



# MUTUAL NONDISCLOSURE AGREEMENT

## (Hudson Fiber Network, Inc.)

**THIS NONDISCLOSURE AGREEMENT** (the "Agreement") is entered into by and between Hudson Fiber Network, Inc. ("HFN") and \_\_\_\_\_ ("Company") as of the Effective Date. For purposes of this Agreement, Company and HFN are sometimes collectively referred to as the "Parties" and individually referred to as a "Party". As used herein, "Receiving Party" shall mean the party that has been given "Confidential Information" (as hereinafter or defined) by and of the other Party.

- A. The Parties are discussing and from time to time, following the Effective Date hereof, will have discussions in connection with potential arrangements for the provisioning of telecommunications and other related services, including, without limitation, the disclosure of certain Confidential Information and/or Trade Secrets (each such discussion is hereinafter referred to individually as a "Discussion").
- B. In order to protect the Parties' substantial investment in their Confidential Information and Trade Secrets and to protect the goodwill associated with their customer, client and contractor relationships, the Parties have agreed to abide by the terms and conditions of the Agreement.

For and in consideration of the above premises and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Definitions.** The following terms shall have the following meanings when used in the Agreement:
  - (a) "Confidential Information" shall mean the proprietary and confidential data or information of a Party, other than "Trade Secrets" (as defined below), which is of tangible or intangible value to that Party and is not generally known or available to that Party's competitors but is known to that Party and those of its employees, independent contractors, consultants or agents to whom it must be confided in order to apply it to the uses intended, including, without limitation, information regarding that Party's customers or prospective customers, marketing methods, business plans and/or rates gained by the other Party as a result of the other Party's participation in a Discussion. In addition, the definition of "Confidential Information" shall include those items specifically identified as "Trade Secrets" in Section 1(c), if it is judicially determined that any such items are not trade secrets, as defined by applicable law, and such items otherwise meet the definition of "Confidential Information" as contained in this Section 1(a). Confidential Information shall not include information which: (i) at the time of disclosure to Receiving Party is in the public domain through no act or omission of Receiving Party; (ii) as shown by written records, is already known by Receiving Party; or (iii) is revealed to Receiving Party by a third party who does not thereby breach any obligation of confidentiality and who discloses such information in good faith.
  - (b) "Entity" shall mean any person, partnership, joint venture, agency, governmental subdivision, association, firm, corporation or entity.
  - (c) "Trade Secrets" shall mean that portion of Confidential Information which constitutes trade secrets, as defined by applicable law and including, without limitation, confidential computer programs, software, designs, processes, procedures, equipment, data, reports, product specifications, formulas, improvements, on-line terminal designs, software applications and knowledge of the existence of any existing or proposed contracts with third parties, whether copyrightable or not.
2. **Consideration.** The consideration for the covenants and agreements of each Party contained in this Agreement shall be that Party's right to participate in a Discussion, which the Parties acknowledge and agree shall constitute sufficient and adequate consideration.

**3. Nondisclosure; Ownership of Proprietary Property.**

- (a) Each Party hereby acknowledges that it is in the best business interests of the other Party to insist on the strict confidentiality of any of its Trade Secrets and Confidential Information that may be disclosed as a result of a Discussion.
- (b) In recognition of the Parties' need to protect their legitimate business interests, each Party hereby covenants and agrees that it shall regard and treat each item of information or data constituting a Trade Secret or Confidential Information of the other Party as strictly confidential and wholly owned by the other Party and that it will not, for any reason or in any manner, either directly or indirectly, use, sell, lend, lease, distribute, license, give, transfer, assign, show, disclose, disseminate, reproduce, copy, appropriate or otherwise communicate any such item of information or data to any person or Entity for any purpose other than strictly in accordance with the express terms of this Agreement or any other written agreement between the Parties. With regard to each item of information or data constituting a Trade Secret, the covenant in the immediately preceding sentence shall apply at all times during a Discussion and for (3) years after the termination of a Discussion.
- (c) Each Party shall exercise reasonable efforts to ensure the continued confidentiality of all Trade Secrets and Confidential Information known by, disclosed or made available to that party or that Party's employees or personnel during a Discussion. Each Party shall immediately notify the other Party of any intended or unintended, unauthorized disclosure or use of any Trade Secrets or Confidential Information by that Party or any other person of which that party becomes aware. Each Party shall assist the other Party, to the extent necessary, in the procurement or any protection of the other Party's rights to or in any of the Trade Secrets or Confidential Information.
- (d) Upon termination of a Discussion, or anytime at the specific request of the other Party, or upon the execution of any agreement resulting from a Discussion containing provisions the expressly supersede the provisions of this Agreement, each Party shall return to the other Party all written or descriptive materials of any kind that contain or discuss any Confidential Information or Trade Secrets, and the confidentiality obligations of this Agreement shall continue until their expiration under the terms of this Agreement.

**4. Remedies: Damages, Injunctions, and Specific Performance.** The Parties expressly understand and agree that the covenants and agreements to be rendered and performed by the Parties pursuant to Section 3 are special, unique, and of an extraordinary character, and in the event of any default, breach by either Party shall be entitled to such relief as may be available to it pursuant hereto, at law or equity, including, without limiting the generality of the foregoing, any proceedings to: (i) obtain direct damages for any breach of this Agreement; (ii) order the specific performance thereof; or (iii) enjoin the breach of such provisions. This agreement shall be governed by the laws of the State of New York without regard to its choice of law principles.

**5. Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF FORESEEABLE, ARISING OUT OF OR RESULTING FROM ANY PROHIBITED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION OR OTHER BREACH HEREUNDER, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOW OF THE POSSIBILITY OF SUCH DAMAGES.

**6. Binding Effect and Assignability.** The rights and obligations of each Party under this Agreement shall inure to the benefit of and shall be binding upon any subsidiary, affiliate, successor or permitted assign of or to the business of such Party, to the extent provided below. Neither this Agreement nor any rights or obligations of either Party under this Agreement shall be transferable or assignable by that Party without the prior written consent of the other Party, and any attempted transfer or assignment of this Agreement by either Party not in accordance herewith shall be null and void. Notwithstanding the foregoing, HFN may assign this Agreement immediately, without the prior written consent of the other Party (a) to any entity that controls, is controlled by, or is in common control with HFN or (b) to any successor in interest to HFN or (c) if necessary to satisfy the rules, regulations and/or orders of any federal, state or local governmental agency or body.

**7. Severability.** All sections and subsections of this Agreement are severable, and the unenforceability or invalidity of any of the sections or subsections of this Agreement shall not affect the validity or enforceability of the remaining sections or subsections of this Agreement, but such remaining sections or subsections shall be interpreted and construed in such a manner as to carry out fully the intention of the parties.

