

LEASE OPTION AGREEMENT

THIS LEASE OPTION AGREEMENT (this “Agreement”) is made and entered into as of this 17th day of July, 2015 (the “Effective Date”), by and between the State of Vermont, Agency of Transportation (hereafter the “State” or the “Grantor”), and Champlain VT, LLC d/b/a TDI New England, (hereafter the “Grantee”).

WHEREAS, the Grantor wishes to grant to the Grantee an option to enter into a lease agreement to use and occupy utility rights of way and corridors within certain State rights-of-way in the form attached hereto; and

WHEREAS, the Grantee wishes to acquire from the Grantor an option to enter into a lease agreement to use and occupy utility rights of way and corridors within such State rights-of-way in the form attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants of the parties and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Option; Consideration. In consideration of the option payments described in Section 2 hereof, the Grantor hereby grants to the Grantee the option (the “Option”) to enter a lease agreement to use and occupy utility rights of way and corridors within the State rights-of-way in the form attached hereto and entitled “Lease Agreement Between State of Vermont, Agency of Transportation and Champlain VT, LLC d/b/a TDI New England” attached to this Agreement as Exhibit A (the “Lease Agreement”).

2. Option Payments. In consideration of the Option, the Grantee shall make the following option payments to the Grantor:

- a. \$25,000 payable no later than thirty (30) days following the Effective Date.
- b. \$75,000 following the Grantee’s receipt of all of the following permits: the Vermont Section 248 Certificate of Public Good, the Presidential Permit, and the Army Corps Permit (collectively, the “Permits”). The one-time \$75,000 payment shall be payable no later than thirty (30) days following the Grantee’s receipt of the last of the three Permits.

3. Term of Option. The term of the Option shall commence on the Effective Date and shall expire on the first to occur of (i) the thirtieth (30th) day following the closing of the Grantee’s financing for the construction of the Project, or (ii) the three (3) year anniversary of the Effective Date. If the Grantee does not exercise the Option prior to the expiration of the term of the Option, the Option and the Grantee’s rights hereunder shall automatically terminate.

4. Exercise of Option. At any time prior to the expiration of the term of the Option, the Grantee may exercise the Option by delivery of written notice of exercise to the Grantor. In the event that the Grantee exercises the Option, the terms of the Lease Agreement attached hereto as Exhibit A shall automatically become effective as of the date set forth in the written notice from the Grantee to the Grantor, which date shall not be later than sixty (60) days from the date of such written notice.

5. Recording Prohibited. This Agreement shall not be recorded. The parties agree to execute and record a notice of option at the Grantee’s expense in the customary Vermont form.

6. Default.

- a. In the event of any alleged material default or perceived failure to perform any material obligation under this Agreement, the non-defaulting party shall give the alleged defaulting party written notice thereof, which notice shall include a description of the alleged default, the acts required to cure the same with reasonable specificity, and allowance of a reasonable time within which the alleged defaulting party shall cure the alleged default. If the alleged default is not fully remedied within that time, the party having received the notice shall be deemed in "Default" of this Agreement.
- b. In the event that the Grantor is in Default of this Agreement, then the Grantee may in its sole discretion, in addition to any other remedies available at law or in equity, tender performance of the obligations of the Grantee and specifically enforce all obligations of the Grantor.
- c. In the event that the Grantee is in Default of this Agreement, then the Grantor, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Agreement by giving the Grantee written notice of termination and to retain all consideration paid the by Grantee for the Option as liquidated damages. The Grantor acknowledges (a) the adequacy of this exclusive remedy, and (b) that this limitation of remedies is an essential part of this Agreement from the perspective of the Grantee.

7. Governing Law. It is agreed that this Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Vermont, without regard to conflicts of law principles.

8. Modification. This Agreement may not be modified except in writing signed by each party.

9. Waiver. Failure of any party to insist upon strict performance of any term, condition or covenant set forth in this Agreement shall not be deemed a waiver of any right or remedy such party may have and shall not be deemed consent to any subsequent breach or default of such term, condition or covenant.

10. Notices. All notices or other communication required or permitted to be given or delivered hereunder shall be in writing and shall be sent by email, nationally recognized overnight courier (e.g., Federal Express) or certified mail, postage prepaid and return receipt requested, or shall be delivered personally. Any such notice or other communication shall be deemed given: (i) if mailed, three days after being deposited in the mail, properly addressed and with postage prepaid; (ii) if sent by email, when transmitted provided that the sender has not received any evidence of delivery failure; or (iii) if sent by overnight service, next-day after sending.

11. Dispute Resolution. In the event of any disagreement over the interpretation of this Agreement or the implementation of any provision of this Agreement that cannot be resolved informally amongst the Parties, the disagreement shall be resolved in the following manner:

- i. The Parties shall meet and make a good faith effort to resolve any dispute. The Parties shall consider the use of alternative dispute resolution to resolve any

dispute.

- ii. If the dispute cannot be resolved by the Parties, any Party can petition the Secretary of the Agency of Transportation for the resolution of the matter, whose decision shall constitute the final administrative decision for purposes of appeal.
- iii. If either Party remains unsatisfied with the decision of the Secretary, the dispute may be resolved by initiating litigation in the Vermont Superior Court, Washington Unit.

12. Successors and Assigns. TDI-NE may assign this Agreement with the written consent of VTrans, such consent not to be unreasonably withheld, delayed or conditioned. Any such assignment shall not become effective unless and until such assignee assumes in writing the obligations and rights of TDI-NE hereunder. Upon delivery of written confirmation of such assignment to VTrans, TDI-NE shall be released from its obligations hereunder.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Lease Option Agreement as of the Effective Date.

GRANTOR:

STATE OF VERMONT, AGENCY OF TRANSPORTATION

By: Chris Cole
Name: CHRIS COLE
Title: DEPUTY SECRETARY

GRANTEE:

CHAMPLAIN VT LLC D/B/A TDI NEW ENGLAND

By: [Signature]
Name: Renato Jessone
Title: General Manager

APPROVED AS TO FORM

DATE: 7-17-15

[Signature]
ASSISTANT ATTORNEY GENERAL

EXHIBIT A

Lease Agreement

(See attached)

LEASE AGREEMENT
BETWEEN STATE OF VERMONT, AGENCY OF TRANSPORTATION
AND
CHAMPLAIN VT, LLC d/b/a TDI NEW ENGLAND

1. Parties. This is a real estate lease (hereafter the "Lease" or "Agreement") between the State of Vermont, Agency of Transportation (hereafter "State" or "Lessor"), and Champlain VT, LLC d/b/a TDI New England (hereafter "TDI-NE" or "Lessee"), a limited liability company organized in Delaware with its principal place of business at P.O. Box 155, Charlotte, Vermont 05445, collectively, "the Parties."

2. Subject Matter/Preliminary Statement. TDI-NE filed a Section 248 Petition in December 2014 with the Vermont Public Service Board requesting permission to develop, construct, and operate the New England Clean Power Link ("NECPL" or "Project"), a proposed electric transmission line. The electricity shipped through the NECPL will be generated by renewable energy sources in Canada and will be delivered to Vermont and the New England electric grid. The transmission line will utilize high voltage direct current (HVDC) technology, capable of transmitting 1,000 megawatts (MW) of electricity. The transmission line will begin at a converter station in the Province of Québec, Canada and transmit electricity from Alburgh, Vermont to Ludlow Vermont, where it will tie into a new converter station. The Ludlow converter station will convert the electrical power from direct current ("DC") to alternating current ("AC") and then connect to the 345 kV Coolidge Substation in Cavendish, Vermont that is owned by the Vermont Electric Power Company ("VELCO"). The underwater portions of the transmission line, approximately 97 miles in length, will be buried in the bed of Lake Champlain, except at water depths of greater than 150 feet where the cables will be placed on the bottom. The terrestrial portions of the transmission line, approximately 57 miles in length, will be buried underground within existing public rights-of-way ("ROWS").

This Lease allows TDI-NE to use and occupy utility rights of way and corridors within the following State rights-of-way:

- portions of VT 22A (from Benson to Fair Haven) (8.1 miles)
- US 4 (limited access)(from Fair Haven to Rutland Town) (17.2 miles)
- US 7 (limited access)(Rutland Town to Clarendon) (2.6 miles)
- VT 103 (from Clarendon to Ludlow) (14.3 miles),
- a 3.5 mile segment of the State-owned rail corridor in Shrewsbury, leased to and operated by Green Mountain Railroad Corporation (GMRC), and
- VT 100 (Ludlow) (0.8 miles).

The above distances and segments are based upon TDI-NE's preliminary design plans as filed in the Section 248 proceeding. The final location of the leased premises (the "Premises") and the controlling specific engineering conditions for TDI-NE's use of the Premises are to be set forth in the VTrans Section 1111 Permit to be issued to TDI-NE, consistent with the VTrans Letter of Intent attached hereto as Attachment E (the "Letter of Intent"), as it may be amended from time to time, as well as the Master Licensing Agreement which TDI-NE will enter with VTrans and GMRC, attached hereto as Attachment G.

3. Term/Renewal.

The Lease is for a term of forty years (40), beginning on the date TDI-NE exercises the Lease Option pursuant to the Lease Option Agreement dated July 17, 2015, but in no event later than July 17, 2018 (the "Commencement Date") and terminating on the forty year anniversary of the Commencement Date unless the Initial Term shall sooner be terminated or extended under the provisions of this Lease. Provided that TDI-NE is not in default, TDI-NE shall have one (1) option to extend this Lease for an extension term of nine and one-half (9.5) years (the "Extension Term," and collectively with the Initial Term, the "Term"). The option shall be automatically renewed without any further act or deed by TDI-NE, unless TDI-NE provides the State with written notice not less than one year prior to the end of the Initial Term that it is not exercising said option.

During the Initial Term and any such Extension Term, the rent shall be that set forth in Attachment B of this Lease. In the event that TDI-NE desires to continue the lease beyond the Extension Term, it shall notify VTrans no less than 90 days prior to the ending date of the Extension Term. In such an event, the Parties agree to negotiate in good faith concerning the terms of a replacement lease, if any.

Should TDI-NE, with the State's consent, continue to use and/or occupy the Premises after the expiration of the Extension Term without having negotiated the terms of a new lease agreement, then this Lease shall be considered as renewed on a year-to-year basis and shall continue in effect from year to year upon the same terms and conditions as contained in this Lease for Extension Term, subject to termination as provided herein. This provision shall not apply to TDI-NE's right to abandon the cables in place as provided for in Attachment A hereto, and which shall not result in the obligation to pay any additional rents.

4. Amendment. No changes, modifications or amendments in the terms and conditions of this Lease shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and TDI-NE, and approved by the Attorney General's Office.

5. Attachments. This Lease consists of ___ pages, including the following attachments, which are incorporated herein:

<u>Attachment A</u>	Description of the Premises and Use
<u>Attachment B</u>	Annual Rent
<u>Attachment C</u>	Standard State Provisions for Contracts and Grants
<u>Attachment D</u>	Other Lease Provisions

Attachment E
Attachment F
Attachment G

Section 1111 Permit [RESERVED]
Memorandum of Lease
Railroad Master License Agreement [RESERVED]

6. Fiber Optic Cable.

- a. TDI-NE shall convey to VTrans the ownership of all the dark fiber installed as part of the Project (“Project Fiber”) that TDI-NE determines, in its sole discretion, is not directly needed by TDI-NE to operate its facility and therefore are incidental to the project (“VTrans’ Fiber”). TDI-NE expressly disclaims any commercial interest in the leasing, sale or commercial operation of any of the fiber optic cable it installs as part of the Project for any purpose other than the direct operation of its facility. At the present time TDI-NE anticipates needing eight (8) strands but may determine to utilize additional strands. VTrans understands that TDI-NE has made informal agreements with Green Mountain Railroad Corp. (“GMRC”) and Vermont Electric Cooperative (“VELCO”) to require VTrans to convey some fiber optic cable to those entities for the direct operation of their facilities and VTrans agrees to make reasonable efforts to negotiate contractual terms with those entities, including terms providing fiber optic cable to those entities solely for the direct operation of their facilities at cost with no markup.
- b. TDI-NE plans to install the Project Fiber as a single fiber optic bundle as a component of its Section 248 petition in order to utilize the fiber strands for the Project as noted above. The Parties acknowledge, however, that 30 VSA Section 248 does not expressly authorize the installation of any facilities not otherwise required to construct or operate TDI’s facility. The Project requires fiber from a Converter Station in Canada through Lake Champlain to a Converter Station in Ludlow, VT (the “Fiber Route”) and does not require any “fiber off-ramp facilities” along the route. TDI-NE will install the Project Fiber along the upland Fiber Route through the Town of Alburgh from the Canadian border to Lake Champlain, a distance of approximately one-half of a mile.
- c. Subject to TDI-NE’s final engineering, and with due consideration to be given to VTrans’ specifications for the fiber optic cable, TDI-NE will install fiber optic cable from Benson to the Ludlow converter station using an industry standard 528 fiber strand fiber optic cable (or a similarly sized cable depending upon market availability) in a 2 inch or greater HDPE conduit. The HDPE conduit will be approximately 9-12 inches in distance from TDI-NE’s HVDC cables, except when it is installed using horizontal directional drilling or a comparable technique, in which case it will be installed in the bore hole directly adjacent to the HVDC cables (still within its own HDPE conduit). TDI-NE plans to install “hand-holes” to access the fiber optic cable every 5,000 feet along the route. The Parties acknowledge that it is expected that the planned Project hand-hole designs will accommodate fiber access points required by the State. In the final fiber design the Parties will work together to confirm this understanding. If there are any changes required from the Project plan to accommodate such fiber access points, all additional costs will be at the State’s expense in accordance with this Agreement.

TDI-NE will be responsible for and perform all construction, operations, testing and maintenance work required for the installation of the Project Fiber, including the incremental work required for VTrans' purposes. However, in no event shall TDI-NE be responsible or liable for the ongoing reliability and operation of the VTrans' Fiber.

- d. VTrans shall be responsible for: (i) obtaining any required regulatory approvals for VTrans' use of the VTrans' Fiber or for the construction or use of vaults, splices, or any other facilities or structures of any type which TDI-NE constructs solely in order to meet VTrans' requirements for the VTrans' Fiber (collectively, "VTrans' Fiber Off-Ramp Facilities"); (ii) all costs related to such regulatory approvals, if any; and (iii) all costs incurred by TDI-NE related to the design, installation, operations, and maintenance of the VTrans' Fiber Off-Ramp Facilities, including but not limited to any incremental work required to meet the State of Vermont's telecommunications requirements. Such costs shall consist only of TDI-NE's and its contractor costs on a time and materials basis. TDI-NE shall provide invoices for such costs to VTrans on a periodic basis, with payment due within 30 days thereafter.
- e. TDI-NE will cooperate with VTrans in the planning, permitting, and construction of the VTrans Fiber Off-Ramp Facilities, provided that the schedule for construction of the Project shall be solely at the discretion of TDI-NE. TDI-NE shall have no obligation to delay or modify the construction schedule of the Project in connection with such fiber off-ramp facilities and VTrans agrees to not cause any such delays to the Project's construction schedule. The Parties agree to work in good faith to insure that construction and ongoing maintenance is mutually beneficial, however in all circumstances the construction and operation of the NECPL Project shall take precedence over the fiber optic cable transferred to VTrans.

[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, the STATE of VERMONT has caused this instrument to be subscribed, this ____ day of _____ 2015, by _____, its [Deputy] Secretary of Transportation and duly authorized agent.

STATE OF VERMONT

By: _____,
Its [Deputy] Secretary of Transportation and
Duly Authorized Agent

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

At Montpelier, this ____ day of _____ 2015, personally appeared _____ and acknowledged the foregoing instrument by him/her as [Deputy] Secretary of Transportation and duly authorized agent for the STATE OF VERMONT subscribed, to be his/her free act and deed and the free act and deed of the STATE OF VERMONT.

Notary Public
My commission expires: _____

IN WITNESS WHEREOF, Champlain VT, LLC d/b/a TDI New England, has caused this instrument to be subscribed in its corporate name, this ____ day of _____ 2015, by Donald Jessome, its _____ and duly authorized agent.

Champlain VT, LLC d/b/a TDI New England

By: _____
Donald Jessome, Duly Authorized Agent

STATE OF _____)
_____ COUNTY, ss.)

At _____, this ____ day of _____ 2015, personally appeared Donald Jessome and acknowledged the foregoing instrument by him as _____ and duly authorized agent for Champlain VT, LLC d/b/a TDI New England, subscribed, to be his free act and deed and the free act and deed of TDI-NE.

Notary Public
My commission expires: _____

APPROVED AS TO FORM:

Dated: _____

Assistant Attorney General

ATTACHMENT A

Description of the Premises and Use

Description of the Premises.

The State hereby leases to TDI-NE the Premises specifically defined in the Section 1111 Letter of Intent, which definition is hereby incorporated by reference, and which includes the following (all distances approximate):

1. VT 22A, from Benson to Fair Haven (8.1 miles);
2. US 4 (limited access), from Fair Haven to Rutland Town (17.2 miles)
3. US 7 (limited access), from Rutland Town to Clarendon (2.6 miles)
4. VT 103, from Clarendon to Ludlow (14.3 miles)
5. a State-owned railroad corridor in Shrewsbury operated by Green Mountain Railroad Corporation (3.5 miles),
6. VT 100, in Ludlow (0.8 miles)
7. Any other road segments or land controlled by VTrans that the parties mutually agree upon.

The above distances and segments are based upon TDI-NE's preliminary design plans. Reference is further made to TDI-NE's Project Plan Set provided as Exhibits TDI-AW-2 and AW-3 in the Section 248 Proceeding and the EPSC Plan filed with the Vermont Department of Environmental Conservation dated 3/27/15, such plans to be replaced with final design plans after issuance of the Section 248 Certificate of Public Good.

Use.

The Premises shall be used by TDI-NE for the construction, reconstruction, maintenance, movement, relocation, inspection, alteration, repair, replacement and operation of cables and associated equipment for the transmission of electricity (including but not limited to fiber optic cables), including the right to abandon such cables in place when the Project is no longer being commercially operated, provided that (1) TDI-NE provides written notification to VTrans at least 180 days prior to such abandonment; (2) TDI-NE takes reasonable action prior to abandonment to prevent voids under the roadway resulting from the abandonment of the cables. As used herein, the term "cables" shall include such surface or subsurface appurtenances and facilities as reasonably deemed necessary or convenient by TDI-NE for its operation and maintenance.

In the event that TDI-NE elects to abandon the cables, the State shall be entitled to elect in its sole discretion to take title to the cables within the Premises by providing notice to TDI-NE within 90 days of receiving TDI-NE's notice of abandonment under (1) above. In the event TDI-NE elects to abandon the cables in place upon termination or expiration of the Lease under Section 3, no rents shall be due thereafter under Attachment B regardless of whether the State elects to take title to the cables,

TDI-NE shall have the right to engage in all actions and activities incidental to, necessary or appropriate for, carrying out the uses set forth above, and/or consistent with the use of the rights

hereby granted and the conditions and specifications set forth in the Permit, including the right of ingress and egress to and from the cables for the exercise of the rights herein granted.

All trees removed from the Premises shall first be offered to VTrans for donation to the Vermont Fuel Assistance Program, and all stumps shall be either ground in place or removed from the Premises.

TDI-NE specifically acknowledges and agrees that the State, as owner of the Premises, may require that TDI-NE relocate the cable facilities should the State determine, in writing, that relocating the cable facilities is necessary for the planning, construction, repair or replacement of a transportation facility in or adjacent to the Premises. In the event that the State determines that such relocation is necessary, the State shall: (a) provide twelve (12) months prior written notice to TDI-NE and sufficient time to relocate its facilities; (b) endeavor to offer suitable substitute property upon which the relocation or adjustment can be effected, and (c) failing the availability of such suitable substitute property, collaborate with TDI-NE so that such property may be promptly obtained by the State, through negotiation and/or the use of eminent domain if the same may be legally resorted to.

ATTACHMENT B

Annual Rent

TDI-NE shall pay State annual rent in advance. During the first year of this Lease and for the first ten (10) years of the Initial Term, annual rent shall be \$4 million per year. The parties agree that the rent provided for hereunder is fair market value ("FMV") rent in accordance with 19 V.S.A. §26a(a).

Commencing in the eleventh (11th) year of the Initial Term, the State and TDI-NE shall adjust the annual rent to be payable annually for the duration of the Initial Term by 1.5% for each remaining year in the Initial Term, as shown in the attached table. Thereafter, the rent shall again be adjusted, and paid, in the same fashion for each successive Extension Term including any period of holdover, unless the Lease is sooner terminated. Annual rent payments shall be due and payable on or before each anniversary date of the Commencement Date of the Initial Term and any of the Extension Terms. The initial rent payment shall be due and payable prior to execution of this Lease by the State.

All rent payments made by TDI-NE hereunder shall be less any rents paid by TDI-NE under the Master License Agreement for use of the railroad segment.

TDI-NE shall make its annual rent payable to "Treasurer, State of Vermont" and each said payment shall be mailed to the State at:

Vermont Agency of Transportation
Financial Operations
One National Life Drive
Montpelier, VT 05633-5001

or as otherwise directed in writing by State.

In the event of past due rent, if such failure is continuing ten (10) business days after written notice of such failure, the State may assess interest on the overdue amount in accordance with the maximum legal rate of interest under the Vermont statutes.

In further consideration for this Lease, TDI-NE shall pay any Vermont Transfer Tax that may be due upon account of this Lease. The Parties shall cooperate in the preparation and execution of a Memorandum of Lease (including a memorandum of any amendments hereto) to be recorded in the land records, together with any transfer tax return that may be required. The Parties expressly agree that a Memorandum of Lease in proper statutory form may be recorded by either the State or TDI-NE.

TDI-NE – VTrans Lease Payment Table

INITIAL LEASE TERM

Lease Year	Payments
1	\$4,000,000
2	\$4,000,000
3	\$4,000,000
4	\$4,000,000
5	\$4,000,000
6	\$4,000,000
7	\$4,000,000
8	\$4,000,000
9	\$4,000,000
10	\$4,000,000
11	\$4,060,000
12	\$4,120,900
13	\$4,182,714
14	\$4,245,454
15	\$4,309,136
16	\$4,373,773
17	\$4,439,380
18	\$4,505,970
19	\$4,573,560
20	\$4,642,163
21	\$4,711,796
22	\$4,782,473
23	\$4,854,210
24	\$4,927,023
25	\$5,000,928
26	\$5,075,942
27	\$5,152,081
28	\$5,229,363
29	\$5,307,803
30	\$5,387,420
31	\$5,468,231
32	\$5,550,255
33	\$5,633,509
34	\$5,718,011
35	\$5,803,781
36	\$5,890,838
37	\$5,979,201
38	\$6,068,889
39	\$6,159,922
40	\$6,252,321

EXTENSION TERM

Lease Year	Payments
41	\$6,346,106
42	\$6,441,297
43	\$6,537,917
44	\$6,635,985
45	\$6,735,525
46	\$6,836,558
47	\$6,939,107
48	\$7,043,193
49	\$7,148,841
49.5	\$3,628,037

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS (Applicable Excerpts Only)

- 1. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 2. Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
- 3. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
- ~~**4. Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.~~
- ~~**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.~~
- 6. Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State. The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

- ~~**7. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed~~

~~herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.~~

~~Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.~~

~~General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:~~

~~Premises—Operations~~

~~Products and Completed Operations—~~

~~Personal Injury Liability—Contractual
Liability~~

~~The policy shall be on an occurrence form and limits shall not be less than:~~

~~\$1,000,000 Per Occurrence~~

~~\$1,000,000 General Aggregate~~

~~\$1,000,000 Products/Completed Operations Aggregate~~

~~\$ 50,000 Fire/ Legal/Liability~~

~~Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.~~

~~Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.~~

~~Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.~~

~~**8. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.~~

~~**9. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.~~

~~For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A 133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2-CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.~~

~~**10. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in~~

the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. Taxes Due to the State:

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. Child Support: (~~Applicable if the Party is a natural person, not a corporation or partnership.~~) Party states that, as of the date the Agreement is signed, he/she:

- ~~a. is not under any obligation to pay child support; or~~
- ~~b. is under such an obligation and is in good standing with respect to that obligation; or~~
- ~~c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.~~

~~Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.~~

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. ~~Party also agrees to include in all subcontract or subgrant agreements a tax-certification in accordance with paragraph 13 above.~~

16. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. Certification Regarding Debarment: ~~Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.~~

~~Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>~~

19. Certification Regarding Use of State Funds: ~~In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.~~

20. Internal Controls: ~~In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).~~

21. Mandatory Disclosures: ~~In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.~~

22. Conflict of Interest: ~~Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section IX and Bulletin 3.5-Section IV.B.~~

(End of Standard Provisions)

ATTACHMENT D

Other Lease Provisions

1. **Default.** The occurrence of any one or more of the following events will constitute an "event of default" on the part of TDI-NE:
 - A. Failure to pay any installment of rent or any other sum required to be paid by TDI-NE under this Lease, and such failure shall continue for ten (10) business days after written notice of such failure is received from State; provided, however, that TDI-NE shall have thirty (30) business days to cure such late payment.
 - B. Failure to perform any of the other covenants or conditions which TDI-NE is required to observe and perform (except for the failure to pay rent or any other monetary obligation contained in this Lease) and such failure should continue for thirty (30) days (or such shorter period of time as may be reasonably specified by State in the event of an emergency presenting risk of loss of life, bodily harm or irremediable property damage) after written notice thereof by State to TDI-NE; provided, however, that if such default is other than the payment of money and cannot be cured within such thirty (30) day period, then an event of default shall not have occurred if TDI-NE commences curing of such failure within thirty (30) days of receiving written notice from the State, and diligently in good faith prosecutes the same to completion and furnishes evidence of completion to State within thirty (30) days thereafter;
 - C. The levy of a writ of attachment or execution or other judicial seizure of substantially all of TDI-NE's assets or its interest in this Lease, such attachment, execution or other seizure remaining undismissed or discharged for a period of thirty (30) days after the levy thereof;
 - D. If TDI-NE shall be declared insolvent according to law;
 - E. The appointment of a receiver or trustee for TDI-NE on all or the majority of TDI-NE's property, which appointment is not discharged within forty-five (45) days after the date of filing; or
 - F. The filing by TDI-NE of a voluntary petition pursuant to the Bankruptcy Code or any successor thereto or the filing of an involuntary petition against TDI-NE pursuant to the Bankruptcy Code or any successor legislation, which petition is not discharged within forty-five (45) days after the date of filing.
2. **Remedies.** Upon the occurrence of an Event of Default under this Lease by TDI-NE, State, without prejudice to any other rights and remedies available to a landlord at law, in equity or by statute, may exercise one or more of the following remedies, all of which shall be construed and held to be cumulative and non-exclusive: Provide written notice of termination, in which case State shall make reasonable efforts to provide TDI-NE sufficient time to relocate its cable facilities. Following the relocation of the TDI-NE

cable facilities, State is authorized to make such repairs or improvements to the Premises as may be necessary in the reasonable opinion of State acting in good faith for the purposes of reletting the Premises. The reasonable costs and expenses incurred in respect of such repairs, and the reasonable expenses of such reletting, shall be paid by TDI-NE to State within thirty (30) business days after receipt of State's statement.

- 3. Lessee to Comply with Laws.** TDI-NE shall and will at its own cost and expense promptly comply with any and all requirements at any time affecting the Premises imposed by any present or future, foreseen or unforeseen, law, statute, or governmental authority now existing or hereafter created (excluding, however, any violations existing, entered or filed against or noticed with respect to the Premises on or before the Commencement Date), relating to changes or requirements incidental to or the result of any use or occupation of the Premises by TDI-NE. TDI-NE shall further so comply with each and every applicable rule, order and requirement of any federal, state, municipal, legislative, executive, judicial or other governmental body, commissioner or officer or of any bureau or department thereof, whether now existing or hereafter created, having jurisdiction over the Premises or any part thereof, or exercising any power relative thereto or to the owners, tenants or occupants thereof including compliance with all regulations and permits for TDI-NE's business. TDI-NE shall maintain said Premises and otherwise operate said Premises in conformity with all existing land use permits currently governing the Premises, but only to the extent such land use permits are consistent with the Permit and TDI-NE's Certificate of Public Good and associated environmental permits.
- 4. No Waiver.** The failure of State to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions and agreements of this Lease, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants or conditions, agreements or options, but the same shall continue and shall remain in full force and effect; and the receipt of any rent or any part thereof, whether the rent be that specifically reserved or that which may become payable under any of the covenants herein contained, and whether the same be received from TDI-NE or from any one claiming under or through TDI-NE or otherwise shall not be deemed to operate as a waiver of the rights of State to enforce the payment of rent or charges of any kind previously due or which may thereafter become due, or the right to terminate this Lease Agreement and to recover possession of the Premises by summary proceedings or otherwise, as State may deem proper, or to exercise any of the rights or remedies reserved to State hereunder or which State may have at law, in equity or otherwise.
- 5. Environmental Covenants.** State and TDI-NE shall comply with all applicable environmental laws, rules, regulations, statutes and ordinances, including, without limitation, those applicable to "hazardous substances" (as defined below). To the extent that the release or discharge from the Premises, of hazardous substances (meaning any substance, material or waste regulated under any environmental law defined below) is caused by TDI-NE or its respective employees, agents, licensees, and subcontractors after the Commencement Date, then TDI-NE shall unconditionally, absolutely and

irrevocably agree to indemnify, defend and hold harmless the State and its officers, employees, agents, and contractors, from and against all loss, cost and expense (including, without limitation, attorneys' fees and disbursements and fees of other professionals advising the State) of whatever nature suffered or incurred by the State, including, without limitation, any claims, costs, losses, liabilities and expenses arising from the violation of any environmental laws or the institution of any action by any party against State based upon such release or discharge of hazardous substances at the Premises after the Commencement Date, whether based on nuisance, negligence or other tort theory alleging liability due to the improper generation, storage, disposal, removal, transportation or treatment of hazardous substances by TDI-NE or its employees, agents, licensees and subcontractors, or the imposition of a lien on any part of the Premises under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended ("CERCLA"), or the Vermont Waste Management Statutes, Vt. Stat. Ann. Title 10, Ch. 159, or any other laws pursuant to which a lien or liability may be imposed on State due to the existence of hazardous substances caused by TDI-NE or its employees, agents, licensees and subcontractors. Notwithstanding the foregoing, the State shall take full responsibility for any and all outstanding environmental issues on the Premises, and the existence of hazardous substances on the Premises, and for the release or discharge of hazardous substances to or from the Premises at any time prior to the date that TDI-NE accesses the Premises pursuant to the Permit or the Lease Agreement, whichever is sooner. State shall also take full responsibility for any releases of hazardous substances or any violation (or claimed violation) of any environmental laws or the institution of any action based upon such release or discharge of hazardous substances caused by the State during the Initial Term or any Extension Term of the Lease.

- 6. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:
\$10,000,000 Per Occurrence
\$10,000,000 General Aggregate
\$10,000,000 Products/Completed Operations Aggregate
\$10,000,000 Fire/Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

7. **Transferees, Successors, and Assigns**

- a. This Lease in its entirety shall apply to, inure to the benefit of, and, be binding upon and enforceable against the Parties hereto and their successors and assigns.
- b. TDI-NE may assign this Lease with the written consent of VTrans, such consent not to be unreasonably withheld, delayed or conditioned. Any such assignment shall not become effective unless and until such assignee assumes in writing the obligations and rights of TDI-NE hereunder. Upon delivery of written confirmation of such assumption to VTrans, TDI-NE shall be released from its obligations hereunder.
- c. In addition to the foregoing, TDI-NE may in its sole discretion collaterally assign the rights and interests afforded to TDI-NE by this Lease to a party or parties providing the debt financing for the Project. Any assignment made in connection with financing the construction or operation of the Project shall not relieve TDI-NE from its obligations hereunder. In the case of any such collateral assignment, this Lease shall not be binding upon or enforceable against such assignee or assignees unless and until, and then only to the extent that, such assignee or assignees elect to exercise its or their right to displace the assignor and assume the assignor's rights and obligations pursuant to this Lease, and VTrans consents to such assignment.
- d. As used throughout this Lease, "TDI-NE" shall mean TDI-NE and its successors and assigns, subject to the provisions of this Section 7.

ATTACHMENT E

Section 1111 Permit

[RESERVED]

ATTACHMENT F

MEMORANDUM OF LEASE

KNOW ALL PERSONS BY THESE PRESENTS that the STATE OF VERMONT, AGENCY OF TRANSPORTATION ("Lessor") and CHAMPLAIN VT, LLC d/b/a TDI NEW ENGLAND ("TDI-NE" or "Lessee") have entered into a Lease Agreement (the "Agreement") containing the following terms and conditions:

Parties	<u>LESSOR</u> State of Vermont Agency of Transportation Attn: _____ One National Life Drive Montpelier, VT 05633	<u>LESSEE</u> Champlain VT, LLC Attn: Donald Jessome P.O. Box 155 Charlotte, VT 05445
Property Address (the "Property")	Property located within the right-of-way of VTrans as specifically described in Attachment E to the Lease Agreement.	
Title Reference (Fee Interest)		
Date of Agreement		
Initial Term	40 years	
Initial Term Commencement Date:	Beginning on the date TDI-NE exercises the Lease Option pursuant to the Lease Option Agreement dated July 17, 2015, but in no event later than July 17, 2018	
Initial Term Expiration Date:	40 years after the Initial Term Commencement Date	
Rights to Extend or Renew:	Lessee has the right to extend/renew the Agreement as follows: one (1) option to extend the Initial Term for periods of nine and one-half (9.5) years, pursuant to the terms of the Lease.	
Rights to Purchase:	None.	
Rights of First Refusal:	None.	
Assignment and Sublease:	TDI-NE may assign performance of the Agreement pursuant to the terms of the Lease.	
Location of Lease:	Original lease is kept by Lessee at the address provided above.	

This Memorandum of Lease will be recorded in the Land Records of the Towns of _____ to provide notice of the Lease Agreement, pursuant to 27 V.S.A. § 341(c). To the extent that the terms and conditions of this Memorandum of Lease differ from the terms and conditions of the Lease Agreement, the terms and conditions of the Lease shall govern and prevail.

[Signature pages follow.]

IN WITNESS WHEREOF, the STATE of VERMONT has caused this instrument to be subscribed, this ____ day of _____, _____, by _____, its [Deputy] Secretary of Transportation and duly authorized agent.

Witness

STATE OF VERMONT

By: _____,
Its [Deputy] Secretary of Transportation and
Duly Authorized Agent

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

At Montpelier, this ____ day of _____, _____, personally appeared _____ and acknowledged the foregoing instrument by him/her as [Deputy] Secretary of Transportation and duly authorized agent for the STATE OF VERMONT subscribed, to be his/her free act and deed and the free act and deed of the STATE OF VERMONT.

Notary Public
My commission expires: _____

IN WITNESS WHEREOF, Champlain VT, LLC d/b/a TDI New England, has caused this instrument to be subscribed in its corporate name, this ____ day of _____, _____, by Donald Jessome, its _____ and duly authorized agent.

Witness

Champlain VT, LLC d/b/a TDI New England

By: _____
Donald Jessome, Duly Authorized Agent

STATE OF _____)
_____ COUNTY, ss.)

At _____, this ____ day of _____, _____, personally appeared Donald Jessome and acknowledged the foregoing instrument by him as _____ and duly authorized agent for Champlain VT, LLC d/b/a TDI New England, subscribed, to be his free act and deed and the free act and deed of TDI-NE.

Notary Public
My commission expires: _____

ATTACHMENT G

Railroad Master License Agreement

[RESERVED]