

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement is entered into as of [REDACTED] ("Effective Date"), between **Washburn University**, a municipal university and a political subdivision of the State of Kansas (hereinafter called "Washburn"), located at 1700 SW College, Topeka, Kansas, and [REDACTED], having an office at [REDACTED], (hereinafter called "Company"). Washburn and Company are collectively referred to as the "Parties" and individually may be referred to as "Party".

**Whereas**, Washburn desires to obtain bids for a cable installer to install a new Fiber Backbone and Network Infrastructure Loop (hereinafter referred to as "Project") on Washburn's main campus located at 1700 SW College, Topeka, Kansas.

**Whereas**, Company desires to participate in the bidding process to submit a bid for the Project.

**Whereas**, during participation in the bidding process, Washburn may disclose to Company certain confidential and proprietary information concerning the logistics, structure, functioning, and other technical or physical aspects of the Fiber structures on Washburn's campus.

**NOW, THEREFORE**, in consideration of the promises recited herein, each party hereto agrees with the following provisions:

### 1. Definitions.

- 1.1 "Confidential Information" shall mean any and all confidential or proprietary information, know-how and data, technical or non-technical, disclosed or provided by Washburn to Company, whether in oral, written, graphic, photographic, electronic or any other form and that is marked or identified as confidential. Information provided orally will be considered confidential as of the time of communication to the Company.

### 2. Restrictions on Use and Disclosure.

- 2.1 Confidential information received by the Company from Washburn shall only be disclosed to those personnel within Company's organization requiring access to perform tasks related to the Project, and any personnel shall be made aware of the restrictions imposed upon the use of the confidential information.
- 2.2 Company shall only use such confidential information for the mutual benefit of the Parties and in furtherance of their bid for the Project. Company shall not use confidential information for any other purpose.
- 2.3 All confidential information shall remain the property of Washburn and shall be returned to Washburn or destroyed upon written request, except as allowed by 5.3 below or as required by applicable law or regulation.
- 2.4 The obligations of confidentiality and non-use under this Agreement do not apply to:
  - 2.4.1 Information that is in the public domain at the time of initial disclosure to the Company;
  - 2.4.2 Such information is known to the Company prior to the initial disclosure, as evidenced by competent and contemporaneous written documentation;
  - 2.4.3 Such information is required to be disclosed pursuant to applicable law or proper governmental or judicial process. When such information is required to be disclosed as described in this section, prompt notice shall be provided to Washburn in order

that Washburn may have every opportunity to intervene in such process to contest the disclosure.

2.5 The identification of any of these occurrences as described in 2.4.1 through 2.4.3 above shall be promptly communicated between the Parties.

2.6 Parties agree that only the Company awarded the winning bid for the Project may retain one archival copy of all documents from the Project for the purposes of proving what information it did or did not receive in the event of future disputes or complying with governmental regulatory requirements.

3. **Termination.** This Agreement shall continue in full force and effect until terminated. This Agreement may be terminated at any time by either of the Parties upon fifteen days' written notice to the other Party, provided, however, that Company's obligations with respect to Washburn's Proprietary and Confidential Information disclosed or received prior to termination will survive indefinitely.

4. **Disclaimers.**

3.1 Nothing contained in this Agreement shall be construed as an obligation to enter into any further agreement by either party, their staff or their employer.

3.2 No license, right or options under any patent, copyright, trademark, or equivalent rights are granted by this Agreement.

5. **Use of Marks, Logos, and Marketing.** Neither Washburn or Company shall make use of this Agreement, or use the other's name, logos, insignias, or other trademarks or that of any member of the other's staff or employer for publicity, advertising, or other commercial purposes.

6. **Compliance with Laws.** Each Party will comply with all applicable federal, state, and local statutes, rules, and regulations, including but not limited to, United States export control laws and regulations as they currently exist and as they may be amended from time to time.

7. **Severability.** Should any court of competent jurisdiction later consider any provisions of this Agreement to be invalid, illegal, or unenforceable, such provisions shall be considered severed from this Agreement. All other provisions, rights, and obligations shall continue without regard to the severed provision, provided that the remaining provisions of this Agreement are in accordance with the intentions of the Parties.

8. **Choice of Law and Venue.** The validity, interpretation and performance of this Agreement and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this Agreement shall reside only in courts located in Shawnee County, Kansas, or other appellate courts with jurisdiction in the State of Kansas.

9. **Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the Confidential Information described herein and supersedes all prior understandings whether written or oral. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both Parties hereto.

10. **Remedies.** Because of the unique and proprietary nature of Confidential Information, Parties acknowledge the breach of an obligation under this Agreement may cause or threaten irreparable harm to non-breaching party. Accordingly, Parties agree, in such event, remedy at law for a breach may be inadequate and, therefore, non-breaching party shall be entitled to seek equitable relief to protect its interests, including but not limited to preliminary and permanent injunctive relief as well as money damages, attorneys' fees, and legal fees incurred. In any action or suit to

enforce any right or remedy under this Agreement, or to interpret any provision of this Agreement, the substantially prevailing Party shall be entitled to recover its costs, including reasonable attorneys' fees. The requirements of this Section will survive any termination of this Agreement.

11. **Assignment.** This Agreement shall be binding on and for the benefit of the undersigned Parties, their successors, and assigns. Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respected permitted successors and assigns of the Parties.
12. **Waiver.** Failure to enforce any provision of this Agreement by a Party shall not constitute a waiver of any term hereof by such Party.
13. **Counterparts/Execution.** This Agreement shall be effective when signed below or in counterpart, and photocopy, facsimile, electronic, or other copies shall have the same effect for all purposes as an ink-signed original or wet signature.
14. **Notice.** All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. For the purpose of all communications and transmittals of Proprietary and Confidential Information under this Agreement, the authorized representatives and addresses of the Parties, subject to change on written notice, are:

Washburn University: Vice President for Administration and Treasurer, 1700 SW College Avenue, Topeka, Kansas, 66621. Telephone: 785-670-1647. Fax:785-670-1048.

Company:

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15. Both parties warrant and represent that they have the right to enter into this Agreement. The parties further warrant and represent that the terms of this Agreement are not inconsistent with other contractual obligations to which they are bound. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". WASHBURN MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF ANY CONFIDENTIAL INFORMATION PROVIDED TO COMPANY UNDER THIS AGREEMENT.

The foregoing has been agreed to and accepted by authorized representatives of each party whose signatures appear below.

Washburn University

Company

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Signature

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Signature

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Name/Title

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Name/Title

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Date

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Date