

## Intermax Networks Master Construction Services Agreement

This Construction Agreement (“**Agreement**”), is made and entered into as of \_\_\_\_\_, (“**Effective Date**”) by and between Newmax LLC, dba Intermax Networks, an Idaho limited liability company, with an address of 7400 N. Mineral Dr., Suite 300, Coeur d’Alene, ID 83815 (“**Intermax**”), and \_\_\_\_\_ with an address of \_\_\_\_\_ (“**Contractor**”). Intermax and Contractor may be referred to individually as “**Party**” or collectively as “**Parties**”.

In consideration of the mutual promises described in this Agreement and for other good and valuable consideration, the Parties agree as follows:

**1. Term.** Unless earlier terminated as provided in this Agreement, this Agreement will commence as of the Effective Date and terminate on [TERM DATE] (the “**Term**”).

**2. Scope of Work.** Contractor shall provide all labor and materials, and perform all construction work necessary for the completion of the work as described in the plans and specifications (the “**Project**”) as set out in detail in the scope of work (the “**SOW**”), attached hereto as Attachment A and incorporated by reference herein.

**3. Project Construction Fee.** Intermax agrees to pay Contractor the fixed price fee as consideration for Contractor’s satisfactory completion of the Project in compliance with Attachment B, attached hereto and incorporated by reference herein, in this Agreement and as further described in the applicable SOW (“**Project Construction Fee**”). Unless otherwise specified in a SOW, the price(s) associated to a particular service(s), equipment, or the overall total price for the satisfactory completion of the Work shall be considered, under law, a “fixed-price contract” for which the Parties are bound. If Intermax accepts the work provided under the Project as completed, and Intermax is satisfied by bond, as applicable, and the Project is free and clear of all liens, claims, and encumbrances arising from the work performed, Intermax will make final payment of the Project Construction Fee to Contractor. Intermax may adjust the final payment on the basis of any final accounting made by Intermax. Intermax may withhold from any payment, including the final payment and any amount incorrectly invoiced, any amount in dispute either because Intermax has found the invoice excessive, the work provided unacceptable, or a sufficient amount is necessary to completely protect Intermax from any loss, damage or expense arising out of assertions by other parties of any claim or lien against Intermax because of Contractor’s performance or failure to perform under this Agreement or SOW.

**4. Late Payment.** All undisputed payments shall be due thirty (30) days from receipt of invoice. A failure to make payment of any undisputed amount for a period in excess of ten (10) days from the due date shall be deemed a material breach of this Agreement. If an undisputed payment is not made when due, then in addition to any cure period for breach Contractor may have under this Section, Contractor may, after providing ten (10) business days’ notice to Intermax and failure to receive such undisputed amount, suspend work on the Project, with the suspension of work by Intermax not being considered a breach of the Agreement, until such time as all undisputed payments due have been made to Contractor. Additionally, Contractor agrees to pay a late charge of 1.5% of all undisputed amounts that are not paid when due.

**5. Work Site.** The Project shall be constructed for Intermax at the locations and along the route more particularly described in the SOW (hereafter “**Work Site**”). All work as stated in the SOW shall be and remain the property of the Contractor; provided, that upon the final payment by Intermax of the Project Construction Fee, (i) the work designated in a SOW as being constructed for the benefit of Intermax shall become the property of Intermax; and (ii) Contractor shall promptly populate, execute and deliver to Intermax, the Waiver of Lien form provided in Attachment E, attached hereto and incorporated by reference herein.

**6. The Project Completion Date.** The Project to be performed under the SOW shall commence and be completed on the date(s) specified in the SOW (“**Completion Date**”). If, during construction, Work Site issues are identified by either Party impacting the Completion Date, prompt notification will be made to the other Party and the Completion Date adjusted upon written agreement of the Parties. In the event the Parties do not agree to change the Completion Date, Contractor shall owe Intermax a credit towards the Project Construction Fee in accordance with Section 7 below.

**7. Notice of Completion.** Within twenty (20) days of Intermax’s receipt of the notice of completion from Contractor, Intermax shall return to Contractor a written notice either accepting or rejecting the telecommunication facilities provided in the Project (“**Facilities**”). If Intermax rejects all or any part of the Facilities, Intermax shall also specify in writing, in reasonable detail, the defect or failure in the Facilities in relation to the specifications in Attachment B. If Intermax fails to notify Contractor of its acceptance or rejection within such 20-day period, Intermax shall be deemed to have accepted the Facilities. The date of such notice of acceptance or deemed acceptance of the Facilities shall be the “**Acceptance Date.**” In the event of any good faith rejection by Intermax, Contractor shall take such action as reasonably necessary, and as expeditiously as practicable, to correct or cure such defect or failure, and the process of acceptance shall be repeated. The foregoing notwithstanding, if Intermax uses any portion of the Facilities prior to issuing a formal acceptance, other than for testing, such use shall constitute acceptance of the Facilities with an Acceptance Date effective as of the earliest documented use by Contractor. In the event the Acceptance Date occurs after the Completion Date, Contractor shall owe Intermax a credit towards the Project Construction Fee equal to \$100 per day Contractor has not completed the Project. The Parties acknowledge that it is impractical and extremely difficult to determine the actual damages or lost revenues that may proximately result from Contractor’s failure to meet the Completion Date, accordingly, the credit(s) described in this Section are (a) liquidated damages, and not a penalty, and (b) reasonable and not disproportionate to the presumed damages resulting from Contractor’s failures hereunder.

**8. Construction Permits and Bonds.** Unless otherwise provided in the SOW, Intermax shall apply for and obtain such permits, regulatory approvals, and performance bonds as are typically required by the local municipal/county government(s) for construction permitting for the Project.

**9. Insurance.** Contractor, at its own expense, shall carry and maintain the insurance coverages (with companies satisfactory to Intermax) in the amounts no less than what is specified in Attachment C. All required insurance policies that name Intermax as an additional insured must include provisions that such insurance is primary insurance with respect to the interests of Intermax and that any other insurance maintained by Intermax is excess and not contributory insurance with the required insurance. Contractor shall notify Intermax thirty (30) days prior to any cancellation or change in limits of liability or carrier of any required insurance policy.

**10. Railway.** In the event the Project requires construction in, near, or around a railway, Contractor shall adhere to such railroad's terms and conditions which may include Contractor's purchase of Railroad Protective Liability Insurance in the amount provided in such agreement, which will be specifically provided under the applicable SOW. Additionally, as part of any SOW specifying a requirement to provide construction flaggers (whether around railways or rights-of-ways), Contractor shall provide the number of flaggers so specified, safety cones, and signage applicable to the situation specified in the SOW. Contractor shall bear the cost of such personnel and associated safety cones, and signage and the failure to furnish such shall prevent Contractor from proceeding with the construction or operation activities requiring such flaggers, which shall not qualify as a Force Majeure Event.

**11. Changes to Scope of Work.** Intermax may make changes to the SOW including changes to the plans and specifications from time to time during the construction of the Project provided such changes do not increase the Project Construction Fee. In the event that any such change or modification would result in an increase to the Project Construction Fee, such change shall only be made by written change order ("**Change Order**") mutually agreed to and signed by both Parties. Such Change Order(s) shall become a part of this Agreement.

**12. Force Majeure.** Contractor shall not be liable for any delay due to circumstances beyond its control including act of God or nature, including an earthquake, flood or hurricane; fire; or other material failures, shortages or unavailability or other delay in delivery not resulting from Contractor's failure to timely place orders, government codes, ordinances, actions, laws, rules, regulations or restrictions; war or civil disorder; strikes or other labor disputes; or actions by third parties, which third parties are not related to, agents, representatives, contractors, subcontractors, or vendors of or for, or acting on behalf of, or at the request of Contractor; provided Contractor: (a) gives prompt written notice of such event, (b) is without fault in causing such default or delay, and (c) such default or delay could not have been prevented by reasonable precautions and could not reasonably be circumvented by Contractor through the use of alternate sources, workarounds or other means (collectively, "**Force Majeure**"). The time for performance for Contractor's obligation under this Agreement will be extended as necessary, without penalty or liability to Contractor, for the same period of time as the delay. Notwithstanding the foregoing, unless agreed to in writing by Intermax, any delay that Intermax, in its sole discretion, deems excessive will be grounds for termination by Intermax if such delay is not cured after ten (10) calendar days written notice of Intermax's intent to terminate. In the event of such termination, Contractor and receive a refund of any unused fees paid, and/or pay for only, on a pass-through basis, the fee for the work performed in accordance with industry standards.

**13. Default.** A default shall be deemed to have occurred under this Agreement if, in the event of any material breach of a Party's obligations or covenants under this Agreement, the breaching Party fails to cure such breach within thirty (30) days after receiving written notice from the non-breaching Party specifying such breach, provided that: (i) if such breach is for Intermax's failure to make payment of any undisputed amount, Contractor may suspend work on the Project until such default is cured by Intermax. In addition to any other rights of termination or any other remedies set forth in this Agreement, Intermax may terminate this Agreement, in whole or in part, upon thirty (30) calendar days written notice for any material breach or material default (or any series of breaches or defaults which in the aggregate constitute a material breach or default) of this Agreement with no liability to Intermax except for payment of work already provided, unless within such 30-day notice period, Contractor (i) has cured such breach or default

to the reasonable satisfaction of Intermax or (ii), where such breach cannot be reasonably cured within such 30-day period, Contractor has commenced to cure such material default or material breach and diligently pursues such cure until accomplished and such cure is accomplished within sixty (60) calendar days of such notice of termination to the satisfaction of Intermax.

**14. Termination for Convenience.** Notwithstanding anything to the contrary contained in this Agreement, with sixty (60) calendar days prior written notice, Intermax reserves the right to terminate this Agreement, in whole or in part, and with or without cause, at any time upon delivery of written notice of termination to Contractor. Upon receiving notice of termination from Intermax, Contractor shall discontinue all work as of the effective date of such termination and shall not place any further orders for materials or services subsequent to its receipt of such notice; except as needed to continue any portion of the Project which have not been terminated, in the event of a partial termination. Contractor shall use commercially reasonable efforts to cancel, upon terms satisfactory to Intermax, all SOW related to the terminated work. In the event of termination, other than arising from and event of default by Contractor, Intermax shall pay Contractor the fees for work acceptably accomplished and delivered to Intermax (including all work-in-progress) prior to and including the effective date of termination. Also, upon termination, Contractor shall deliver to Intermax completed work in progress, including notes, draft reports, and similar materials. Upon termination, Contractor maintains responsibility for the proper disposal, in accordance with environmental requirements, of any waste materials it has generated.

**15. Work Standards.** All work shall be completed in a workman-like manner and in compliance with all government codes, regulations, permits and applicable laws, and in a manner reasonably consistent with typical construction standards within the telecommunications industry. Contractor's inability to adhere to the terms of this Section shall constitute a material breach of contract.

**16. Job Site Safety.** At all times, Contractor shall follow all government codes, regulations, permits and applicable laws related to job site safety. Contractor shall conduct weekly safety meetings and daily tailgate meetings (collectively referred to as "**Meetings**"). Such Meetings must be documented and Intermax shall be granted access to the Meeting documents upon its request.

**17. Warranty of Project.** Contractor warrants to Intermax that Contractor: (a) is duly qualified and in good standing in every jurisdiction the Project enters into, and holds all required licenses and permits and has received or will timely receive all approvals, consents or other prerequisites required for its performance of its obligations under the SOW, and (b) has all the requisite resources, skills, experience and qualifications to perform all of the work under the SOW in a professional and workmanlike manner, in accordance with industry standards for similar services, and (c) will complete the Project with high quality materials in compliance with the Specifications in Attachment B. In the event that any material or Facilities delivered to Intermax under the Project, or the work provided under the Project causes the Facilities to, no longer adhere to the Specifications in Attachment B within one (1) year from the Acceptance Date, Contractor will correct such deficiencies as necessary to meet the Specifications in Attachment B at its sole expense ("**Warranty Period**"). If Intermax notifies Contractor of a deficiency during the Warranty Period, Contractor shall have ten (10) days to commence the repair of such deficiency or Intermax may repair said deficiency to restore the impacted Facilities to meet the Specifications. Contractor shall promptly reimburse Intermax for the reasonable cost thereof, plus an administrative fee of fifteen percent (15%) of such cost, within thirty (30) calendar days after receipt of invoice.

**18. Warranty of Title/Pass-Through.** Contractor certifies that title to all construction materials and equipment covered by any invoice, whether incorporated into the Project or not, will pass to Intermax no later than at the time of payment the Project Construction Fee, free and clear of all liens. In addition, Contractor shall identify, in writing, all third-party warranties that Contractor receives in connection with the Project provided to Intermax. Contractor shall pass through the benefits of all such warranties, provided that nothing in this Section shall reduce or limit Contractor's obligations under this Agreement.

**19. Subcontractors or Consultants.** Contractor may, with Intermax's prior written approval, at its sole discretion, engage licensed subcontractors or consultants to perform work hereunder, provided Contractor shall fully pay said subcontractor or consultant and, in all instances, remain responsible for the work performed under the applicable SOW. To the extent required by law, all work shall be performed by individuals duly licensed and authorized by law to perform said work. Contractor will provide evidence that all subcontractors and consultants are carrying and maintaining insurance coverage in the same manner as Contractor furnishes such evidence pursuant to Section 9 above. Contractor will be responsible and liable for the services and deliverables of any subcontractor or consultant. Any approved subcontractor or consultant must agree to be bound by all applicable provisions of this Agreement.

**20. Lien Waivers.** If requested by Intermax, Contractor shall furnish Intermax all appropriate releases or waivers of lien for all work performed or materials provided at the completion of the Project.

**21. Dispute Resolution.** Except for an action seeking a temporary restraining order or injunction, or suit to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedures set forth in this Section with respect to any controversy or claim arising out of or relating to this Agreement. For a period of thirty (30) days after notice from either Party, the Parties shall attempt in good faith to resolve the dispute by direct negotiation of representatives of the Parties. If the Parties do not resolve the dispute within such period, and except as otherwise agreed to by both Parties, the dispute shall be settled without litigation by either Party submitting such dispute to binding arbitration. The arbitration shall take place in Idaho or Washington before a single neutral arbitrator appointed in accordance with the Arbitration Rules or AAA Rules, as applicable. If either Party refuses to perform any or all of its obligations under the final arbitration award (following appeal, if applicable) within thirty (30) days of such award being rendered, then the other Party may enforce the final award in any court of competent jurisdiction in Kootenai County, Idaho, and each of the Parties hereto unconditionally submits to the jurisdiction of such court for the purpose of any proceeding seeking such enforcement. Notwithstanding the foregoing, either Party shall be entitled to seek provisional remedies (e.g., preliminary injunction, TRO) for any dispute arising out of this Agreement, subject to Washington law, in any court of competent jurisdiction in Kootenai County, Idaho, and each of the Parties hereto unconditionally submits to the jurisdiction of such court for the purpose of any proceeding seeking such provisional remedies. In the event of any action, suit or proceeding brought under or in connection with this Agreement, the prevailing party shall be entitled to recovery and the non-prevailing party agrees to pay, the prevailing party's reasonable costs and expenses in connection therewith, including actual and reasonable attorney's fees.

**22. Independent Contractor.** The Parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute the parties as partners, joint venturers, fiduciaries, co-owners or otherwise as participants in a joint or common undertaking. Contractor will be solely responsible for and will promptly pay all salaries and other monies owing to its employees, agents, and independent

contractors. Contractor and its employees, agents, and independent contractors are not eligible to participate in any benefit plan for Intermax employees. In addition, Contractor will be solely and exclusively responsible for the payment of all required federal, state and local taxes and contributions arising out of this relationship. Each Party has and hereby retains the right to exercise full control of and supervision over the performance of its obligations hereunder and full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations.

**23. Access.** If applicable, Intermax shall provide for, or arrange, reasonable access to the property, consistent with Intermax's security standards, 24 hours a day, 7 days a week so that Contractor may construct the Project. Contractor shall contact Intermax's designated contact for entry at times other than during typical business hours.

**24. Indemnification.** Contractor will indemnify and hold harmless Intermax, its respective officers, directors, administrators, managers, employees, servants and agents, successors and assigns (each, a "**Intermax Indemnified Party**") from and against any and all damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, actions, demands, suits, costs, and expenses including, without limitation, reasonable attorneys' fees, incurred by the Intermax Indemnified Party that arise out of or relate to the work performed by Contractor or its employees, independent contractors, subcontractors, or agents, including, but not limited to, third party claims and claims for property damage or personal injury to Contractor's employees, servants and agents, independent contractors and subcontractors; provided, however, that the foregoing does not in any manner relieve Intermax of its obligations under statutory workers' compensation law and other laws regarding employer obligations as to Intermax's own employees, and for such claims caused by the sole gross negligence of a Intermax Indemnified Party. Contractor's obligations under this Agreement will be subject to Intermax providing Contractor reasonable notice of the event giving rise to an indemnity obligation. Failure to give notice shall not affect this indemnification obligation in the absence of actual prejudice.

**25. Assignment.** Except as expressly set forth in this Agreement, neither Party may assign, delegate, subcontract or otherwise transfer its rights or obligations under this Agreement, except with the prior written consent of the other Party, which may be withheld, conditioned, or delayed at the non-assigning Party's sole election.

**26. Notices.** Any notice, consent, approval, demand, or other communication to be given or sent to the other Party under this Agreement must be in writing and must be personally delivered or registered mail or via nationally recognized overnight delivery service to the address of the Parties set forth below:

To Intermax:

Intermax Networks  
7400 N. Mineral Dr., Ste. 300  
Coeur d'Alene, ID 83815  
Michael R. Kennedy, President & CEO  
[mkennedy@intermaxteam.com](mailto:mkennedy@intermaxteam.com)

With copy to: [corporate@intermaxteam.com](mailto:corporate@intermaxteam.com)

To Contractor:

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Any such notice shall be deemed given when received or refused by the receiving Party.

**27. Headings.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein.

**28. Confidential Information.** All information disclosed by one Party to the other pursuant to this Agreement, including the details of this Agreement, other than such information as may be generally available to the public or the industry, is and will be disclosed to the other Party in confidence solely for their use in the conduct of its business as a Party to this Agreement. Each Party agrees that its obligations to maintain confidentiality of the information it has received under this Agreement shall continue for a period of two (2) years after the termination of this Agreement and then terminate, provided, however, that such obligation shall continue indefinitely as to any information exchanged which constitutes a trade secret under applicable law.

**29. Amendment.** No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties. Neither Party shall assign any of its rights hereunder without the prior written consent of the other Party.

**30. Survival.** Any and all provisions of this Agreement which, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement, shall survive and be enforceable after the expiration or termination of this Agreement. In the event that any term or provision of this Agreement is declared to be illegal, invalid or unconstitutional, then that provision shall be deemed to be deleted from this Agreement and have no force or effect and this Agreement shall thereafter continue in full force and effect, as modified.

**31. Merger.** This Agreement constitutes the entire agreement between the Parties, there being no other terms, oral or written, except as herein expressed.

**32. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

**33. Counterparts.** This Agreement may be executed in counterparts and each counterpart constitutes an original document. The Parties agree that fully executed electronic copies or facsimile copies of this Agreement are legally binding and shall act as originals for the purpose thereof.

**34. Severability.** If any term or provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not be construed to affect any other provision of this Agreement, and the remaining provision shall be enforceable in accordance with their terms.

**35. No Waiver.** Neither the failure of either Party to exercise any power given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

**36. Authority.** Each Party represents to the other that this Agreement has been duly authorized, executed, and delivered by and on behalf of such Party and constitutes the valid, binding, and enforceable agreement.

*Signature Page to Follow*



**IN WITNESS WHEREOF** and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, and once this Agreement is executed by both Parties this Agreement shall be effective on the Effective Date first written above. The Parties agree that this Agreement may be electronically signed. The Parties agree that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

\_\_\_\_\_ (**“Contractor”**)

**Newmax, LLC dba Intermax Networks**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

**ATTACHMENT A**  
**SOW Form**

This Scope of Work is incorporated into the Agreement between Contractor and Intermax and sets forth the work to be provided and the compensation to be paid to Contractor by the Intermax.

1. **Work Performed.** Contractor shall perform the following work (attach drawings as required and include list of all attached drawings below, all incorporated herein): \_\_\_\_\_.
  
2. **Term.** The work to be performed under this SOW shall commence (“Start Date”) on: \_\_\_\_\_ and shall be completed (“Completion Date”) by: \_\_\_\_\_  
[ALTERNATIVELY, Insert Days from Start Date]
  
3. **Fixed Price Compensation.** Intermax will pay Contractor the fixed lump sum amount of \$ \_\_\_\_\_ (“Project Construction Fee”) for Contractor’s completion of the Project in adherence with this SOW and in conformance with the Specifications set forth in the Agreement. Contractor will invoice Intermax the Project Construction Fee and Intermax will pay the Project Construction Fee within thirty (30) days of its receipt of such invoice.
  
4. **Underlying Rights.** “Underlying Rights” shall mean all deeds, leases, easements, rights-of-way agreements, licenses, franchises, permits, grants, permissions and other rights, titles and interests that are necessary for the SOW.

If Intermax is the owner of some or all of the Work Site, Intermax hereby grants permission to Contractor to construct, bore, install, attach to, own, operate, maintain, repair, disconnect, replace and remove fiber optic cable, conduit, innerduct, fiber termination panels and associated equipment (collectively the “Worksite Placeholder”), in, on, over, under and across the portion of the Work Site owned by Intermax in order to allow Contractor to perform the Scope of Work and complete the Project.

Intermax shall arrange some or all of the Underlying Rights from the appropriate owner(s) and/or legal jurisdictions in order to allow Contractor to perform the SOW as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

—  
Intermax understands and agrees that any delay caused by Intermax’s failure to obtain Underlying Rights may cause the Start Date to be tolled on a day-for-day basis.

Contractor shall arrange for all of the necessary Underlying Rights from the appropriate owner(s) and/or legal jurisdictions, as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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## **ATTACHMENT B**

### **Conduit and Construction Specifications**

1. **GENERAL.** This Attachment B outlines the specifications for construction of the conduit under that certain SOW. In all cases, the standards contained in this Attachment or the standards of the federal, state, local or private agency having jurisdiction, whichever is stricter, shall be followed. In addition, all work and the resulting conduit system will comply with the current requirements of all governing entities (FCC, NEC, DEC, and other national, state, and local codes).
2. **MATERIAL.** HDPE shall be a minimum of SDR-11. PVC conduit shall be minimum 40 wall thickness. Buried cable warning tape shall be three inches (3") wide and display "Warning: Buried Fiber Optic Cable" and emergency One Call "800" numbers printed every twenty-four inches (24").
3. **MINIMUM DEPTHS.** The minimum cover required in the placement of conduit shall be forty-two inches (42"). Additional depth will be required in ditches, forty-eight inches (48") and across streams, washes, culvert outfalls, and other waterways, sixty inches (60"). At locations where the conduit crosses other subsurface utilities or other structures, the conduit shall be installed to provide a minimum of twelve inches (12") vertical clearance at the applicable minimum depth; otherwise, the conduit will be installed under the existing utility or other structure. If, however, adequate clearance cannot be obtained and the conduit must be placed above, steel conduit shall be used. In rock, the conduit depth shall be 36 to 42 inches in HDPE, 24 to 36 inches in steel conduit, 18 to 24 inches in HDPE, PVC or steel conduit and concrete encased. PVC or HDPE conduit will be backfilled with six inches (6") inches of select materials (padding) in rock areas. Polyurethane channel (Fiber-Rockgard or equivalent) may be used as protective cover in lieu of select material padding. In the case of the use/conversion of existing steel pipelines or existing conduit systems, the existing depth shall be considered adequate.
4. **BURIED CABLE WARNING TAPE.** The conduit will be installed with buried cable warning tape except. The warning tape shall be placed above the conduit with generally 18 to 24 inches of cover.
5. **CONDUIT CONSTRUCTION.** The conduit may be placed by means of trenching, plowing, jack and bore, or directional bore. The conduit will generally be placed on a level grade parallel to the surface, with only gradual changes in grade elevation. Crossings of roads maintained by government bodies and railroad crossings will be encased in HDPE conduit, or as required by the permitting authority.
6. **INNERDUCT INSTALLATION.** Innerduct(s) shall be installed in all steel or PVC conduits. Innerduct(s) shall extend beyond the end of all conduits a minimum of twelve inches (12"). Both the conduit and innerducts shall be sealed with foam sealant and/or duct plugs after installation.
7. **HANDHOLES/MANHOLES.** Handholes/manholes will be installed at intervals appropriate to site conditions. Manholes are to be installed in street builds.

8. **DEVIATIONS FROM SPECIFICATIONS.** Contractor may only deviate from these specifications when field conditions or other requirements dictate with Intermax's prior written approval.
9. **CONDITION OF CONDUIT.** The conduit shall be free of any blockages, collapse points or other impediments that would prevent installation, operation, maintenance or removal of Intermax's fiber optic cable.
10. **MECHANIC'S LIEN REQUIREMENT.** It is a material condition of this Agreement that Contractor shall populate the Waiver of Lien form provided here in Attachment E.

**ATTACHMENT C**  
**Insurance Requirements**

**[NOTE TO CHRIS – THIS SHOULD BE EXACTLY THE SAME AS THE CITY’S INSURANCE REQUIREMENTS. YOU CAN CUT AND PASTE ALL SUCH REQUIREMENTS HERE IN PLACE OF THE FOLLOWING – USE THE BELOW FOR FUTURE DEALS WHERE YOU ARE NOT USING A SUB, BUT INSTEAD THE CONSTRUCTION IS FOR YOUR NETWORK]**

Unless otherwise agreed to in writing, Contractor will, at its own expense, carry and maintain during this Agreement the insurance coverage (with companies satisfactory to Intermax in amounts no less than what is specified in this Attachment C.

All insurance policies or bonds required by this Agreement will be issued by insurance companies licensed to do business within the state in which the work is to be performed with an A.M. Best Rating of not less than "A-." Contractor will also be responsible for ensuring that its subcontractors comply with the insurance requirements of this Exhibit.

Contractor agrees to waive, and will require its insurers to waive, all rights of subrogation against Intermax, its directors, officers, employees, and agents because of any payment made under any such policy of insurance. All policies must provide that Intermax will be notified of any material change or cancellation of such policies with at least thirty (30) days prior written notice. All policies except Workers’ Compensation must be endorsed to name as additional insured: Newmax, LLC dba Intermax Networks, its officers, directors, and employees.

Intermax retains the right to review and approve the insurance form to be used by Contractor. On or prior to the execution of this Agreement, Contractor will provide Intermax with a Certificate of Insurance evidencing such required coverage. The Certificate of Insurance should indicate any special provision contained in policies and coverage should not exclude explosion, collapse, or underground damage. Contractor will not commence work until all of the insurance required herein will have been obtained and approved by Intermax. All liability insurance requirements shall remain in full force and effect for 3-5 years from contract termination, except product liability requirements for “direct” products, which shall remain in force for at least 10 years from contract termination.

The consent of Intermax to the amount of insurance specified in this Attachment will not be considered as a limitation of Contractor’s liability under this Agreement nor an agreement by Intermax to assume liability in excess of said amount or for risks not insured against.

Contractor will maintain the following insurance:

Workers' Compensation:

- (A) Workers’ Compensation: Statutory
- (B) Employer's Liability:
  - (1) Bodily Injury by Accident, for Each Accident: \$1,000,000
  - (2) Bodily Injury for Each Employee by Disease: \$1,000,000

(3) Policy Limit for Bodily Injury by Disease: \$1,000,000

Commercial General Liability:

Written on a per occurrence basis to include coverage for: Broad Form Property Damage; Bodily Injury; Personal Injury; Blanket Contractual Liability; Products/Completed Operations, Premises-Operation, Explosion and Collapse Hazard, Underground Hazard, Hazard, Independent Contractors.

- (A) Combined Single Limit per Occurrence: \$5,000,000
- (B) General Aggregate: \$5,000,000
- (C) Fire Legal Liability per Occurrence: \$5,000,000
- (D) Medical Expense per Person per Occurrence: \$5,000,000

This policy will be primary and non-contributory.

Automotive Liability:

Such policy will include coverage for all vehicles owned, hired, non-hired, non-owned and borrowed by Contractor in the performance of the work covered by this Agreement.

Combined Single Limit: \$1,000,000

Umbrella Liability:

Combined Single Limit: \$5,000,000

Errors & Omissions Liability (Professional Liability):

Such policy will include coverage for actual or alleged breach of duty, act, error, omission, misstatement, misleading statement or neglect in the rendering of or failure to render the Services under this Agreement.

Per Occurrence: \$1,000,000

**ATTACHMENT D**  
**Bill of Sale**

In the event Intermax requires a Bill of Sale for completion of the Project, the following will be used as a template for the Parties to input as necessary and execute:

This Bill of Sale is entered into \_\_\_\_\_ by between Newmax, LLC dba Intermax Networks, an Idaho limited liability company located at 7400 N. Mineral Dr., Ste. 300, Coeur d'Alene, ID 83815 (“**Buyer**”), and \_\_\_\_\_ with an address of \_\_\_\_\_ (“**Seller**”). This Bill of Sale is made pursuant to the Construction Agreement entered into by and between Seller and Buyer dated \_\_\_\_\_ (the “**Agreement**”), to transfer the telecommunication facilities, as fully defined herein. Any capitalized term used but not defined in this Bill of Sale have the meaning, if any, set forth in the Agreement.

**1. Conveyance.** For good and valuable consideration in the amount of \$[INSERT] to be paid in accordance with the Agreement, the receipt and adequacy of which Seller hereby acknowledges, Seller hereby irrevocably sells, assigns, transfers, conveys, grants, bargains, and delivers to Buyer, all of its right, title, and interest in and to that certain [INSERT], feet of conduit spanning from [INSERT], to [INSERT], then east to [INSERT], and north back to [INSERT], as more particularly depicted in the Agreement (“**Conduit**”).

**2. Representations and Warranties.** Seller represents and warrants that (1) Seller is conveying good and valid title to Conduit, free and clear of all encumbrances, debts, mortgages, attachments, pledges, charges, claims, and liens of any kind; (2) Seller has the right to sell the Conduit to Buyer and shall warrant and defend the right against the lawful claims and demands of all persons in accordance with the terms and conditions of the Agreement; (3) the Conduit has been fully installed within the Route as of the date hereof in accordance with the specifications therefor set forth in the Agreement; and (4) Seller has all necessary permits, licenses and/or easements to use the property through which the Route is located as necessary to maintain such Route.

**3. Disclaimer of Warranties.** EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 2 ABOVE AND IN THE AGREEMENT, SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THE CONDUIT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BY ACCEPTING THIS BILL OF SALE, BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR IN THE AGREEMENT.

**4. Governing Law.** This Bill of Sale is governed by, and construed in accordance with, the laws of the state of Idaho, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the state of Washington.



5. **Incorporation of Agreement.** This Bill of Sale incorporates by reference all of the terms of the Agreement, including but not limited to Seller's representations, warranties, covenants, and agreements relating to Conduit, as if each term was fully set forth herein. In the event of conflict between the terms of the Agreement and the terms of this Bill of Sale, the terms of the Agreement govern and control.

6. **Counterparts.** This Bill of Sale may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Bill of Sale delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Bill of Sale.

*Signature Page to Follow*





**ATTACHMENT E**

**Waiver of Lien By Contractor, Subcontractor(s) and Suppliers**

We, the undersigned, acknowledge receipt of the amounts stated below as full payment for all labor, professional services, materials, or equipment furnished for use on or about the property of Newmax, LLC dba Intermax Networks in \_\_\_\_\_ County, Idaho, through the \_\_\_\_\_ day of \_\_\_\_\_ (month), 20\_\_ (year). The property is described as follows (give legal description):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each person or entity signing this release form releases and waives any interest in the property described above and releases and waives any right to claim a lien on that property for any labor, professional services, materials, or equipment provided through the date listed above. Each person or entity signing this release form reserves the right to claim a lien for any labor, professional services, materials, or equipment provided after that date, to the extent allowed by law. The consideration received by each person or entity for this release is as follows:

Company Name	Authorized Signature	\$ Amount Received
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Printed Name	Title	Date
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\_\_\_\_\_  
Contractor/Subcontractor/Supplier

Company Name	Authorized Signature	\$ Amount Received
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Printed Name	Title	Date
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\_\_\_\_\_  
Contractor/Subcontractor/Supplier

