

**Fiber Optic Private Network Agreement
Product Order**

This Product Order ("Product Order") together with Exhibit A and the General Terms and Conditions attached hereto constitute the Fiber Optic Private Network Agreement ("Agreement") which is effective as of May 29, 1998 by and between Metromedia Fiber Network Services, Inc. ("MFN"), 1 North Lexington Avenue, 4th Floor, White Plains, New York 10601, and Allegiance Telecom of New York, Inc. ("Carrier") whose address is 1950 Stemmons Freeway, Suite 3026, Dallas, Texas 75207. Definitions of terms used in this Agreement appear in this Product Order and in the General Terms and Conditions.

1. Carrier orders and MFN will provide Leased Fiber as follows:

- 1.1 Fiber Lease Term: Ten (10) Years
- 1.2 Number of Leased Fibers: Four (4) Strands of Single Mode Fiber in three (3) ring configurations.
- 1.3 Carrier locations ("Location(s)"):

Ring # 1:

Existing MFN Zero Manhole Splice Points

60 Hudson Street, New York, NY

Not Applicable

221 East 37th Street, New York, NY

E/SE Third Ave. & 38th St, RL=431.68'
2nd INT. E/O 37th St on 37th St, RL=297.00'

228 East 56th Street, New York, NY

E/SE Third Ave & 56th St, RL=452'
E/SE Third Ave & 55th St, RL=476'

208 East 79th Street, New York, NY

None Available

435 West 50th Street, New York, NY

W/SW Ninth Ave & 51st St, RL=337.2'
C/L Ninth Ave S/O 51st St, RL=464.0'

Ring # 2:

60 Hudson Street, New York, NY

Not Applicable

204 Second Avenue, New York, NY

2nd INT. N/O 12th St on 2nd Ave, RL=153.7'
N/W 13th St & 2nd Ave

227 East 30th Street, New York, NY

E/O 3rd Ave on 30th St, RL=307.5'
N/W 2nd Ave & 30th St, RL=322.8'

1095 Ave of the Americas, NY, NY

1st INT. S/O 42nd St on 6th Ave, RL=97.0'
1st INT. N/O 41st St on B'way, RL=445.0'

230 West 36th Street, New York, NY

None Available

111 Eighth Avenue, New York, NY

Not Applicable

Ring # 3:

60 Hudson Street, New York, NY	Not Applicable
140 West Street, New York, NY	N/NE Vesey St & Washington St, RL=55.5' S/O Vesey St on West St, RL=251.0'
104 Broad Street, New York, NY	W/NW Broad St & Pearl St, RL=75.1' W/SW Broad St & Water St, RL=95'
360 Bridge Street, Brooklyn, NY	None Available
210 West 18 th Street, New York, NY	INT. E/O 8 th Ave on 17 th St, RL=447.5' INT. W/O 7 th Ave on 17 th St, RL=46'

1.4 Leased Fiber specifications: See Exhibit A.

1.5 Installation Charge and Lease Payments:

One Time Installation Charge:	\$ N/A
Pre-Paid Lease Payment:	\$ 3,485,000.00

Payment Terms for Pre-Paid Lease Payment:

Due upon contract signing:	\$ 871,250.00
Due on each ring:	\$ 871,250.00 to be paid as follows:

Ring # 1 - \$174,250.00 per each of the five (5) Locations.

Ring # 2 - \$145,208.33 per each of the six (6) Locations.

Ring # 3 - \$174,250.00 per each of the five (5) Locations.

The amounts above are due upon the Service Date of each Location in each Ring except as otherwise noted in Section 6.3 herein.

For the purposes of Outage Credit as defined in Section 3.2 of the General Terms and Conditions attached hereto, the Monthly Lease Payment shall mean the Pre-Paid Lease Payment divided by the number of months of the Lease Term.
\$ 3,485,000 divided by 120 months = \$29,041.67

Payment Terms for One Time Lateral Costs: To be billed upon completion of work

Applicable Taxes (as provided in the Agreement) on the Installation Charge and all Lease Payments are to be paid by Carrier as and when due.

2. Estimated Installation Completion Date:

For each Location within each ring, no earlier than fifteen (15) days and not later than thirty (30) days after Carrier gives MFN written notice of completion of Bell Atlantic approval of cage assignments and manhole assignments which are the MFN Zero Manhole Splice Points set forth in Section 1.3 herein. If any Bell Atlantic manhole assignment is not to

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MFN's Zero Manhole Splice Points then the Estimated Installation Completion Date for that Location will not be later than ninety (90) days after receipt of Carrier's written notice to MFN.

3. MFN address (and contact person) is as follows:

Metromedia Fiber Network Services, Inc.
1 North Lexington Avenue, 4th Floor
White Plains, New York 10601
Attn: John McLeod, Vice President -- Marketing
Reference:

If declaring a default or termination, a copy of the notice must be sent to:

Dennis E. Codlin
Vice President -- Legal Affairs
Metromedia Fiber Network Services, Inc.
1 North Lexington Avenue, 4th Floor
White Plains, New York 10601

4. Carrier address (and contact person) is as follows:

Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, Texas 75207
Attn: *Dana Crowne* 

5. Early Termination Charge:

In the event of early termination of this Product Order by Carrier (other than by reason of a default by MFN as provided in Article 11), MFN shall be entitled to receive, and Carrier shall promptly pay all unamortized and unpaid Lease Payments payable by Carrier for the remainder of the initial Lease Term and/or Renewal Term, as applicable.

6. Special Requirements:


- 6.1 Carrier will arrange for its own cage space within and manhole assignments adjacent to each Bell Atlantic Central Office and installation approval for MFN to build laterals and risers into Carrier's cages.
- 6.2 6.2 Pricing includes fiber termination into existing MFN zero manhole splice points at each Bell Atlantic Central Office as set forth in Section 1.3 of this Product Order. An additional estimated one-time construction cost of \$10,000 - \$30,000 but not to exceed \$65,000 per Central Office will be required to build laterals and risers into Carrier's cages. If the one-time construction cost for any Central Office will exceed \$30,000, MFN will notify Carrier in writing with supporting documentation prior to construction.
- 6.3 If Carrier is assigned a different zero manhole other than MFN's existing zero manhole splice points, additional one time construction costs will be charged to

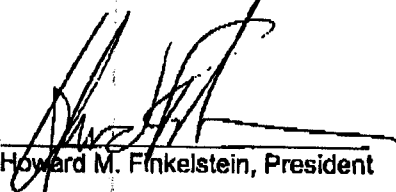
Carrier. Additionally, lateral and riser construction costs as described in 6.2 will be charged. MFN will notify Carrier in writing with supporting documentation of the actual one-time construction cost per Central Office prior to construction, which will be subject to Carrier's reasonable approval. Carrier shall approve or disapprove in writing of the one time construction cost within ten (10) business days of notification by MFN. Carrier's failure to respond within ten (10) business days of notification will be deemed an approval of the one time construction cost for that particular Central Office. If Carrier approves of such cost, Carrier will pay all amounts due for that Central Office as provided in Section 1.5. If Carrier disapproves of the one-time construction cost for any Central Office MFN will not perform such construction. In this event, the amount due for that Central Office as set forth in Section 1.5 (but not any one-time construction cost) shall be paid within thirty (30) business days of notification of that Central Office's one-time construction cost.

The persons signing this Agreement are authorized by the respective parties to do so. Signature constitutes acceptance of all terms and conditions in this Product Order, the Exhibits and the General Terms and Conditions.

Allegiance Telecom of New York, Inc.

Metromedia Fiber Network Services, Inc.

By: 
 Name: Royce J. Holland
 Title: Chief Executive Officer

By: 
 Howard M. Finkelstein, President

Fiber Optic Private Network Agreement

Exhibit A

Leased Fiber Cable Specifications

- Lucent Depressed Cladding Single Mode Fiber (Non-Dispersion Shift Fiber)

Lucent Technologies
Bell Labs Innovations



Depressed Cladding Single Mode Fiber

The Reliable Solution for Low-Loss,
High-Bandwidth Applications

Designed for fiber optic systems requiring low loss and high bandwidth, Lucent Technologies Depressed Cladding Single Mode Fiber is the reliable solution for your most demanding applications. With millions of kilometers installed around the world since its introduction over 10 years ago, Depressed Cladding Fiber provides the performance and reliability that both present and future systems require. Depressed Cladding Single Mode Fiber is available in a variety of cable designs, including central tube, loose tube, slotted core and ribbon cable.



Special Design Increases Optical Performance

Lucent Technologies Depressed Cladding Single Mode Fiber sets the standard for optical fiber performance. Consisting of a germanium-doped core within two concentric synthetic silica cladding layers, this fiber lets you take advantage of the full capability of single mode fiber. The inner cladding layer is doped with fluorine to reduce its refractive index below that of the outer layer. This special refractive index profile provides better control of

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mode field diameter, cutoff wavelength, and chromatic dispersion than other commonly used index profiles. A fiber which has low attenuation, low chromatic dispersion and excellent bending loss resistance is achieved through the proper choice of core and cladding diameters and refractive index values. Although optimized for operation in the 1310 nm region, Depressed Cladding Fiber also supports systems that operate in the 1550 nm region.

Simplified Installation and Reduced Splice Loss

Precise control of the geometrical properties of Depressed Cladding Fiber permit low-loss splicing with either single-fiber or mass-fusion techniques, increasing installation efficiency and maintaining system performance. Depressed Cladding Fiber can be spliced with very low loss to Matched Cladding fibers manufactured by Lucent Technologies or other major fiber suppliers, providing system design flexibility and cost effectiveness.

Wavelength	dB/km
1.0 μm	1.15
1.30 μm	0.35
1.31 μm	0.34
1.38 μm	0.50
1.55 μm	0.19

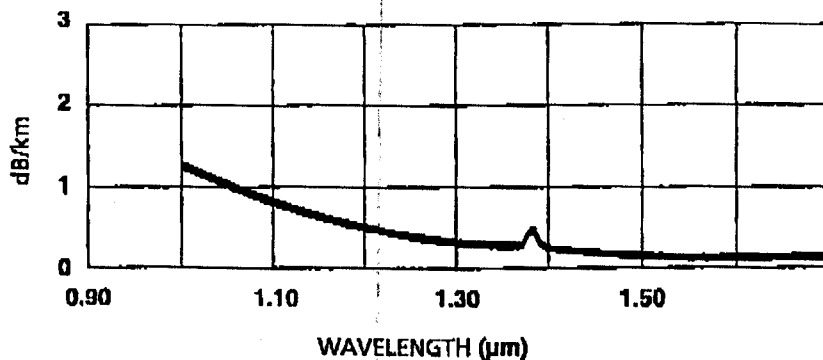
Depressed Cladding Single Mode Fiber Offers These Benefits to You

- **Reduced Transmission Loss** – This fiber provides low intrinsic loss for transmission capability at 1310 and/or 1550 nm.
- **Simplified Installation** – This fiber's compatibility with other vendors' fiber makes installation easy, even in environments with existing fiber. In addition, its excellent geometrical properties help ensure improved splice loss control.
- **Superior Micro-bending Resistance** – The Depressed Cladding design and D-LUX® coating cushion the fiber and protect it from micro-bending loss.
- **Unparalleled Environmental Protection** – The D-LUX coating system gives you excellent environmental performance and long-term reliability, even in harsh environments.
- **Superior Performance** – To support digital systems with very high bit rates or high-capacity analog systems, this fiber provides excellent polarization mode dispersion performance.

Specifications

Attenuation (Customer specifies maximum value within range):	0.35 - 0.40 dB/km at 1310 nm 0.21 - 0.30 dB/km at 1550 nm
Zero Dispersion Wavelength:	$1300 \text{ nm} \leq \lambda_0 \leq 1320 \text{ nm}$
Dispersion Slope:	$\leq 0.092 \text{ ps/nm}^2\text{-km}$
1550 nm Dispersion:	$\leq 18 \text{ ps/nm}^2\text{-km}$
Polarization Mode Dispersion Coefficient:	$\leq 0.5 \text{ ps}/\sqrt{\text{km}}$ at 1310 nm (in Lucent Technologies cable)*
Mode Field Diameter:	$8.8 \pm 0.5 \mu\text{m}$ at 1310 nm
Cladding Diameter:	$125.0 \pm 1.0 \mu\text{m}$
Core/Cladding Concentricity Error:	$\leq 0.8 \mu\text{m}$
Cabled Cutoff Wavelength (λ_{cc}):	$\leq 1260 \text{ nm}$
Coating Diameter (uncolored):	$245 \pm 10 \mu\text{m}$
Proof Test Levels:	100 kpsi minimum (or as specified)

* Check with your cable manufacturer for specific PMD limits in cable form.



Spectral Attenuation Curve of a Typical Fiber

Transmission Characteristics

Attenuation:

The maximum attenuation (loss) in dB/km may be specified within the ranges indicated in the table below:

Wavelength (nm)	Maximum Attenuation (dB/km)
1310	0.35 - 0.40
1550	0.21 - 0.30

Attenuation vs. Wavelength:

The maximum attenuation in the wavelength region from 1285 nm to 1330 nm is no more than 0.10 dB/km greater than the attenuation at 1310 nm.

The maximum attenuation in the wavelength region from 1525 nm to 1575 nm is no more than 0.05 dB/km greater than the attenuation at 1550 nm.

Attenuation at Water Peak:

The attenuation at the OH absorption peak (1383 ± 3 nm) is less than or equal to 1.0 dB/km.

Macrobanding Attenuation:

The maximum attenuation with bending does not exceed the specified values with the following deployment conditions:

Deployment Condition	Wavelength	Induced Attenuation
1 turn, 32 mm (1.2 inch) diameter	1550nm	≤ 0.5 dB
100 turns, 75 mm (3 inch) diameter	1310 nm	≤ 0.05 dB
	1550 nm	≤ 0.10 dB

Point Discontinuities:

There are no attenuation discontinuities greater than 0.10 dB at 1310 nm or 1550 nm.

Chromatic Dispersion:

Zero dispersion wavelength (λ_0): 1300 - 1320 nm

The maximum dispersion slope (S_0) at λ_0 : 0.092 ps/nm²-km

Dispersion at any wavelength (λ) in the range 1200 - 1600 nm may be calculated using the following equation:

$$\text{Dispersion} = D(\lambda) = S_0 \frac{\lambda}{\lambda_0^4} \left[1 - \frac{\lambda_0^4}{\lambda^4} \right] \text{ ps/nm}^2\text{-km}$$

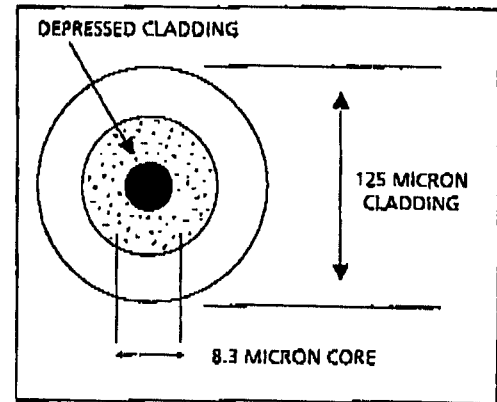
Mode Field Diameter:

at 1310 nm: 8.8 ± 0.5 μm

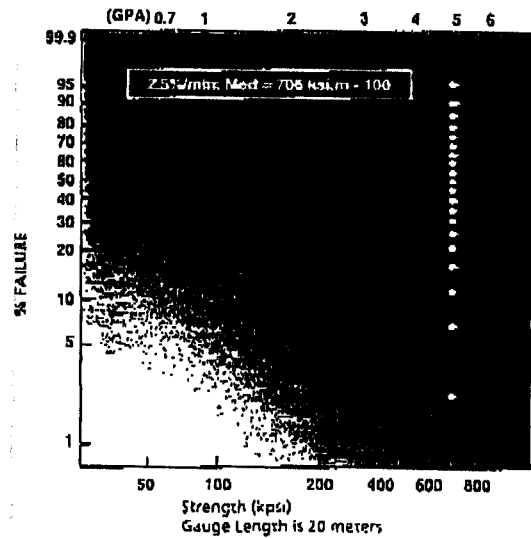
at 1550 nm: 9.7 ± 0.6 μm

Cutoff Wavelength:

Cable Cutoff Wavelength (λ_{cc}): ≤ 1260 nm



Typical Weibull Plot of Fiber Strength



Geometrical Characteristics

Glass Geometry

Cladding Diameter:	125.0 ± 1.0 μm
Core/Clad Concentricity Error:	≤ 0.8 μm
Cladding Noncircularity:	≤ 1.0%

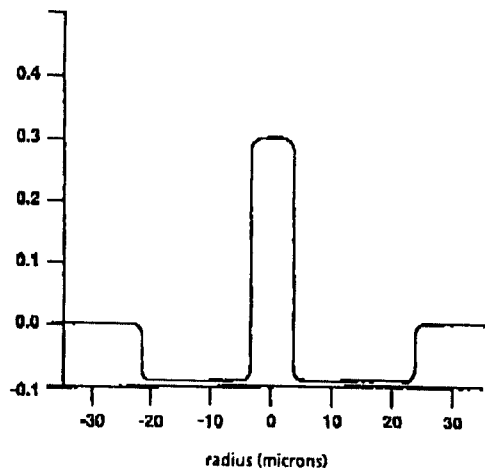
Coating Geometry:

Coating Diameter (uncolored):	245 ± 10 μm
Coating/Cladding Concentricity Error:	≤ 12 μm

Length:

Standard spool lengths are:	4.4, 6.4, 12.6, 19.2 and 25 km
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Lengths cut to specific customer request are also available.



Typical Refractive Index Profile

Other Performance Characterizations

(Values stated are typical values)

The nominal zero dispersion wavelength (λ_0) is:	1310 nm
The nominal dispersion slope at λ_0 :	0.088 ps/nm ² -km
Index of refraction difference between:	
Core and depressed cladding	0.29%
Depressed cladding & outer cladding	-0.08%
Typical Core Diameter:	8.3 μ m
Effective Group Index of Refraction:	
1310 nm	1.466
1550 nm	1.467
Rayleigh Backscattering Coefficient: (1 μ s pulse width)	
1310 nm	-49.2 dB
1550 nm	-51.8 dB
Dynamic Fatigue Parameter (n_d):	>20
Static Fatigue Parameter (n_s):	>20
Weight Per Unit Length:	64 grams/km

Unparalleled Environmental Protection

All Lucent Technologies fibers feature the D-LUX ultraviolet-cured, acrylate, dual-coating system. Since its introduction in 1989, D-LUX coating has been recognized as a superior coating that provides unparalleled performance in a wide variety of environments. Recent enhancements, such as increased delamination resistance, and compatibility with additional filling compound materials, make D-LUX coating even better. Consisting of an inner, low-modulus primary coating, which is applied directly to the fiber cladding surface, and an outer high-modulus secondary coating, D-LUX coatings are mechanically strippable and have a nominal outside diameter of 245 μ m.

Mechanical Characteristics

Proof Test:	100 kpsi (0.7 GPa)	
Higher proof test levels are available upon request.		
Coating (Performance Characterization):		
Coating Strip Force:		
The force to mechanically strip the dual coating is		
	≥ 1.3 (0.3 lbf.) and < 8.9 N (2.0 lbf.).	
Coating Appearance:		
The dual coating layers are free of voids or entrapped bubbles.		
Pullout Force (Adhesion of Coating to Glass Surface):		
The pullout force is		
	> 6.2 N (1.4 lbf.) and < 22.2 N (4.9 lbf.).	
Fiber Curl:		
The fiber curl is		
	≥ 2 m.	
Fiber Shipping Spool Mechanical Specifications:		
	A	B
Flange Diameter:	9.25 in. (23.50 cm.)	9.25 in. (23.50 cm.)
Barrel Diameter:	6.00 in. (15.24 cm.)	6.00 in. (15.24 cm.)
Traverse Width:	3.39 in. (8.61 cm.)	4.70 in. (11.94 cm.)
Weight:	1.22 lbs. (0.46 kg.)	1.36 lbs. (0.51 kg)

Note: Spool A is used for shipped lengths of fiber < 15 km
 Spool B is used for shipped lengths of fiber ≥ 15 km

Advantages of the D-LUX Coating System

- Cushions fiber against micro-bending losses
- Provides abrasion and cut-through resistance
- Enhances aging and reliability characteristics through superior hydrolytic stability
- Preserves the mechanical strength of the glass
- Provides stability in a wide range of environmental conditions
- Resists color change with age.

Test Methods

The following industry-accepted test methods are used to characterize fibers described herein.

Fiber Parameter	EIA/TIA Test Method	IEC Test Method
Attenuation	EIA/TIA-455-78	IEC 793-1-C1A, IEC 793-1-C1C
Point Discontinuity	EIA/TIA-455-59	IEC 793-1-C1C
Macrobending Attenuation	EIA/TIA-455-62	IEC 793-1-C11
Cable Cutoff Wavelength	EIA/TIA-455-170	IEC 793-1-C7B
Chromatic Dispersion	EIA/TIA-455-175	IEC 793-1-C5C
Polarization Mode Dispersion	EIA/TIA-455-113 & 122	*
Mode Field Diameter	EIA/TIA-455-167	IEC 793-1-C9B
Cladding Diameter	EIA/TIA-455-176	IEC 793-1-A2
Cladding Non-circularity	EIA/TIA-455-176	IEC 793-1-A2
Core/Cladding Concentricity Error	EIA/TIA-455-176	IEC 793-1-A2
Coating Geometry	EIA/TIA-455-173 EIA/TIA-455-163	IEC 793-1-A2 *
Coating Strip Force	EIA/TIA-455-178	*
Proof Test	EIA/TIA-455-31	IEC 793-1-B1
Tensile Strength	EIA/TIA-455-28	IEC 793-1-B2A, B2B
Fiber Curl	EIA/TIA-455-111	*
Length	EIA/TIA-455-60	IEC 793-1-C1C
Operating Temperature Range	EIA/TIA-455-69	*
Temperature Cycling	EIA/TIA-455-3	IEC 793-1-D1
Temperature/Humidity Cycling	EIA/TIA-455-72 & -73	*
Fluid Immersion	EIA/TIA-455-74 & -75	*
High Temperature Aging	EIA/TIA-455-67 & -70	*
Dynamic Fatigue	EIA/TIA-455-76	IEC 793-1-B7A
Static Fatigue	EIA/TIA-455-97	IEC 793-1-B7D

* There is currently no equivalent IEC test procedure for this parameter.

Superior Performance

Lucent Technologies was one of the first fiber manufacturers to specify maximum limits on polarization mode dispersion (PMD). PMD can affect performance in digital systems at very high bit rates and in high-capacity analog systems. Lucent Technologies Depressed Cladding Fiber is manufactured using a patented process that ensures low PMD in every fiber installed.

Fiber You Can Count On — For Performance and Reliability

Lucent Technologies has the knowledge and experience to provide you with quality products for all your telecommunications needs. We understand the requirements of telecommunications applications and provide fiber that will support those needs. Our Depressed Cladding Fiber sets the standard for optical fiber performance and reliability — wherever it may be used.

Environmental Characteristics

Operating Temperature Range:	-60°C to +85°C
Temperature Dependence of Attenuation: Induced Attenuation, -60°C to +85°C at 1310 and 1550 nm:	≤ 0.05 dB/km
Temperature - Humidity Cycling: Induced Attenuation, -10°C to +85°C and 95% relative humidity at 1310 and 1550 nm:	≤ 0.05 dB/km
Water Immersion, 23°C: Induced Attenuation due to Water Immersion at 23 ± 2°C at 1310 and 1550 nm:	≤ 0.05 dB/km
Accelerated Aging (Temperature), 85°C: Induced Attenuation due to Temperature Aging at 85 ± 2°C at 1310 and 1550 nm:	≤ 0.05 dB/km
Retention of Coating Color: D-LUX coated fiber shows no discernable change in color when aged	
• for 30 days at 95°C and 95% relative humidity. • for 20 days in dry heat, 125°C.	

Ordering Information

Fiber Type:	Lucent Technologies Depressed Cladding Single Mode Fiber
Coating:	D-LUX Coating Series
Attenuation:	1310 nm maximum dB/km 1550 nm maximum dB/km
Length:	meters
Proof Test Level:	kpsi
Number/Color of Spools:	# spools

If you have technical questions about fiber optics, call Lucent Technologies Technical Information at 1-800-344-0233, ext. 3500. For assistance with fiber optics products, call 1-888-342-3743.

For additional information about Depressed Single Mode Fiber, contact your Lucent Technologies Sales Representative.

Visit our web site at <http://www.lucnet.com>

D-LUX is a registered trademark of Lucent Technologies.

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Fiber Optic Private Network Agreement

General Terms and Conditions

1. TERM AND LEASE

1.1 MFN hereby grants to Carrier access to and use of optical fiber ("Leased Fiber") on MFN's fiber optic cable network ("Network"), as provided in the Product Order to which these General Terms and Conditions are attached. The Leased Fiber leased by Carrier hereunder will be referred to as the "Product". The lease term ("Lease Term") and other specific terms pertaining to the Product is set forth in the Product Order. The term "Party" will refer, individually, to either MFN or Carrier and the term "Parties" will refer to both of them. The term "Agreement" will mean and include the Product Order and Exhibits thereto.

1.2 MFN will use commercially reasonable efforts to install the Product on or about the Estimated Installation Completion Date specified in the Product Order at the Locations specified in the Product Order and provide Carrier with access thereto ("Turnover Date"). For a period of time not to exceed ten (10) business days from the Turnover Date (the "Acceptance Test Period"), Carrier will conduct such testing as it deems necessary to ensure that the Product conforms in all material respects to the technical specifications set forth in the relevant Exhibits to the Product Order ("Specifications"). Carrier will use commercially reasonable efforts to complete such acceptance testing and notify MFN in writing within five (5) business days from the Turnover Date, but in any event within the Acceptance Test Period, of acceptance or, if there are material deficiencies in the Product (i.e., the failure of the Product to conform in all material respects to the Specifications), then with sufficient details of such material deficiency. Upon receipt of such notification from Carrier, MFN will promptly undertake correction of such deficiencies and restore access to and use of the Product to Carrier. The "Service Date," whereupon the Lease Term commences will be the earlier of (i) completion of testing and acceptance of the Product by Carrier, (ii) expiration of the Acceptance Test Period or, (iii) if Carrier has identified deficiencies as provided above, then the first date upon which the Product performs in all material respects with Specifications.

1.3 Unless otherwise provided for in the Product Order, Carrier will arrange for access into the buildings and for the use of any required building riser conduit at all Locations. At any Location where there is no existing external building access and/or riser conduit, either occupied or unoccupied, the cost to construct and install such access or conduit will be borne solely by Carrier unless otherwise set forth in the Product Order. Carrier will have the election to perform all construction and installation of conduit or to request MFN to perform such construction and installation as set forth in the Product Order or by written notice to MFN within thirty (30) days after the date of this Agreement. If such construction and installation is performed by MFN, the charge to Carrier will be on a "cost plus" basis based upon the cost incurred by MFN plus fifteen percent (15%) plus applicable sales or other taxes.

1.4 Upon the expiration of the Lease Term, or any earlier termination of this Agreement, Carrier will promptly remove from any property owned, leased or licensed by MFN all Carrier property, equipment and other materials used in connection with the Product within forty-five (45) days from such expiration or termination. Carrier will complete such removal in a manner that does not interfere with or damage the Product or the Network. If Carrier fails to remove its property within such period, such property will be deemed abandoned, and MFN will make such disposition of the property as it deems necessary or advisable at Carrier's sole expense.

2. TERMS OF PAYMENT

2.1 The Leased Fiber Monthly Lease Payment shall mean the Pre-Paid Lease Payment divided by the number of months of the Lease Term.

2.2 Unless otherwise provided in the Product Order, Carrier agrees to pay upon execution of this Agreement the One Time Installation Charge and to prepay an amount equal to four (4) months of Leased Fiber Monthly Lease Payments for the Location(s) plus applicable sales or other taxes (other than taxes on or measured by MFN's income or capital), unless otherwise subject to an exemption and an exemption certificate or other documentation is provided by Carrier ("Applicable Taxes"). Commencing on the first day of the month following the Service Date and continuing each month thereafter for the duration of the Lease Term, Carrier will pay the Monthly Lease Payment plus Applicable Taxes in advance for each month. If service commences after the first day of any month or terminates before the last day of a month, then the payment for such partial month will be pro rated based on the number of days of service to the number of days in that month. Such pro rata payment for the initial partial month will be included in the first monthly payment at the commencement of the Lease Term.

2.3 If Carrier fails to pay any sum when due pursuant to this Agreement, then, in addition to such sum, Carrier will pay interest on such unpaid sum at the lower of the highest legal rate of interest permitted in the State of New York or one and one-half percent (1.5%) per month.

3. MAINTENANCE, RESTORATION AND REPAIR OF THE PRODUCTS ("MAINTENANCE SERVICE")

3.1 In the event of the complete interruption of service for one or more of Carrier's circuits or failure of any Product or otherwise which interrupts service ("Outage"), Carrier will notify MFN by telephone at (888) 636-2778 or through such other notification procedure as the Parties may establish. Provided that MFN personnel or contractors have access to affected Carrier facilities immediately upon notification, MFN will respond and commence work to resolve such Outage within two (2) hours from notification by Carrier and restore effective use of the Product as expeditiously as practicable, but in no event more than four (4) hours from receipt by MFN of Carrier's notification. Maintenance Service for any Outage will be provided on a seven (7) days per week, twenty-four (24) hours per day basis. MFN will provide remote monitoring of the Network and Product.

3.2 In the event of an Outage, Carrier will receive from MFN a credit ("Outage Credit") calculated at 5% of the Leased Fiber Monthly Lease Payment for the affected Leased Fiber strands for each four (4) hours of Outage, up to a maximum of the Leased Fiber Monthly Lease Payment for one (1) full month. The Outage Credit will be determined by dividing the total Leased Fiber Monthly Lease Payment by the number of Locations and dividing this result by the number of Leased Fiber strands to determine the Leased Fiber Monthly Lease Payment per Leased Fiber Strand, and this result then multiplied by 5%. For example, if the Leased Fiber Monthly Lease Payment for sixteen (16) locations is \$29,041.67, the Leased Fiber Monthly Lease Payment for each location would be \$1,815.11, and if there were four (4) Leased Fiber strands for each Location, the result would be \$453.78 per Fiber Strand. If the Outage affected one strand at one Location for eight hours, the Outage Credit would be $\$453.78 \times 5\% \times 2 = \45.38 . Outage Credits will not be payable for any period during which MFN personnel or contractors are denied access to Carrier facilities to remedy an Outage.

3.3 If all or part of the Product requires restoration, replacement or repair during the Lease Term as a result of an act or omission, including the negligence or willful misconduct of Carrier, its officers, employees, agents, contractors, subcontractors, invitees or representatives, such repair, replacement and/or restoration will be made by MFN, at Carrier's sole expense, in accordance with MFN's then current time and materials rates plus Applicable Taxes. In addition, Carrier will not receive any Outage Credit resulting from the foregoing. If for any other reason all or part of the Product requires restoration, replacement or repair during the Lease Term, such repair, replacement and/or restoration will be made promptly by MFN at MFN's sole expense.

3.4 MFN may assign or subcontract to any third party any or all of its duties to Carrier with respect to installation of the Product and Maintenance Service, under this Agreement and

Product Order at any time, without the consent of Carrier, provided that MFN will remain responsible for such duties.

3.5 It is specifically acknowledged and agreed by Carrier that MFN will have the right to inspect Carrier's use of the Product during normal business hours upon at least one (1) day's prior notice by MFN.

4. USE AND OWNERSHIP OF THE PRODUCT

4.1 Carrier will not, by itself or through any agent or contractor, make any repair or replacement of the Product or any other equipment provided by MFN in connection with the Product or otherwise. Carrier will not install any equipment to be used with the Product or use the Product in any manner which damages or interferes with the Product or the Network.

4.2 Carrier will use the Product in full compliance with all applicable federal, state and local codes, ordinances, laws, rules and regulations and all applicable franchises, rights of way, leases, licenses and other obligations with respect to the Network or Product. Carrier shall be responsible for the obtaining of any permits, licenses or governmental or other approvals necessary for Carrier's or any other customer of Carrier's use of the Product hereunder.

4.3 Carrier acknowledges and agrees that the Product is provided for use (1) exclusively by Carrier and/or wholly-owned subsidiaries of Carrier ("Subsidiary(ies)") named in the Product Order and, if applicable (the term "Carrier" shall include any such Subsidiaries of Carrier), (2) customers of Carrier and (3) only in the ordinary course of business. Under no circumstances shall access to or use of the Product, in whole or in part, be (a) provided by Carrier to any third party (other than a customer of Carrier in the ordinary course of business), pursuant to any third party (by way of example and not in limitation) sublease, license, sublicense or resale, or any other right to use, or (b) shared or otherwise utilized in conjunction with a third party (including without limitation in any joint venture or as part of any outsourcing activity), without the prior written consent of MFN, which consent may be given or withheld in MFN's sole discretion. Any breach of this Section 4.3 shall be deemed to be a material breach of this Agreement and the lease granted hereunder and in the event of such material breach MFN shall have, in addition to any and all rights and remedies, the right to immediately terminate this Agreement, any applicable Product Orders and Carrier's access to the Network.

4.4 MFN holds all right, title and interest in and to the Product and the Network up to the Location(s) specified in the Product Order, i.e., the points at which MFN's facilities end and Carrier's facilities begin, subject only to the grant of access and use provided to Carrier under the terms of this Agreement.

4.5 MFN reserves the right to utilize unused external building access and space within the conduit(s) occupied by the Product provided that such use does not interfere with or hinder Carrier's use of its Product as permitted hereunder.

5. APPROVALS

During the term of this Agreement Carrier will secure and maintain in full force and effect any and all necessary approvals, consents, permits, licenses, easements and leases ("Approvals") to enable MFN to perform its responsibilities to Carrier, including but not limited to such Approvals as may be necessary or advisable to provide all requisite building and/or facility access twenty-four (24) hours per day/seven (7) days per week. Upon MFN's request (which request may be made verbally or in writing), Carrier will provide copies of such Approvals to MFN or any third party. Carrier will provide all electricity, sanitary facilities, and other utilities at Carrier's locations as MFN may require to provide safe and convenient working conditions.

6. WARRANTIES

6.1 MFN warrants to Carrier that upon the Service Date the Network and Product will operate in accordance with the Specifications related thereto and MFN covenants that during the term MFN will use commercially reasonable efforts to cause the Network and Product to operate in all material respects in accordance with such Specifications.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, MFN DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE (i) NETWORK OR PRODUCT, (ii) THE LEASE GRANTED PURSUANT HERETO, (iii) MAINTENANCE SERVICE, (iv) CONSTRUCTION AND INSTALLATION SERVICES, IF ANY, AND (v) ANY OTHER SERVICE(S) (HEREINAFTER (iii) THROUGH (v) WILL COLLECTIVELY BE REFERRED TO AS "SERVICES") PROVIDED BY OR ON BEHALF OF MFN HEREUNDER.

7. LIABILITY/INDEMNIFICATION

7.1 Except for the gross negligence or willful misconduct of a Party hereto, the liability of each Party one to the other for damages will be limited to the total Installation Charge and Lease Payments paid or payable by Carrier for the Lease Term during which the damages were incurred. In no event will either Party be liable one to the other for any incidental, indirect, special, consequential, exemplary, or punitive damages arising out of or relating to this Agreement, the lease granted hereunder, the Network, Product or Services provided hereunder, including damages based on loss of revenues, profits or lost business opportunities, regardless of whether the respective party had been advised of or could have foreseen the possibility of such damages.

7.2 Each Party agrees to indemnify, defend and hold the other, its officers, directors, employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorney's fees) by reason of any claims or actions by third parties for (i) bodily injury, including death, (ii) damage, loss or destruction of any real or tangible personal property (including without limitation the Network and Product) which third party claims arise out of or relate to (a) Products provided by or on behalf of MFN hereunder, (b) a Party's performance of or failure to perform any term, condition or obligation under this Agreement or the Product Order, or (c) any act or omission of a Party's officers, directors, agents, employees, contractors, representatives or invitees.

7.3 Nothing contained herein will operate as a limitation on the right of either hereto to bring an action for damages against any third party based on any act or omission of such third party as such act or omission may affect the construction, operation, or use of the Product. Each Party agrees to execute such documents and provide such commercially reasonable assistance, at the injured Party's sole expense, as may be reasonably necessary to enable the injured Party to pursue any such action against such third party.

8. CONFIDENTIALITY

The Parties acknowledge and agree that the information each Party has provided or will provide in connection with this Agreement, including, without limitation, the terms and conditions thereof, are and will be confidential and proprietary to the Party providing such information (the "Providing Party"). The Party in receipt of the confidential information (the "Receiving Party") agrees not to distribute, use or disclose to any third party the confidential information of the Providing Party. Except as may be required by applicable legal requirements in the course of defending or prosecuting a legal, insurance or other claim or in connection with funding requests by Carrier, each Party will restrict dissemination of confidential information to only those persons who must have access to such confidential information in order to perform their respective rights or obligations hereunder. Notwithstanding the other provisions of this Section and without waiver of any obligations contained herein, MFN may disclose the identity of Carrier as a customer of MFN

and Carrier may disclose the identity of MFN as a supplier of Carrier, each without any additional consent from the other.

9. NOTICES

9.1 Unless otherwise provided herein, all notices and communications concerning this Agreement will be in writing and sent to the address (and contact person) specified in the Product Order, or at such other address as may be designated in writing by a Party. Unless otherwise provided herein, notices will be sent by certified US Mail, return receipt requested, or by commercial overnight delivery service, or by facsimile, and will be deemed delivered, if sent by US Mail, five (5) days after deposit, if sent by facsimile, upon verification of receipt or, if sent by commercial overnight delivery service, one (1) business day after deposit therewith.

10. RENEWAL TERM

10.1 If MFN, in its sole discretion, extends or renews any underlying rights and authorizations required for leasing of the Leased Fiber hereunder beyond the Lease Term set forth in the Product Order, and provided that Carrier is not in breach of any of its material obligations under this Agreement, Carrier may renew the term of this Agreement for the Leased Fiber for one (1) additional renewal term upon the terms and conditions of this Agreement except for the length of such renewal term and the Installation and Lease Fee Payments, which shall be pre-paid upon commencement of the renewal term in a one-time, lump sum payment (together with applicable taxes). The term of such renewal term shall be the lesser of (i) the term extension of such underlying rights and authorizations and (ii) ten (10) years. The Lease Fee Payments shall be determined by an amount equal to the sum of the Pre-Paid Lease Payment set forth in the Product Order, plus the amount by which such Pre-Paid Lease Payment is increased (but not decreased) by the percentage increase, if any, in the Consumer Price Index – Urban Wage Earners and Clerical Workers (New York/New Jersey Metropolitan Area, All Items, Base 1982 – 1984 equals 100) (the "Index"), as published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau"). The Index for the calendar month which is four (4) months prior to the Service Date shall be compared with the Index for the calendar month which is four (4) months prior to the applicable anniversary date of the Service Date when the renewal term commences, and the Pre-Paid Lease Payments shall be increased in accordance with the percentage increase, if any, between such indexes. Should the Bureau discontinue the publications of the Index or alter the same in a material manner, the Parties shall adapt a substitute Index or procedure, which reasonably reflects and monitors consumer prices.

11. TERMINATION/FORCE MAJEURE

11.1 If one or more of the following events of default will occur, the non-breaching Party will have the right to terminate this Agreement and affected Product Order:

11.2 A Party breaches any material term or condition of this Agreement and such breach remains uncured thirty (30) days after delivery to said Party of written notice of such breach; provided, however, that if the breach is of a nature or involves circumstances taking more than thirty (30) days to cure, the time period may be extended for as long a time as one may reasonably require, as long as the defaulting party proceeds diligently to cure same;

11.3 Notwithstanding the thirty (30) day cure period in Section 11.2 above, if Carrier fails to make any payment hereunder within five (5) days of receipt of written notice of late payment from MFN, MFN will have the right to terminate this Agreement immediately without further notice to Carrier;

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11.4 A Party applies for or consents to the appointment of a receiver, trustee or similar officer for it or any substantial part of its property or assets, or any such appointment is made without such application or consent by such Party and remains undischarged for a period of sixty (60) days; or

11.5 A Party consents to the institution of a petition, application, answer, consent, default or otherwise of any bankruptcy, insolvency or reorganization and any such proceeding as instituted against such Party remains undischarged for a period of sixty (60) days.

11.6 In the event of early termination of the Product Order by Carrier (other than for cause as provided in this Section), MFN will be entitled to receive, and Carrier will immediately pay, the early termination charge ("Early Termination Charge") set forth in the Product Order.

11.7 In the event any law, statute, ordinance, decision, order, regulation or opinion letter issued by a governmental (federal, state or local) agency or regulatory body threatens to cause or does cause (i) financial loss to MFN; (ii) impairment, of MFN's control, possession and/or effective use of the Network or ability to lease Product; or (iii) a loss or impairment of MFN's operating authority, MFN has the right, exercisable in its sole discretion, to terminate the Product Order upon thirty (30) days prior written notice (or such other notice as is practicable under the circumstances) without liability whatsoever to Carrier or any party claiming by, through or under Carrier.

11.8 Neither party will be considered in breach of this Agreement resulting from delay or prevention of performance caused by any act attributable to an occurrence of an event of Force Majeure. Neither party will, however, be relieved of liability for failure of performance due to a claimed Force Majeure hereunder if such failure is due to causes arising out of its own negligence or to removable or remedial causes that it fails to remove or remedy with reasonable dispatch.

The term "Force Majeure" will mean any cause beyond the control of Carrier (or MFN, as applicable) which, by the exercise of due foresight, Carrier (or MFN) could not reasonably have been expected to avoid, and which by the exercise of due diligence, Carrier (or MFN) will be unable to overcome, including but not limited to action by governmental authority including without limitation moratorium on any activities related to this Agreement, third party labor dispute, flood, earthquake, fire, lightning, epidemic, war, riot, civil disturbance, sabotage and the like. The party affected by an event of Force Majeure (the "Affected Party") will notify the other party (the "Other Party") promptly of any occurrence or condition which, in the Affected Party's opinion, warrants an extension of time. Such notice will specify in detail the anticipated length of delay, the cause of the delay, and a timetable by which any remedial measures will be implemented.

12. ASSIGNMENT; SUCCESSION

12.1 Carrier will not assign any right nor delegate any duty under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of MFN which consent will not be unreasonably withheld. Upon any permitted assignment (or delegation) hereunder, Carrier will remain jointly and severally responsible for the performance under this Agreement. Any permitted assignee will expressly assume all liabilities hereunder prior to the effectiveness of such assignment. Any attempted assignment or delegation without such consent will be null and void and may be deemed by MFN, in its sole discretion, to constitute a material breach of this Agreement.

12.2 This Agreement and Product Order will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

13. GOVERNING LAW

13.1 THIS AGREEMENT WILL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS PRINCIPLES OF CONFLICTS OF LAWS.

14. SURVIVAL

The Parties' respective representations, warranties, and covenants, together with obligations of indemnification, confidentiality and limitations on liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect.

15. ENTIRE AGREEMENT

This Agreement, Product Order, Exhibits and all addenda 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 agreement with respect hereto, whether oral or written.

16. REMEDIES CUMULATIVE

Except as otherwise expressly provided, the rights and remedies set forth in this Agreement will be in addition to, and cumulative of, all other rights and remedies at law or in equity.

17. REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Party represents, warrants and covenants to the other that (a) it is a corporation, limited liability company, partnership, or other legal entity, duly organized, validly existing and in good standing under the laws of the state of its organization, (b) it has all requisite power and authority to enter into and perform its obligations under this Agreement and Product Order and (c) this Agreement, when executed, will become the legal, valid and binding obligation of such Party.

18. MISCELLANEOUS

18.1 The covenants, undertakings, and agreements set forth in this Agreement will be solely for the benefit of and will be enforceable only by the Parties hereto or their respective successors or permitted assigns.

18.2 The headings of the Sections in this Agreement are strictly for convenience and will not in any way be construed as amplifying or limiting any of the terms, provisions or conditions thereof.

18.3 In the event any term of this Agreement will be held invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will be in any way affected thereby.

18.4 This Agreement may be amended only by a written instrument executed by the Parties.

18.5 No failure to exercise and no delay in exercising, on the part of either Party hereunder, any right, power or privilege hereunder will operate as a waiver hereof, except as expressly provided herein.

18.6 This Agreement may be executed in multiple counterparts, each of which will constitute one and the same instrument.

18.5 No failure to exercise and no delay in exercising, on the part of either Party hereunder, any right, power or privilege hereunder will operate as a waiver hereof, except as expressly provided herein.

18.6 This Agreement may be executed in two or more counterparts, each of which will constitute one and the same instrument.

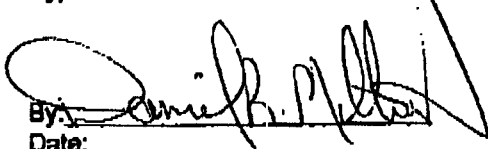
18.7 The Parties recognize that Carrier may be, or may hereafter become, eligible for certain benefits from third party governmental or private funding programs which may relate to this Agreement. MFN will provide such commercially reasonable assistance and cooperation in connection therewith upon request by Carrier.

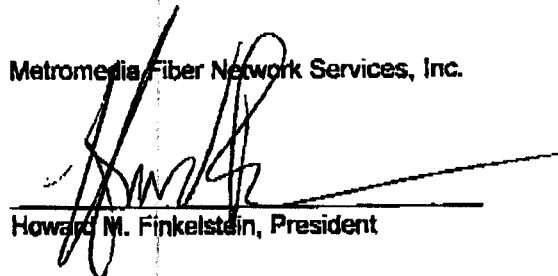
18.8 This Agreement may be subject to certain laws, rules and regulations of the City of New York and/or any other governmental authority wherever located ("Governmental Provisions"), and in connection therewith the Parties agree to cooperate in good faith and provide commercially reasonable assistance to one another as may be required to conform the provisions of this Agreement to such Governmental Provisions.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement and Leased Fiber Order as of the day and year first above written.

Hyperion Telecommunications, Inc.

Metromedia Fiber Network Services, Inc.

By: 



Date:

Howard M. Finkelstein, President

Daniel R. Millard
President and COO