of the Contract and the address to which payments shall be sent.

Assignor: New York State Thruway Authority

Assignor Representative: Stephen D. Morgan

Title: Executive Director

Address: 200 Southern Blvd., P.O. Box 189, Albany, NY 12201

Telephone Number: (518) 436-2900

Facsimile Number: (518) 471-5058

First Assignee: MFS Network Technologies, Inc.

First Assignee Representative: Kevin P. Moersch

Title: President and CEO

Address: 1200 Landmark Center, Suite 1300, Omaha, NE 68102

Telephone Number: (402) 233-7700

Facsimile Number: (402) 233-7650

Second Assignee: Office of General Services

Second Assignee Representative: Michael McCormack

Title: Assistant to the Deputy Commissioner

Address: 41st Fl., Corning Tower, ESP, Albany, NY 12242

Telephone Number: 486-9200

Facsimile Number: 486-9166

The parties individually warrant and represent that they will each continue to fully perform all of their duties and obligations under the Contract. This Consent is made, executed and delivered upon the express condition that it shall not operate to discharge any claims, demands or causes of action the parties heretofore had, now have, or hereafter may have against either of the other parties for or by reason of any matter or thing whatsoever.

This Assignment of Monies shall not be effective, valid or binding until the Contract is approved by the Office of the State Comptroller and this Consent, which is incorporated by reference into such Contract, are delivered, filed and accepted by the Office of the State Comptroller.



NEW YORK STATE THRUWAY AUTHORITY

copy

By *[Signature]*
Authorized Agent of ASSIGNOR
Name: Stephen D. Morgan
Title: Executive Director
Date: October 10, 1995
Federal I.D. No. 14-6003955

MFS NETWORK TECHNOLOGIES, INC.

By *[Signature]*
Authorized Agent of FIRST ASSIGNEE
Name: Kevin P. Moersch
Title: President and CEO
Date: September 27, 1995
Federal I.D. No. 47-0714-393

THE PEOPLE OF THE STATE OF NEW YORK
OFFICE OF GENERAL SERVICES

PLEASE
ALM
9/28/95
INITIAL

BY: *[Signature]*
Authorized Agent of SECOND Assignee
Name: Michael McCormack
Title: Assistant to the Deputy Commissioner
Date: September 22, 1995
Federal I.D. No. 096-60-5303

APPROVED _____ 19 ____
FOR THE STATE COMPTROLLER

Exhibit 7

USER AGREEMENT FOR INNERDUCT

This USER AGREEMENT FOR INNERDUCT (hereinafter referred to as "AGREEMENT") is made this 12th day of April, 1999, by and between MFS Network Technologies, Inc. (hereinafter referred to as "MFSNT"), whose office is located at Suite 1300, 1200 Landmark Center, Omaha, Nebraska 68102 and Williams Communications, Inc. (formerly known as Vyvx, Inc. and doing business in New York as Vyvx), whose office is located at One Williams Center, Tulsa, OK 74172 (hereinafter referred to as "USER").

WITNESSETH

WHEREAS, MFSNT has constructed and installed the Communications System and desires to install the Installed Williams Fibers and grant to USER the right to use the Communications System and Installed Williams Fibers within the User Route (as defined below), and USER desires to obtain the use of the Communications System and Installed Williams Fibers within the User Route upon the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, the receipt and sufficiency of which the parties acknowledge, MFSNT and USER hereby agree as follows:

ARTICLE 1. CERTAIN DEFINITIONS. For purposes of this AGREEMENT the following terms are hereby defined:

- Item 1 "Communications System" shall mean the communications system installed by MFSNT along the User Route which will include USER's Innerducts, but which will exclude the Installed Williams Fibers.
- Item 2 "Completion Notice" shall have the meaning set forth in Article 3, Item 1.
- Item 3 "Innerduct" shall mean two (2) one and one-quarter inch (1 1/4") (inner diameter) duct(s) within which MFSNT shall, or USER shall be permitted to place fibers.
- Item 4 "Installed Williams Fibers" shall mean the fiber optic cable provided by USER to be installed by MFSNT in the Innerduct pursuant to the provisions hereof.
- Item 5 "User Route" shall mean the route along which the Innerduct is placed. The location of the User Route is shown generally on Exhibit A attached hereto and incorporated herein by this reference. MFSNT reserves the right to alter the User Route, provided that such alterations do not result in changes to the endpoints for each segment of the User Route and provided that USER is given notice of such alterations prior to commencement of installation. Within thirty (30) days following execution of this AGREEMENT MFSNT shall provide USER with "as built" drawings prepared in accordance with standard industry practices and showing the location of the Innerduct.

Item 6

"User Term" shall mean the period which commences on the date this AGREEMENT has been fully executed by USER and MFSNT, and which ends twenty (20) years after the date on which the Installed Williams Fibers within the first Innerduct have been accepted by USER pursuant to Article 3, Item 1. Subject to MFSNT obtaining property rights sufficient to allow extension of the User Term, USER may extend the User Term for an additional twenty (20) year term. To extend the User Term by the additional twenty (20) years USER shall provide to MFSNT notice of such election not less than sixty (60) days prior to the expiration of the initial twenty (20) years. User Fees for any renewal term shall be negotiated in good faith by the parties, and shall bear a reasonable relationship to the user fees charged by MFSNT, or its permitted assigns, to all other comparable users (taking into consideration all relevant factors, including (but not limited to) the length of the User Route and User Term and such other terms and conditions bearing on the fees charged hereunder) of the Communications System. Notwithstanding the foregoing, in the event that, pursuant to Article 9(b) hereof, this AGREEMENT is assigned to the New York State Thruway Authority, the New York State Thruway Authority shall not be obligated to extend the User Term, but shall give reasonable consideration to such extension.

ARTICLE 2. USER RIGHTS AND TERMINATION.

Item 1

The rights granted to USER (the "User Rights") by MFSNT hereunder include, but are not limited to:

- a. the exclusive and indefeasible right to use the Innerduct and Installed Williams Fibers within the User Route for the User Term, upon terms and conditions contained herein; and
- b. the right to have the User Route modified to allow connection at additional access points (in addition to access points at the equipment shelters and intermediate point cities set forth on Exhibit A and existing splice point locations along the User Route) which additional points shall be subject to the approval of MFSNT (which approval shall be given unless MFSNT reasonably determines that such access (i) is prohibited by MFSNT's agreements with underlying property owners (MFSNT shall use commercially reasonable efforts to obtain permission from the New York State Thruway Authority for USER to have the same access points along the User Route as MFSNT), or (ii) may adversely affect the operation of other fibers or the operation of the Communications System) and provided USER reimburses MFSNT for MFSNT's actual, direct costs incurred in performing such modifications;
- c. the right to lengthen the User Route as approved by MFSNT on terms mutually agreeable to MFSNT and USER;

d. the exclusive right to install in the second Innerduct one or more fiber optic cable(s) or other equipment at USER's expense (the price and schedule for any such installation shall be negotiated by the parties at the time USER elects to install such additional fiber optic cable(s) and the price shall be quoted on a commercially reasonable basis) which fiber optic cable(s), when installed, shall be considered "Installed Williams Fibers" hereunder;

e. the right to increase the fiber count of the Installed Williams Fibers in the first Innerduct in the increments and at the additional incremental USER Fees to be paid pursuant to Article 3, Item 2(c) as shown below:

97 to 144 fiber optic strands	\$13.48 per fiber. per mile
145 to 288 fiber optic strands	\$15.32 per fiber. per mile
289 to 432 fiber optic strands	\$17.15 per fiber. per mile

provided that such right must be exercised by USER in writing on or before April 8, 1999 and further provided a Project Schedule adjustment shall be negotiated by the parties at the time USER exercises such right: and

f. the right to use 200 square feet of separately caged and accessed floor space and access to 100 Amps DC power at each of the twelve (12) equipment shelters all as described in Section 3 of Exhibit "B" hereto.

During the User Term, MFSNT will use reasonable efforts to allow USER to expand its facilities in any regeneration site, PROVIDED that USER bears the cost of such expansion and reimburses MFSNT for any and all costs and expenses (including a reasonable allowance for overhead) and agrees to pay any additional User Fees which are due and payable in accordance with Article 3, Item 2(a) incurred in connection therewith, and further PROVIDED that the underlying property owner consents to such expansion.

Item 2

On termination of this AGREEMENT, all rights of USER in and to the Communications System shall cease. USER shall surrender the User Route to MFSNT and MFSNT may, at its option, disconnect, terminate, or remove some or all of the USER's property (including the Installed Williams Fibers) within the User Route without liability to USER. USER may, provided the User Fee stated in Article 3, Item 2(a) has been paid in full, abandon any or all of its property within the User Route to MFSNT or remove its property (except for the Installed Williams Fibers) from the User Route within 180 days following termination of this Agreement and terminate this AGREEMENT without any further liability to MFSNT other than for amounts relating to the time period prior to such termination.

ARTICLE 3. ACCEPTANCE, FEES AND CHARGES.

Item 1 MFSNT shall perform testing on the Installed Williams Fibers as indicated in the Fiber Cable Splicing, Testing and Acceptance Procedures (attached hereto as Exhibit C) to demonstrate that the Installed Williams Fiber meets the applicable specifications. MFSNT shall provide written notice to USER of the date upon which the tests shall take place, and USER shall have the right to (a) witness such tests or designate an individual or individuals to witness such tests on USER's behalf and (b) subject to USER's compliance with all safety, access and operations requirements imposed by the New York State Thruway Authority, USER shall, at USER's risk and expense, be permitted to inspect the work and conduct its own fiber testing; in no event, however, shall MFSNT be required to schedule or postpone the tests to assure that a representative of USER is present during the tests. Upon successful completion of such tests which demonstrate that the Installed Williams Fibers are in accordance with the specifications set forth in Exhibit C, MFSNT shall provide written notice of same to USER (a "Completion Notice") along with a copy of the test results. USER shall, within fifteen (15) days of receipt of the Completion Notice, either accept or reject the Completion Notice (specifying, if rejected, the defect or failure in the acceptance testing and/or the items or matters to be remedied) by delivery of written notice to MFSNT (provided, however, that the USER shall immediately deliver written notice of acceptance of the Installed Williams Fibers in the event that the USER's tests demonstrates that the Installed Williams Fibers are in accordance with the specifications set forth in Exhibit C). In the event USER rejects the Completion Notice, MFSNT shall promptly, and at no cost to USER, commence to remedy the defect or failure specified in USER's notice. Thereafter MFSNT shall again give USER a Completion Notice. The foregoing procedure shall apply again and successively thereafter until MFSNT has remedied all defects or failures specified by USER. Any failure by USER to timely reject a Completion Notice shall be deemed to constitute acceptance for purposes of this AGREEMENT and USER shall be deemed to have delivered a notice of acceptance on the sixteenth day after delivery of the Completion Notice. USER may accept the Installed Williams Fibers prior to the completion of the tests by providing MFSNT a written notice of acceptance and waiver of tests. Upon acceptance or deemed acceptance of the Installed Williams Fibers MFSNT shall give USER written notice of such acceptance or deemed acceptance.

Item 2 As consideration for the rights granted herein, USER agrees to pay MFSNT the following fees and charges:

- a. a one-time, non-recurring User Fee of \$25,737,500 for the use of the Communications System, one hundred percent (100%) of which shall be due and payable within three (3) business days after execution and delivery by each Party of this AGREEMENT to the other;

b. an annual payment of \$300 per User Route mile per Innerduct as a User Fee for MFSNT's maintenance of the Installed Williams Fibers and Communications System, which sum with respect to the first Innerduct shall be invoiced after the date the Installed Williams Fibers therein have been accepted by USER and on each anniversary date of such acceptance thereafter during the User Term, and with respect to the second Innerduct shall be invoiced after the first to occur of

(i) the date the Installed Williams Fibers in the second Innerduct therein have been accepted by USER, or

(ii) three (3) years after execution hereof

and on each anniversary date thereafter; and

c. a one-time, non-recurring User Fee of \$5,519,296 for installation, splicing and testing of the Installed Williams Fibers in the first Innerduct (up to the initial 96 fiber optic cable strands provided by USER), due and payable as described in Item 3 below.

Item 3 MFSNT shall deliver invoices for payment of the User Fees set forth in subsections (b) and (c) of Item 2 above, and each such invoice shall be due and payable within thirty (30) days from the date of invoice. Nonpayment of any portion of any User Fee when due and payable under this AGREEMENT shall constitute a default under this AGREEMENT. Any User Fee or portion thereof, for which payment has not been received within such time shall be deemed past due. Past due amounts shall bear interest at a rate equal to two (2) percentage points above the Prime Rate as then published in the Money Rates section of the Wall Street Journal as that rate which is the base rate on corporate loans posted by a substantial percentage of the nation's largest banks, compounded monthly, commencing with the date due until the date payment is received.

Item 4 The User Fee stated in Item 2, subsection (b) above shall be adjusted annually by multiplying the User Fee by a fraction in which the numerator is the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index "All Finished Goods" Series ID WPUSOP 3000 applicable to the New York State area (the "Index") most recently published before the date of adjustment and the denominator is the Index most recently published prior to the execution hereof; PROVIDED, however, that such fraction shall not be less than 1.

ARTICLE 4. MFSNT REPRESENTATIONS AND COVENANTS. MFSNT hereby covenants, represents and warrants that:

Item 1 MFSNT has obtained and will maintain, at its sole cost and expense, defensible property rights sufficient to permit it to install and maintain in place for the User

Term the Communications System and the Installed Williams Fibers along the User Route.

- Item 2 MFSNT is a corporation duly incorporated and organized and validly existing and in good standing under the laws of the State of Delaware. MFSNT is duly qualified to do business and is in good standing in New York. MFSNT has full corporate power and authority to execute, deliver and perform its obligations under this AGREEMENT. The execution of this AGREEMENT by MFSNT has been duly and validly authorized by all necessary action on the part of MFSNT. This AGREEMENT is a legal, valid and binding obligation of MFSNT, enforceable against MFSNT in accordance with its terms. The execution and delivery of this AGREEMENT by MFSNT and the performance of the terms, covenants and conditions contained herein will not violate the articles of incorporation or by-laws of MFSNT, or any applicable law or regulation or any order of court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which MFSNT is bound.
- Item 3 All approvals, authorizations or other actions by governmental authorities or filings with any such authorities have been, or will be, obtained or accomplished in connection with the execution, delivery and performance by MFSNT of this AGREEMENT.
- Item 4 Except as otherwise disclosed to USER in writing prior to the execution hereof, there are no actions, suits or proceedings pending or overtly threatened against MFSNT before any court or administrative agency that would materially impair MFSNT's performance of its obligations under this AGREEMENT.
- Item 5 MFSNT expressly disclaims any further warranties or representations except as expressly set forth in this AGREEMENT.
- Item 6 Subject to the terms of this AGREEMENT, MFSNT hereby agrees (i) to install the Installed Williams Fibers along the User Route according to the standards and specifications set forth in Exhibit B and (ii) without limiting the preceding sentence, to maintain the Communications System, Installed Williams Fibers and User Route in accordance with Article 7 of this AGREEMENT and in accordance with the standards and specifications of Exhibit B.
- Item 7 MFSNT shall use reasonable care with respect to the Installed Williams Fibers from the time such cable is delivered to MFSNT until it is accepted by USER. Any loss or damage to the Installed Williams Fiber during such time shall be borne solely by MFSNT (provided however any such loss or damage to the Installed Williams Fiber caused during such time that USER self-performs installation, testing or acceptance of the Installed Williams Fibers shall be borne solely by USER).

- Item 8 The Innerduct has been or will be installed in accordance with the standards and specifications set forth in Exhibit B and provides or will provide a continuous duct for installation of the Installed Williams Fiber from end to end of the User Route.
- Item 9 MFSNT shall, except as may be caused by events of Force Majeure or by the failure of USER or USER suppliers to deliver the Installed Williams Fibers in accordance with the time frames set forth in Exhibit D (Project Schedule), perform the installation of the Installed Williams Fibers in accordance with the Project Schedule.
- Item 10 MFSNT shall permit USER to inspect at USER's risk and expense the progress of the installation and the conformance of the installation with the standards and specifications set forth in Exhibit B and the terms and conditions of this AGREEMENT.
- Item 11 MFSNT shall, until acceptance of the Installed Williams Fibers in the first Innerduct, provide to USER weekly progress reports detailing all activity taken during the prior week to accomplish completion of the installation and showing progress with respect to meeting the milestones set forth in Exhibit D. Once every thirty (30) days during the installation period MFSNT's chief project engineer shall meet with a designated representative of USER to report on the progress of the installation.
- Item 12 The Innerduct (a) is free of defects in material, workmanship and design; and (b) is fit for use as a conduit for an optical fiber cable system. Maintenance or repairs to the Communications System or the Installed Williams Fibers required as a result of breach of the warranties set forth in this AGREEMENT shall be performed at the sole cost and expense of MFSNT.

ARTICLE 5. USER REPRESENTATIONS AND COVENANTS. USER hereby covenants, represents and warrants that:

- Item 1 USER is a corporation duly incorporated and organized and validly existing and in good standing under the laws of the State of Delaware. USER is duly qualified to do business and is in good standing in New York. USER has full corporate power and authority to execute, deliver and perform its obligations under this AGREEMENT. The execution of this AGREEMENT by USER has been duly and validly authorized by all necessary action on the part of USER. This AGREEMENT is a legal, valid and binding obligation of USER, enforceable against USER in accordance with its terms. The execution and delivery of this AGREEMENT by USER and the performance of the terms, covenants and conditions contained herein will not violate the articles of incorporation or by-laws of USER, or any applicable law or regulation or any order of court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which USER is bound.

- Item 2 All approvals, authorizations or other actions by governmental authorities or filings with any such authorities have been, or will be, obtained or accomplished in connection with the execution, delivery and performance by USER of this AGREEMENT.
- Item 3 Except as otherwise disclosed to MFSNT in writing prior to the execution hereof, there are no actions, suits or proceedings pending or overtly threatened against USER before any court or administrative agency that would materially impair USER's performance of its obligations under this AGREEMENT.
- Item 4 USER expressly disclaims any further warranties or representations except as expressly set forth in this AGREEMENT.

ARTICLE 6. PERMITTED USE. USER shall be permitted to use the Innerduct and Installed Williams Fibers for any lawful purpose. USER may sell or otherwise transfer capacity, sell or lease or otherwise transfer dark or lit fibers, or transfer, convey or grant any right of use, including IRU's (Indefeasible Right to Use) to others in the Installed Williams Fibers and in the Innerduct.

ARTICLE 7. MAINTENANCE AND ACCESS.

- Item 1 MFSNT shall have the exclusive right to supply, install and maintain all property (except for electronics and optronics) owned by USER which is for use in conjunction with the Innerduct and the User Route. MFSNT agrees to repair, constantly maintain, reinforce and otherwise preserve the Communications System and the Installed Williams Fibers, in accordance with normal industry standards and the standards set forth in Exhibit B hereto. Without limiting the generality of the foregoing and recognizing the importance to USER in the conduct of USER's business of the constant efficacy of the Communications System, MFSNT hereby agrees to effect and perform at all times, all necessary, on-site repair and maintenance of the Communications System and the Installed Williams Fibers effective commencement of which shall begin no later than four (4) hours after MFSNT receives notification from anyone of failure, disrepair, impairment or other need for repair; provided, however, that in the event any of the User Rights are interrupted by a Force Majeure event, repairs will be made as expeditiously as possible; and further provided that MFSNT's obligations to repair within the time specified above shall at all times be subject to and contingent upon MFSNT being allowed by the appropriate governmental authorities to enter the User Route to effect such repairs. Ordinary and customary maintenance of the Communications System and the Installed Williams Fibers shall be completed at MFSNT's sole cost and expense; in the event, however, that extraordinary repairs are required to be performed in connection with the Communications System or the Installed Williams Fibers, USER shall reimburse MFSNT for its pro rata share (based on the total number of innerducts affected and then based on the total number of fiber count affected by such work) of all reasonable and actual costs incurred in making repairs to the Communications System or