

EX-10.7 6 dex107.htm INDEFEASIBLE RIGHT OF USE AGREEMENT

**CONFIDENTIAL TREATMENT HAS BEEN REQUESTED.**

**\*\*\* INDICATES THAT MATERIAL HAS BEEN OMITTED AND CONFIDENTIAL TREATMENT HAS BEEN REQUESTED THEREFORE. ALL SUCH OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2.**

**INDEFEASIBLE RIGHT OF USE AGREEMENT**

**THIS IRU AGREEMENT (“Agreement”)** is made, entered into, and effective as of the 28th day of September, 2001, by and between McLeodUSA Telecommunications Services, Inc. an Iowa corporation (“**McLeodUSA**”) and Norlight Telecommunications, Inc., a Wisconsin corporation (“**IRU Grantee**”).

**DEFINITIONS:**

In addition to any terms defined herein, the following terms used in this Agreement shall have the following meanings:

- A. “**Acceptance**” means the IRU Grantee’s issuance of an Acceptance Notice or failure to issue a notice of defective IRU Fibers within fourteen (14) days after receipt of Fiber test results from McLeodUSA.
- B. “**Acceptance Notice**” means the notice of acceptance or deemed acceptance of a Segment and/or entire route given by the IRU Grantee pursuant to Article III.
- C. “**Access Point**” is the physical location(s) at which IRU Grantee may, subject to required permits and Rights, connect its telecommunications system with the IRU Fibers. Access Points may be a McLeodUSA point of presence, regenerator site, or optical amplifier with each Access Point specifically set forth on **Exhibit A** attached hereto and incorporated by reference herein.
- D. “**Dark Fiber**” means Fiber between two specified locations that has no optronics or electronics attached to it.
- 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. “**Effective Date**” means the date the IRU commences following Acceptance.
- G. “**Fiber Optic Cable**” or “**Cable**” means a collection of Fibers contained in color-coded buffer tubes with a protective outer covering, which covering includes stiffening rods and filler.
- H. “**Indefeasible Right of Use**” or “**IRU**” is an exclusive and irrevocable right to use certain Dark Fibers in the McLeodUSA Cable, subject to the terms and conditions of this IRU Agreement.
- I. “**IRU Fibers**” means the Dark Fibers obtained by the IRU Grantee in the McLeodUSA Cable as set forth in **Exhibit A**.

J. “**IRU Fee**” means the amount of money in United States Dollars IRU Grantee shall pay McLeodUSA for the use of the IRU Fibers as set forth in **Exhibit A**.

K. “**IRU Grantee**” is the party in the preamble to this Agreement obtaining IRU Fibers in the McLeodUSA Cable.

L. “**McLeodUSA Cable**” means the Cable containing Fibers in which IRU Grantee has an IRU pursuant to the terms of this Agreement.

M. “**McLeodUSA Network**” means the telecommunications system owned or operated by McLeodUSA.

N. “**Optical Splice Point**” means the point where the IRU Grantee’s Cable connects to the IRU Fibers.

O. “**Proportionate Share**” means the percentage determined by dividing the applicable number of IRU Fibers in the McLeodUSA Cable or Cables by the total number of IRU Fibers in the McLeodUSA Cable or Cables. The Proportionate Share may vary with respect to particular Segments of the McLeodUSA Cable.

P. “**PSWP**” means Plan System Work Period, which is a prearranged period of time reserved for certain work on the McLeodUSA Network that may potentially impact traffic.

Q. “**Rights**” means any and all necessary right of way agreements, easements, licenses, leases, rights or other agreements necessary for the occupancy and use by either party of poles, conduit, cable, wire, physical plant facilities, and/or access to real property underlying the Cable.

R. “**Segments**” are portions of McLeodUSA Cable routes specified in **Exhibit A** of this Agreement, which are capable of being tested and accepted.

S. “**Term**” means the term of the IRU as set forth in **Exhibit A** attached hereto, commencing on the Effective Date of this Agreement.

## **BACKGROUND**

IRU Grantee desires to obtain the right to use certain Dark Fibers in the McLeodUSA Cable and McLeodUSA desires to grant to IRU Grantee an Indefeasible Right of Use in certain Fibers in the McLeodUSA Cable subject to the terms and conditions set forth below.

Accordingly, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

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**ARTICLE I**  
**FIBER OPTIC USE**

1.1 **Grant of IRU.** Subject to the terms and conditions of this Agreement, McLeodUSA grants IRU Grantee an IRU in certain Fibers in the McLeodUSA Network as specifically described in **Exhibit A**. The IRU includes a non-exclusive right to use tangible and intangible property in order to use the IRU Fibers, including but not limited to cable sheathing, troughing, pedestals, slack containers, and related equipment necessary for the operation and use of the IRU Fibers as contemplated herein (collectively, the “**Associated Property**”), but excluding any electronic or optronic equipment which shall be provided by IRU Grantee at its sole cost. From time to time, Dark Fiber IRUs in certain Segments may be incorporated into this Agreement by both parties executing a supplemental Exhibit in the form of **Exhibit A** of this Agreement. For each additional Segment in which an IRU is granted, the separate **Exhibit A**, executed by both parties, will be attached hereto and titled so as to identify this Agreement, the Cable Segment affected, the resulting IRU Fee and any other terms and conditions relating to the additional Segment in which an IRU is granted thereunder. Upon payment of the IRU Fee for the Segment set forth in a supplemental Exhibit, IRU Grantee shall acquire hereunder an IRU for the IRU Fibers specified in the supplemental Exhibit. IRU Grantee shall be entitled to use its IRU Fibers for any lawful purpose and hereby agrees i) to be bound by all laws, regulations and any requirements of Rights agreements, ii) to appoint McLeodUSA as its agent for any and all matters relating to the Rights if requested by McLeodUSA, iii) to notify McLeodUSA of any transfer and obtaining from any transferee undertakings to be bound by this Agreement and the terms and conditions of the Rights agreements, and iv) to be bound by the provisions of any underlying agreements McLeodUSA has with third parties.

1.2 **Survival of Restrictions.** Any restrictions contained herein regarding the manner in which IRU Grantee uses the IRU Fibers, including Section 1.3 below, shall continue to apply upon the early termination or expiration of this Agreement.

1.3 **Non-Interference.** IRU Grantee shall not use the IRU Fibers in a manner that physically or electronically interferes in any way with, or otherwise adversely affects the use of the McLeodUSA Network, Fibers, Cable, (or any equipment or element thereof), or of the fiber, cable or equipment of any person along the route Segments. McLeodUSA shall not use any other Fibers in the McLeodUSA Cable in a way that materially interferes with or adversely affects the use of the IRU Fibers.

**ARTICLE II**  
**EFFECTIVE DATE AND TERM**

2.1 **Effective Date and Term.** The IRU Grantee will be entitled to use the IRU Fibers upon the Effective Date. The IRU Term shall start upon the Effective Date and shall terminate on the date set forth in the applicable **Exhibit A**.

2.2 **Rights at End of Term.** At the end of the Term, or upon a termination of Rights pursuant to the terms and conditions of this Agreement, including but not limited to condemnation pursuant to Article XIV, the IRU granted hereunder shall immediately terminate and McLeodUSA shall immediately transfer title to the IRU Fibers, along with an undivided interest in the conduit containing the IRU Fibers (but not the other Associated Property), to IRU Grantee. At such time as McLeodUSA transfers title to the IRU Fibers, this Agreement shall terminate only as to the IRU granted hereunder, but shall otherwise remain in effect perpetually as to the Associated Property.

2.3 **Survival of Certain Obligations.** Expiration or termination of this Agreement shall not affect the rights or obligations of any party with respect to any payments of costs incurred prior to the date of termination or pursuant to Article IX (Taxes); Article X (Liability); Article XXII (Dispute Resolution) and Article XXVI (Rights).

**ARTICLE III**  
**ACCEPTANCE AND DOCUMENTATION**

3.1 **Acceptance/Test Results.** Within seven (7) days after receiving the test results, the IRU Grantee shall inspect the Work and its Fibers in accordance with the Testing and Acceptance Standards attached as Exhibit B. The IRU Grantee shall then provide the Acceptance Notice, or indicate its Fibers do not meet the specifications, on the form attached as Exhibits C. McLeodUSA will cooperate with the IRU Grantee to provide additional documentation that would reasonably allow the IRU Grantee to evaluate the acceptability of its Fibers. In addition, the IRU Grantee shall be allowed, subject to the protocols of the Rights agreements, to conduct its own tests, at the IRU Grantee's expense, to determine acceptability of its Fibers. Issuance of an Acceptance Notice or failure to issue a notice of defective Work during the time period indicated above shall constitute "Acceptance" of the Work by IRU Grantee, but such Acceptance shall not invalidate the Warranty described in this Agreement. McLeodUSA shall take required actions, including retesting Fibers, until all Fibers conform to the specifications in Exhibits B.

3.2 **Disputes.** Any disputes as to Acceptance of IRU Fibers shall be resolved in accordance with Article XXII of this Agreement.

3.4 **As-Builts.** McLeodUSA shall deliver to the IRU Grantee complete documentation regarding the as-built condition of the Cable. This documentation (hereinafter referred to as the "Documentation") shall consist of the following:

- (a) As-Built Drawings prepared in accordance with the specifications set forth in Exhibit D.

- (b) Names of all manufacturers whose optical fiber cable, associated splices and other equipment are used in installing and providing fiber optic network services.
- (c) Technical specifications of the optical fiber cable, associated splices and other equipment used in installing and providing fiber optic network services.
- (d) Summary of Rights and easement providers and recurring fee schedule.

3.5 The Documentation shall be supplied within ninety (90) days after Acceptance of each Segment.

**ARTICLE IV**  
**FRANCHISE/LICENSE/PERMIT FEES, AND CO-LOCATION AGREEMENTS**

4.1 **Collocation.** IRU Grantee shall be responsible for entering into any co-location agreements with Local Exchange Carriers and Interexchange Carriers to use its IRU Fibers. In the event that IRU Grantee wishes to co-locate in McLeodUSA facilities, the parties shall enter into a separate collocation agreement for each site in the form attached hereto as **Exhibit E** (a “**Collocation Agreement**”).

4.2 **Permits.** IRU Grantee shall be responsible for the appropriate government filings, licenses, or other requirements to place the IRU Fibers into operation, including, but not limited to any necessary municipal licenses and/or franchise agreements in addition to the Rights agreements.

4.3 **Rights Fees.** Pole attachment, permit, Rights, easement fees, or any other fees related to the construction of the McLeodUSA Network shall be the responsibility of and paid for by McLeodUSA, subject to the reimbursement and annual Rights cost sharing provisions of Article V of this Agreement.

**ARTICLE V**  
**PAYMENT**

5.1 **IRU Fee.** Upon Acceptance of the IRU Fibers and in consideration of the grant of the IRU by McLeodUSA to IRU Grantee, IRU Grantee shall pay McLeodUSA the balance of the IRU Fee set forth in **Exhibit A**. The IRU Fee shall be calculated in United States dollars per fiber per route mile for the applicable McLeodUSA Cable Segment in which the IRU Grantee receives an IRU hereunder. The Segments and actual route miles used to calculate the IRU Fee shall be set forth in **Exhibit A**. The IRU Fee shall be paid within thirty (30) days after Acceptance, unless otherwise specified in this Agreement. Payment provisions specified in **Exhibit A** shall supersede this provision.

5.2 **Method of Payment.** Unless otherwise specified, all payments to McLeodUSA set forth in this Agreement may be made using standard company business practices.

5.3 **Rights Fee.** IRU Grantee shall pay its Proportionate Share of Rights fees as reasonably required from time to time by property owners, government agencies, taxing authorities, or otherwise imposed by law or contract and which relate to the McLeodUSA Cable containing the IRU Fibers during the Term of this Agreement. To the extent possible, all such fees shall be established and agreed to in advance and listed in **Exhibit A**. Upon written request therefore, McLeodUSA shall provide a reasonable accounting for same.

5.4 **Annual Maintenance Fee.** Payment for Maintenance and Repairs performed pursuant to Article VI of this Agreement shall be made as follows:

(a) An annual maintenance fee for routine maintenance will be paid by IRU Grantee to McLeodUSA. After Acceptance, the IRU Grantee shall pay McLeodUSA an annual routine maintenance fee as set forth in the attached **Exhibit A** within thirty (30) days after receipt of invoice. The IRU Grantee shall pay McLeodUSA for routine maintenance of its IRU Fibers based upon Segment route miles. Routine maintenance fees shall be adjusted every five (5) years by using the Consumer Price Index (all city index), published by the Bureau of Labor Statistics, United States Department of Labor. The routine maintenance fee shall adjust by the same percentage of increase that the Consumer Price Index published on each fifth (5<sup>th</sup>) anniversary date has increased over the Consumer Price Index published on the Effective Date of this Agreement.

(b) Except as otherwise stated in **Exhibit A** or herein, the IRU Grantee shall pay its Proportionate Share for emergency maintenance, payable within thirty (30) days after IRU Grantee's receipt of invoice.

5.5 **Splicing Fee.** The cost for McLeodUSA to splice and test the IRU Fibers pursuant to Article VII hereunder shall be billed to and paid by the IRU Grantee within thirty (30) days after invoice.

## **ARTICLE VI MAINTENANCE AND REPAIR**

6.1 **Procedures.** Maintenance and Repair shall be performed in accordance with the Maintenance and Repair Procedures and Time Frames set forth on the attached **Exhibit F** incorporated by reference herein. McLeodUSA warrants that the IRU Fiber will be maintained in accordance with prevailing telecommunications industry standards, and with the Routine Maintenance Standards set forth in the attached **Exhibit G** incorporated by reference herein.

6.2 **Routine and Emergency Maintenance.** All routine maintenance and repair functions and emergency maintenance and repair functions, including “one-call” responses, cable locate services, and necessary relocation of the McLeodUSA Cable containing the IRU Fibers, shall be performed by McLeodUSA or its designee for a period coterminous with the term of this Agreement.

(a) **Emergency Maintenance.** In accordance with the notice and other requirements set forth in the Maintenance and Repair Procedures and Time Frames, McLeodUSA shall respond to any failure, interruption or impairment in the operation of the IRU Fibers within four (4) hours after receiving a report of any such failure, interruption or impairment. McLeodUSA shall use its reasonable efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of the IRU Fibers within eight (8) hours.

(b) **Routine Maintenance.** McLeodUSA shall schedule and perform periodic maintenance and repair checks and services as set forth in the Routine Maintenance Standards. Additional maintenance can be performed from time to time on the IRU Fibers at McLeodUSA reasonable discretion, or upon IRU Grantee’s reasonable request with reasonable advance notice to McLeodUSA.

6.3 **Notice of Repair.** McLeodUSA shall provide reasonable advance notice to the IRU Grantee of maintenance or repairs that may affect the IRU Fibers. IRU Grantee shall have the right to have a representative present during any maintenance affecting the IRU Fibers.

6.4 **Notice of PSWP.** McLeodUSA shall provide reasonable advance notice for any PSWP affecting the McLeodUSA Network.

6.5 **Obsolescence.** If the grantees of at least fifty percent (50%) of the fibers on the McLeodUSA Network containing the IRU Fibers deem the fiber to be functionally obsolete, then McLeodUSA may offer to IRU Grantee, on not less than one hundred twenty (120) days’ written notice, to substitute for the IRU Fibers on the McLeodUSA Network an equal number of alternative fibers along the same or an alternative route; provided that in any such event, such substitution (a) shall be without unreasonable interruption of service and use by the applicable party; (b) shall be constructed and tested in accordance with the applicable specifications; and (c) shall not adversely affect the use, operation or performance of the party’s network or business. IRU Grantee shall have the right to either accept the proposed substitute fibers or retain the IRU Fibers as initially configured pursuant to this Agreement, provided, however, that if IRU Grantee elects to retain the IRU Fibers as initially configured, McLeodUSA and IRU Grantee shall negotiate a new arrangement for the payment of the costs for maintaining such IRU Fibers, the costs associated with the Rights and all other costs of McLeodUSA relating to such IRU Fibers for the remainder of the Term. McLeodUSA shall provide IRU Grantee with such information as IRU Grantee may reasonably require in order to propose a new arrangement for payment of such costs prior to electing to accept or reject the proposed substitute fibers. In the event of a

fiber substitution hereunder, all costs of such substitution, including, without limitation, all disconnect and reconnect costs, fees and expenses, shall be shared by the parties in the following order and amounts: (i) if the affected portion of the McLeodUSA Network includes any conduit other than the conduit housing the IRU Fibers, the total costs shall be allocated equally among all of the affected conduits; and (ii) the costs related to the conduit carrying the IRU Fibers plus the costs specifically related to the fibers within such conduit shall be allocated between IRU Grantee and McLeodUSA and other users based on IRU Grantee's Proportionate Share. The foregoing notwithstanding, as a condition to paying its share of such fiber substitution costs, IRU Grantee shall be entitled to negotiate an extension to the Term of this Agreement for the reasonably anticipated useful life of the substitute fibers. Except as may be agreed by the parties, in the event of a substitution of fibers, the Term of the IRU shall not exceed twenty (20) years following the Effective Date.

6.6 In the event Owner, or others acting on the Owner's behalf, at any time during the term of this Agreement, or any extension thereof, discontinues maintenance and/or repair of the Owner's Cable, the IRU Grantee, or others acting on the IRU Grantee's behalf, shall have the right, but not the obligation, to thereafter provide for the maintenance and repair of IRU Fibers in the Owner's Cable at the IRU Grantee's sole cost and expense. If the Owner discontinues maintenance, the IRU Grantee shall not pay the annual routine maintenance fees in Subarticle 5.4(a) of this Agreement, and shall be entitled to a pro-rata refund of any pre-paid maintenance fees within thirty (30) days after discontinuance of maintenance. The IRU Grantee shall use contractors pre-approved by the Owner, which approval shall not be unreasonably withheld or delayed, and shall be deemed approved after the expiration of a thirty (30) day notice period. Any maintenance and/or repair discontinuance shall be upon no less than six (6) months' prior written notice by the Owner to IRU Grantee. In the event of such discontinuance, Owner shall obtain for IRU Grantee, or others acting in IRU Grantee's behalf, adequate access to the easements or Rights on or within which the IRU Fibers are located, for the purpose of permitting the IRU Grantee, or others acting on the IRU Grantee's behalf, to undertake maintenance and repair of the IRU Fibers.

## **ARTICLE VII**

### **SPLICING**

7.1 **McLeodUSA to Perform.** The IRU Fibers may be physically spliced into the McLeodUSA Cable. In order to maintain the integrity of the McLeodUSA Cable and Network, McLeodUSA, or a contractor operating under its direction, shall perform all splicing performed on the McLeodUSA Cable.

7.2 **Future Work.** For future expansion at existing Access Points, or at splice points that are not access points if requested (and if possible), McLeodUSA will perform the necessary splicing upon written or email request by IRU Grantee at its cost. Normal requests for splicing shall be submitted at least ten (10) days prior to the requested splicing date, and expedited requests shall



be submitted at least seventy-two (72) hours prior to the requested splicing date. IRU Grantee will pay an expedite fee for each expedited splicing request in the amount specified in **Exhibit A**. McLeodUSA shall obtain any and all permits necessary for such splicing. IRU Grantee agrees that it will not perform any splicing or interfere in any manner with the McLeodUSA Cable at any time for any reason. The cost of splicing Fibers into McLeodUSA Cable will be borne at all times by the IRU Grantee in accordance with Article V herein.

7.3 All splicing will be performed by the fusion splicing method or by any other method that is mutually agreed to in writing by the parties.

**ARTICLE VIII**  
**REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS**

8.1 **Representations and Warranties.** Each party represents and warrants to the other with respect to the rights and obligations contained herein:

- (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (b) this Agreement constitutes a legal, valid, binding obligation enforceable against such party in accordance with its terms;
- (c) 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 or body.

8.2 **Limited Warranty and Disclaimer of Implied Warranties.** MCLEODUSA WARRANTS THAT THE MCLEODUSA CABLE AND FIBERS SHALL HAVE BEEN CONSTRUCTED IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS AND SHALL BE FREE OF DEFECTS IN MATERIALS AND WORKMANSHIP FOR A PERIOD OF ONE (1) YEAR FROM ACCEPTANCE THEREOF BY IRU GRANTEE. MCLEODUSA SHALL USE REASONABLE EFFORTS TO PROMPTLY REPAIR OR REPLACE ANY DEFECTIVE WORK. MCLEODUSA MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MCLEODUSA CABLE OR THE IRU FIBERS. THE FOREGOING WARRANTY CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE MCLEODUSA CABLE AND IRU FIBERS AND THE TIMELY REPAIR AND MAINTENANCE OF THE IRU FIBERS PURSUANT TO THIS AGREEMENT SHALL BE THE EXCLUSIVE REMEDY OF THE IRU GRANTEE WITH REGARD TO THERETO. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF

**MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MCLEODUSA SHALL IN NO EVENT BE LIABLE TO THE IRU GRANTEE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER FOR ANY REASON HEREUNDER.**

8.3 IRU Grantee's sole and exclusive remedy and sole and exclusive maximum liability of McLeodUSA under the warranties contained in this Article shall be, at the sole option of McLeodUSA, to repair (with new or functionally operative parts) or replace any defective portion of its Cable of which McLeodUSA receives notice during the warranty period, provided that McLeodUSA is promptly notified in writing upon discovery by IRU Grantee that any portion of the IRU Grantee's Fibers has failed to conform with the terms of this Agreement, such writing to include an explanation of alleged defects.

8.4 In addition to the foregoing warranties, McLeodUSA hereby assigns to the IRU Grantee, and the IRU Grantee shall have the benefit of, any and all contractors' and suppliers' warranties with respect to the material in the Cable. The parties agree to cooperate with each other in the event that they have a similar warranty claim against contractor or supplier arising out of this Agreement.

8.5 These warranties do not extend to defects caused by acts of God, accident, fire or other hazard, factors outside the reasonable control of McLeodUSA, nor resulting from IRU Grantee's, its designees or third parties misuse, neglect, alterations, storage, attempts to repair, or use of other supplies not meeting specifications.

## **ARTICLE IX**

### **TAXES**

9.1 **Definition.** As used in this Article IX, "Tax" or "Taxes" shall mean any and all taxes, fees, assessments, charges, levies, together with any penalties, fines, or interest thereon, (hereinafter collectively referred to as "**Taxes**") imposed by any authority having the power to tax, including any city, county, state, or federal government or quasi-governmental agency or taxing authority.

9.2 **Responsibility.** The IRU Grantee shall be responsible for any and all sales, use, income, gross receipts or other Tax assessed on the basis of receipt of the IRU Fibers or revenues received by IRU Grantee pursuant to its use of its IRU Fibers. IRU Grantee shall be solely responsible for any real or personal property Taxes relating in any way to its IRU Fibers. IRU Grantee shall reimburse McLeodUSA for IRU Grantee's Proportionate Share of any Taxes if McLeodUSA is assessed and pays any such Tax. McLeodUSA and IRU Grantee agree to cooperate fully in the preparation of any returns or reports relating to the Taxes or in the event the other contests any Tax. McLeodUSA and IRU Grantee further acknowledge and agree that the provisions of this Article are intended to allocate the Taxes on procedures and methods of computation that are in effect on the date of this Agreement. Material changes in such

procedures and methods could significantly alter the fundamental economic assumptions of the parties underlying this Agreement. Accordingly, the parties agree that, if such procedures or methods of computation materially change, the parties will negotiate in good faith an amendment to this Article to preserve, to the extent reasonably practicable, the economic intent and effect of this Article.

9.3 **Right to Contest.** Either party may in good faith, contest the imposition of any Tax imposed against them in accordance with this Agreement; provided, however, that the contesting party shall take all steps reasonably necessary to ensure that the non-contesting party's use of its fibers shall not be impaired, including, but not limited to, depositing the entire contested amount with the taxing authority.

9.4 **Indemnity.** All payments made by IRU Grantee 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.

## **ARTICLE X** **LIABILITY**

10.1 **Waiver.** Neither Party shall not be liable to the other Party for any indirect, incidental, special, punitive or consequential damages (including, but not limited to, any claim from any customer for loss of services) arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of, its directors, officers, employees, servants, contractors and/or agents. Each Party shall include in any agreement with any third party relating to the use of the IRU Fiber, a waiver by such third party of any claim for indirect, incidental, special, punitive or consequential damages (including, but not limited to, any claim from any client or customer for loss of services) arising out of or as a result of any act or omission by each Party hereto, its directors, officers, employees, servants, contractors and/or agents. Notwithstanding any other provisions of this Agreement, neither Party shall be liable for any damages (including without limitation, damages for harm to business, lost revenues, lost savings, or lost profits) claimed by the other Party or its end user customers or those to whom a Party has entered into leases with or to whom it has granted IRUs in accordance with Section XXV.

10.2 **Indemnity.** Each Party hereby agrees to indemnify, defend, protect and save the other Party (including its directors, officers, agents, representatives and employees) harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any property or facilities arising out of or resulting in any way from the acts or omissions to act, negligence or willful misconduct of the Party, its directors, officers, employees, servants, contractors and/or agents in connection with the exercise of its rights and obligations under the terms of this Agreement.

10.3 **Actions Against Third Parties.** Nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of such third party as such acts or omissions may affect the operation or use of the McLeodUSA Cable, or any IRU Fibers; and each party hereto shall assign such rights or claims, execute such documents and take whatever actions as may be reasonable and necessary to enable the injured party to pursue any such action against such third party.

**ARTICLE XI**  
**FORCE MAJEURE**

The obligations of the parties (except for the payment of money hereunder) are subject to force majeure and neither party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefor; lack of transportation; legal inability to access property; acts of any governmental authority; government codes, ordinances, laws, rules and regulations or restrictions; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either party hereto. The excused party shall use its best efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. Notification of any such event or cause shall in all cases be given by the excused party to the other and, when possible, of the estimated duration.

**ARTICLE XII**  
**RELOCATION OF CABLE**

12.1 **Relocation.** If after the Effective Date, McLeodUSA is required to, or reasonably determines that it is required to, relocate or replace its Cable or any of the appurtenant facilities used or required in providing the IRU, (whether by act of nature, government, or grantor of any Right) and the gross cost (excluding reimbursements) of the relocation or replacement exceeds \$5,000 per occurrence, then, so long as such work is not necessitated by a breach of the McLeodUSA obligations hereunder, the IRU Grantee shall reimburse McLeodUSA for the IRU Grantee's Proportionate Share of such costs, including, without limitation, fiber acquisition, splicing, and testing, but only to the extent McLeodUSA has not been reimbursed by a third party including but not limited to an obligated insurance carrier. McLeodUSA shall deliver to the IRU Grantee updated as-built drawings and Documentation with respect to any relocated portion of the Cable no later than ninety (90) days following such relocation. Any such relocation must be performed in a manner so as not to adversely affect the operations, performance or connection points with the network of the IRU Grantee or the end points of the applicable Cable.

12.2 **Notice of Relocation.** McLeodUSA shall give the IRU Grantee sixty (60) days prior notice of any such relocation, if possible, and shall have the obligation to proceed with such relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to use for such relocation. Acceptance of relocated IRU Fibers shall be in accordance with Article III of this Agreement.

12.3 **Right to Review.** McLeodUSA shall have the right to determine the timing, means, method and extent of any relocation hereunder; provided however, that the IRU Grantee shall have the right to review and approve the relocation plans of McLeodUSA not less than fourteen (14) days prior to any relocation and shall have the right to have a representative present at the time McLeodUSA relocates the Cable that contains the IRU Fibers.

### **ARTICLE XIII INSURANCE**

13.1 **IRU Grantee's Insurance.** IRU Grantee shall maintain insurance, for the duration of this Agreement, as follows:

(a) Workers' Compensation Insurance complying with the law of the state or states in which the services are to be provided and Employers Liability Insurance with the limits of \$500,000 for each accident, including occupational disease coverage with limits of \$500,000 for each employee, with a \$500,000 policy limit.

(b) Comprehensive General Liability Insurance, including premises, operations, products and completed operations, contractual, broad form property damage, independent contractors and personal injury with the following minimum limits: Personal Injury - \$5,000,000 each person and \$5,000,000 each accident, and Property Damage - \$1,000,000 each accident.

(c) Railroad Protective Liability Coverage required for any work within fifty (50) feet of a railroad Rights: \$2,000,000 or any other amounts required by the right-of-way providers.

(d) Automobile Liability Insurance for owned, hired and non-owned autos: \$2,000,000 combined single limit bodily injury/property damage.

Insurance amounts contained in this section shall be increased by using the Consumer Price Index ten (10) years based upon the increase in the Consumer's Price Index.

13.2 **Certificates.** Failure of McLeodUSA to enforce the minimum insurance requirements listed above shall not relieve IRU Grantee of the responsibility for maintaining coverages in the aforesaid amounts. IRU Grantee shall furnish to McLeodUSA certificates of insurance reflecting policies carried and limits of coverage as required above, which shall state that thirty (30) days

notice shall be given prior to cancellation, non-renewal or any material change in any such insurance coverage. The insurance for shall name **McLeodUSA Incorporated, McLeodUSA Telecommunications Services, Inc. and McLeodUSA Network Services, Inc.**, as additional insureds.

#### **ARTICLE XIV CONDEMNATION**

14.1 **Awards.** In the event any portion of the McLeodUSA Cable and/or the IRU Fiber, or the Rights in or upon which it has been installed, become the subject of a condemnation proceeding by any governmental agency or other party cloaked with the power of eminent domain for public purpose or use, then and in such event, it is agreed that IRU Grantee's interest (being its Proportionate Share of the Fiber and Associated Equipment) shall be severed from the McLeodUSA interest in such proceeding. IRU Grantee shall be entitled to independently pursue an award for its interest in such proceedings and the parties hereto agree to have any such condemnation awards specifically allocated between IRU Grantee's interest and the McLeodUSA's interest. In the event IRU Grantee's interest in such proceeding cannot be severed from the McLeodUSA interest, IRU Grantee shall be entitled to receive its Proportionate Share of the award for its interest in the IRU Fibers and occupancy of the Rights.

14.2 **Notice of Taking.** Upon its receipt of a formal notice of condemnation or taking, McLeodUSA shall notify IRU Grantee immediately of such condemnation proceeding filed against the McLeodUSA Cable, including the IRU Fibers, or the Rights in or upon which the IRU Fibers have been installed. McLeodUSA shall also notify IRU Grantee as soon as practicable if it becomes aware of circumstances out of which a condemnation or taking is likely to arise.

14.3 It is expressly recognized and understood by the IRU Grantee that relocation costs resulting from any such condemnation proceeding may not be fully reimbursed by the condemning authority and, if McLeodUSA relocates the IRU Fibers, IRU Grantee shall pay its Proportionate Share of all costs associated with the relocation of the IRU Fibers in excess of such costs which were reimbursed by the condemning authority. Notwithstanding, if the IRU Fibers are relocated by McLeodUSA, IRU Grantee shall pay to McLeodUSA all condemnation awards given to IRU Grantee, if any, that relate to the relocation of the IRU Fibers.

#### **ARTICLE XV CONFIDENTIALITY**

15.1 **Generally.** McLeodUSA and IRU Grantee shall ensure that any and all information and documents obtained from the other party during the term of this Agreement, and identified as being confidential information will be held in strict confidence and will not disclosed or be used for any purpose other than a party's performance required by this Agreement, and except for disclosures to Affiliates, directors, officers, employees, advisors and agents with a bona fide need to

know any such information solely for the purpose of analyzing, investigating, or evaluating issues arising under this Agreement. The term "Affiliate" shall mean any person or entity controlling, controlled by, or under common control with a party.

15.2 **Return of Information.** All documents, data, or information furnished by McLeodUSA or IRU Grantee is the sole property of that party. Upon the expiration of this Agreement and any extensions thereof, those documents, data, or information shall be returned to its owner if readily available.

15.3 **Press Releases/Use of Name.** Neither McLeodUSA nor IRU Grantee may make any news release, public announcement, denial or confirmation concerning all or any part of this Agreement or use the other's name in sales or advertising materials, or in any manner advertise or publish the fact that the companies have entered into this Agreement, or disclose any of the details of this Agreement to any third party, including the press, without the prior written consent of the other party, except such disclosures required by law, or the rules and regulations of the relevant government agencies.

## **ARTICLE XVI** **ABANDONMENT**

Should the IRU Grantee decide to abandon all or part of its IRU Fibers, it may do so by informing McLeodUSA in writing. IRU Grantee shall remove its equipment and electronics within thirty (30) days of such notification of abandonment by IRU Grantee, failing which McLeodUSA shall remove same at IRU Grantee's cost payable within thirty (30) days of receipt of an invoice. At the time of abandonment, the IRU Grantee shall have no further rights with respect to the abandoned IRU Fibers. Such abandonment shall not reduce or otherwise affect the IRU Grantee's obligations hereunder to the extent required herein.

## **ARTICLE XVII** **DEFAULT**

17.1 **Notice and Cure.** Neither party shall be in default under this Agreement unless and until the other party shall have given the defaulting party written notice of such default and the defaulting party shall have failed to cure the default within thirty (30) days after written receipt of such notice; provided, however, that where a default cannot be reasonably cured within the thirty (30) day period, if the defaulting party shall promptly proceed to cure the default with due diligence, the time for curing the default shall be extended for a period of up to ninety (90) days from the date of receipt of the default notice.

17.2 **Failure to Cure.** Upon the failure by the defaulting party to timely cure any default after notice thereof from the non-defaulting party, the non-defaulting party may take any action it determines, in its discretion, to be necessary to correct the default, and/or pursue any legal remedies it may have under applicable law or principles of equity relating to the breach.

17.3 **Equitable Relief.** The parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party shall be entitled to injunctive or similar preliminary relief to prevent or cure breaches of the provisions of this Agreement by the other and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they may be entitled by law or equity.

17.4 **Additional Events of Default.** An event of default shall also be deemed to have occurred if a party becomes insolvent, or institutes or has instituted against it bankruptcy proceedings which are not dismissed within ninety (90) days of filing, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, and the non-defaulting party may immediately terminate this Agreement.

## **ARTICLE XVIII** **NOTICES**

18.1 **Notice Address.** Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to McLeodUSA:

McLeodUSA Telecommunications Services, Inc.  
McLeodUSA Technology Park  
Attention: Law Group  
6400 C Street SW  
P.O. Box 3177  
Cedar Rapids, Iowa 52406-3177

If to IRU Grantee:

Norlight Telecommunications, Inc.  
Attn: Senior Vice President  
275 North Corporate Drive  
Brookfield, WI 53045-5818

18.2 **Manner of Giving Notice.** Unless otherwise provided herein, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service which provides acknowledgement of delivery and shall be deemed delivered: if sent by U.S. Mail, five (5) days after deposit, or if sent by commercial overnight delivery service, upon verification of receipt.



**ARTICLE XIX**  
**ASSIGNMENT, SUCCESSION**

19.1 Except as provided in this Article, IRU Grantee shall not assign this Agreement to any other party without the prior written consent of McLeodUSA, provided, however, that without such consent, IRU Grantee shall have the right to assign, sublet or otherwise transfer this Agreement, in whole or in part, to any parent, subsidiary or affiliate of IRU Grantee or to any person, firm or corporation which shall control, be under the control of or be under common control with IRU Grantee, or any corporation or entity into which IRU Grantee, or a subsidiary of IRU Grantee, may be merged or consolidated or which purchases all or substantially all of the assets of IRU Grantee, or a subsidiary of IRU Grantee.

19.2 Except as provided in this Article, McLeodUSA shall not assign this Agreement to any other party without the prior written consent of IRU Grantee, provided, however, that without such consent, McLeodUSA shall have the right to assign, sublet or otherwise transfer this Agreement, in whole or in part, to any parent, subsidiary or affiliate of McLeodUSA or to any person, firm or corporation which shall control, be under the control of or be under common control with McLeodUSA, or any corporation or entity into which McLeodUSA, or a subsidiary of McLeodUSA, may be merged or consolidated or which purchases all or substantially all of the assets of McLeodUSA, or a subsidiary of McLeodUSA.

19.3 Subject to the provisions of this Article, each of the parties' respective rights and obligations hereunder, 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 During the term of this Agreement, the IRU Grantee shall have the right, without the prior written consent of McLeodUSA, to assign, lease, grant an IRU with respect to, or otherwise in any manner transfer or make available in any manner to any third party the right to use, or use of or access in any manner to any of the IRU Grantee's rights in the whole and discrete IRU Fibers which are part of the McLeodUSA system. Promptly following any such subsequent IRU grant, the IRU Grantee shall give McLeodUSA written notice identifying the transferee.

**ARTICLE XX**  
**GOVERNING LAW**

This Agreement shall be interpreted and construed in accordance with the laws of the state in which the Cable is located, without regard to its conflict of laws principles.

**ARTICLE XXI**  
**NOT A PARTNERSHIP**

The parties agree that this Agreement does not create a partnership between, or a joint venture of McLeodUSA and IRU Grantee.

**ARTICLE XXII**  
**DISPUTE RESOLUTION**

22.1 It is the intent of IRU Grantee and McLeodUSA that any disputes which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties hereto agree to resolve such disputes in accordance with the provisions of this Article. The obligation herein to arbitrate shall not be binding upon any party with respect to requests for preliminary injunctions, temporary restraining orders, specific performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.

22.2 McLeodUSA and IRU Grantee shall each designate, by separate letter, representatives as points of contact and decision making with respect to the obligations and rights of the parties, said letters to be furnished by each party to the other within thirty (30) days from the date of this Agreement. Any disputed issues arising during the term of this Agreement shall in all instances be initially referred to the parties' designated representatives. The parties' designated representatives shall render a mutually agreeable resolution of the disputed issue, in writing, within seventy-two (72) hours of such referral. Either party may modify the designated representative upon written notice to the other party.

22.3 Any claims or disputes arising under the terms and provisions of this Agreement, or any claims or disputes which the parties' representatives are unable to resolve within the seventy-two (72) hour time period shall continue to be resolved between the parties' representatives if mutually agreeable, or may be presented by the claimant in writing to the other party within thirty (30) days after the circumstances which gave rise to the claim or dispute took place or become known to the claimant, or within thirty (30) days after the parties' representatives fail to achieve resolution, whichever is later. The written notice shall contain a concise statement of the claim or issue in dispute, together with relevant facts and data to support the claim.

22.4 Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator.

The arbitrator(s) shall not have the authority, power or right to alter, change, amend, modify, add or subtract from any provision of this Agreement except pursuant to Article 26.3 or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under the prevailing arbitration law.

26.5 During the continuance of any arbitration proceeding, each party shall continue to perform their respective obligations under this Agreement.

### **ARTICLE XXIII ACKNOWLEDGEMENT**

23.1 IRU Grantee agrees and acknowledges that it has no right to use any of the fibers, other than the IRU Fibers, included in the McLeodUSA Cable or otherwise incorporated in the McLeodUSA Network and that IRU Grantee shall keep any and all of the McLeodUSA Network, including the IRU Fibers, free from any liens, rights or claims of any third parties whatsoever.

### **ARTICLE XXIV OPERATIONS**

24.1 **Responsibility for Operations.** Subject to the provisions of this Agreement, each party shall have responsibility for determining any network and service configurations or designs, routing configurations, rearrangement or consolidation of channels or circuits and all related function with regard to the use of that party's Fiber.

24.2 **Responsibility for Optronics.** IRU Grantee acknowledges and agrees that McLeodUSA is not supplying nor is McLeodUSA obligated to supply to IRU Grantee any optronics or electronics or optical or electrical equipment, all of which are the sole responsibility of IRU Grantee; nor is McLeodUSA responsible for performing any work other than as specified in this Agreement or providing other facilities, including, without limitation, generators, batteries, air conditioners, fire protection, and monitoring and testing equipment.

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**ARTICLE XXV**  
**RIGHTS**

25.1 **Continuation.** As of the date hereof and to the best of its knowledge, McLeodUSA has, with respect to each IRU Segment to be delivered hereunder, obtained the Rights that were necessary for the construction and use of the McLeodUSA Cable for the Term specified in **Exhibit A**. It is expressly understood that McLeodUSA and IRU Grantee obligations under this Agreement are conditioned upon and shall in all respects be subject to the continuation of such Rights. McLeodUSA shall use commercially reasonable efforts to cause such Rights to remain effective through the Term of this Agreement. In the event McLeodUSA is unable to resolve any issue with respect to Rights in a manner reasonably acceptable to the IRU Grantee, the IRU Grantee may, after providing McLeodUSA thirty (30) days prior written notice and if allowed under any McLeodUSA third party agreement, attempt to resolve the issue directly with the grantor of such Rights; provided however, that it is understood that the IRU is subject to the terms of the Rights, and subject to the terms under which the right of way is owned or held by the grantor of the 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 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 the McLeodUSA to use its rights granted under the Rights. The rights granted herein are expressly made subject to each and every limitation, restriction or reservation affecting the Underlying Rights. Nothing herein shall be construed as to be a representation, warranty or covenant of McLeodUSA's right, title or interest with respect to the right of way or the Underlying Rights.

25.2 **Right to Contest.** McLeodUSA shall have the right to contest any legal or equitable challenge relating to the Rights. If IRU Grantee agrees in writing to join McLeodUSA in any such contest the out-of-pocket costs and expenses (including, without limitation, reasonable attorney's fees and expenses) incurred by McLeodUSA in any such contest shall be shared by IRU Grantee and McLeodUSA by their Proportionate Shares.

25.4 **Expiration or Termination.** Upon the expiration or termination of any Right before the end of the Term that is necessary in order to grant, continue or maintain an IRU granted hereunder in accordance with the terms and conditions hereof, the Term of the IRU hereunder shall automatically expire upon such expiration or termination of the Right. Notwithstanding the foregoing, in the event McLeodUSA elects to relocate the McLeodUSA Cable, this Agreement shall remain in full force and effect and the IRU Grantee shall pay McLeodUSA for IRU

Grantee's Proportionate Share of the reasonable costs and expenses incurred as a result of such relocation pursuant to Article XII herein. If the relocation is necessitated by the fault or negligence of McLeodUSA, then IRU Grantee will not be required to pay its Proportionate Share of the reasonable costs and expenses incurred as a result of such relocation pursuant to Article XII herein. McLeodUSA shall give IRU Grantee at least ninety (90) days prior notice of any pending expiration.

**ARTICLE XXVI**  
**MISCELLANEOUS**

26.1 **Headings.** The headings of the Articles in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions or conditions of this Agreement.

26.2 **Construction.** In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

26.3 **Severability.** No provision of this Agreement shall be interpreted to require any unlawful action by either party. If any Article or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that Article or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such Article or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement section or clause that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

26.4 **Entire Agreement; Amendment.** This Agreement, and any Exhibits referenced and attached hereto or to be attached hereto, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior negotiations, understandings and agreements with respect hereto, whether oral or written. This Agreement may be amended only by a written instrument executed by the party against whom enforcement of the modification is sought.

26.5 **Non-Waiver.** No failure to exercise and no delay in exercising, on the part of either party hereto, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both parties.

26.6 **Conflicts.** In the event of a conflict or difference between the provisions of this Agreement and those of **Exhibit A**, the provisions of **Exhibit A** shall prevail. If there is a conflict or difference between this Agreement and other Exhibits, this Agreement shall prevail.

26.7 **Performance.** All actions, activities, consents, approvals and other undertakings of the parties in this Agreement shall be performed in a reasonable and timely manner.

26.8 **Well Known Meanings.** Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

26.9 **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

26.10 **Drafting.** This Agreement has been fully negotiated between and jointly drafted by the parties.

26.11 **Claims.** Each action or claim against any party arising under or relating to this Agreement shall be made only against such party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer, or director of the other party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Subarticle and shall be entitled to enforce the obligations of this Subarticle.

**Norlight Telecommunications, Inc.**

By: James J. Ditter

Date: 9/30/01

Title: President

**McLeodUSA Telecommunications Services, Inc.**

By: /s/

Date: 9/30/01

Title: President and CEO

**EXHIBITS (all incorporated by reference in this Agreement):**

- A: IRU Fiber Details, Route Maps, and Material Terms.
- B: Splicing, Testing and Acceptance Standards
- C: Acceptance/Rejection Notice
- D: As-Built Drawing Specifications
- E: Collocation Agreement
- F: Maintenance and Repair Procedures and Time Frames
- G: Routine Maintenance and Repair Standards



**Exhibit A.1**  
**McLeodUSA/Norlight**  
**Indefeasible Right of Use Agreement dated September 28, 2001**

**Description of Cable Route Segment:** McLeodUSA shall provide \*\*\* fibers in the McLeodUSA cable from the appropriate splice point near \*\*\* (that will provide contiguous fiber path with the fiber IRU granted by \*\*\* to Norlight for fibers in the McLeodUSA cable), to the McLeodUSA POP in \*\*\*. McLeodUSA will make available an additional \*\*\* fibers for use by Norlight for System Maintenance.

From	To	Fiber Count
***	***	*** fibers
***	***	*** fibers
***	***	*** fibers
***	***	*** fibers
***	***	*** fibers

McLeodUSA will make available \*\*\* spare maintenance fibers as needed from time to time, to be used by Norlight for maintenance, system upgrade or emergency maintenance. Said maintenance to be coordinated with McLeodUSA. Those maintenance fibers will remain the property of McLeodUSA.

<b><u>Miles / Footage:</u></b>	*** miles
<b><u>Estimated Completion / Delivery Date:</u></b>	September 28, 2001
<b><u>Constructing Party and IRU Grantor:</u></b>	McLeodUSA
<b><u>IRU Grantee:</u></b>	Norlight
<b><u>IRU Term:</u></b>	20 Years
<b><u>IRU Fee:</u></b>	\$***

A deposit of at least \*\*\*% of the IRU Fee will be paid by IRU Grantee upon execution of the Agreement.

**Maintenance by:** McLeodUSA

Annual Maintenance fee: Norlight to pay McLeodUSA \$\*\*\*/mile/year routine maintenance fee per the Agreement. Due to the \*\*\*, Norlight shall not pay any Proportionate Share emergency maintenance.

**Other:**

Norlight shall be deemed to have provided notice of Acceptance of the IRU Fibers identified in this Exhibit upon execution of this Agreement.

**Attachment:** McLeod Fiber Route Detail

**Exhibit A.1, Map Attachment  
McLeodUSA Route from \*\*\***

\*\*\*

**Exhibit A.2**  
**McLeodUSA/Norlight**  
**Indefeasible Right of Use Agreement dated September 28, 2001**

**Description of Cable Route Segment: See attached: McLeodUSA shall provide \*\*\* fibers in the McLeodUSA cable from the McLeodUSA \*\*\*. McLeodUSA will make available an additional \*\*\* fibers for use by Norlight for System Maintenance.**

From	To	Fiber Count
***	***	*** fibers
***	***	*** fibers
***	***	*** fibers
***	***	*** fibers
***	***	*** fibers

McLeodUSA will make available \*\*\* spare maintenance fibers as needed from time to time, to be used by Norlight for maintenance, system upgrade or emergency maintenance. Said maintenance to be coordinated with McLeodUSA. Those maintenance fibers will remain the property of McLeodUSA.

<b><u>Miles / Footage:</u></b>	*** miles
<b><u>Estimated Completion / Delivery Date:</u></b>	September 28, 2001
<b><u>Constructing Party and IRU Grantor:</u></b>	McLeodUSA
<b><u>IRU Grantee:</u></b>	Norlight
<b><u>IRU Term:</u></b>	20 Years
<b><u>IRU Fee:</u></b>	\$***

A deposit of at least \*\*\*% of the IRU Fee will be paid by IRU Grantee upon execution of the Agreement.

**Maintenanceby:** McLeodUSA

Annual Maintenance fee: Norlight to pay McLeodUSA \$\*\*\*/mile/year routine maintenance fee per the Agreement. Due to the \*\*\*, Norlight shall not pay any Proportionate Share for emergency maintenance.

**Other:**

Norlight shall be deemed to have provided notice of Acceptance of the IRU Fibers identified in this Exhibit upon execution of this Agreement.

**Attachment:** McLeod Fiber Route Detail

**Exhibit A.2, Map Attachment  
McLeodUSA Route from \*\*\***

\*\*\*

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**FIRST AMENDMENT  
TO INDEFEASIBLE RIGHT OF USE AGREEMENT  
BETWEEN McLeodUSA and Norlight**

This First Amendment ("First Amendment") is between McLeodUSA Telecommunications Services, Inc., ("McLeodUSA") and Norlight Telecommunications, Inc. ("Norlight") effective as of November 1st, 2001.

- A. Effective September 30th, 2001, McLeodUSA and Norlight entered into that certain IRU Agreement (the "Agreement") under the terms of which McLeodUSA granted to Norlight the right to use certain optical fibers in the McLeodUSA network;
- B. The parties now desire to amend the Agreement in certain particulars, to adjust the annual route maintenance payment from \$\*\*\* per route mile to \$\*\*\* per route mile.

In consideration of the mutual promises of the parties in this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties agree as follows:

- 1. Any term used in this First Amendment shall have the same definition as is provided in the Agreement, unless otherwise modified in this Section.
- 2. Exhibit A.1 and A.2 to the Agreement shall be amended as follows:  
"Norlight agrees to pay McLeodUSA \$\*\*\* per mile per year routine maintenance fee per Article 8.2(d) of the Agreement. Any Relocation expense will be paid on a Proportionate Share. Due to the \*\*\*, Norlight shall not pay any Proportionate Share of emergency maintenance per Article 9.2(a)."
- 3. This First Amendment is incorporated into the Agreement and supersedes any terms or conditions with which it conflicts. In all other respects, except as amended previously, the Agreement remains in full force and effect and the obligations of Norlight and McLeodUSA are governed by the Terms and Conditions therein.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date and year first written above.

**Norlight Telecommunications, Inc.**

**McLeodUSA Telecommunications Services, Inc.**

By: /s/ Robert E. Rogers

By: /s/

Title: Senior Vice President

Title: Group Vice President and Secretary

Date: 11/12/01

Date: 11/1/01

**FIRST AMENDMENT TO INDEFEASIBLE  
RIGHT OF USE AGREEMENT**

**THIS AMENDMENT TO IRU AGREEMENT** (“Amendment”) is made this 24th day of November, 2003, by and between McLeodUSA Telecommunications Services, Inc. an Iowa corporation (“**McLeodUSA**”) and Norlight Telecommunications, Inc. a Wisconsin corporation (“**IRU Grantee**”), and amends that certain IRU Agreement between the parties dated September, 28, 2001 (the “**Agreement**”).

**RECITALS:**

**WHEREAS**, Pursuant to Article I of the Agreement, IRU Grantee desires to purchase additional IRU Fibers from McLeodUSA along the route and as more particularly described in **Exhibit A-3** attached hereto (the “**Metro Fibers**”) and McLeodUSA desires to sell such IRU Fibers to IRU Grantee; and

**WHEREAS**, McLeodUSA and IRU Grantee desire to otherwise amend the Agreement, it being understood that certain amendments herein shall apply on a prospective basis, all as further set forth herein

**NOW THEREFORE**, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree hereto as follows:

1. **Capitalized Terms**. All capitalized terms used herein shall have the same meaning ascribed to them in the Agreement unless otherwise specifically set forth herein.

2. **Term**. The following sentence is hereby added to Section 2.1 of the Agreement:

“Upon the mutual written agreement of the parties prior to the expiration hereof, the Term hereunder may be extended for two (2) additional extension terms of five (5) years each, upon the same terms and conditions contained herein; provided that IRU Grantee shall not be required to pay any additional non-recurring costs for such extensions.”

3. **Rights at End of Term**. Section 2.2 is amended to read as follows:

“At the end of the term, and upon any relocation, condemnation, or other substitution of any nature of the IRU Fibers pursuant to Articles VI, XII, XIV, or Article XXV, or otherwise, the IRU granted hereunder shall immediately terminate. McLeodUSA shall thereafter be deemed to have immediately transferred title to the IRU Fibers, along with an undivided interest in the conduit containing the IRU Fibers (but not the other Associated Property), to IRU Grantee. At such time as McLeod USA transfers title to the IRU Fibers, this Agreement shall terminate only as to the IRU granted hereunder, but shall otherwise remain in effect perpetually as to the Associated Property.”

4. **Obsolescence**. Section 6.5 of the Agreement is hereby deleted and replaced in entirety with the following:

“If the grantees of at least fifty percent (50%) of the fibers on the McLeodUSA Network containing the IRU Fibers deem the fiber to be functionally obsolete, then McLeodUSA may offer to IRU Grantee, on not less than one hundred twenty (120) days’ written notice, to substitute for the IRU Fibers on the McLeodUSA Network an equal number of alternative fibers along the

same or an alternative route; provided that in any such event, such substitution (a) shall be without unreasonable interruption of service and use by the applicable party; (b) shall be constructed and tested in accordance with the applicable specifications; and (c) shall not adversely affect the use, operation or performance of the party's network or business. IRU Grantee shall have the right to either accept the proposed substitute fibers or retain the IRU Fibers as initially configured pursuant to this Agreement, provided, however, that if IRU Grantee elects to retain the IRU Fibers as initially configured, IRU Grantee shall pay its remain Proportionate Share (depending on the number of remaining users) of costs for maintaining such IRU Fibers and of costs associated with the Rights and of any other costs relating to such IRU Fibers for the remainder of the Term. McLeodUSA shall provide IRU Grantee with such information as IRU Grantee may reasonably require in order to determine the amount of such costs prior to electing to accept or reject the proposed substitute fibers. In the event of a fiber substitution hereunder, all costs of such substitution, including, without limitation, all disconnect and reconnect costs, fees and expenses, or other reasonable costs associated with the substitute fibers and the provision of the substitute fibers, costs of fiber, Rights, conduit (if applicable), and any other cost otherwise required to be borne by IRU Grantee under this Agreement shall be shared by the parties in the following order and amounts: (i) if the affected portion of the McLeodUSA Network includes any sheath/conduit other than the sheath/conduit housing the IRU Fibers, the total costs shall be allocated equally among all of the affected sheaths/conduits; and (ii) the costs related to the sheath/conduit carrying the IRU Fibers plus the costs specifically related to the fibers within such sheath/conduit shall be allocated between IRU Grantee and McLeodUSA and other others based on IRU Grantee's Proportionate Share. The foregoing notwithstanding, as a condition to paying its share of such fiber substitution costs, IRU Grantee shall be entitled to negotiate an extension to the Term of this Agreement for the reasonably anticipated useful life of the substitute fibers. Except as may be agreed by the parties, in the event of a substitution of fibers, the substitute fibers shall be subject to the same acceptance procedures as the original fibers being granted hereunder and the Term of the IRU shall not exceed twenty (20) years following the Effective Date for the substitute fibers."

5. **Non-Performance of Maintenance Obligations.** Section 6.6 is hereby added as follows:

"In the event McLeodUSA at any time during the Term discontinues or fails to perform maintenance and/or repair of the Cable, IRU Grantee may give written notice to McLeodUSA identifying such failure. If McLeodUSA does not cure such failure within thirty (30) days of IRU Grantee's notice (or in the case of any emergency, if McLeodUSA does not respond in accordance with Section 6.2 (a) of this Agreement), subject to Article XI, IRU Grantee, or its designated contractor, shall have the right, but not the obligation, to provide for the maintenance and repair of the IRU Fibers in the Cable at IRU Grantee's sole cost and expense until such failure is cured by McLeodUSA in any given case. In such case, in the event of a non-emergency situation, IRU Grantee shall send McLeodUSA a notice naming the contractor to be used with respect to any maintenance or repair hereunder and providing such information as is necessary in order to give McLeodUSA sufficient notice to have a representative present during any such maintenance or repair. Such notice shall not be necessary in the case of an emergency, provided however that IRU Grantee shall give notice to McLeodUSA of any such action taken as soon as practicable thereafter. Any McLeodUSA representative so present shall have the authority to modify or temporarily halt the work to the limited extent reasonably necessary to protect the integrity of the McLeodUSA Network. Any such contractor to be used by IRU Grantee shall also be pre-approved in writing by McLeodUSA, which approval shall not be unreasonably withheld or delayed, and which approval shall be deemed given in the event McLeodUSA fails to respond within ten (10) days after receipt of such notice. McLeodUSA shall, upon the request of IRU

Grantee, obtain for IRU Grantee, or its designee, adequate access to the easements or Rights on or within which the IRU Fibers are located, for the purpose of permitting IRU Grantee, or its designee, to undertake maintenance and repair of the IRU Fibers as contemplated herein. IRU Grantee shall be entitled to a credit from McLeodUSA of a prorated portion of its prepaid annual maintenance fee against the next year's fee and shall have no obligation to pay any maintenance fee pursuant to Section 5.4 for such period of time as McLeodUSA fails to perform such maintenance. Notwithstanding anything to the contrary contained in the foregoing, in the event McLeodUSA fails to meet its obligation to maintain and/or repair the IRU Fibers pursuant to this Agreement and this Section 6.6 three (3) times in any twelve (12) month period, IRU Grantee shall have the right, but not the obligation, to elect to perform its own maintenance and repairs on the IRU Fibers for the remainder of the Term hereof and shall be relieved of any maintenance fees payable hereunder. Subject to any other limitation on damages or liability contained in this Agreement, nothing in this Section shall be construed to otherwise limit the rights of IRU Grantee to seek any other remedy available for any such failure by McLeodUSA to meet its maintenance and repair obligations under this Agreement."

6. **Tax and Accounting Treatment of IRU.** Section 9.5 is hereby added as follows:

"Notwithstanding the fact that McLeodUSA will continue to hold legal title to the IRU Fibers during the Term, it is agreed that the grant of the IRU is a passage of equitable title and shall be treated for all accounting and all applicable tax purposes as the sale and purchase of the IRU Fibers, and that IRU Grantee shall be treated as the beneficial owner thereof, having assumed all burdens therefore from and after Acceptance. The parties shall maintain their books and records and make all relevant tax filings consistently with the foregoing. In addition, given the foregoing intent of the parties, in the event that any modification to any provision of this Agreement is necessary or desirable at any time under the terms hereof in order to satisfy any current or future accounting rule or other guideline relating to such accounting and tax treatment, IRU Grantee hereby agrees that in consideration of the IRU granted hereunder, it shall make whatever reasonable modifications may be necessary hereunder in order to satisfy such current or future rule or guideline as if the modification were a part of this Agreement as of the date hereof, provided such modification or alteration shall not materially and/or adversely affect IRU Grantees rights or obligations hereunder.

7. **Relocation.** The following clause contained in Section 12.1 is hereby deleted in its entirety; provided however, that the deletion set forth herein shall apply only to purchases of IRU Fiber from and after the date hereof and shall not apply to IRU Fibers purchased previously by IRU Grantee under this Agreement.

"..and the gross cost (excluding reimbursements) of the relocation exceeds \$5,000 per occurrence, ..."

8. **Abandonment.** Article XVI is hereby deleted in its entirety.

9. **Liens and Encumbrances.** Article XXIII is hereby deleted in its entirety and replaced with the following:

"IRU Grantee agrees and acknowledges that it has no right to use any of the fibers, other than the IRU Fibers, included in the McLeodUSA Cable or otherwise incorporated in the McLeodUSA Network and that IRU Grantee shall keep any and all of the McLeodUSA Network, other than the IRU Fibers, free from an liens, rights or claims of any third parties whatsoever."



10. **Expiration or Termination.** Section 25.4 is hereby renumbered Section 25.3, and the following is hereby added as Section 25.4:

“Within a reasonable period prior to the expiration of the Term hereof, McLeodUSA shall use commercially reasonable efforts, and shall cooperate with IRU Grantee, to preserve any Rights necessary for IRU Grantee’s continued use of the IRU Fibers upon transfer of title pursuant to Article II herein. Upon the expiration or termination of any Right before the end of the Term that is necessary in order to grant, continue or maintain the IRU granted hereunder, the Term of the IRU hereunder shall automatically expire upon such expiration or termination of the Right. Notwithstanding the foregoing, in the event McLeodUSA elects to relocate the McLeodUSA Cable and IRU Grantee elects to relocate with McLeodUSA, then notwithstanding the expiration of the Term, the IRU Grantee shall pay McLeodUSA for IRU Grantee’s Proportionate Share of the reasonable costs and expenses incurred as a result of such relocation pursuant to Article XII herein.”

11. **No Further Amendments.** Except as specifically set forth herein, the Agreement shall remain unmodified and in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment to IRU Agreement as of the date first written above.

**Norlight Telecommunications, Inc.**

By: /s/ Robert E. Rogers

Title: Senior Vice President

Date: 12/01/03

**McLeodUSA Telecommunications Services, Inc.**

By: /s/

Title: President

Date: 11/24/03

**EXHIBITS (incorporated by reference in this Agreement):**

**A-3:** IRU Fiber Details (\*\*\*), Route Maps, and other Material Terms.

**EXHIBIT A-3 dated November 24, 2003**  
**McLeodUSA/Norlight IRU Agreement dated September 28, 2001**  
**as amended November 24, 2003**

**IRU Grantee:** Norlight Communications, Inc.

**Description of Cable Route Segments:**

**Route 1:** McLeodUSA will provide IRU Fibers beginning at McLeodUSA's \*\*\* POP site located at \*\*\*. This ring will provide diverse entrances into the \*\*\* POP site. The \*\*\* ring follows the route illustrated by Ring 1 in Attachment 1 to this Exhibit A-3.

**Route 2:** McLeodUSA will provide IRU Fibers beginning at McLeodUSA's \*\*\* POP site. This ring will provide diverse entrances into the \*\*\* POP site. The \*\*\* ring follows the route illustrated by Ring 2 in Attachment 2 to this Exhibit A-3.

**Estimated Miles / Footage:**

- Route 1 – \*\*\* route miles /\*\*\* feet
- Route 2 – \*\*\* route miles /\*\*\* feet

**Number of IRU Fibers:** \*\*\* fibers

**Fiber Type:** Single Mode Fiber

**IRU Fee (\$/Fiber/mile):** \$\*\*\* (\$\*\*\*/fiber/mile x \*\*\* fibers x \*\*\* total miles)

**Diverse Lateral IRU Fiber Entrance Fees**

Location	# Fibers	Price
***	***	\$***
***	***	\$***

**Total Lateral Fees**

\$\*\*\*

Additional fibers will need to be pulled for the north and south lateral entrances to \*\*\*. Fiber Pulls:

Location	Price
***	\$ ***
***	\$ ***

**Total IRU Fee:** \$\*\*\*

**Initial Proportionate Share of Annual Rights Fees (\$):** None

**Annual Routine Maintenance Fee:** \$\*\*\* annual maintenance fee

**Splicing Expedite Fee (\$)** \*\*\*% above Contracted Splicing Cost

**Access Points:** Customer shall have access to its IRU Fibers at all McLeodUSA Fiber Distribution panels, including FDPs collocated in Central Offices, access points, and any existing McLeodUSA splice enclosures or at any mutually agreed 'mid-sheath' location along the respective Service Route according to any access limitations set forth in the Agreement.

**Collocation:** No.

**Term of IRU Grant:** Effective Date to the date which is 20 years from the Effective Date.

**Deposit:** \$\*\*\* (\*\*\*)% of total IRU fee)

**Other Special Provisions:** IRU Grantee acknowledges that McLeodUSA does not own a certain \*\*\* mile portion of the IRU Fibers subject to this Exhibit A-3 and that they are subject to that certain IRU Exchange Agreement dated September \*\*\*, 1999 between McLeodUSA and \*\*\* (the “\*\*\* Agreement”). Accordingly, IRU Grantee acknowledges that (i) it has had an opportunity to review the \*\*\* Agreement, (ii) McLeodUSA does not own the IRU Fibers subject to the \*\*\* Agreement and therefore title to the IRU Fibers subject to the \*\*\* Agreement shall not transfer to IRU Grantee upon termination of the IRU granted herein, (iii) the initial term of the \*\*\* Agreement shall end in accordance with Section 8 therein, and (iv) the initial term may be extended as set forth in Section 8 therein. McLeodUSA shall continue the term of the \*\*\* Agreement in accordance with its terms as necessary to provide the IRU Fibers to IRU Grantee hereunder for the Term hereof, including making the portion of any “Renewal Payment” attributable to the remaining term hereof, as that term is used in Section 8 of the \*\*\* Agreement. Otherwise, the terms of the \*\*\* Agreement shall govern to the extent that they are inconsistent with any term or provision of this Agreement.

**McLeodUSA Telecommunications Services, Inc.**

**Norlight Telecommunications, Inc.**

By: /s/\_\_\_\_\_

By: /s/ Robert E. Rogers\_\_\_\_\_

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

Title: Senior Vice President\_\_\_\_\_

Date: 11/24/03\_\_\_\_\_

Date: 12/01/03\_\_\_\_\_

**Attachment 1**  
**\*\*\*Route 1**  
**Route indicated in Red**

\*\*\*

**Attachment 2**  
**\*\*\* Route 2**  
**Route indicated in Green**

\*\*\*

**EXHIBIT A-4 dated May 23, 2005  
McLeodUSA/Norlight IRU Agreement dated September 28, 2001  
as amended November 24, 2003**

**IRU Grantee:** Norlight

**Description of Cable Route Segments:**

**Route 1:** McLeodUSA will provide Norlight with \*\*\* fibers on the \*\*\* ring. See Attachment A.4.

**Lateral 1:** McLeodUSA will provide Norlight with \*\*\* fibers on a dual entrance lateral into the \*\*\* located at \*\*\*. Fiber will be terminated in the McLeodUSA collocation space.

**Lateral 2:** McLeodUSA will provide Norlight with \*\*\* fibers on a dual entrance lateral into the \*\*\* located at \*\*\*. The fiber termination point under this agreement is the McLeodUSA collocation.

**Estimated Miles / Footage:**

- Route 1 – \*\*\* miles

**Number of IRU Fibers:** \*\*\* fibers

**Fiber Type:** Single Mode Fiber

**Total IRU Fee:**

Route 1:	\$***
Lateral 1:	\$***
Lateral 2:	\$***
<b>Total:</b>	<b>\$***</b>

**Initial Proportionate Share of Annual Rights Fees:** \$\*\*\*

**Annual Routine Maintenance Fee:** \$\*\*\*

**Special Delivery Charge:** \$\*\*\*

**Estimated Delivery Date:** Eight Weeks

**Splicing Expedite Fee:** \*\*\*% above Contracted Splicing Cost

**Access Points:**

- McLeodUSA Collocation at \*\*\*
- McLeodUSA Collocation at \*\*\*

**Collocation:** No

**Term of IRU Grant:** Effective Date of this Exhibit A-4 to the date which is 20 years from the Effective Date.

**Deposit:** \$\*\*\* (Total IRU fee plus Special Delivery Charge) X \*\*\*%

**Other Special Provisions:**

(1) Route 1 described in this Exhibit A-4 is subject to a Lease Agreement dated September \*\*\*, 1997, by and between \*\*\*, as lessor, and \*\*\*, predecessor in interest to Grantor, as lessee (the "Lease"), pursuant to which Grantor leases duct within the lessor's Conduit System, as defined in the Lease. Accordingly, the parties acknowledge and agree that, notwithstanding Section 2.2 of the IRU Agreement, no portion of or interest in such duct or in the Conduit System that are subject to the Lease shall be conveyed to the IRU Grantee, and shall be deemed Associated Property for purposes of this IRU Agreement. The parties further represent and acknowledge that Grantee has been provided a true and correct copy of the Lease.

(2) The fiber termination points for Lateral 2 under this agreement is the McLeodUSA collocation in the \*\*\*. McLeodUSA will make available its collocation cage as a connection point. In the event that either McLeodUSA or \*\*\* terminates the McLeodUSA collocation agreement, McLeodUSA will reasonably cooperate with Norlight to secure continued access to the McLeodUSA fiber, but shall not be required to incur any expense.

**Attachment:** Route Map A.4

**Norlight Telecommunications, Inc.**

**McLeodUSA Telecommunications Services, Inc.**

/s/ Robert E. Rogers

/s/ Joseph Ceryanec

Signed

Signed

Robert E. Rogers

Joseph Ceryanec

Printed

Printed

Senior Vice President

GVP

Title

Title

**Route Map A.4**

\*\*\*



**EXHIBIT A-5 dated June 23, 2005  
McLeodUSA/Norlight IRU Agreement dated September 28, 2001  
as amended November 24, 2003**

**Description of Cable Route Segment:**

**Route 1:** McLeodUSA will provide Norlight with \*\*\* fibers on \*\*\* miles of the \*\*\* ring. The North endpoint on this segment is the McLeodUSA splice at the intersection of \*\*\*. The South endpoint on this segment is the McLeodUSA splice at the intersection of \*\*\*. See Attachment A-5a.

**Lateral 1:** McLeodUSA will provide Norlight with \*\*\* fibers on a dual entrance lateral into the \*\*\*. McLeodUSA will make available the fibers to the McLeodUSA collocation cage as well as its collocation cage as a connection point. See Attachment A-5b.

**Lateral 2:** McLeodUSA will provide Norlight with \*\*\* fibers on a dual entrance lateral into the \*\*\*. McLeodUSA will make available the fibers to the McLeodUSA collocation cage as well as its collocation cage as a connection point. See Attachment A-5c.

**Lateral 3:** McLeodUSA will provide Norlight with \*\*\* fibers on a dual entrance lateral into the \*\*\*. McLeodUSA will make available the fibers to the McLeodUSA collocation cage as well as its collocation cage as a connection point. See Attachment A-5d.

\*Testing will not be done specifically on the laterals listed above. Testing will be done on the following routes that will include the laterals listed above:

\*\*\* POP 2 to \*\*\*  
\*\*\* to \*\*\*  
\*\*\* to \*\*\* POP 2  
\*\*\* POP to \*\*\*  
\*\*\* to \*\*\*

**Route Totals:**

Route 1: \$\*\*\*  
Lateral 1: \$\*\*\*  
Lateral 2: \$\*\*\*  
Lateral 3: \$\*\*\*  
**Total:** \$\*\*\*

**Number of Fibers:** \*\*\* fibers **Fiber Type:** Single Mode Fiber

**Initial Proportionate Share of Annual Rights Fees:** None

**Annual Routine Maintenance Fee** \$\*\*\*

**Delivery Charges:** \$\*\*\*

**Estimated Delivery Date:** 35 days from the date of this Exhibit

**Splicing Expedite Fee:** \*\*\*% above Contracted Splicing Cost

**Access Points:**

- McLeodUSA splice location outside \*\*\*
- McLeodUSA splice location at the intersection of \*\*\*
- McLeodUSA splice location at the intersection of \*\*\*
- McLeodUSA splice location outside of \*\*\*
- McLeodUSA splice location outside of \*\*\*

**Collocation Locations Requested:** No

**Term of IRU Grant:** Effective Date to the date which is 20 years from the Effective Date.

**Total IRU, Lateral and Delivery Fee:** \$\*\*\*

**Deposit:** \$\*\*\* (\*\*% of total IRU fee and delivery fee)

**Other Special Provisions:**

Laterals 1, 2, and 3 (the "Laterals") are owned by \*\*\* (or an affiliated company, collectively "\*\*\*"), and licensed to McLeodUSA pursuant to a certain Appendix \*\*\* (the "Appendix") between \*\*\* and McLeodUSA. Accordingly, the parties acknowledge and agree that, notwithstanding Section 2.2 of the IRU Agreement, no portion of or interest in such Laterals shall be conveyed to the IRU Grantee. In the event that either McLeodUSA or \*\*\* terminates the Appendix for any reason, McLeodUSA will reasonably cooperate with Norlight to secure continued access to the Laterals at Norlight's sole cost and expense. Termination of the Appendix shall not affect the compensation payable by Norlight under the Agreement or this Exhibit.

The fibers in this Exhibit A-5 will be spliced into fibers Norlight previously obtained from McLeod in Exhibit A-1 of the Agreement.

**Norlight Telecommunications, Inc.**

**McLeodUSA Telecommunications Services, Inc.**

/s/ Robert E. Rogers

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/s/ Joseph Ceryanec

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Signed

Signed

Robert E. Rogers

---

Joseph Ceryanec

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Printed

Printed

Senior Vice President

---

GVP

---

Title

Title

**Attachment A-5a**

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**Attachment A-5b**

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**Attachment A-5c**

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**Attachment A-5d**

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\*\*\*

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**EXHIBIT A-6 dated June 23, 2005**  
**McLeodUSA/Norlight IRU Agreement dated September 28, 2001**  
**as amended November 24, 2003**

**Description of Cable Route Segment:**

McLeodUSA will provide Norlight with \*\*\* fibers on \*\*\* miles of the \*\*\* Ring. The fiber on this route will be accessed at a McLeodUSA splice point at \*\*\*.

**Estimated Miles / Footage:**

- \*\*\* Miles/ \*\*\* Feet

**Number of Fibers:** \*\*\* fibers Fiber Type: Single Mode Fiber

**IRU Fee (\$/Fiber/mile):** \$\*\*\*/fiber/mile X \*\*\* fibers X \*\*\*Miles)

**Initial Proportionate Share of Annual Rights Fees:** \$\*\*\*

**Annual Routine Maintenance Fee (\$)** \$\*\*\*.

**Delivery Charges:** \$\*\*\*.

**Estimated delivery date:** 35 days from the date of this Exhibit

**Splicing Expedite Fee:** \*\*\*% above Contracted Splicing Cost

**Access Points:**

- McLeodUSA splice located at \*\*\*
- McLeodUSA splice located at \*\*\*
- McLeodUSA splice located at \*\*\*
- McLeodUSA splice located at \*\*\*

**Collocation Locations Requested:** No

**Term of IRU Grant:** Effective Date to the date which is 20 years from the Effective Date.

**Total IRU Fee:** \$\*\*\*.

**Deposit:** \$\*\*\*. (\*\*\*% of total IRU and Delivery fee)

**Other Special Provisions:** The fibers in this Exhibit A-6 will be spliced into fibers Norlight previously obtained from McLeod in Exhibit A-1 of the Agreement.

**Attachment:** Route Map A-6

**Norlight Telecommunications, Inc.**

/s/ Robert E. Rogers  
Signed

Robert E. Rogers  
Printed

Senior Vice President  
Title

**McLeodUSA Telecommunications Services, Inc.**

/s/ Joseph Ceryanec  
Signed

Joseph Ceryanec  
Printed

GVP  
Title



**Attachment A-6**

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**EXHIBIT A-7 dated September 23, 2005  
McLeodUSA/Norlight IRU Agreement dated September 28, 2001  
as amended November 24, 2003**

**Description of Cable Route Segment:**

**Laterals:** McLeodUSA will provide Norlight with \*\*\* fibers on a dual entrance lateral into the \*\*\*. The fiber termination point under this agreement is the \*\*\*. In the event that either McLeodUSA or \*\*\* terminates the McLeodUSA collocation agreement for any reason, Norlight will be responsible to find an alternate path \*\*\*.

**Total Lateral IRU Fee: \$\*\*\***

**Number of Fibers:** \*\*\* fibers **Fiber Type:** Single Mode Fiber

**Estimated Miles / Footage:** \*\*\*

**Initial Proportionate Share of Annual Rights Fees:** \*\*\*

**Annual Routine Maintenance Fee (\$/mile):** \*\*\*

**Delivery Charges:** \$\*\*\* (for splice work by \*\*\*)

**Splicing Expedite Fee:** \*\*\*% above Contracted Splicing Cost

**Access Points:**

- McLeodUSA handhole located at \*\*\*
- McLeodUSA handhole located on \*\*\*

**Collocation Locations Requested:** No

**Term of IRU Grant:** Effective Date to the date which is 20 years from the Effective Date. Effective date for this Exhibit is 10-1-05.

**Total Lateral and Delivery Fee: \$\*\*\* due upon execution.**

**Deposit:** None

**Other Special Provisions:** A portion of the Segment described in this Exhibit A-7 is subject to an Interconnection Agreement between \*\*\* and McLeodUSA Telecommunications Services, Inc., pursuant to which McLeodUSA leases duct within portions of \*\*\* telecommunications network. Accordingly, the parties acknowledge and agree that no portion of such duct or of \*\*\* system shall be conveyed to the IRU Grantee.

The fibers in this Exhibit A-7 will be spliced into fibers Norlight previously obtained from McLeod in Exhibit A-6 of the Agreement.

**Norlight Telecommunications, Inc.**

/s/ \_\_\_\_\_  
Signed

Printed \_\_\_\_\_

Title \_\_\_\_\_

**McLeodUSA Telecommunications Services, Inc.**

/s/ \_\_\_\_\_  
Signed

Printed \_\_\_\_\_

Title \_\_\_\_\_

**Attachment A-7**

\*\*\*

**EXHIBIT A-8 dated September 23, 2005  
McLeodUSA/Norlight IRU Agreement dated September 28, 2001  
as amended November 24, 2003**

**Description of Cable Route Segments:**

**Route 1:** Beginning at McLeodUSA's POP site located at \*\*\*, the backbone route that follows the route illustrated by an Attachment to this Exhibit, ending in a Fiber Distribution Panel (FDP) at McLeodUSA's \*\*\*. The backbone route is \*\*\* route miles. Norlight's fibers are spliced into McLeodUSA's in the basement of the switch site located at \*\*\*.

**Route 2:** Beginning in a FDP at McLeodUSA's \*\*\*, the diverse city ring that follows the route illustrated by an Attachment to this Exhibit, ending in a FDP at \*\*\*. Access shall be at the McLeodUSA FDP located at \*\*\*.

**Route 3:** Beginning at the intersection of \*\*\*, the route is illustrated by an Attachment to this exhibit. The route terminates approximately \*\*\* of the intersection of \*\*\*, and access is provided to in McLeodUSA's FDP collocated in the \*\*\* office located at \*\*\*.

**Total IRU Fee:** \*\*\*. The remaining IRU Fee attributable to the First and Second Extension Terms of Route 2 shall be due and payable upon the commencement thereof, as follows: First Extension Term- \$\*\*\*; Second Extension Term- \$\*\*\*.

**Additional Consideration:** By separate agreement, Norlight has agreed to allow McLeodUSA to collocate its equipment in Norlight's \*\*\* POP site ("\*\*\* Site") without requiring McLeodUSA to make a commitment to order related services sufficient to meet Norlight's typical monthly minimum recurring revenue commitment for such collocations.

**Number of Fibers:**

Route 1 \*\*\*

Route 2 \*\*\*

Route 3 \*\*\*

**Miles/Footage:**

Route 1 – \*\*\* route miles/\*\*\* fiber miles

Route 2 – \*\*\* route miles/\*\*\* fiber miles

Route 3 – \*\*\* route miles/\*\*\* fiber miles

**Initial Proportionate Share of Annual Rights Fees:** \$\*\*\*

**Annual Routine Maintenance Fee (\$/mile):** \$\*\*\* (\$\*\*\* per route mile-to be reduced pro-rata per route mile in the event that the term of Route 2 ends prior to the term of Routes 1 and 3).

**Delivery Charges:** \*\*\*. Customer shall be responsible for any additional costs incurred for the optical cross-connections between McLeodUSA's and Customer's FDPs within the McLeodUSA collocation cages within \*\*\*.

**Splicing Expedite Fee:** \*\*\*% above Contracted Splicing Cost

**Access Points:** Customer shall have access to IRU fibers at all McLeod Fiber Distribution Panels, including FDPs \*\*\*, access points, and any existing McLeod splice enclosures or at any mutually agreed 'mid-sheath' location along the respective Service Route according to the access limitations set forth in the Agreement.

**Collocation Locations Requested:** No

**Term of IRU Grant:** 20 years from the Effective Date.

**Deposit:** N/A

**Other Special Provisions:**

1. Effective on the date of this Exhibit A-8, the Dark Fiber Capacity Services Agreement executed between the parties on April 11, 2003 shall become null and void, and shall be superceded by the Agreement and this Exhibit A-8. The parties acknowledge and agree Fibers described in the Capacity Agreement and in this Exhibit A-8 have been accepted by IRU Grantee.
2. McLeodUSA hereby grants, bargains, sells and conveys to IRU Grantee the Fibers specifically described in this Exhibit A-8. Except for the portions of the such Fibers that are subject to transfer restrictions set forth below (the "Restricted Fibers"), title to the Fibers, along with a Proportionate Share of an undivided tenant in common interest in and to tangible and intangible property necessary to use the Fibers, including but not limited to cable sheathing, troughing, pedestals, slack containers, and related equipment (the "Associated Property") (but excluding any electronic or optronic equipment which shall be provided by IRU Grantee at its sole cost) shall pass immediately to IRU Grantee. With respect to the Restricted Fibers and appurtenant Associated Property, IRU Grantee shall be deemed to have an Indefeasible Right of Use for the Term pursuant to the terms of the Agreement. IRU Grantee may at any time begin the process of obtaining permits, consents, franchises, or other authorizations from all relevant governmental entities or private parties as may be necessary for, or incidental to, the transfer of title to the Restricted Fibers, at its sole cost and expense, and McLeodUSA shall reasonably cooperate with IRU Grantee in such efforts. When IRU Grantee has obtained all Rights necessary for the transfer of title to the Restricted Fibers (or for one or more Segments thereof), title to such Restricted Fibers shall transfer to IRU Grantee and the IRU in the Restricted Fibers shall terminate. At IRU Grantee's request, McLeodUSA shall give a Bill of Sale to all or part of such Fibers. In addition, at the end of the Term, and upon any relocation, condemnation, or other substitution of any nature of the IRU Grantee Fibers pursuant to Articles XII, XIV, or Article XXIV, or otherwise, the IRU in the Restricted Fibers shall immediately terminate and McLeodUSA shall thereafter be deemed to have immediately transferred title to those individual Restricted Fibers, along with an undivided interest in the Associated Property.

Restricted Fibers:

- a. That portion of the Fibers subject to a Licensing Agreement dated July \*\*\*, 2003, executed by and between McLeodUSA Telecommunications Services, Inc. and \*\*\*.
  - b. That portion of the Fibers subject to an Agreement dated April \*\*\*, 1998, executed by and between McLeodUSA Telecommunications Services, Inc. and \*\*\*.
3. The parties acknowledge (i) that Route 2 is not owned by McLeodUSA and is subject to that certain \*\*\* Agreement between McLeodUSA and \*\*\* dated July \*\*\*, 1998 (the "\*\*\*\* Agreement"); (ii) that the initial term of the \*\*\*\* Agreement automatically extends for three additional five (5) year

periods unless one of the parties thereto gives the other two (2) years written notice prior to the end of the initial term (or an extension term) of its intent to terminate the \*\*\* Agreement. Accordingly, the initial term ("Initial Term") of Route 2 hereunder shall end on \*\*\*, 2015. Notwithstanding, if \*\*\* exercises its right to terminate the \*\*\* Agreement at any time, Customer and McLeodUSA shall be relieved of all obligations with respect to Route 2 at the end of the then applicable Term, and the Annual Maintenance Fee shall be adjusted accordingly. The parties further acknowledge and agree that, notwithstanding any provision in the IRU Agreement or this Exhibit A-8 to the contrary, no Fiber or Associated Property that is owned by \*\*\* shall be conveyed to IRU Grantee.

4. A portion of the Segment is subject to a certain Agreement dated April \*\*\*, 1998, executed by and between McLeodUSA Telecommunications Services, Inc. and \*\*\*, pursuant to which McLeodUSA leases ducts and other facilities from \*\*\*. Therefore, the parties acknowledge and agree that, notwithstanding any provision in the IRU Agreement or this Exhibit A-8 to the contrary, no duct or other Associated Property that is owned by \*\*\*, or its successors, shall be conveyed to IRU Grantee.

5. In the event that McLeodUSA is forced in connection with the above-referenced agreements with \*\*\* or \*\*\* to decommission any collocation site they will not be responsible for any costs associated with removal or relocation of the customer's facilities or fiber.

**Norlight Telecommunications, Inc.**

**McLeodUSA Telecommunications Services, Inc.**

/s/  
\_\_\_\_\_  
Signed  
  
\_\_\_\_\_  
Printed  
  
\_\_\_\_\_  
Title

/s/  
\_\_\_\_\_  
Signed  
  
\_\_\_\_\_  
Printed  
  
\_\_\_\_\_  
Title

Attachments:

A-8a                   \*\*\* backbone route  
A-8b /A-8c           \*\*\* Ring  
A-8d                   \*\*\* Loop

**Attachment A-8a**

\*\*\*

\*\*\*



**Attachment A-8b**

\*\*\*

\*\*\*

**Attachment A-8c**

\*\*\*

\*\*\*

**Attachment A-8d**

\*\*\*

\*\*\*

**EXHIBIT A-9 dated February 1, 2006  
McLeodUSA/Norlight IRU Agreement dated September 28, 2001  
as amended November 24, 2003**

**Description of Cable Route Segment:**

**Lateral 1:** McLeodUSA will provide Norlight with \*\*\* fibers from the McLeodUSA FDP located in the McLeodUSA POP site at \*\*\* to the McLeodUSA splice located at \*\*\*. Approximate optical distance is \*\*\* miles.

**Total IRU Fee:** \$\*\*\*

**Number of Fibers:** \*\*\* fibers **Fiber Type:** Single Mode Fiber

**Initial Proportionate Share of Annual Rights Fees:** None

**Annual Routine Maintenance Fee (Flat Fee)** \$\*\*\*

**Delivery Charges:** \$\*\*\*

Delivery Charges include the following:

- Lateral cable tie-in at the NW corner of \*\*\* for the IRU fibers
- Lateral cable tie-in at \*\*\* to access IRU fibers on our cable they lease from another party
- Jumper placement from the Mcld POP 1 panel to the cross connect panel to Norlight.
- Testing fibers paths
- Hot cut over to the new path for Norlight active systems

**Splicing Expedite Fee:** \*\*\*% above Contracted Splicing Cost

**Access Points:**

- McLeodUSA panel located inside the McLeodUSA POP site at \*\*\*
- McLeodUSA splice located on the NW corner at \*\*\*

**Collocation Locations Requested:** No

**Term of IRU Grant:** Effective Date to the date which is 20 years from the Effective Date.

**Total IRU and Delivery Fee:** \$\*\*\*

**Deposit:** \$\*\*\* (\*\*\*)% of total Lateral and Delivery fee)

**Other Special Provisions:**

1. In the event that McLeodUSA in its discretion decommissions any collocation site they will not be responsible for any costs associated with removal or relocation of the customer's facilities or fiber.

2. Collocation in McLeodUSA facilities is subject to Article IV of the Agreement, and subject to availability. Additional charges may apply, including charges for equipment, labor and any other make ready charges (both MRC/NRC), and charges associated with accessing fibers. Any splicing or jumpering through intermediate McLeodUSA POP sites will be billed pursuant to Section 5.5 of the Agreement, unless otherwise provided for in the Delivery Charges of this Exhibit.

**Norlight Telecommunications, Inc.**

**McLeodUSA Telecommunications Services, Inc.**

/s/ Robert E. Rogers

/s/

Signed

Signed

Robert E. Rogers

Printed

Printed

Senior Vice President

Title

Title

**Attachment A-9**

\*\*\*

**EXHIBIT A-10 dated March 23, 2006  
McLeodUSA/Norlight IRU Agreement dated September 28, 2001  
as amended November 12, 2001 and November 24, 2003**

**Description of Cable Route Segment:**

McLeodUSA will provide Norlight with \*\*\* fibers on the \*\*\* ring. The route will be a complete ring beginning and ending at the McLeodUSA \*\*\* site located at \*\*\* (fiber will be accessed at the McLeodUSA FDP \*\*\*) as further depicted in Attachment A-10 to this Exhibit A-10.

**Estimated Miles / Footage:**

- \*\*\* Route Miles/ \*\*\* Feet

**Number of IRU Fibers:** \*\*\* fibers      **Fiber Type:** Single Mode Fiber

**IRU Fee (\$/Fiber/mile):** (\$\*\*\*/fiber/mile X \*\*\* fibers X \*\*\* Miles)

**Total IRU Fee:** \$\*\*\*

**Initial Proportionate Share of Annual Rights Fees:** \$\*\*\*

**Annual Routine Maintenance Fee (\$/OTDR mile):** Approximately \*\*\* miles at \$\*\*\* per OTDR mile (excluding approximately \*\*\* duplicate miles)

**Delivery Charges:** \$\*\*\*. Cost includes three splice locations for the Norlight \*\*\* ring at the following addresses:

- \*\*\* fibers at \*\*\*
- \*\*\* fibers at \*\*\*
- \*\*\* fibers at \*\*\*

Cost also includes an engineering delivery fee for jumpers at the McLeodUSA \*\*\*

**Splicing Expedite Fee:** \*\*\*% above Contracted Splicing Cost

**Access Points:**

FDP in McLeodUSA \*\*\*

Splice outside \*\*\*

**Splice locations outside the following \*\*\*:**

\*\*\*

**Collocation Locations Requested:** No

**Term of IRU Grant:** Effective Date to the date which is 20 years from the Effective Date.

**Total IRU and Delivery Fee:** \$\*\*\*

**Deposit:** \$\*\*\* (\*\*\*% of total IRU and Delivery Fee)

### Other Special Provisions:

1. Notwithstanding any provision in the Agreement to the contrary, McLeodUSA hereby grants, bargains, sells and conveys to IRU Grantee the Fibers specifically described in this Exhibit A-10. Except for the portions of such Fibers that are subject to transfer restrictions set forth below (the "Restricted Fibers") or as otherwise provided herein, title to the Fibers, along with a Proportionate Share of an undivided tenant in common interest in and to tangible and intangible property necessary to use the Fibers, including but not limited to cable sheathing, troughing, pedestals, slack containers, and related equipment (the "Associated Property") (but excluding any electronic or optronic equipment which shall be provided by IRU Grantee at its sole cost) shall pass immediately to IRU Grantee. With respect to the Restricted Fibers and appurtenant Associated Property, IRU Grantee shall be deemed to have an Indefeasible Right of Use for the Term pursuant to the terms of the Agreement. IRU Grantee may at any time begin the process of obtaining permits, consents, franchises, or other authorizations from all relevant governmental entities or private parties as may be necessary for, or incidental to, the transfer of title to the Restricted Fibers, at its sole cost and expense, and McLeodUSA shall reasonably cooperate with IRU Grantee in such efforts. When IRU Grantee has obtained all Rights necessary for the transfer of title to the Restricted Fibers (or for one or more Segments thereof), title to such Restricted Fibers shall transfer to IRU Grantee and the IRU in the Restricted Fibers shall terminate. At IRU Grantee's request, McLeodUSA shall give a Bill of Sale to all or part of such Fibers. In addition, at the end of the Term, and upon any relocation, condemnation, or other substitution of any nature of the IRU Grantee Fibers pursuant to Articles XII, XIV, or Article XXIV, or otherwise, the IRU in the Restricted Fibers shall immediately terminate and McLeodUSA shall thereafter be deemed to have immediately transferred title to those individual Restricted Fibers, along with an undivided interest in the Associated Property.

#### Restricted Fibers:

- a. That portion of the Fibers subject to an Agreement dated April \*\*\*, 1998, executed by and between McLeodUSA Telecommunications Services, Inc. and \*\*\*.
  - b. That portion of the Fibers subject to \*\*\* Agreement dated December \*\*\*, 1998, by and between the \*\*\*.
  - c. That portion of the Fibers subject to \*\*\* Agreements with \*\*\*.
2. A portion of the Segment is subject to an Agreement dated April \*\*\*, 1998, by and between \*\*\* and McLeodUSA pursuant to which McLeodUSA leases fiber and conduit owned by \*\*\*. Accordingly, title to such fiber and duct shall not be conveyed to the IRU Grantee.
3. A portion of the Segment is subject to \*\*\* Agreement dated December \*\*\*, 1998, by and between the \*\*\*, pursuant to which McLeodUSA leases conduit owned by the \*\*\*. Accordingly, title to such conduit shall not be conveyed to the IRU Grantee.
4. Collocation in McLeodUSA facilities is subject to Article IV of the Agreement, and subject to availability. Additional charges may apply, including charges for equipment, labor and any other make ready charges (both MRC/NRC), and charges associated with accessing fibers. Any splicing or jumpering through intermediate McLeodUSA POP sites will be billed pursuant to Section 5.5 of the Agreement, unless otherwise provided for in the Delivery Charges of this Exhibit.
5. In the event that McLeodUSA in its discretion decommissions any collocation site they will not be responsible for any costs associated with removal or relocation of the customer's facilities or fiber.



6. With respect to the Segment described in this Exhibit A-10, the Agreement is hereby amended to replace the second sentence of Section 7.2 with the following sentence: "Normal requests for splicing shall be submitted at least sixty (60) days prior to the requested splicing date, and expedited requests shall be submitted at least seventy-two (72) hours prior to the requested splicing date."

**Attachment:** Route Maps

**Norlight Telecommunications, Inc**

\_\_\_\_\_  
/s/  
Signed  
\_\_\_\_\_  
Printed  
\_\_\_\_\_  
Title

**McLeodUSA Telecommunications Services, Inc.**

\_\_\_\_\_  
/s/  
Signed  
\_\_\_\_\_  
Printed  
\_\_\_\_\_  
Title

**Attachment A-10a**

\*\*\*

**Attachment A-10b**  
**Restricted Fibers**

\*\*\*

**Attachment A-10c  
Restricted Fibers**

\*\*\*

**Attachment A-10d  
Restricted Fibers**

\*\*\*

**EXHIBIT A-11 dated March 23, 2006  
McLeodUSA/Norlight IRU Agreement dated September 28, 2001  
As amended November 12, 2001 and November 24, 2003**

**Description of Cable Route Segment:**

**Lateral 1:**  
McLeodUSA will provide Norlight \*\*\* fibers on a dual entrance lateral into \*\*\*. Fiber will terminate in the McLeodUSA FDP of this \*\*\* location. See Attachment A-11a.

**Lateral 2:**  
McLeodUSA will provide Norlight \*\*\* fibers on a dual entrance lateral into \*\*\*. Fiber will terminate at the existing McLeodUSA FDP of this \*\*\* location. See Attachment A-11b.

**Lateral 3:**  
McLeodUSA will provide Norlight \*\*\* fibers on a dual entrance lateral into \*\*\*. Fiber will terminate at the existing McLeodUSA FDP of this \*\*\* location. See Attachment A-11c.

**Lateral 4:**  
McLeodUSA will provide Norlight \*\*\* fibers on a dual entrance lateral into \*\*\*. Fiber will terminate at the existing McLeodUSA FDP of this \*\*\* location. See Attachment A-11d.

**Lateral 5:**  
McLeodUSA will provide Norlight \*\*\* fibers on a dual entrance lateral into a McLeodUSA POP located at \*\*\*. Fiber will terminate at the existing McLeodUSA FDP \*\*\* of this POP site. See Attachment A-11e.

**Lateral Fee:**  
Dual Entrance Lateral 1: \$\*\*\*  
Dual Entrance Lateral 2: \$\*\*\*  
Dual Entrance Lateral 3: \$\*\*\*  
Dual Entrance Lateral 4: \$\*\*\*  
Dual Entrance Lateral 5: \$\*\*\*

**Total Lateral Fee:** \$\*\*\*

**Initial Proportionate Share of Annual Rights Fees:** \$\*\*\*

**Annual Routine Maintenance Fee (\$/OTDR mile):** N/A

**Delivery Charges:** \$\*\*\*

Charges include: terminating in FDP's—includes material costs of pigtails and splice trays. These costs do not include installing pass-thru jumpers at our switch.

\*\*\*—Splicing outside laterals and Terminating in FDP's

\*\*\*—Splicing outside laterals and Terminating in FDP's

\*\*\*—Splicing outside laterals and Terminating in FDP's

\*\*\*—Splicing outside laterals and Terminating in FDP's

\*\*\*—Splicing in manhole

OTDR Testing Ring  
McLeodUSA Labor

**Splicing Expedite Fee:** \*\*\*% above Contracted Splicing Cost

**Access Points:**

- McLeodUSA splice location at the FDP at the \*\*\*.
- McLeodUSA splice location at the FDP at the \*\*\*.
- McLeodUSA splice location at the FDP at the \*\*\*.
- McLeodUSA splice location at the FDP at the \*\*\*.
- McLeodUSA splice location at the FDP at the McLeodUSA POP at \*\*\*.

**Collocation Locations Requested:** None

**Term of IRU Grant:** Effective Date to the date which is 20 years from the Effective Date.

**Total Lateral and Delivery Fee:** \$\*\*\*

**Deposit:** \$\*\*\* (\*\*% of total Lateral and Delivery Fee)

**Other Special Provisions:**

1. Notwithstanding any provision in the Agreement to the contrary, McLeodUSA hereby grants, bargains, sells and conveys to IRU Grantee the Fibers specifically described in this Exhibit A-11. Except for the portions of such Fibers that are subject to transfer restrictions set forth below (the "Restricted Fibers") or as otherwise provided herein, title to the Fibers, along with a Proportionate Share of an undivided tenant in common interest in and to tangible and intangible property necessary to use the Fibers, including but not limited to cable sheathing, troughing, pedestals, slack containers, and related equipment (the "Associated Property") (but excluding any electronic or optronic equipment which shall be provided by IRU Grantee at its sole cost) shall pass immediately to IRU Grantee. With respect to the Restricted Fibers and appurtenant Associated Property, IRU Grantee shall be deemed to have an Indefeasible Right of Use for the Term pursuant to the terms of the Agreement. IRU Grantee may at any time begin the process of obtaining permits, consents, franchises, or other authorizations from all relevant governmental entities or private parties as may be necessary for, or incidental to, the transfer of title to the Restricted Fibers, at its sole cost and expense, and McLeodUSA shall reasonably cooperate with IRU Grantee in such efforts. When IRU Grantee has obtained all Rights necessary for the transfer of title to the Restricted Fibers (or for one or more Segments thereof), title to such Restricted Fibers shall transfer to IRU Grantee and the IRU in the Restricted Fibers shall terminate. At IRU Grantee's request, McLeodUSA shall give a Bill of Sale to all or part of such Fibers. In addition, at the end of the Term, and upon any relocation, condemnation, or other substitution of any nature of the IRU Grantee Fibers pursuant to Articles XII, XIV, or Article XXIV, or otherwise, the IRU in the Restricted Fibers shall immediately terminate and McLeodUSA shall thereafter be deemed to have immediately transferred title to those individual Restricted Fibers, along with an undivided interest in the Associated Property.

**Restricted Fibers**

- a. That portion of the Fibers subject to an Agreement dated April \*\*\*, 1998, executed by and between McLeodUSA Telecommunications Services, Inc. and \*\*\*.
- b. That portion of the Fibers subject to \*\*\* Agreement between \*\*\* and McLeodUSA Telecommunications Services, Inc.

2. A portion of the Segment is subject to an Agreement dated April \*\*\*, 1998, by and between \*\*\* and McLeodUSA pursuant to which McLeodUSA leases conduit owned by \*\*\*. Accordingly, title to such conduit shall not be conveyed to the IRU Grantee.
3. A portion of the Segment is subject to \*\*\* Agreement between \*\*\*, and McLeodUSA Telecommunications Services, Inc., pursuant to which McLeodUSA licenses the use of \*\*\* within \*\*\*. Accordingly, the parties acknowledge and agree that, notwithstanding any provision in the IRU Agreement to the contrary, no portion of or interest in such conduit or poles that are owned by \*\*\* shall be conveyed to the IRU Grantee.
4. Collocation in McLeodUSA facilities is subject to Article IV of the Agreement, and subject to availability. Additional charges may apply, including charges for equipment, labor and any other make ready charges (both MRC/NRC), and charges associated with accessing fibers. Any splicing or jumpering through intermediate McLeodUSA POP sites will be billed pursuant to Section 5.5 of the Agreement, unless otherwise provided for in the Delivery Charges of this Exhibit.
5. In the event that McLeodUSA in its discretion decommissions any collocation site they will not be responsible for any costs associated with removal or relocation of the customer's facilities or fiber.
6. With respect to the Segments described in this Exhibit A-11, the Agreement is hereby amended to replace the second sentence of Section 7.2 with the following sentence: "Normal requests for splicing shall be submitted at least sixty (60) days prior to the requested splicing date, and expedited requests shall be submitted at least seventy-two (72) hours prior to the requested splicing date."

**Attachment:** Route Maps

**Norlight Telecommunications, Inc.**

\_\_\_\_\_  
/s/

Signed

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

**McLeodUSA Telecommunications Services, Inc.**

\_\_\_\_\_  
/s/

Signed

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title



**Attachment A-11a**

\*\*\*

**Attachment A-11b**

\*\*\*

**Attachment A-11c**

\*\*\*

**Attachment A-11d**

\*\*\*

**Attachment A-11e**

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**EXHIBIT B**  
**SPLICING, TESTING AND ACCEPTANCE STANDARDS**

1. All splices will be performed with an industry, accepted fusion splicing machine.
2. Splices will be qualified during the initial construction by the core alignment system on the fusion splicer.
3. After end-to-end (site-to-site) connectivity on the fibers, bi-directional span testing will be completed. These measurements will be made after all cable installation activities are complete for each span. Connectors will be cleaned as necessary to ensure accurate measurements are taken.
  - Installed loss measurements at 1550 nm will be recorded using an industry accepted laser source and power meter. Continuity testing (checking for “frogging”) will be done on all fibers concurrently.
  - OTDR traces will be taken at 1550 nm and splice loss measurements will be analyzed. GN Nettest Laser Precision format will be used on all traces, unless another OTDR format is agreed to by both parties.
  - All testing, power levels and OTDR traces, will be conducted at 1550 nm only.
  - OTDR traces shall be saved in a standard file naming convention.
  - One set of diskettes with OTDR traces will be provided. Power level results will be submitted on paper documentation.
4. The splicing standards are as follows:
  - The objective loss value of the connector and its associated splice will be 0.50 dB or less.
  - The objective for each fiber within a span shall be an average bi-directional loss of 0.2 dB 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 2.0 dB or less. Individual bi-directional loss values for each splice will be reviewed for high losses.
  - The aforementioned standards are objectives, not the basis for acceptance. The acceptance standard for each fiber per span shall be calculated as follows:  
Span Loss = a(span distance in kilometers) + b(0.2 dB/splice) + c(0.50 db/connector)

Where:

  - a = maximum fiber loss in dB per kilometer for the specific fiber type/manufacturer at 1550 nm
  - b = number of splice locations for the span
  - c = number of connectors for the 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 splice enclosure will be used on all splices.

**EXHIBIT C**  
**ACCEPTANCE/DEFICIENCY NOTICE**

Check one box:

Fiber Accepted (fill in acceptance statement below)

Pursuant to Article III of the IRU Agreement between McLeodUSA Telecommunications Services, Inc. and Norlight Telecommunications, Inc. (“IRU Grantee”), dated September 28, 2001, IRU Grantee hereby Accepts its IRU Fibers as defined in Exhibit A.1/A.2 (Circle applicable route(s))

Fiber Deficiency (fill in reason statement below)

Reason for Deficiency:

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

Signature: \_\_\_\_\_

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

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

**EXHIBIT D**  
**“AS BUILT” DRAWING SPECIFICATIONS**

1.0 General

The purpose of the As Built drawings is to clearly document the location and components of the completed Cable in order to have the ability to maintain the Cable throughout the term of the Agreement.

2.0 Format

At a minimum, the “As Built” drawings will include:

A route diagram that illustrates the location of the:

End Locations

Mid Span Splice Locations

Mid Span Repeater Locations

A summary of distances between the locations listed above.

The type of cable construction between locations.

Any geographical information deemed necessary to further clarify the route.

Detailed route information that includes:

Street, road and highway names

Railroad and major highway crossings

Bridge crossings

Manhole and pole identification

Pole to pole distances in feet

Manhole to manhole distances in feet

Distances along or between any other attachment points on the route

New conduit, manhole and pole installations

Building riser and lateral conduit locations

Identification of Rights Provider(s)



**EXHIBIT E**

(form of collocation agreement)

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**EXHIBIT F**  
**MAINTENANCE AND REPAIR PROCEDURES AND TIME FRAMES**

MCLEODUSA MAINTENANCE AND CALL OUT LIST

Upon the McLeodUSA Network Management Center (1-800-332-2385) receiving a trouble report from IRU Grantee, McLeodUSA will dispatch qualified personnel to the location of the outage within four (4) hours. At the same time the call will be escalated to the McLeodUSA Field Operations Manager. The McLeodUSA Operations Manager will respond with on call qualified personnel to isolate the problem. The problem will then be escalated to the McLeodUSA Vice President/General Manager for notification.

<u>Title</u>	<u>Office</u>	<u>Pager</u>	<u>Cellular</u>
Field Operations Manager			
Senior Manager	<i><u>To be provided</u></i>		
Senior Vice President			

**EXHIBIT G**  
**ROUTINE MAINTENANCE STANDARDS**

Maintenance of the fiber plant should be completed on a regular recurring basis and documented. Properly installed fiber plant normally needs minimal routine maintenance. Most hazards to fiber plant are external in nature, such as dig ups, pole hits, gunshots, animals, etc. Most destructive events are detected immediately and corrected with plant restoration. A well-implemented maintenance plan will permit correction of marginal plant conditions that might otherwise become restoration events. The McLeodUSA Network Management Center should be notified in advance of any scheduled OSP maintenance activity reported or planned at McLeodUSA 1-800-332-2385 (fax 1-319-298-7375).

**1.1 CABLE ROUTE SURVEILLANCE**

Outside Plant facilities (OSP) are periodically inspected by field personnel. During this periodic inspection the Cable route is driven/walked to inspect for discrepancies that may affect cable integrity. Any discrepancies found are documented and forwarded into the Outside Plant Maintenance desk for correction and repair as necessary. The following are some of the OSP items that will be inspected:

- Cable route integrity (e.g.: erosion)
- Condition of poles, pedestals, risers, lashing wire, route markers and signs
- Clearance of aerial facilities
- Construction activity in the area near the cable

**1.2 PLANT LOCATION REQUESTS**

All facilities associated with this Agreement are located in states with statewide “one call” agencies for excavators to request and notify utilities of digging in the vicinity of the McLeodUSA facilities. McLeodUSA will subscribe to these services and follow the guidelines and laws applicable to that state including the marking of their facilities within 48 hours of receipt of request. McLeodUSA will also take action to insure excavator is aware and protect the facility during the excavation as required.

**1.3 PLANT RELOCATION REQUESTS**

Plant relocation requests will be submitted to the manager of field operations to be reviewed for applicable resolution. Requests should be responded to within 10 business days and scheduled as required taking into consideration the scope of work and the urgency of the activity.