

**PUBLIC-PRIVATE PARTNERSHIP FIBER NETWORK AND RESOURCE SHARING  
AGREEMENT  
BETWEEN ST. MARY’S COUNTY AND THINKBIG NETWORKS, LLC**

This **PUBLIC-PRIVATE PARTNERSHIP FIBER NETWORK AND RESOURCE SHARING AGREEMENT** (“this Agreement”) is entered into this 6th day of December, 2022 (“Effective Date”) by and between the Commissioners of St. Mary’s County, Maryland, a body corporate and politic of the state of Maryland (“the County”) and ThinkBig Networks, LLC, a Maryland limited liability company with offices at 10807 Falls Road #1388, Brooklandville, Maryland 21022 (“ThinkBig”) (collectively, “the Parties”).

**WHEREAS**, the County recognizes the need and understands the benefit of bringing state-of-the-art fiber optic broadband to the citizens of St. Mary’s County; and

**WHEREAS**, ThinkBig is a Maryland limited liability company that installs and operates fiber optic broadband services throughout Maryland, and has a history of partnerships with Maryland counties regarding installing and operating fiber optic broadband networks; and

**WHEREAS**, this Agreement reflects the terms and conditions agreed upon by the County and ThinkBig with respect to the use of Public Rights-of-Way for the construction and implementation of a broadband network; and

**WHEREAS**, the Parties believe this Agreement will be of material benefit to both, as well as the citizens of St. Mary’s County.

**NOW, THEREFORE**, in consideration of mutual promises set forth herein and intending to be legally bound hereby, the County and ThinkBig agree as follows:

**Section 1. Definitions**

- i. Abatement Period: Four (4) years from the Effective Date of this Agreement, during which fees will not be payable by ThinkBig pursuant to Section 4.2 of this Agreement.
- ii. Broadband: relating to high-speed data transmission in which the bandwidth installed is shared by more than one simultaneous signal.
- iii. Drop: the fiber optic cable that connects the Network to a subscriber’s premises.
- iv. Effective Date: the date upon which this Agreement is fully signed and executed by both Parties.
- v. Force Majeure: Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the State of Maryland or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms;

floods; droughts; explosions; partial or entire failure of utilities or other event that is catastrophic and beyond the ability of the parties to reasonably anticipate or control.

- vi. Information Technology Assets Fiber Optics Resource Sharing Standard Pricing Schedule: the Maryland Department of Information Technology's publication entitled "Information Technology Assets Fiber Optics Resource Sharing Standard Pricing Schedule," or any superseding document published by the Department of Information Technology that serves as its functional replacement
- vii. Public Rights-of-Way: the surface of and the area across, in, over, along, above and below the surface of the public streets, roads, highway, freeways, bridges, tunnels, lanes, paths, public ways or places, alleys, courts, boulevards, sidewalks, ways, drives, circles, waterways, parkways, easements, or similar property, or other public rights-of-way now or hereafter held by the County for the purpose of public travel and shall include other similar easements or rights-of-way as shall be now held or hereafter held by the County which shall, within their proper use and meaning, entitle ThinkBig to the use thereof for the purposes of installing poles, wires, fiber, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Network.
- viii. Network: the fiber optic broadband network to be constructed by ThinkBig.
- ix. Subscriber: a resident or business that lawfully receives broadband data service distributed by the Network.

## **Section 2. Grant of Use of Public Rights-of-Way**

**2.1 Grant of Authority.** Subject to the terms and conditions herein, the County hereby grants to ThinkBig the right to own, construct, extend, install, operate, maintain, upgrade, and rebuild a fiber optic Network in the Public Rights-of-Way, including property over which the County has a sufficient easement or right-of-way to provide such services.

**2.2. Term.** This agreement shall be for a period of fifteen (15) years, commencing on the Effective Date and expiring on \_\_\_\_\_, unless this agreement is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

**2.3 Non-Exclusivity.** The rights conferred by this Agreement are non-exclusive. Nothing in this Agreement shall affect the right of the County to confer similar rights to other parties to construct, operate, or maintain a similar network or provide similar services.

## **Section 3. Construction and Maintenance of Network.**

**3.1. Construction Commitment.** ThinkBig shall engineer, construct, install, operate, and maintain all necessary fiber and equipment for the Network and shall provide, market, and sell broadband data services. The Network will include all constructed Service Drops. The parties acknowledge that constructing Service Drops is contingent upon customer subscriptions for broadband service with ThinkBig, and that any Service Drops constructed



will be incorporated as part of the Network; however, that any Service Drops constructed will be incorporated as part of the Network.

**3.2. Governmental Approvals.** ThinkBig shall ensure that all necessary approvals have been obtained before installing any part of the Network, including all applicable permits and licenses.

**3.3. Technical Requirements of Network.** The Network shall meet the following minimum technical performance requirements:

- i) Passive Optical Network (“PON”) to provide one Gbps downstream and 1000 Mbps symmetrical service to all subscribers.
- ii) Latency <10 milliseconds to the internet exchange point in Ashburn, Virginia. ThinkBig will ensure that its upstream providers of bandwidth to the internet exchange point in Ashburn, Virginia commit to provide service to ThinkBig that provides this requirement.
- iii) Backup power of at least 72 hours in case of an electric outage for all electronics, excepting those electronics at a subscriber’s premises.
- iv) The Network shall comply with all current applicable codes, including the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances, and construction standards of the State of Maryland.

**3.4. Customer Service Requirements.** ThinkBig shall meet the following minimum service requirements with respect to its Subscribers:

- i) ThinkBig will offer residential products and services with pricing equal to or better than that offered by the terrestrial, fixed broadband networks operating in the County.
- ii) ThinkBig shall open at least one (1) physical office in the County to regularly offer in-person customer service support to Subscribers.
- iii) The Network shall be neutral with respect to applications, websites, type of use, and type of end-user device.
- iv) ThinkBig will not collect or sell personal information from a customer without express written approval.
- v) ThinkBig will offer data services that do not limit, quota, cap, or otherwise ration a user’s total upload and download data capacity to an extent that limits reasonable use of broadband. So long as such uncapped services are available for purchase by County Subscribers, ThinkBig may offer services that do cap data capacity.

**3.5. Subscriber Installations.** Any dwelling unit within three hundred feet (300’) Drop distance from the distribution line within the Network shall be entitled to installation at no charge other than applicable installation fees for the individual subscriber’s drop. For any dwelling unit in excess of three hundred feet (300’) Drop distance, ThinkBig will extend service and the Subscriber shall pay ThinkBig’s actual cost of installation from its distribution line within the Network from which a usable signal can be obtained with such cost being only the incremental cost beyond three hundred feet (300’) Drop distance for any installation.

**3.6 Service to Certain County Locations.** In the course of building the ThinkBig network in St Mary's County, ThinkBig agrees to make available to the County, at no cost to the County, certain dark fiber cable strands for the exclusive use of The County to certain County facilities where a public benefit will be derived from such access. ThinkBig will work with The County to add these designated locations when ThinkBig network is constructed adjacent to these locations throughout the course of the installation of the ThinkBig fiber optic network in St. Mary's County. The County locations are enumerated more particularly in the Individual Right of Use Agreement attached to this Agreement as Appendix A.

**3.7 Disconnection and Relocation.** ThinkBig shall, at no cost to the County, protect, support, temporarily disconnect, relocate in the same street or other public way and place, or remove from any street or any other public way or place, any of its property as required by the County or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety, and welfare. In requiring ThinkBig to undertake any such obligation, the County shall treat ThinkBig the same as, and require no more of than, any similarly situated entity. ThinkBig shall have the right to seek reimbursement under any applicable insurance or government program that offers reimbursement for such activities.

#### **Section 4. Compensation to the County.**

**4.1 Abatement Period.** As an inducement to provide services to the County, County agrees to waive any right to compensation under this Section for the first four (4) years of this Agreement, starting from the Effective Date.

**4.2 Future Fees Fixed.** Upon expiration of the Abatement Period, ThinkBig shall pay to the County a fee for continued use of the County Public Rights-of-Way, due and payable on the first day following expiration of the Abatement Period and on the same day every year thereafter for as long as this Agreement remains in force. ThinkBig's annual rate shall be the lower rate of either the State of Maryland Information Technology Assets Fiber Optics Resource Sharing Standard Pricing Schedule prevailing at the time each annual payment is due, or a maximum fee of \$0.01894 per year per linear foot of fiber optic band the Network maintains in a County Public-Right-of-Way.

#### **Section 5. Insurance.**

**5.1 Insurance Policy Required.** ThinkBig shall obtain and maintain, in full force and effect, at its sole cost and expense, during the term of this Agreement, the following minimum insurance coverage with an insurance company that is authorized to conduct business in Maryland and which has an A.M. Best rating (or equivalent) no less than A-minus, indemnifying the County from and against any and all claims for injury or damage to persons or property, both real and person, caused by the construction, installation, reconstruction, operation, maintenance, or removal of the Network by ThinkBig or any of its contractors, subcontractors, agents or employees in the following amounts:



- i) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any single occurrence.
- ii) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).
- iii) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.
- iv) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage.

**5.2. Additional Insureds.** The County, its officials, and its employees shall be designated as additional insureds under each of the insurance policies required in this Section.

**5.3. No Cancellation Without Alternative Policy.** ThinkBig shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section and without submitting insurance certificates to the County verifying ThinkBig has obtained such alternative insurance. ThinkBig shall provide the County with at least thirty (30) days prior written notice in the event there is an adverse material change in coverage or the policies are cancelled or not renewed.

**5.4 Proof of Insurance.** ThinkBig shall deliver to the County Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective date of the Agreement, upon request by the County.

## **Section 6. Default & Disputes.**

**6.1. Right to Terminate.** If the County has reason to believe that ThinkBig has not complied with any material provision of this Agreement, it shall notify ThinkBig in writing of the nature of such alleged noncompliance and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the County does not notify ThinkBig of any noncompliance or violation of this Agreement, it shall not operate as a waiver of any rights of the County hereunder or pursuant to applicable law.

**6.2. Time to Cure.** Notwithstanding whether the County notifies ThinkBig, upon the occurrence of an Event of Default, as defined below, ThinkBig shall have thirty (30) days from such occurrence to: (i) respond to the County, if ThinkBig contests the assertion of noncompliance; (ii) notify the County, if County is not yet aware of such Event of Default, (iii) cure such noncompliance; and (iv) in the event that, by nature of the noncompliance, it cannot be cured within the thirty (30) day period, inform the County in writing how much additional time is necessary to complete the cure and provide a reasonable schedule for curing such cure, provided that County shall grant such additional time to cure if ThinkBig shall have promptly commenced efforts to cure and continues to diligently pursue its efforts to cure.

**6.3. Remedies.** Upon the occurrence of an Event of Default, the County may, at its sole option, seek any and all remedies available under this Agreement and at law or equity.

**6.4 Events of Default.** The following actions by ThinkBig shall constitute a default under this Agreement (collectively, “Events of Default”):

- i) ThinkBig changes its name or address from that set forth herein, unless it shall have given the County no less than thirty (30) days prior written notice.
- ii) ThinkBig enters into any transaction of merger or consolidation (unless ThinkBig is the surviving entity), unless the surviving entity is organized and existing or qualified to do business under the laws of the United States or any state thereof and prior to the consummation of such event: (A) the surviving entity executes and delivers to the County an agreement satisfactory to the County, in its sole discretion, containing such person’s effective assumption and agreement to perform all of ThinkBig’s obligations hereunder.
- iii) ThinkBig breaches any representation or warranty contained herein or made any incorrect representation or warranty in any other document furnished to the County in connection herewith.
- iv) ThinkBig fails to maintain the insurance required by this Agreement.
- v) ThinkBig becomes insolvent or ceases to do business in the ordinary course, or suffers a material adverse change in its management or ownership.
- vi) Any representation or warranty made by ThinkBig in any documents entered into in connection with this Agreement or any information provided by ThinkBig in connection with the transactions evidenced by this Agreement is materially incomplete, incorrect or misleading as of the date made or delivered.

**Section 7. Other Provisions.**

**7.1 Entire Agreement.** This written instrument, including any Appendix, contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the County and ThinkBig.

**7.2. Captions and Headings.** All captions and headings of each section and paragraph in this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of the Agreement.

**7.3. Force Majeure.** If for any reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation of this Agreement during the bona fide continuance of such inability.

**7.4. Assignment & Transfer.**

(a) Neither ThinkBig nor any Affiliated Entity shall not transfer, assign, or otherwise encumber through its own action or by operation of law, its right, title, interest or control in this Agreement, or any portion of the Network without the prior written consent of the County, such consent not to be unreasonably withheld.



(c) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title, or interest of ThinkBig in this Agreement or in the Network in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by ThinkBig.

(d) ThinkBig shall make written application to the County of any transfer or change in control or assignment as described above and shall provide all information required by any applicable federal, state, and local statutes and regulations regarding transfer or assignment.

(e) Any consent by the County for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions in this Agreement.

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

**7.6. Change of Law.** In the event there is a change in a federal or state statute or regulation applicable to the Network or this Agreement, the County or ThinkBig may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The County and ThinkBig shall amend this Agreement to comply with such change in statute or regulation.

**7.7 Compliance with All Laws.** ThinkBig shall comply with all federal, state, and generally applicable local laws and regulations.

**7.8. Waiver of Jury.** The parties waive any right to a jury trial in any litigation that may arise to enforce the terms of this Agreement.

**7.9. Venue.** If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Maryland, St. Mary's County.

**7.10. Nondiscrimination.** As a condition of entering into this Agreement, ThinkBig may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall ThinkBig retaliate against any person for reporting instances of such discrimination. ThinkBig shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. ThinkBig understands that a material violation of this clause shall be considered a material breach of this Agreement. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

**7.11. Severability.** If any section, provision, or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision, or clause shall be deemed to

be severable from the remaining portions of this Agreement and shall not affect the legality, validity, or enforceability of the remaining portions of this Agreement.

**7.12. Representations & Warranties.** ThinkBig represents and warranties that it is duly organized and validly existing and in good standing under the laws of the jurisdiction of its organization, duly qualified to do business in each jurisdiction it is located or operates, and has full limited liability company power and authority to enter into and perform its obligations under this Agreement, and that the execution, delivery and performance by ThinkBig of this Agreement have been duly authorized by all necessary limited liability company action on the part of ThinkBig.

**7.13. Third Party Beneficiaries.** Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

**7.14. Appropriations.** If the County fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of the Agreement succeeding the first fiscal period, the Agreement shall be cancelled automatically as of the beginning of the fiscal year for which the funds were not appropriated or otherwise made available; provided, however, that this will not affect either the Party's rights under any termination clause in the Agreement. The effect of termination of the Agreement hereunder will be to discharge both ThinkBig and the County from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The County or ThinkBig shall notify the other party as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

**7.15. Individual Liability.** ThinkBig agrees that no elected or public official of St. Mary's County shall be held individually liable under this Agreement.

**7.16. Sovereign Immunity.** To the extent it may have any, the County does not waive any defense related to its sovereign immunity or status as a body corporate and politic of the State of Maryland.

**7.17. Notices.** All notices required by this Agreement shall be made via hand delivery or registered certified mail with confirmed receipt at the addresses first listed above, or as notified to a party in writing:

**To the County:**

Commissioners of St. Mary's County  
P.O. Box 653  
41770 Baldrige Street  
Leonardtown, MD 20650

With copy to:

Office of the County Attorney  
P.O. Box 653  
41770 Baldrige Street  
Leonardtown, MD 20650



**To ThinkBig:**

ThinkBig Networks  
Attn: Dee Anna Sobczak  
10807 Falls Road, Number 1388  
Brooklandville, MD 21022

**7.18. Counterparts.** This Agreement may be signed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument; and in pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one complete set of such counterparts.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date(s) referenced below:

**COMMISSIONERS OF ST. MARY'S COUNTY**

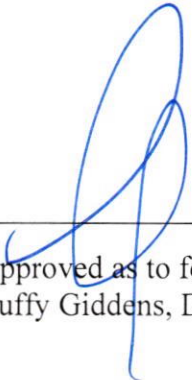
By: James R. Guy  
James R. Guy, Commissioner President

Date: 10/25/2022

**THINKBIG NETWORKS, LLC**

By: Mark Wagner  
Mark Wagner, President

Date: 12/06/22

  
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Approved as to form and legal sufficiency:  
Buffy Giddens, Deputy County Attorney