

Installed Williams Fibers which are not reimbursed by any third party. For purposes of this Item 1, extraordinary repairs shall mean repairs required as a result of fiber or cable cuts or natural or man-made disasters. In the event MFSNT fails to respond within the time frame specified in the standards referred to above, or in the event that any outage respecting the Williams Installed Fibers lasts longer than eight (8) hours after MFSNT's receipt of notice thereof, USER shall have the right to perform maintenance itself subject to USER's compliance with all safety, access and operations requirements imposed by the New York State Thruway Authority.

Item 2 MFSNT or its agents shall have the right to alter the location of the User Route or the Communications System in accordance with the provisions of this Item 2. Whenever possible and except with respect to any actions required to be taken in emergency situations, MFSNT shall notify USER sixty (60) days in advance of a planned movement or alteration of the User Route or the Communications System which may result in the interruption of operation of the Installed Williams Fibers. MFSNT shall use its reasonable best efforts to accomplish any movement or alteration of the User Route without causing an interruption of service to USER. MFSNT shall use its reasonable best efforts to assure that the endpoints for each segment of the User Route shall, notwithstanding any relocation, remain the same as depicted on Exhibit A. MFSNT shall have no liability to USER for interference with the User Rights during any movement or alteration of the User Route or the Communications System.

Item 3 In the event that movement or alteration of the User Route, the Communications System or the Installed Williams Fibers is required (subsequent to the acceptance of the initial Installed Williams Fibers as set forth in the Project Schedule) due to circumstances beyond the control of MFSNT, MFSNT shall perform such work as may be required and USER shall reimburse MFSNT for USER's pro rata share (based on the total number of innerducts affected and then based on the total fiber count affected by such work) of the reasonable and actual costs of such work which are not reimbursed by any third party. In the event of a condemnation of all or part of the User Route, MFSNT agrees to use such portion of the proceeds of any condemnation award as are required to provide an alternate User Route.

Item 4 Within ninety (90) days after each movement or alteration of the User Route, MFSNT shall provide User with updated "as built" drawings prepared in accordance with standard industry practices and showing the then current location of the Innerduct.

ARTICLE 8. AUTHORITIES. USER shall obtain from the appropriate public and/or private authority any authorization or franchise required to use the Installed Williams Fibers. USER shall submit to MFSNT upon request, such evidence as may be required to demonstrate compliance with this Article 8. MFSNT shall obtain from the appropriate public and/or private authority any authorization required to install and maintain the Communications System and the Installed Williams Fibers. MFSNT shall submit to USER upon request, such evidence as may be required to demonstrate compliance with this Article 8.

ARTICLE 9. ASSIGNMENT.

- Item 1 Neither USER nor MFSNT may assign this AGREEMENT without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding this restriction, MFSNT and USER hereby agree that (a) either party may assign this AGREEMENT to an Affiliate or lender without the prior written consent of the other party, and (b) MFSNT may assign this AGREEMENT to the New York State Thruway Authority (or its nominee) in the event that MFSNT's agreement with the New York State Thruway Authority for use of certain property owned or controlled by the New York State Thruway Authority terminates or expires. For purposes of this section, "Affiliate" shall mean any party controlling, controlled by or under common control with the assigning party.
- Item 2 In addition to the foregoing USER may assign some of all of its rights and obligations hereunder to State Street Bank and Trust Company of Connecticut, National Association, in connection with a financing by USER of construction of its fiber optic network; in addition, State Street Bank and Trust Company of Connecticut, National Association, may further assign this AGREEMENT as collateral for such financing. If USER makes an assignment pursuant to this subsection, USER (or its assignee pursuant to an assignment made under the other provisions of this Article 9) shall guarantee performance of the assignee's obligations.

ARTICLE 10. TITLE AND ENCUMBRANCES.

- Item 1 The right of USER to use the Communications System as specified in this AGREEMENT is in the nature of a contract right under Article 9 of the Uniform Commercial Code. No use, whatever its duration, of the Communications System or payment of the User Fee required under this AGREEMENT shall create or vest in USER any rights other than the rights granted herein, including without limitation any ownership or other property right in the User Route or the Communications System, nor shall this AGREEMENT be construed as constituting an assignment of any property rights of MFSNT.
- Item 2 The Communications System shall remain the property of MFSNT and MFSNT shall be solely responsible for the payment of all property, possessory, income, excise and use taxes and any special assessments of any kind that may be levied against the Communications System. The Installed Williams Fibers shall remain the property of USER and USER shall be solely responsible for the payment of all property possessory, income, excise and use taxes and any special assessments of any kind that may be levied against the Installed Williams Fibers.
- Item 3 USER may not grant its lenders a security interest in the Communications System. USER has no authority to encumber the Communications System and shall not purport to create or permit any such encumbrance. MFSNT may not grant its lenders

a security interest in the Installed Williams Fibers. MFSNT has no authority to encumber the Installed Williams Fibers and shall not purport to create or permit any such encumbrance. MFSNT shall not allow any default to occur or continue to exist in any agreement in which a security interest has been granted affecting the Communications System. MFSNT shall obtain from any person to whom MFSNT has granted or hereafter grants a security interest or lien on the Communications System an agreement not to disturb the rights of the USER in the event any foreclosure of such security interest or lien.

- Item 4 MFSNT shall permit no mechanics or materialmen's liens to be filed against the Communications System which adversely affects the User Rights nor the Installed Williams Fibers and in the event any such lien may be so filed shall immediately cause its removal and shall indemnify, defend and hold harmless USER against any claim or expense arising in connection with any such lien.

ARTICLE 11. INDEMNIFICATION.

- Item 1 USER will indemnify and hold harmless MFSNT and its officers, directors, employees, partners, and agents from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or several, expenses of any nature (including reasonable attorneys', accountants', and experts' fees and disbursements), and judgments, fines, settlements and other amounts (herein collectively called "Damages") arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (herein collectively called "Claims") relating to or arising out of USER's negligence or willful misconduct related to this AGREEMENT.

- Item 2 MFSNT will indemnify and hold harmless USER and its officers, directors, employees, partners, and agents from and against any and Damages arising from any and all Claims relating to or arising out of MFSNT's negligence or willful misconduct related to this AGREEMENT including its installation, maintenance and any repair to the Communications System and/or the Installed Williams Fibers, or related to any breach by MFSNT of its obligations pursuant to Article 4, Item 1, Article 8, or Article 10, Items 3 and 4.

ARTICLE 12. CONSEQUENTIAL DAMAGES. In no event shall MFSNT or USER be liable to the other for special, consequential, exemplary or punitive damages as a result of the performance or nonperformance of their obligations under this AGREEMENT. Neither MFSNT nor USER shall make any claim against any underlying property rights owner for any special, consequential, exemplary or punitive damages for any reason whatsoever.

ARTICLE 13. INTERRUPTION OF USER SERVICE. MFSNT shall have no obligation (beyond its obligations set forth in Article 7) to USER respecting any interruption of

USER's rights in and to the Communications System caused by an event of Force Majeure, nor shall MFSNT have any obligation for any other interruption or delay except to the extent such interruption or delay is caused by the gross negligence of MFSNT.

ARTICLE 14. EVENTS OF DEFAULT.

- Item 1 If any party materially defaults in the performance of any of its covenants, conditions, representations or warranties hereunder, and in the event that said default continues uncured for a period of thirty (30) days after receipt of written notice of the default from the non-defaulting party or, if such default is not curable within such time, the failure to commence action to cure the same within such thirty (30) days and to pursue such action diligently to completion, the non-defaulting party may: (a) terminate this AGREEMENT in accordance with ARTICLE 2. and/or (b) exercise and pursue all other rights and remedies available to it under applicable law and consistent with this AGREEMENT.
- Item 2 Time is of the essence in the performance of MFSNT's obligations hereunder. In the event that MFSNT fails (other than as caused by events of Force Majeure or by the failure of USER or its suppliers to deliver the Installed Williams Fibers in accordance with the time frames set forth in the Project Schedule) to perform installation of the Installed Williams Fibers substantially in accordance with the Project Schedule, USER shall provide MFSNT with written notice thereof. After delivery of such written notice, USER and MFSNT shall immediately schedule a meeting to determine what steps can and should be implemented to maintain the Project Schedule. In the event that the installation of the Installed Williams Fibers is not substantially on schedule (to meet the completion date set forth in the Project Schedule) within thirty (30) days after the meeting, USER shall
- a. be permitted to assist in the installation of the Installed Williams Fibers (subject to USER's compliance with all safety, access and operations requirements imposed by the New York State Thruway Authority) (in which event all reasonable and actual costs incurred by USER in connection therewith shall be deducted from the User Fee due and payable under Article 3, Item 2(c) hereof), or
 - b. continue to assist in the installation work of the Installed Williams Fibers and, in the event that the work is not substantially complete on or before 30 days from the completion date set forth in the Project Schedule, recover as a credit off the amount payable under Article 3, Item 2(c) hereof, equal to one hundred sixty two thousand five hundred dollars (\$162,500) for each 30 days (which amount shall be prorated, as applicable, for periods shorter than 30 days) that the completion is delayed beyond such date (for the purposes hereof, "substantially complete" shall mean that stage in the progress of installation of the

Installed Williams Fibers where the Installed Williams Fibers are ready for and capable of being placed into commercial service by USER). The amount of the credit to which USER shall be entitled, however, shall in no event exceed \$487,500.

The foregoing shall be USER's sole and exclusive remedies for a failure to complete work in accordance with the Project Schedule. In the event that a credit is due hereunder, such credit shall not be deemed a penalty but has been agreed upon as liquidated damages because USER's actual damages in such event would be extremely difficult to determine.

ARTICLE 15. BINDING EFFECT. This AGREEMENT shall be binding upon, and shall inure to the benefit of, the parties hereto, their permitted successors and assigns.

ARTICLE 16. GOVERNING LAW. This AGREEMENT shall be governed by and interpreted pursuant to the laws of the State of New York, without respect to New York State's conflict of law rules. MFSNT and USER shall at all times observe and comply with, and the provisions of this AGREEMENT are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this AGREEMENT, so long as such laws, ordinances or regulations remain in effect.

ARTICLE 17. ENTIRE AGREEMENT. This AGREEMENT, including the Exhibits attached hereto, sets forth the entire agreement of the parties with respect to the subject matter hereof.

ARTICLE 18. NOTICES. All notices or approvals required or permitted under the terms of this AGREEMENT shall be in writing and shall be delivered either personally or by prepaid nationally-recognized commercial overnight delivery service which maintains evidence of receipt, addressed as follows:

If to MFSNT:

MFS Network Technologies, Inc.
ATTN.: President and Legal Counsel
1200 Landmark Center, Suite 1300
Omaha, NE 68102

If to USER:

Williams Communications, Inc.
ATTN: President and Legal Counsel
One Williams Center
Tulsa, Oklahoma 74172

or at such other address as the entity to which notice or approval is to be given may have communicated to the other party in writing in accordance herewith. Any such notice or approval shall be deemed to have been given when delivered if delivered personally or on the first business day after dispatch if sent by commercial overnight delivery service.

ARTICLE 19. PUBLICITY. Except as may be otherwise required by law, each party shall obtain the written consent of the other party prior to releasing any public announcements, press releases, sales brochures, advertising or other publicity materials relating specifically to this AGREEMENT in which the name or logo of any other party is used; any such consent shall not be unreasonably withheld or unduly delayed.

ARTICLE 20. NO PARTNERSHIP. The parties acknowledge and agree that this AGREEMENT does not create a partnership between, or a joint venture of, MFSNT and USER. The performance by the parties of all duties and obligations hereunder shall be as independent contractors and not as agents of the other party, and no persons employed or utilized by a performing party shall be considered employees or agents of the other.

ARTICLE 21. MODIFICATION. This AGREEMENT may be amended, changed or otherwise modified only by written amendment to this AGREEMENT which is executed by MFSNT and USER.

ARTICLE 22. INSURANCE.

Item 1 MFSNT and USER shall provide the insurance set forth below:

a. commercial general liability insurance for bodily injury (including death) and property damage which provides limits of not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) annual aggregate. The insurance coverage required by this Item will include contractual liability to cover each party's obligations under this AGREEMENT, including its indemnity obligations, and coverage for products/completed operations;

b. automobile liability insurance for bodily injury (including death) and property damage that provides total limits of not less than one million dollars (\$1,000,000) per occurrence to all owned, non-owned and hired vehicles;

c. statutory workers' compensation and employers' liability insurance of not less than one million dollars (\$1,000,000) per occurrence applicable to employers' liability coverage for all employees engaged in services under this AGREEMENT.

The foregoing coverages shall include broad form all-states/other states coverage. The foregoing coverages shall be endorsed to include the insurer's waiver of subrogation in favor of the other party, its officers, representatives, agents and employees, a copy of which shall be provided to the other party.

- Item 2 Certificates of insurance shall be provided to each party and must be effective before commencement of installation of the Installed Williams Fibers and shall remain in force until expiration or termination of this AGREEMENT. Such certificates shall provide that the coverages cannot be canceled or modified in coverage or amount without thirty (30) days' prior written notice to the other party.
- Item 3 Insurance provided pursuant to this Article shall name as additional insureds the relevant underlying property rights owners, as their interests may appear.
- Item 4 The presence of such insurance coverage is not intended to and shall not in any manner limit the liabilities and obligations of either party hereunder.

ARTICLE 23. FORCE MAJEURE. As used in this AGREEMENT, the term "Force Majeure" shall mean any occurrences beyond a party's reasonable control, which, by the exercise of reasonable diligence, such party is unable to prevent or avoid. The obligations of either party, to the extent that such obligations are affected by an event of Force Majeure, shall be suspended during the continuance of such event of Force Majeure. Notwithstanding the foregoing, Force Majeure shall not delay or excuse USER's obligation to pay the USER Fee hereunder. Each party shall use its best efforts to remedy such event of Force Majeure with all reasonable dispatch and to minimize the effects thereof.

ARTICLE 24. SOLE BENEFIT. This AGREEMENT is for the sole benefit of the parties hereto and their respective permitted successors and assigns, and shall not be construed as granting rights to any person or entity other than the parties or imposing on either party obligations to any person or entity other than a party.

ARTICLE 25. SEVERABILITY. In the event any term, covenant or condition of this AGREEMENT, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this AGREEMENT and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this AGREEMENT.

ARTICLE 26. CONFIDENTIALITY.

- Item 1 The parties hereto agree, except as may be required to comply with any applicable law, regulation or order of any governmental or other authority, to:

- a. maintain, or cause to be maintained, the confidentiality of the proprietary information or other confidential matters (hereinafter "Confidential Matters") of the other party and not disclose, or permit to be disclosed, any such Confidential Matters, unless authorized in writing by such other party;
- b. not use, or permit to be used, any such Confidential Matters, unless for the sole benefit of such other party;
- c. restrict, or cause to be restricted, disclosure of such Confidential Matters to those officers, employees and agents who need to know such Confidential Matters in the performance of work relating to the subject matter of this AGREEMENT (it being understood that such officers, employees and agents shall be informed of the confidential nature of such Confidential Matters and shall be directed to treat such Confidential Matters confidentially and not use such Confidential Matters other than for the purpose described above); and
- d. take precautions necessary or appropriate to guard the confidentiality of such Confidential Matters.

Item 2 Neither party shall be required to hold confidential any information: 1) which becomes publicly available other than through the recipient, 2) which is required to be disclosed, by a governmental or judicial order, 3) which is independently developed by the disclosing party, or 4) which becomes available to the disclosing party without restriction known to it from a third party.

Item 3 In the event that either party hereto becomes obligated to disclose Confidential Matters pursuant to an order of any governmental or other authority, such party shall advise the other party and, if requested by such other party and at such requesting party's expense, seek a protective order or other appropriate remedy that will permit such party to avoid such disclosure. In the event that such protective order or other remedy is not obtained, such party will disclose only that portion of the Confidential Matters as it is obligated to disclose pursuant to such order, and will use all reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Matters so disclosed.

Item 4 The parties acknowledge and agree that money damages would not be a sufficient remedy for any breach of the provisions of this Article 26 and that the injured party shall be entitled to specific performance and injunctive relief as remedies for any such breach. These obligations shall survive expiration or termination of this AGREEMENT for a period of two (2) calendar years.

ARTICLE 27. PRIORITY. In the event a conflict exists between the provisions of this AGREEMENT and any Exhibit, the provisions of this AGREEMENT shall prevail.

MFS NETWORK TECHNOLOGIES, INC. (MFSNT)

By: Steve V. Rubin

Its: President

Date: April 12, 1999

Williams Communications, Inc. (USER)

By: E. M. Williams

Its: Senior VP

Date: March 12, 1999



EXHIBITS

- EXHIBIT A: Location of User Route
- EXHIBIT B: Scope of Work
- EXHIBIT C: Fiber Splicing, Testing & Acceptance Procedures
- EXHIBIT D: Project Schedule

Exhibit 8

99E0588.00

USER AGREEMENT FOR INNERDUCT AND DARK FIBER

This USER AGREEMENT FOR INNERDUCT AND DARK FIBER (hereinafter referred to as "AGREEMENT") is made this 12 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 "Dark Fiber" shall mean 48 fiber optic strands along that portion of the User Route generally running from Yonkers to 60 Hudson Street in New York City.
- 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 and Dark Fiber are 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 Dark Fiber and 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.

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 Dark Fiber, 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, 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 three (3) equipment shelters shown on Section 3 of Exhibit "B" hereto.

During the User Term, MFSNT will use reasonable efforts to allow USER to expand its facilities in any terminal, regeneration site or junction, 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) 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 Dark Fiber and the Installed Williams Fibers as indicated in the Fiber Cable Splicing, Testing and Acceptance Procedures (attached hereto as Exhibit C) to demonstrate that the Dark Fiber and 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 governmental authorities, 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 Dark Fiber and 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 Dark Fiber and the Installed Williams Fibers in the event that the USER's tests demonstrates that the Dark Fiber and 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 Dark Fiber or 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 Dark Fiber and 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 \$ 9,983,100.00 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 in those places where USER has two (2) Innerducts, and per route mile for the Dark Fiber) as a User Fee for MFSNT's maintenance of the Installed Williams Fibers, the Dark Fiber and the Communications System, which sum with respect to the first Innerduct and the Dark Fiber shall be invoiced after the date the Dark Fiber and the Installed Williams Fibers in the first Innerduct 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 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 \$ 2,945,913.00 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) and for installation, splicing and testing of the Dark Fiber, 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 and the Dark Fiber 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, Dark Fiber 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, the Dark Fiber 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, Installed Williams Fibers and Dark Fiber 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, the Dark Fiber 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, the Dark Fiber 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, the Dark Fiber 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, the Dark Fiber 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, the Dark Fiber 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, the Dark Fiber or Installed Williams Fibers which are not

reimbursed by any third party. For purposes of this Item 1, extraordinary repairs shall mean repairs required as a result of fiber or cable cuts or natural or man-made disasters. In the event MFSNT fails to respond within the time frame specified in the standards referred to above, or in the event that any outage respecting the Williams Installed Fibers lasts longer than eight (8) hours after MFSNT's receipt of notice thereof, USER shall have the right to perform maintenance itself subject to USER's compliance with all safety, access and operations requirements imposed by governmental agencies.

- Item 2 MFSNT or its agents shall have the right to alter the location of the User Route or the Communications System in accordance with the provisions of this Item 2. Whenever possible and except with respect to any actions required to be taken in emergency situations, MFSNT shall notify USER sixty (60) days in advance of a planned movement or alteration of the User Route or the Communications System which may result in the interruption of operation of the Dark Fiber or Installed Williams Fibers. MFSNT shall use its reasonable best efforts to accomplish any movement or alteration of the User Route without causing an interruption of service to USER. MFSNT shall use its reasonable best efforts to assure that the endpoints for each segment of the User Route shall, notwithstanding any relocation, remain the same as depicted on Exhibit A. MFSNT shall have no liability to USER for interference with the User Rights during any movement or alteration of the User Route or the Communications System.
- Item 3 In the event that movement or alteration of the User Route, the Communications System, the Dark Fiber or the Installed Williams Fibers is required (subsequent to the acceptance of the Dark Fiber and initial Installed Williams Fibers as set forth in the Project Schedule) due to circumstances beyond the control of MFSNT, MFSNT shall perform such work as may be required and USER shall reimburse MFSNT for USER's pro rata share (based on the total number of innerducts affected and then based on the total fiber count affected by such work) of the reasonable and actual costs of such work which are not reimbursed by any third party. In the event of a condemnation of all or part of the User Route, MFSNT agrees to use such portion of the proceeds of any condemnation award as are required to provide an alternate User Route.
- Item 4 Within ninety (90) days after each movement or alteration of the User Route, MFSNT shall provide User with updated "as built" drawings prepared in accordance with standard industry practices and showing the then current location of the Dark Fiber and Innerduct.

ARTICLE 8. AUTHORITIES. USER shall obtain from the appropriate public and/or private authority any authorization or franchise required to use the Dark Fiber and Installed Williams Fibers. USER shall submit to MFSNT upon request, such evidence as may be required to demonstrate compliance with this Article 8. MFSNT shall obtain from the appropriate public and/or private authority any authorization required to install

and maintain the Communications System, Dark Fiber and the Installed Williams Fibers. MFSNT shall submit to USER upon request, such evidence as may be required to demonstrate compliance with this Article 8.

ARTICLE 9. ASSIGNMENT.

- Item 1 Neither USER nor MFSNT may assign this AGREEMENT without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding this restriction, MFSNT and USER hereby agree that either party may assign this AGREEMENT to an Affiliate or lender without the prior written consent of the other party. For purposes of this section, "Affiliate" shall mean any party controlling, controlled by or under common control with the assigning party.
- Item 2 In addition to the foregoing USER may assign some of all of its rights and obligations hereunder to State Street Bank and Trust Company of Connecticut, National Association, in connection with a financing by USER of construction of its fiber optic network; in addition, State Street Bank and Trust Company of Connecticut, National Association, may further assign this AGREEMENT as collateral for such financing. If USER makes an assignment pursuant to this subsection, USER (or its assignee pursuant to an assignment made under the other provisions of this Article 9) shall guarantee performance of the assignee's obligations.

ARTICLE 10. TITLE AND ENCUMBRANCES.

- Item 1 The right of USER to use the Communications System as specified in this AGREEMENT is in the nature of a contract right under Article 9 of the Uniform Commercial Code. No use, whatever its duration, of the Communications System or payment of the User Fee required under this AGREEMENT shall create or vest in USER any rights other than the rights granted herein, including without limitation any ownership or other property right in the User Route or the Communications System, nor shall this AGREEMENT be construed as constituting an assignment of any property rights of MFSNT.
- Item 2 The Communications System shall remain the property of MFSNT and MFSNT shall be solely responsible for the payment of all property, possessory, income, excise and use taxes and any special assessments of any kind that may be levied against the Communications System. The Installed Williams Fibers shall remain the property of USER and USER shall be solely responsible for the payment of all property possessory, income, excise and use taxes and any special assessments of any kind that may be levied against the Installed Williams Fibers.
- Item 3 USER may not grant its lenders a security interest in the Communications System. USER has no authority to encumber the Communications System or the Dark Fiber and shall not purport to create or permit any such encumbrance. MFSNT may not grant its lenders a security interest in the Installed Williams Fibers. MFSNT has no

authority to encumber the Installed Williams Fibers and shall not purport to create or permit any such encumbrance. MFSNT shall not allow any default to occur or continue to exist in any agreement in which a security interest has been granted affecting the Communications System. MFSNT shall obtain from any person to whom MFSNT has granted or hereafter grants a security interest or lien on the Communications System an agreement not to disturb the rights of the USER in the event any foreclosure of such security interest or lien.

- Item 4 MFSNT shall permit no mechanics or materialmen's liens to be filed against the Communications System which adversely affects the User Rights nor the Installed Williams Fibers and in the event any such lien may be so filed shall immediately cause its removal and shall indemnify, defend and hold harmless USER against any claim or expense arising in connection with any such lien.

ARTICLE 11. INDEMNIFICATION.

- Item 1 USER will indemnify and hold harmless MFSNT and its officers, directors, employees, partners, and agents from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or several, expenses of any nature (including reasonable attorneys', accountants', and experts' fees and disbursements), and judgments, fines, settlements and other amounts (herein collectively called "Damages") arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (herein collectively called "Claims") relating to or arising out of USER's negligence or willful misconduct related to this AGREEMENT.

- Item 2 MFSNT will indemnify and hold harmless USER and its officers, directors, employees, partners, and agents from and against any and all Damages arising from any and all Claims relating to or arising out of MFSNT's negligence or willful misconduct related to this AGREEMENT including its installation, maintenance and any repair to the Communications System and/or the Installed Williams Fibers, or related to any breach by MFSNT of its obligations pursuant to Article 4, Item 1, Article 8, or Article 10, Items 3 and 4.

ARTICLE 12. CONSEQUENTIAL DAMAGES. In no event shall MFSNT or USER be liable to the other for special, consequential, exemplary or punitive damages as a result of the performance or nonperformance of their obligations under this AGREEMENT. Neither MFSNT nor USER shall make any claim against any underlying property rights owner for any special, consequential, exemplary or punitive damages for any reason whatsoever.

ARTICLE 13. INTERRUPTION OF USER SERVICE. MFSNT shall have no obligation (beyond its obligations set forth in Article 7) to USER respecting any interruption of USER's rights in and to the Communications System caused by an event of Force Majeure, nor shall MFSNT have any obligation for any other interruption or delay

except to the extent such interruption or delay is caused by the gross negligence of MFSNT.

ARTICLE 14. EVENTS OF DEFAULT.

- Item 1 If any party materially defaults in the performance of any of its covenants, conditions, representations or warranties hereunder, and in the event that said default continues uncured for a period of thirty (30) days after receipt of written notice of the default from the non-defaulting party or, if such default is not curable within such time, the failure to commence action to cure the same within such thirty (30) days and to pursue such action diligently to completion, the non-defaulting party may: (a) terminate this AGREEMENT in accordance with ARTICLE 2, and/or (b) exercise and pursue all other rights and remedies available to it under applicable law and consistent with this AGREEMENT.
- Item 2 Time is of the essence in the performance of MFSNT's obligations hereunder. In the event that MFSNT fails (other than as caused by events of Force Majeure or by the failure of USER or its suppliers to deliver the Installed Williams Fibers in accordance with the time frames set forth in the Project Schedule) to perform installation of the Installed Williams Fibers substantially in accordance with the Project Schedule, USER shall provide MFSNT with written notice thereof. After delivery of such written notice, USER and MFSNT shall immediately schedule a meeting to determine what steps can and should be implemented to maintain the Project Schedule. In the event that the installation of the Installed Williams Fibers is not substantially on schedule (to meet the completion date set forth in the Project Schedule) within thirty (30) days after the meeting, USER shall
- a. be permitted to assist in the installation of the Installed Williams Fibers (subject to USER's compliance with all safety, access and operations requirements imposed by the underlying property owner) (in which event all reasonable and actual costs incurred by USER in connection therewith shall be deducted from the User Fee due and payable under Article 3, Item 2(c) hereof), or
 - b. continue to assist in the installation work of the Installed Williams Fibers and, in the event that the work is not substantially complete on or before 30 days from the completion date set forth in the Project Schedule, recover as a credit off the amount payable under Article 3, Item 2(c) hereof, equal to eighty-seven thousand five hundred dollars (\$87,500.00) for each 30 days (which amount shall be prorated, as applicable, for periods shorter than 30 days) that the completion is delayed beyond such date (for the purposes hereof, "substantially complete" shall mean that stage in the progress of installation of the Installed Williams Fibers where the Installed Williams Fibers are ready for and capable of being placed

into commercial service by USER). The amount of the credit to which USER shall be entitled, however, shall in no event exceed \$262,500.00.

The foregoing shall be USER's sole and exclusive remedies for a failure to complete work in accordance with the Project Schedule. In the event that a credit is due hereunder, such credit shall not be deemed a penalty but has been agreed upon as liquidated damages because USER's actual damages in such event would be extremely difficult to determine.

- ARTICLE 15. BINDING EFFECT.** This AGREEMENT shall be binding upon, and shall inure to the benefit of, the parties hereto, their permitted successors and assigns.
- ARTICLE 16. GOVERNING LAW.** This AGREEMENT shall be governed by and interpreted pursuant to the laws of the State of New York, without respect to New York State's conflict of law rules. MFSNT and USER shall at all times observe and comply with, and the provisions of this AGREEMENT are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this AGREEMENT, so long as such laws, ordinances or regulations remain in effect.
- ARTICLE 17. ENTIRE AGREEMENT.** This AGREEMENT, including the Exhibits attached hereto, sets forth the entire agreement of the parties with respect to the subject matter hereof.
- ARTICLE 18. NOTICES.** All notices or approvals required or permitted under the terms of this AGREEMENT shall be in writing and shall be delivered either personally or by prepaid nationally-recognized commercial overnight delivery service which maintains evidence of receipt, addressed as follows:

If to MFSNT:

MFS Network Technologies, Inc.
ATTN.: President and Legal Counsel
1200 Landmark Center, Suite 1300
Omaha, NE 68102

If to USER:

Williams Communications, Inc.
ATTN: President and Legal Counsel
One Williams Center
Tulsa, Oklahoma 74172

or at such other address as the entity to which notice or approval is to be given may have communicated to the other party in writing in accordance herewith. Any such notice or approval shall be deemed to have been given when delivered if delivered personally or on the first business day after dispatch if sent by commercial overnight delivery service.

ARTICLE 19. PUBLICITY. Except as may be otherwise required by law, each party shall obtain the written consent of the other party prior to releasing any public announcements, press releases, sales brochures, advertising or other publicity materials relating specifically to this AGREEMENT in which the name or logo of any other party is used; any such consent shall not be unreasonably withheld or unduly delayed.

ARTICLE 20. NO PARTNERSHIP. The parties acknowledge and agree that this AGREEMENT does not create a partnership between, or a joint venture of, MFSNT and USER. The performance by the parties of all duties and obligations hereunder shall be as independent contractors and not as agents of the other party, and no persons employed or utilized by a performing party shall be considered employees or agents of the other.

ARTICLE 21. MODIFICATION. This AGREEMENT may be amended, changed or otherwise modified only by written amendment to this AGREEMENT which is executed by MFSNT and USER.

ARTICLE 22. INSURANCE.

Item 1 MFSNT and USER shall provide the insurance set forth below:

a. commercial general liability insurance for bodily injury (including death) and property damage which provides limits of not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) annual aggregate. The insurance coverage required by this Item will include contractual liability to cover each party's obligations under this AGREEMENT, including its indemnity obligations, and coverage for products/completed operations;

b. automobile liability insurance for bodily injury (including death) and property damage that provides total limits of not less than one million dollars (\$1,000,000) per occurrence to all owned, non-owned and hired vehicles;

c. statutory workers' compensation and employers' liability insurance of not less than one million dollars (\$1,000,000) per occurrence applicable to employers' liability coverage for all employees engaged in services under this AGREEMENT.