

AMENDMENT NO. 1

to the

INTERCONNECTION AGREEMENT

between

**VERIZON NEW ENGLAND INC., D/B/A VERIZON MASSACHUSETTS, F/K/A NEW ENGLAND
TELEPHONE AND TELEGRAPH COMPANY, D/B/A BELL ATLANTIC – MASSACHUSETTS**

and

DARK AIR CORPORATION

This Amendment No. 1 (this “Amendment”) to the Interconnection Agreement (the “Agreement”) which became effective December 27, 2001 is by and between Verizon New England Inc., d/b/a Verizon Massachusetts, f/k/a New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts (“Verizon”), a New York corporation at 185 Franklin Street, Boston, Massachusetts 02110 and Dark Air Corporation (Dark Air), a Delaware corporation with offices at 10-I Commerce Way, Woburn, Massachusetts 01801. Verizon and Dark Air being referred to collectively, as the “Parties” and individually as a “Party”. This Amendment covers services in the Commonwealth of Massachusetts the (“State”).

WITNESSETH:

WHEREAS, pursuant to an adoption letter dated December 13, 2001 (the “Adoption Letter”), Dark Air adopted in the Commonwealth of Massachusetts, the interconnection agreement between AT&T Broadband Phone of Massachusetts, LLC and Verizon (the “Terms”); and

WHEREAS, subsequent to the approval of the Terms Dark Air notified Verizon that it desired to amend the Terms; and

WHEREAS, pursuant to Section 252(a)(1) of the Act, the Parties wish to amend the Terms; and

WHEREAS, the Federal Communications Commission (the “FCC”) issued an order on November 5, 1999 in CC Docket No. 96-98 (the “UNE Remand Order”), and issued a supplemental order on November 24, 1999 in the same proceeding, which orders became effective in part as of February 17, 2000 and fully effective as of May 17, 2000; and

WHEREAS, Verizon is prepared to provide network elements and collocation in accordance with, but only to the extent required by, Applicable Law.

NOW, THEREFORE, in consideration of the mutual promises, provisions and covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties agree that the terms and conditions set forth in the UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment attached hereto shall govern Verizon’s provision of Network Elements to Dark Air.

UNE Remand Amendment

2. Conflict between this Amendment and the Terms. This Amendment shall be deemed to revise the terms and provisions of the Terms to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Terms, this Amendment shall govern, *provided, however*, that the fact that a term or provision appears in this Amendment but not in the Terms, or in the Terms but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.
3. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.
4. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.
5. Scope of Amendment. This Amendment shall amend, modify and revise the Terms only to the extent set forth expressly in Section 1 of this Amendment, and, except to the extent set forth in Section 1 of this Amendment, the terms and provisions of the Terms shall remain in full force and effect after the date first set forth above.

UNE Remand Amendment

IN WITNESS WHEREOF, each Party has executed this Amendment, and it shall be effective upon execution by both Parties.

DARK AIR CORPORATION

VERIZON NEW ENGLAND INC.,
D/B/A VERIZON MASSACHUSETTS

By: _____

By: _____

Printed: _____

Printed: Steven J. Pitterle

Title: _____

Title: Director – Contract Negotiations

UNE Remand Attachment

1. General

- 1.1. Verizon shall provide to Dark Air, in accordance with the Terms, as amended (hereinafter referred to in this UNE Remand Attachment as the "Agreement"), this UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, access to Verizon's Network Elements on an unbundled basis and in combinations (Combinations); provided, however, that notwithstanding any other provision of the Agreement, this UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment, Verizon shall be obligated to provide unbundled Network Elements (UNEs) and Combinations to Dark Air only to the extent required by Applicable Law and may decline to provide UNEs or Combinations to Dark Air to the extent that provision of such UNEs or Combinations is not required by Applicable Law.
- 1.2. Except as otherwise required by Applicable Law: (a) Verizon shall be obligated to provide a UNE or Combination pursuant to the Agreement, this UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment only to the extent such UNE or Combination, and the equipment and facilities necessary to provide such UNE or Combination, are available in Verizon's network; (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination; and, (c) Verizon shall not be obligated to combine Network Elements that are not already combined in Verizon's network. Consistent with the foregoing, should Dark Air engage in a pattern of behavior that suggests that Dark Air either i) knowingly induces Verizon Customers to order Telecommunications Services from Verizon with the primary intention of enabling Dark Air to convert those Telecommunications Services to UNEs or Combinations, or ii) itself orders Telecommunications Services from Verizon without taking delivery of those Telecommunications Services in order to induce Verizon to construct facilities that Dark Air then converts to UNEs or Combinations, then Verizon will provide written notice to Dark Air that its actions suggest that Dark Air is engaged in a pattern of bad faith conduct. If Dark Air fails to respond to this notice in a manner that is satisfactory to Verizon within fifteen (15) business days, then Verizon shall have the right, with thirty (30) calendar days advance written notice to Dark Air, to institute an embargo on provision of new services and facilities to Dark Air. This embargo shall remain in effect until Dark Air provides Verizon with adequate assurances that the bad faith conduct shall cease. Should Dark Air repeat the pattern of conduct following the removal of the service embargo, then Verizon may elect to treat the conduct as an act of material breach in accordance with the provisions of the Agreement that address default.
- 1.3. Dark Air may use a UNE or Combination only for those purposes for which Verizon is required by Applicable Law to provide such UNE or Combination to Dark Air. Without limiting the foregoing, Dark Air may use a UNE or Combination (a) only to provide a Telecommunications Service and (b) to provide Exchange Access services only to the extent that Verizon is required by Applicable Law to provide such UNE or Combination to Dark Air in order to allow Dark Air to provide such Exchange Access services.
- 1.4. Notwithstanding any other provision of the Agreement, this UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment:

- 1.4.1. To the extent Verizon is required by a change in Applicable Law to provide to Dark Air a UNE or Combination that is not offered under the Agreement, this UNE Remand Attachment, and the Pricing Appendix to the UNE Remand Attachment to Dark Air as of the Effective Date, the terms, conditions and prices for such UNE or Combination (including, but not limited to, the terms and conditions defining the UNE or Combination and stating when and where the UNE or Combination will be available and how it will be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair, maintenance and billing) shall be as provided in an applicable Verizon Tariff, or, in the absence of an applicable Verizon Tariff, as mutually agreed in writing by the Parties.
 - 1.4.2. Verizon shall not be obligated to provide to Dark Air, and Dark Air shall not request from Verizon, access to a proprietary advanced intelligent network service.
- 1.5. Without limiting Verizon's rights pursuant to Applicable Law or any other section of the Agreement, this UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment to terminate its provision of a UNE or a Combination, if Verizon provides a UNE or Combination to Dark Air, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such UNE or Combination, Verizon may terminate its provision of such UNE or Combination to Dark Air. If Verizon terminates its provision of a UNE or a Combination to Dark Air pursuant to this Section 1.5 and Dark Air elects to purchase other services offered by Verizon in place of such UNE or Combination, then: (a) Verizon shall reasonably cooperate with Dark Air to coordinate the termination of such UNE or Combination and the installation of such services to minimize the interruption of service to Customers of Dark Air; and, (b) Dark Air shall pay all applicable charges for such services, including, but not limited to, all applicable installation charges.
- 1.6. Nothing contained in the Agreement, this UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment shall be deemed to constitute an agreement by Verizon that any item identified in the Agreement, this UNE Remand Attachment and the Pricing Attachment to the UNE Remand Attachment as a Network Element is (i) a Network Element under Applicable Law, or (ii) a Network Element Verizon is required by Applicable Law to provide to Dark Air on an unbundled basis or in combination with other Network Elements.
- 1.7. Except as otherwise expressly stated in the Agreement, this UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment, Dark Air shall access Verizon's UNEs specifically identified in this Agreement via Collocation in accordance with Verizon's tariffs at the Verizon Wire Center where those UNEs exist, and each Loop or Port shall, in the case of Collocation, be delivered to Dark Air's Collocation node by means of a Cross Connection.
- 1.8. If as the result of Dark Air Customer actions (i.e., Customer Not Ready ("CNR")), Verizon cannot complete requested work activity when a technician has been dispatched to the Dark Air Customer premises, Dark Air will be assessed a non-recurring charge associated with this visit. This charge will be the sum of the applicable Service Order charge as provided in the Pricing Appendix to the UNE Remand Attachment and the Premises Visit Charge as provided in Verizon's applicable retail or wholesale Tariff.

- 1.9. Notwithstanding anything else set forth in the Agreement, this UNE Remand Attachment or the Pricing Appendix to the UNE Remand Attachment and subject to the conditions set forth in this Section 1 of this UNE Remand Attachment, Verizon shall provide access to Verizon's Network Elements and Combinations subject to charges based on rates and/or rate structures that are consistent with Applicable Law (collectively, the "Rates" and, individually, a "Rate"). Certain of these Rates are set forth in the Pricing Appendix to the UNE Remand Attachment, which Rates Verizon shall charge Dark Air and Dark Air agrees to pay to Verizon. Dark Air acknowledges, however, that certain Rates are not set forth in the Pricing Appendix to the UNE Remand Attachment as of the effective date of this UNE Remand Attachment ("Effective Date") but that Verizon is developing such Rates and Verizon has not finished developing such Rates as of the Effective Date. When Verizon finishes developing a Rate not included in the Pricing Appendix to the UNE Remand Attachment as of the Effective Date, Verizon shall notify Dark Air in writing of such Rate in accordance with, and subject to, the notices provision of the Agreement and thereafter shall bill Dark Air, and Dark Air shall pay to Verizon, for services provided under this UNE Remand Attachment on the Effective Date and thereafter in accordance with such Rate. Any notice provided by Verizon to Dark Air pursuant to this Section 1.9 shall be deemed to be a part of the Pricing Appendix to the UNE Remand Attachment immediately after Verizon sends such notice to Dark Air and thereafter.

2. **UNE Remand Provisions**

- 2.1. Subject to the conditions set forth in Section 1, and at the request of Dark Air, Verizon shall permit Dark Air to connect a carrier's Loop to the Inside Wiring of a Customer's premises through Verizon's Network Interface Device (NID) at the rates, terms and conditions set forth in DTE No. 17 Tariff, as amended from time to time. Verizon shall provide Dark Air with access to NIDs in accordance with, but only to the extent required by, Applicable Law.

2.2. Network Interface Device

Subject to the conditions set forth in Section 1, and at the request of Dark Air, Verizon shall permit Dark Air to connect a carrier's Loop to the Inside Wiring of a Customer's premises through Verizon's Network Interface Device (NID) at the rates, terms and conditions set forth in DTE No. 17 Tariff, as amended from time to time. Verizon shall provide Dark Air with access to NIDs in accordance with, but only to the extent required by, Applicable Law.

2.3. Combinations

Verizon's provision of Combinations to Dark Air shall be subject to the conditions set forth in Section 1. Verizon shall be obligated to provide a Combination only to the extent provision of such Combination is required by Applicable Law. To the extent Verizon is .required by Applicable Law to provide a Combination to Dark Air, Verizon shall provide such Combination in accordance with the terms, conditions and prices for such Combination as provided in Verizon's DTE No. 17 Tariff, as amended from time to time. Until any amendment to such tariff filed by Verizon with the Commission that is applicable to Combinations becomes effective, Verizon shall provide Combinations to Dark Air in accordance with, and subject to, the terms and provisions of such amendment, as amended from time to time.

2.4. Sub-Loop Distribution (USLA)

Subject to the conditions set forth in Section 1, Verizon shall provide Dark Air with access to a Distribution Sub-Loop (as such term is hereinafter defined) in accordance with, and subject to, the rates, terms and conditions set forth in Verizon's DTE No. 17 Tariff, as amended from time to time, that relate to or concern Distribution Sub-Loops, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective. A "Distribution Sub-Loop" means a two-wire or four-wire metallic distribution facility in Verizon's network between a Verizon feeder distribution interface (an FDI) and the rate demarcation point for such facility (or network interface device (NID) if the NID is located at such rate demarcation point). Verizon shall provide Dark Air with access to a Sub-Loop in accordance with, but only to the extent required by, Applicable Law.

2.5. Sub-Loop – Feeder (UFSE).

Subject to the conditions set forth in Section 1 and upon request by Dark Air, Verizon shall provide Dark Air with access to a Feeder Sub-Loop (as such term is hereinafter defined) in accordance with, and subject to, the rates, terms and conditions set forth in Verizon's DTE No. 17 Tariff, as amended from time to time, that relate to or concern Feeder Sub-Loops, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective. A "Feeder Sub-Loop" means a DS1- or DS3- transmission path over a feeder facility in Verizon's network between a Verizon end office and either a Verizon remote terminal equipment enclosure (an "RTEE") that subtends such end office or a Verizon feeder distribution interface (such an interface, an "FDI") that subtends the end office. Verizon shall provide Dark Air with access to a Feeder Sub-Loop in accordance with, but only to the extent required by, Applicable Law.

2.6. Collocation in Remote Terminals.

To the extent required by Applicable Law, Verizon shall allow Dark Air to collocate equipment in a Verizon remote terminal equipment enclosure in accordance with, and subject to, the rates, terms and conditions set forth in applicable Verizon tariffs, as amended from time to time, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective.

2.7. Dark Fiber

Subject to the conditions set forth in Section 1 and upon request, Verizon shall provide Dark Air with access to Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF (as such term is hereinafter defined) in accordance with, and subject to, the rates, terms and conditions set forth in Verizon's DTE No. 17 Tariff, as amended from time to time, that relate to or concern Dark Fiber, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective. Verizon will provide Dark Air access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law. A "Dark Fiber Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable between the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center, and Verizon's main termination point, such as the fiber patch panel located within a Customer premise, and that has not been activated through connection to the electronics that "light" it, and thereby render it capable of carrying Telecommunications Services.

2.8. In addition to the other terms and conditions of this Agreement, the following terms and conditions shall apply to Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF:

2.8.1. Verizon shall be required to provide a Dark Fiber Loop only where one end of the Dark Fiber Loop terminates at a Verizon Accessible Terminal in Verizon's Central Office that can be cross-connected to Dark Air's collocation arrangement located in that same Verizon Central Office and the other end terminates at the Customer premise. Verizon shall be required to provide a Dark Fiber Sub-Loop only where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's Central Office that can be cross-connected to Dark Air's collocation arrangement located in that same Verizon Central Office and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Dark Air's collocation arrangement or adjacent structure, or (2) one end of the Dark Fiber Sub-Loop terminates at Verizon's main termination point located within the Customer premise and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Dark Air's collocation arrangement or adjacent structure, or (3) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Dark Air's collocation arrangement or adjacent structure and the other end terminates at Verizon's Accessible Terminal at another Verizon remote terminal equipment enclosure that can be cross-connected to Dark Air's collocation arrangement or adjacent structure. A Dark Air demarcation point at a Customer premise shall be established in the main telco room of the Customer premise if Verizon is located in that room or, if the building does not have a main telco room or if Verizon is not located in that room, then at a location to be determined by Verizon. A Dark Air demarcation point at a Customer premise shall be established at a location that is no more than 30 feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Dark Air demarcation point by installing a fiber jumper no greater than 30 feet in length

2.8.2. Dark Air may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF, and Dark Air may not access a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF at any other point, including, but not limited to, a splice point or case. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF are not available Dark Air unless such Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF already are terminated on a Verizon Accessible Terminal. Except where required by Applicable Law, Verizon will not introduce additional splice points or open existing splice points or cases to accommodate Dark Air's request. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch panel, are not available to Dark Air.

2.8.3. A strand shall not be deemed to be continuous if splicing is required to provide fiber continuity between two locations. Dark Fiber Loops, Dark

Fiber Sub-Loops and Dark Fiber IOF will only be offered on a route-direct basis where facilities exist (i.e., no intermediate offices).

- 2.8.4. Verizon shall perform all work necessary to install (1) a cross connect or a fiber jumper from a Verizon Accessible Terminal to a Dark Air collocation arrangement or (2) from a Verizon Accessible Terminal to Dark Air's demarcation point at a Customer premise or Dark Air Central Office.
- 2.8.5. A Dark Fiber Inquiry must be submitted prior to submitting an ASR. Upon receipt of the completed Dark Fiber Inquiry, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available between the locations and in the quantities specified. Verizon will respond within fifteen (15) Business Days from receipt of Dark Air's request, indicating whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available based on the records search except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.
- 2.8.6. Dark Air shall order Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF by sending to Verizon a separate ASR for each A to Z route.
- 2.8.7. Access to Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF that terminate in a Verizon premise must be accomplished via a collocation arrangement in that premise. In circumstances where collocation cannot be accomplished in the premises, the Parties agree to negotiate for possible alternative arrangements.
- 2.8.8. A Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF will be offered to Dark Air in the condition that it is available in Verizon's network at the time that Dark Air submits its request (i.e., "as is"). In addition, Verizon shall not be required to convert lit fiber to a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF for Dark Air's use.
- 2.8.9. Spare wavelengths on fiber strands, where Wave Division Multiplexing (WDM) or Dense Wave Division Multiplexing (DWDM) equipment is deployed, are not considered to be Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF, and, therefore, will not be offered to Dark Air as Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.
- 2.8.10. Fiber that has been assigned to fulfill a Customer order or for maintenance purposes will not be offered to Dark Air as Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.
- 2.8.11. Dark Air shall be responsible for providing all transmission, terminating and regeneration equipment necessary to light and use Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF.
- 2.8.12. Dark Air may not resell Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF, purchased pursuant to this Agreement to third parties.
- 2.8.13. Except to the extent that Verizon is required by Applicable Law to provide Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF to Dark Air for use for Special or Switched Exchange Access Services,

Dark Air shall not use Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF, for Special or Switched Exchange Access Services.

- 2.8.14. In order to preserve the efficiency of its network, Verizon will limit Dark Air to leasing up to a maximum of twenty-five percent (25%) of the Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF in any given segment of Verizon's network. In addition, except as otherwise required by Applicable Law, Verizon may take any of the following actions, notwithstanding anything to the contrary in this Amendment:
- 2.8.14.1. Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to Dark Air upon a showing of need to the Commission and twelve (12) months' advance written notice to Dark Air; and
 - 2.8.14.2. Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to Dark Air upon a showing to the Commission that Dark Air underutilized fiber within any twelve (12) month period;
 - 2.8.14.3. Verizon reserves and shall not waive, Verizon's right to claim before the Commission that Verizon should not have to fulfill a Dark Air order for Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF because that request would strand an unreasonable amount of fiber capacity, disrupt or degrade service to Customers or carriers other than Dark Air, or impair Verizon's ability to meet a legal obligation.
- 2.8.15. Dark Air may not reserve Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF.
- 2.8.16. Dark Air shall be solely responsible for: (a) determining whether or not the transmission characteristics of the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF accommodate the requirements of Dark Air; (b) obtaining any Rights of Way, governmental or private property permit, easement or other authorization or approval required for access to the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF; (c) installation of fiber optic transmission equipment needed to power the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF to transmit Telecommunications Services traffic; (d) installation of a demarcation point in a building where a Customer is located; and (e) Dark Air's collocation arrangements with any proper optical cross connects or other equipment that Dark Air needs to access Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF before it submits an order for such access. Dark Air hereby represents and warrants that it shall have all such rights of way, authorizations and the like applicable to the geographic location at which it wishes to establish a demarcation point for dark fiber, on or before the date that Dark Air places an order for the applicable dark fiber, and that it shall maintain the same going forward.
- 2.8.17. Dark Air is responsible for trouble isolation before reporting trouble to Verizon. Verizon will restore continuity to Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF that have been broken. Verizon will not repair a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF that is capable of transmitting light, even if the transmission

characteristics of the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF have changed.

- 2.8.18. Dark Air is responsible for all work activities at the Customer premises. Except as otherwise required by Applicable Law, all negotiations with the premises owner are solely the responsibility of Dark Air.

2.9. Inside Wire

2.9.1. House and Riser.

Subject to the conditions set forth in Section 1, Verizon shall provide Dark Air with access to a House and Riser Cable (as such term is hereinafter defined) in accordance with, and subject to, the rates, terms and conditions set forth in Verizon's DTE No. 17 Tariff, as amended from time to time, that relate to or concern House and Riser Cables, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective. A "House and Riser Cable" means a two-wire or four-wire metallic distribution facility in Verizon's network between the minimum point of entry for a building where a premises of a Customer is located (such a point, an "MPOE") and the rate demarcation point for such facility (or network interface device (NID) if the NID is located at such rate demarcation point). Verizon shall provide Dark Air with access to House and Riser Cables in accordance with, but only to the extent required by, Applicable Law.

- 2.9.2. To provide Dark Air with access to a House and Riser Cable, Verizon shall not be obligated to (a) move any Verizon equipment, (b) secure any Right of Way for Dark Air, (c) secure space for Dark Air in any building, (d) secure access to any portion of a building for Dark Air or (e) reserve space in any building for Dark Air.

- 2.9.3. Dark Air must ensure that its terminal block has been tested for proper installation, numbering and operation before ordering from Verizon access to a House and Riser Cable. Verizon shall perform cutover of a Customer to Dark Air service by means of a House and Riser Cable subject to a negotiated interval. Verizon shall install a jumper cable to connect the appropriate Verizon House and Riser Cable pair to Dark Air's termination block, and Verizon shall determine how to perform such installation. Dark Air shall coordinate with Verizon to ensure that House and Riser Cable facilities are converted to Dark Air in accordance with Dark Air's order for such services.

- 2.9.4. If a Dark Air compatible connecting block or spare termination on Dark Air's connecting block is not available at the time of installation, Verizon shall bill Dark Air, and Dark Air shall pay to Verizon, the Not Ready Charge set forth in the Pricing Appendix to the UNE Remand Attachment and the Parties shall establish a new cutover date.

- 2.9.5. Verizon shall perform all installation work on Verizon equipment. All Dark Air equipment connected to a House and Riser Cable shall comply with applicable industry standards.

- 2.9.6. Verizon shall repair and maintain a House and Riser Cable at the request of Dark Air. Dark Air shall be solely responsible for investigating and determining the source of all troubles and for providing Verizon with

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appropriate dispatch information based on its test results. Verizon shall repair a trouble only when the cause of the trouble is a Verizon House and Riser Cable. If (a) Dark Air reports to Verizon a Customer trouble, (b) Dark Air requests a dispatch, (c) Verizon dispatches a technician, and (d) such trouble was not caused by a Verizon House and Riser Cable in whole or in part, then Dark Air shall pay Verizon the charge set forth in the Pricing Appendix to the UNE Remand Attachment for time associated with said dispatch. In addition, this charge also applies when the Customer contact as designated by Dark Air is not available at the appointed time. If as the result of Dark Air instructions, Verizon is erroneously requested to dispatch to a site on Verizon company premises ("dispatch in"), a charge set forth in the Pricing Appendix to the UNE Remand Attachment will be assessed per occurrence to Dark Air by Verizon. If as the result of Dark Air instructions, Verizon is erroneously requested to dispatch to a site outside of Verizon company premises ("dispatch out"), a charge set forth in the Pricing Appendix to the UNE Remand Attachment will be assessed per occurrence to Dark Air by Verizon.

Pricing Appendix to the UNE Remand Attachment

1. General

- 1.1. As used in this Appendix, the term "Charges" means the rates, fees, charges and prices for a Service.
- 1.2. Except as stated in Section 2, below, Charges for Services shall be as stated in this Section 1.
- 1.3. The Charges for a Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff.
- 1.4. In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Exhibit A of this Pricing Appendix.
- 1.5. The Charges stated in Exhibit A of this Pricing Appendix shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Exhibit A of this Pricing Appendix also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.
- 1.6. In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.5, if Charges for a Service are otherwise expressly provided for in the Agreement, the UNE Remand Attachment or this Pricing Appendix to the UNE Remand Attachment, such Charges shall apply.
- 1.7. In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.6, the Charges for the Service shall be the Providing Party's FCC or Commission approved Charges.
- 1.8. In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.7, the Charges for the Service shall be mutually agreed to by the Parties in writing.

2. Dark Air Prices

Notwithstanding any other provision of the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment, the Charges that Dark Air bills Verizon for Dark Air's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent that Dark Air's cost to provide such Dark Air Services to Verizon exceeds the Charges for Verizon's comparable Services and Dark Air has demonstrated such cost to Verizon, or, at Verizon's request, to the Commission or the FCC.

3. Section 271

If Verizon is a Bell Operating Company (as defined in the Act) and in order to comply with Section 271(c)(2)(B) of the Act provides a Service under the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment that Verizon is not required to provide by Section 251 of the Act, Verizon shall have the right to establish Charges for such Service in a manner that differs from the manner in which

under Applicable Law (including, but not limited to, Section 252(d) of the Act) Charges must be set for Services provided under Section 251.

4. **Regulatory Review of Prices**

Notwithstanding any other provision of the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment, each Party reserves its respective rights to institute an appropriate proceeding with the FCC, the Commission or other governmental body of appropriate jurisdiction: (a) with regard to the Charges for its Services (including, but not limited to, a proceeding to change the Charges for its services, whether provided for in any of its Tariffs, in Exhibit A, or otherwise); and (b) with regard to the Charges of the other Party (including, but not limited to, a proceeding to obtain a reduction in such Charges and a refund of any amounts paid in excess of any Charges that are reduced