



**Fiber Optic Restoration and Repair Agreement**

This agreement is made on this date \_\_\_\_\_ and is entered into between Benchmark Network Solutions, Inc., of 1931 Evans Road, Cary, NC 27513, USA ("Seller"), and \_\_\_\_\_(Customer).

This agreement consists of this signature page and the following sections and Exhibits, which are incorporated in this agreement by this reference:

- 1. Agreement Scope
- 2. Responsibilities of the Parties
- 3. Term
- 4. Pricing and Payment
- 5. Additional Terms and Conditions

**Exhibit 1.1 - Description of Typical Fiber Repair Scenarios**

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have caused this agreement to be duly executed and delivered.

**Benchmark Network Solutions, Inc.**

**Public Sector Client**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## 1.0 UG FIBER REPAIR AGREEMENT SCOPE

### 1.1 Agreement Overview

Customer has requested that BENCHMARK provide fiber optic repair services identified and depicted in "Typical Scenarios" for repair of Fiber in Exhibit 1.1 attached to and made a part of this Agreement (the "Support Services"), on an as needed basis at a fixed hourly rate billed in accordance with PRICING LIST in Section 4.0 schedule and paid from the Prepaid Block Service Fee (hereinafter defined) paid by Customer. SECTION 4.0 PRICING DOES NOT INCLUDE ALL MATERIALS THAT WOULD BE USED FOR THE REPAIRS.

### 1.2 Resources

BENCHMARK through DataWatt will provide appropriate level employees and/or approved sub-contractors as determined by BENCHMARK in its sole discretion to perform the Repair Services, unless specific BENCHMARK resources are identified in an Exhibit 1.2 attached to and made a part of this Agreement.

### 1.3 Services

**1.3.1** As described in Section 2. Responsibilities of the Parties, BENCHMARK shall provide the Repair Services during the term of this Agreement on an as needed basis at Customer's request. Requests for Support Services shall be made by Customer in accordance with Section 4.2 of this Agreement. **When a customer issues a request for the repair services to be performed to a particular Customer Site, Benchmark then reserves the right to invoice the customer directly for all repairs and services. \* As a convenience, any USETPA Public Sector Client may opt to issue an "open" purchase order, for example, \$20,000, to Benchmark for fiber repair services with a "not to exceed" amount. This would assist in the expedition of repair services. Any repair fees above and beyond the "not to exceed" amount would be billed in addition to the open purchase order number and separately after the repair work is completed.**

1.3.2 Support Services may be performed (a) remotely from a BENCHMARK or an approved sub-contractor's location ("Remote Services") or (b) on-site at the customer's locations ("On-Site Services"). Support Services performed outside Normal Business Hours will be subject to overtime billing.

1.3.3 **Overtime billing is 1.5 times the normal rate.** For purposes of this Agreement, Normal Business Hours are defined as 8:00 a.m. to 6:00 p.m. Monday through Friday Eastern Time excluding BENCHMARK observed holidays. A list of BENCHMARK observed holidays will be provided upon request.

1.3.4 Customer shall have the right to reasonably request a replacement for any BENCHMARK employee, agent or representative assigned to this Agreement if Customer deems the employee, agent or representative to be unacceptable. BENCHMARK shall replace said individual with another BENCHMARK employee or sub-contractor who is equally trained and qualified, within a reasonable time frame so as to minimize the impact on BENCHMARK's performance of the services hereunder within the time frames specified herein. Notwithstanding the foregoing, BENCHMARK shall not be required to comply with any Customer request, which is in violation of any applicable federal or state law.

**1.4 Customer Site Information**

Name	Street	City	State	Zip

**1.5 Primary Contacts**

Unless specified otherwise in writing, the primary contacts for Customer and BENCHMARK are identified below:

**Public Sector Client Contacts:**

Primary Contact:	John Doe
Telephone Number:	919-XXX-XXXX
Facsimile Number:	
E-mail address:	

Secondary Contact:  
 Telephone Number:  
 Facsimile Number:  
 E-mail address:

**Benchmark Manager Contact:**

Telephone Number:

Facsimile Number:

E-mail Address:

**Jason McCain**

919-678-8595

919-678-8599

[jmccain@benchmarkns.com](mailto:jmccain@benchmarkns.com)

**Benchmark Contact:**

Telephone Number:

Facsimile Number:

E-mail Address:

**Tom Myatt**

919-414-7689

919-882-1816

[tmyatt@benchmarkns.com](mailto:tmyatt@benchmarkns.com)

## 2.0 RESPONSIBILITIES OF THE PARTIES

- 2.1** BENCHMARK shall provide Fiber Repair Services requested Customer in accordance with the terms of this Agreement.
- 2.1.1 An appropriate BENCHMARK resource will call the Customer contact identified in the Service Request **within one to four hours** to begin coordinating the requested Support Services. Best Effort will be practiced to expedite Repair Crews to the stated Customer site for Fiber Repairs.
- 2.1.2 BENCHMARK shall use commercially reasonable efforts to assign such resources to perform the requested Repair Services.
- 2.1.3 BENCHMARK shall provide Customer with an invoice for Time and Materials Support and will be billed with a Net 30 Day Invoice following the completion of the work. **When Customer issues a request for the repair services to be performed to Customer, Benchmark then reserves the right to invoice the Customer directly for all repairs and services.**
- 2.1.4 Customer shall provide the following resources during the term of the services (Section 3.0)
- 2.1.5 Customer shall designate a person to whom all BENCHMARK communications may be addressed and who has the authority to act on all aspects of the services.
- 2.1.6 Customer shall provide reasonable access to Customer site grounds, facilities and workspace as well as any as-built documents, documentations or diagrams of the existing fiber infrastructure.

2.1.7 Unless otherwise agreed to by the parties, Customer shall make **best effort** to respond within **4 Hours** of BENCHMARK's request for any documentation or information needed for the completion of Repair Services.

### **3.0 TERM**

Upon receipt of the signed Agreement, BENCHMARK will sign and date the Agreement. This date will be considered the Effective Date. A copy of the fully signed Agreement will be mailed to the customer. The Agreement will be review annually to confirm that pricing and response times are specified correctly.

**4.0 2017 PRICING AND PAYMENT STRUCTURE FIBER OPTIC REPAIR**

**4.1 Pricing (Fees per Unit or Hourly per the given task for repair)**

4.1.1 Service Fees: Client agrees to pay the listed rate for the repair services based on the task at hand. Depending on the nature of the fiber repair service required, the appropriate tasks and fees will be assigned.

**OUTSIDE PLANT SERVICE PRICE SCHEDULE**

<b>TASK</b>	<b>Unit</b>	<b>Unit Price</b>
Emergency Response Mobilization Fee	Each	\$1000
Service Truck with tools	Hourly	\$60
Emergency repair trailer - tools and materials	Hourly	\$35
Utility Truck	Hourly	\$40
Excavator and Trailer	Hourly	\$45
Crew Leader	Hourly	\$80
Communications Line Technician	Hourly	\$70
Communications Helper	Hourly	\$70
Communications Helper	Hourly	\$70
Communications Outside Plant Specialist	Hourly	\$120
Communications Inside Plant Specialist	Hourly	\$110
Labor to prepare cables at splice point	Each	\$350
Splice enclosure for fusion splicing	Each	\$300
Labor and consumables to fusion splice one fiber	Each	\$60

**INSIDE PLANT PRICE SCHEDULE**

<b>TASK</b>	<b>Unit</b>	<b>Unit Price</b>
Emergency Response Mobilization Fee	Each	\$1750
Project Manager	Hourly	\$110
Technician Helper	Hourly	\$80
Inside Plant Fiber Specialist	Hourly	\$110
Splice enclosure for fusion splicing	Each	\$300
Labor and consumables to fusion splice one fiber	Each	\$40
Replacement Fiber Cable	Per/ft.	TBD

4.1.2 Expenses: Customer will reimburse BENCHMARK or approved sub-contractors for any reasonable travel and living expenses and/or material/equipment expenses (“T&E”) incurred in support of this Agreement. Amounts incurred by BENCHMARK for expenses and/or materials/equipment in support of this Agreement shall be paid separately and may not be paid from amounts in Customer’s Prepaid Block. Invoices for T&E are payable on Net 30 terms from the date of invoice.

4.1.3 On Call Services. Occasionally, Customer may desire to have a BENCHMARK resource immediately available by phone during change controls or other potential network-impacting events. BENCHMARK will pre-arrange on-call support on an as-available basis for a fee of \$500 per day. This fee is in addition to billing for any time actually expended and will be paid whether a call is placed to the resource or not.

2.1.8 Payment Terms: BENCHMARK shall provide Customer with an invoice for Time and Materials Support and will be billed with a Net 30 Day Invoice following the completion of the work. BENCHMARK reserves the right to bill for materials upon receipt of order. When Customer issues a request for the repair services to be performed to Customer, Benchmark then reserves the right to invoice Customer directly for all repairs and services.

2.1.9 Disputes Over Invoices: Should Customer have a dispute over any BENCHMARK invoice, Customer agrees to notify BENCHMARK in writing of the

details of such dispute within **30 days** of the date of the invoice so as to allow BENCHMARK to take appropriate action to address Customer's concerns. If written notice is not received within 15 days, the invoice will be deemed accurate and payable under the terms outlined in section 4.1.3 of this agreement.

## **4.2 Support Service Requests**

4.2.1 Customer shall place support service request by contacting the Manager listed in Section 1.5 via phone, e-mail or facsimile request. To help expedite the response to the request please submit the following information.

- Location of service requested
- Description of service needed
- Bill of Material, if any
- Cost of travel and expenses, if any
- Requested service date
- Bill-to address or department

4.2.2 The terms and conditions of the agreement prevail regardless of any conflicting terms on the request, other correspondence and any and all verbal communications.

## **4.3 Notices**

All notices intended for the parties shall be effective if sent to their respective addresses set forth in the preamble to this Agreement; if to Customer, Attention: Customer name, if to BENCHMARK, Attention: Tom Myatt. Notices under this Agreement will be sufficient only if personally delivered, delivered by a major commercial rapid delivery courier service with next business day delivery and tracking capabilities and costs prepaid, or mailed by prepaid certified or registered mail, return receipt requested, to a party at its address first set forth in this Agreement. If not received sooner, notices by mail shall be deemed received three (3) days after deposit in the U.S. mails.

## **5.0 ADDITIONAL TERMS AND CONDITIONS**

### **5.1 Limitation of Liability**

BENCHMARK SHALL IN NO EVENT HAVE ANY LIABILITY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, ARISING OUT OR RELATED TO THIS SOW OR ANY ADDENDUM, OR THE PROPOSAL OR THE PERFORMANCE OR

BREACH THEREOF, EVEN IF BENCHMARK IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL THE LIABILITY OF BENCHMARK, WHETHER IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNTS ACTUALLY PAID TO BENCHMARK UNDER THIS AGREEMENT.

**5.2 Limitation of Warranty**

EXCEPT AND TO THE EXTENT EXPRESSLY PROVIDED IN THIS SOW AND IN LIEU OF ALL OTHER WARRANTIES, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BENCHMARK HAS NO OBLIGATION WITH RESPECT TO THE SERVICES PERFORMED OR COMPUTER PRODUCTS SOLD AND DELIVERED, EXCEPT AS EXPLICITLY SET FORTH IN THIS SOW. BENCHMARK SHALL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED TO CLIENT BY BENCHMARK DURING ANY ASPECT OF A PROJECT UNDER THIS AGREEMENT OR OTHERWISE.

**5.3 Customer's Non-Solicitation of BENCHMARK's and BENCHMARK's Sub-contractors Employees**

During the term of this SOW and for a period of twelve (12) months after the completion of the work performed under this SOW, Customer agrees that it will not employ or offer employment to or cause any other person or entity (whether or not affiliated with Customer) to employ or offer employment to any employee of the BENCHMARK or its approved sub-contractors.

**5.4 Governing Law**

The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without reference to its conflicts of laws principles.

**5.5 Costs and Expenses**

In the event of any litigation or other proceeding relating to or arising out of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to reimbursement from the other party of all costs and expenses (including attorneys' fees) reasonably incurred by the prevailing party therein.

**5.6 Arbitration**

Any controversy of claim arising out of or related to this Agreement, or the breach of this Agreement, shall be settled by arbitration administered by the American Arbitration Association under its rules and judgment.

[end of agreement]

## EXHIBIT 1.1 – Description of Typical Fiber Repair Scenarios

### **Outside Plant Fiber Repair Scenarios:**

This particular situation would include the fiber being dug up and damaged between two existing hand holes. The repair itemized includes repair labor, material and splicing. This repair scenario includes intercepting the existing duct on each side of the damage, setting a new hand hole on each side of the damage, pulling the old/damaged fiber out of the damaged duct run in order to present a splice tail on each end, installing new duct between the two new hand holes (200 feet), pulling new fiber cable between the 2 new hand holes, and splicing the 48 ct cable in both new hand holes. The line items reflect our current charges for these activities and materials. The total cost indicated at the bottom of the estimate is indeed a typical emergency repair cost.

Variations are infinite, but a couple typical situations are:

**Scenario # 1:** The fiber is damaged between two existing hand holes. The damaged location is dug up and the duct repaired. A new Hand hole is set approximately 50 - 75 feet to one side of the damage (to create a splice tail from the existing, damaged cable). Fiber cable storage (coil) from an adjacent, existing hand hole is used to pull to the new hand hole to meet up with the other splice tail. The tails are spliced together. This would eliminate one hand hole, new 48 ct fiber cable, one splice can and prep, and 48 fusion splices. This is, obviously, a less expensive repair, but not always possible for various circumstances.

**Scenario # 2:** The fiber and duct may be damage for an extended distance between two existing hand holes (someone directional drills parallel and gets into your fiber but doesn't know it for some time, damaging multiple feet of your duct and cable). In order to resolve this problem within any reasonable time-frame, a temporary fiber cable may need to be placed on the ground between the two existing, adjacent hand holes, and a new splice placed in each hand hole in order to restore connectivity in a reasonable time. ASAP after this temp repair, and new duct run would need to be established between the two hand holes and temp splices. New fiber cable then pulled thru the new duct. A service interruption would then be scheduled with the customer, and the new permanent replacement fiber cable would be spliced in and the temp cable removed. This scenario is obviously much more expensive and time consuming. This typical scenario would cost in the range of \$20,000, but may be necessary to restore connectivity in a reasonable timeframe, and then implement the permanent solution.

### **Inside Plant Fiber Repair Scenario:**

This scenario is based on a single fiber optic cable cut or damage in a single location. First, the damaged cable section will be cut and removed. Due to the fact that there are no fiber storage loops in the plenum ceiling environment, this will require a separate cable to be spliced into the

two sections of know good cable. This will require splicing at two points to restore the fiber cable run. This will be considered a temporary repair. Once fiber has been repaired, if requested, Benchmark will provide the customer a permanent repair quotation to replace the repaired cable with new cable such that there is a single point to point cable run in place.