

# EQUIPMENT LEASE/RENTAL AGREEMENT

This Equipment Lease Agreement (as it may be amended from time to time, this "**Agreement**"), dated as of [DATE], is entered into by and between KITCO Fiber Optics, Inc., a Virginia corporation having an address at 1151 Azalea Garden Rd, Norfolk, VA 23502 ("**Lessor**"), and [LESSEE NAME], a [STATE OF ORGANIZATION] [ENTITY TYPE] having an address at [LESSEE BUSINESS ADDRESS] ("**Lessee**," and together with Lessor, the "**Parties**," and each, a "**Party**").

WHEREAS, Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee the Units (as hereinafter defined).

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Equipment. Lessor hereby leases the Units and Accessories set forth in Exhibit A- which is per the Rental Request Form ("**RRF**") previously received by Lessee, and further described in Exhibit B-Rental Specifications Sheet attached hereto (collectively, the "**Units**," and each, a "**Unit**") to Lessee and Lessee hereby accepts the Units for all purposes of this Agreement and leases the Units from Lessor subject to the terms and conditions of this Agreement.

2. Delivery Location. The delivery location under this Agreement, per the RRF is [EITHER ADDRESS OR CUSTOMER PICK-UP].

3. Delivery Date. The estimated delivery date under this Agreement is [INSERT DATE] as set forth in the RRF. Lessor shall use reasonable efforts to meet the estimated delivery date, but Lessor shall have no responsibility or liability for delays in delivery.

4. Shipping. Unless Lessee indicates they will pick-up/deliver the Unit(s), all Unit(s) will be shipped and insured at the Lessee's expense. Unless Lessee notifies Lessor to the contrary in writing within 72 hours after receipt of a Unit(s) it shall be conclusively presumed that the Unit(s) was delivered to Lessee in good operating condition, that the Unit(s) conforms in all respects to Lessee's order and that Lessee has accepted the Unit(s) for all purposes under this Agreement. Lessee shall return the Unit(s) in good operating condition to Lessor at the end of the Rental Term by prepaid insured shipment.

5. True Lease. The Parties intend that this Agreement shall constitute a true lease under applicable law. Lessor has title to the Units at all times. Lessee acquires no ownership, title, property, right, equity, or interest in the Units other than its leasehold interest solely as lessee subject to all the terms and conditions of this Agreement.

6. Security Interest. The Parties intend and agree that, if this Agreement is recharacterized under applicable law as a secured financing or a lease intended for security, this Agreement shall be deemed a security agreement and Section 1 hereof shall be deemed to grant Lessor by Lessee a lien on and first priority security interest in the Units and all proceeds thereof, to secure the payment of Lessee's obligations under this Agreement. Lessor and Lessee each agree to execute, acknowledge, deliver, file, and record, or cause to be executed, acknowledged,

delivered, filed, and recorded such further documents (including without limitation UCC financing statements), and to do all such things and acts, necessary to ensure that such security interest would be a perfected first priority security interest under applicable law.

7. No Setoff. Lessee's obligation to pay all rent and other amounts under this Agreement is absolute and unconditional and is not subject to any abatement, counterclaim, defense, deferment, interruption, recoupment, reduction, or setoff for any reason whatsoever.

8. Commencement Date. The "**Commencement Date**" of this Agreement is [DATE].

9. Expiration Date. The "**Expiration Date**" of this Agreement is [[DATE]/[NUMBER IN WORDS] ([NUMBER]) [days/weeks/months/years] from the Commencement Date hereof].

10. Rental Period. Minimum initial rental period will be no less than one month.

11. Early Termination. Other than for Default, as per Paragraph 24, there will be no Early Termination of this Agreement.

12. Rent. The term hereof with respect to any Unit shall commence on the Commencement Date and, unless sooner terminated hereunder, shall expire on the Expiration Date when Unit is returned to and accepted by Lessor in the condition required hereunder ("**Term**"). During the Term for any Unit, Lessee shall pay to Lessor a fixed rent of [NUMBER IN WORDS] US dollars (US \$[NUMBER]) per Unit per [month], payable the first day of each month, in accordance with the provisions of Section 13 hereof. The amount due for this Lease/Rental period is (# of Units) x (# of Months) x (Fixed Monthly Rent Amount per u/m) = (Total \$).

13. Payment Mechanics. Lessee shall pay all amounts due under this Agreement on the applicable due date in US dollars such method as agreed to by the parties, which may include by check, credit card, or wire transfer of immediately available funds in accordance with the wire transfer instructions set forth on Schedule 1 by Lessor. If a payment under this Agreement becomes due and payable on a Saturday, Sunday, or any day on which commercial banks located in [LOCATION] are authorized or required by applicable law to be closed for business (any other day, a "**Business Day**"), then Lessee shall make such payment on the next succeeding Business Day.

14. Late Payments. If Lessee does not pay any amount payable to Lessor under this Agreement by the due date, Lessee shall pay to Lessor a late charge equal to the lower of (a) the maximum amount allowed by law and (b) 1.5% of the late payment amount for each day payment is overdue. Payment of any late charge does not excuse Lessee from any default under this Agreement.

**15. EXCLUSIVE WARRANTY. LESSOR'S EXCLUSIVE WARRANTY IS THAT EACH UNIT(S), WHEN SHIPPED TO LESSEE, WILL BE IN GOOD OPERATING CONDITION.**

**16. EXCLUSION OF WARRANTIES. LESSOR IS NOT THE MANUFACTURER OF THE UNITS. LESSEE ACKNOWLEDGES THAT IT IS ULTIMATELY**

**RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY AND RELIABILITY OF THE UNITS FOR LESSEE'S PURPOSES IN ACCORDANCE WITH THIS AGREEMENT. LESSOR MAKES NO WARRANTY WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY AGAINST INTERFERENCE; OR (d) WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

High Risk Uses. LESSEE UNDERSTANDS AND ACKNOWLEDGES THAT UNITS ARE NOT DESIGNED, MANUFACTURED, OR TESTED FOR USE IN LIFE OR SAFETY CRITICAL SYSTEMS, HAZARDOUS ENVIRONMENTS OR ANY OTHER ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING IN THE OPERATION OF NUCLEAR FACILITIES; AIRCRAFT NAVIGATION; AIR TRAFFIC CONTROL SYSTEMS; LIFE SAVING OR LIFE SUSTAINING SYSTEMS OR SUCH OTHER MEDICAL DEVICES; OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE PRODUCT OR SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE OR ENVIRONMENTAL HARM (COLLECTIVELY, "HIGH-RISK USES"). FURTHER, LESSEE AGREES TO TAKE ALL PRUDENT STEPS TO PROTECT AGAINST PRODUCT AND SERVICE FAILURES, INCLUDING BUT NOT LIMITED TO, PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. LESSOR EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE PRODUCTS OR SERVICES FOR HIGH- RISK USES. LESSEE SHALL DEFEND, INDEMNIFY, RELEASE AND HOLD LESSOR, AND ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, ACTIONS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR RELATING TO LESSEE'S USE OF THE UNITS FOR ANY HIGH-RISK USES INCLUDING ARISING FROM CLAIMS FOR PRODUCT LIABILITY, PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF LESSOR.

17. Lessee's Representations. Lessee represents and warrants for the benefit of Lessor that the statements in this Section 17 are true and correct as of the date hereof.

17.1 Lessee is the entity type shown in the recitals and duly organized, validly existing, in good standing, and duly licensed and qualified to do business under applicable law.

17.2 Lessee has full corporate power and authority to enter into this Agreement, carry out its obligations hereunder, and consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Lessee, and constitutes a legal,

valid, and binding obligation of Lessee enforceable against Lessee in accordance with its terms.

17.3 The execution, delivery, and performance by Lessee of this Agreement will not require the consent of any party, result in any lien on any Unit, or conflict with the organizational documents of Lessee, any provision of applicable law, or any instrument by which Lessee is bound.

17.4 There are no actions pending or threatened against or by Lessee challenging the transactions contemplated by this Agreement and no circumstances exist that may give rise to such an action.

17.5 If not publicly available and if requested by Lessor, Lessee has delivered complete copies of Lessee's financial statements for its most recent fiscal year and any other financial information of Lessee reasonably requested by Lessor, fairly presenting the financial condition and operations of Lessee's business as of the dates such statements and information were prepared.

18. Lessee's Covenants. Lessee agrees that until all amounts payable under this Agreement have been paid in full and all other obligations hereunder have been performed in full, Lessee shall comply with the covenants in this Section 18.

18.1 Lessee shall comply with all applicable law.

18.2 Lessee shall maintain in full force and effect all permits required to continue conducting its business and to lease and use each Unit in the manner contemplated under this Agreement.

18.3 Lessee shall pay, and indemnify and hold Lessor harmless from, all assessments, license fees, and sales, use, property, excise, and other taxes and charges (other than gross or net income taxes) arising out of or in connection with this Agreement, the consummation of the transactions contemplated herein, or the shipment, possession, ownership, use, delivery, or operation of any Unit.

18.4 Lessee shall keep the Units free and clear of all liens.

18.5 Lessee shall not enter into any sublease of any Unit without Lessor's prior written consent, which consent may be withheld in Lessor's sole discretion. No permitted sublease shall relieve Lessee of its obligations under this Agreement.

19. Lessee's Use of Equipment.

19.1 No marking of any kind shall be placed on any Unit by Lessee except with the prior written consent of Lessor. Any such marking placed on a Unit by Lessee shall be removed at Lessee's expense on or before the expiration or earlier termination of the Term for such Unit. Lessee shall, at Lessee's expense and to Lessor's satisfaction, place and maintain on each Unit any identifying marks required by Lessor.

19.2 Lessee may not move any Unit from its location without Lessor's prior written consent.

19.3 The Parties intend that each Unit shall remain at all times personal property and not a fixture under applicable law, even if the Unit, or any part thereof, may be or become affixed or attached to real property or any improvements.

19.4 Lessee shall operate each Unit exclusively as may be more fully described in the Exhibits and in connection with its business. Lessee shall not operate or permit the operation of any Unit in an unsafe or improper manner or in any manner not authorized by KITCO and the Unit manufacturer per MIL-STD 2042 and the User Guide and demo available at [www.kitcofiberoptics.com/Training](http://www.kitcofiberoptics.com/Training).

19.5 Lessor's employees and agents shall have the right of access to Lessee's premises to inspect the Units and Lessee's Records on reasonable notice and during regular business hours. On Lessor's request, Lessee shall cooperate with and assist Lessor in obtaining access to premises other than Lessee's so that Lessor's employees and agents may inspect the Units.

19.6 Export Regulations. Lessee shall not transfer or otherwise dispose of any Unit or related software, know-how, technical data, documentation or materials furnished by Lessor to any party or in any manner which would constitute a violation of the export control regulations of the U.S. (now or hereafter in effect). Such export regulations prohibit, without limitation, exports, transshipments or re-exports of any Unit to: (a) such countries or regulations that are subject to U.S. sanctions programs, or (b) to entities or individuals that appear on the U.S. government's (a) Specially Designated Nationals List; (b) Denied Persons List; (c) Unverified List; (d) Debarred List; or (e) Entity List (each as may be changed from time to time).

## 20. Maintenance and Mandatory Modifications.

20.1 Lessee, at its sole expense and consistent with standard industry practice for similar equipment, and Lessee's maintenance practices as described in Exhibit B-Rental Specifications Sheet, and applicable insurance requirements, shall maintain, service, and repair each Unit and keep each Unit in compliance with any vendor's or manufacturer's specifications and applicable law, in serviceable and operable condition, free of broken, damaged, or missing parts, suitable for the commercial use originally intended. All maintenance, service, and repair of any Unit and any part thereof shall be done to standards and with parts of like kind and at least equal quality to items being maintained, serviced, or repaired.

20.2 If during the Term hereof any part of any Unit is lost, stolen, damaged beyond repair, or otherwise permanently rendered unfit for use, Lessee, at its sole expense, shall promptly replace or cause to be replaced such part with one or more replacement parts. Lessee shall cause such Unit after the replacement to be in as good an operating condition as, and have a value, remaining useful life, and utility at least equal to the value, remaining

useful life, and utility of the Unit before the replacement (assuming such Unit to have been in the condition required by the terms of this Agreement).

20.3 Lessee, at its sole expense, shall make any alteration or modification to any Unit, including without limitation the replacement or addition of any component, that is required or supplied by the Lessor or the manufacturer or necessary to comply with applicable law. Lessee shall notify Lessor within ten (10) days of learning that an alteration or modification is required by applicable law.

20.4 If Lessee incorporates or installs any part in or attaches any part to a Unit, including without limitation any replacement or addition under Section 19.3 but excluding test cables, then immediately on any part becoming incorporated or installed in or attached to the Unit, without further act or any cost to Lessor, such part is deemed part of the Unit to the same extent as though originally incorporated or installed in or attached to the Unit, title to such part vests in Lessor, and such part becomes subject to this Agreement. Lessee shall cause all parts to be free and clear of any lien.

20.5 Upon reasonable notice from Lessee during the course of rental, Lessor will repair or calibrate any malfunctioning Unit; provided, however, Lessee will pay the costs of such repair or calibration if the Unit has been neglected, misused or abused after receipt by Lessee, or permitted anyone other than Lessor to work on or service the Unit. Lessee must pay rental charges if any Equipment replaced by Lessor is not properly returned to Lessor not later than the earlier of ten (10) calendar days after shipment of the replacement Equipment or (ii) the expiration of the rental term.

## 21. Loss.

21.1 From the Commencement Date through the expiration or earlier termination of the Term hereunder as to any Unit, Lessee shall bear all risk of loss, damage, destruction, theft, taking, confiscation, or requisition, partial or complete, of or to such Unit or its use, however caused or occasioned ("**Loss**"). Lessee shall immediately notify Lessor of learning of any such Loss.

21.2 If Lessor determines in its sole discretion that a Loss has materially impaired the Unit(s) affected or its use, Lessee shall pay, on Lessor's demand ("**Loss Payment Date**"), all rent and other amounts due prior to the Loss Payment Date with respect to such Unit plus the replacement cost of the Unit as determined by Lessor (collectively, "**Loss Payment**"). This Agreement shall terminate with respect to any materially impaired Unit on receipt by Lessor of the corresponding Loss Payment. So long as no Event of Default shall have occurred and be continuing, Lessee shall be subrogated to all claims of Lessor, if any, against third parties, for material impairment of such Unit to the extent of the value as reasonably determined by Lessor of such Unit.

21.3 If Lessor determines in its sole discretion that a Loss has not materially impaired the Unit affected or its use, this Agreement shall continue with respect to such Unit as though no Loss had occurred; and Lessee shall at its sole expense promptly repair or cause to be repaired such Unit to the condition in which such Unit is required to be

maintained hereunder, to the satisfaction of Lessor. For the avoidance of doubt, there shall be no abatement of rent or rent credit for any period in which a Unit is in a shop or otherwise out of operation in connection with any maintenance, repairs, or mandatory modifications under this Section 19 or Section 20 hereof.

22. Insurance. Lessee, at its sole expense, shall provide and maintain for such insurance as set forth in Schedule 1.

23. Application of Insurance Proceeds and Condemnation Payments.

23.1 If Lessor receives any proceeds as loss payee of the Property Insurance, or under any condemnation proceeding related to the Units, it shall, if received pursuant to a Loss that has materially impaired a Unit under Section 21.2, credit such proceeds against Lessee's obligation to make Loss Payments to Lessor under Section 21.2 or if no such amounts are then due and outstanding, remit such proceeds to Lessee; or, if received pursuant to a Loss that has not materially impaired a Unit under Section 21.3, remit the proceeds to Lessee. If Lessee is in default under this Agreement, or an Event of Default (as hereinafter defined) has occurred and is continuing, Lessor may hold any such proceeds as security for the obligations of Lessee under this Agreement and apply such amounts in its sole discretion against Lessee's obligations hereunder.

23.2 If Lessee receives any proceeds under the Property Insurance, or under any condemnation proceeding related to the Units, unless received with respect to a Loss that has not materially impaired a Unit as set forth in Section 21.3, Lessee shall promptly forward such amounts to Lessor to be applied by Lessor under Section 23.1.

24. Default.

24.1 Each of the following events is an "**Event of Default**" under this Agreement: (a) Lessee fails to pay any rent or any other amount under this Agreement when due; (b) Lessee defaults in the observance or performance of any other term, covenant, or condition of this Agreement, on Lessee's part to be observed or performed; (c) Lessee's interest or any portion thereof in this Agreement devolves on or passes to any other party, whether by operation of law or otherwise; (d) Lessee (i) becomes insolvent, (ii) is generally unable to pay, or fails to pay, its debts as they become due, (iii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy, (iv) makes or seeks to make a general assignment for the benefit of its creditors, or (v) applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property or business; (d) Lessee sells, transfers, or disposes of all or substantially all of its assets or the property of its business, or merges or consolidates with any other entity; or (e) any representation contained in Section 17 is untrue as and when made.

24.2 If an Event of Default occurs, Lessor may, in its sole discretion, exercise one or more of the following remedies: (a) declare this Agreement in default; (b) terminate this Agreement in whole or in part; (c) take possession of, or render unusable, any Unit wherever it may be located, without demand or notice, without any court order or other process of law, and without liability to Lessee for any damages occasioned by such action; (d) require

Lessee to deliver any Unit in the condition required under this Agreement to a location designated by Lessor and, for each day that Lessee fails to return any Unit, Lessor may demand an amount equal to the rent for such Unit, prorated on the basis of a thirty-day month, in effect immediately prior to such Event of Default; (e) proceed by court action to enforce performance by Lessee of this Agreement and/or to recover all damages and expenses incurred by Lessor by reason of any Event of Default; (f) sell any or all of the Units at public or private sale, with or without notice to Lessee or advertisement, or otherwise dispose of, hold, use, operate, lease to others, or keep idle such Units, and without any duty to account to Lessee for such action or inaction or for any proceeds with respect thereto, and apply the net proceeds thereof (after deducting all expenses, including legal fees and costs, incurred in connection therewith) to the amounts owed to Lessor under this Agreement, provided, however, that Lessee shall remain liable to Lessor for any deficiency that remains after any sale or lease of such Units; and (g) exercise any other right or remedy available to Lessor at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

25. Indemnity.

25.1 Lessee shall indemnify, defend, and hold harmless Lessor, its successors and assigns, and its affiliates and their successors and assigns and the respective directors, officers, managers, members, employees, and agents of Lessor, its successors and assigns, Lessor's affiliates, and their successors and assigns (collectively, "**Indemnitees**") against any and all losses, injury, death, damages, liabilities, claims, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatsoever kind and nature, including reasonable attorneys' fees and the cost of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers incurred by Indemnitees relating to, arising out of, or in connection with the transactions contemplated by this Agreement, including without limitation:

(a) the selection, design, manufacture, delivery, purchase, acceptance, or rejection of any Unit or the ownership of any Unit;

(b) the lease, possession, maintenance, use, condition, repair, return, disposition, operation, storage, or transportation of any Unit, any parts, or any modifications thereto (including, without limitation, latent and other defects, whether or not discoverable by Lessor or Lessee);

(c) any inaccuracy in or breach of any of the representations of Lessee contained in this Agreement;

(d) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Lessee pursuant to this Agreement; and

(e) any assertion of the infringement of patent, trade secret, trademark, copyright, or other intellectual property rights of third parties.

26. Lessor's Performance of Lessee's Obligations. If Lessee is in default or an Event of Default has occurred and is continuing, Lessor may, in its sole discretion, make any payment or



perform any obligation on behalf of Lessee or take any action that Lessor in Lessor's sole discretion deems necessary to maintain and preserve any or all Units and Lessor's interests therein. Lessor's payment, performance of such obligation, or taking of such action shall not be a waiver by Lessor of any default or Event of Default or a release of Lessee by Lessor. Lessee shall pay immediately on demand to Lessor all sums so paid by Lessor and any expenses (including legal fees and costs) incurred by Lessor in connection with Lessor's payment, performance of such obligation, or taking of such action.

## 27. Return of Units.

27.1 Lessee shall, at its sole expense and risk, no later than the Expiration Date or the earlier termination of the Term for any Unit (and except as set forth in Section 20.3), return such Unit to a location that shall be designated by Lessor in its sole discretion.

27.2 Lessee shall cause any Unit and all parts returned under this Agreement to be in at least as good condition as when delivered to Lessee, including without limitation the removal of any marks that Lessee is permitted to apply to the Unit under Section 19.1, complete with all parts, and in compliance with applicable law. Any repairs to such parts necessary on return to restore them to a condition as good as when such Unit delivered, and any replacement of such parts required on return by their unfitness for use or damage beyond repair, shall be at Lessee's sole expense. Any repairs to any Unit required on return because of damage to such Unit while in Lessee's possession shall be at Lessee's sole expense.

27.3 If by the Expiration Date or the earlier termination of this Agreement for a Unit, Lessee does not return such Unit to Lessor in the condition required by and otherwise in accordance with the terms and conditions of this Agreement, Lessee shall continue to comply with all the terms and conditions of this Agreement with respect to such Unit, including without limitation the obligation to pay 125% of the prorated daily rent for each day from the Expiration Date or the earlier termination of this Agreement for such Unit until the date on which Lessee returns such Unit to Lessor in the manner required under this Agreement ("**Holdover Rent**"). Nothing contained in this Section, including Lessee's payment of Holdover Rent, shall (a) constitute a waiver of Lessee's failure to perform any obligation under this Agreement; or (b) give Lessee the right to retain possession of any Unit after the Expiration Date or the earlier termination of this Agreement for such Unit.

27.4 Should Lessee return any unit that contains customer data, including test results, Lessee shall be charged a fee to cover the costs of returning the equipment to its pre-rental condition. If the Lessee wishes to have a copy of the customer data and test results, there will be an additional fee charged, to be determined at that time.

## 28. Renewal Option.

28.1 Provided that no Event of Default shall have occurred and be continuing, if Lessor consents in its sole discretion, Lessee shall have the option at the conclusion of the Base Term to renew the lease of all and no less than all the Units under this Agreement ("**Renewal Option**") for a period of seven days ("**Renewal Term**," and together with the

Base Term, the "**Term**"). No less than seven (7) business days prior to the Expiration Date, Lessee shall notify Lessor in writing and in accordance with the provisions of Section 28.2 of Lessee's intention to exercise the Renewal Option. In the event that Lessee fails so to notify Lessor no less than seven (7) business days prior to the Expiration Date, the Renewal Option shall expire and Lessee shall have no further right to renew the lease of the Units under this Agreement. Extensions are at the sole discretion of Lessor.

28.2 During the Renewal Term, Lessee shall pay to Lessor a fixed renewal rent of the greater of (a)) [NUMBER IN WORDS] US dollars (\$[NUMBER])) [ and (b)) [ the US dollar rent amount for a Unit in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor in a free market, determined by an independent appraiser selected by Lessor, assuming that the Units are in the condition required hereunder,] per Unit per [month/week], payable in advance on the first day of each month, in accordance with the provisions of Section 12 hereof.

28.3 Except as otherwise set forth herein, Lessee shall comply during the Renewal Term with all the terms and conditions of this Agreement.

29. Miscellaneous.

29.1 Subject to any limitations and other provisions contained in this Agreement, the representations of Lessee contained in Section 17 survive indefinitely. All covenants and agreements of Lessee contained herein, including without limitation Lessee's obligations under Section 26, survive indefinitely.

29.2 Each Party shall deliver all notices and other communications under this Agreement (each, a "**Notice**") in writing and addressed to the other Party at its address set forth in the first paragraph hereof (or to such other address as the receiving Party may designate from time to time in accordance with this Section 29.2). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email of a PDF document (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section 29.2.

29.3 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

29.4 If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

29.5 This Agreement, together with all related exhibits and schedules, constitutes the sole and entire agreement of the Parties hereto with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings,

agreements, representations, and warranties, both written and oral, with respect to such subject matter.

29.6 No amendment to this Agreement is effective unless it is in writing and signed by each Party to this Agreement.

29.7 No waiver under this Agreement is effective unless it is in writing and signed by the Party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion. Neither any failure or delay in exercising any right, remedy, power, or privilege, or in enforcing any condition under this Agreement, nor any act, omission, or course of dealing between the Parties constitutes a waiver or estoppel with respect to any right, remedy, power, privilege, or condition arising from this Agreement.

29.8 All rights and remedies of Lessor provided in this Agreement are cumulative and not exclusive, and the exercise by Lessor of any right or remedy does not preclude the exercise by Lessor of any other rights or remedies that may be available to Lessor at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

29.9 Lessee acknowledges that a breach or threatened breach by Lessee of any of its obligations under this Agreement would give rise to irreparable harm to Lessor for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by Lessee of any such obligations, Lessor will, in addition to any and all other rights and remedies that may be available to Lessor in respect of such breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

29.10 Lessee may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Lessor. Any purported assignment or delegation in violation of this Section 29.10 is null and void. No assignment or delegation relieves Lessee of any of its obligations under this Agreement.

29.11 This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.

29.12 Subject to the final sentence of this Section 29.12, this Agreement benefits solely the Parties and their respective successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason hereof. The Parties hereby designate the Indemnitees other than Lessor as third-party beneficiaries of Section 25, having the right to enforce Section 25.

29.13 This Agreement and all exhibits and schedules attached hereto, and all matters arising out of or relating hereto, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of Virginia without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or

permit the application of the laws of any jurisdiction other than those of the State of Virginia.

29.14 Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement or any exhibits or schedules attached hereto, or any contemplated transaction in any forum other than Federal or State courts sitting in Norfolk, Virginia, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**29.15 EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT OR ANY EXHIBITS OR SCHEDULES ATTACHED HERETO IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY EXHIBITS OR SCHEDULES ATTACHED HERETO, OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

29.16 This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

29.17 No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Lessee to make payments to Lessor hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, epidemics or pandemics, or explosion; (c) war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) other events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within five days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty consecutive days following written notice given by it under this Section 29.17, the other Party may thereafter terminate this Agreement upon written notice.

29.18 Lessee agrees to execute, acknowledge, deliver, file, and record, or cause to be executed, acknowledged, delivered, filed, and recorded, such further documents or other papers and to do all such things and acts as Lessor may request in furtherance of the provisions and purposes of this Agreement and the transactions contemplated hereby.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

KITCO Fiber Optics, Inc.

By \_\_\_\_\_

Name:

Title:

[LESSEE NAME]

By \_\_\_\_\_

Name:

Title:

## **SCHEDULE 1**

### **Lessee Insurance Requirements**

#### **Ensure the COI states the following as the Certificate Holder:**

KITCO Fiber Optics, Inc.  
1151 Azalea Garden Road, Suite 100  
Norfolk, VA 23502

All insurance coverage shall be from companies possessing a rating of “A-” or better and a financial category no lower than “VIII” from A.M. Best.

Except for Workers Compensation, and Employers Liability, all coverages shall **name Lessor as an additional insured**, be primary to, and shall seek no contribution from the additional insureds. **All coverage shall provide Waiver of Subrogation in favor of Lessor.**

Lessee shall require each of its sub-tier contractors to maintain the same insurance coverage and limits.

A Certificate of Insurance shall be provided on request evidencing insurance coverage, limits, waiver of subrogation and additional insured.

#### **Required Coverage:**

**COMMERCIAL GENERAL LIABILITY** with a minimum Limit of Liability: \$1,000,000 per Occurrence / \$2,000,000 Aggregate. Includes Premises, Products, and Completed Operations. Bodily Injury and Property Damage. Lessor to be listed as Additional Insured.

**AUTO LIABILITY** with a \$1,000,000 Combined Single Limit covering Owned, Hired and Non-Owned vehicles.

**PROPERTY INSURANCE** with a limit to cover damage or loss for the full replacement value of the rented equipment and/or Units.

**WORKERS COMPENSATION & EMPLOYERS LIABILITY** maintaining all statutorily required Workers Compensation coverages and limits. Employers Liability including limits of \$1,000,000 Each Accident for Bodily Injury, \$1,000,000 Each Employee Bodily Injury by Disease, \$1,000,000 Policy Limit by Disease.

**EXHIBIT A**  
**LIST OF UNITS AND ACCESSORIES PROVIDED (PER RRF)**



**EXHIBIT B**  
**RENTAL SPECIFICATIONS SHEET**