

**CBE 606813-23**  
**DARK FIBER IRU AGREEMENT**

This DARK FIBER IRU AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_, 2024 by and between Switch, Ltd., a Nevada Limited Liability Company (“Switch”) and Clark County (“COUNTY”).

RECITALS

A. COUNTY desires to obtain the right to use two (2) fibers in the Cable along a portion of the connection points identified in Exhibit A, attached hereto.

B. Switch desires to grant to COUNTY an indefeasible right to use the fibers identified in Exhibit A.

C. This Agreement sets forth the terms and conditions of the foregoing transactions.

1. DEFINITIONS

1.1. “Acceptance Date” shall mean the date when COUNTY delivers (or is deemed to have delivered) notice of acceptance of a Completion Notice in accordance with Section 8.

1.2. “Acceptance Testing” shall have the meaning set forth in Section 8.1.

1.3. “Affiliate” shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person (“control,” “controlled by,” and “under common control with” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise).

1.4. “Cable” shall mean the high fiber count fiber optic cable.

1.5. “Completion Notice” shall have the meaning set forth in Section 8.2.

1.6. “Costs” shall mean the actual, documented direct costs paid or payable in accordance with the procedures generally used by Switch in billing third parties for reimbursable projects.

1.7. “Dark Fiber” shall mean fiber provided without electronic and/or optronic equipment and which is not “lit” or activated.

1.8. “Force Majeure Event” shall have the meaning set forth in Section 16.

1.9. “Governmental Authority” shall mean any federal, state, regional, county, city, municipal, local, territorial, or tribal government, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and sewer authorities.

1.10. “COUNTY Fibers” shall mean the strands of fiber on the Cable for use by COUNTY on the System Route as identified in Exhibit A.

1.11. “Impositions” shall mean all franchise, license and permit fees imposed upon the Cable, or any part thereof, by any Governmental Authority or any other Person owning the underlying right-of-way where the Cable is located and which may be attributable or apportionable to the COUNTY Fibers.

1.12. “Interconnection Points” shall have the meaning set forth in Section 9.1.

1.13. “IRU” shall have the meaning set forth in Section 3.

1.14. “IRU Effective Date” shall have the meaning set forth in Section 5.1.

1.15. “IRU Fee” shall be the fee for the use of the COUNTY Fibers as specified in Section 4.1. The IRU Fee shall be comprised of a non-recurring fee and a monthly-recurring fee.

1.16. “Operations and Maintenance Fee” or “O&M Fee” shall have the meaning set forth in Section 11.2.

1.17. “Person” shall mean any natural person, corporation, partnership, limited liability company, business trust, joint venture, association, company or Governmental Authority.

1.18. “POPs” shall mean such facilities along the route of the Cable that are owned, leased or otherwise used by Switch for the placement of and operation of communications equipment.

1.19. “Project” shall mean fiber optic connectivity to UNLV’s supercomputer located at Switch’s LAS.07 data center facility.

1.20. “Property Taxes” shall have the meaning set forth in Section 12.4.

1.21. “Property Tax Fee” shall have the meaning set forth in Section 11.4.

1.22. “Proprietary Information” shall have the meaning set forth in Section 21.1.

1.23. “Relocating Authority” shall have the meaning set forth in Section 7.3.

1.24. “Route Miles” shall mean the number of route miles identified in Exhibit A.

1.25. “Running Line Facilities” shall mean such facilities (including regeneration facilities and op amp facilities) that are owned, leased or otherwise used by Switch to regenerate the signal of lit fibers in the Cable or optically amplify lit fibers in the Cable.

1.26. “System Route” shall have the meaning set forth in Section 2.1.

1.27. “Taxes” shall mean Property Taxes, Transactional Taxes, and Withholding Taxes, collectively.

1.28. “Term” shall have the meaning set forth in Section 5.

1.29. “Transaction Taxes” shall have the meaning set forth in Section 11.3.

1.30. “Underlying Rights” shall have the meaning set forth in Section 6.1.

1.31. “Withholding Taxes” shall have the meaning set forth in Section 12.5.

## 2. SYSTEM ROUTE

2.1. The “System Route” will connect the points identified in Exhibit A. The specific location of the System Route between the identified end points is subject to change upon prior notice to COUNTY provided such routing shall not materially adversely affect COUNTY’S use of the COUNTY Fibers hereunder.

## 3. GRANT OF IRU

3.1. As of the IRU Effective Date as defined below in Section 5.1, Switch hereby grants to COUNTY, and COUNTY hereby acquires from Switch an exclusive, non-terminable and non-cancellable (except as specifically provided herein), indefeasible right of use in, for the purpose described herein, the COUNTY Fibers designated in Exhibit A all upon and subject to the terms and conditions set forth herein (collectively the “IRU”).

## 4. FEES

4.1. COUNTY agrees to pay, as compensation for the indefeasible rights of use of the COUNTY Fibers, the “IRU Fee” set forth in Exhibit A.

4.2. COUNTY further agrees to pay, as compensation for Switch’s Scheduled Maintenance of the Cable, the O&M Fees as further described in Section 11 and as set forth in Exhibit A.

4.3. In addition to the foregoing amounts, COUNTY shall pay directly or reimburse Switch for all other Costs, sums, fees and expenses, which are expressly provided to be paid by COUNTY under this Agreement.

4.4. Switch will send COUNTY invoices for payments of all other Costs, sums, fees and expenses owed by COUNTY to Switch hereunder and COUNTY shall pay such invoiced amounts within thirty (30) days after receipt of such invoice by COUNTY. Switch shall not complete installation of the COUNTY Fibers until Switch has received the Project's non-recurring IRU Fee in full. COUNTY, as a government entity, is subject to budget limitations and COUNTY is prohibited from obligated itself to expend money or incur fixed liabilities in excess of amounts appropriated and available for expenditure. Possible future expenses for COUNTY Fibers are subject to COUNTY's annually approved budget appropriations. The continuation of any use of the COUNTY Fibers under this Agreement beyond the current Term is: (i) limited to the total fees outlined in Exhibit A, and (ii) subject to and contingent upon sufficient funds being appropriated, budgeted and otherwise made available by the Government Entity. COUNTY will provide notice to Switch promptly after COUNTY learns that for any reason COUNTY'S funding is not appropriated or is withdrawn, limited, or impaired. If COUNTY fails to obtain annually approved budget appropriations for the fees outlined in Exhibit A, COUNTY or Switch may terminate this Agreement (including the IRU granted hereunder) for convenience upon delivery of ten (10) days' prior written notice. Neither party shall have any obligation or liability to the other party arising from the fact or act of termination for convenience. Each invoice shall be accompanied by a detailed list of Costs and third party invoices and reasonable supporting documentation shall be provided to COUNTY upon request.

## 5. TERM.

5.1. The IRU with respect to the System Route shall become effective on the first day when both (i) the Acceptance Date with respect to the COUNTY Fibers has occurred, and (ii) Switch has received the entire non-recurring IRU Fee, as applicable (the "IRU Effective Date"). Subject to the provisions of Section 17, the IRU with respect to the COUNTY Fibers for the System Route shall remain in effect for a minimum of five (5) years with two (2) five-year extension options (the "Term").

5.2. Upon the expiration or termination of the Term as provided in this Agreement, all rights to the use of the COUNTY Fibers therein shall revert to Switch without reimbursement of any of the IRU Fee, or other Costs, sums, fees or expenses previously made with respect thereto, and from and after such time COUNTY shall have no further rights or obligations hereunder with respect thereto unless such rights or obligations are specifically provided herein to survive the Term.

5.3. Subject to Section 17, this Agreement shall become effective on the date hereof and shall terminate on the date when the Term has expired or terminated, except that those provisions of this Agreement which are expressly provided herein to survive such termination shall remain binding on the parties hereto.

## 6 GRANTEE'S FISCAL LIMITATIONS

6.1 The content of this Section shall apply to the entire Contract and shall take precedence over any conflicting terms and conditions and shall limit COUNTY's financial responsibility as indicated in Subsections 2 and 3 below.

6.2 Notwithstanding any other provisions of this Contract, this Contract shall terminate and Grantee's obligations under it shall be extinguished at the end of any fiscal year in which COUNTY fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

6.3 COUNTY'S total liability for all charges for services which may become due under this Contract is limited to the total maximum expenditure(s) authorized in COUNTY'S purchase order(s) to Switch.

## 7 UNDERLYING RIGHTS

7.1 Switch has or will obtain and shall maintain in full force and effect all rights, licenses and permits, authorizations, franchises, rights-of-way, easements and other approvals that are necessary to permit Switch to construct, install and keep installed, maintain and repair the COUNTY Fibers and otherwise comply with its obligations in accordance with this Agreement and to convey the IRU in the COUNTY Fibers to COUNTY and all other rights under this Agreement pursuant to the IRU (the "Underlying Rights"). The parties also recognize that the Switch and COUNTY rights and obligations under this Agreement are conditions upon and shall in all respects be subject to the continuation of such Underlying Rights. Switch shall use all commercially reasonable efforts to cause such Underlying Rights to remain effective through the Term of this Agreement such that there is no adverse impact or impairment of COUNTY'S use of the COUNTY Fibers. Switch shall indemnify, defend, protect and hold harmless COUNTY from and against, and assumes liability arising from any such failure, delay or discontinuation that occurs after the IRU Effective Date. Switch shall provide prompt notification to COUNTY in the event Switch believes, in its reasonable judgment, that a fact or circumstance with respect to an Underlying Right has a reasonable likelihood of causing an adverse impact or impairment of COUNTY'S use of the COUNTY Fibers, and the parties agree to cooperate with each other in good faith in an attempt to resolve the dispute with the Underlying Right grantor. In the event Switch is unable to resolve any issue with respect to Underlying Rights in a timely manner reasonable acceptable to COUNTY, then COUNTY may, after providing Switch thirty (30) days prior written notice, attempt to resolve the issue directly with the grantor of such Underlying Rights; provided however, that it is understood that the IRU is subject to the terms of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The IRU granted hereunder is further subject and subordinate to the prior right of the grantor of the Underlying Rights to use the right of way for other business activities, including railroad operations, telecommunications uses, pipeline operations or any other purposes, and to the prior right of Switch to use its rights granted under the Underlying Rights.

7.2 In the event Switch shall receive notice from any grantor or provider of any Underlying Right during the Term that Switch has failed to observe or perform its obligations under such Underlying Right, and Switch is not contesting in good faith the validity of such claimed or alleged failure, Switch shall give written notice to COUNTY and COUNTY may, at its option (subject to the terms and provisions of the Underlying Right and the ability of third parties to cure defaults of Switch thereunder and further subject to good faith consultation with Switch), cure or correct such failure, and Switch agrees to cooperate in good faith with COUNTY in the event COUNTY decides to pursue such cure or correction.

7.3 If, after the Acceptance Date, Switch is required (i) by any Governmental Authority under the power of eminent domain or otherwise, (ii) by the provider of any Underlying Right (each a "Relocating Authority"), or (iii) by the occurrence of any Force Majeure Event, to relocate the Cable or any portion thereof, Switch shall have the right to either proceed with such relocation, including, but not limited to, the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation, or to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation. COUNTY shall be kept fully informed of determinations made by Switch in connection with such relocations, and any such relocation shall incorporate fiber meeting or exceeding the specifications set forth in Exhibit B and be subject to Acceptance Testing. COUNTY shall reimburse Switch for its proportionate share of the Costs (including Acceptance Testing and including amounts paid to a Relocating Authority to avoid relocation) related to such relocation (to the extent Switch has not been reimbursed by the Relocating Authority) allocated to COUNTY based on the number of COUNTY Fibers and the total fiber count in the affected portion of the Cable.

## 8 ACCEPTANCE TESTING AND COMPLETION

8.1 Switch shall test the COUNTY Fibers in accordance with the procedures and standards specified in Exhibit C ("Acceptance Testing") and Switch shall provide COUNTY with a copy of such test results in a timely manner. Switch shall provide COUNTY with reasonable prior written notice of when Acceptance Testing shall occur, and COUNTY has the right, but not the obligation, to have COUNTY personnel present to observe the Acceptance Testing. Acceptance Testing is limited to testing of the COUNTY Fibers into operation (and COUNTY'S failure to designate its space and power requirements or complete such work shall not be grounds for rejection of a Completion Notice, as defined in Section 8.2).

8.2 Upon the successful completion of Acceptance Testing, Switch shall provide written notice of same to COUNTY (a "Completion Notice"). Switch shall contemporaneously deliver a copy of the results of the Acceptance Testing (if and to the extent that Switch has not previously delivered same) and COUNTY shall, within fifteen (15) days of receipt of the Completion Notice, either accept or reject the Completion Notice (COUNTY shall be permitted to reject only if COUNTY specifies a material failure of the COUNTY Fiber to satisfy the requirements of this Agreement) by delivery of written notice to Switch. In the event COUNTY rejects the Completion Notice, Switch shall promptly, and at no cost to COUNTY commence to remedy the defect or failures specified in COUNTY'S notice. Thereafter Switch shall again conduct Acceptance Testing and (if successfully completed) provide COUNTY a new Completion

Notice. The foregoing procedure shall apply again and successively thereafter until Switch has remedied all defects or failures specified by COUNTY; provided that Switch may terminate this Agreement without further obligation, in which event Switch shall refund the non-recurring IRU Fee, which shall be COUNTY'S sole and exclusive remedy for Switch's failure to deliver the COUNTY Fibers in accordance with the terms of this Agreement. Any failure by COUNTY to timely accept or reject a Completion Notice, or any use of the COUNTY Fibers for any purpose other than testing of COUNTY shall be deemed to have delivered a notice of acceptance upon such use or on the fifteenth (15<sup>th</sup>) day after delivery of the Completion Notice.

## 9 INTERCONNECTION POINTS

9.1 COUNTY shall have the right to request that Switch interconnect COUNTY'S communications system with the COUNTY Fibers at the points identified in Exhibit A (the "Interconnection Points"). Switch may engage a contractor of its choosing to perform such interconnections; provided that Switch shall remain obligated to COUNTY under the terms of this Agreement for any such interconnections.

9.2 Switch may route the COUNTY Fibers through Switch's space in any Running Line Facilities or POPs; provided such routing shall not materially adversely affect COUNTY'S use of the COUNTY Fibers hereunder and Switch shall be responsible for all costs and expenses associated therewith.

9.3 In the event that COUNTY desires to cross-connect the COUNTY Fibers with other fibers provided by COUNTY or another carrier with a Running Line Facility or POP, COUNTY will execute a separate agreement in a form mutually acceptable to the parties. In the event that COUNTY desires to interconnect the COUNTY Fibers with other fibers provided by COUNTY or another carrier then COUNTY shall comply with the then-current interconnection policies and guidelines, which shall be promptly provided to COUNTY at any time upon request. The fees associated with such interconnection and cross-connection shall be the standard rates charged by Switch for such interconnections and cross-connections, and such rates shall be promptly provided to COUNTY at any time upon request.

9.4 Any additional work respecting the Cable or the COUNTY Fibers beyond standard cross-connections and interconnections required by COUNTY, shall be undertaken only by Switch (or a contractor chosen by Switch to perform the work; provided that Switch shall remain obligated to COUNTY under the terms of this Agreement for any such interconnections) at COUNTY'S request, provided that such work is technically feasible and does not materially adversely affect other Switch Dark Fiber grantees or customers utilizing the Cable, as determined in Switch's reasonable judgment, and shall be performed within a reasonable amount of time consistent with industry accepted practices. COUNTY will reimburse Switch for all Costs incurred in connection with such additional work.

9.5 COUNTY shall have no right to perform work on or otherwise physically access the COUNTY Fibers, the Cable or the Interconnection Points, except with the express permission and supervision of Switch.

## 10 OPERATIONS

10.1 Subject to the access restrictions set forth in this Agreement, COUNTY will (at its full cost and expense) have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, re-grooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of the COUNTY Fibers; provided, such control and responsibility by COUNTY shall not adversely and materially affect the use by any other Person of the Cable and/or electronic or optronic equipment used by such Person in connection therewith.

10.2 COUNTY acknowledges and agrees that Switch is not supplying nor is Switch obligated to supply to COUNTY any optronic or electronic equipment or related facilities, all of which are the sole responsibility of COUNTY, nor is Switch responsible for performing any work other than as specified in this Agreement.

10.3 Upon not less than ninety (90) days written notice from Switch to COUNTY, Switch may, at its option substitute for the COUNTY Fibers an equal number of alternative fibers along the System Route, provided that in such event, such substitution (i) shall be effected at the sole cost of Switch; (ii) shall incorporate fiber meeting or exceeding the specifications set forth in Exhibit B, and be tested in accordance with the Acceptance Testing; (iii) shall not change any Interconnection Points; and (iv) Switch shall use all commercially reasonable efforts to promptly minimize and resolve any interruptions in the operation of the COUNTY Fibers. Substitution of COUNTY Fibers shall not affect or extend the Term with respect to the fibers so substituted.

## 11 MAINTENANCE AND REPAIR

11.1 From and after the IRU Effective Date, Switch shall maintain the COUNTY Fibers in accordance with the maintenance requirements and procedures set forth in Exhibit D. Such maintenance work will be performed by Switch or a contractor chosen by Switch to perform the work, unless otherwise agreed in writing by the parties. The costs of all Scheduled Maintenance (as such term is defined in Exhibit D) of the COUNTY Fibers shall be borne by Switch as part of the O&M Fee; however COUNTY shall reimburse Switch for its proportionate share of the Costs of any Unscheduled Maintenance (as such term is defined in Exhibit D).

11.2 In consideration of Switch's responsibilities under Section 11.1, COUNTY will pay to Switch the O&M Fee as described in Exhibit A, subject to the adjustments described in Section 11.3 below.

11.3 The O&M Fee shall be increased on each anniversary of the Acceptance Date by the increase, if any, in the Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1982-84 = 100), for the preceding twelve (12) month period. In the event such index shall cease to be computed or published, Switch may, in its reasonable discretion, designate a successor index to be used in determining any increase to the O&M Fee.

## 12 IMPOSITION AND TAXES

12.1 Switch and COUNTY acknowledge and agree that it is their mutual objective and intent to minimize, to the extent feasible, all Impositions and Taxes and that they will cooperate with each other and coordinate their mutual efforts to achieve such objective in accordance with the provisions of this Section. In the event any Imposition or Tax is required to be paid by COUNTY to Switch hereunder, all invoice, payment and interest terms of Section 4.4 shall apply.

12.2 Following the Acceptance Date, Switch shall timely pay any and all Impositions imposed upon or with respect to the Cable to the extent such Impositions have not been or may not feasibly be separately assessed or imposed upon or against the respective interests of Switch and COUNTY. Upon receipt of a notice of any such Imposition, Switch shall promptly notify COUNTY of such Imposition, which share shall be determined (i) to the extent possible, based upon the manner and methodology used by the particular Governmental Authority imposing such Imposition (e.g., on the cost of the relative property interests, historic or projected revenue derived therefrom, or any combination thereof); or (ii) if the same cannot be so determined, then based upon COUNTY'S proportionate share of the total fiber count in the affected portion of the Cable.

12.3 Except for taxes based on Switch's net income, worth or capital, COUNTY will be responsible for payment of all applicable taxes that arise in any jurisdiction as a result of the transactions contemplated herein, including without limitation all sales, use, value added, consumption, gross receipts (other than in lieu of net income tax), excise, stamp or transfer taxes (collectively, "Transaction Taxes"), however designated. If any taxing authority asserts that Switch should have collected from COUNTY any Transaction Tax from such Transaction Taxes, Switch shall promptly notify COUNTY of such an occurrence and COUNTY agrees to reimburse Switch for its proportionate share of such Transaction Taxes, including any interest or penalties levied or asserted in connection therewith, and to bear a proportionate share of Switch's documented contest expenses; provided, however, that COUNTY will have no such reimbursement obligation when a taxing authority makes such assertion more than three (3) years after the Transaction Tax was originally due and payable to such taxing authority.

12.4 Switch and COUNTY agree to cooperate fully in the preparation of any returns or reports relating to taxes. Switch shall be responsible for filing returns and paying all ad valorem property taxes (the "Property Taxes") imposed on, related to or assessed against the COUNTY Fibers by payment of an annual fee (the "Property Tax Fee") billed to COUNTY for the Term. Such payment shall be made on the Acceptance Date and annually thereafter in accordance with the provisions of Section 4. Switch shall calculate the Property Taxes attributed to the COUNTY Fibers (utilizing an apportionment methodology that compares the total fiber miles in COUNTY Fibers to the total fiber miles in the property and then applying that percentage to the most recently-available annual accrual for total Property Tax (excluding Property Tax attributable to other than conduit and fiber) on the property). The resultant annual Property Tax attributable to the COUNTY Fibers shall be divided by twelve to determine the monthly Property Tax Fee that will be billed to COUNTY for the COUNTY Fibers. If COUNTY believes it is exempt from any taxes, then COUNTY will provide Switch with satisfactory evidence of such exemption.

12.5 All payments made by COUNTY hereunder shall be made without any deduction or withholding for or on account of any tax, duty or other charges of whatever nature imposed by any taxing or government authority (collectively, "Withholding Taxes"). If either COUNTY or Switch are or were required by law to make any deduction or withholding from any payment due hereunder to Switch, then, notwithstanding anything to the contrary contained in this Agreement, the gross amount payable by COUNTY shall be increased so that, after any such deduction or withholding for Withholding Taxes, the net amount received by Switch will not be less than Switch would have received had no such deduction or withholding been required.

12.6 If COUNTY disputes any Imposition, Tax or other charge imposed as a result of the existence or operation of this Agreement, COUNTY, at its own expense and in its own name, shall have the right to protest the imposition of the disputed imposition. In the event that such protest must be made in the name of the Switch, Switch shall, in good faith and with due diligence at COUNTY'S sole expense, contest such imposition, provided that Switch will not be required to pursue such a protest if the action (i) will result in a lien against Switch or Switch's property; (ii) will result in a penalty being assessed against Switch for which COUNTY has not adequately indemnified Switch; or (iii) will cause Switch to be in violation of any Underlying Rights.

12.7 Notwithstanding the forgoing, and to the extent permitted by applicable law, Clark County is a political subdivision of the State of Nevada and under the provisions of Nevada Revised Statutes 372.325 is exempt from payment of Sales or Use Tax. In the event any imposition or taxes are required to be paid by COUNTY, COUNTY does not waive its rights under Revised Statutes 372.325.

### 13 USE OF CABLE

13.1 COUNTY represents and warrants that it will use the COUNTY Fibers and the IRU hereunder in compliance with all applicable governmental codes, ordinances, laws, rules and regulations applicable to COUNTY.

13.2 COUNTY represents and warrants that it will use the COUNTY Fibers and the IRU for any lawful purpose in accordance with generally accepted industry standards. COUNTY acknowledges and agrees that it has no right to use any fibers, other than the COUNTY Fibers, included or incorporated in the Cable, and that COUNTY shall keep any and all of the Cable and the designated space in the Running Line Facilities and POPs free from any liens, rights or claims of any third party attributable to COUNTY.

13.3 Notwithstanding anything to the contrary contained in this Agreement (including, without limitation, Section 19) and except for customers of COUNTY for the limited purpose of transport between facilities owned, operated or utilized by COUNTY or the applicable customer (or Switch in the event that COUNTY is utilizing services or space from Switch at such facility): (i) COUNTY covenants and agrees that COUNTY will not, that COUNTY will have no right to, and that Switch may enjoin COUNTY from any attempt to assign, sell, lease, sublease, transfer, grant an indefeasible right of use or other similar right or interest in the IRU or the COUNTY Fibers to any Person as Dark Fiber, and (ii) COUNTY will not sublease nor assign the right to

use space in any Running Line Facility or POP without the prior written consent of Switch, which consent shall not be unreasonably withheld. For clarity, the parties recognize that nothing in this Section shall restrict COUNTY from providing lit transport service to COUNTY'S customers on the COUNTY Fibers between facilities owned, operated or utilized by COUNTY or the applicable customer (or Switch in the event that COUNTY is utilizing services or space from Switch at such facility).

13.4 COUNTY shall not use the COUNTY Fibers in a way which materially and adversely affects the use of the fibers, cable or conduit of any other Person using the Cable.

13.5 COUNTY and Switch shall promptly notify each other of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to or loss of the Cable.

#### 14 INDEMNIFICATION

14.1 Subject to the provisions of Section 14, Switch hereby agrees to indemnify, defend, protect and hold harmless COUNTY and its employees, officers and directors, from and against, and assumes liability for (i) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorneys' fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of Switch, its officers, employees, servants, Affiliates, agents, contractors, licensees, invitees and vendors ("Switch Indemnified Parties") in connection with the performance by Switch of its obligations or the exercise by Switch of its rights under this Agreement; and (ii) any claims, liabilities or damages arising out of any failure to comply with any and all conditions, in accordance herewith, violation by Switch of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by Switch of its obligations, or the exercise by Switch of its rights under this Agreement (collectively, the "COUNTY Covered Claims").

14.2 To the extent permitted under Nevada law, subject to the statutory limitations of liability set forth in NRS Chapter 41, and subject to the provisions of Section 14, COUNTY hereby agrees to indemnify, defend, protect and hold harmless Switch and its employees, officers and directors, from and against, and assumes liability for (i) any injury, loss or damage to any Person, tangible property or facilities of any Person (including reasonable attorneys' fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of COUNTY, its officers, employees, servants, Affiliates, agents, contractors, licensees, invitees and vendors ("COUNTY Indemnified Parties") in connection with the performance by COUNTY of its obligations or the exercise by COUNTY of its rights under this Agreement; and (ii) any claims, liabilities or damages arising out of any failure to comply with any and all conditions, in accordance herewith, violation by COUNTY of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by COUNTY of its obligations, or the exercise by COUNTY of its rights under this Agreement (collectively, the "Switch Covered Claims").

In addition to the foregoing indemnification obligations in Section 14.2, with respect to COUNTY'S customers that use services provided over the COUNTY Fibers, to the extent permitted under Nevada law, and subject to the statutory limitations of liability set forth in NRS Chapter 41, COUNTY shall defend, indemnify and hold harmless Switch and its Switch Indemnified Parties against any claims by such customers for damages to the extent arising or resulting from any defect in or failure of the COUNTY Fibers or the Cable or of service provided over the COUNTY Fibers.

14.3 Switch and COUNTY agree to promptly provide each other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing at its cost provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified party, which consent shall not be unreasonably withheld or delayed.

14.4 The indemnification obligations contained in this Section shall not be applicable to any claims to the extent caused by the negligence or willful misconduct of an indemnified party. The terms and conditions of this Section shall survive the expiration or termination of this Agreement.

## 15 LIMITATION OF LIABILITY

15.1 With the exception of a party's confidentiality and indemnification obligations herein and notwithstanding any other provision of this Agreement to the contrary, neither party shall be liable to the other party, its Affiliates or customers for any special, incidental, indirect, punitive or consequential damages, or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with such party's failure to perform its respective obligations hereunder, including, but not limited to, loss of profits or revenue (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), 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 breach of contract, breach of warranty, negligence, or strict liability, all 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 claims for indirect, special or consequential damages, based on any acts or omissions of such third party.

15.2 COUNTY, in any contract or tariff offering of service, capacity, or rights of use that in any of the preceding instances involves use of the Cable, shall use its best efforts to include in such contract or tariff a written limitation of liability that is binding on COUNTY'S customers and in all material respects at least as restrictive as the limitations set forth in Sections 15.1.

## 16 INSURANCE

16.1 Each party shall obtain and maintain during the Term of this Agreement commercial general liability insurance of not less than \$1,000,000 per occurrence and \$3,000,000 per aggregate .

16.2 During the term of this Agreement, COUNTY will obtain and maintain “all risk” property insurance in an amount equal to the replacement cost of all electronic, optronic and other equipment utilized by COUNTY in connection with the COUNTY Fibers.

16.3 Both parties expressly acknowledge that a party shall be deemed to be in compliance with the provisions of this Section through self-insurance.

16.4 Each party shall ensure that each policy required hereunder contains a waiver of subrogation provision for the benefit of the other party.

16.5 In the event either party fails to maintain the required insurance coverage and a claim is made or suffered, such party shall indemnify, defend, protect and hold harmless the other party from any and all claims for which the required insurance would have provided coverage.

16.6 Until the IRU Effective Date, Switch shall bear all risk of loss of and damage or destruction to the Cable. Commencing as of the IRU Effective Date, any loss, damage or destruction of or to the Cable not otherwise required to be insured hereunder shall be treated for all purposes as Unscheduled Maintenance (as such term is defined in Exhibit D).

## 17 FORCE MAJEURE

17.1 Except as may be otherwise specifically provided in this Agreement, and except for COUNTY’S payment obligations contained within this Agreement, neither party shall be in default under this Agreement if and to the extent that any failure or delay in such party’s performance of one or more of its obligations hereunder is caused by any of the following conditions, and such party’s performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; flood; shortages or unavailability or other delay in delivery of fiber, cable, conduit or other material not resulting from the responsible party’s acts or omissions or failure to timely place orders therefor; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war; act of terrorism or civil disorder; failure of a third party to recognize a Underlying Right; any other cause beyond the reasonable control of such party (each a “Force Majeure Event”). The party claiming relief under this Section shall notify the other party in writing, as soon as practicable, of the existence of the event relied on and the cessation or termination of said event and COUNTY will not pay for services not rendered during such event.

## 18 DEFAULT AND TERMINATION

18.1 If COUNTY fails to observe and perform the terms and provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice from Switch (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then Switch may (i) terminate this Agreement (including the IRU granted hereunder) and the Term, in whole or in part, in which event Switch shall have no further duties or obligations hereunder; and (ii) subject to Section 14, pursue any legal remedies it may have under applicable law or principles of equity

relating to such default, including an action for damages, specific performance and/or injunctive relief. Notwithstanding the aforementioned, if COUNTY fails to make payments as outlined in Section 4.4 and such failure continues for a period of thirty (30) days after written notice from Switch, then Switch may terminate this Agreement (including the IRU granted hereunder) and the Term, in whole or in part, in which event Switch shall have no further duties or obligations hereunder.

18.2 If Switch fails to observe and perform the terms and provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice from COUNTY (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then COUNTY may (i) terminate this Agreement and the Term, in whole or part, in which event COUNTY shall have no further duties or obligations hereunder; and (ii) subject to Section 4, pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance and/or injunctions relief. In the event of Switch's uncured default and a resulting termination of this Agreement by COUNTY, Switch shall issue a pro-rata refund to COUNTY of any prepaid fees.

18.3 Switch shall promptly notify COUNTY of any notice or other communication, or the discovery of any fact or circumstance that, or the occurrence or non-occurrence of any event the occurrence or non-occurrence of which, would materially adversely affect COUNTY'S use of the COUNTY Fibers.

## 19 ASSIGNMENT

19.1 Neither party may assign, encumber or otherwise transfer this Agreement to any other Person without prior written consent of the other party, except to an affiliate or as part of a merger, acquisition or financing.

19.2 Any and all increased payments to grantors of Underlying Rights and any other additional fees, charges, costs or expenses which result under the Underlying Rights or otherwise as a result of any permitted assignment or transfer of this Agreement by COUNTY will be paid by COUNTY.

19.3 This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

19.4 Nothing contained in this Section shall be deemed or construed to prohibit Switch from selling, transferring, leasing, licensing, granting indefeasible rights of use or entering into similar agreements or arrangements with other Persons respecting any fibers and conduit constituting a part of the Cable, provided they do not materially impair COUNTY'S rights hereunder.

## 20 REPRESENTATIONS AND WARRANTIES

20.1 Each party represents and warrants that (i) it has the full right and authority to enter into, execute and deliver this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and (iv) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court of body.

20.2 The parties acknowledge and agree that, on and after the relevant Acceptance Date, COUNTY'S sole rights and remedies with respect to any degradation of the COUNTY Fibers or for any defect in or failure of the COUNTY Fibers to perform in accordance with the applicable vendor's or manufacturer's specifications shall be limited to the particular vendor's or manufacturer's warranty with respect thereto, except to the extent that such defect or failure is directly and solely related to the negligent acts or omissions of Switch. COUNTY acknowledges and agrees that (i) Switch's obligations under this Agreement to perform Scheduled Maintenance and Unscheduled Maintenance do not include an obligation to address failure or diminished performance of the COUNTY Fibers caused by degradation, wear or manufacturer's defects; and (ii) performance of the COUNTY Fibers may be affected over time by degradation and wear. In the event any maintenance or repairs to the Cable are required as a result of breach of any warranty made by any manufacturers, contractors, or vendors on behalf of COUNTY, Switch shall reimburse COUNTY'S costs for any maintenance COUNTY has incurred as a result of any such breach of warranty to the extent the manufacturer, contractor or vendor has paid such costs and less COUNTY'S proportionate share of documented costs including attorneys' fees incurred by Switch in collecting such costs.

20.3 Switch represents and warrants that (i) it will comply with all applicable government codes, ordinances, laws, rules and regulations in connection with its performance hereunder; and (ii) it will perform its obligations hereunder in conformance with applicable industry standards; and (iii) it shall keep any and all of the COUNTY Fibers free from any liens, rights or claims of any third party.

20.4 EXCEPT AS SET FORTH IN THE FOREGOING SECTION 20.3, SWITCH MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GRANTEE FIBERS INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

## 21 CONFIDENTIALITY

21.1 Switch and COUNTY hereby agree that if either party provided confidential or proprietary information to the other party ("Proprietary Information"), such Proprietary Information shall be held in confidence, and the receiving party shall afford such Proprietary Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) in order to avoid disclosure to or unauthorized use by any third party. Except as set forth in Section 21.7 below, the parties acknowledge and agree that all information disclosed by either party to the other in connection with or pursuant to this Agreement shall be deemed to be Proprietary Information. All Proprietary Information, unless otherwise specified in writing, shall remain the property of the disclosing party, shall be used by the receiving party only for this intended purpose, and such written Proprietary Information, including all copies thereof, shall be returned to the disclosing party or destroyed upon the request of the disclosing party. All information is provided "as-is" without any express or implied warranties, including, but not limited to a warranty that it is accurate or complete or a warranty against infringement. Proprietary Information shall not be reproduced except to the extent necessary to accomplish the purpose and intent of this Agreement, or as otherwise may be permitted in writing by the disclosing party.

21.2 The foregoing provisions of Section 21.1 shall not apply to any Proprietary Information which (i) becomes generally known or available in the relevant industry without fault of the receiving party; (ii) is independently developed by the receiving party without use or access to the Proprietary Information as evidenced in written records; or (iii) becomes available to the receiving party without restriction from a third party who has the right to disclose it without violation of any confidentiality obligations.

21.3 Notwithstanding Sections 21.1 and 21.2, either party may disclose Proprietary Information to its employees, agents, lenders, funding partners and legal and financial advisors and providers to the extent necessary or appropriate in connection with the negotiation and/or performance of this Agreement or in obtaining financing, provided that each such party is notified of the confidential and proprietary nature of such Proprietary Information and is subject to or agrees to be bound by similar restrictions on its use and disclosure.

21.4 If a receiving party is subject to judicial or governmental proceedings requiring disclosure of Proprietary Information, then, prior to any such disclosure to the extent legally permissible, the receiving party will provide the disclosing party with reasonable prior written notice and will obtain, or provide disclosing party with an opportunity to obtain, a protective order or confidential treatment of this Proprietary Information. In the event either party shall be required to disclose all or any part of this Agreement in, or attach all or any part of this Agreement to, any regulatory filing or statement, each party agrees to discuss and work cooperatively, in good faith, with the other party, to protect, to the extent possible, those items or matters which the other party deems confidential and which may, in accordance with applicable laws, be deleted therefrom.

21.5 COUNTY acknowledges that Switch may be required to disclose all or any part of this Agreement to a provider of an Underlying Right and, in such event, Switch shall redact, to the extent possible, any commercial terms and other provisions that are deemed confidential; provided that such provider of an Underlying Right is notified of the confidential and proprietary nature of such Agreement and is subject to or agrees to be bound by similar restrictions on its use and disclosure.

21.6 The provisions of this Section shall survive expiration or termination of this Agreement. Nothing in this Section is intended to or shall be deemed to modify any obligation of confidentiality of either party that is subject to one or more separate confidentiality or other similar agreements between the parties prior to the date hereof.

21.7 Notwithstanding Sections 21.1, 21.2, 21.3, 21.4, 21.5, and 21.6, COUNTY is a governmental entity and subject to the public records laws and regulations set forth in chapter 239 of the NRS. COUNTY'S records are public records and are subject to inspection and copying by any person unless there is an applicable exception or the record is declared by applicable law to be confidential. Switch is advised, and acknowledges, that this Agreement and documents provided in connection with this Agreement become a public record and, unless the information is declared by law to be confidential or is otherwise excluded from the public records disclosure requirements, may be subject to inspection and copying. COUNTY makes no representation or warranty as to whether any Proprietary Information will be deemed or determined to be confidential or proprietary pursuant to law. COUNTY takes no responsibility and is not liable for release of any Proprietary Information that COUNTY determines in its sole and absolute discretion that COUNTY must provide such Proprietary Information because an applicable exception does not apply or the Proprietary Information is not declared by law to be confidential or proprietary.

## 22 NOTICES AND PAYMENTS REMITTANCE

22.1 All notices or other communications which are required or permitted herein (other than remittance of payment) may be delivered personally, by electronic mail (other than notices of breach or termination), deposited with an overnight courier or mailed by registered mail, return receipt requested, postage prepaid, to the address of the receiving party as each party will provide to the other. Notices will be deemed delivered upon receipt.

## 23 ENTIRE AGREEMENT; AMENDMENT

23.1 This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

## 24 RELATIONSHIP OF THE PARTIES

24.1 The relationship between Switch and COUNTY shall not be that of partners, agents or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including but not limited to federal income tax purposes.

## 25 COUNTERPARTS

25.1 This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

## 26 CONSTRUCTION AND INTERPRETATION OF AGREEMENT

26.1 The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

## 27 ENFORCEMENT

27.1 If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

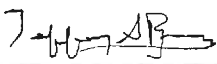
## 28 GOVERNING LAW

28.1 This Agreement shall be governed and construed in accordance with the laws of the State of Nevada without reference to its choice of law principles.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, Switch and COUNTY have executed this Agreement as of the date first above written.

**Switch, Ltd.**

By:   
Title: EVP Solution Architecture  
Date: 5/16/2024 | 04:50 PDT



**CLARK COUNTY**

By: \_\_\_\_\_  
JESSICA COLVIN  
Chief Financial Officer  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

STEVEN B. WOLFSON  
District Attorney

By:   
Jason Patchett (Jun 6, 2024 08:40 PDT)  
JASON B. PATCHETT  
Deputy District Attorney



**Exhibit A**  
**COUNTY Fibers**

**1. Description**

COUNTY shall receive an indefeasible right to use two (2) fibers contained in the Cable along the System Route as described below.

**2. Route Miles**

There are a total of 10.1 Route Miles on the System Route.

**3. Route Map**





#### 4. Interconnection Points



#### 5. Initial Term

Five (5) years with two (2) five-year extension options.

#### 6. Fees

The non-recurring IRU Fee for the indefeasible right to use the COUNTY Fibers is \$750,000.

The monthly-recurring IRU Fee for the indefeasible right to use the COUNTY Fibers is \$4,161.20 per month.

The monthly-recurring O&M Fee is \$252.50 per month.



**Exhibit B**  
**Fiber Specifications**

1. The fiber optic cable shall be ADSS or Armor in design. The cable may be either loose tube or central core in construction. The central strength member shall be dielectric. Each buffer tube or ribbon shall contain 12 fibers.
2. The glass within the fiber optic cable shall be either Standard Single-Mode or Non-Zero Dispersion-Shifted, maximized for operation in the broadest wavelength ranges.
3. All connectors shall be Ultra polished LC -LC unless both Parties agree to another type.



**Exhibit C**  
**Acceptance Testing Procedures and Standards**

1. All splices will be performed with an industry-accepted fusion splicing machine.
2. Splices will be qualified during initial construction with an Optical Time Domain Reflectometer (OTDR) from only one direction. The profile alignment system or light injection detection system on the fusion splicer may be used to qualify splices in lieu of an OTDR, provided both Parties agree a close correlation to the OTDR values can be established.
3. Bi-directional span testing will be done from fiber termination panel to fiber termination panel between each colocation facility unless the fiber is dead-ended or terminated in a splice case or vault, in which case testing will be done uni-directionally. When testing is done uni-directionally, no power meter data will be provided.
  - 3.1 Installed loss measurements at 1550 nm will be recorded using an industry-accepted laser source.
  - 3.2 OTDR traces will be taken at 1550 nm and splice loss measurements will be analyzed. GN Nettest Laser Precision or EXFO format will be used on all traces, unless another OTDR format is agreed to by both Parties. Launch reels will not be used for the span OTDR traces.
  - 3.3 All testing will be conducted at 1550 nm only.
  - 3.4 OTDR traces shall be saved in a standard file naming convention.
  - 3.5 Raw trace data will be transmitted electronically.
4. The splicing standards are as follows:
  - 4.1 The objective loss value of the connector and its associated splice will be 0.50 dB or less. This value does not include the insertion loss from its connection to the FDP.
  - 4.2 The objective for each fiber within a span shall be an average bi-directional loss of 0.15dB or less for each splice. For example, if a given span has 10 splices, each fiber shall have a total bi-directional loss (due to the 10 splices) of 1.5 dB or less. Individual bi-directional loss values for each splice will be reviewed for high losses, which may indicate splice instability.
  - 4.3 The aforementioned standards are objectives, not the basis for acceptance. The acceptance standard for each fiber shall be an average bi-directional installed loss of 0.25 dB/km or less across each span.



5. All connector splices will be protected with heat shrinks. Backbone splices may be stored in trays with bare fiber manifolds and RTV silicone protection. Buffer tubes/ribbons will not be split across more than one splice tray. An industry-accepted non-encapsulated splice enclosure will be used on all splices (e.g. PLP Coyote, Lucent 2600, or Tyco B, C, or D case).
6. The entire fiber optic cable system shall be properly protected from foreign voltage and grounded with an industry-accepted system.
7. Connectors shall be Ultra polished LC with conventional single mode glass.



**Exhibit D**  
**Maintenance Requirements and Procedures**

**MAINTENANCE OF THE FIBER AND CONDUIT**

- (a) **Scheduled Maintenance.** Routine maintenance and repair of conduit and fiber shall include the following activities:
  - i. Patrol of the System Route on a regularly scheduled basis,
  - ii. Maintenance of a “Call-Before-You-Dig” program, where applicable, and all required and related cable locates; and
  - iii. Maintenance of sign posts along the System Route with a phone number; and
  - iv. Assignment of fiber maintenance employees to locations along the System Route at reasonable intervals dependent upon terrain, accessibility, locate ticket volume, etc.
- (b) **Unscheduled Maintenance.** Non-routine maintenance and repair of the fibers and conduit, which is not included as Scheduled Maintenance, shall be performed by or under the direction of Switch (“Unscheduled Maintenance”) and shall consist of:
  - i. “Emergency Unscheduled Maintenance” in response to an alarm identification by Switch or COUNTY’S Operations Center with notification to Switch of any failure, interruption or impairment in the operation of the fibers or conduit, or any event imminently likely to cause the failure, interruption or impairment in the operation of the fibers or conduit.
  - ii. “Non-Emergency Unscheduled Maintenance” in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the fibers or conduit.

COUNTY will report the need for Unscheduled Maintenance to Switch in accordance with procedures promulgated by Switch from time to time, which shall promptly be made available to COUNTY upon request. Switch will log the time of COUNTY’S report, verify the problem and dispatch personnel to take corrective action.