

# **Attachment A**

**AMENDED AND RESTATED  
MASTER LICENSE AND IRU AGREEMENT  
FOR OPTICAL FIBER LOCAL LOOP  
INSTALLATIONS  
BETWEEN  
PACIFIC GAS AND ELECTRIC COMPANY  
IP NETWORKS, INC.  
AND  
LEVEL 3 COMMUNICATIONS, LLC**

December 20, 2012

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**AMENDED AND RESTATED  
MASTER LICENSE AND IRU AGREEMENT**

THIS AMENDED AND RESTATED MASTER LICENSE AND IRU AGREEMENT FOR OPTICAL FIBER INSTALLATION (“Agreement”) is made and entered into effective as of the 20<sup>th</sup> day of December 2012, by and between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (“PG&E”), located at 245 Market Street, San Francisco, CA 94105, IP NETWORKS, INC, a California Corporation (“IPN”), located at 30 Corporate Park, Suite 300, Irvine, CA 92606, and LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company (“Level 3”), located at 1025 Eldorado Boulevard, Broomfield, CO 80021. IPN, Level 3 and PG&E may hereinafter be referred to individually as a “Party” and together as the “Parties.”

**RECITALS**

A. PG&E and IPN entered into (i) a Master License and IRU Agreement for Optical Fiber Local Loop Installations dated effective as of November 15, 2000 for the installation of fiber optic cable on PG&E facilities; (ii) a First Amendment to the Master License and IRU Agreement for Optical Fiber Local Loop Installations dated effective as of December 13, 2000; (iii) a Second Amendment to the Master License and IRU Agreement for Optical Fiber Local Loop Installations dated effective as of January 11, 2001; Third Amendment to the Master License and IRU Agreement for Optical Fiber Local Loop Installations dated effective as of April 22, 2004; and Fourth Amendment to the Master License and IRU Agreement for Optical Fiber Local Loop Installations dated effective as of June 23, 2009 (collectively, the “Original Agreement”).

B. Level 3 is in discussion to acquire IPN (the “Acquisition”). In light of the Acquisition, PG&E and IPN desire to amend the terms of the Original Agreement. As consideration for PG&E’s consent to amend the terms of the Original Agreement, Level 3 shall make certain commitments to PG&E, including but not limited to, with respect to PG&E’s use and access of Level 3’s existing fiber optical network.

C. PG&E is a public utility regulated by, among others, the California Public Utilities Commission and the Federal Energy Regulatory Commission. PG&E owns electric transmission and gas and electric distribution facilities used to provide gas and electricity to its customers throughout northern and central California. PG&E operates its gas and electric distribution facilities, but has ceded operational control of its electric transmission system to the Independent System Operator. PG&E also owns and operates an internal telecommunications system.

D. IPN and Level 3 are providers of telecommunications services and hold certificates of public convenience and necessity to provide such services in the State of California. IPN and Level 3 have each been approved by the California Public Utilities Commission as a facilities-based Competitive Local Carrier (“CLC”) installing, operating and marketing advanced telecommunications services in the State of California, and IPN and Level 3 have the authority under their respective CLC certification to use currently installed conduit or duct system within the public right of way for installing fiber optic cable in, under and along public streets and roads in the State of California.

E. PG&E requires additional optical fiber capacity and desires to construct optical fiber communications systems for its own internal communications needs and to provide ancillary communications services for operation of gas and electric facilities.

F. IPN, upon the terms, covenants and conditions contained in this Agreement, is willing to assist PG&E to construct optical fiber communications systems, and desires to reserve to itself an indefeasible right to use some of the optical fibers in the completed systems to provide its services to IPN’s customers, and IPN desires a license to certain real properties held by PG&E for the purpose of installing equipment at those locations.

G. PG&E, upon the terms, covenants and conditions contained in this Agreement, is willing to: (1) allow IPN to assist PG&E with the installation of optical fiber systems; (2) take bare legal title to the fiber optic cable and accessories and give to IPN an irrevocable right to use some of the optical fibers within the cable to provide services to IPN's customers; (3) reserve of the optical fibers within the cable installed under this agreement for use in connection with PG&E's own internal communications needs and to provide ancillary communications services unless specified otherwise in the Route License Acknowledgment (RLA), (4) grant to IPN a license to enter upon certain property owned in fee simple by PG&E for the purpose of installing the System Electronics, (5) grant to IPN a License to certain real properties held by PG&E for the purpose of installing Equipment Stations and grant to IPN permission to lease or license those optical fibers and space in Equipment Stations not dedicated to PG&E to third parties.

H. NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, PG&E and IPN agree to amend and restate the Original Agreement as follows:

## ARTICLE I: DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below:

1.1 "Acceptance of Construction" means the written notification from PG&E to IPN, pursuant to Section 7.10 that specified work has been inspected by PG&E and found to have been performed substantially in accordance with the requirements of this Agreement and standard industry practice.

1.2

1.3 "Ad Valorem Taxes" means ad valorem property taxes, special assessments, local improvement district levies and other levies assessed against the System, Equipment Stations, Equipment Sites, System Electronics or the Right of Way.

1.4 "Affected Portion" means any portion of a System that is or may (1) be necessary for PG&E to perform Utility Operations, (2) be affected by a discontinuance or relocation, (3) be affected by a Taking, (4) become the subject of a lien or transfer, or (5) be damaged or destroyed as the result of the occurrence of an event of casualty, or (6) becomes necessary to conduct PG&E utility operations as described in Section 3.9.

1.5 "Affiliate" means, with respect to PG&E or IPN, any corporation or other entity that controls such party, is controlled by such party, or is with such party under common control of another entity.

1.6 "Annual Site License Fee" means one payment applicable to all Sites, a fee for the license of each Equipment Site in annual installments, due pursuant to Section 5.6.

1.7 "Approvals" means all permits, approvals and licenses from all government authorities having jurisdiction or approval rights with respect to (1) the construction and installation of the System, or (2) the use and occupation of the Right of Way along the Cable Route where the System is to be located or constructed.

1.8 "Approved System Segment" means a System Segment for which Working Drawings have been approved under the terms of this Agreement for construction and installation of the Cable, the Cable Accessories, System Electronics and other facilities and equipment associated with the Approved System Segment.

1.9 "Building Entry License Acknowledgment" is defined in Section 2.4.

1.10 “Building Entry” means the right to use a PG&E owned or controlled service lateral extending from the manhole, splice box, handhole or other and extending to or into the building, facility, site or other structure at or near the electrical service entry location.

1.11 “Building Lateral” means a fiber optic cable that extends from the Point of Interface back to the nearest Cable access point (e.g. manhole, vault, utility pole) on an existing lateral, including any Building Entry, or such that (a) the cable is placed in existing PG&E facilities or controlled space; (b) ; and (c) .

1.12 “Cable” means a single optical fiber cable with specific characteristics and a specific number of fibers as specified in any Route License Acknowledgment appended in Exhibit A of this document.

1.13 “Cable Accessories” means all hardware and appurtenances necessary for the attachment or installation of the Cable on PG&E Facilities, excluding steel peaks.

1.14 “Cable Route” means the corridor in which the Cable for the System, including but not limited to the Building Laterals and , will be deployed for engineering purposes. . An approximate location of each Cable Route is provided in the Route License Acknowledgments appended in Exhibit A.

1.15 “Cable Specifications” means the drawings and specifications regarding the Cable, the Cable Accessories, and related hardware and materials to be employed in the installation of the Cable.

1.16 “Chief Engineer” means with respect to PG&E or IPN, as applicable, the person designated to be responsible for managerial decision making with respect to the System and this Agreement and to give technical or managerial advice.

1.17 “Closing Date” means the date the Acquisition is completed, which shall occur no later than days following the date the CPUC approves the terms of this Agreement.

1.18 “Contractor” means a company with appropriate qualifications that acts as IPN’s general contractor for the design and/or installation of the Cable along the Cable Route preparation of the Equipment Sites or the installation of the Equipment Stations in accordance with the terms, covenants, conditions and specifications stated in this Agreement. IPN may have more than one Contractor. In particular, IPN may desire separate Contractors for design and installation, or for installation of each System Segment. Contractor may include employees of Level 3 or its Affiliates.

1.19 “CPUC” means the California Public Utilities Commission.

1.20 “Detailed Restoration Plan” means the restoration plan applicable to the System as described in Section 8.2. The Detailed Restoration Plan is attached as Exhibit H.

1.21 “Developed System Segment” means a System Segment on which all construction and installation work has been completed and an Acceptance of Construction has been issued.

1.22 “Effective Date” means the date first written above.

1.23 “Equipment Station” means each building along the Cable Route located on property owned by PG&E and housing any System Electronics used by IPN to operate the System . For purposes of this Agreement, IPN shall own or lease the physical structure housing all System Electronics used in connection with the Equipment Station.

1.24 “Equipment Sites” means those areas on or near the Right of Way where PG&E owns the land in fee simple and maintains equipment and on which IPN, pursuant to the terms of this Agreement, may locate Equipment Stations subject to the parties executing a Site License Acknowledgment.

1.25 “Force Majeure Event” shall have the meaning given in Section 16.2.

1.26 “Hazardous Substances” means any waste, pollutant (as that term is defined in 42 U.S.C. § 9601(33) or in 33 U.S.C. § 1362(13) or any successor statutes thereto), hazardous substance (as that term is defined in 42 U.S.C. § 9601(14) or any successor statute thereto), hazardous chemical (as that term is defined by 29 CFR Part 1910.1200(c) or any successor regulation thereto), toxic substance, hazardous waste (as that term is defined in 42 U.S.C. § 6901 or any successor statute thereto), radioactive material, special waste, petroleum, including crude oil or any other hydrocarbon based substance, waste, or breakdown or decomposition product thereof, or any constituent of any such substance or waste, including, but not limited to polychlorinated biphenyls, and asbestos.

1.27 “Independent System Operator” means the California Independent System Operator, the entity to which PG&E has ceded operational control of its electric transmission system. The Independent System Operator has, among other powers, authority to direct the operation of all facilities under its control that affect the reliability of the electric transmission system and to approve requests to work on electric transmission facilities.

1.28 “IPN Fibers” means the number of optical fibers in the Cable, as specified in each Route License Acknowledgment and each Pre-Existing Building Entry License Acknowledgment, which are not PG&E Fibers along the entirety of each Developed System Segment in which IPN, pursuant to the terms, covenants and conditions of this Agreement, reserves an exclusive IRU.

1.29 “IPN Space” means the physical space inside Equipment Station(s) reserved to accommodate System Electronics.

1.30 “IPN System Electronics” means those System Electronics owned by IPN or a customer of IPN.

1.31 “Irrevocable License” means the nonexclusive and nonpossessory irrevocable right to exercise certain rights granted under the terms of this Agreement which irrevocable license does not include a conveyance of any interest in real property.

1.32 “IRU” means the exclusive indefeasible right in and to optical fibers contained in the Cable in the entire length of the Developed System Segment(s) for the remainder of the Term.

1.33 “Maintenance” means routine visual inspection, repair and maintenance of the Cable, the Cable Accessories, and PG&E Facilities.

1.34 “Monthly Fee” is defined in Section 5.2.

1.35

1.36 “Point of Interface” means a point, usually a termination panel, at which the PG&E Fiber physically diverges from the IPN Fiber. Such Point of Interface shall be clearly marked.

1.37 “PG&E Facilities” means utility infrastructure used to support and/or contain Cable along the Cable Route. This includes, but is not limited to, towers, poles, and conduits.

1.38 “PG&E Fibers” means the number of optical fibers in the Cable, as specified in each Route License Acknowledgment, along the entirety of each Developed System Segment that PG&E retains for the purposes and on the terms described in this Agreement.

1.39 “PG&E System Electronics” means those System Electronics owned by PG&E.

1.40 “PG&E System Integrity” means the operation of PG&E’s electric system in a manner



that is deemed to minimize the risk of injury to persons and property and enable PG&E to provide adequate and reliable electric service to its customers, as determined by PG&E.

1.41 “PG&E Utility Operations” means the procurement, generation, transmission, distribution, management or monitoring by PG&E of electricity, natural gas, or any combination thereof, including, without limitation, consulting and advising with respect to the use thereof and providing all related equipment and services.

1.42 “RLA Execution Date” means the date first written of any Route License Acknowledgment as included in Exhibit A.

1.43 Intentionally Omitted.

1.44 Intentionally Omitted.

1.45 “Right of Way” means PG&E’s real property and rights related thereto, whether created pursuant to a grant, easement, lease, license or other agreement, which are used for the Cable Routes.

1.46 “Route License Acknowledgment” is defined in Section 2.2.

1.47 “Route Application Form” means an application for a potential Route License Acknowledgment in the form found in Exhibit K.

1.48 “Route Miles” means the actual miles traversed by the Cable (including spurs) based on the “as-built” drawings described in Section 7.11.

1.49 “Site License Acknowledgment” is defined in Section 2.3.

1.50 “SLA Execution Date” means the date first written of any Site License Acknowledgment as included in Exhibit B.

1.51 “System” means all of the Cable, including the fiber optic strands therein, Cable Accessories, Equipment Sites, Equipment Stations, PG&E Facilities, System Electronics, Building Entries and other improvements forming a part of the fiber optic network constructed or installed pursuant to the terms of this Agreement.

1.52 “System Electronics” means all items of equipment, hardware, software, electronics, optronics and any components that are used to transmit or monitor services over the System, including, without limitation, routers, access nodes, MSDTs, channel banks, digital system cross connect equipment, fiber optic terminals, multiplexers, terminal, and switches.

1.53 “System Materials” means all Cable, Cable Accessories, and other equipment and materials obtained under the terms of this Agreement to construct or equip any portion of the System.

1.54 “System Segment” means a portion of the System with defined beginning and end points, as set forth in Exhibit A.

1.54 “Taking” means the exercise of the power of eminent domain by any public or quasi-public authority.

1.55 “Term” means the period of time beginning on the Closing Date and terminating as specified in Section 4.1. The Term includes any extension of the original Term, as specified in Section 4.2.

1.56 “Transferee” means any individual or entity to which either PG&E or IPN, pursuant to Article XII, transfers or assigns any interest in this Agreement.

1.57 “Working Drawings” means the construction plans for the installation of the System along the Cable Route.

## ARTICLE II: MASTER LICENSE AGREEMENT

2.1 Master License Agreement. This Agreement contains the terms and conditions upon which, effective on or after the Closing Date, PG&E will grant to IPN permission to install System Materials and System Electronics on or in PG&E Facilities, to install Equipment Stations and System Electronics on PG&E property and to operate the System under this Agreement, provided however, under no circumstances shall IPN be permitted to install any System Materials on PG&E Facilities without required Approvals. Upon the Closing Date, the Original Agreement shall be of no further force and effect. IPN shall provide PG&E with written notification of the anticipated Closing Date at least three (3) business days prior to the occurrence thereof, with confirmation of the Closing Date provided within 24 hours thereafter.

### 2.2 Route License Acknowledgment.

(a) Pre-Existing RLAs. The Cable Routes for which IPN and PG&E have completed and executed Route License Acknowledgment (“RLA”) forms through the Effective Date of this Agreement are summarized in the table included in Exhibit A-1 and are those specific locations that IPN and PG&E hereby agree are covered by this Agreement as of the Effective Date hereof; and along with any RLAs executed between the Effective Date and Closing Date pursuant to the Original Agreement, which will be added to Exhibit A-1, are together herein referred to as “Pre-Existing RLAs”. The term of each Pre-Existing RLA is hereby amended to be coterminous with the Term of this Agreement.

(b) Route Application Form. During the Term, IPN may request that a Cable Route be added to this Agreement by submitting a Route Application Form to PG&E (“RAF”) and paying PG&E the applicable Administrative Fee as set forth in Section 5.5. PG&E will review the Route Application Form in accordance with Section 6.3(a). The Route Application Form to be used under this Agreement will be attached as Exhibit K hereto upon completion by PG&E.

(c) Route License Acknowledgment. After PG&E’s approval of the RAF, IPN shall submit and the Parties shall execute an RLA for the applicable Cable Route (“New RLA”). Each such additional RLA shall become part of Exhibit A-2 to this Agreement and shall be incorporated by reference herein at the time it is executed by PG&E and IPN and delivered and the location specified therein shall become a Cable Route for purposes of this Agreement. The RLA form to be used under this Agreement will be attached as Exhibit D hereto upon completion by PG&E.

2.3 Equipment Sites. The Equipment Site(s) for which IPN and PG&E have completed and executed Site License Acknowledgment (“SLA”) forms through the Effective Date of this Agreement are summarized in Exhibit B -1, and are those specific locations that the Parties hereby agree are covered by this Agreement as of the date hereof; and, along with any SLAs executed by the parties between the Effective Date and the Closing Date pursuant to the Original Agreement, which will be added to Exhibit B -1, are together referred to herein as “Pre -Existing SLAs”. At IPN’s request, PG&E may approve additional SLAs from time to time, said approval not to be unreasonably withheld. Notwithstanding the foregoing, PG&E may take into account the needs of its business operations when deciding whether to consent to any SLA request. Each such additional SLA entered into by PG&E and IPN shall become part of Exhibit B -2 to this Agreement and shall be incorporated by reference herein at the time it is executed and delivered shall become an Equipment Site for all purposes of this Agreement. The SLA form to be used under this Agreement is attached as Exhibit E hereto.

2.4 Building Entry License Acknowledgment. The Building Entry for which IPN and PG&E have completed and executed Building Entry License Acknowledgment (“BELA”) forms through the Effective Date of this Agreement are included in Exhibit C (“Pre -Existing Building Entry License Acknowledgements”). The Parties acknowledge and agree that on or after the Effective Date of this

Agreement, all Building Entries will be addressed in the RAF and/or RLA.

## **ARTICLE III: RIGHTS IN AND TO THE FIBER AND EQUIPMENT SITES**

3.1 Regulatory Approval. PG&E, with IPN and Level 3's assistance, shall apply to the CPUC under Section 851 of the California Public Utilities Code for an approval authorizing PG&E to enter into the Irrevocable License with IPN for the use and operation of the IPN Fibers by IPN under the terms set forth in this Agreement (the "CPUC Approval"). PG&E shall exercise all commercially reasonable efforts to pursue and secure such an approval as expeditiously as possible. IPN and Level 3 shall cooperate fully with PG&E's efforts by providing any information, personnel or other resources PG&E may reasonably request from time to time only as directly related to PG&E's efforts in securing CPUC Approval. IPN and Level 3's cooperation shall include assisting in the preparation of applications, discovery and testimony and making available to PG&E, the CPUC and other relevant authorities all necessary and appropriate IPN and Level 3 information and personnel. PG&E makes no representation or warranty concerning its ability to secure any such approval, the nature or extent of any conditions or limitations, which may be, imposed thereby, how long the application or approval process may take, or the costs that may be incurred in such process.

3.2 Grant of IRU. Effective as of the Closing Date, pursuant to section 3.1 of this Agreement, PG&E, upon the terms, covenants and conditions contained in this Agreement and subject to IPN complying in all respects with Section 5.13, hereby grants to IPN an exclusive IRU in and to the IPN Fiber contained in the Cable in the entire length of any Developed System Segments for the remainder of the Term and any extension thereof.

3.3 Use of the IPN Fibers. IPN may use the IPN Fibers for any lawful purpose, including, without limitation, the sale of services to telecommunications services providers at wholesale, and to retail commercial and residential telecommunications services users. PG&E acknowledges and agrees that PG&E has no right to use the IPN Fibers during the Term. IPN warrants that its use of the IPN Fibers and the System shall comply in all material respects with applicable government codes, ordinances, laws, rules, regulations and restrictions.

3.4 Use of PG&E Fibers.

- (a) PG&E Fibers. The Parties acknowledge PG&E acquired rights to certain PG&E Fibers under the Original Agreement associated with the Pre-Existing RLAs identified in Exhibit A-1 and may, between the Effective Date and the Closing Date, acquire rights to additional PG&E Fibers pursuant to additional RLAs under the Original Agreement (together, "Pre-Existing PG&E Fiber"). For any Developed System Segment constructed by IPN on or after the Closing Date, PG&E shall retain Fibers within each Cable that is contained within such Developed System Segment with no rights of IPN in respect thereof, unless specified otherwise in the RLA ("New PG&E Fibers"). For avoidance of doubt, "PG&E Fibers" as used in this Agreement, includes both the Pre-Existing PG&E Fibers and New PG&E Fibers. If the PG&E Fibers on a particular Developed System Segment turn out to be insufficient for PG&E's internal purposes, IPN agrees to make additional fibers available to PG&E on that Developed System Segment as required by PG&E for its internal use, or provide PG&E with lit services on that Developed System Segment, in each case to the extent that IPN determines in its reasonable discretion that it has such fiber or lit services available. IPN acknowledges and agrees that IPN has no right to use the PG&E Fibers at any time. PG&E may access the PG&E Fibers at prearranged splice points along each Developed System Segment designated by PG&E and agreed to by IPN in connection with the approval of the Working Drawings for such System Segment, as described in Section 6.3. Any such interconnection shall be made, and all related equipment shall be acquired and installed, at PG&E's cost and expense.

(b) PG&E Fiber Use. Throughout the Term of the Agreement, including any extensions thereof pursuant to Section 4.2, PG&E's use of the PG&E Fibers, , shall be limited to PG&E's internal use, including to monitor or maintain PG&E assets, internal communications, and subject to IPN's prior consent (not to be unreasonably withheld), other non-competitive uses. Notwithstanding the foregoing, where PG&E Fibers were licensed, leased, or swapped with a third party, that arrangement will be allowed to continue on its terms (including any renewal terms), and the Parties will consider future fiber swaps between PG&E and a third party, subject to the approval of IPN, which may be withheld in its sole discretion. . In consideration for and as a condition to PG&E restricting its use of the PG&E Fibers to internal use as set forth in this Section 3.4(b) To be clear, the obligations involving the PG&E Fibers described in this paragraph apply as of the Effective Date, regardless of the actual date of the .

(c)

3.5 Essential Cable Routes.

(a) During the Term, IPN will maintain the following (or equivalent) Cable Routes that are essential for PG&E's internal use:

- o 350 North Wiget Lane, Walnut Creek
- o 1850 Gateway Blvd., Concord
- o 1030 Detroit Avenue, Concord

(b) On the condition that the applicable fees for IPN's provision of services to the 350 North Wiget Lane, Walnut Creek and 1030 Detroit Avenue, Concord facilities remains fixed at PG&E's existing rate throughout the Term

3.6 Development of Equipment Stations. IPN may install Equipment Stations, pursuant to Section VII, at each Equipment Site. IPN will provide PG&E with space ("PG&E Space") sufficient to accommodate equipment. PG&E's minimum space requirements shall be identified in Exhibit B. IPN will reserve to itself space ("IPN Space") sufficient to accommodate the System Electronics, subject to adequate access rights of PG&E. Remaining racks and other space inside the Equipment Stations will be considered non-exclusive space and will be reserved for IPN for the purpose of licensing, leasing or otherwise making available such non-exclusive space to third parties.

3.7 Access to Equipment Stations. Subject to the terms of this Agreement, IPN and third parties shall have twenty-four (24) hour-a-day accesses to the Equipment Stations. However IPN and third parties shall have no access or entry within the perimeter fence of PG&E's substation facilities without a PG&E authorized escort. IPN shall give PG&E at least 48 hours advance notice for any non-emergency access or entry within the perimeter fence of any substation. Any such Third Party shall be equally bound to the applicable terms and conditions of this Agreement as the Parties.

3.8 Reservation of IRU to Space in Equipment Stations. Upon the terms, covenants, and conditions contained in this Agreement, IPN hereby (1) reserves to itself the IPN Space and Non-Exclusive Space, and (2) reserves to PG&E an exclusive IRU in and to the PG&E Space.

3.9 Nonexclusive Use. Neither the payment of any amount under this Agreement by IPN or any other provision of this Agreement shall impair in any way PG&E's right or ability to negotiate with any third-party with respect to the use by such third-party of PG&E Facilities, Right of Way, or , except to the extent of the rights specifically granted to IPN under this Agreement. For purposes of clarity, nothing herein shall restrict IPN from constructing and operating telecommunications networks in the State of California through means other than this Agreement with PG&E.

3.10 Reservation of Certain PG&E Rights. PG&E reserves for itself, its successors and assigns, the right to use PG&E Facilities, Equipment Sites and the Right of Way, or any portion thereof, for

any purpose that PG&E may find necessary or useful in the performance of its duties to the public, together with the right to enter upon or into PG&E Facilities and the Right of Way, or any portion thereof, at all times, and for any and all purposes. These rights may be exercised by PG&E without any notice to or consent from IPN and without payment of any compensation to IPN.

3.11 No Property or Possessory Interest. Neither the Irrevocable License nor IPN's exercise of its rights under this Agreement shall confer upon IPN any property interest in any of the PG&E Facilities or Right of Way, whether or not owned in fee simple by PG&E or a third-party. Notwithstanding the generality of the foregoing sentence, IPN shall have the contractual rights granted under the terms of the Irrevocable License to enter upon the PG&E Facilities and the Right of Way to install the Cable and the Cable Accessories, and the System Electronics and to use the System subject to the terms, covenants and conditions of this Agreement.

3.12 Entry Conditions. PG&E, from time to time by written notice to IPN, may specify additional reasonable and necessary entry conditions or requirements, including, but not limited to, no entry unless accompanied by PG&E personnel, and entry only through a specific route. IPN's right of entry to the PG&E Facilities and Right of Way is further subject to the conditions that: (a) IPN shall comply with PG&E's established safety rules, a copy of which is attached to and incorporated by reference in this Agreement as Exhibit J (as amended from time to time by PG&E), when working around the towers, electric cables or other elements of the PG&E electric power distribution and transmission system; (b) IPN shall comply with any conditions legally imposed by the owner of the property on which the Right of Way is located and (c) IPN shall indemnify PG&E with respect to such entry as further provided in Section 15.2 of this Agreement. If notice is required prior to entry by IPN and entry by IPN is scheduled to last more than one consecutive day, a single telephone or email notice describing the scope and duration of the entry shall be sufficient notice.

3.13 Disclaimer. PG&E makes no representation or warranty whatsoever (including no warranty of merchantability or fitness for a particular purpose) concerning the nature, adequacy or suitability of the PG&E Facilities or the Right of Way for the purposes intended by IPN. IPN acknowledges that neither PG&E nor any of PG&E's officers, employees or agents has made, nor is IPN entering into this Agreement in reliance upon, any such representation or warranty.

3.14 Conflicting Provisions. In the event of any conflict between this Agreement and any exhibit hereto (other than an RLA), the terms and conditions of this Agreement, as amended from time to time, shall control. In the event of any conflict among the exhibits, the exhibit of the latest date mutually agreed upon by the Parties shall control. In the event of any conflict on the subject of the provision of electric or natural gas service between PG&E's Rules as filed with the CPUC and any provision of this Agreement, including the exhibits hereto, PG&E's Rules shall govern. Notwithstanding the foregoing, the terms and conditions of the Agreement will govern and control in the event there is any conflict between the terms and conditions of such RLA and this Agreement, unless expressly provided otherwise in the RLA. Notwithstanding anything to the contrary herein, the pricing commitment agreed to by the parties in paragraph 6 of the September 15, 2005 letter agreement between them with respect to fiber license fees for new fiber licenses of PG&E Fiber by IPN shall be null and void as of the Closing Date;

## **ARTICLE IV: TERM**

4.1 Term. The Term of this Agreement shall commence on the Effective Date of this Agreement and shall expire, unless sooner terminated pursuant to the terms of this Agreement and subject to extension as provided in Section 4.2, on midnight Pacific time on the anniversary of the Closing Date. If the CPUC Approval does not occur by the month anniversary of the Effective Date, then any of PG&E, IPN or Level 3 may thereafter terminate this Agreement in full immediately upon written notice to the other parties in accordance with Section 17.1(a)(4)

4.2 Extension of Term. IPN shall have the option to extend the Term for additional terms of years each. IPN shall exercise the option to extend by providing a written notice to PG&E stating the

exercise of its option to extend the Term or any extension thereof, which notice must be given at least one hundred eighty (180) days prior to the scheduled expiration date of the Term (as previously extended, if applicable). In the event IPN does not give notice of election to extend the Term (if such an extension is then available) within the time period specified above, IPN shall be deemed to have elected not to extend the Term. In the event the Term is not extended, upon expiration IPN gives up its right to the IRU, and each party gives up its rights to the obligations and benefits stated under the terms of this Agreement, with the exception of those terms that survive termination pursuant to Section 20.15, and the provisions of Section 4.4 will apply.

4.3 Effect of Extension. The terms, covenants and conditions of this Agreement shall continue in force throughout any extension of the Term.

4.4 Quit and Surrender. For any Cable Route or Equipment Sites included in this Agreement under Exhibit A, B or C no later than one hundred eighty (180) days prior to the scheduled expiration or earlier termination of the applicable Cable Route, Equipment Site or this Agreement (including any renewal terms) either in its entirety or as it pertains to specific Cable Route(s), PG&E shall provide IPN with written notice of PG&E's election to do one of the following. The notice may be shorter where explicitly stated in Section 17.

- (a) Have IPN remove, at IPN's sole cost, all of the System and other personal property and fixtures installed under this Agreement for IPN on or in PG&E Facilities and Right of Way, at which time title to the Cable and the Cable Accessories shall pass to IPN, and to restore, at IPN's sole cost, the PG&E Facilities and Right of Way to as good an order and condition as they were at the time immediately prior to their removal.
- (b) Have PG&E remove, at IPN's sole cost, and in accordance with removal policies provided by IPN, all of the System and other personal property and fixtures installed under this Agreement for IPN on or in PG&E Facilities and Right of Way, at which time title to the Cable and the Cable Accessories shall pass to IPN.
- (c) Leave the System in place (except for the IPN System Electronics, which shall be removed and delivered to IPN at IPN's cost and expense), at which time title to the same shall pass to PG&E.

PG&E and IPN shall mutually agree to a schedule for implementing the election provided in PG&E's written notice, but in no event will the schedule extend more than one (1) calendar year from the date of expiration or earlier termination of this Agreement, either in its entirety or as it pertains to a specific Cable Route(s).

4.5 Holdover. If IPN continues to utilize the Cable Route(s) after expiration or earlier termination of this Agreement and any renewal terms, either in its entirety or as it pertains to specific Cable Route(s), such use or holding over will, unless otherwise agreed to by PG&E in writing, constitute and be construed to be a month-to-month use at the monthly fees specified in Section 5. Notwithstanding the foregoing, any period when the System is being removed pursuant to Section 4.4 shall not be deemed a holdover.

## **ARTICLE V: FEES and REIMBURSEMENTS**

5.1 Minimum Annual Fee.

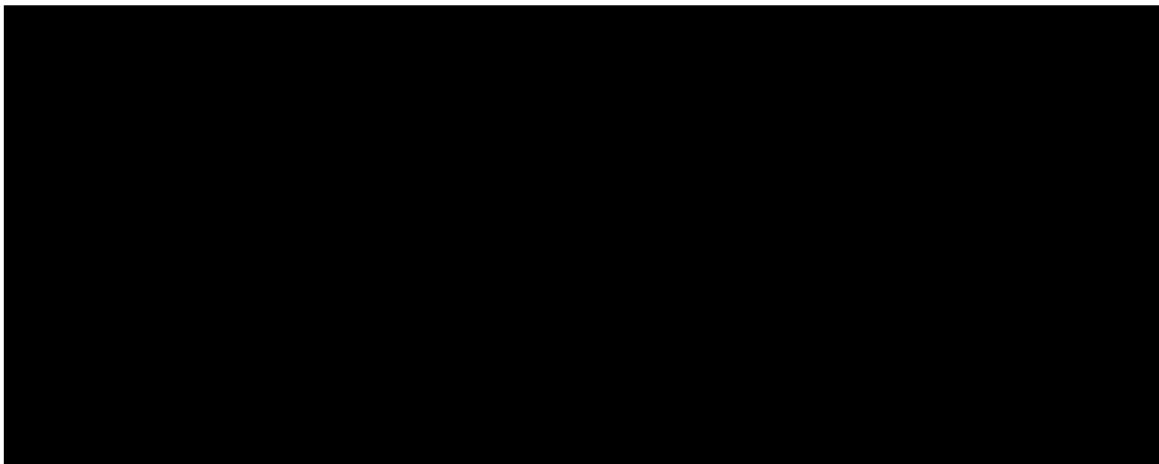
(a) IPN will pay PG&E no less than a minimum annual fee in the amount of (the "Minimum Annual Fee") as provided in 5.1(b) below. For clarity, the Minimum Annual Fee covers the annual fee owed under this Agreement including the fees payable for RLAs, including Pre -Existing RLAs, identified in Exhibit A -1 and A -2, and . The Minimum Annual Fee will increase on an annual basis by per year compounded for the years of the Term as displayed in the following table:



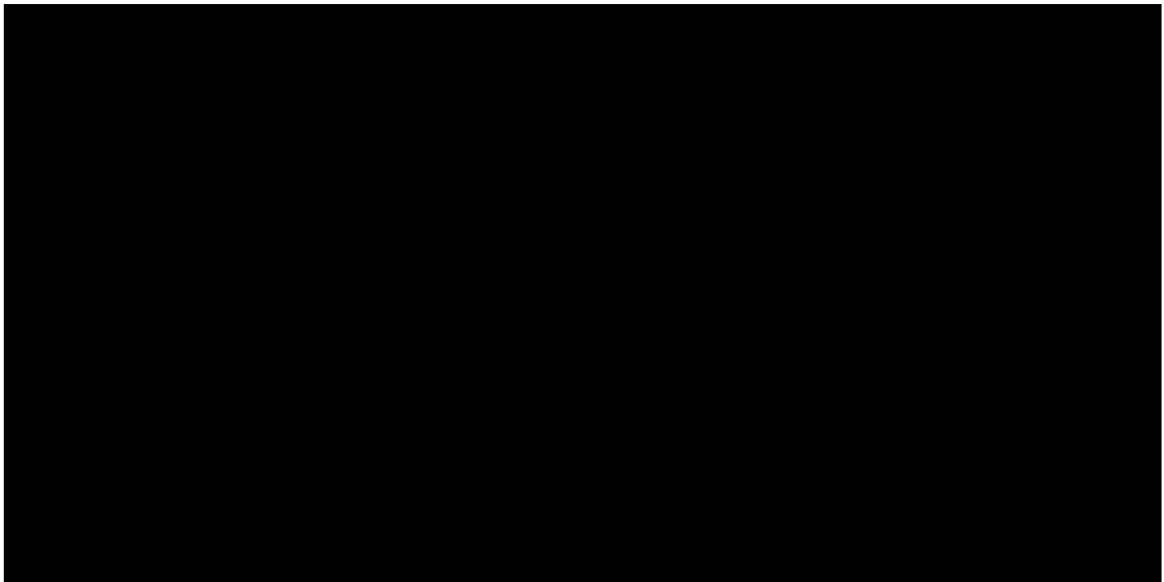

5.4 Payment of the Monthly Fee.

- (a) IPN will pay the Monthly Fee within 30 days from the date of receipt of PG&E’s invoice. The Fees will increase by annually for the remainder of the Term. The will increase by at the end of the initial year term.
- (b) IPN must notify PG&E of any and will pay the applicable Fees . Thereafter, IPN will pay the applicable monthly for such throughout the remainder of the Term
- (c) Within five (5) business days of the Closing Date and on January 15<sup>th</sup> of every year thereafter, IPN shall provide a written report to PG&E
- (d) PG&E reserves the right to audit IPN to verify the accuracy of any reported via the proces s or otherwise, subject to Section 10.11 of the Agreement. IPN shall at its expense provide all documentation or proof, as reasonably requested by PG&E. PG&E shall have the right once per year to conduct a physical inspection of the or take such other a ctions as may be necessary to verify . If the result of an audit shows underreporting, IPN shall timely remediate by paying PG&E, for discovered by the audit, an amount equal to the fee(s) that should have been paid but were not plus interest at the rate of 1.5% per month compounded monthly starting from the month in which the last was conducted to the current month. In addition, if the result of an audit shows underreporting of fees by more than percent (%), IPN shall reimburse PG&E for its reasonable costs of the audit.
- (e) In addition to PG&E’s rights under 5.4(d), PG&E may from time to time during the Term . Such sampling shall be at PG&E’s cost and expense unless results in an underreporting of more than two percent (2%). .

The table below shows the rates for throughout the first years of this Agreement. The table will be updated to reflect the







5.5 Administrative Fee. For each , IPN will pay PG&E to cover administrative project documentation, mapping and other associated project-related administrative costs. This administrative fee is non-refundable and non-returnable, except as otherwise provided herein.

5.6 Annual Site License Fee. IPN shall pay PG&E an Annual Site License Fee for the use of Equipment Sites specified in the Site License Acknowledgments attached in Exhibit B. The Annual Site License Fee shall be at the market rate on a per square foot per year of space used basis, and once in place such fee shall be increased percent per year for the Term of the Agreement.

5.7 Other Payment Provisions.

- (a) On or before the tenth (10th) day of each month, IPN shall prepare and submit to PG&E an itemized accounting of the calculation of the Monthly Fee for the preceding month and PG&E shall issue an invoice within ten (10) business days of its receipt of the itemized accounting. The itemized accounting of the Monthly Fee shall include sufficient detail for PG&E to verify the calculation of the Monthly Fee.
- (b) Upon execution or commencement of an SLA, whichever is first, IPN shall pay PG&E a pro-rated Annual Site License Fee. The pro-rated Annual Site License Fee will be calculated as the Annual Site License Fee for the current year multiplied by the ratio of (1) the number of days remaining in the current calendar year divided by (2) three-hundred and sixty five (365). The pro-rated Annual Site License Fee shall be due no later than thirty (30) days after the SLA Execution or Commencement Date. Thereafter, on or before the twentieth (20th) day in January of each calendar year, IPN shall prepare and submit to PG&E a calculation of the Annual Site License Fees due for all previously-executed SLAs still in force, along with a check or wire transfer in the amount due.

5.8 Reimbursement of Costs.

- (a) Project Costs. IPN will reimburse PG&E for all actual and reasonable project expense and capital costs incurred by PG&E. Project costs incurred by PG&E will include but not be limited to costs associated with obtaining permits, project management, design and engineering, construction and installation, inspection, Equipment Stations, Building Entries, associated labor, and procurement of equipment, pursuant to Sections 6.1 (Design Responsibility), 6.2 (PG&E Information), 6.3 (Working Drawings), 6.6 (Reimbursement), 7.10 (PG&E Inspection of Construction), 7.11 (As-Built Drawings),

7.13 (Reimbursement), 8.1 (Maintenance Responsibilities), 8.3 (Restoration Plan), 9.3 (Property Interest Documentation) and 9.4 (Perfection of PG&E's Easements) . In addition, IPN shall pay PG&E the costs from PG&E's accounting system for all labor, material expenses and vendor payments arising under the sections noted in this Section 5.8(a).

- (b) Other Costs. IPN shall also reimburse PG&E for actual and reasonable costs incurred by PG&E pursuant to: Sections 4.4 (Quit and Surrender), 9.2(d) (Contest of Ad Valorem Taxes), 9.5 (Incremental Property Rights Costs), 9.6 (Franchise Rights and Licensing Costs), 9.7(a) Release of Liens, 10.3(h) (Equitable Relief), 10.12 (Interference), 13.2 (Discontinuance and Relocation), 15.2 (IPN Indemnity), 19.1 (Income Taxes), and 20.10 (Attorney Fees). Such costs shall be calculated utilizing whatever reasonable method PG&E has in place at the time such costs become reimbursable, and shall include all applicable indirect and overhead charges.
- (c) Pursuant to this section 5.8 the term "incurred" means the actual and reasonable payments made by PG&E to contractors, vendors, suppliers, and other third-parties, as well as actual and reasonable expenses booked or recorded by PG&E for costs relating to its own personnel, materials and supplies charged to such work, including fully-loaded labor costs. PG&E's costs shall not include costs associated with the following: return on capital, negotiating and preparing this Agreement, market research, marketing, billing, and payment processing.

5.9 Invoices for Reimbursement of Costs. On or before the twentieth (20th) day of each calendar month, PG&E shall prepare and submit to IPN an invoice for all identified reimbursable costs pursuant to Section 5.5 incurred by or for the account of PG&E during the immediately preceding calendar month, together with all other identified reimbursable costs previously incurred by PG&E and not previously invoiced. Upon request by IPN, PG&E shall provide sufficiently detailed back-up documentation to support the costs. Any amount not in dispute shall be promptly paid by IPN. If IPN disputes any amounts, it shall use reasonable efforts to submit a detailed letter explaining the basis for the dispute to PG&E within sixty (60) calendar days of receiving an invoice from PG&E containing the disputed amount. Any dispute that is not resolved by mutual agreement of the parties shall be resolved in accordance with Article XVIII. PG&E will use reasonable efforts to invoice within days of the month in which the costs occurred.

5.10 Fee Payment Procedure. Any fees payable to PG&E or IPN under this Agreement shall be made by check or wire payable to Pacific Gas and Electric Company or IPN, as applicable, and sent to the following addresses:

Pacific Gas and Electric Company  
Attn: Director, Business Development  
245 Market Street, MC N10D  
San Francisco, CA 94105

IP Networks, Inc.  
Attn: President  
365 Main Street  
San Francisco, CA 94105

5.11 Late Fees. If any payment due from one party to the other party under the terms of this Agreement is not received by the receiving party within forty-five (45) calendar days after the date it becomes due, the party which owes the payment obligation shall pay to the other party, in addition to the amount due, a late fee charge in an amount equal to one and one-half percent (1.5%) per month of the amount due.

5.12 Other Fees.

- (a) Any work performed by PG&E pursuant to Section 6.7 or Section 7.14 of the Agreement will be compensated as separately arranged and mutually agreed between IPN and PG&E. PG&E will not bill IPN under Section 5.8 for any costs or expenses that are appropriately incurred under Section 6.7 or Section 7.14. Any dispute regarding invoicing or payment of costs incurred pursuant to Sections 6.7 or 7.14 will be resolved as specified in Section 5.10.
- (b) Rack space fees will be at market price where space is available and as needed to support network infrastructure. Once set, these fees will escalate once per year at an annual rate of 1%. For avoidance of doubt, IPN must give PG&E at least 48 hours advance notice for any non-emergency access or entry to rack space that is within the perimeter fence of any substation in accordance with Section 3.7.

5.13 Existing Debt Owed to PG&E

- (a) On the Closing Date, IPN will pay PG&E in full all amounts outstanding under the Promissory Note executed by IPN on December 23, 2010 in favor of PG&E in the amount of \$, plus any additional unpaid accrued interest thereon. Also on the Closing Date, all overdue PG&E receivables from IPN will be paid in full by IPN.
- (b) Upon the signing of an agreement providing for the acquisition of IPN by Level 3 (the "IPN Acquisition Agreement"), all overdue PG&E receivables from IPN will be secured by means of a first priority security interest in all of IPN's assets, pari passu with the existing secured debt held by PG&E and ExteNet. Although IPN has established an interim funding plan satisfactory to PG&E which is designed to provide reasonable assurance of timely payment of up to of potential future PG&E receivables from IPN arising between the signing of the IPN Acquisition Agreement and CPUC Approval, IPN will continue to be obligated to pay all such PG&E receivables when due, including those exceeding the amount of the interim funding plan.
- (c) Contingent upon and effective as of the Closing Date, Level 3 agrees that it will be fully liable in the event IPN fails to pay the amounts owed under Section 5.13(a). Notwithstanding any other provision of this Agreement, PG&E may terminate this Agreement immediately upon written notice to IPN if the conditions set forth in Section 5.13(a) and 5.13(b) are not met within five (5) days of the Closing Date.

5.14 Final Invoicing Under Original Agreement. Except as provided under Section 5.13, within 80 days of the Closing Date, PG&E shall submit a final invoice to IPN in respect of all fees and cost reimbursements then owed to PG&E under the Original Agreement . Any such fees and reimbursable amounts not included on such invoice shall automatically and without any further action by the parties be deemed irrevocably waived by PG&E.

## **ARTICLE VI: SYSTEM DESIGN**

6.1 Design Responsibility. IPN, at IPN's cost and expense, shall design and engineer the System specified in the RLA, including the Cable and the Cable Accessories, Equipment Sites, Equipment Stations , Building Laterals, and any equipment attachment modifications to PG&E Facilities, and the splice points necessary to accommodate the System. The design and engineering work shall be performed by IPN or the Contractor (and applicable subcontractors). PG&E shall have the right to approve the appointment and qualifications of the Contractor, which consent shall not be unreasonably withheld or delayed. IPN or the Contractor shall furnish PG&E with copies of any computer models, analyses, and design specifications developed for modifications to the towers and distribution facilities. In fulfilling its responsibilities under this Section 6.1, IPN and the Contractor shall follow the following specifications and

standards, to the extent reasonable: (a) the Cable Specifications; (b) PG&E's established procedures for working in and around PG&E Facilities, including the safety rules set forth on Exhibit J; (c) PG&E's design specifications relating to the PG&E Fibers and associated splicing points, as set forth on Exhibit A; (d) PG&E's engineering standards and specifications for PG&E Facilities, as provided to IPN, and updated by PG&E from time to time; and (e) IPN's customary design and engineering standards and specifications, as provided to PG&E, and updated by IPN from time to time.

During the design process, PG&E will at IPN's cost and expense provide advice and assistance at the request of IPN and if PG&E has sufficient resources available to meet IPN's requests. Upon receiving the System design, PG&E shall, at IPN's cost and expense review any proposed Cable Route and modifications proposed to PG&E Facilities. PG&E shall, at IPN's cost and expense, perform structural analysis, pole-loading calculations and design any rearrangement necessary to accommodate the installation of the System on PG&E Facilities. If PG&E labor is not available, IPN may perform pole-loading engineering to accommodate the installation of the System on PG&E poles.

6.2 PG&E Information. To facilitate IPN's design and engineering of the System, PG&E shall furnish to IPN, if available, with reasonable promptness after request from IPN, and upon the condition that IPN shall reimburse PG&E for PG&E's reasonable cost of producing and delivering the same:

- (a) Copies of PG&E's established procedures for working in and around PG&E Facilities and Right of Way and copies of PG&E's design specifications relating to the PG&E Fibers and associated splicing points.
- (b) Copies of available maps, charts and other engineering data and documentation pertaining to specified portions of the Right of Way and the physical conditions thereof, including the location and nature of towers, power stations, distribution facilities, and other improvements, as well as all relevant engineering data and plans relating thereto;
- (c) Copies of available title documentation with respect to specified sections of the Right of Way (including existing easements, rights of use or other use or occupancy rights, if any, previously granted), and other existing agreements respecting the Right of Way (including, without limitation, utility crossings) and restrictions on the right to use and to occupy the same for the purposes intended by this Agreement;
- (d) Any available information on pending or planned relocation projects by PG&E or others along specified sections of the Right of Way and information regarding material scheduling restraints on obtaining temporary clearances to install particular System Segments along the Right of Way; and
- (e) Maps and other available documentation sufficient to describe the identity and location of other users of specified portions of the Right of Way and PG&E Facilities as well as identification of areas within the Right of Way which might contain title or possession problems due to the nature of the ownership, third-party right of way ownership (including, without limitation, reversionary or reentry rights of underlying fee owners) or third-party rights to use PG&E Facilities.

### 6.3 Route Application Process and Working Drawings

(a) Route Application. When IPN has identified a building in which they desire to reach, IPN shall submit a Route Application Form to PG&E, along with (i) the Administrative Fee; (ii) single-line sketch of the proposed Cable Route, including building entry locations and cable connection points, using PG&E Facilities as reference points; (iii) desired work schedule containing enough detail for PG&E to determine the workforce needed to support the build and (iv) all other relevant information as may be reasonably requested by PG&E (collectively, the "Application Package"). Upon receipt of a complete Application Package, including the Administrative Fee, PG&E shall acknowledge the date of receipt. PG&E shall at all

times use commercially reasonable efforts to review the Application Packages submitted by IPN as soon as practicably possible. Provided that IPN has not submitted more than , and further provided that the Route Application Forms are limited to underground electric distribution System Segments that , PG&E shall process and respond to the Application Package within business days from receipt with the following information: (1) (a) known or obvious issues that may be present along the proposed pathway (based on a paper review) and (b) an estimate of the PG&E supplemental labor hours and cost to escort and inspect the installation (this will be based on the information provided in the Application Package and will be subject to modification if conditions change), or (2) if the Application Package is not approved, the reason for PG&E's rejection. Provided there are no other issues with the Application Package, PG&E and IPN shall work together to schedule and complete the field verification of the pathway. PG&E may not unreasonably withhold or delay its approval of any Application Package. Notwithstanding the foregoing, PG&E may take into account the needs of its business operations when deciding whether to approve any Application Package. . Unless otherwise mutually agreed to by the Parties, all RAFs shall expire sixty (60) days from the date of PG&E's receipt of the RAF; provided that PG&E had responded to such expiring RAF within the review period. An example of the Route Application process flow is illustrated in Exhibit L, which may be updated from time to time by mutual agreement of the Parties.

(b) Working Drawings. When IPN has completed the design for any System Segment, IPN shall either prepare, or cause the Contractor to prepare, and submit to PG&E Working Drawings for the construction of that System Segment. The Working Drawings shall include plans and specifications for the Cable, the Cable Accessories and splicing points (including splicing points for the PG&E Fibers at locations designated by PG&E). PG&E shall review the Working Drawings, at IPN's cost and expense, and as soon as reasonably practical but not to exceed working days from submission thereof, PG&E shall approve the same Working Drawings in whole or in part (which approval shall not be unreasonably withheld) or raise any objections thereto, to the Working Drawings, which objections and/or corrections shall be stated in writing. If PGE fails to approve or raise objections within the working days, IPN shall have the option to terminate the applicable Route Application Form and PG&E will forego the reimbursement of any costs and expenses associated with such Working Drawings. Upon receipt of any objections and/or corrections to the Working Drawings, IPN shall use its reasonable efforts to correct, or cause the Contractor to correct, the Working Drawings with respect to which such objections were noted by making appropriate changes thereto and to re-submit the same to PG&E for approval or objection as stated above. PG&E will use commercially reasonable efforts to review the re-submitted Working Drawings within working days of PG&E's receipt of the Working Drawings, provided IPN has supplied all information or other materials requested by PG&E in connection with the review of the re-submitted Working Drawing. Notwithstanding the foregoing:

- (i) PG&E shall have sole authority for approval, which shall not be unreasonably withheld, of the Working Drawings with respect to the impact of the System on PG&E Facilities and Right of Way; and
- (ii) IPN shall have sole authority and responsibility for determining, in its reasonable discretion, the fitness of the Cable and the System Electronics, as set forth in the Working Drawings, for use in connection with the System and for approval, which shall not be unreasonably withheld, of the Working Drawings with respect to the operation and use of the System for telecommunications purposes.
- (iii) The estimated times for review noted in this Section 6.3 are based on the Working Drawing consisting of an underground electric distribution System Segment. The Parties, acting reasonably will mutually agree upon the review times and process for any overhead Working Drawing submitted by IPN.

Approval by PG&E of Working Drawings submitted by IPN shall constitute PG&E's approval solely with respect to PG&E's electric transmission and electric and gas distribution system and shall in no way be deemed to constitute an opinion of PG&E with respect to the adequacy of any aspects of the System for telecommunications purposes.

6.4 Construction Schedule. Promptly after the Working Drawings for any System Segment have been approved, PG&E and IPN shall, acting reasonably, agree upon a detailed schedule for completion of the construction of the Approved System Segment, which schedule shall be consistent with the assumptions underlying the applicable Working Drawings and PG&E electric clearance requirements.

6.5 Warranty of Work. Each of PG&E and IPN shall cause their respective contractors, subcontractors and agents who perform work to design or engineer the System (including, without limitation, the Contractor) to warrant their work in accordance with industry standards and practices and the terms of this Agreement (including, without limitation, the Cable Specifications). In addition, PG&E or IPN, as applicable, shall, at its own cost and expense, enforce the provisions of such warranties following completion of the Work.

6.6 Reimbursement. IPN shall reimburse PG&E for any actual and reasonable cost incurred by PG&E under the terms of this Article VI as provided in Section 5.8.

6.7 PG&E Option. If so requested by IPN, PG&E may, at PG&E's option and if PG&E has sufficient resources available, submit a proposal or bid to perform for IPN the design and engineering functions specified as IPN's or Contractor's responsibility in this Article VI. Such proposal or bid shall specify the terms of payment or reimbursement for the specific functions to be performed by PG&E, along with any other appropriate terms. If IPN elects to have PG&E perform the specified design and engineering functions, then PG&E's compensation for such work shall be under the terms of the proposal or bid, as modified by mutual agreement and accepted by both parties. In this event, PG&E will separately track and account for costs incurred by PG&E under this Section 6.7 and other costs incurred by PG&E under Article VI, which are separately reimbursable. PG&E will not bill IPN under Sections 6.6 and 5.3 for any costs or expenses, which are appropriately incurred under Section 6.7.

## **ARTICLE VII: CONSTRUCTION**

7.1 Scope of Work. IPN, at its expense, shall be responsible for the installation of the Cable, Cable Accessories, preparation of Equipment Sites, Equipment Stations, Building Laterals, splice points, construction of any modifications to PG&E Facilities necessary to accommodate the System, and the installation of the IPN System Electronics. The installation work shall be performed by IPN or the Contractor (and applicable subcontractors). PG&E shall have the right to approve the appointment and qualifications of the Contractor, which consent shall not be unreasonably withheld or delayed. In order to permit IPN to perform its work, PG&E shall allow IPN and the Contractor access to PG&E Facilities and the splice point sites, subject to the notice requirements of Section 3.7. PG&E acknowledges that IPN may conduct network construction in excess of the levels performed under the Original Agreement. PG&E shall provide necessary resources under this Agreement to perform the review and approval processes promptly. PG&E and IPN agree to work together in good faith to create a build plan for larger network builds in order to facilitate availability of necessary resources. The Parties will reasonably cooperate to build new Cable Routes in accordance with the Route License Application Process Flow Chart in Exhibit L. Notwithstanding the foregoing, IPN understands and acknowledges that PG&E's gas and electric operations and ancillary services will take precedence over any construction activity contemplated herein.

7.2 Work Standards. All work to be performed hereunder by IPN shall be performed in a good, workmanlike manner and in compliance with the requirements of applicable electrical safety codes, prudent utility practice, and all applicable other laws, ordinances, codes, regulations and Approvals of any government authority having jurisdiction over the work. Work in areas adjacent to electrically energized equipment shall be performed in accordance with PG&E's established safety rules, as set forth on Exhibit J.

7.3 Time. Installation of the Cable and the Cable Accessories, construction of and installation of the System Electronics and for installation of the Equipment Stations shall, to the extent practicable and within the reasonable control of IPN, be carried out by IPN in accordance with the construction schedule prepared pursuant to Section 6.4. The construction schedule shall be updated and

revised at regular intervals by IPN with the approval of PG&E, which approval shall not be unreasonably withheld. Such updating and revision shall include, without limitation, adjustment for delays caused by a Force Majeure Event.

7.4 Intentionally omitted.

7.5 System Materials. IPN, at its expense, shall provide all System Materials necessary to install and operate the Cable. All System Materials shall comply with the Cable Specifications and shall meet the specifications described in the Working Drawings. IPN, at its expense, shall complete staking and marking of the Cable in accordance with standard industry engineering practices. IPN System Electronics and Equipment Stations shall be installed at IPN's sole cost and expense. PG&E System Electronics shall be installed at PG&E's sole cost and expense.

7.6 Interface between PG&E and IPN. PG&E and IPN shall cooperate and mutually agree upon the respective responsibilities of each party with respect to the interface or interconnection between the portion of the System for which IPN has construction, installation and Maintenance responsibilities, and the portion of the System for which PG&E has Maintenance responsibilities.

7.7 Title and Risk of Loss.

- (a) Cable and Cable Accessories. Upon the issuance of an Acceptance of Construction with respect to any System Segment, legal title to the Cable (of which PG&E has an interest in the PG&E Fibers) and the Cable Accessories shall pass to PG&E. Notwithstanding such transfer to PG&E, because of the IRU retained by IPN in and to the fibers, IPN will carry the Cable, including the optical fibers therein as an asset on IPN's books and records. IPN shall be entitled to depreciate such asset for book, regulatory and tax purposes. In addition, at all times during the Term, IPN shall bear the risk of loss or damage with respect to the Cable, including the optical fibers therein, and Cable Accessories.
- (b) System Electronics. Title to and risk of loss associated with IPN System Electronics shall remain with IPN throughout the Term and shall at no time pass to PG&E. Title to and risk of loss associated with PG&E System Electronics shall remain with PG&E throughout the Term and shall at no time pass to IPN.
- (c) Equipment Stations. Title to and risk of loss associated with IPN Equipment Stations shall remain with IPN throughout the Term and shall at no time pass to PG&E.

7.8 System Warranties. In procuring and obtaining System Materials pursuant to Section 7.5, if possible, IPN shall assign to PG&E, or enforce on behalf of PG&E at PG&E's direction, any and all warranties regarding the System Materials that it obtains from the vendors and suppliers thereof. Following any such assignment, PG&E shall administer all such warranties for the benefit of PG&E and IPN. IPN shall administer the manufacturers and other warranties with respect to the IPN System Electronics and Equipment Stations both before and after the issuance by PG&E of an Acceptance of Construction associated with such System Segment.

7.9 Use of Contractors. IPN shall have the right, at its cost and expense, to have any of the construction and installation work to be provided by IPN under the terms of this Agreement performed by the Contractor, or one or more other contractors or subcontractors; provided that the Contractor and any other contractor or subcontractor retained by IPN to install the Cable or Equipment Stations shall be subject to the prior approval of PG&E, which approval shall not be unreasonably withheld or delayed. No such contract or subcontract shall create a contractual relationship between the Contractor or any other contractors or subcontractors and PG&E, and IPN shall be solely responsible for the engagement and management of the Contractor and any other contractor or subcontractor.

7.10 PG&E Facility Access and Inspection of Construction. PG&E may, at IPN's cost and expense, provide access to PG&E Facilities and perform routine inspections of construction while in

progress. A PG&E representative may be on-site during all construction work to perform functions such as safety watch, protection of PG&E Facilities, and obtaining clearances. Within twenty (20) working days after the completion of the installation of the Cable and the Cable Accessories along an Approved System Segment or the Equipment Stations, IPN shall notify PG&E of such completion and provide to PG&E a summary of the fiber optic specifications and the results of any testing with respect thereto performed by IPN or the Contractor including post installation fiber optic testing. PG&E shall have twenty (20) working days following receipt of such notice from IPN to make an inspection, at IPN's cost and expense, of the Cable, Cable Accessories and Equipment Stations for conformance with the applicable Working Drawings and the other construction requirements of this Agreement. Within ten (10) working days following such inspection, PG&E shall furnish IPN with either: (i) an Acceptance of Construction with respect to the installation of the Cable, Cable Accessories or Equipment Stations along such Approved System Segment; or (ii) a statement setting forth in reasonable detail any objections to or defects in the installation of the Cable, Cable Accessories or Equipment Stations along such Approved System Segment. Upon receipt of the statement of objections, IPN shall either: (x) correct, or cause the Contractor to correct, the objections or defects, whereupon PG&E shall re-inspect the same within ten (10) working days following receipt from IPN that the work has been corrected, and if found corrected, issue an Acceptance of Construction as stated above; or (y) dispute the statement of objections or defects by referring the disputed issues for determination to the Chief Engineers of PG&E and IPN (without thereby waiving any rights with respect to the issues in controversy). Notwithstanding the foregoing:

- (a) PG&E shall have sole authority, not to be unreasonably withheld, for determining the fitness and acceptance of the Cable Accessories, including, without limitation, the attachment of the Cable to PG&E Facilities Right of Way, as the same may impact PG&E's electric transmission or gas or electric distribution system.
- (b) IPN shall have sole authority and responsibility for determining the fitness and acceptance of the construction with respect to the operation and use of the System for broadband telecommunications purposes.

Acceptance of the construction and installation work associated with the Cable and the Cable Accessories for any System Segment by PG&E shall constitute PG&E's approval solely with respect to PG&E's electric transmission and electric and gas distribution system and shall in no way be deemed to constitute an opinion of PG&E with respect to the adequacy of any aspects of the System for telecommunications purposes.

7.11 As-Built Drawings. Within ninety (90) days following the issuance of an Acceptance of Construction for any System Segment, IPN, at its cost, shall submit, or cause the Contractor to submit, to PG&E "as-built" drawings (CAD and PDF versions) of the Cable and the Cable Accessories include fiber cable numbers, fiber cable type and count, tracer wire details, butterfly drawings, splice locations, building POI locations, GPS or latitude & longitude coordinates and a bill of materials including all restoration materials delivered to PG&E. Additional details would be required for overhead as-built drawings. Within thirty (30) working days following the delivery of the "as-built" drawings, PG&E shall, at IPN's cost and expense, inspect the Cable and the Cable Accessories along such Developed System Segment for conformance with the "as-built" drawings. Within thirty (30) working days following such inspection, PG&E shall furnish IPN with either: (a) an acceptance of the drawings with respect to the Cable and the Cable Accessories; or (b) a statement setting forth in reasonable detail any reasonable objections to or defects in the drawings thereof. Upon receipt of a statement of reasonable objections or defects, IPN shall either: (i) promptly amend, or cause the Contractor to amend, the "as-built" drawings, if so requested by PG&E; or (ii) correct the defects, or cause the Contractor to correct the defects, whereupon PG&E shall re-inspect the same within thirty (30) working days following notice from IPN that the work has been corrected and, if found corrected, issue an acceptance of the drawings as provided above. Notwithstanding the foregoing, PG&E's approval of any "as-built" drawings or statement of any objections to any "as-built" drawings shall signify approval of or objections with respect to PG&E's electric transmission and electric and gas distribution system along the Developed System Segment only and shall in no way be deemed to represent an opinion of PG&E with respect to the adequacy of any aspects of the Developed System Segment for telecommunications purposes.



7.12 Warranty of Work. Each of PG&E and IPN shall cause their respective contractors, subcontractors and agents who perform work to install the System (including, without limitation the Contractor) to warrant their work in accordance with industry standards and practices and the terms of this Agreement (including, without limitation, the Cable Specifications). In addition, PG&E or IPN, as applicable, shall, at its own cost and expense, enforce the provisions of such warranties following completion of the work.

7.13 Reimbursement. IPN shall reimburse PG&E for any actual and reasonable cost incurred by PG&E under the terms of this Article VII as provided in Section 5.8.

7.14 PG&E Option. If so requested by IPN, PG&E may, at PG&E's option and if PG&E has sufficient resources available, submit a proposal or bid to perform for IPN the construction and installation functions specified as IPN's or Contractor's responsibility in this Article VII. Such proposal or bid shall specify the terms of payment or reimbursement for the specific functions to be performed by PG&E, along with any other appropriate terms. If IPN elects to have PG&E perform the specified construction and installation functions, then PG&E's compensation for such work shall be under the terms of the proposal or bid, as modified by mutual agreement and accepted by both parties. In this event, PG&E will separately track and account for costs incurred by PG&E under this Section 7.14 and other costs incurred by PG&E under Article VII, which are separately reimbursable. PG&E will not bill IPN under Sections 7.13 and 5.3 for any costs or expenses, which are appropriately incurred under Section 7.14.

## **ARTICLE VIII: MAINTENANCE**

8.1 Maintenance Responsibilities. During the Term and any extension thereof, PG&E shall be responsible for the performance and related costs of Maintenance of the Cable, the Cable Accessories, and PG&E Facilities along the Cable Route up to the Point of Interface. IPN shall be responsible for the performance and related costs of maintenance of the Cable and IPN facilities along the Cable Route beyond the Point of Interface and such other maintenance as set forth in Section 8.2. PG&E and IPN shall maintain the Cable, the Cable Accessories, the Facilities and the Right of Way at all times in good working order and in a safe condition, in conformity with the Cable Specifications and all applicable laws and regulations.

8.2 IPN Maintenance Responsibilities. IPN, at IPN's cost, will control and perform operations, monitoring, maintenance and provisioning of any System Electronics not controlled by PG&E, and of any Equipment Stations. IPN shall maintain the facilities at all times in good working order and in a safe condition, in conformity with all applicable laws and regulations.

8.3 Restoration Plan. PG&E will perform cable restoration services, if necessary, in accordance with the Detailed Restoration Plan (as defined below). PG&E and IPN will be proportionally responsible, based on the proportion of fibers PG&E owned within the cable, for restoration costs resulting from any causes of cable failure not recoverable from third parties. IPN, at IPN's cost, shall provide spare materials such as cable and cable accessories for use in cable restoration. Materials shall be stored at mutually agreeable locations. PG&E will be responsible for costs related to the IPN material storage only to the extent the materials are stored at PG&E Facilities. Restoration activities will be integral to ensuring successful implementation of this Agreement. Timely restoration is dependent on timely coordination and cooperation between PG&E and IPN. Prior to the Closing Date, PG&E and IPN shall jointly develop a Detailed Restoration Plan, which upon its completion shall be attached to this Agreement as Exhibit H.

- (a) Priorities and General Requirements. The Detailed Restoration Plan shall contain the following priorities and general requirements:
- (1) PG&E's obligation to maintain and repair the Cable, Cable Accessories, PG&E Facilities, and Right of Way and any activities incidental thereto shall be subordinate to, and shall not conflict with, PG&E's rightful use and operation of its transmission and distribution facilities. In the event both PG&E Facilities

and Cable/Cable Accessories require Maintenance or repair, PG&E shall use reasonable efforts to repair the PG&E Facilities, Cable and Cable Accessories concurrently. However, the restoration of the Cable and Cable Accessories shall be at all times subordinate to the restoration of PG&E Facilities. Restoration of the Cable and Cable Accessories shall be the next priority after PG&E Facilities. If restoration is needed and only involves the Cable or Cable Accessories and PG&E is not able to perform the restoration in a timely manner, PG&E at its option may permit IPN or another third party of its choosing to perform the restoration.

- (2) Any and all PG&E and IPN representatives that construct, install, repair, replace or otherwise handle the Cable, including the optical fibers therein, the Cable Accessories, or any related materials and equipment shall be properly trained and equipped to meet all current industry standards.
  - (3) A PG&E representative must be on-site during all repair and restoration work to perform functions such as safety watch, protection of PG&E Facilities, and obtaining line clearances. PG&E shall make reasonable efforts to have a representative arrive at the site requiring emergency Maintenance or repair activity.
  - (4) PG&E and IPN, when performing repair and restoration work, shall employ prudent utility practices and to the extent practical, use the most cost-effective restoration procedures and materials available given the Cable Specifications and current industry standards.
  - (5) All employees and agents of IPN, including the Contractor, who work near PG&E Facilities shall be properly trained and equipped to perform their work. PG&E shall have the right to have a representative present when work is conducted on or around PG&E Facilities.
  - (6) PG&E shall have the authority to stop any work activities or equipment functions for reasons, determined in good faith, to involve potential health hazards, safety concerns or potential disruption to PG&E's transmission and distribution system. PG&E shall make reasonable efforts to coordinate with IPN in case of such events.
- (b) Cable Restoration. The Detailed Restoration Plan shall include the following with respect to the restoration of the Cable:
- (1) A timeframe within which to mobilize PG&E or IPN crews in the event of an interruption of service, failure, disrepair, or impairment or other need to repair or restoration of the Cable.
  - (2) In the event PG&E is unable to restore the Cable and Cable Accessories concurrently with PG&E Facilities, PG&E shall give IPN immediate notice thereof. In addition, PG&E shall use reasonable efforts to complete the restoration work within the time frames established in the Restoration Plans.
  - (3) For purposes of Sections 8.2(a) and 8.2(b), "reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for PG&E hourly employees, preserving PG&E System Integrity, and response times that do not jeopardize the health and safety of the employees and agents of PG&E and IPN. In any event, PG&E shall have the sole discretion to prioritize work in the event of an emergency.

- (4) The Detailed Restoration Plan shall set forth the roles and responsibilities of PG&E and IPN, and shall address issues regarding logistical considerations, response interval factors, communication between PG&E and IPN, sequential activity requirements, and other related items which could impact response time and restoration intervals.
- (5) Restoration Materials. The Detailed Restoration Plan shall include provisions for the inclusion of sufficient materials for Cable restoration to support the expanded network. Upon the Closing Date, and for each new Building Lateral or , IPN will ensure that all restoration materials are in place in authorized storage areas.

## ARTICLE IX: PROPERTY RIGHTS AND OBLIGATIONS

9.1 Maintain Property Rights. With respect to any portion of the Right of Way, PG&E shall timely perform in accordance with all applicable terms and conditions of the property conveyances by which PG&E holds its interest in the Right of Way, and shall take such other actions as may reasonably be necessary to prevent the lapse, forfeiture or termination of such property interests.

9.2 Payment of Ad Valorem Taxes.

- (a) Right of Way. With respect to any portion of the Right of Way, PG&E shall timely pay any non-disputed Ad Valorem Taxes the nonpayment of which could result in a lien upon the Right of Way.
- (b) Cable and Cable Accessories. IPN shall timely pay any and all Ad Valorem Taxes allocable to the Cable and the Cable Accessories.
- (c) System Electronics and Equipment Stations. IPN shall timely pay any and all Ad Valorem Taxes assessed against the IPN System Electronics. PG&E shall pay any and all Ad Valorem Taxes assessed against the PG&E System Electronics.
- (d) Contest of Ad Valorem Taxes. Notwithstanding the foregoing, the named taxpayer shall consider in good faith a request by the other party to contest an assessment of Ad Valorem Taxes that would be or have been charged to the requesting party under this Agreement, upon the requesting party's written request and provided the requesting party agrees in writing to assume the full cost of such appeal. Any decision to appeal an unfavorable administrative decision to a court of competent jurisdiction shall be made by the taxpayer in its sole and absolute discretion. The taxpayer shall afford the requesting party and its counsel an opportunity to review written submissions and discuss case strategy prior to filing any appeal. The taxpayer shall retain control of the administration of the tax appeal process. If the contest is favorably resolved, in whole or in part, upon receipt of a refund, the taxpayer shall promptly remit the requesting party's share of such refund. To the extent the contest is not favorably resolved, the requesting party shall not be entitled to any refund of any costs incurred by the requesting party or the taxpayer.

9.3 Property Interest Documentation. From time to time upon request of IPN, PG&E, at IPN's cost and expense, shall make available to IPN for IPN's review at the PG&E main office agreements and other documents in PG&E's possession with respect to PG&E's right, title and interest in and to the Right of Way along the Cable Route, Equipment Sites or Building Entry. In addition, from time to time throughout the Term, and any extension of Term, when a property interest is in dispute or as necessary to design the System, PG&E shall inform IPN of any facts relating to such property interest of which PG&E has knowledge which are material to IPN's exercise or defense of the rights granted to IPN under the terms of this Agreement.

9.4 Perfection of PG&E's Easements. Prior to execution of an RLA for any Cable Route, PG&E, at IPN's cost and expense, shall review its records, including but not limited to real property deeds and easements in its possession and other documentation. In the event PG&E Facilities or Right of Way on which Cable Routes are to be located occupy real property by virtue of any easement or other right conveyed to PG&E by the underlying fee owner of the real property, or its predecessor in interest, and if any such easement or other right held by PG&E is not sufficient to (1) accommodate the presence and operation of the Cable and Cable Accessories to be installed along the Route or Building Entry or (2) permit IPN access to and use of the IPN Fibers on such Route or Building Entry as set forth in this Agreement, then, IPN shall determine whether to proceed or not. If IPN elects to proceed, at IPN's cost and expense, PG&E shall at its option, either by itself or, through a third party of its choosing, or otherwise give IPN permission to proceed to secure and acquire such necessary rights from the property owner of record to allow such easement or other right to accommodate the presence and operation of the Cable and Cable Accessories. IPN shall reimburse PG&E's reasonable labor and miscellaneous expenses, including but not limited to any payments to fee owners or property right holders, irrespective of whether the parties ultimately execute an RLA for the prospective Route.

9.5 Incremental Property Rights Costs. If at any time during the Term a third-party Right of Way grantor of PG&E makes a demand for additional compensation or indicates its intent to reopen, renegotiate or terminate the easement, license or other agreement establishing PG&E's rights in any portion of the Right of Way as a direct result of the existence of this Agreement or the presence of the System on the Right of Way, PG&E shall promptly notify IPN. After conferring with PG&E and allowing PG&E an opportunity to resolve the issue, IPN may attempt at IPN's expense to resolve the issue with such grantor through negotiation or settlement, provided IPN may not enter into a settlement that imposes any costs or obligations on the part of PG&E without PG&E's prior written consent. Any decision to commence litigation on behalf of or in the name of PG&E shall be in the sole discretion of PG&E, and any subsequent litigation, whether brought by PG&E at IPN's request or by such third-party Right of Way grantor, shall be conducted at IPN's expense, and under PG&E's direction and control with respect to any issues materially affecting PG&E's rights in the Right of Way. If the dispute is resolved through negotiation or settlement, and such resolution requires the payment of additional consideration by PG&E, IPN shall reimburse PG&E for the amount of such additional consideration. If the dispute is resolved through litigation in accordance with the foregoing and the resulting judgment requires the payment of additional consideration by PG&E, IPN shall reimburse PG&E for the amount of such additional consideration. If IPN possesses the power of eminent domain within the relevant jurisdiction, IPN shall have the right, in its sole discretion, independently of PG&E to seek resolution of such a dispute by exercising such power of eminent domain, provided that IPN shall pay all costs of such exercise. The terms of any settlement must be approved by PG&E and IPN before it becomes binding, which approval shall not be unreasonably withheld, conditioned or delayed.

9.6 Franchise Rights and Licensing Costs. PG&E and IPN shall each be responsible for all franchises and licenses required by government authorities as may be necessary for their respective operations. If at any time during the Term, a government authority having or asserting franchise or licensing authority over PG&E makes a lawful demand, as a direct result of the IRU reserved by IPN under the terms of this Agreement, for a new franchise or license from PG&E, for additional compensation under an existing franchise or license, or indicates its intent to reopen, renegotiate or terminate an existing franchise or license or gives notice of a forfeiture thereof, PG&E shall promptly notify IPN in writing of such demand. After conferring with each other and allowing PG&E an opportunity to resolve the issue, IPN may attempt, at its expense, to resolve the issue with the government authority through negotiation or settlement. Any decision to commence litigation on behalf of or in the name of PG&E shall be in the sole discretion of PG&E, and any subsequent litigation, whether brought by PG&E at IPN's request or by the government authority, shall be conducted at IPN's expense, but under PG&E's direction and control in coordination with IPN. If the dispute is resolved through negotiation or settlement approved by IPN, and the resolution requires the payment of additional consideration by PG&E, or additional costs and expenses to comply with any alternative, additional or modified franchise provisions imposed on PG&E by any government authority having or asserting franchise authority, IPN shall reimburse PG&E for the amount of the additional consideration, costs and expenses. If the dispute is resolved through litigation in accordance with the foregoing and the resulting final judgment requires the payment of additional consideration by

PG&E or additional costs and expenses to comply with any alternative, additional or modified franchise provisions imposed on PG&E by any government authority having or asserting franchise authority, IPN shall reimburse PG&E for the amount of the additional consideration, costs and expenses. The terms of any settlement must be approved by PG&E and IPN before it becomes binding. IPN's obligation to reimburse PG&E for any additional consideration, costs or expenses incurred prior to the expiration or earlier termination of this Agreement shall survive the expiration or termination of this Agreement.

9.7 Liens.

- (a) Release of Liens. In the event the System or any portion thereof becomes subject to any mechanics', artisans' or materialmen's lien, the following provisions shall apply:
- (1) If the lien is chargeable to or through PG&E, PG&E shall promptly cause the lien to be discharged and released of record (by payment, posting of bond, court deposit or other means) without cost to IPN. PG&E shall indemnify IPN against all costs and expenses (including reasonable attorney fees) reasonably incurred in discharging and releasing such lien. If any such lien is not so discharged and released within ninety (90) days after notice thereof by IPN to PG&E, then IPN may pay or secure the release or discharge thereof at the expense of PG&E.
  - (2) If the lien is chargeable to or through IPN, IPN shall promptly cause the same to be discharged and released of record (by payment, posting of bond, court deposit or other means) without cost to PG&E. IPN shall indemnify PG&E against all costs and expenses (including reasonable attorney fees) reasonably incurred in discharging and releasing the lien. If any lien is not so discharged and released within ninety (90) days after notice thereof by PG&E to IPN, then PG&E may pay or secure the release or discharge of the lien at the expense of IPN.
- (b) Contest of Liens. Nothing in this Agreement shall preclude PG&E or IPN from contesting any lien described in subsection (a) above or the contract or action upon which the lien arose after the lien shall have been bonded or otherwise released of record, as provided above.
- (c) Facilities as Collateral. Neither PG&E nor IPN shall pledge or encumber any of its interests in the System in any manner that impairs or could impair the use and operation of the System for internal or commercial purposes, provided that the lien of PG&E's First and Refunding Mortgage shall not be deemed to impair the use and operation of the System.

## **ARTICLE X: REPRESENTATIONS, WARRANTIES AND COVENANTS**

10.1 Representations, Warranties and Covenants of IPN. IPN represents and warrants to PG&E, and covenants with PG&E, as follows:

- (a) Authority. IPN is a Delaware corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to enter into this Agreement and to perform according to the terms, covenants and conditions contained in this Agreement.
- (b) Restrictions. To the best of IPN's knowledge, the execution of this Agreement, any instrument or document required by this Agreement, and the consummation of the transactions contemplated by this Agreement will not violate any article, bylaw or other

corporate restriction, or any statute, ordinance, law, order, ruling, certificate or license, regulation or demand of any court, regulatory agency or other tribunal to which IPN is subject.

- (c) Binding Obligation. This Agreement, when duly executed by IPN, shall constitute a valid, legal and binding obligation of IPN, and shall be enforceable in accordance with its terms, subject to the effect of any bankruptcy, insolvency, reorganization, liquidation, moratorium, receivership, conservatorship, readjustment of debts, or other similar action affecting the rights of creditors generally.
- (d) Government Approvals. IPN has all necessary government approvals to enter into this Agreement. IPN has, or will obtain in a timely manner consistent with meeting IPN's obligations hereunder, all necessary government approvals to perform its obligations under this Agreement.
- (e) Proceedings. Except for matters now pending or that may hereafter be brought by or before the CPUC or other regulatory bodies having jurisdiction over IPN and the activities contemplated by this Agreement relating to the provision of services, no litigation or government proceeding is pending, or to IPN's knowledge, threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or IPN's rights under, or ability to perform pursuant to the terms of, this Agreement. IPN shall promptly notify PG&E of any material adverse claims, actual or threatened, affecting any part of the System or IPN's ability to perform under this Agreement.
- (f) Conduct of Business. IPN will operate the System in a safe manner and will use reasonable efforts to comply in all material respects with applicable laws, regulations and government orders.
- (g) Compliance with Government Requirements. To its knowledge, IPN has not violated any rule, order or regulation issued by any government authority with respect to IPN, its business or operations that may materially and adversely affect IPN's ability to execute and perform its obligations under this Agreement.
- (h) Financing Restrictions. This Agreement does not violate any terms, covenants, conditions or restrictions in any mortgages, bonds and other indentures of IPN.
- (i) Resources and Capacity. IPN or its Affiliates possess sufficient financial, managerial, and technical capacity and resources to perform its obligations under the terms of this Agreement.

10.2 Representations, Warranties and Covenants of PG&E. PG&E represents and warrants to IPN, and covenants with IPN, as follows:

- (a) Authority. PG&E is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and has all requisite corporate power and authority to enter into this Agreement and to perform according to the terms, covenants and conditions contained in this Agreement.
- (b) Restrictions. To the best of PG&E's knowledge, the execution of this Agreement, any instrument or document required by this Agreement, and the consummation of the transactions contemplated by this Agreement will not violate any article, bylaw or other corporate restriction, or any statute, ordinance, law, order, ruling, certificate or license, regulation or demand of any court, regulatory agency or other tribunal to which PG&E is subject.
- (c) Binding Obligation. This Agreement, when duly executed by PG&E, shall constitute a

valid, legal and binding obligation of PG&E, and shall be enforceable in accordance with its terms, subject to the effect of any bankruptcy, insolvency, reorganization, liquidation, moratorium, receivership, conservatorship, readjustment of debts, or other similar action affecting the rights of creditors generally.

- (d) Government Approvals. PG&E has all necessary government approvals to enter into and to perform its obligations under this Agreement, excepting approval from the CPUC regarding this Agreement.
- (e) Proceedings. Except for matters now pending or that may hereafter be brought by or before the CPUC or other regulatory bodies having jurisdiction over PG&E or the activities contemplated by this Agreement relating to the provisions of services, no litigation or governmental proceeding, including, without limitation, before the CPUC, is pending, or to PG&E's knowledge, threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or PG&E's rights under, or ability to perform pursuant to the terms of, this Agreement. PG&E shall promptly notify IPN of any material adverse claims, actual or threatened, affecting any portion of the System.
- (f) Conduct of Business. Except as otherwise provided herein, PG&E will maintain PG&E Facilities and Cable and Cable Accessories, and will use reasonable efforts to comply in all material respects with all applicable laws, regulations and government orders.
- (g) Compliance with Government Requirements. To its knowledge, PG&E has not violated any rule, order or regulation issued by any government authority with respect to any license, permit, franchise or right of way which may materially and adversely affect IPN's use of the System as contemplated by this Agreement or PG&E's right to grant the Revocable License to IPN, or to execute and perform this Agreement.
- (h) Financing Restrictions. This Agreement does not violate any terms, covenants, conditions or restrictions in any mortgages, bonds and other indentures of PG&E.
- (i) Resources and Capacity. PG&E possesses sufficient financial, managerial, and technical capacity and resources to perform its obligations under the terms of this Agreement.

10.3 Confidentiality. For purposes of this Section 10.3, the term "Information" shall mean all information furnished by PG&E and IPN to each other, or by or to their respective representatives, including drafts and the final form of this Agreement, whether or not reduced to writing or specifically identified as intellectual property, non-public, confidential, or proprietary, and all analyses, compilations, data, studies, or other documents prepared by PG&E or IPN containing, or based in whole or in part on, any such furnished information, or reflecting review of, or interest in, all or part of such information. As used in this Agreement, a "representative" of PG&E or IPN, as the case may be, shall mean any and all directors, officers, employees, agents or consultants, including, without limitation, attorneys, accountants and financial advisors of PG&E or IPN, as the case may be. In consideration of being furnished with the Information, PG&E and IPN agree that:

- (a) Nondisclosure. Each party will take reasonable steps to keep the Information confidential and the Information will not be used by a party or any of its representatives directly or indirectly for any purpose other than activities contemplated by this Agreement. Moreover, PG&E and IPN will transmit the Information only to those representatives who need to know the Information for the purpose of performing or exercising each party's obligations and rights under this Agreement.
- (b) Authorized Disclosure. Without the prior written consent of the other party, neither party or its representatives will disclose to any other person the fact that the Information has been made available, or any of the terms, conditions or other facts with respect to this

Agreement, except as required by law. The term “person” as used in this Agreement shall be interpreted broadly to include, without limitation, any corporation, company, group, partnership or individual.

- (c) Non-confidential Information. This Section 10.3 shall be inoperative as to any portion of the Information which: (1) is or becomes generally available to the public other than as a result of a disclosure by a party or its representatives; (2) becomes available to a party in good faith from a third-party not subject to a confidential obligation to the party; (3) was known to a party on a non-confidential basis prior to its disclosure by the other party or one of its representatives; (4) is independently developed by employees of the receiving party who have not had access to or received any information under this Agreement; or (5) is authorized in writing by the disclosing party to be released from the confidentiality obligations of this Agreement.
- (d) Compelled Disclosure. In the event that either party or anyone to whom the party transmits the Information relating to this Agreement becomes legally compelled or is required as part of obtaining any Approval or as part of the regulatory approval process described in Section 3.1 (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or any similar process) to disclose any of the Information, the party so compelled will, if permitted, provide prompt written notice of such event to the other party so that the notified party may seek a protective order or other appropriate remedy, waive compliance with the provisions of this Agreement or both. In the event that such protective order or other remedy is not obtained or that the notified party waives compliance with the provisions of this Agreement, the legally compelled party will furnish only that portion of the Information which is legally required and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.
- (e) Public Records Law. It is understood that PG&E and IPN are or may in the future be subject to public records disclosure laws, and that these laws will govern the disclosure responsibilities of PG&E and IPN notwithstanding the terms of this Agreement. To the extent reasonably practical, PG&E and IPN will notify each other of any public records requests of any part of the Information, and will give the other party a reasonable opportunity to contest the public records request.
- (f) Non-Waiver. The failure or delay by a party in exercising any rights, power or privilege under this Section 10.3 shall not operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
- (g) Public Communications. All press releases and other public communications of any sort, other than as may be required by law, relating to this Agreement or the transactions described herein shall be subject to the prior approval of both PG&E and IPN, which approval shall not be unreasonably withheld or delayed.
- (h) Equitable Relief. A party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by a party or its representatives, but shall be in addition to all other remedies available by law or equity. A breach of the provisions of this Section 10.3 may subject that party who has provided Information to irreparable harm and injury.
- (i) Ownership of Information. The Information acquired from the other party or any of its representatives shall be and shall remain the exclusive property of the disclosing party. Neither the disclosure of Information nor the execution of this Agreement shall be construed as a license to the party receiving Information to make use of, or sell the



Information or products derived from the Information, or to make use of it in any way that damages or competitively disadvantages the party disclosing the Information.

10.4 Cooperation. PG&E and IPN shall cooperate with each other, in good faith, and shall use commercially reasonable efforts to:

- (a) System Design and Deployment. Expediently complete the design and installation of the System as provided in this Agreement;
- (b) Conflicts Resolution. Negotiate reasonable and mutually beneficial resolutions to all conflicts that may arise between PG&E and IPN relating to the design, installation, Maintenance, operation and use of the System or any other duty, right or obligation of either of them relating to or arising out of this Agreement; and
- (c) Approvals and Consents. Obtain all regulatory, governmental, third-party and shareholder approvals, consents, permits and franchises as may be necessary or prudent for the operation of the System as described in this Agreement.

10.5 Regulatory Compliance. PG&E and IPN shall each be responsible to comply with the regulatory requirements relating to its own business practices and operations.

10.6 Certificates. Upon request of either PG&E or IPN, at any time and from time to time, the other party without charge and within thirty (30) days following receipt of such request, shall certify in writing to the requesting party: (a) that this Agreement is in full force and effect and has not been supplemented, modified or amended (or if there have been supplements, modifications or amendments, specifying those); (b) whether, to the best knowledge of the party issuing the certificate, any sums are then due and payable by IPN to PG&E or by PG&E to IPN pursuant to any provisions of this Agreement (and if any sums remain unpaid, the amount thereof); (c) whether, to the best knowledge of the party issuing such certificate, the other party is in default in the performance of any term, covenant or condition of this Agreement (or, if defaults exist, specifying each particular in which it is asserted the other party is in default); (d) if the certificate is issued in connection with any financing of any portion of the System, the requesting party is authorized to enter into the financing transaction and that the other party will adhere to and perform its obligations under Article XII, following its receipt of notice of the Transfer (as defined in Section 12.2); and (e) as to other matters as the party requesting the certificate may reasonably request.

10.7 Independent Status. PG&E and IPN reserve no control whatsoever over the employment, discharge, compensation of, or services rendered by the employees or contractors of each other, notwithstanding the ability of PG&E and IPN to exercise certain rights to enforce the various standards and specifications agreed upon pursuant to this Agreement. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent status and relationship or as creating or implying a partnership or joint venture between PG&E and IPN.

10.8 Transactions with Affiliates. All transactions with an Affiliate involving the System entered into by either PG&E or IPN that may potentially impact PG&E or IPN's respective costs under this Agreement shall be at arm's-length and shall comply with applicable regulatory requirements.

10.9 Further Assurances. PG&E and IPN, with reasonable promptness, shall each execute and deliver any instruments, documents, applications and requests or petitions for authority as may be necessary or prudent to implement or carry out more effectively the terms, covenants and conditions of this Agreement.

10.10 Damage and Destruction. In the event any portion of the System is damaged or destroyed, PG&E or IPN, as applicable, shall give immediate notice to the other party of the occurrence of the damage or destruction. PG&E and IPN shall cooperate with each other to reroute or substitute services delivered by means of the Affected Portion to allow for continued and uninterrupted service to customers. Unless mutually agreed otherwise, PG&E and IPN shall use any available insurance proceeds to repair or

reconstruct the damaged or destroyed Affected Portion and to restore the Affected Portion to its full and proper use. PG&E and IPN shall coordinate efforts to minimize any disruption of service that may result from the occurrence of the damage or destruction.

10.11 Audit Rights. IPN shall have the right, not more than one (1) time per year, to audit PG&E's books and records relating to any costs for which PG&E, under the terms of this Agreement, seeks reimbursement or contribution from IPN, including any and all records of PG&E and its subcontractors for the purpose of verifying compliance with Section 20.14. PG&E shall have the right, not more than one (1) time per year, to audit IPN's books and records relating to (i) IPN's costs for which IPN, under the terms of this Agreement, seeks reimbursement or contribution from PG&E, (ii) IPN's calculation of Monthly Fees or other payments due to PG&E, and (iii) any and all records of IPN and its subcontractors for the purpose of verifying compliance with Section 20.14. Any such audit shall be conducted: (a) by a reputable public accountant or, as applicable, a member of the internal auditing staff of PG&E or IPN; and (b) during reasonable business hours in a manner as not to interfere with the normal business activities of the party being audited. PG&E and IPN shall include the necessary provisions in their contracts and subcontracts to ensure compliance with this Section 10.11.

10.12 Interference. Whenever PG&E notifies IPN that the System or any portion thereof materially interferes with the operation of PG&E's equipment or with existing equipment of current licensees, or constitutes a hazard to the service rendered by PG&E or other licensee, or fails to comply with applicable codes or regulations, IPN shall use reasonable efforts to cooperate with and assist PG&E to remedy the interference or hazard, with the associated cost and expense to be split by the Parties proportional to the number of fibers each party has in the Cable Route, except where such interference or hazard arises from IPN's, or PG&E's, negligent acts or omissions or its failure to comply with applicable codes or regulations, in which event the associated costs and expenses shall be borne solely by IPN, or PG&E, as applicable. Under no circumstances shall IPN, its employees or contractors or subcontractors disturb, tamper with or contact any PG&E equipment, without PG&E's consent. IPN shall avoid contact with PG&E's lines, wires and transformers, whether or not they appear to be energized, unless otherwise directed by and under the direction of PG&E.

## **ARTICLE XI: INSURANCE**

11.1 Required Insurance Coverage. Without limiting any of the liabilities or other obligations hereunder IPN covenants that it shall procure and maintain in force at IPN's own cost and expense the following insurance coverage throughout the Term:

- (a) Workers Compensation and Employers Liability Insurance. Workers Compensation Insurance to cover obligations imposed by applicable federal and state statutes and Employers Liability Insurance with a minimum limit of \$1,000,000.00 for injury or death for each accident.
- (b) Commercial Liability Insurance. Commercial Liability Insurance with a minimum combined single limit of \$10,000,000.00 each occurrence. The policy shall include coverage for bodily injury liability, property damage liability, personal injury liability, product liability, completed operations liability, and contractual liability for liability assumed under this Agreement. The policy shall contain a severability of interest provision.
- (c) Automobile Liability Insurance. Automobile Liability Insurance with a minimum combined single limit of \$3,000,000.00 for each accident for bodily injury and property damage, to include coverage for all owned, non-owned and hired vehicles.
- (d) Pollution Liability Insurance. Coverage for bodily injury, property damage, including cleanup costs and defense costs resulting from sudden and gradual pollution conditions

including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water. The limit shall not be less than \$1,000,000 each occurrence for bodily injury and property damage.

11.2 General Conditions. The policies required to be maintained by IPN and its contractors pursuant to Sections 11.1(b), (c) and (d) and Section 11.4 shall (1) include PG&E as an additional insured; (2) provide that PG&E shall not by reason of its inclusion as an additional insured, incur liability to the insurer for payment of premiums for such insurance; and (3) provide that such insurance is primary and not excess without right of contribution from any other insurance which might be otherwise available to PG&E.

11.3 Evidence of Insurance. Prior to commencing work under the terms of this Agreement, IPN and its respective contractors shall furnish to PG&E a certificate of insurance as evidence attesting that the insurance required under this Article XI is in effect. Each policy of insurance required hereunder shall state that coverage shall not be canceled except after thirty (30) days' prior written notice to the other party. PG&E uses a third party vendor, Exigis, to confirm and collect insurance documents. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to issue certificates of insurance and endorsements on its behalf, and submitted via email or fax to:

Certificate Holder:  
PG&E  
c/o EXIGIS LLC  
support@exigis.com  
Fax: 646-755-3327

11.4 Insurance for Contractors. IPN shall require and ensure that all of its contractors and subcontractors obtain and maintain, throughout the Term, the types and amounts of insurance coverage as set forth above in Section 11.1 (Required Insurance Coverage), provided that IPN is not required to ensure that its contractors maintain Pollution Liability Insurance as detailed in 11.1(d), unless such contractor will perform work in connection with an excavation,

. In addition, if any contractor or subcontractor performs any engineering or similar professional services, said contractor and/or subcontractor shall be required to obtain and maintain, throughout the Term, professional liability insurance for errors and omissions in an amount not less than \$1,000,000 per occurrence. Upon request, IPN shall furnish PG&E with evidence of this insurance for its contractors and subcontractors.

11.5 Self-Insurance. Notwithstanding any provision in this Article XI to the contrary, PG&E may self-insure.

## **ARTICLE XII: ASSIGNMENT, SUBLETTING AND OTHER TRANSFERS**

12.1 Transfers. This Agreement and the rights granted under this Agreement are being granted in reliance on the financial standing and technical experience of PG&E and IPN and are thus granted personally to IPN by PG&E and to PG&E by IPN. Neither PG&E nor IPN may assign any right under this Agreement, whether in whole or in part, without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the generality of the foregoing:

- (a) Either party may assign its rights in this Agreement in whole or in part without the

consent of the other party to a domestic Affiliate, provided that such assignment shall not relieve the assigning party of any of its obligations under this Agreement.

(b) IPN, without prior notice to or the prior consent of PG&E shall have the right to convey an indefeasible right of use or lease rights in and to the IPN Fibers to commercial users of services and to other services providers, provided the terms of such indefeasible right of use or lease right are consistent with the terms and conditions of this Agreement, including but not limited to the termination provisions set forth in Article 17. IPN may assign or swap IPN Fibers with prior notice to PG&E. All such transactions shall be subject to the terms of this Agreement, and no such transaction shall relieve IPN of its obligations under this Agreement.

(c) IPN shall have the right, without PG&E consent, to assign or otherwise transfer this Agreement to any parent, subsidiary or Affiliate of IPN, or to any person, firm or corporation which shall control, be under the control of or be under common control with IPN, or any corporation into which IPN may be merged or consolidated or which purchases all or substantially all of the assets of IPN or as collateral to any lender; provided, however, that any such assignment or transfer shall be subject to IPN's rights under this Agreement and any Transferee shall continue to perform IPN's obligations to PG&E under the terms and conditions of this Agreement.

(d) IPN shall not sell or assign its rights in respect of a Cable Route, including the route, or any IPN Fibers contained therein to any third party other than a parent, subsidiary, or Affiliate of IPN, without the prior written consent of PG&E acting in good faith and upon such terms as it reasonably requires. In the event of a proposed sale or assignment of a Cable Route by IPN, the Parties agree that the terms of this Agreement will not apply to the new owner and PG&E will negotiate a new agreement with the new owner prior to its consent to any such transaction.

12.2 PG&E or IPN Financing. In the event that PG&E or IPN assigns its interest under this Agreement pursuant to a sale-leaseback or other financing transaction, the other party agrees that, upon written notice to it specifying: (a) the name and address of the Transferee; and (b) the name and address of the Transferee's agent who is entitled to receive notice on behalf of the Transferee, the other party will simultaneously give to such agent any notices required to be given to the financing party under this Agreement. PG&E and IPN shall accept payment or performance by the Transferee's agent of any obligation of the other party provided such payment or performance shall be made within the applicable cure periods allowed by this Agreement. The Transferee's agent shall have the right to cure any default by PG&E or IPN, as the case may be, within the applicable cure periods allowed by this Agreement. Subject to the terms of this Section 12.2, the Transferee may further assign or transfer any rights or interests it may have under this Agreement from time to time, in whole or in part, with the prior written consent of PG&E or IPN, as the case may be, which consent shall not be unreasonably withheld or delayed.

12.3 PG&E and IPN Recognition of Transferees. If any such Transferee receiving interest pursuant to Section 12.2 shall obtain use of all or any part of the System, through enforcement of any agreement with PG&E or IPN, then, so long as all of the obligations of the other party under this Agreement are being performed and such Transferee agrees to be bound by and to observe and perform the obligations of the financing party under this Agreement with respect to the Affected Portion, the other party shall not disturb the use of the Affected Portion by such Transferee and shall recognize such Transferee's right to use thereof, subject to the terms of this Agreement.

12.4 No Assumption or Release. Except as set forth in Section 12.3, no assignment under this Article XII shall be deemed to be an assumption by the Transferee of the obligations of PG&E or IPN under this Agreement. PG&E or IPN, as the case may be, shall not in any event be released, relieved or discharged of or from any of the obligations assumed under this Agreement unless specifically agreed to by the other.

12.5 Mergers and Acquisitions. Notwithstanding any provision of this Agreement to the contrary, neither PG&E nor IPN shall be restricted or prohibited by this Agreement from participating in or

completing any mergers with or acquisitions of businesses, provided that the successor by merger to either PG&E or IPN shall be subject to the terms, covenants and conditions of this Agreement and shall be deemed to have assumed all obligations of the merging party under this Agreement.

## **ARTICLE XIII: DISCONTINUANCE, RELOCATION AND CONDEMNATION**

13.1 Intentionally Omitted.

13.2 Discontinuance and Relocation. PG&E shall be entitled to discontinue its use of and to relocate any part of its electric transmission or electric or gas distribution system, including any PG&E Facilities or to discontinue use of any portion of the Right of Way. However, PG&E shall not take any action to release or relinquish voluntarily its underlying property interests along the Right of Way without first notifying IPN. In the event of any such discontinuance and relocation which necessitates discontinuation or relocation of the Cable or Cable Route, PG&E shall give written notice to IPN as soon as reasonably practicable. The notice shall state a termination date for the Affected Portion and the provisions of Section 4.4 will apply to the Affected Portion, which is terminated. The notice shall be accompanied by a plan of any alternative route for the Affected Portion, if available. If an alternate route can be made available, design, installation and construction of the alternate route will be according to the provisions of Articles VI and VII, except that the cost of relocating the Cable or Cable Route shall be allocated as follows rather than as specified in Articles VI and VII:

- (a) If requested by IPN, IPN shall pay all of PG&E's and IPN's relocation costs.
- (b) If requested by PG&E, PG&E shall pay all of PG&E's and IPN's relocation costs.
- (c) If the relocation must be made due to the order of any court or government agency or the Independent System Operator, PG&E, in consultation with IPN, shall designate a replacement route for the Cable. The costs associated with the relocation of the Cable that are not paid by a third-party shall be prorated fifty percent (50%) to each party. IPN shall be responsible for any relocation costs associated with the IPN System Electronics.

13.3 Taking. Should any portion of the PG&E Facilities or Right of Way or property controlled by PG&E, or any other interest belonging to PG&E, be the subject of a Taking, the Irrevocable License granted to IPN under the terms of this Agreement, as then applicable, to the extent appropriated by such Taking, shall terminate upon a date specified by PG&E as necessitated by the Taking, and the provisions of Section 4.4 shall apply to the Affected Portion. PG&E's written notice of termination shall be accompanied by a plan of any alternative route for the Affected Portion, if available. If an alternate route can be made available, design, installation and construction of the alternate route will be according to the provisions of Articles VI and VII. In addition, PG&E shall not sell or convey any Equipment Sites without acquiring authority in lieu of condemnation without giving prior notice to and the opportunity to IPN to participate in the negotiations with respect to such conveyance.

13.4 Taking Awards. In the proceeding for any such Taking (or an involuntary discontinuance of the use of a portion of the Right of Way or PG&E Facilities in anticipation of a Taking), the interests of PG&E and IPN in and to the Affected Portion shall be severed. Any awards resulting from the proceeding shall be allocated between and payable in accordance with the respective interests of PG&E and IPN (both physical and occupational, including any incremental value of any property interest by virtue of the installation therein of the System). In addition, PG&E and IPN shall each be entitled to claim and receive the portion of the total award attributable to its interest in the System and associated construction costs and may claim damages payable on account of relocation or re-routing expenses relating to the System.

13.5 Notice of Taking. PG&E and IPN shall each notify the other immediately of any Taking

threatened or filed against any portion of the PG&E Facilities or Right of Way. In addition, PG&E shall not sell or convey any portion of the Right of Way containing any of the System Electronics to an acquiring authority in lieu of condemnation without giving prior notice to and the opportunity to IPN to participate in the negotiations with respect to any conveyance.

## **ARTICLE XIV: ENVIRONMENTAL HAZARD LIABILITY**

14.1 Responsibilities of Parties. If any Hazardous Substance is unlawfully introduced or released by IPN that affects any portion of the System, IPN shall defend, indemnify and hold PG&E harmless from and against any and all expenses, claims, fines and actions arising out of the existence, introduction or release of any such Hazardous Substance. In addition, IPN shall also bear all costs of removing, neutralizing, containing or otherwise remediating any such Hazardous Substance. . If any Hazardous Substance is unlawfully introduced or released by PG&E that affects any portion of the System, PG&E shall defend, indemnify and hold IPN harmless from and against any and all expenses, claims, fines and actions arising out of the existence, introduction or release of any such Hazardous Substance. In addition, PG&E shall also bear all costs of removing, neutralizing, containing or otherwise remediating any such Hazardous Substance.

14.2 Alternate Locations. Upon learning of the existence, introduction or release of Hazardous Substances on areas within which the System is or is intended to be located, PG&E and IPN, to the extent commercially reasonable, shall use alternate contiguous areas within which the System may be relocated to avoid the contaminated areas.

14.3 Warning. The California Health and Safety Code requires businesses to provide warnings prior to exposing individuals to material listed by the Governor of California as chemicals “known to the State of California to cause cancer, birth defects or reproductive harm”. PG&E uses chemicals on the Governor’s list at many of its facilities and locations. Accordingly, in exercising its rights and performing the work or services contemplated by this Agreement, IPN and its contractors and subcontractors and their respective employees and agents may be exposed to chemicals on the Governor’s list. IPN shall be responsible for notifying all such persons that work performed hereunder may result in exposures to chemicals on the Governor’s list.

## **ARTICLE XV: LIABILITY AND INDEMNITY**

15.1 PG&E Indemnity. PG&E shall indemnify, defend and hold harmless IPN, its parent corporation, directors, officers, agents and employees of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of PG&E or IPN, and damage or destruction of property, including, but not limited to, property of either PG&E or IPN, arising out of: (a) negligent acts or omissions or willful misconduct of PG&E, its agents, officers, directors, employees or contractors; or (b) the breach by PG&E of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by IPN in defending such claims, demands, lawsuits or actions, including, but not limited to, reasonable attorney, witness and expert witness fees, and any other litigation related expenses. PG&E’s obligations pursuant to this Section 15.1 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of IPN, its parent corporation, directors, officers, employees, contractors, successors or assigns, or the acts of third-parties. PG&E shall pay any cost that may be incurred by IPN in enforcing this indemnity, including reasonable attorney fees.

15.2 IPN Indemnity. IPN shall indemnify, defend and hold harmless PG&E, its directors, officers, agents and employees of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of PG&E or IPN, and damage or destruction

of property, including, but not limited to, property of either PG&E or IPN, arising out of: (a) negligent acts or omissions or willful misconduct of IPN, its agents, officers, directors, employees or contractors; or (b) the breach by IPN of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by PG&E in defending such claims, demands, lawsuits or actions, including, but not limited to, reasonable attorney, witness and expert witness fees, and any other litigation related expenses. IPN's obligations pursuant to this Section 15.2 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of PG&E, its directors, officers, employees, contractors, successors or assigns, or the acts of third-parties. IPN shall pay any cost that may be incurred by PG&E in enforcing this indemnity, including reasonable attorney fees.

15.3 No Consequential Damages. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, NEITHER PG&E, IPN NOR THEIR RESPECTIVE CONTRACTORS OR SUBCONTRACTORS SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY LESSEE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL OR INCREASED OPERATING COSTS, ARISING OUT OF THIS TRANSACTION WHETHER BY REASON OF CONTRACT, INDEMNITY, STRICT LIABILITY, NEGLIGENCE, INTENTIONAL CONDUCT, BREACH OF WARRANTY OR FROM BREACH OF THIS AGREEMENT.

15.4 Waiver of Subrogation. To the extent that such insurance is in force and collectible and to the extent permitted by law, each of PG&E and IPN hereby releases and waives all right of recovery against the other or anyone claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force and effect only if the releasing party's insurance policies contain provisions to the effect that such a release and waiver shall not invalidate the insurance, and each of PG&E and IPN shall use its best efforts to secure such provisions in its policies.

15.5 Defense of Claims. Either PG&E or IPN as the indemnifying party hereunder shall have the right to defend the other by counsel of the indemnifying party's selection reasonably satisfactory to the indemnified party, with respect to any claims within the indemnification obligations of this Article XV. PG&E and IPN shall give each other prompt notice of any asserted claims or actions indemnified against, shall cooperate with each other in the defense of the claims or actions, and shall not settle the claims or actions without the prior written consent of the other.

15.6 Third-Party Claims. Except as set forth in Sections 12.2, 15.1 and 15.2, nothing in this Agreement shall be construed to create rights in, or duties or liabilities to, or any standard of care with reference to, or to grant remedies to, any person or entity not a party to this Agreement. PG&E and IPN by entering into this Agreement do not hold themselves out as furnishing like or similar services to any other person or entity.

15.7 Survival. The obligations of the respective parties under this Article XV shall survive the expiration or earlier termination of this Agreement.

15.8 Applicability of Liability Limitations. The waivers and disclaimers of liability, releases from liability, exclusive remedy provisions, and (except as expressly stated to the contrary therein) indemnity and hold harmless provisions expressed throughout this Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability, or breach of contract of the party released or whose liability is waived, disclaimed, limited, apportioned or fixed by such exclusive remedy provision, or who is indemnified or held harmless, and shall extend to their respective Affiliates and its and their parent corporations, directors, officers, employees and agents. Such provisions shall continue in full force and effect notwithstanding the completion, termination, suspension, cancellation or rescission of this Agreement, or termination of the rights and privileges granted by this Agreement. No officer, director, employee, agent or other individual representative of either PG&E or IPN shall be personally responsible for any liability arising under this Agreement.

15.9 Claims Against Third-Parties. Nothing contained herein shall operate as a limitation on the right of either PG&E or IPN to bring an action for damages against any third-party, including indirect, special or consequential damages, based on any acts or omissions of such third-party as such acts or omissions may affect the construction, operation or use of any portion of the System. PG&E and IPN shall reasonably cooperate with each other, including, without limitation, executing documents and doing whatever else may be reasonably appropriate to enable the other to pursue any such action against such third-party.

## **ARTICLE XVI: FORCE MAJEURE**

16.1 Excuse of Performance. Notwithstanding anything in this Agreement to the contrary, neither PG&E nor IPN shall be liable or responsible for a delay or failure in performing or carrying out any of its obligations (other than obligations to make payments) under this Agreement caused by a Force Majeure Event (as defined below).

16.2 Definition. The term “Force Majeure Event” as used in this Agreement shall mean any cause beyond the reasonable control of PG&E or IPN, as applicable, or beyond the reasonable control of any of their respective contractors, including without limitation the Contractor, subcontractors, suppliers or vendors, including without limitation:

- (a) Acts of God. Acts of God, including, but not necessarily limited to, lightning, earthquakes, adverse weather of greater duration or intensity than normally expected for the job area and time of year, fires, explosions, floods, other natural catastrophes, sabotage, acts of a public enemy, acts of government or regulatory agencies, wars, blockades, embargoes, insurrections, riots or civil disturbances;
- (b) Labor Disputes. Labor disputes, including, but not necessarily limited to, strikes, work slowdowns, work stoppages or labor disruptions, labor or material shortages, or delays or disruptions of transportation;
- (c) Court Orders. Orders and judgments of any federal, state or local court, administrative agency or governmental body or the Independent System Operator having operational control over PG&E’s electric transmission system;
- (d) Change in Law. The adoption of or change in any federal, state or local laws, rules, regulations, ordinances, permits or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits or licenses, by a court or public agency having appropriate jurisdiction after the date of the execution of this Agreement; or
- (e) Government Approvals. Any suspension, termination, interruption, denial or failure to issue or renew by any government authority or other party having approval rights of any Approval required or necessary hereunder for the construction, installation or operation of the System or for either party to perform its obligations hereunder, except when such suspension, termination, interruption, denial or failure to issue or renew results from the negligence or failure to act of the party claiming the occurrence of a Force Majeure Event.

16.3 Continuance after Force Majeure Event. If either PG&E or IPN cannot fulfill any of its obligations under this Agreement by reason of a Force Majeure Event, such party shall promptly notify the other and shall exercise due diligence to remove such inability with all reasonable dispatch and use all commercially reasonable efforts to otherwise perform; provided, that nothing contained in this Section 16.3 shall be construed as requiring PG&E or IPN to settle any strike, work stoppage or other labor dispute in which it may be involved, or to accept any permit, certificate, license or other Approval on terms reasonably deemed unacceptable to such party, or to enter into any contract or other undertaking on terms which the party reasonably deems to be unduly burdensome or costly.



## ARTICLE XVII: TERMINATION

17.1 Termination Events. The occurrence and continuance of the events herein may result in the termination of this Agreement, subject to the provisions of this Article XVII.

- (a) Change of Conditions. A change of conditions under which PG&E, IPN or the System operates which is beyond the control of the parties such that the System cannot continue to operate as contemplated by the terms of this Agreement, including, without limitation:
  - (1) A material adverse change in the financial condition of PG&E or IPN that prevents PG&E or IPN from performing in accordance with the terms, covenants and conditions of this Agreement;
  - (2) Changes in law or in the regulatory environment, including, without limitation, actions by the Independent System Operator, CPUC, Federal Energy Regulatory Commission, or the Federal Communications Commission that renders PG&E or IPN unable to perform in accordance with the terms, covenants and conditions of this Agreement;
  - (3) The occurrence of a Force Majeure Event that renders PG&E or IPN unable to perform its material obligations under this Agreement for a continuous period of six (6) months, provided that only the Party whose performance is not affected by the Force Majeure Event shall have the option to terminate with respect to this change of condition; or
  - (4) The inability of PG&E to obtain CPUC Approval upon terms and conditions mutually acceptable to the Parties acting reasonably within ( ) months from the Effective Date.
- (b) Breach or Default or Bankruptcy. A material breach or material default under the terms, covenants or conditions of this Agreement by either PG&E or IPN, including, without limitation:
  - (1) the failure of either PG&E or IPN to make any payment required under the terms of this Agreement when due.
  - (2) The filing by either Party of a petition under any chapter of the U.S. Bankruptcy Code (or any similar petition under any insolvency law of any jurisdiction), or the filing against either Party of any such petition which is not dismissed within sixty (60) days of the date filed, or the proposal by either Party of any dissolution, liquidation or composition with creditors, or if a receiver, trustee, custodian or similar agent is appointed with respect to or takes possession of any material portion of the property or business of a Party.

17.2 Actions Following Occurrence of Termination Event. Should any termination event described in Section 17.1 occur, PG&E and IPN shall have the following rights and obligations:

- (a) Change of Conditions. If the termination event is a change in conditions described in Section 17.1(a), PG&E and IPN shall meet expeditiously to discuss and negotiate in good faith the effect of the changed condition on this Agreement, their respective performance obligations hereunder, and their ability to perform under the terms, covenants and conditions of this Agreement. By mutual consent, PG&E and IPN may terminate this

Agreement, either in whole or in part as it relates to any System Segment, or modify this Agreement to address and account for the changed condition in a mutually acceptable manner. If PG&E and IPN cannot agree on a solution to the effect of the changed condition, either party, by written notice to the other, may elect to terminate this Agreement. The termination date shall be one-hundred and eighty (180) days from the date of the issuance of the written notice of termination, unless the Parties mutually agree to an alternative date or unless the changed condition has been rectified prior to the termination date in which case the termination shall not occur. Notwithstanding the foregoing, if the termination event is a change in conditions described in Section 17.1(a)(4), the Parties agree that this Agreement will terminate immediately and the Original Agreement will remain unmodified and in full force and effect.

- (b) Breach or Default or Bankruptcy. If the termination event is a breach or default or bankruptcy described in Section 17.1(b), the non-defaulting party shall give written notice of such occurrence to the defaulting party. The defaulting party shall be given a reasonable time to cure any breach or default as follows:
- (1) In the case of a monetary default, the defaulting party shall have forty-five (45) days after receipt of the written notice in which to effectuate a cure. If such monetary default is not cured in the specified time period, then the non-defaulting party may elect to terminate this Agreement by providing written notice of such election to the defaulting party. The termination date shall be forty-five (45) days from the date of the issuance of the written notice of termination, unless the Parties mutually agree to an alternative date.
  - (2) In the case of a non-monetary default, the defaulting party shall have sixty (60) days after receipt of the written notice in which to effectuate a cure. If the non-monetary default cannot be corrected within the sixty (60) day period, the defaulting party shall have an additional sixty (60) day period in which to effectuate a cure, provided the defaulting party commences corrective action within the original sixty (60) day period and thereafter diligently prosecutes the corrective action to completion. If the defaulting party does not timely cure the breach or default within the time periods specified above, the non-defaulting party may elect to terminate this Agreement by providing written notice of its election to do so to the defaulting party. The termination date shall be thirty (30) days from the date of the issuance of the written notice of termination, unless the Parties mutually agree to an alternative date.
  - (3) In the case of a bankruptcy, as described in Section 17.1 (b)(2), the provisions of Section 17.2 (b)(1) shall apply if the Party filing for bankruptcy fails to make any payment required under the terms of this Agreement when due. Otherwise, the provisions of Section 17.2 (b)(2) shall apply.
- (c) Remedies. In the event of an uncured breach or default described in Section 17.1(b), the non-defaulting party, in addition to the remedies and obligations set forth in Section 17.3, shall have available to it all legal remedies available at law or in equity for breach of contract, including, without limitation, general contract damages.

17.3 Actions Following Termination Notice. Following notice of termination of this Agreement, either in whole or in part as it pertains to specific System Segments, the provisions of Sections 4.4 and 4.5 will apply.

17.4 Amounts Due Upon Termination. If this Agreement is terminated prior to the expiration of the Term, the Monthly Fee for the then current month at the termination date shall be prorated based on the actual number of days elapsed in the month. The provisions of this Section 17.4 are in addition to and not in lieu of other remedies available under the terms of this Agreement.

17.5 No Release. No termination or expiration of this Agreement or the rights granted hereunder shall release either PG&E or IPN, as applicable, from any liability or obligation (whether for the Monthly Fee or other payments, indemnity or otherwise) which may have become due, attached or accrued prior to, or which become due, attach or accrue at the time or by reason of, such termination or expiration.

17.6 Termination of an RLA, or SLA, IPN may terminate an RLA or SLA upon ( ) days advance written notice to PG&E. Following notice of termination of an RLA or SLA, the provisions of Sections 4.4 and 4.5 will apply to the particular RLA or SLA to the extent applicable.

## **ARTICLE XVIII: DISPUTE RESOLUTION**

18.1 Dispute Resolution. Except as may otherwise be set forth expressly herein, all disputes arising under this Agreement shall be resolved as set forth in this Article XVIII.

18.2 Negotiation and Mediation. PG&E and IPN shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between a Vice President of PG&E or his or her designated representative and an executive of similar authority of IPN. Either PG&E or IPN may give the other party written notice of any dispute. Within twenty (20) days after delivery of the notice, the designated executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days of the first meeting, either PG&E or IPN may initiate a mediation of the controversy. The mediation shall be facilitated by a mediator that is acceptable to both parties and shall conclude within sixty (60) days of its commencement, unless PG&E and IPN agree to extend the mediation process beyond this deadline. Upon agreeing on a mediator, PG&E and IPN shall enter into a written agreement for the mediation services. The mediation shall be conducted in accordance with the Commercial Rules of the American Arbitration Association.

18.3 Confidentiality. All negotiations and any mediation conducted pursuant to Section 18.2 shall be confidential and shall be treated as compromise and settlement negotiations, to which Section 1152.5 of the California Evidence Code shall apply, which Section is incorporated in this Agreement by reference.

18.4 Injunctive Relief. Notwithstanding the foregoing provisions, either PG&E or IPN may seek a preliminary injunction or other provisional judicial remedy if in its judgment that action is necessary to avoid irreparable damage or to preserve the status quo.

18.5 Continuing Obligation. PG&E and IPN shall continue to perform their obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

18.6 Failure of Mediation. If PG&E and IPN, after good faith efforts to mediate a dispute under the terms of this Agreement (as provided in Section 18.2), cannot agree to a resolution of the dispute either party may pursue whatever legal remedies may be available to that party, at law or in equity, before a court of competent jurisdiction and with venue as provided in Section 20.7.

## **ARTICLE XIX: TAX INDEMNITY**

19.1 Income Taxes.

- (a) IPN shall provide a limited income tax indemnification to PG&E relating to IPN's development, construction and installation of the System pursuant to this Agreement as provided in this Section 19.1. The limited tax indemnification shall be available to PG&E and its successors, assigns, shareholders and members of any consolidated group

of which any of them is or becomes a member (each, a “Tax Indemnitee”). The limited income tax indemnification shall be governed by the following:

- (1) The limited income tax indemnification shall apply if:
  - (i) PG&E or another Tax Indemnitee is required by the Internal Revenue Service (the “IRS”) or any state taxing authority (each, a “Taxing Authority”) to make any Gross Income Transfer Adjustment (as defined below); or
  - (ii) PG&E or another Tax Indemnitee elects to settle or compromise any audit or review of its federal or state income tax liability by agreeing to any Gross Income Transfer Adjustment.
- (2) For purposes of this Section 19.1, the term “Gross Income Transfer Adjustment” shall mean any adjustment to the reported gross income of PG&E or any other Tax Indemnitee for federal or state income tax purposes attributable to or arising from:
  - (i) any cash payment made by or on behalf of IPN with respect to upgrades or modifications to PG&E Facilities to accommodate the installation of the Cable; or
  - (ii) any actual or deemed transfer of property by IPN to PG&E pursuant to this Agreement.

Notwithstanding the foregoing, the term “Gross Income Transfer Adjustment” shall not include any adjustment to gross income attributable to or arising from IPN’s payment of Monthly Fees, Annual Site License Fees, Rack Space Fees, or Building Entry License Fees any gross income attributable to any actual or deemed transfers of the PG&E Fibers or rights therein.

- (3) The amount of the limited income tax indemnification shall be limited to an amount equal to the sum of:
  - (i) the amount determined by multiplying (A) the amount of any Gross Income Transfer Adjustment, reduced by offsetting deductions for construction expenditures (excluding depreciation or amortization deductions) attributable to the System, exclusive of the PG&E Fibers, that PG&E or any other Tax Indemnitee determines to be allowable in a year of income includability by (B) the CPUC gross-up rate applicable to contributions in aid of construction, as provided in PG&E’s electric tariffs (which is currently thirty-five percent (35%)), for that year of income includability; and
  - (ii) interest with respect to the amount described in (i) above for the period during which statutory interest accrues with respect to such Gross Income Transfer Adjustment under the Internal Revenue Code at a rate equal to the rate attributable to corporate deficiencies under Internal Revenue Code Section 6621(c).

The parties agree that the foregoing amount is a reasonable measure of the economic loss that PG&E or another Tax Indemnitee would suffer upon the occurrence of any of the events described in this Section 19.1(a).

- (b) PG&E shall pay, without right of indemnification by IPN, all additional or incremental

income taxes, if any, assessed against PG&E in connection with the development, construction and installation of the System and transfer of legal title thereto by IPN that is attributable to the PG&E Fibers.

- (c) For purposes of Section 19.1(a), PG&E or any other Tax Indemnitee shall be deemed to be required to recognize gross income for a taxable year in connection with the development, construction and installation of the System if: (i) an IRS Revenue Agent's Report is issued which includes any adjustment attributable to the development, construction and installation or an assessment is made by the IRS or any Taxing Authority with respect to such gross income; or (ii) the IRS or any Taxing Authority issues any ruling, notice or other administrative pronouncement, or a court issues an opinion, which PG&E determines in good faith requires recognition of such gross income for that taxable year (individually or collectively an "Authoritative Precedent").
- (d) If, during the course of any audit or other examination of the tax returns of PG&E or any other Tax Indemnitee for a taxable year that would give rise to an obligation of indemnity by IPN under Section 19.1(a), the issue of the includability by PG&E or any other Tax Indemnitee of any Gross Income Transfer Adjustment is raised or reviewed, or if PG&E or any other Tax Indemnitee becomes aware of any Authoritative Precedent, or if any adjustment is proposed, PG&E or any other Tax Indemnitee shall promptly give written notice thereof to IPN.
- (e) Any amount payable to PG&E or any other Tax Indemnitee pursuant to Section 19.1(a) shall be paid within 90 days after receipt by IPN of a written demand therefor from PG&E or any other Tax Indemnitee accompanied by a statement describing in reasonable detail the circumstances giving rise to the claim for indemnity and the computation of the amount payable.
- (f) If in the course of an audit of PG&E or any Tax Indemnitee by any Taxing Authority, there is a proposed adjustment, which would result in a requirement that IPN indemnify PG&E or any other Tax Indemnitee pursuant to Section 19.1(a), PG&E or the other Tax Indemnitee shall promptly notify IPN. If IPN requests PG&E or the other Tax Indemnitee to contest or dispute the proposed adjustment, all costs and expenses incurred by PG&E or the other Tax Indemnitee in connection with the contest or dispute, including all reasonable legal and accounting fees and disbursements, shall be borne by IPN.
- (g) PG&E and each other Tax Indemnitee shall in good faith use reasonable efforts in filing its tax returns, and in dealing with Taxing Authorities, to report and defend the payments and transfers in accordance with the description of the form of this transaction and the intent of the parties as described in this Agreement.

19.2 Sales and Use Taxes. IPN shall pay or cause to be paid, and shall indemnify and hold PG&E harmless from and against, all sales and use taxes applicable to the development, construction and installation of the System by IPN, including without limitation the purchase of all materials incorporated by IPN into the System.

19.3 Indemnification Conditions. IPN's indemnification obligation set forth in this Article XIX is expressly conditioned upon IPN receiving timely notice of any tax liability or the possibility that there may be a proposed adjustment to any tax liability to which PG&E or any other Tax Indemnitee believes this indemnity applies and upon IPN receiving the opportunity to request that PG&E contest or dispute any such adjustment or proposed adjustment consistent with Section 19.1(f).

## ARTICLE XX: MISCELLANEOUS

20.1 Amendments. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally and may only be modified or amended by an instrument in writing, signed by both PG&E, Level 3 and IPN.

20.2 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of PG&E, Level 3 and IPN and their respective successors and assigns.

20.3 Waivers. The failure by PG&E, Level 3 or IPN at any time or times hereafter to require strict performance by the other of any of the undertakings, agreements or covenants contained in this Agreement shall not waive, affect or diminish any right of PG&E, Level 3 or IPN under this Agreement to demand strict compliance and performance therewith. None of the undertakings, agreements or covenants of PG&E, Level 3 and IPN under this Agreement shall be deemed to have been waived unless such waiver is evidenced by an instrument in writing signed by the party to be charged specifying such waiver.

20.4 Notices. Unless otherwise specifically provided in this Agreement, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, faxed, emailed or sent by courier or United States certified mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a fax or email, or five (5) days after deposit in the United States mail, with postage prepaid and properly addressed, as follows:

If to PG&E, to:	Pacific Gas and Electric Company Mail Code N10A Post Office Box 770000 San Francisco, CA 94177 Attention: Supervisor, Land Rights Services Telephone: (415) 973-3201 Facsimile: (415) 973-5790
With copy to:	Pacific Gas and Electric Company 245 Market Street, MC N10D San Francisco, CA 94105 Attention: Director, Business Development Telephone: (415) 973-3362 Facsimile: (415) 973-3884
If to PG&E by hand delivery:	Pacific Gas and Electric Company 245 Market Street Room 1002 San Francisco, CA 94106
With copy to:	Pacific Gas and Electric Company 245 Market Street Room 1039 San Francisco, CA 94105
If to IPN, to:	Chief Executive Officer IP Networks, Inc. 365 Main Street San Francisco, CA 94105
With copy to:	General Counsel

IP Networks, Inc.  
30 Corporate Park, Suite 300  
Irvine, CA 92606

If to Level 3, to: Chief Executive Officer  
Level 3 Communications LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021

With copy to: General Counsel  
Level 3 Communications LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021

Such addresses may be changed by notice to the other party given in the same manner as above provided.

20.5 Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.

20.6 Interpretation. Whenever the context shall require, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The article, section and subsection headings contained in this Agreement are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof. All references in this Agreement to articles, sections and subsections, unless expressly noted otherwise, are to articles, sections and subsections contained in this Agreement. Unless the context requires otherwise, references in this Agreement to “party” shall be to either PG&E, Level 3 or IPN, as applicable, and references to “parties” shall be to PG&E, Level 3 and IPN.

20.7 Governing Law and Choice of Forum. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of California. Any mediation under this agreement shall be held in the State of California, County of San Francisco. Jurisdiction for any disputes arising out of this Agreement shall be exclusively in the courts of the State of California, state or federal, and any litigation shall be brought in San Francisco County, California.

20.8 Commissions. PG&E and IPN shall indemnify and hold each other harmless (including attorney fees and costs) from and against any and all claims for brokerage and finder’s fees or commissions, which may be asserted against the other, based on the actions or omissions of the indemnifying party. PG&E and IPN shall each pay any fees or compensation due to their respective consultants as advisors, if any, with respect to this transaction.

20.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute only one instrument.

20.10 Attorney Fees. PG&E, Level 3 and IPN agree that should either of them default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney fees and costs, incurred by the nondefaulting party to protect its rights hereunder, regardless of whether an action is commenced or prosecuted to judgment.

20.11 Costs. Except as otherwise set forth in this Agreement, PG&E, Level 3 and IPN shall each be responsible for its own costs, including legal fees, incurred in negotiating and finalizing this Agreement.

20.12 No Third-Party Beneficiaries. Except as otherwise expressly provided in this Agreement,

the terms, covenants and conditions of this Agreement, shall not be construed as being for the benefit of any person who is not a signatory to this Agreement.

20.13 Entire Agreement. This Agreement expresses the entire understanding of PG&E, Level 3 and IPN relating to the subject matter hereof. All prior understandings, written or oral, with respect to such subject matter are hereby merged herein and superseded.

20.14 Conflict of Interest/Business Ethics. Each party shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the other party's interest. Each party or its employees shall not offer substantial gifts, entertainment, payments, loans or other considerations to the other party's employees, their families, vendors, subcontractors and other third-parties for the purpose of influencing such persons to act contrary to the party's interest. All financial statements, reports, billings and other documents rendered shall properly reflect the facts about all activities and transactions handled for the account for each party. Each party shall immediately notify the other party of any and all violations of this Section 20.14 upon becoming aware of such violation.

20.15 Survival. In addition to the survival provisions set forth elsewhere in this Agreement, those Articles or Sections of this Agreement which by their nature should survive expiration or other termination of the Agreement, including Section 4.4 (Quit and Surrender), Section 4.5 (Holdover), Section 9.6 (Franchise Rights and Licensing Costs), Section 10.3 (Confidentiality), Article XV (Liability and Indemnity), Section 17.2 (Actions Following Occurrence of Termination Event), Section 17.3 (Actions Following Termination Event), Section 17.4 (Amounts Due Upon Termination), Section 17.5 (No Release) and Article XIX (Tax Indemnity).

20.16 Exhibits. The exhibits to this Agreement referenced above are an integral part of the agreement and understanding of the parties and are incorporated in this Agreement by reference. Any exhibits referred to above in this Agreement, which are not attached hereto as of the Effective Date, may be attached to this Agreement following the Effective Date when approved as to form by both PG&E and IPN. The omission of any of the exhibits from this Agreement as of the Effective Date shall not affect the enforceability of this Agreement.

DATED effective as of the date first above written.

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

By: \_\_\_\_\_

IP NETWORKS, INC.  
a California corporation

By: \_\_\_\_\_

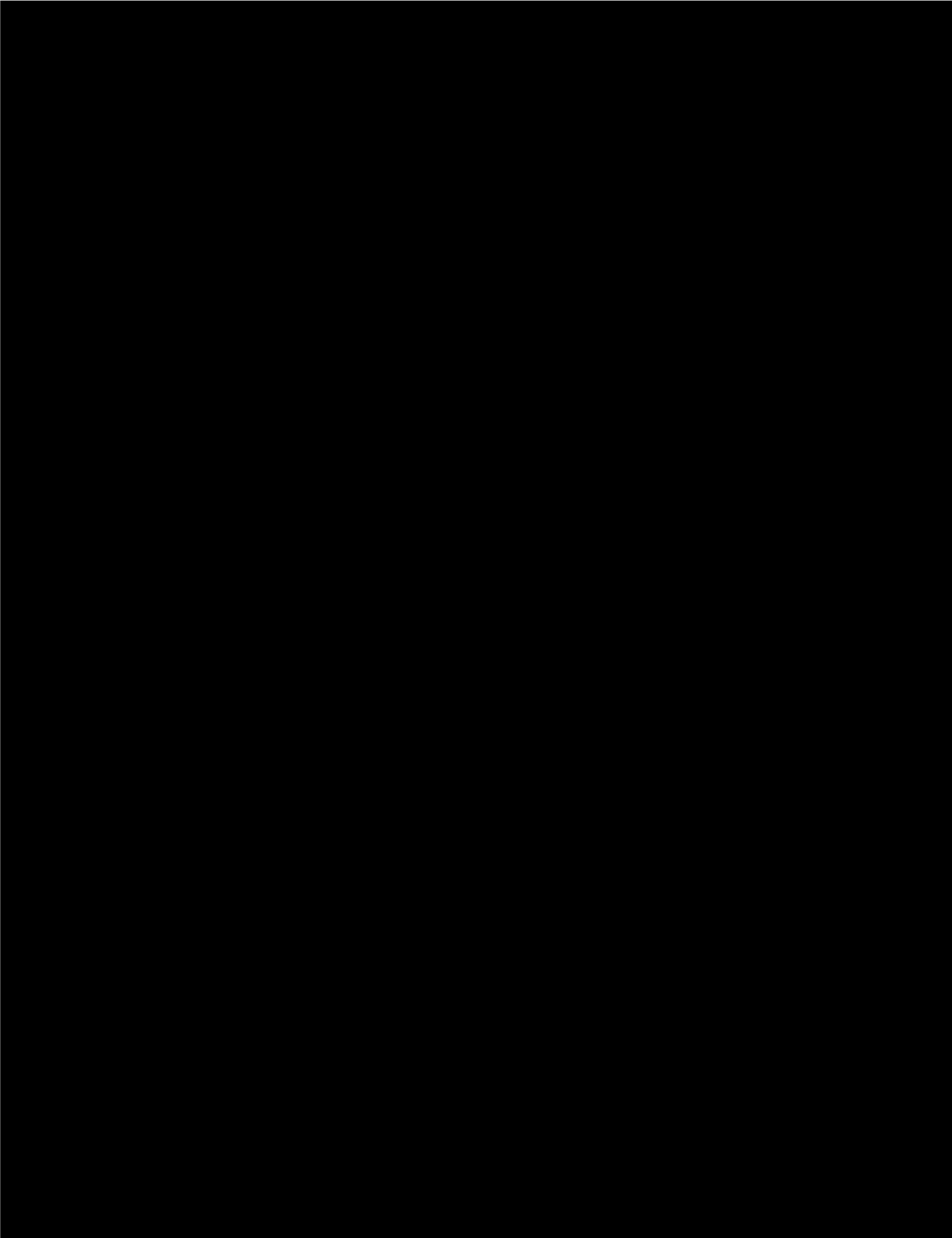
AGREED AND ACCEPTED FOR PURPOSES OF SECTIONS 3.1,  
3.4(b), 4.1 AND 5.13(c) AND ARTICLE XX ONLY:

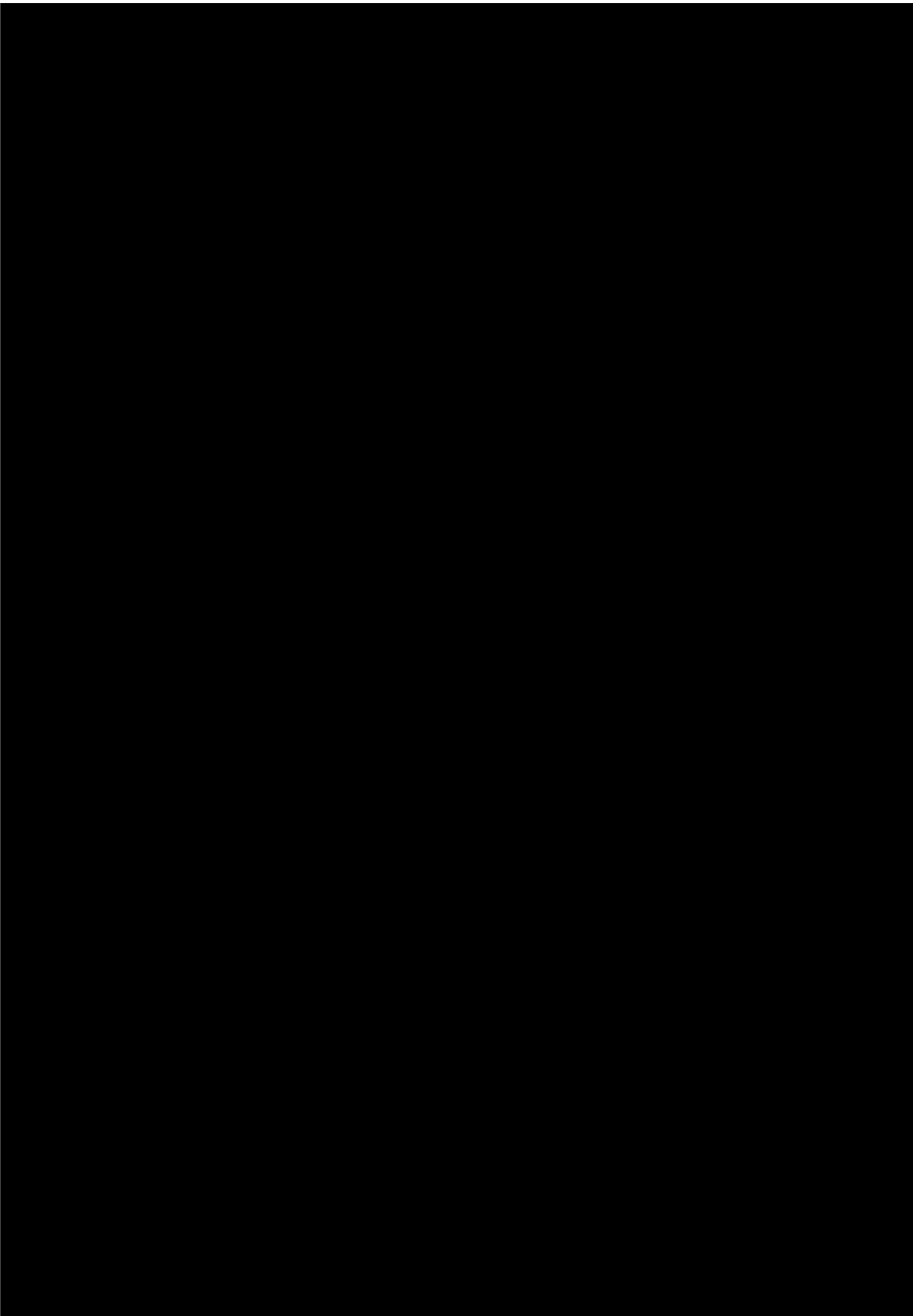
LEVEL 3 COMMUNICATIONS, LLC  
a Delaware limited liability company

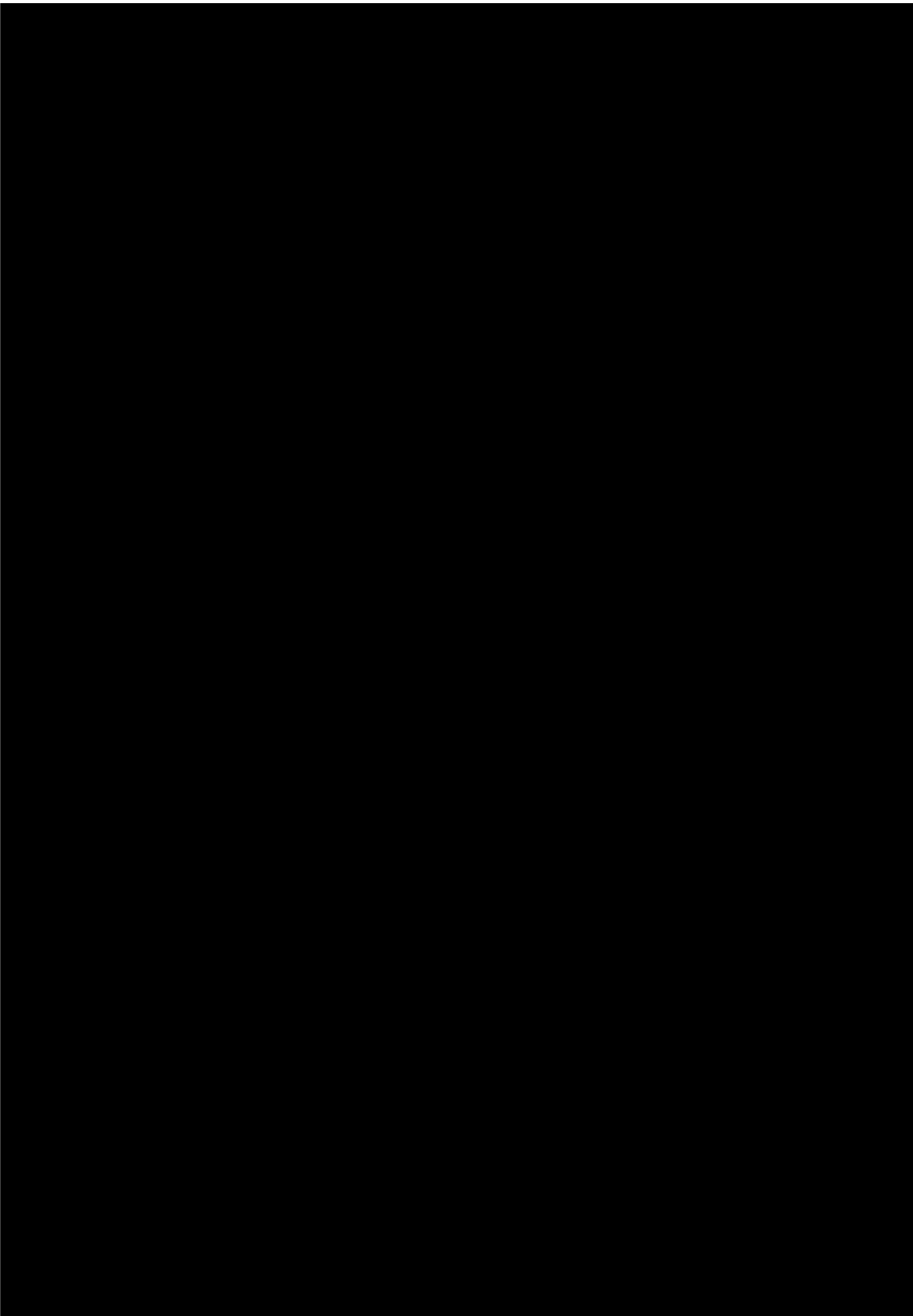


By: \_\_\_\_\_

**EXHIBIT A-1: PRE\_EXISTING  
ROUTE LICENSE ACKNOWLEDGMENTS**









**EXHIBIT A-2:  
NEW ROUTE LICENSE ACKNOWLEDGMENTS**

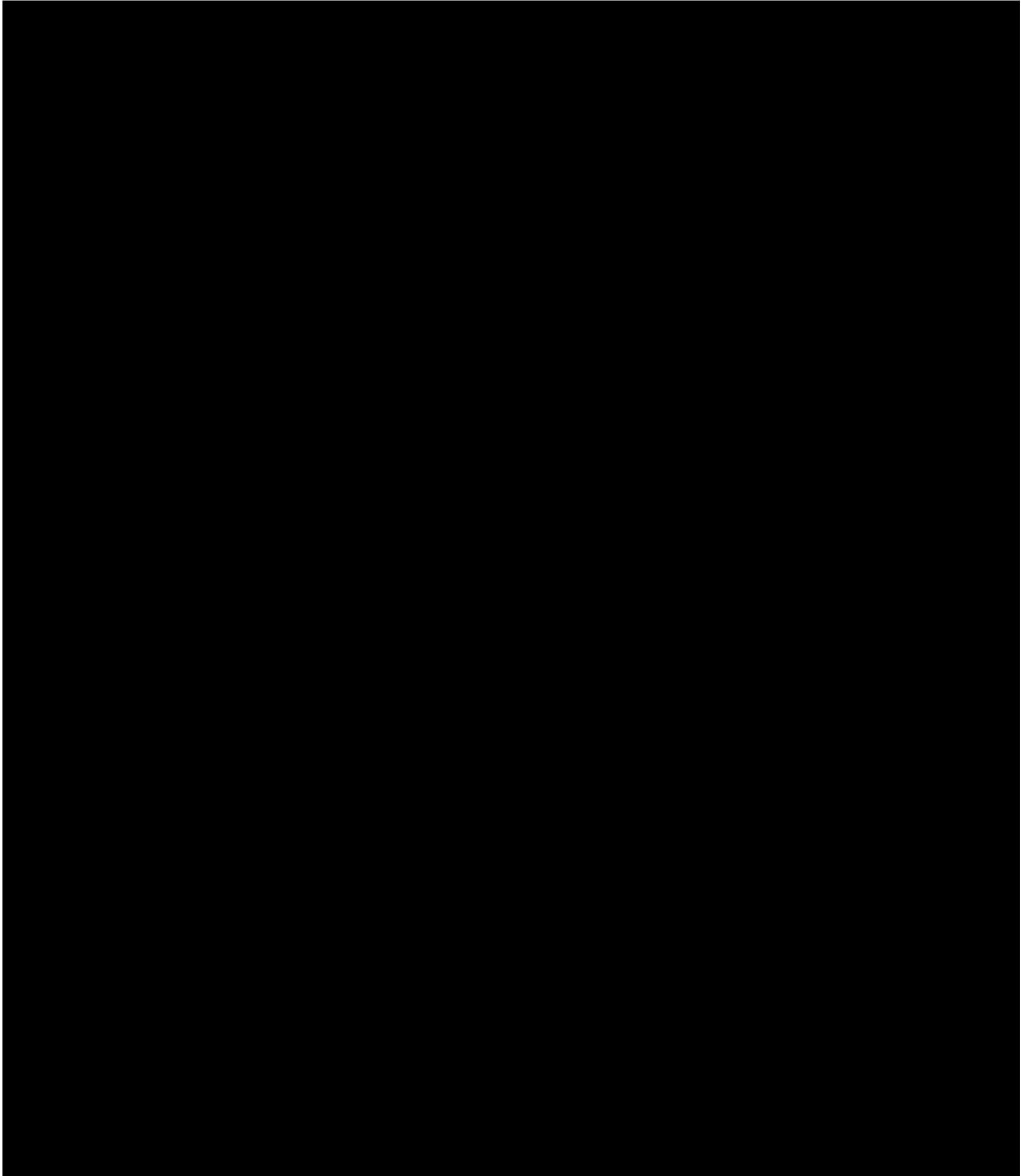
**EXHIBIT B-1: PRE-EXISTING SITE LICENSE  
ACKNOWLEDGMENTS**

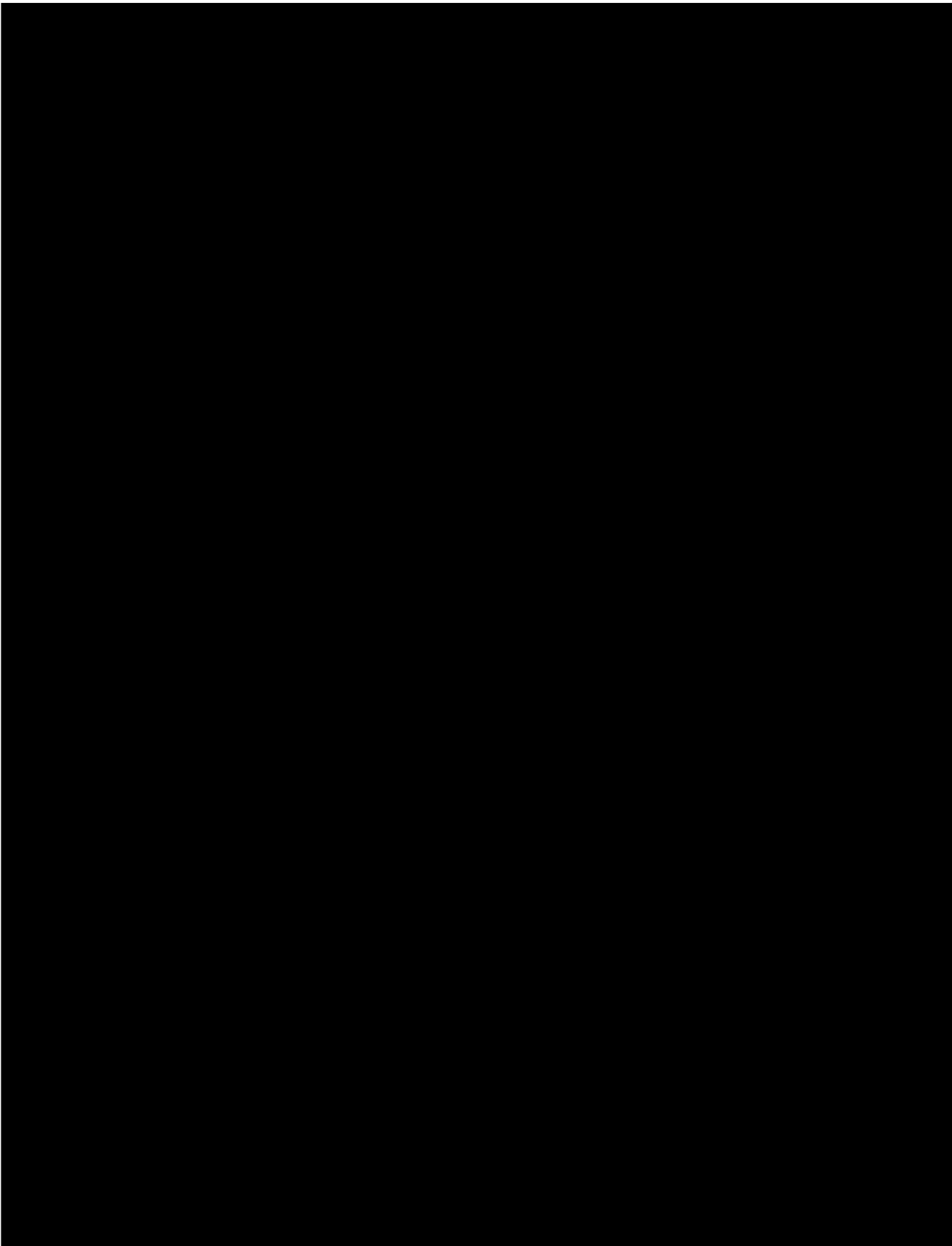
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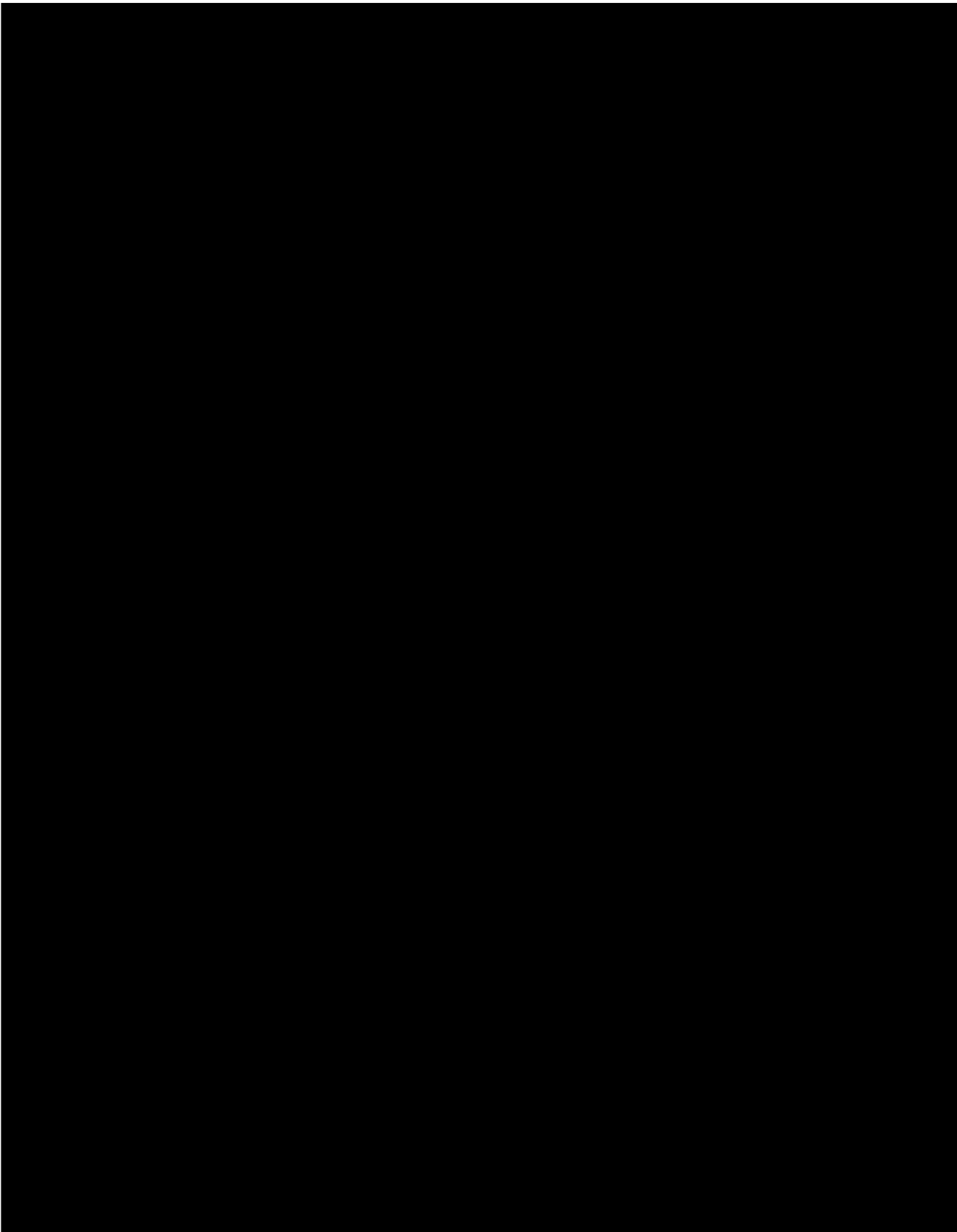
## **EXHIBIT B-2: NEW SITE LICENSE ACKNOWLEDGMENTS**

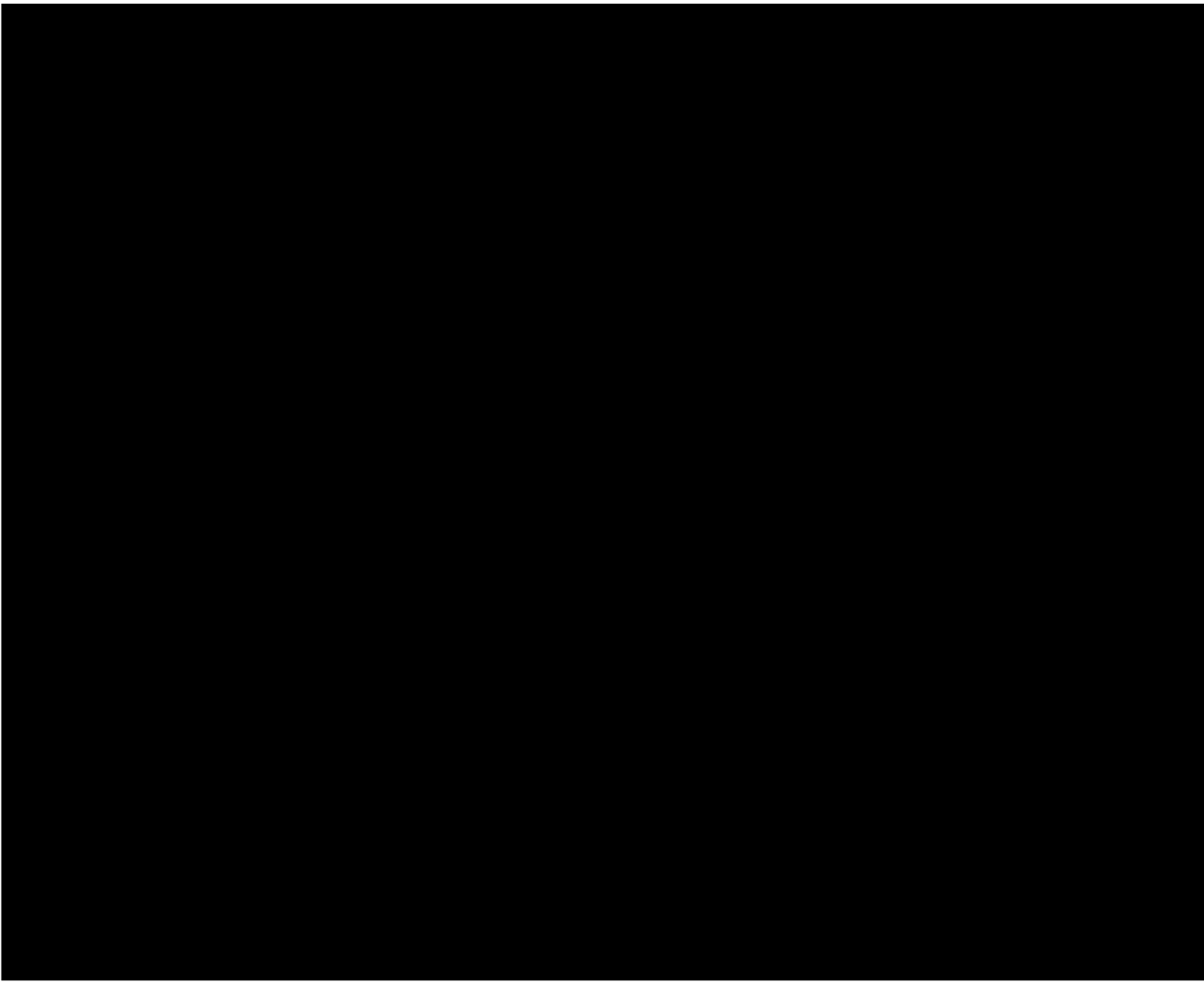


**EXHIBIT C: PRE-EXISTING BUILDING ENTRY LICENSE  
ACKNOWLEDGMENTS**









# EXHIBIT D: ROUTE LICENSE ACKNOWLEDGMENT FORM

This Route License Acknowledgment (“RLA”) is made pursuant to the Master License and IRU Agreement for Optical Fiber Installations between Pacific Gas and Electric Company (“PG&E”) and IP Networks, Inc. (“IPN”) dated \_\_\_\_\_, 2000 (the “Agreement”). Capitalized terms used in this RLA have the same meanings given terms in the Agreement unless otherwise indicated herein.

1. RLA Execution Date:
  2. RLA Expiration Date:
  3. Route Name and Description:
  4. Total Number of Route Miles:
  5. Route Access Procedures:
  6. Fiber Description and Count:
  7. Optic Fiber description:
  8. PG&E Fibers \_\_\_\_\_ IPN Fibers \_\_\_\_\_ Total Fibers \_\_\_\_\_
  9. Special Conditions
  10. PG&E contact:
 

Name:
Address: 245 Market St., MCN10D
San Francisco, CA 94105
Telephone:
  11. IPN contact:
 

Name:
Address:
Telephone:
  12. PG&E contact for emergencies:
 

Name: Telecommunications Control Center
Telephone: 707.427.6387
Electric and Gas Service Call Center
Telephone: 800.743.5000
  13. IPN contact for emergencies:
 

Name:
Telephone:
- Additional Provisions:

**PACIFIC GAS AND ELECTRIC COMPANY**

**IP NETWORKS, INC.**

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____



approval or denial.

This license is subject to existing easements. Underground facilities must be located prior to construction. Site plan must be submitted to PG&E for approval prior to construction. If IPN cannot obtain permits or other required material Approvals necessary to construct this site, this agreement will be null and void.

If installation of the Equipment Facilities is not completed within one (1) year, provided the cause for the delay in completion is not attributable in whole or in part to PG&E, the Independent System Operator or a Force Majeure Event, PG&E shall have the option to terminate this SLA.

**PACIFIC GAS AND ELECTRIC COMPANY**

**IP NETWORKS, INC.**

By:

By:

Name:

Name:

Title:

Title:

**EXHIBIT F: INTENTIONALLY LEFT BLANK**



**EXHIBIT G: LEFT INTENTIONALLY BLANK**

# EXHIBIT H: DETAILED CABLE ROUTE RESTORATION PLAN

## SECOND REVISED AND RESTATED EXHIBIT "H" - DETAILED CABLE ROUTE RESTORATION PLAN (LOCAL LOOP) DECEMBER 11, 2012

*Between IP Networks, Inc. and Pacific Gas and Electric Company*

**This Detailed Cable Route Restoration Plan** ("Plan") is made and entered into effective as of March 22, 2005 ("Effective Date") and is hereby incorporated into the Master License and IRU Agreement for Optical Fiber Installations dated November 15, 2000, by and between **PACIFIC GAS AND ELECTRIC COMPANY**, a California corporation ("PG&E"), and **IP Networks, Inc.** a California corporation ("IPN").

**WHEREAS**, PG&E and IPN entered into a Master License and IRU Agreement for Optical Fiber Installations dated effective as of November 15, 2000 (the "Agreement"), for the installation of fiber optic transmission cables ("System") through Rights of Way held by PG&E and through real property owned in fee by PG&E; and

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Amendment, PG&E and IPN expressly agree as follows:

### 1. OBJECTIVE STATEMENT

The purpose of this Plan is to define procedures and assign responsibilities for fiber optic cable Restoration. The procedures outlined in this Plan are consistent with current PG&E standard operating and maintenance procedures. PG&E functional groups are assigned responsibilities consistent with current responsibilities.

Timely Restoration will depend upon coordination and cooperation between PG&E and IPN personnel. Loss of PG&E and/or IPN revenue and control functions may occur while the fiber optic cable is out of service.

PG&E and IPN will use reasonable efforts in all Restoration activities concerning these facilities. These efforts will be consistent with prudent utility practice, and will comply with all applicable laws and regulations and existing agreements between PG&E and the California Independent System Operator (CA-ISO). In addition, all applicable safety rules in the PG&E Code of Safe Practices will be followed to avoid jeopardizing the health and/or safety of any person.

### 2. DEFINITIONS

Capitalized terms are defined in Article I of the Agreement. For purposes of the Plan, the term "Restoration" is defined as follows: "Activity to return the fiber optic network infrastructure to an unimpaired condition which meets or exceeds the network's original construction specifications after an accident or incident damaging the infrastructure."

### 3. SAFETY AND TRAINING

3.1 Personnel safety is a primary objective of PG&E and IPN. PG&E and IPN will stress

SAFETY FIRST to their respective employees and contractors in the performance of their duties. Applicable safety standards and practices of PG&E and IPN will be made available to PG&E and IPN personnel, and will be adhered to at all times.

- 3.2 All personnel of PG&E, IPN, or the contractors of either party working on or in proximity to PG&E facilities will be required to comply with PG&E safety guidelines and will attend periodic safety training classes provided by their respective companies. The safety classes will be conducted as needed and will reflect the latest available concepts and practices. Should PG&E and IPN operational personnel agree that any other applicable training is required, the appropriate party will provide it. Each party will bear its own costs of providing safety training to its employees and/or its contractors' employees, of attending any required safety courses, and of providing any other applicable training that may be required.
- 3.3 Both parties will ensure that all work is performed in a good workmanlike manner in accordance with applicable telecommunications and electric industry standards and in compliance with all applicable laws, ordinances, codes, and regulations of any governmental authority (including Cal-OSHA) having jurisdiction thereof.
- 3.4 IPN EMPLOYEES, AGENTS, OR SUBCONTRACTORS WILL NOT CLIMB PG&E TRANSMISSION TOWERS OR DISTRIBUTION POLES OR PERFORM ANY WORK ON THE M WITHOUT PRIOR APPROVAL FROM PG&E. This includes making attachments to the base of the transmission towers or distribution poles.
- 3.5 IPN EMPLOYEES, AGENTS, OR SUBCONTRACTORS WILL NOT WORK IN OR AROUND PG&E GAS TRANSMISSION PIPELINES WITHOUT THE PRESENC E OF A PG&E INSPECTOR. This includes installing Cable or conduit anywhere within the Right of Way.
- 3.6 PG&E employees, agents or subcontractors will follow the same work rules as IPN employees, agents or subcontractors when working in the vicinity of any IPN System Electronics provided such rules, at a minimum, comply with applicable telecommunications industry standards. IPN will inform PG&E Employees, Agents or Subcontractors of its other internal work practices concerning IPN Equipment. PG&E Employees, Agents or Subcontractors will maintain the safe working distance specified by IPN.
- 3.7 IPN System Electronics on the Right of Way of a Cable Route will be placed sufficiently far away from any tower, pole or natural gas pipeline so that IPN's employees, agents, or contractors will not come in direct or indirect contact with the tower, pole or pipeline.
- 3.8 Any PG&E employee, agent or subcontractor will have the authority to stop any work, including IPN's access and activities, if it is determined th at the work cannot be accomplished safely. Such work stoppage will be consistent with PG&E's current Code of Safe Practices. In the event of work stoppage, PG&E will promptly contact IPN at, and inform an IPN's representative of the stoppage and the reas on. PG&E or IPN, as applicable will diligently pursue all commercially reasonable activities to make the work area safe and complete the work in a timely manner.

## 4. AREAS OF RESPONSIBILITY

- 4.1 PG&E will maintain and restore all overhead and underground fiber up to and including the Point of Interface (POI) along each Cable Route. The POI shall be located at mutually agreed upon location. Each POI will be clearly marked in the Building Entry License Acknowledgement (“BELA”) for each Cable Route, Building Entry and Equipment Station.
- 4.2 IPN will maintain and restore all overhead and underground fiber from the POI to and within buildings, Equipment Stations and through facilities owned by third parties.
- 4.3 Copies of all as -built documents will be located on both PG&E’s and IPN’s fiber document database.
- 4.4 Intentionally omitted.
- 4.5 If, with mutual consent, the POI is located inside the building or passes through facilities owned by a third parties (e.g., conduit, enclosure or building) the following conditions shall exist:
- (i) The third party and IPN shall grant PG&E access to the fiber 24 hours a day 7 days a week.
  - (ii) Restoration of the third party facilities (e.g., boxes, conduit or trench) shall be the responsibility of the third party or IPN.
  - (iii) PG&E shall be responsibility to maintain and restore the fiber located within third party facilities only after the third party has repaired or restored the facilities that support the fiber.
- 4.6 Neither party will access the splice enclosures without an advance notification to the other party.
- 4.7 Mark and Locate. PG&E will field mark subsurface installations per Section 4216.3(a) of the California Government Code within PG&E’s area of responsibility as describe d in Section 4.1 of this Plan except through facilities owned by third parties. IPN will field mark subsurface installations per Section 4216.3(a) of the California Government Code within IPN’s area of responsibility as described in Section 4.2 of this PI an and through facilities owned by third parties.

## 5. USE OF CONTRACTORS

- 5.1 PG&E shall have the right to retain one or more contractors or subcontractors to perform any of the Restoration work under the terms of this Plan; provided that the contractor or subcontractor retained by PG&E to perform the Restoration work shall be subject to the prior approval of IPN, which approval shall not be unreasonably withheld or delayed. No such contract or subcontract shall create a contractual relationship between the contractors or subcontractors and IPN, and PG&E shall be solely responsible for the engagement and management of each contractor or subcontractor.
- 5.2 IPN shall have the right to retain one or more contractors or subcontractors to perform

any of the Restoration work under the terms of this Plan; provided that the contractor or subcontractor retained by IPN to perform the Restoration work shall be subject to the prior approval of PG&E, which approval shall not be unreasonably withheld or delayed. No such contract or subcontract shall create a contractual relationship between the contractors or subcontractors and PG&E, and IPN shall be solely responsible for the engagement and management of each contractor or subcontractor.

## **6. EQUIPMENT AND MATERIALS**

- 6.1 Initial acquisition and subsequent replacement of restoration materials and equipment specifications, including the Cable, splice enclosures, mounting equipment and accessories, will be provided by IPN and included as the Materials List in this document as Appendix B. The Materials List will be reviewed annually by both parties, and modified as agreed, on or before December 31<sup>st</sup> each year throughout the term of the Agreement (“Review Date”).
- 6.2 PG&E will stage Restoration materials as indicated in the Materials List. PG&E will store and maintain all required tools, equipment, and materials necessary for the Restoration of the Cable. PG&E is responsible for maintaining tools, test equipment, and materials necessary for splicing of replacement cable segments with the exception of ribbon fiber. PG&E is responsible for storage and maintenance of Restoration Cable and all necessary hardware for installation on towers, poles or in conduits. In the event PG&E elects to locate such materials within an IPN shelter, IPN will provide the key(s) necessary for PG&E’s access. In the event IPN or PG&E assumes the other’s responsibility of any Restoration activities, that party will be granted immediate access to these materials.

## **7. EMERGENCY CALL-OUT AND FAULT LOCATION**

- 7.1 In the event of an alarm of an interruption of service, IPN’s Network Control Center (“NCC”) will notify (within 15 minutes or as soon as practical) PG&E’s Telecommunications Control Center (“TCC”) at (707) 427-6387 or [TCCShift@pge.com](mailto:TCCShift@pge.com) and advise the “Operations Supervisor” or his designated representative, of the IPN Fiber fault location. For the duration of the outage, the TCC and NCC will fully cooperate and share information with each other to determine the location of the fault and concurrently utilize and perform fault isolation techniques on their own systems to quickly isolate the fault, develop a restoration plan, and cure the problem. Communication to IPN will be at 1-877-447-6662.
- 7.2 Intentionally omitted.
- 7.3 Intentionally omitted.
- 7.4 After assessing the situation, IPN and PG&E will agree to make either a permanent Restoration or a temporary Restoration. If IPN and PG&E agree upon a temporary Restoration, then IPN will provide the temporary restoration kit.

## **8. RESTORATION ACTIVITIES**

Once the location of Cable or Fiber outage is determined, PG&E will coordinate with IPN to establish an action plan to restore the cable. This action plan will take into account PG&E's requirements to restore service to the electric system and to ensure that all Restoration efforts can be conducted in a safe manner. The action plan will consider whether to temporarily restore the Cable, to permanently restore the Cable, or to pursue both temporary and permanent Restoration efforts. The decision on which plan of action to pursue will be made jointly by PG&E and IPN.

## 8.1 Temporary Restoration

- (i) When PG&E personnel arrive at the location of a Fiber break, PG&E electric personnel will first determine whether a safe condition exists to conduct the necessary work. IN NO EVENT WILL IPN'S PERSONNEL, PG&E TELECOM TECHNICIANS OR CONTRACTORS TOUCH OR OTHERWISE COME IN CONTACT WITH THE CABLE OR ANY CONDUCTORS UNLESS AUTHORIZED BY PG&E LINE PERSONNEL HOLDING THE APPROPRIATE CLEARANCE. When PG&E verifies that a clearance has been issued and the electrical conductors and Cable are grounded, PG&E will remove the affected section of the Cable from the tower(s), pole(s) and or conduit and place it away from PG&E power Restoration efforts as much as possible. PG&E will be responsible to bring down or out the broken Cable ends or "tails" so that the necessary splicing may be performed. All splicing of the fiber(s), up to and including the POI, will be performed or supervised by PG&E.
- (ii) In cases of emergency with respect to Restoration activities at splice enclosures, the accessing party shall provide as much prior telephone notice as possible.
- (iii) Emergency splices shall be performed using fusion-splicing techniques. If PG&E cannot conduct emergency splicing within the timeframes outlined in this Plan, then IPN may hire a third party contractor to complete the fusion splicing associated with the IPN Fibers. IPN will test all splices on the IPN Fibers to ensure integrity. Documentation of these tests will be provided to the other party.
- (iv) PG&E, along with IPN, will determine how the temporarily restored Cable should be attached to existing structures or if temporary structures are needed to keep the Cable from being damaged, obstructing traffic or becoming a hazard. During Restoration, PG&E will use standard PG&E grounding procedures and maintain proper clearances, as outlined in the PG&E Protective Grounding Manual.

## 8.2 Permanent Restoration

Permanent Restoration will be scheduled and performed as soon as practical. This Restoration schedule will be mutually developed and agreed to in advance. Permanent repairs to the Cable returning it to its original or better condition will be performed or supervised by PG&E or IPN, depending on the location of the affected Cable. After final repairs have been completed, IPN will test the Fibers to ensure integrity of the splices and provide PG&E with a copy of the test results. If requested by PG&E, IPN will provide access to buildings or Equipment Stations to allow testing of PG&E fibers from fiber patch panel to fiber patch panel; PG&E will remove all temporary facilities.

## 8.3 Restoration of PG&E System Integrity

If Restoration of PG&E System Integrity is required simultaneously with Restoration of the IPN Fibers, or if the preservation of PG&E System Integrity conflicts with the complete Restoration of the IPN Fibers, PG&E may, at its discretion, place a higher priority on the Restoration or preservation of PG&E System Integrity. Under such circumstances a PG&E -approved contractor may be hired by IPN for conducting emergency repair work simultaneously so long as it does not interfere with PG&E's Restoration activities or preservation of PG&E System Integrity, and is in accordance with the procedures outlined below. In any event PG&E will manage all the contractors

and outside resources to ensure that the work is done in a safe and efficient manner.

## **9. RESPONSE TIME**

- 9.1 Upon notification from IPN of interruption of service, failure, disrepair, impairment or other need for repair or Restoration of the Cable and the location of the damaged Cable as determined by Optical Time Domain Reflectometer (OTDR) readings from the closest patch panel, PG&E shall immediately mobilize PG&E crews and make continuous reasonable efforts to achieve all necessary repair or Restoration including, without limitation, making reasonable efforts to have Maintenance personnel at the affected site(s) within hours after receipt of such notice with the proper repair equipment. In the event that IPN's use of the Cable is interrupted due to the occurrence of a Force Majeure Event, repairs and Restoration shall be made as expeditiously as possible. IPN recognizes that the hour response time represents optimal conditions, and maybe impossible to achieve when emergency Restoration of PG&E's System Integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as the terrain, weather conditions present at the time the request is made, and the actual mileage from PG&E's dispatch station to the affected site.
- 9.2 For purposes of this section, "reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for PG&E hourly employees, preserving PG&E System Integrity, and response times that do not jeopardize the health and safety of the employees and agents of PG&E and IPN. In any event, PG&E shall have the sole discretion to prioritize work in the event of an emergency.
- 9.3 Every six (6) months PG&E will determine whether IPN may perform emergency response and restoration instead of PG&E and will notify IPN of such determination.
- a. When IPN is responsible for emergency response and Restoration IPN shall conduct emergency splicing per the terms of Section 8.1 (iii).
  - b. When PG&E is responsible for emergency response and Restoration, including emergency splicing, PG&E shall determine if it has sufficient qualified manpower available to support the work within the first four hours after notification and if PG&E determines it does not have sufficient qualified manpower available, PG&E may dispatch a PG&E approved contractor or permit IPN to perform the emergency response and restoration work. PG&E will manage all the contractors and outside resources to ensure that the work is done in a safe and efficient manner.
  - c. If an electrical line clearance is necessary, a qualified PG&E employee will coordinate the clearance on the electric system to facilitate the repair work.

## **10. PRIORITY OF FIBER OPTIC CABLE RESTORATION ACTIVITIES**

The priority of restoring PG&E System Integrity and the Cable is as follows:



- ◆ PG&E System Integrity, including protection circuits
- ◆ All lit fibers
- ◆ All dark fibers

The prioritization of restoration activities must take into consideration the practicality and economy of splicing specific fibers in any given order. For example, it may be more practical to restore fibers in a sequential manner, i.e. starting with buffer tube number 1, strand number 1, etc. Under such circumstances, PG&E will coordinate these efforts with IPN. PG&E would notify IPN as soon as a buffer tube is repaired so that it can begin to restore the traffic.

## **11. CONDITION OF DEFAULT**

- 11.1 If either PG&E or IPN fails to perform any of its respective duties or obligations as set forth in this Plan, or by its acts or omissions, places itself or the System in a position or condition which breaches the terms, covenants, conditions and time limitations of this Plan or the Agreement, such failure, act or omission will be a material breach of this Plan (“Plan Default”). The non-defaulting party will send the defaulting party written Notice of Plan Default.
- 11.2 The non-defaulting party will have the right, but not the obligation, to assume any or all Restoration or Maintenance duties or obligations and complete the Restoration or Maintenance according to the Plan. The defaulting party will be responsible for all costs incurred by the non-defaulting party associated with such Restoration or Maintenance.
- 11.3 Notwithstanding the provisions of the Agreement, the defaulting party will have thirty (30) days from the date of Notice of Plan Default to cure the Plan Default. If the defaulting party is unable to cure the Plan Default within such time, the defaulting party will notify the non-defaulting party and the parties will agree on a cure. In the event that the defaulting party does not cure the Plan Default within the said thirty (30) days and the parties have been unable to agree when the cure will be complete, the non-defaulting party will have the right, but not the obligation, to assume any or all Restoration or Maintenance duties or obligations and complete the Restoration or Maintenance according to the Plan. The defaulting party will be responsible for all costs incurred by the non-defaulting party associated with such Maintenance.

## **12. CABLE REPLACEMENT**

PG&E may require IPN to replace, or have replaced, any Cable which, in PG&E’s judgment, presents a hazard, threatens damage to PG&E facilities, or is defective. IPN may choose to replace a cable at any time at their sole discretion and expense. IPN will provide PG&E with written notice at least ninety (90) days before the commencement of the replacement, or as soon as an Electrical Clearance on the affected portion of the electrical system can be secured, that such procedure should occur (“Replacement Notice”); however, PG&E may require such replacement sooner if, in PG&E’s judgment, it is necessary to avoid a hazard or other damage. If, at the time of the Replacement Notice, PG&E has scheduled during its current planning cycle, discontinuance, abandonment or relocation of such affected facilities, PG&E will give a discontinuance notice to IPN within ninety (90) days of receipt of the Replacement Notice. This notice will be consistent with Section 13 of the Agreement, and will be accompanied by a plan

identifying the alternative route.

### **13. RECORDS AND DOCUMENTATION**

- 13.1 IPN will provide and maintain route maps including POI and building entry documentation (as -built drawings), Equipment Station design drawings (as -built drawings), a current fiber design database and fiber test records. The fiber test records will include fiber test data received by IPN as a prerequisite to acceptance.
- 13.2 All documents will be delivered in hard copy and in an electronic format approved by PG&E. Updates to these documents made by either party will be delivered to the other party within 90 days after any restoration is completed.

### **14. CHANGES TO THIS DOCUMENT**

This Plan will be reviewed annually on or before the Review Date of Execution of this document. This Plan may be amended, modified, supplemented, discharged or terminated only by mutual written agreement of the parties. Any amendments, modifications, or supplements agreed to must be expressed in writing and signed by both parties, each of which when so signed will be an original for all purposes and will be distributed to all personnel of PG&E and IPN who are responsible for the installation, maintenance, restoration, and removal of Cable, Cable Accessories, and System Electronics. With respect to this Plan either party will have the right to periodically change and update their respective contact information which are listed in Appendix A. Such changes to this Plan will be made by written notice to the other party and will not require the signature of both parties.

### **15. CONFLICT STATEMENT**

In the event of a conflict between this Plan and the Agreement, the Agreement will be the governing document.

By signing below, we concur with this Plan:

\_\_\_\_\_  
President  
IP Networks, Inc.

\_\_\_\_\_  
Jill Miller Robinett  
Manager, Business Development  
Pacific Gas & Electric Company

## **Appendix A: Escalation List**

### **Contacts for PG&E**

Emergency and Non-Emergency Notification

Level	Title	E-mail	24X7 Phone

**Contacts for IPN**

Emergency

Level	Title	E-mail	24X7 Phone

Non-Emergency Notification (if different from above)

Level	Title	E-mail	24X7 Phone

## **Appendix B: Materials List**

Note: This Appendix B may be modified or eliminated upon the mutual agreement of the parties.

PG&E and IPN will coordinate with respect to the specific materials to be procured and stored. When replenishment of materials is required, PG&E will refer to the initial materials list use to procure materials.

OPGW, Dielectric Cable, and related attachment hardware will be stored at the PG&E electric transmission materials storage facility in a location to be agreed upon by both Parties. Cable and attachment hardware unique to the south bay area section of the route (.676 diameters) will be stored in the PG&E materials facility in a location to be agreed upon by both Parties. Five (5) emergency restoration kits will be located at a location to be agreed upon by both Parties and will be distributed so as to minimize the distance between each kit and any part of the Cable Route. IPN acknowledges that the quantity of materials stored by PG&E may not, in all circumstances, be sufficient to complete emergency repairs to the Cable. In such cases, IPN will hold PG&E harmless of any default.

PG&E will provide all tools and equipment necessary to perform the Restoration obligations at no cost to IPN. IPN will be financially obligated only for the materials and hardware provided in this Materials List. If future growth at affected PG&E facilities requires the relocation of any emergency restoration kit, the costs associated with this relocation will be negotiated between PG&E and IPN.

**EXHIBIT I: LEFT INTENTIONALLY BLANK**

## **EXHIBIT J: PG&E SAFETY RULES**

J.1 Personnel safety is a primary objective to PG&E and IPN. The Parties shall stress SAFETY FIRST to their respective employees and contractors in the performance of their duties.

J.2 All personnel of PG&E, IPN, or the contractors of either Party working on or in proximity to any Cable Route shall be required to comply with all applicable federal, state and local requirements, including but not limited to, all safety requirements mandated by the Safety Orders of the California Division of Occupational Safety and Health, shall comply with, all requirements set forth in any permit issued by Federal, State, County, City, or other governmental agency. IPN shall comply with electric utility industry standards including, but not limited to, applicable ASTM and ANSI standards. IPN is solely responsible for the safety of its operators, equipment and machinery.

J.3 Both Parties shall endeavor to assure that all work is performed in a good workmanlike manner in accordance with applicable telecommunications and electric industry standards and in compliance with all applicable laws, ordinances, codes, and regulations of any governmental authority (including Cal-OSHA) having jurisdiction thereof.

J.4 IPN EMPLOYEES, AGENTS, OR SUBCONTRACTORS SHALL NOT CLIMB THE PG&E TRANSMISSION TOWERS, NOR ENTER ANY ENERGIZED VAULT, MANHOLE OR ENCLOSURE OR PERFORM ANY WORK ON THEM WITHOUT PRIOR CERTIFICATION FROM PG&E. This includes making attachments to the base of the transmission towers.

J.5 PG&E workers shall follow the same work rules as IPN workers when working in the vicinity of any IPN Equipment provided such rules, at a minimum, comply with the applicable industry standard. IPN shall inform PG&E workers of its other internal work practices concerning IPN Equipment. PG&E workers shall maintain the safe working distance specified by IPN.

J.6 IPN Equipment on the Right-of-Way of a Cable Route shall be placed sufficiently far away from any transmission tower or energized vault, man hole or conduit so that IPN employees, agents, or contractors will be unlikely to come in direct or indirect contact with the transmission tower or energized vault, man-hole or conduit.

J.7 Any PG&E representative will have the authority to stop any work, including IPN access and activities, if it determined that the work cannot be completed safely.

## EXHIBIT K: ROUTE APPLICATION FORM

This Route Application Form describes the proposed route license that IPN desires to obtain from PG&E pursuant to the Master License and IRU Agreement for Optical Fiber Installations between Pacific Gas and Electric Company (“PG&E”) and IP Networks, Inc.(“IPN”) dated \_\_\_\_\_, 2012 (the “Agreement”). If the Route Application Form is acceptable to PG&E, in its sole discretion, the Parties will execute a Route License Acknowledgment. Capitalized terms used in this Route Application Form have the same meanings given terms in the Agreement unless otherwise indicated herein.

1. Proposed Route License Scope of Work:
2. Route Name and Description:
  - a. Total Number of Route Miles:
  - b. Fiber Description and Count:
  - c. Special Conditions:
3. Application Term. Unless otherwise mutually agreed to by the Parties, this Route Application Form will automatically terminate sixty (60) days from the Date Received below.
4. Administrative Fee: payable upon submittal of this application.
5. Single Line Sketch:
6. Proposed Work Schedule: e.g. number of crews, number of PG&E inspectors needed, etc.

To be completed by P&E:

DATE RECEIVED:	DATE APPROVED:

**IP NETWORKS, INC.**

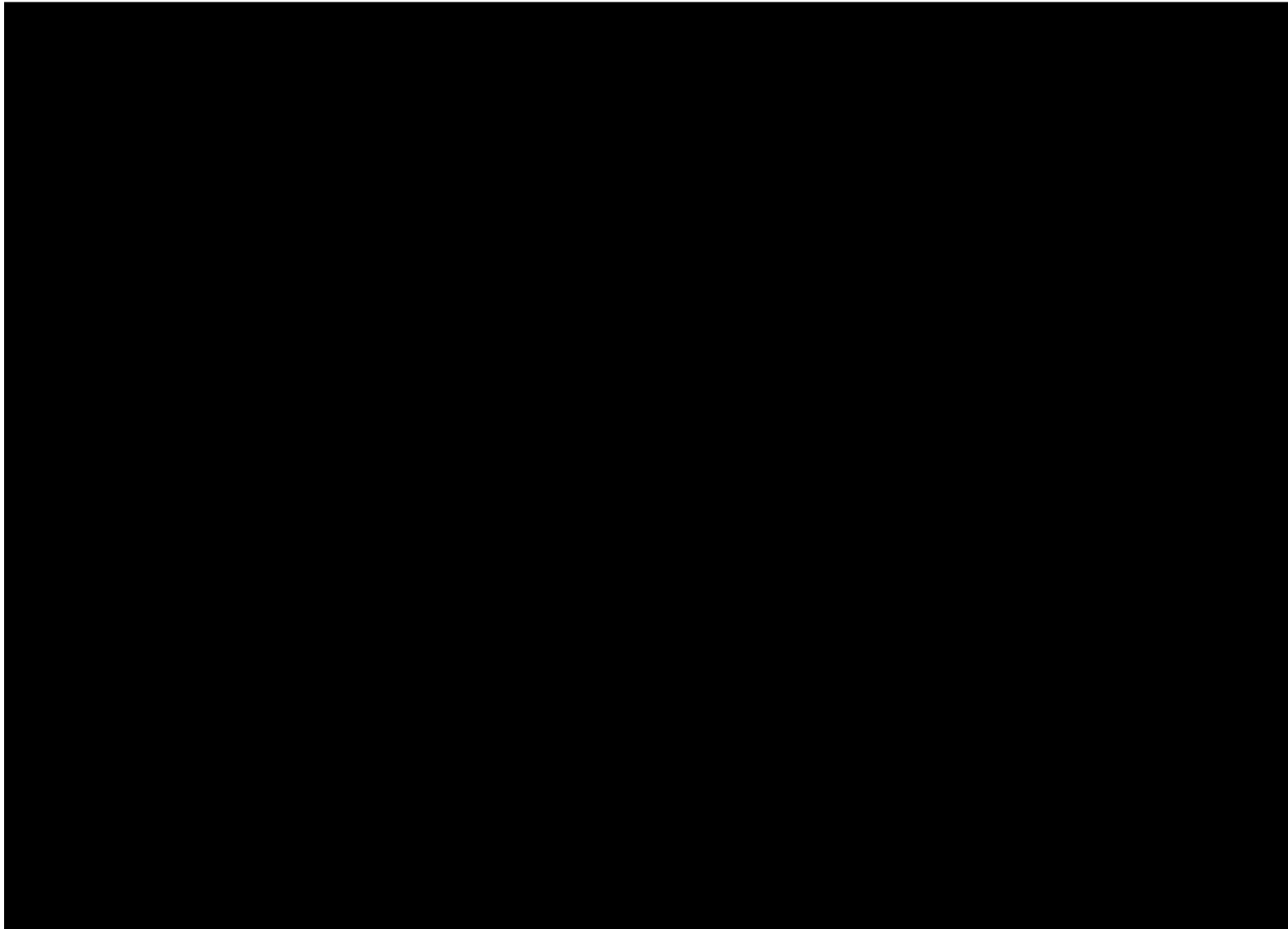
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

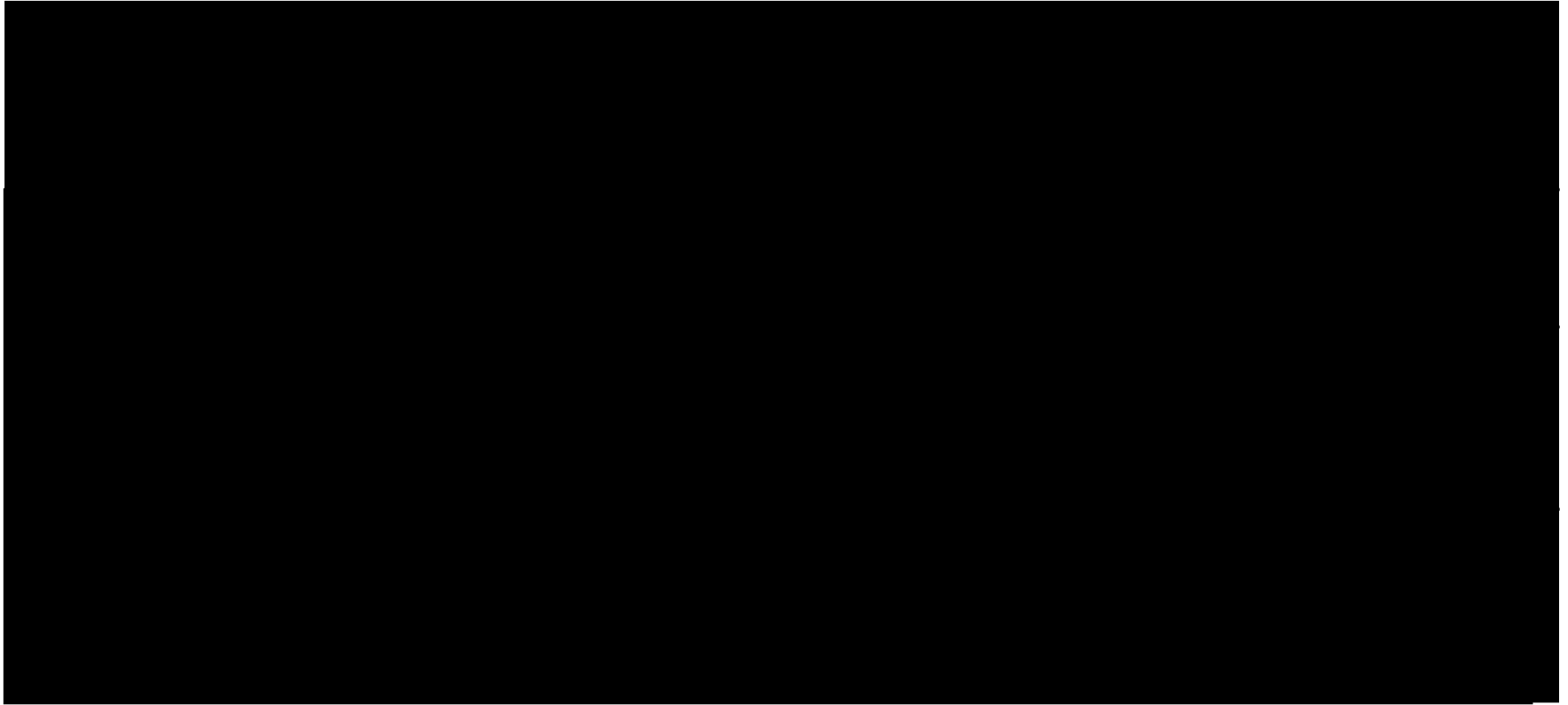
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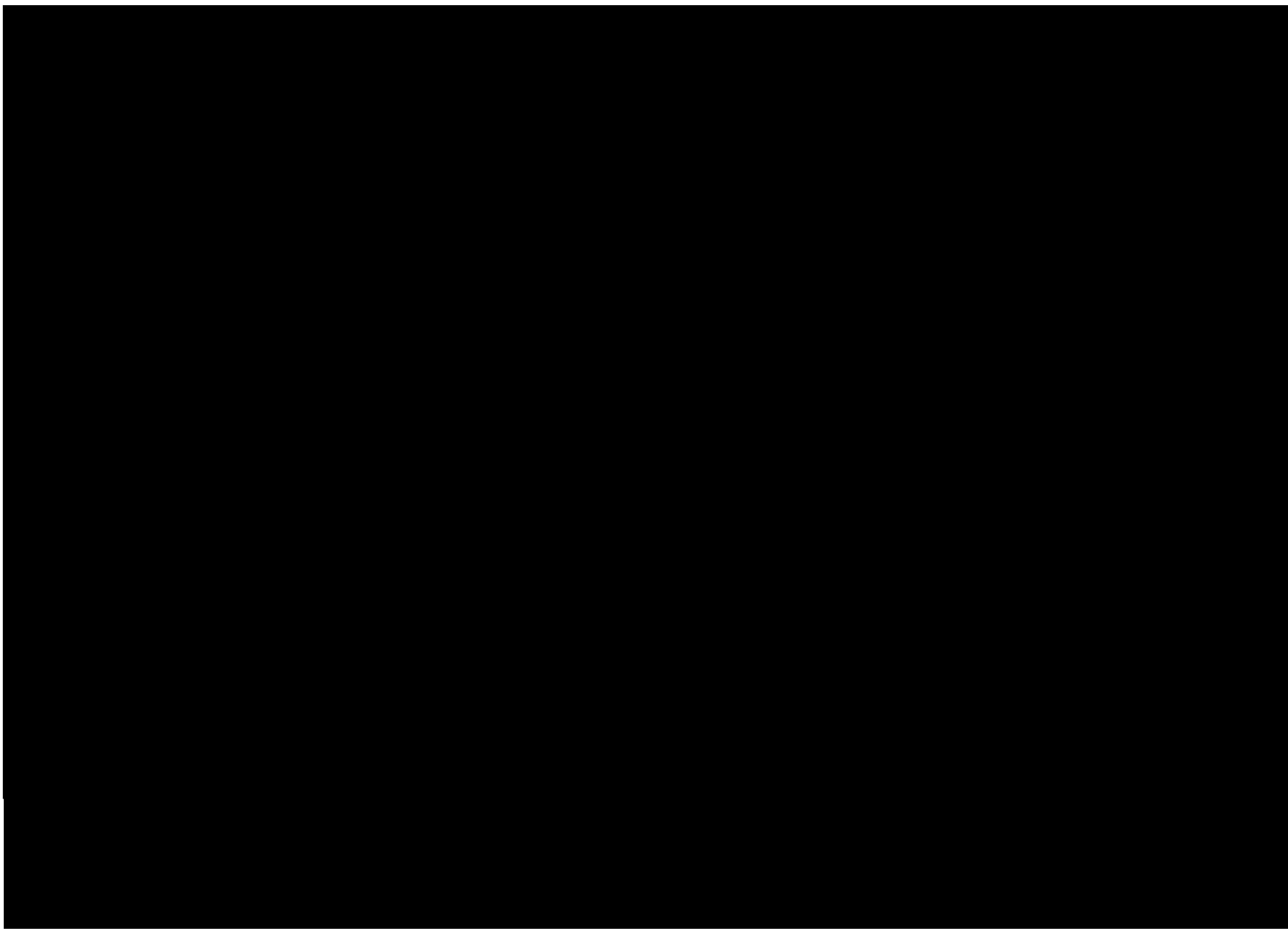
**EXHIBIT L: ROUTE LICENSE APPLICATION FLOW CHART**

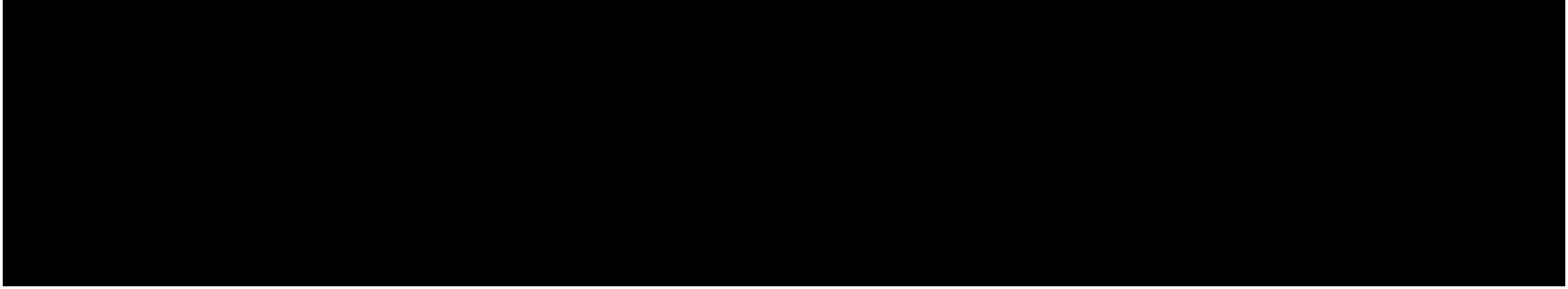




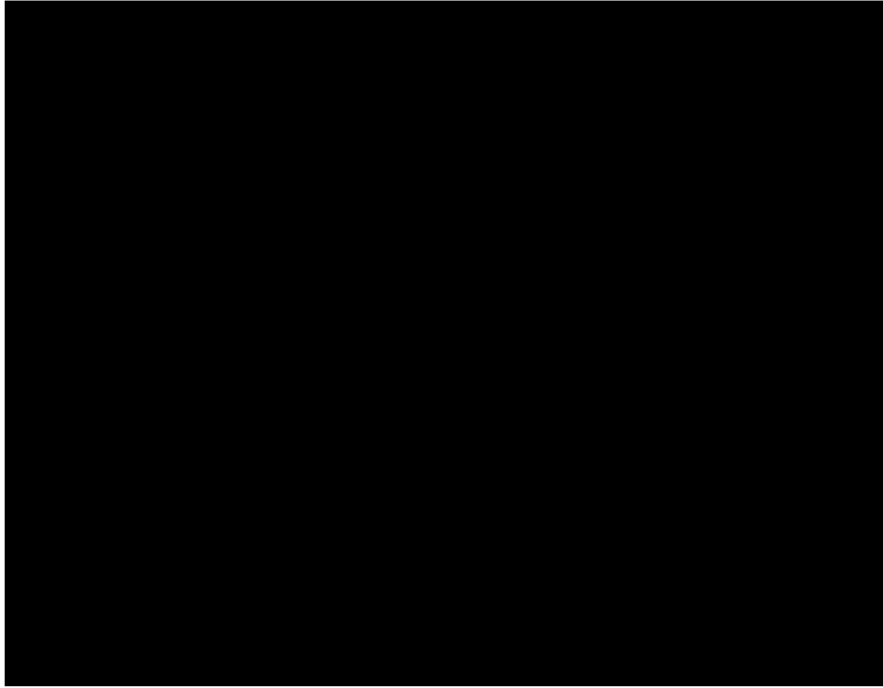
**EXHIBIT M:**







**EXHIBIT N:**



**EXHIBIT O:**

