

# MASTER SUBCONTRACTOR AGREEMENT

This Master Subcontractor Agreement ("MSA") is entered into this

Effective Date: \_\_\_\_\_

(the "Effective Date"), by and between LYT Communications, LLC ("LYT" or "Contractor"), a Texas limited liability company with its principal place of business at 12130 State Highway 3, Webster, TX 77598, and

Subcontractor Name: \_\_\_\_\_

Entity Type: \_\_\_\_\_

## Article 1 – Performance of the Work

### 1.1. Designated Work Defined

Subcontractor will perform such labor and items of work, and furnish such equipment required by the applicable Contract documents, as is set forth in one or more Statement(s) of Work (each a "SOW") executed by the parties hereto. Each SOW shall (i) specifically reference this MSA, (ii) include a numerical contract designation, (iii) specifically reference the applicable Owner and associated project and (iv) be deemed to be incorporated as part of this MSA upon execution by an authorized representative of LYT and Subcontractor. To the extent that the terms of any SOW conflict with this MSA, the most recent SOW shall govern the provision of the work performed by Subcontractor. Such labor, items of work, and/or equipment contained in any SOW are collectively referred to herein as "Designated Work."

### 1.2. MSA Not Requirement to Designate Work

This MSA does not commit LYT to designate any quantity or dollar amount of work. LYT retains the right to assign work to other subcontractors or to LYT's own employees or agents.

### 1.3. Cooperation with Others

Designated Work may be assigned to more than one subcontractor in the same general area or general location. If Designated Work is to be performed at the same time and in the same general place as, or if Designated Work will interfere with other work, then Subcontractor must afford other subcontractors, LYT, or the Owner, as the case may be, reasonable opportunities for the performance of their work, and must cooperate and coordinate the sequencing of all work with others so that the work will be performed in the manner most efficient for the performance of all the work of the Owner. In the event that the subcontractors are not able to cooperatively work out the sequencing or the coordination of the work, LYT may schedule the sequencing of the multiple subcontractors work and will charge an appropriate amount to whichever subcontractor was responsible for the work, all in LYT's sole discretion.

### 1.4. Prints and Contract Documents

Owner and/or LYT will furnish to Subcontractor copies of plans and documents, hereinafter referred to as "Prints" and/or "Contract Documents" reasonably necessary for performance of the Designated Work. The Prints and Contract Documents may consist of plans, maps, drawings, specifications, and written instructions detailing the Designated Work and will constitute a part of this MSA. Subcontractor will perform the Designated Work to achieve the result described in the Prints or Contract Documents or any written or oral instructions or other drawings furnished by LYT or the Owner.

LYT and Owner furnish Prints and Contract Documents based on best available information without warranty of accuracy; Subcontractor assumes all risks of variations and must verify/protect utilities, indemnifying LYT per this MSA.

### **1.5. Delays**

Subcontractor will not be compensated by LYT for time lost due to delays, interference, disruption, or hindrance that the Subcontractor may encounter in completion of the Designated Work regardless of the cause therefore. An extension of time shall be the Subcontractor's sole remedy for any such occurrence. If Subcontractor believes an extension of time is necessary, Subcontractor shall promptly notify LYT in writing (within 72 hours) of the need for an extension of time and the basis for the request. Owner's approval of the request for extension of time is a condition precedent to an extension of time for Subcontractor.

### **1.6. Inspection**

LYT or Owner may inspect Subcontractor's work and performance, and Subcontractor will facilitate inspection. Any work unacceptable to LYT or Owner will be corrected immediately by Subcontractor at Subcontractor's sole cost and expense. If Subcontractor fails to correct defective or nonconforming work within three (3) days from the date of notice, LYT may correct the work with all related costs charged to Subcontractor, but such correction shall not affect LYT's ability to seek reimbursement from Subcontractor for such correction. Inspection of the work by LYT or Owner shall not constitute acceptance of the Designated Work, nor shall inspection (1) act as a waiver of any right or warranty, (2) preclude LYT or Owner from rejecting defective Designated Work or (3) relieve Subcontractor of Subcontractor's obligations under this MSA.

### **1.7. Time**

The time frame and location for the Designated Work shall be as specified and in accordance with LYT's instructions, time being of the essence in Subcontractor's performance of the Designated Work.

### **1.8. Changes**

Changes must be in writing signed by LYT. Oral changes are invalid unless Subcontractor confirms no impact on cost/time/integrity. Performing without signed writing waives claims. If a change is suspected, notify LYT within 7 days and propose within 10; adjustments require Owner approval.

## **Article 2 – Commercial Terms**

### **2.1. Compensation**

The amount to be paid by LYT to Subcontractor for the performance of Designated Work shall be as outlined in SOWs issued under this MSA. Any subsequent changes in or additions to the payment amounts or payment terms in any SOW must be accepted in writing by LYT to be deemed effective, signed by an officer of LYT, and signed by a representative of Subcontractor. Upon completion of these requirements, said changes in or additions

to the payment amounts or payment terms, upon written acceptance by both parties, become an amendment to the SOW. LYT will not have any liability for any other expenses or costs incurred by Subcontractor unless expressly agreed to by LYT in writing. Claims waived if not noticed per Section 1.8.

Upon termination of this MSA for any reason, final payment to Subcontractor for any Designated Work, except for retainage which is governed by Section 2.2 and Section 2.3 below, shall occur within sixty (60) days from the last day of work or until all known obligations of Subcontractor are satisfied, whichever occurs later.

## **2.2. Retainage**

LYT may, at its sole option, on each payment to Subcontractor, retain ten percent (10%) or the maximum amount permitted by law in the state where the Designated Work is being performed, whichever is less, of the amount of each Subcontractor invoice. Retainage due only after (i) punch list completion, (ii) LYT/Owner acceptance, (iii) claim resolution, and (iv) lien waivers/compliance; subject to offset. Invoice required for payment.

## **2.3. Billing Procedures**

Subcontractor shall bill and invoice for work performed in discrete detail weekly. Invoices shall include detailed listings of quantities and amounts installed by Subcontractor for the week. All invoices must be approved by LYT's Site Supervisor at the Project before being turned into LYT. Invoices shall be accompanied by marked up as-built construction drawings (project redlines) corresponding to the work performed by Subcontractor for which it seeks payment in the invoice, all necessary lien waivers corresponding to the work performed by Subcontractor contained in the invoice, photographic evidence where necessary, as well as any LYT customer required items for invoice processing which shall be outlined in any SOW issued under this MSA. Timely submitted invoices from Subcontractor will be paid by LYT within ten (10) days of receipt of payment from Owner for that portion of Subcontractor's Designated Work. LYT shall have no obligation to pay any invoice containing work that is over sixty (60) days old.

## **2.4. Taxes, Duties, and Fees**

Subcontractor is responsible for any local, state, or federal sales, use or other excise taxes upon the fees to be paid by LYT for the Designated Work performed by Subcontractor. In the event the governing law does not permit Subcontractor to absorb such tax, such tax will be separately stated on the invoice and will be paid by LYT in addition to the fees or other compensation owed Subcontractor.

## **2.5. Right of Offset**

LYT, without waiver or limitation of any rights, may deduct from any amounts due to the Subcontractor under this MSA any amounts due or estimated to be due from Subcontractor to LYT under this MSA or any SOW or any other agreement between the parties. LYT shall be entitled to withhold or offset payment from or to Subcontractor at any time for:

- (i) defective work not remedied;
- (ii) third party claims filed or reasonable evidence indicating the probable filing of such claims;
- (iii) failure of the Subcontractor to make payments properly to its sub-contractor and/or suppliers for labor, materials or equipment;
- (iv) reasonable evidence that the Work cannot be completed on time or for the balance then remaining unpaid under this MSA or any SOW;

- (v) damage to Owner, LYT or another subcontractor;
- (vi) persistent failure to carry out the Designated Work in accordance with the requirements of this MSA or other failure to comply with the terms and requirements of this MSA;
- (vii) Subcontractor's breach of this MSA or of any of Subcontractor's warranties or obligations arising under this MSA;
- (viii) amounts which LYT is entitled to recover from or charge back to Subcontractor, whether involving work performed by Subcontractor under this MSA or arising from any other agreement, contract, transaction or occurrence between the parties; or
- (ix) failure of Subcontractor to deliver to LYT any lien waivers and releases (executed by Subcontractor and by others who have furnished labor or materials to the Project through Subcontractor) required by LYT to evidence that Subcontractor has waived all of its lien rights pertaining to the work for which payment is made and that Subcontractor's immediate and lower-tier subcontractors and suppliers have been paid in full and released all of their respective lien rights for all labor and materials which they have provided to the Project.

## 2.7. Damages by Subcontractor

Subcontractor has the sole responsibility for calling in all utility locates related to Subcontractor's Designated Work. Subcontractor handles utility locates and all Claims (damages/complaints). Tendered Claims must be resolved/paid within 10 days or disputed with evidence; failure waives dispute. LYT may settle/deduct costs.

## 2.8. Liquidated Damages

Should LYT be compelled to pay any liquidated damages or penalties as a result of Subcontractor's failure to begin, continue, or complete Designated Work as herein contemplated, the Subcontractor shall indemnify and reimburse LYT in full upon demand by LYT for any such payments or damages.

# Article 3 – Term and Termination

## 3.1. Term

The term of this MSA begins on the Effective Date of this MSA and shall continue in full force and effect until completion of all Designated Work or termination as described below.

## 3.2. Termination by LYT in the Event of Owner Termination

LYT may terminate this Agreement and any Designated Work, in whole or in part, effective immediately upon written notice to the Subcontractor, when LYT's contract with Owner or any applicable part thereof has been terminated by Owner. In such event, the Subcontractor shall accept as full compensation and as satisfaction of all obligations of LYT hereunder, those amounts actually paid by Owner to LYT or recovered from Owner by LYT, which payment by Owner or recovery from Owner shall be a condition precedent to payment to Subcontractor and the source of such payment.

## 3.3. Termination by LYT for Cause

If Subcontractor at any time shall (i) refuse or neglect to supply sufficient, properly skilled workmen, (ii) fail in any

respect to prosecute the Designated Work with promptness and diligence, (iii) cause by any action or omission the stoppage or interference with the work of LYT or other subcontractors, (iv) fail in the performance of any of the covenants or conditions herein contained, (v) be unable to meet its debts as they mature, or (vi) file or institute bankruptcy, reorganization, liquidation, or receivership proceedings or make an assignment of a substantial portion of Subcontractor's assets for the benefit of creditors, and if Subcontractor fails to cure such failure within ten (10) days written notice by LYT, LYT may, at its option, terminate this MSA and/or any Designated Work effective immediately by delivering written notice of termination to Subcontractor from LYT without liability. Subcontractor shall cease work on the Termination Date even if all Designated Work is not complete and take all reasonable actions to minimize expenses. Subcontractor shall remain liable for any and all damages and losses resulting from termination. Upon 10-day uncured notice, LYT may terminate, take possession, complete work, and deduct costs (including 20% admin fee, losses, attorneys' fees) from amounts due; use retainage as needed. Any retainage amount leftover after LYT deducts its cost of completion shall be payable in accordance with Section 2.2.

### **3.4. Termination by LYT for Convenience**

LYT may, by written notice, without Subcontractor being at fault, for any cause or for its own or the Owner's convenience, terminate this Agreement and require Subcontractor to immediately stop work. In such event, LYT shall pay Subcontractor for that portion of the Designated Work actually performed. LYT shall not be liable to Subcontractor for any other costs or for prospective or lost profits on portions of the Designated Work not performed. However, if the reason for the termination and cancellation is due to any default or action by Owner, or as a result of court order or public authority, then LYT shall not be liable to Subcontractor for any sum greater than that which LYT receives from Owner with respect to Subcontractor's performance, less any costs incurred by LYT. Any retainage amount owed to Subcontractor following termination under this section shall be payable in accordance with Section 2.2. Any cause termination subsequently determined to have been erroneous shall be treated as a termination for convenience under this section.

### **3.5. Effect of Termination**

If LYT so terminates this Agreement, Subcontractor shall not be entitled to any further payments under this Subcontract until Subcontractor's Designated Work has been completed and accepted by Owner, and payment has been received by LYT from Owner with respect thereto—including retainage in accordance with Section 2.2. In the event that the unpaid balance due to Subcontractor exceeds LYT's cost of completion, the difference shall be paid to Subcontractor; but if LYT's cost of completion exceeds the balance due to Subcontractor, Subcontractor agrees to pay the difference to LYT within ten (10) calendar-days of written notice from LYT.

### **3.6. Suspension of the Work**

LYT may issue a stop work order to Subcontractor at any time and, when such order is issued, Subcontractor shall immediately stop work and take reasonable efforts to minimize costs associated with stopping work. In the event of a work suspension, LYT will inform Subcontractor as to when work may commence again.

## **Article 4 – Independent Subcontractor**

### **4.1. Independent Contractor**

Subcontractor is an independent contractor for all purposes and at all times. Subcontractor has the responsibility for and control over the means and details of performing the Designated Work, subject to Owner's and LYT's inspection. Subcontractor will provide all training, hiring, supervision, hours of work, work policies and procedures, work rules, compensation, expense reimbursement and discipline for its employees. Subcontractor is solely

responsible for payment of wages, salaries, fringe benefits and other compensation of, or claimed by, Subcontractor's employees including, without limitation, contributions to any employee, benefit, medical or savings plan, and Subcontractor is responsible for any and all payroll taxes including, without limitation, the payment of withholding and estimated taxes of all federal, state and local income taxes, FICA, unemployment taxes either for itself or its employees. Subcontractor is also solely responsible for compliance with applicable Workers' Compensation laws with respect to maintenance of workers' compensation coverage on Subcontractor's employees. Subcontractor assumes toward LYT all the obligations and responsibilities which LYT assumes toward the Owner, provided that where any provision of the Contract is inconsistent with any of the provisions of this MSA, the Contract between Owner and LYT shall govern. Subcontractor shall indemnify and hold harmless LYT from and against the imposition of any wage or other employment-related tax assessment, penalties, interest, fines, reasonable attorney's fees and other costs incurred by LYT as a result of Subcontractor's breach of this paragraph (per Article 10).

#### **4.2. Subcontractor's Employment Practices**

Subcontractor shall comply with all applicable federal, state, and local laws, regulations and orders concerning or relating to equal employment opportunity, including but not limited to, those pertaining to discrimination based on race, religion, sex, national origin, disability, age, and veterans status. These laws include but are not limited to: Americans with Disabilities Act, workers' compensation, unemployment compensation and Federal Insurance Contributions Act (FICA). Upon request, Subcontractor will furnish LYT with verification of workers' compensation, unemployment compensation, FICA.

#### **4.3. No Agency**

Subcontractor, its agents, employees and servants and Subcontractors have no authority to act on behalf of, or to bind LYT, unless LYT gives prior specific written authorization.

#### **4.4. Compliance with Immigration Laws, Employment Verification, Wage Payment and Overtime Laws, and Background Checks**

Subcontractor shall, at its own expense, comply with all applicable federal, state, and local laws, statutes, rules, ordinances, and orders, including but not limited to all laws relating to employment, labor, payment of wages, payment of taxes, employment eligibility status and verification (I-9), immigration, workers' compensation, occupational safety and health, overtime, unemployment and income tax withholding. Specifically, and without limitation to its other legal requirements as employer, Subcontractor shall have each of its employees complete an I-9 form and shall verify the documentation submitted for work eligibility as outlined below; Subcontractor shall have each of its employees complete a W-4 form at the start of employment and shall properly withhold from income and submit all federal and state withholding and payroll taxes; Subcontractor shall properly calculate and pay overtime to each non-exempt employee and Subcontractor shall issue a W-2 wage and tax statement at the end of the year for each employee. LYT may reasonably request from Subcontractor evidence of its compliance with applicable federal, state, and local laws, including evidence of verification concerning work eligibility, hours of work, wages paid, and deductions made.

To the extent required by LYT's customer or requested by LYT, Subcontractor and its employees shall at all times wear ID badges provided by LYT's customer or LYT when performing work under this MSA or any SOW. Further, at the request of LYT, Subcontractor agrees that it shall affix vehicle magnets provided by LYT's customer or LYT to any vehicle used by Subcontractor in prosecution of the work.

To the extent required by LYT's customer or requested by LYT, Subcontractor shall conduct background checks of its employees, agents, representatives, and subcontractors as directed by LYT or LYT's customer. The cost of the background checks will be borne by the Subcontractor. LYT or LYT's customer may require the Subcontractor to exclude certain of Subcontractor's employees, agents, representatives, or subcontractors based on the

background check results.

## Article 5 – Confidentiality and Owner's Property

### 5.1. Confidentiality

While performing this MSA, Subcontractor may have access to LYT's or Owner's trade secrets, including but not limited to Prints, products, planned products, or other information relating to LYT's and/or Owner's business activities or operations or those of its subcontractors (the "Proprietary Information"). Subcontractor will keep all Proprietary Information confidential and will only use Proprietary Information to perform the Designated Work and not for its own benefit. Subcontractor shall not disclose Proprietary Information to any third party and expressly agrees not to use any Proprietary Information for Subcontractor's own benefit or the benefit of Subcontractor's other clients. Except with respect to using Proprietary Information to perform the Designated Work, nothing in this MSA shall be construed as granting Subcontractor whether expressly, by implication, estoppel, or otherwise, any license or any right to use any Proprietary Information received from LYT and/or Owner, and return/destroy upon request.

### 5.2. Return of Proprietary Information

All Proprietary Information disclosed pursuant to this MSA, including any copies thereof, shall remain the property of LYT and/or Owner and is loaned to Subcontractor for use solely in connection with this MSA and the performance of the Designated Work. Subcontractor agrees to return all information, including but not limited to all originals and copies (if any) of all information whether supplied by LYT and/or Owner or constructively developed for LYT and/or Owner (a) immediately upon request, (b) upon termination of this MSA, or (c) upon expiration of this MSA. Upon expiration or termination of this MSA, Subcontractor shall cease use of all Proprietary Information received hereunder. At LYT's and/or Owner's sole discretion, Subcontractor shall either return all information to LYT and/or Owner or destroy the Proprietary Information and shall certify destruction within fifteen (15) days of written request by LYT and/or Owner.

### 5.3. Non-Circumvention / Non-Solicitation

During the term of this MSA and for a period of two (2) years thereafter, Subcontractor shall not, either for itself or for any other person, firm, corporation or other entity, directly or indirectly or by action in concert with others, divert or take away, or attempt to divert or take away, or solicit or attempt to solicit, or accept business from any existing or former customer of LYT with whom Subcontractor has had any material contact or for whom Subcontractor has performed any work or gained knowledge about through its provision of services to LYT in the twelve (12) months immediately preceding the termination of this Agreement, for any work related to the installation of underground utilities including fiber optic cable.

## Article 6 – Subcontractor Obligations

### 6.1. Subcontractor Warranties

In addition to other representations and warranties contained herein and in applicable law, Subcontractor represents and warrants that:

- (1) Subcontractor and its agents and employees will have the expertise, skill, training, and professional knowledge necessary to perform the Designated Work in accordance with this MSA;

- (2) The Designated Work will conform to all applicable requirements and will be performed to the highest quality and professional standards;
- (3) Subcontractor, its employees and agents will obtain and keep current, at Subcontractor's expense, all certificates and professional licenses necessary to perform the Designated Work;
- (4) Materials and equipment furnished by the Subcontractor will be of good quality and new, will be fit for the particular purpose of the Designated Work, will comply with any relevant specifications, will continue to perform at the highest quality and professional standards for a period of three years from the date of installation, and machines, tools, and equipment used by Subcontractor are fit for their intended use and are suitable for the safe and efficient performance of the Designated Work;
- (5) Subcontractor will replace at its sole cost any material or cable lost, stolen, destroyed, or damaged after possession is given to Subcontractor;
- (6) Subcontractor has complied or will comply with all applicable federal, state, municipal and local laws, ordinances and regulations in the performance of the Designated Work, and shall obtain all necessary permits to complete the Designated Work covered under this MSA. All inspections required by any authority having jurisdiction over the Project shall be documented and submitted to LYT for all Designated Work. Subcontractor acknowledges that inspection submittals are required for payment to be processed by LYT for any Subcontractor invoice;
- (7) Subcontractor shall remove all debris, excess material, waste, and trash after installation and at the conclusion of each day of work from the Project site. Subcontractor shall clean up all fixtures and equipment at the completion of any Designated Work;
- (8) Subcontractor has performed this type of work in the past, is familiar with the location and any peculiarities thereof; has made a careful inspection of said location and conditions, knows the character, quality and quantity of the equipment, transportation facilities, and storage facilities required to perform the work; has examined the Prints, Contract Documents, drawings, and all other documents related to the Designated Work; is familiar with the labor conditions of the area; is familiar with the materials provided for the Designated Work; knows of all matters affecting the performance of the Designated Work; and there are no conditions, latent or otherwise, that will affect its ability to perform the Designated Work for the compensation provided herein;
- (9) Subcontractor agrees to turn the Designated Work over to LYT in good condition and free and clear from all claims, encumbrances and liens for labor, services, or materials, and to protect and hold harmless LYT from all claims, encumbrances and liens arising out of the performance of the Designated Work (including all attorney's fees and expenses) and all maintenance required under the Prints and Contract Documents. Should Subcontractor, during the progress of the Designated Work, or at any time thereafter, fail to pay for all labor, services and materials used or purchased for use in the prosecution of the Designated Work, LYT, may at its sole option, with or without notice to Subcontractor, pay all such claims and charge the amounts thereof to Subcontractor or offset such sums against any amount due Subcontractor;
- (10) LYT's obligations to the Owner are set forth in the Contract between LYT and Owner. The Subcontractor hereby acknowledges that it has reviewed the Contract or has at least been given the opportunity by LYT to review the Contract and related documents. Insofar as the work being performed by the Subcontractor, the Subcontractor shall be bound by, and assumes toward LYT, all of the obligations and responsibilities that LYT assumes toward the Owner by such Contract Documents, including any exhibits, addenda, modifications, revisions, drawings, specifications, work schedules, or other details and agrees to abide by the terms and conditions thereof. All rights and remedies reserved to Owner under the Contract shall be available to and possessed by LYT in dealings with Subcontractor.

## 6.2. Subcontractor Surety Bonds

To the extent requested by LYT, Subcontractor, at its expense, agrees to obtain, effect, maintain, and furnish to LYT during the life of this MSA, payment and performance bonds in the full amount of any Designated Work from an acceptable surety, conditioned upon and covering the full payment of all amounts due from Subcontractor to all persons supplying labor or materials to the Designated Work and Subcontractor's faithful performance of, and compliance with, all the terms, provisions and conditions of this Subcontract, including, but not limited to, Subcontractor's guarantee of all Designated Work and materials provided by Subcontractor.

## Article 7 – Safety

### 7.1. General

Subcontractor is knowledgeable about and shall comply with all federal, state and local statutes, regulations, ordinances and laws (together the "Applicable Law") which are applicable to its performance of Designated Work. Applicable Law includes, but is not limited to, laws relating to workplace safety and protection of the environment. Subcontractor shall immediately notify LYT by telephone, with written follow-up within 24 hours, of any injury requiring hospitalization or death occurring on or about any site where Designated Work is being performed. Notwithstanding anything in this MSA to the contrary, Subcontractor shall perform all Designated Work in a safe, professional and workmanlike manner.

Subcontractor shall pay all sales and/or use taxes and contributions imposed or required by any law for any employment insurance, pensions, old age retirement funds, or similar purposes, with respect to the Work and the employees of Subcontractor in the performance of the Work. Subcontractor warrants that the price of the Work includes code compliance as well as payment by Subcontractor of the foregoing taxes and other costs.

### 7.2. Subcontractor Safety Guidelines

Subcontractor acknowledges and agrees that it shall adhere to all local, state and federal safety guidelines and regulations applicable to work performed pursuant to this MSA.

### 7.3. Subcontractor Supervisor

The Subcontractor shall designate a responsible member of the Subcontractor's organization who will be present (working or supervising) at the job site every shift, whose duty will be to monitor and ensure that applicable safety laws are being followed. This person must be a "competent person," defined by OSHA. This person is expected to take immediate remedial action in the event that there are unsafe conditions at the job site and/or provisions of Article 7 of this MSA are not followed. This person will be the Subcontractor's Supervisor unless otherwise designated by Subcontractor in writing to LYT.

### 7.4. Unsafe Conditions

If the Subcontractor fails to correct unsafe conditions or work which is not in accordance with the requirements of this Article 7, LYT may direct the Subcontractor in writing or orally to stop until the cause for such order has been eliminated or corrected. If an imminent dangerous condition exists, a verbal request to stop work will be given by LYT and work will be immediately stopped until the condition is abated.

### 7.5. Protective Measures and Notices

Subcontractor assumes risks near facilities/utilities (even if unmarked), must locate/mark/protect them, and bears full responsibility for injury/damage.

## Article 8 – Further Subcontracting

### 8.1. Assignment of this Subcontract

Subcontractor may not assign any portion of this MSA or any SOW or any Designated Work without the prior written consent of LYT.

## Article 9 – Insurance

### 9.1. Requirements

During the term of this Agreement, Subcontractor will obtain and maintain, and will cause any of its subcontractors or vendors to obtain and maintain, with financially reputable insurers (AM Best Rated A-; Financial Size VIII or higher) which are licensed to do business in all jurisdictions where any Designated Work is performed and which are reasonably acceptable to LYT, not less than the following insurance:

- (a) Workers' Compensation Insurance and Employers Liability Insurance in compliance with the laws of the state in which the work is to be performed with the minimum limit per accident/occurrence of: \$1,000,000 Each Accident; \$1,000,000 Disease – Each Employee; \$1,000,000 Disease – Policy Limit
- (b) Commercial General Liability Insurance (CGL) Coverage should be written on Insurance Services Office (ISO) occurrence form CG 00 01 (with an edition date no earlier than 10/01) or an equivalent form, providing coverage for liability arising from premises and operations, products and completed operations, contractual liability for any indemnification obligations, the work of independent contractors, and personal injury and advertising injury. The coverage should have the following minimum limits: Aggregate - \$2,000,000; Products Completed Operations Aggregate - \$2,000,000; Personal Injury - \$1,000,000; Each Occurrence - \$1,000,000; Fire - \$50,000; Med Expense - \$5,000
- (c) Automobile Liability Insurance covering all of Subcontractor's owned, non-owned and hired automobiles with minimum limits of \$1,000,000 combined single limit for each accident.
- (d) Umbrella or Excess Liability: For jobs up to \$250,000.00 the Umbrella limit must be at least \$1,000,000.00. For jobs over \$250,000.00 but under \$1,000,000.00 the required Umbrella limit is \$3,000,000.00. For jobs \$1,000,000.00 and over, the required Umbrella limit is \$5,000,000.00. Umbrella limit is over and above the required limits under the General Liability, Automobile Liability and Employers Liability.

Policies must cover underground damage, 811 failures, residential projects, XCU hazards, or sub work without exclusions. Broader/higher coverage applies if in force. Maintain completed ops for 6 years or statute of repose.

Subcontractor shall ensure that all subcontractors, suppliers, and other lower-tier entities engaged by Subcontractor in connection with the Work ("Lower-Tier Subcontractors") are bound in writing to the same obligations, terms, and conditions imposed on Subcontractor under this Agreement, including, without limitation, all safety requirements, indemnification obligations, and insurance coverage requirements. Subcontractor shall obtain and furnish to Contractor certificates of insurance and endorsements from each Lower-Tier Subcontractor prior to commencement of any Work by such party, and shall ensure compliance with all such requirements throughout the performance of the Work. Failure by any Lower-Tier Subcontractor to comply with such requirements shall be deemed a material breach by Subcontractor. The obligations of Subcontractor under this

section are in addition to, and not in lieu of, any other rights or remedies Contractor may have under this Agreement or at law.

## 9.2. Certificates

Subcontractor will furnish to LYT certificates evidencing the insurance coverage as set forth above prior to commencing performance of any Designated Work hereunder. LYT shall have the right to review Subcontractor's underlying insurance policies and/or declarations to ensure Subcontractor is insured for the types of work required by the Designated Work. Subcontractor's insurance policies may not have any exclusions which potentially impact their scope of work in any way during the project term as well as through the statute of repose specific to the state the work is performed and completed in. Such certificates shall provide for a thirty (30) day prior written notice to LYT of any cancellation or material change in coverage. If Subcontractor does not have or is not able to obtain any insurance coverage described herein, LYT may obtain said insurance coverage for itself and charge back the cost thereof to Subcontractor; this and any other right of LYT is not, and shall not be construed as, an obligation. If Subcontractor, with LYT's written authorization, subcontracts any of the Designated Work to another subcontractor, Subcontractor shall require the subcontractor to acquire the same insurance coverage outlined herein on the subcontractor performing the Designated Work. LYT may, at any time request a certificate evidencing the insurance coverage as set forth above for any or all subcontractors of Subcontractor. Failure of Subcontractor to comply with this Section 9.2 shall result in suspension of all work until the certificate of insurance is issued as required by this Section 9.2.

## 9.3. Waiver of Subrogation

Subcontractor will look first to any insurance in its favor before making any claim against LYT or Owner and their directors, officers, employees, and/or agents for damage to any property arising from any cause, regardless of negligence, and does hereby release and waive to the fullest extent permitted by law, and shall cause its respective insurers to waive to the fullest extent permitted by law, all rights of recovery by subrogation or otherwise against LYT, Owner, and their directors, officers, employees, and/or agents.

## 9.4. Additional Insured

LYT and Owner, along with their respective officers, agents, and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations (subject to form CG2010 and CG2037 or equivalents) on the Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy and Umbrella or Excess Liability Policy, all of which must be primary and noncontributory with respect to these additional insureds. The Subcontractor shall maintain Commercial General Liability and Umbrella or Excess Liability, including Completed Operations Liability for the duration of the project and for at least the length of the Statute of Repose in the state where the subject work is performed. LYT and Owner, along with their respective officers, agents, and employees, shall be named as additional insureds on the Business or Commercial Automobile Liability Policy, which must be primary and noncontributory with respect to these additional insureds.

# Article 10 – Liability and Indemnifications

## 10.1. Limitation of LYT's Liability

LYT's entire liability under the MSA and any SOWs is limited to the amount due for the Designated Work in accordance with Article 2 hereof, less amounts paid by LYT to Subcontractor and amounts which may be deducted or offset against sums due to Subcontractor. Notwithstanding anything to the contrary in this MSA, neither LYT or Subcontractor shall be liable to the other for any indirect or consequential damages or punitive damages or any loss of profit or revenue, loss of use of equipment, cost of capital and/or financing, down time

costs, loss of opportunity, loss of goodwill (whether indirect or consequential or not) suffered by LYT or Subcontractor arising under or related to this MSA or the Designated Work.

## 10.2. Indemnity

To the fullest extent permitted by applicable law, Subcontractor shall indemnify and hold harmless LYT, Owner, and their respective officers, directors, shareholders, agents, employees, and servants (hereinafter referred to singularly or collectively as "Indemnitee") from and against claims, damages, losses, penalties, fines, expenses of whatsoever kind or nature (including counsels or attorneys' fees, costs related to the defense or prosecution of an action, increased worker's compensation or other insurance premiums), suits and actions, arising out of or resulting from (i) the performance of or failure to perform the Designated Work, including performing or providing defective workmanship or faulty work; (ii) breach of the obligations of Subcontractor under this MSA, including violations of or failure to comply with any applicable laws; (iii) any claim by, or any act or omission of, Subcontractor or its lower tier subcontractors or suppliers and anyone directly or indirectly employed by any of them or by anyone whose acts for which they may be liable and for which Subcontractor is responsible, (iv) any injury to person or property arising from the negligence, whether in whole or in part, or willful act of Subcontractor or its employees, agents, or subcontractor, or (v) any actual or alleged infringement of any third party's patent, trademark, or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to Subcontractor's performance of the Designated Work under this MSA or any SOW.

Subcontractor's indemnity and defense obligations will apply regardless of the fault or negligence of the Subcontractor, except that if such claim, damage, loss, or expense is caused in whole, or in part, by any Indemnitee, Subcontractor's indemnity and defense obligations shall not apply to Indemnitee's proportional share of fault for the claim, damage, loss, or expense. If any claim arises or is asserted which relates to injuries to persons or damages to property attributable to the negligent or willful acts of Subcontractor, Contractor may withhold any amounts due and owing to Subcontractor until such claims are settled or an acceptable indemnity, surety, or guaranty is provided to LYT by Subcontractor. Subcontractor will make such payment to the Indemnitee as soon as the Indemnitee shall have paid out such sums, or any part thereof, in good faith, under the belief that they were or may be, liable for the amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed, all at the Indemnitee's sole discretion.

In claims against any person or entity indemnified herein, by an employee of the Subcontractor, its agents, anyone directly or indirectly employed by it, or anyone else for whose acts they may be liable, the indemnification obligation of this paragraph shall not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for LYT, or Subcontractor under worker's compensation acts, disability benefits acts, or other employee benefit acts. The indemnity obligations described herein shall not be construed to negate, abridge, or otherwise reduce other rights of indemnity that may exist in favor of Indemnitee.

## Article 11 – Notices or Communications

Notices or Communications which are required or permitted under this MSA are effective when given (unless otherwise indicated herein) by email to info@lytcomm.com

## Article 12 – Miscellaneous

### 12.1. Disputes and Choice of Law

In the event a dispute arises related to the obligations of the Parties to this MSA, LYT and Subcontractor will first attempt to resolve disputes or disagreements at the field level through discussions between designated representatives of both Parties which shall conclude within fourteen (14) days of either Party providing the other Party with written notice of a dispute.

If a dispute or disagreement cannot be resolved at the field level, the Parties shall submit the dispute to mediation no later than thirty (30) days after the field level meeting described above.

Should any disputes arise between the parties under this MSA or any SOW, including but not limited to disputes regarding the interpretation or meaning of the terms and conditions of the MSA or SOW or of any details concerning work, the quality of work, the completion of work, or the enforcement of this MSA that are not resolved pursuant to the above provisions, at the option of LYT, the disputes shall be referred for final determination to binding arbitration pursuant to the applicable rules of the American Arbitration Association by one (1) arbitrator appointed by the AAA. If the Parties agree, a panel of three (3) arbitrators may be used in lieu of a single arbitrator in which case both Parties will select (1) arbitrator and the selected arbitrators will jointly select a third arbitrator who will act as the chair of the panel. This Agreement shall be construed in accordance with the laws of Texas and any arbitration shall be conducted in the city of Galveston, Texas. Subcontractor consents to be subject to the personal jurisdiction of the courts of Galveston County in the State of Texas. Notwithstanding the foregoing, in the event a claim is made against LYT by Owner or any third party relating to the work performed by Subcontractor, Subcontractor consents to be subject to the personal jurisdiction of the courts or arbitration of any locale in which LYT is subject to suit or arbitration. Subcontractor consents to the consolidation of any lawsuit, arbitration or other legal proceeding between the parties with any other legal proceeding arising from the same project, facts, occurrences, or transactions (or any series thereof), at LYT's sole discretion.

Should LYT employ an attorney to enforce any of the provisions hereof, or to protect its interest in any matter arising under this MSA, or to collect damages for the breach of this MSA, or to prosecute or defend any suit resulting from this MSA, or to recover on any surety bond given by Subcontractor under this MSA, Subcontractor and its surety, jointly and severally, agree to pay LYT all costs, charges, and expenses incurred in connection therewith plus reasonable attorney's fees. In all arbitrations pursuant to this section, the Parties shall have the right to reasonable discovery, the scope of which shall be determined in the discretion of the arbitrator(s). The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon an arbitration award in accordance with applicable law by any court having jurisdiction thereof.

## **12.2. Injunctive Relief**

Notwithstanding the foregoing, LYT may bring a claim for injunctive relief in any court of competent jurisdiction without first submitting the claim to arbitration.

## **12.3. Waiver**

The waiver of a breach of any term or condition of this MSA by LYT will not constitute the waiver of any other breach of the same or any other term or condition.

## **12.4. Severability**

Should any part, term, portion or provision of this MSA be held to be illegal or unenforceable for any reason by any court having personal and subject matter, the validity of the remaining part, term, portion, or provisions shall not be affected thereby and shall nevertheless continue in full force and effect.

## **12.5. Extent of Agreement**

This MSA cancels and supersedes all prior or contemporaneous written or oral negotiations, commitments and writings regarding the matters contained herein. As to the matters contained herein, they cannot be changed orally, but may only be changed or modified by an agreement in writing, signed by the parties hereto.

#### **12.6. Right of Audit**

Subcontractor will maintain all records pertaining to Designated Work, Subcontractor's performance, and costs performed for a period of at least 3 years after final payment for any SOW issued under this MSA. LYT may audit, copy and inspect the records at reasonable times during the term of this MSA and for the 3-year period.

#### **12.7. Force Majeure**

Neither party shall be liable for any delay or failure of performance under this MSA, nor shall either party be liable to the other for damages (including liquidated damages) if such party's performance is delayed due to unavoidable casualty, strikes or labor disputes, war or enemy action or invasion, terrorism, riots, mob violence or civil disturbances, government regulations, failure of a governmental instrumentality to act in a timely fashion, acts of civil or military authorities, acts of God (each, a "Force Majeure"). In such event, the affected party shall promptly notify the other of the delay and its likely duration.

# SIGNATURE PAGE

NOW, THEREFORE, LYT and Subcontractor have hereunto set their hands and seals, effective as of the year and date first written above.

## LYT COMMUNICATIONS, LLC

Signature:

Printed Name: **Matthew Roy**

Title: **Owner**

Date: \_\_\_\_\_

## SUBCONTRACTOR

Signature: \_\_\_\_\_

Printed Name:

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Witness (if required):*

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_