

**LEASE AGREEMENT  
BETWEEN  
WOODBURY COUNTY  
AND  
LONG LINES**

**AGREEMENT**

**THIS AGREEMENT** is made on the 24<sup>th</sup> day of April 2018 by and between WOODBURY COUNTY, IOWA (the "County"), and Long Lines Metro, LLC, a Delaware limited liability company ("LONG LINES").

In consideration of the mutual covenants contained in this Agreement, the sufficiency of which is acknowledged, the parties agree as follows:

**SECTION 1. IDENTITY OF THE PARTIES.**

- A. WOODBURY COUNTY, located 620 Douglas Street, Suite 104, Sioux City, Iowa.
- B. LONG LINES is located at 501 Fourth Street, Sergeant Bluff, IA 51054.

**SECTION 2. DEFINITIONS.** The following words shall have the meanings set forth below. Words in the singular shall be held to include the plural and vice versa.

- A. "**Agreement**" means this document including the product, equipment and services referenced within this documentation.
- B. "**Designated Fiber**" shall mean the Designated Dark Fiber, between 6<sup>th</sup> and Lewis Blvd. and the WIT Security Institute Building located on the Western Iowa Tech Campus at 4647 Stone Avenue, Sioux City, Iowa 51106.
- C. "**Communications Cable**" means a cable of one or more fiber optic strands installed and owned by the County.
- D. "**Dark Fiber**" means a number of fibers, normally expressed in number of glass strands unless otherwise stated, between two specified locations that have no optronics or electronics attached to it, thus no light/communications signal is being transmitted thru the fiber.
- E. "**Fiber**" means a glass strand or strands which is/are protected by a color-coded buffer tube and which is/are used to transmit a communication signal along the glass strand in the form of pulses of light.
- F. "**Communications Equipment**" means facilities or equipment provided, owned or installed by the County in, around or on the Designated Fiber.
- G. "**LONG LINES**" means Long Lines L.L.C.
- H. "**Patch Panel**" means termination point for ingoing and outgoing fiber connections for communications networks.
- I. "**TSI**" means the County fiber room located in the "The Security Institute Building"

**SECTION 3. PARTIES' OBLIGATIONS.**

A. Woodbury County shall give LONG LINES access to and permission to use fibers number 49,50,51,52,53,54,55,56,57,58,59,60 "SLATE TUBE" of Woodbury County fiber between the 6<sup>th</sup> and Lewis Blvd fiber vault to the T.S.I., within this route. Prior notice and approval of access to the leased fibers shall

be secured pursuant to Section 3 (E). LONG LINE's use of the fibers will not be restricted except by those restrictions set out by local, state, and federal authorities.

**B. Qualifications of Splicing Technicians.** LONG LINES shall use certified Fiber Splicing Technicians when splicing into the County's fiber cable. Such splicing is subject to the County's inspection prior to sealing of the splice case

**C.** Woodbury County shall provide LONG LINES twelve (12) continuous dark fibers between the 6<sup>th</sup> and Lewis Blvd fiber vault to the T.S.I.

**D.** The initial term of the Agreement shall be five (5) years from April 1<sup>st</sup>, 2018 (the "Initial Term") unless terminated earlier in accordance with the Termination section of this Agreement. Upon the expiration of the Initial Term, the Agreement will automatically be renewed for additional 5 year prior to the expiration of the agreement and each successive term.

**E. Annual Rent and Renewal Term,** LONG LINES shall pay a base annual rent during the initial term in the amount of \$12,000.00 Dollars, The Rent shall be payable in advance in equal monthly amounts of \$1000.00 each, due on the 1<sup>st</sup> day of each month. Woodbury County will invoice Long Lines for the monthly rent. All Rent more than thirty (30) days in arrears shall bear interest at the rate of twelve percent (12%) per annum from the initial date due until paid, but this provision shall not preclude Woodbury County from employing any remedy available to Woodbury County in this Agreement upon default in the payment of the Rent.

- a. First Renewal Term (years 11 through 15) Rent shall be increased by 10% over the highest amount paid during the Initial Term.
- b. Second Renewal Term (years 16 through 20) Rent shall be increased by 10% over the highest amount paid during the first Renewal Term
- c. Third Renewal Term (years 21 through 25) Rent shall be increased by 10% over the highest amount paid during the second Renewal Term
- d. Fourth Renewal Term (years 26 through 30) Rent shall be increased by 10% over the highest amount paid during the third Renewal Term

**E.** Woodbury County, or Woodbury County's authorized contractor, shall perform all maintenance on the Fiber, including any Fiber repairs, Fiber restoration, and Fiber relocation that becomes necessary during the term of this Agreement. In the event of a fiber cut or other need for an emergency repair, Woodbury County will make the repair and bill the party that is responsible for the cut for the entire cost of the repair.

**F.** Installation of LONG LINES Equipment. If LONG LINES or a contractor operating under the direction of LONG LINES performs any splicing, accesses splice cases, or performs any other procedure that could accidentally disrupt the passage of light in the Fibers or otherwise directly impact Woodbury County's Fibers, the activity must be preplanned and approved by the Woodbury County Communications Center five (5) working days in advance and performed during established Communications Maintenance Windows (normally 8 AM - 4 PM) LONG LINES shall call Woodbury County Communications Center at 279-6960 to establish all maintenance windows. LONG LINES may modify the Designated Dark Fiber by splicing, terminating, or otherwise extending the connection within its facilities beyond the patch panel.

#### **SECTION 4. EXCLUSION OF WARRANTIES.**

WOODBURY COUNTY MAKES NO WARRANTY TO LONG LINES OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE DESIGNATED FIBER, ANY FIBERS, OR THE SYSTEM, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

#### **SECTION 5. INDEMNIFICATION.**

**A.** LONG LINES shall indemnify and hold harmless, Woodbury County, its governing body, officials, and



employees from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of LONG LINES, while acting within the scope of the employee's office of employment in connection with the performance of this Agreement.

**B.** Woodbury County shall indemnify and hold harmless LONG LINES, its owners, agents and employees from and against any and all costs, expenses, losses, claims, damages, liabilities, settlement and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of Woodbury County, while acting within the scope of the employee's office of employment in connection with the performance of this Agreement.

**C.** Nothing contained herein shall operate as a limitation on the right of either party hereto 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 the Designated Fiber.; provided, however, that each party hereto shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the other party to pursue any such action against such third party.

**SECTION 6. LIMITATION OF LIABILITY.** Notwithstanding any provision of this Agreement to the contrary, in no event shall either party be liable to the other party for any special, incidental, indirect, punitive or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, or any interruption or degradation of service, including, but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other party or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability all claims for which damages are hereby specifically waived.

**SECTION 7. COUNTY'S PROPERTY.** Except as provided for in Section 3(E), LONG LINES shall not, and shall not permit others, to rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any of Woodbury County's property without the written consent of Woodbury County. The Parties agree that no party other than Woodbury County or a contractor under the direct supervision of Woodbury County shall be permitted to perform maintenance or splicing on the Fiber.

**SECTION 8. LONG LINES EQUIPMENT.** LONG LINES shall have sole responsibility for installation and operation of LONG LINES Equipment. Woodbury County shall not be responsible for the operation or maintenance of any LONG LINES Equipment. Woodbury County shall not be responsible for the transmission or reception of communications or signals by LONG LINES Equipment or for the quality of, or defects in, such transmission or reception.

## **SECTION 9. TERMINATION.**

**A. Termination for Cause.** Either party may terminate this Agreement if the other party breaches a material obligation under the Agreement and fails to correct the breach within 30 days of receiving written notice of the breach from the non-breaching party.

**B. Termination for Change in Law.** Woodbury County shall have the right to terminate this Agreement without penalty by giving 360 days' written notice to LONG LINES if one of the following events occurs: (a) Adequate funds are not appropriated or granted to allow Woodbury County to operate as required to fulfill its obligations under this Agreement; (b) Funds are de-appropriated or not allocated or if funds needed by Woodbury County at Woodbury County's Chairman's sole discretion, are insufficient for any reason; (c) Woodbury County's authorization to operate is withdrawn or there is a material change in the programs administered by Woodbury; or (d) Woodbury County's duties are substantially modified, at any time during the course of the Agreement or extensions of the Agreement.

**C. Termination Without Cause.** Either party may terminate this Agreement without penalty by giving 360 days written notice to the other party.

## SECTION 10. CONTRACT ADMINISTRATION.

**A. Amendments.** This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

**B. Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit LONG LINES and Woodbury County. This Agreement may not be assigned by LONG LINES without the written consent of Woodbury County.

**C. Choice of Law and Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law. In the event any judicial proceeding is commenced in connection with this Agreement, the exclusive jurisdiction for the proceeding shall be brought in Woodbury County District Court for the State of Iowa, Sioux City, Iowa. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to LONG LINES or Woodbury County.

**D. Integration.** This Agreement, including all the documents incorporated by reference, represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement. The parties agree that if a Schedule, Addendum, Rider or Exhibit or other document is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

**E. Not a Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

**F. Supersedes Former Agreements.** This Agreement supersedes all prior Agreements between Woodbury County and LONG LINES for the services provided in connection with this Agreement.

**G. Waiver.** Any breach or default by either party shall not be waived or released other than by writing signed by the other party. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

**H. Notices.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, or by receipted hand deliver, by Federal Express, courier, or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

WOODBURY COUNTY      Board of Supervisors  
620 Douglas Street, Suite 104  
Sioux City, Iowa 51101

Woodbury County-Starcomm  
P.O. Box 447  
Sioux City, Iowa, 51102

To                              LONG LINES, L.L.C.  
ATTN:  
501 Fourth Street  
Sergeant Bluff, Iowa 51054



Each such notice shall be deemed to have been provided at the earliest of the following: (a) at the time it is actually received; or (b) in the case of overnight hand delivery courier or services such as Federal Express with guaranteed next day delivery, within one day; or (c) in the case of registered U.S. Mail, within five (5) days. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**I. Cumulative Rights.** The various rights, powers, options, elections and remedies of either party, provided in this Agreement, shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law. Nothing in this Agreement shall be construed as affecting, impairing or limiting the equitable or legal remedies to which either party may be entitled as a result of any breach of this Agreement.

**J. Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the invalid portion shall be severed from this Agreement. Such a determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

**K. Obligations beyond Agreement Term.** This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. All obligations of the parties incurred or existing under this Agreement as of the date of expiration, termination or cancellation will survive the expiration, termination or cancellation of this Agreement.

**L. Authorization.** Each party to this Agreement represents and warrants to the other that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement. This Agreement constitutes a legal, valid and binding obligation upon the parties in accordance with its terms.

**M. Successors in Interest.** All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

**N. Counterparts and Facsimile Signatures.** The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument. The parties further agree that the signatures on this Agreement or any amendment or schedule may be manual or a facsimile signature of the person authorized to sign the appropriate document. All authorized facsimile signatures shall have the same force and effect as if manually signed.

**O. Taxes: Federal, State and Local.** LONG LINES will be responsible to pay any Federal, State or Local Taxes.

**P. Further Assurances and Corrective Instruments.** LONG LINES agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

**Q. Assignment and Delegation.** This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, which shall not be unduly withheld.

**SECTION 12. EXECUTION.**

**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

**WOODBURY COUNTY**

**LONG LINES**

By: 

By: 

Printed name: Rocky DeWitt

Printed name: Brent Olson

Title: Chairman

Title: President / CEO

Date: 4-24-2018

Date: 3/26/18

Attest:   
By: Patrick Gill  
County Auditor

Date: 4-24-2018