FRANCHISE AGREEMENT

Between

THE CITY OF NEW YORK

And

Transit Wireless, LLC

EXECUTION DATE 15
MAY 8, 2012

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APPENDICES

THIS AGREEMENT, dated as of the __ day of April, 2012 (the "Execution Date"), is by and between the City of New York (as defined in Section 1 hereof, "the City") and Transit Wireless, LLC, whose principal place of business is located at 45-18 Court Square, Suite 401, Long Island City, NY 11101 (as defined in Section 1 hereof, "the Company"), (each, a "party" and collectively, the "parties").

WITNESSETH:

WHEREAS, the New York City Transit Authority ("NYCTA") operates certain subway stations and facilities pursuant to a lease (the "Master Lease") dated June 1, 1953 from the City of New York ("City").; and

WHEREAS, in 2007, the NYCTA granted a license (such license, as modified from time to time thereafter, hereinafter referred to as the "License" or the "License Agreement") to the Company to, among other things, construct and operate a wireless communications network within the underground subway stations that the NYCTA operates under the Master Lease (such network referred to herein as "the Subway Station Mobile Network" or "SSMN"); and

WHEREAS, the New York City Department of Information Technology and Telecommunications ("DoITT"), finds that the installation, operation, and maintenance of fiber optic cables and related facilities will help facilitate the connection of mobile communications signals being delivered to and from SSMN facilities to other networks, including the public switched telephone network and the Internet, and would thus facilitate the public purposes intended to be fulfilled by the SSMN; and

WHEREAS, DoITT, on behalf of the City, has the authority to grant franchises involving the occupation or use of the Inalienable Property (as defined in Section 1 hereof) of the City in connection with the provision of Mobile Telecommunications Services (as defined in Section 1 hereof); and

WHEREAS, the Company has submitted to DoITT its proposal in response to a solicitation (the "Solicitation") issued by DoITT pursuant to Resolution Number 191 (adopted by the New York City Council on August 25, 2010); and

WHEREAS, on April 9, 2012 the New York City Franchise and Concession Review Committee (as defined in Section 1 hereof, the "FCRC") held a public hearing on the Company's petition for a franchise (the "Franchise") to install, operate, and maintain fiber optic cables and related facilities to help facilitate the connection of mobile communications signals being delivered to and from the SSMN to other networks, including the public switched telephone network and the Internet, which hearing was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the City Charter; and

WHEREAS, DoITT has with respect to the proposed grant of the Franchise complied with the New York State Environmental Quality Act ("SEQRA") (Section 8-010 et. seq.) of the

New York State Environmental Conservation Law), the SEQRA regulations set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations, and the City Environmental Quality Review process (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York); and

WHEREAS, the New York City Department of City Planning determined that franchises granted pursuant to the Solicitation would not have land use impacts or implications, and therefore such franchises are not subject to the Uniform Land Use Review Procedure set forth in Section 197-c of the New York City Charter;

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

SECTION 1 -- DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.

1.1 "Affiliate" means each Person who directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, the Company.

1.2 "Agreement" means this agreement, together with the Appendices attached hereto and all amendments, modifications or renewals hereof or thereof.

1.3 "Base Annual Payment" means $100,000 (One Hundred Thousand Dollars) as adjusted by the CPI Adjustment.

1.4 "City" means the City of New York or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission, department or any other entity of the City of New York, or any authorized officer, official, employee or agent thereof, or any successor thereto.

1.5 "Commissioner" means the Commissioner of DoITT, or his or her designee, or any successor in function to the Commissioner.

1.6 "Company" means Transit Wireless, LLC, a New York limited liability company organized and existing under the laws of the state of New York and authorized to do business in the State of New York, or any authorized successor or assign to the extent authorized as set forth in Section 7 hereof.

1.7 "Comptroller" means the Comptroller of the City, the Comptroller's designee, or any successor in function to the Comptroller.

1.8 "control" of an entity means the ability to exercise de facto or de jure control over the day-to-day policies and operations or the management of such entity's affairs.

1.9 "CPI Adjustment" applied to a dollar amount for purposes of calculating a payment means an adjustment in which said dollar amount is multiplied by a fraction, the numerator of which is the Consumer Price Index (All Urban Consumers, All Items, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, 1982-84=100) announced by the U.S. Department of Labor for the month prior to the month in which said payment is to be made and the denominator of which is the same index announced by the U.S. Department of Labor for the month in which the Effective Date occurred. If the U.S. government no longer announces an index as described in the preceding sentence, thereafter an alternative index shall be selected by the City which is expected to thereafter be as comparable as practicable in its effect as the index described in the preceding sentence would have been.

1.10 "DoITT" means the Department of Information Technology and Telecommunications of the City of New York, or any successor thereto.

1.11 "Effective Date" means the date stated in a notice issued by the City to the Company, which date shall be two (2) days after the first date on which all of the following conditions have been met: (a) this Agreement has been registered with the Comptroller as provided in Sections 375 and 93.p. of the City Charter, (b) all documents have been submitted, and certain other conditions met, as required by Section 2.2 hereof, (c) the City's Vendex review process (if lawfully applicable to franchises of the type covered by this Agreement) with respect to the Company has been favorably completed, (d), the payment described in the first sentence of Section 3.2.1 hereof has been paid to the City, (e) the letter of credit described in Section 5.1 has been deposited with the City and (f) payment has been made of an amount sufficient to pay, or reimburse the City for, all costs incurred in publishing legally required notice or notices with respect to the FCRC's hearing regarding the franchise granted by this Agreement.

1.12 "FCC" means the Federal Communications Commission or any successor thereto.

1.13 "FCRC" means the Franchise and Concession Review Committee of the City of New York, or any successor thereto.

1.14 "Fiber" means fiber optic telecommunications cable or other closed-path transmission medium that may be used in lieu thereof for the same purposes.

1.15 "Franchise Area" means the boroughs of Brooklyn, the Bronx, Queens and Manhattan in the City of New York.

1.16 "Inalienable Property" shall mean that property of the City which is inalienable pursuant to Section 383 of the New York City Charter or a successor provision thereto. References to the Inalienable Property in the Agreement shall be deemed to include the space on, over and under the surface of the Inalienable Property (except that where the City's property rights to such Inalienable Property is expressly limited in a particular case to specified dimensional boundaries then such references shall be limited, in regard to such particular property, as thus expressly limited).

1.17 "Indemnitees" shall have the meaning set forth therefor in Section 8.1 hereof.

1.18 "Mayor" means the chief executive officer of the City, the designee thereof, or any successor to the executive powers thereof.

1.19 "Mobile Telecommunications Services" means any "mobile service," as defined in Section 153 of Title 47 of the United States Code, and other voice and/or data communications or information services employing electromagnetic waves propagated through space to serve portable sending and/or receiving equipment."

1.20 "Monthly Per Station Amount" shall mean $120.00 (One Hundred Twenty Dollars) as adjusted by the CPI Adjustment

1.21 "Service" means the activity for which this franchise is granted, that is, helping to facilitate the connection of mobile communications signals being delivered to and from the SSMN facilities to other networks, including the public switched telephone network and the Internet.

1.22 "Person" shall mean any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.

1.23 "PSC" means the New York State Public Service Commission or any successor thereto.

1.24 "Security Fund" shall have the meaning set forth therefor in Section 5.1 hereof.

1.25 "System" means the system which the Company uses to provide the Service.

1.26 "Term" shall have the meaning set forth therefor in Section 2.1 hereof.

SECTION 2 -- GRANT OF AUTHORITY

2.1 Term This Agreement and the franchise granted hereunder, shall commence upon the Effective Date, and shall continue until and including the day preceding the fifteenth (15^{th}) anniversary of the Execution Date, unless earlier terminated as described herein. The period of time that this Agreement remains in effect is herein referred to as the "Term."

2.2 Conditions to Effectiveness As provided in Section 1.11 above, the occurrence of the Effective Date is conditional on, among other things, the submission to the City by the Company of certain documents as described in this Section 2.2. Said documents shall be (a) evidence as described in Section 8.6.1 below of the Company's liability insurance coverage pursuant to Section 8 hereof; (b) an opinion of the Company's counsel dated as of the date this Agreement is executed by the Company, in form reasonably satisfactory to the City, (c) an affirmation signed by an authorized officer or representative of the Company in the form set forth in the solicitation issued by DoITT seeking a proposal from the Company for a franchise of the type described herein; (d) an IRS W-9 form certifying the Company's tax identification number; and (e) organizational and authorizing documents as described in Sections 10.5.1 and 10.5.2 hereof. The occurrence of the Effective Date shall also be conditional on the following having occurred: (1)

the Company has completed all required submissions under the City's VENDEX process, and the City's review thereof has been completed; and (2) the City's review of the Company's submissions pursuant to Local Law 34 of 2007 has been completed and the City has found that the Company is in compliance with the requirements of said Local Law 34. The City shall issue a notice confirming the date on which the Effective Date occurred.

2.3 Nature of Franchise; Effect of Termination

2.3.1 Nature of Franchise The City hereby grants the Company, subject to the terms and conditions of this Agreement, a nonexclusive franchise authorizing use of the Inalienable Property within the Franchise Area to install, operate, remove, replace and maintain Fiber and related or similar facilities to help facilitate the connection of mobile communications signals being delivered to and from the SSMN facilities to other networks, including the public switched telephone network and the Internet. The parties acknowledge that the preceding sentence authorizes the Company, subject to the terms and conditions of this Agreement, to install and operate a fiber network fully integrated with the SSMN such that all mobile services that are provided by the SSMN may be transmitted over the Company's facilities in the Inalienable Property, including all SSMN backhaul to base stations and hubsites, wherever located in the City of New York. The franchise granted hereunder does not include the right or consent to use the facilities installed in the Inalienable Property for any other purpose except the one described in the preceding sentence, and use for any other purpose shall constitute a breach of its obligations under this Agreement by the Company, as further described in Section 9.2.1(a)(ii) hereof, triggering the liquidated damages described in Section 9.3.1 hereof.

2.3.2 Effect of Termination Upon termination of this Agreement, the franchise granted hereunder shall expire; all rights of the Company in the franchise shall cease, with no value allocable to the franchise itself; and the rights of the City and the Company to the System, or any part thereof, shall be determined as provided in Section 10.8 hereof. The termination of this Agreement and the franchise granted hereunder shall not, for any reason, operate as a waiver or release of any obligation of the Company or any other Person, as applicable, for any liability (i) pursuant to Section 8.1 hereof, which arose or arises out of any act or failure to act required hereunder prior to the termination; (ii) which exists pursuant to Sections 3 ("Compensation"), 6.5.2 ("Right of Inspection"), 9.3 ("Remedies of the City") 10.8 ("Rights Upon Termination"), 10.13 ("Governing Law") and 10.16 ("Claims Under Agreement") hereof; and (iii) to maintain in full force and effect the Security Fund described in Section 5 hereof, and the coverage under the liability insurance policies required under and in accordance with Section 8 hereof.

2.3.3 Renewal This Agreement does not grant to the Company any right to renewal of this Agreement or the franchise granted hereunder. At the end of the Term, the City shall have the discretion to renew this Agreement, or not, subject only to such limitations on such discretion as may exist under applicable state and/or federal law.

2.4 Conditions and Limitations on Franchise

2.4.1 Not Exclusive Nothing in this Agreement shall affect the right of the City to grant an additional franchise, or additional franchises, to any Person or Persons authorizing

installations and activities for the same or similar purposes as those authorized hereunder and or for any purpose not authorized hereunder.

2.4.2 Construction of System

(a) The Company shall use its best efforts to coordinate its construction schedule with the appropriate City agencies, including, without limitation, the Department of Transportation, the appropriate Borough Engineer and the Office of Construction, to minimize unnecessary disruption.

(b) The Company shall obtain all construction, building, street opening or other permits or approvals necessary before installing, operating, and maintaining Fiber and related or similar facilities to help facilitate the connection of mobile communications signals being delivered to and from the SSMN facilities to other networks, including the public switched telephone network and the Internet. The Company shall provide copies of any such permits and approvals to DoITT upon request.

(c) The Company's obligations under this Section 2.4.2, or under any other provision of this Agreement, may be performed by the Company itself or by contractors or subcontractors acting on the Company's behalf, provided that the Company shall in any event be responsible for compliance with its obligations under this Agreement, and the actions or failures to act of a contractor or subcontractor shall not excuse any non-compliance with the Company's obligations, and the actions of any such contractor or subcontractor acting on behalf of the Company shall be treated for purposes of this Agreement as the actions of the Company.

SECTION 3 – COMPENSATION

3.1 Compensation The Company agrees to provide to the City reasonable compensation, as described in this Section 3, in return for the benefit conferred by the City of the right to use the City's Inalienable Property for the purpose of installing, operating, removing, replacing and maintaining Fiber and related or similar facilities to help facilitate the connection of mobile communications signals being delivered to and from the SSMN facilities to other networks, including the public switched telephone network and the Internet.

3.2 Monetary Compensation. The monetary portion of the compensation described in Section 3.1 above shall be due and payable by the Company to the City in the amounts and pursuant to the procedures described below:

3.2.1 Monetary Amounts Payable.

(a) On the Effective Date and on each anniversary of the Effective Date during the Term, the Base Annual Payment shall be due and payable.

(b) On July 30, 2012, and thereafter on the thirtieth day of each full calendar quarter that falls within the Term there shall be due and payable an amount equal to the product of the Monthly Per Station Amount multiplied by the number of

Total Station Activation Months occurring during the preceding calendar quarter. Station Activation Months occurring in any calendar quarter means, with respect to any particular Transit Authority subway station in which the Company has installed facilities, the number of calendar months during said quarter in which, for part or all of such calendar month, such station has been Active. A station is Active if any services are being provided to the public at such station the provision of which services includes the use of Company facilities. Total Station Activation Months for any quarter means the sum of all Station Activation Months occurring during such quarter. By way of example, if during a particular calendar quarter period there are 100 stations that were Active throughout the quarter, and 50 other stations were Active at some point during two of the three calendar months of the quarter and another 10 stations were Active at some point during the final month of the quarter of the year-long period (and assuming for purposes of this example that the CPI Adjustment used to calculate the Monthly Per Station Amount has not resulted in any change in such amount from the initial $120) the total amount due under this subsection (b) with respect to such quarter, and due and payable within thirty days of the end of such quarter, (would be $36,000 (which is $120 multiplied by 100 and further multiplied by 3), plus $12,000 (which is $120 multiplied by 50 and further multiplied by 2) plus $1,200 (which is $120 multiplied by 10), for a total of $49,200.[1] Within thirty days of the end of the Term, there shall be due and payable an amount equal to the product of the Monthly Per Station Amount multiplied by the number of Total Station Activation Months occurring during the partial calendar quarter that ended on the last day of the Term, and further adjusted pro rata to reflect the portion of a full quarter represented by such final partial calendar quarter of the Term.

3.2.2 Existing Revocable Consent. The City acknowledges that the Fiber in the Inalienable Property for the stations in the Initial Build (as defined in the License) is subject to a Revocable Consent for which the Company pays annual compensation. The City further acknowledges that said Revocable Consent was meant to be superseded by this Franchise. Consequently, after the Effective Date, the stations in the Initial Build will be considered Active stations and the compensation requirements of Section 3.2.1 shall apply. The City will either terminate the Revocable Consent as of the Effective Date and return the security to the Company or, notwithstanding anything to the contrary in this Agreement, the Company shall be entitled to a credit against the amounts due under Section 3.2.1 hereof, such credit to be in the amount of any sums paid by the Company paid to the City in compliance with said Revocable Consent attributable to the period after the Effective Date.

3.3 Non-Monetary Compensation. As further compensation in exchange for the benefit and privilege of the franchise granted hereunder the Company shall provide (in addition to and not in lieu of the monetary compensation required pursuant to Section 3.2 above) facilities and services constituting non-monetary compensation to the City as described in Appendix B attached to, and constituting a part of, this Agreement.

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[1] As of the Execution Date, it is anticipated by the parties that upon full completion of the SSMN as contemplated by the License, 277 subway stations will have become Active. The definition of a "subway station" as used in this Agreement shall track the use in the License.

3.4 Records. The Company shall keep comprehensive itemized records of the relevant aspects of its operations in sufficient detail to enable the City to determine whether all compensation owed to the City to this Section 3 is being paid to the City.

3.5 Reservation of Rights. No acceptance of any compensation payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid, and all representations by the Company as to amounts due hereunder, shall be subject to audit by the City.

3.6 Ordinary Business Expense Nothing contained in this Section 3 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation that it pays pursuant to this Agreement as an ordinary expense of doing business and, accordingly, from deducting said payments from gross income in any City, state, or federal income tax return.

3.7 Costs Related to Company-Sought Transactions The Company shall, as part of the reasonable compensation payable to the City for use of the Inalienable Property, pay, in addition to and not in lieu of all other reasonable compensation due hereunder, to the City or to third parties, at the direction of DoITT, an amount equal to the reasonable costs and expenses which the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any Company-sought renegotiation, transfer, amendment or other modification of this Agreement or the franchise granted hereunder provided the City has given the Company notice in advance of any work being performed by such third party. The Company expressly agrees that the payments made pursuant to this Section 3.6 are in addition to and not in lieu of, and shall not be offset against, the compensation to be paid to the City by the Company pursuant to other provisions of this Section 3.

3.8 No Credits or Deductions

(a) The Company, as part and parcel of its agreement hereunder to pay reasonable compensation for the use of the public right-of-way in the City, expressly acknowledges and agrees that:

(i) the compensation to be provided pursuant to this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or other fees or charges which the Company or any Affiliate shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company; and

(ii) with respect to the franchise granted pursuant to this Agreement, the Company expressly relinquishes and waives its rights and the rights of any Affiliate to a deduction or other credit pursuant to Section 626 of the New York State Real Property Tax Law and any successor or amendment thereto, and (to the extent such waiver is permitted by law) to any subsequent law, rule, regulation, or order which would purport to permit any of the acts prohibited by this Section 3.7; and

(iii) except as might be permitted by Sections 3.2.2 and 3.6, the Company shall not, and shall not otherwise support any attempt by an Affiliate to, make any claim for any deduction of, or other credit for, all or any part of the amount of the compensation (whether monetary or in-kind), or other consideration to be provided pursuant to this Agreement from or against any City or other governmental agency's taxes of general applicability or other fees or charges which the Company or any Affiliate is required to pay to the City or other governmental agency; and

(iv) except as might be permitted by Sections 3.2.2 and 3.6, the Company shall not, and shall not otherwise support any attempt by an Affiliate to, apply or seek to apply all or any part of the amount of the compensation (whether monetary or in-kind) or other consideration to be provided pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliates; and

(v) except as might be permitted by Sections 3.2.2 and 3.6, the Company shall not, and shall not otherwise support any attempt by an Affiliate to, apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the consideration to be provided pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliates.

(b) In any situation where the Company believes the effect of this Section 3.8 is unduly harming, in a manner inconsistent with the intent of this Section 3.8, an Affiliate of the Company or the Company may petition the Commissioner for relief, and such relief shall not be unreasonably withheld.

3.9 Interest on Late Payments In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon shall accrue from such date (regardless of whether and when such late payment matures into an Event of Default) until received at a rate equal to the rate of interest then in effect that would be charged by the City for late payments of water charges of a comparable amount.

3.10 Method of Payment Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement shall be payable to the City's Department of Finance and shall be sent to DoITT, c/o Director of Franchise Audits and Revenue, Two MetroTech Center, 4th Floor, Brooklyn, New York 11201, or to such alternative payee and/or address as DoITT may designate by written notice to the Company from time to time.

3.11 Continuing Obligation and Holdover In the event the Company continues to operate within the Inalienable Property all or any part of the System after the Term then (a) the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, and all liquidated damages provisions shall continue to

apply, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the franchise granted pursuant to this Agreement or of the right to occupy the Inalienable Property, and (b) the City, in addition to all other remedies available to it under this Agreement or by law, shall be entitled to receive all payments it is entitled to receive under this Agreement including, but not limited to, the compensation set forth in this Section 3, and any liquidated damages applicable as set forth hereunder, as if the Term remained in effect.

SECTION 4 CONSTRUCTION AND MAINTENANCE REQUIREMENTS

4.1 Generally The Company agrees to exercise its right described in Section 2.3.1 above in accordance with the standards of work and operation as set forth in this Section 4 and Appendix A attached hereto and incorporated herein.

4.2 Quality In order to assure that the Inalienable Property and its continuing use by the public is adequately protected, all work involved in the construction, operation, maintenance, repair, upgrade and removal of the System located within the Inalienable Property shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by any entity with applicable authority or jurisdiction that any part of the System located within the Inalienable Property is harmful to the public health or safety, then the Company shall, at its own cost and expense, take all steps necessary to correct all such conditions.

4.3 Licenses and Permits In order to assure that the Inalienable Property and its continuing use by the public is adequately protected, the Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, and thereafter complying with, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain, upgrade or repair the System located within the Inalienable Property, including but not limited to any necessary approvals from Persons to use any privately-owned equipment or other property (including, without limitation, any privately-owned easements, poles and conduits) located within the Inalienable Property.

4.4 Public Works and Improvements Nothing in this Agreement shall, and nothing in this Agreement is intended to, abrogate the right of the City to perform, or to arrange to have performed, any public works or public improvements of any description or change, or to arrange to have changed, the grades, lines or boundaries of any Inalienable Property. In the event that the System interferes with the installation, upgrade, construction, operation, maintenance, repair, relocation or removal of such public works or public improvements, or such change in grades, lines or boundaries, then Section 4.7 of this Agreement shall be applicable.

4.5 No Waiver Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the City or of the City's right to require the Company, or other Persons using, constructing or maintaining the System, to secure the appropriate permits or authorizations for such use, provided that no fee or charge may be imposed for any such permit or authorization, other than the standard fees or charges generally applicable to all Persons for such permits or authorizations. Any such standard fee or charge shall not be an offset against, or

in lieu of, the amounts the Company has agreed to pay to the City pursuant to Section 3 or any other provisions of this Agreement.

4.6 Eliminated, Discontinued, Closed Or Demapped Streets Or Other Inalienable Property In the event that all or any part of the Inalienable Property is eliminated, discontinued, closed or demapped, or the status of such property otherwise changes so that it is no longer to be included in the category of Inalienable Property, all rights and privileges of the Company acknowledged and recognized pursuant to this Agreement with respect to said (formerly) Inalienable Property, or any part thereof, so eliminated, discontinued, closed, demapped or otherwise recategorized, shall cease upon the effective date of such elimination, discontinuance, closing, demapping or other such recategorization and the Company shall at the direction of the City and upon reasonable notice from the City remove any and all of the Company's facilities located within such property by a date not later than the effective date of such elimination, discontinuance, closing, demapping or other recategorization or such later date as the City shall direct.

4.7 Protection, Relocation, Alteration of the System In the event that the System interferes with the installation, construction, upgrade, operation, maintenance, repair, relocation or removal of public works or public improvements, or in the event the grades, lines or boundaries of any Inalienable Property are changed at any time during the Term in a manner affecting the System, then the Company shall, at its own cost and expense (unless dedicated funds have been provided to the City by another entity specifically for such purpose), upon reasonable notice from the City, promptly protect or alter or relocate the System, or any part thereof, as directed by the City. In the event that the Company refuses or neglects to so protect, alter or relocate all or part of the System, the City shall have the right, upon notice by the City, to break through, remove, alter, or relocate all or any part of the System without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such breaking through, removal, alteration, or relocation.

4.8 City Authority to Move Facilities The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any Fiber, wires, facilities or other parts of the System within the Inalienable Property, in which event the City shall not be liable therefor to the Company. If practicable, the City shall notify the Company in writing prior to such cutting or moving, but in any event shall notify the Company in writing as soon as possible following any such action.

4.9 Company Required to Move Facilities The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move its facilities within the Inalienable Property to permit the moving of said structure. The Company may impose a reasonable charge on any Person other than the City for any such movement of its facilities.

4.10 Protect Structures In connection with the construction, operation, maintenance, repair, upgrade or removal of the System within the Inalienable Property, the Company shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmarks and historic pavements, as well as all other structures within any designated landmark district. The Company shall obtain the prior approval of the City before undertaking any alteration of any water main, sewerage or drainage system, equipment or facility or any other

municipal structure within the Inalienable Property, required because of the presence of the System. Any such alteration shall be made by the Company, at its own cost and expense and in a manner prescribed by the City. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Inalienable Property involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company.

4.11 No Obstruction In connection with the construction, operation, maintenance, upgrade, repair or removal of the System, the Company shall not, without the prior consent of the appropriate authorities, obstruct the Inalienable Property, or the subways, railways, passenger travel, river navigation, or other pedestrian or vehicular traffic that is using the Inalienable Property.

4.12 Safety Precautions

(a) The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites within the Inalienable Property, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting.

(b) The Company agrees to apply for membership in the Mutual Aid and Restoration Consortium ("MARC") and if accepted for such membership, to execute the then applicable MARC agreement, and be fully active in MARC activities, including participation in MARC alerts, drills and meetings. If it is determined by a court of competent jurisdiction after all appeals have been exhausted that the agreement by the Company described in the preceding sentence is, pursuant to federal law, not enforceable against the Company, then this provision shall be deemed severed from this Agreement, and the Agreement shall remain in effect as if this provision had not been included.

SECTION 5 SECURITY FUND AND GUARANTY

5.1 General Requirement Prior to or simultaneously with the execution of this Agreement, the Company shall have deposited with the City an unconditional and irrevocable letter of credit in an amount initially equal to $125,000, and thereafter subject to increase as described below in this section 5.1. Such letter of credit shall be in a form and issued by a bank reasonably satisfactory to the City, and such letter of credit shall serve as a security fund (the "Security Fund"), securing the Company's full payment and performance of its obligations under this Agreement. Throughout the Term, and for one year thereafter, the Company shall maintain the Security Fund at a level which shall, as specified above, begin at $125,000 and thereafter increase annually, no later than August 31 of each year, to an amount equal to the sum of (x) $125,000, plus (y) the product of $2,000 multiplied by the number of subway stations that are then Active and located in the borough of Manhattan south of 96th Street, plus (z) the product of $1,000 multiplied by the number of subway stations then Active but not located in the area referred to in the preceding clause (y). The letter of credit shall contain the following endorsement or language with similar effect: "It is hereby understood and agreed that this letter may not be canceled or not renewed by the issuer/surety until at least sixty (60) days after receipt

by the New York City Department of Information Technology of a written notice stating such intention to cancel or not to renew". Compliance with the requirement for adjustments to the amount of the letter of credit that will be required from time to time pursuant to the provisions of this Section 5.1 may be implemented either by a replacing or amending the existing letter of credit.

5.2 Purpose The Security Fund shall serve as security for full payment and performance by the Company in accordance with this Agreement and any costs, losses or damages incurred by the City as a result of any failure by the Company to abide by any provision or provisions of this Agreement.

5.3 Withdrawals from the Security Fund In the circumstances described in Section 9.3 hereof, the City may withdraw from the Security Fund such amounts as are necessary to satisfy (to the degree possible) the Company's obligations not otherwise met (and to reimburse the City for costs, losses or damages incurred as the result of the Company's failure(s) to meet its obligations), provided, however, that the City shall not make any withdrawals by reason of any breach or default of which the Company has not been given notice. The City may not seek recourse against the Security Fund for any costs or damages for which the City has previously been compensated through a withdrawal from the Security Fund or otherwise by the Company.

5.4 Notice of Withdrawals Within one (1) week after any withdrawal from the Security Fund, the City shall notify the Company of the date and amount thereof. The withdrawal of amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of the Company to the City but only to the extent of said withdrawal.

5.5 Replenishment by the Company Within thirty (30) days after receipt of notice from the City that any amount has been withdrawn from the Security Fund, as provided in Section 5.4 hereof, the Company shall replenish the Security Fund to the amount specified in Section 5.1 hereof, by submitting such documentation as may be necessary to restore the letter of credit which constitutes the Security Fund to the full amount required by Section 5.1.

5.6 Replenishment by the City If a court finally determines that a withdrawal from the Security Fund by the City was improper, the City shall refund the improperly withdrawn amount to the issuer of the applicable letter of credit or to the Company such that the balance in the Security Fund shall not exceed the amount specified in Section 5.1 hereof.

5.7 Not a Limit on Liability The Company's obligations of payment and performance, and the liability of the Company pursuant to this Agreement, shall not be limited by the amount of the Security Fund required by this Section 5.

5.8 Renewal Any letter of credit which is to constitute the Security Fund required hereunder shall provide that it shall not be cancelled, and shall not expire without renewal, except after at least sixty (60) days' notice to the City of the impending cancellation, or expiration without renewal, of such letter of credit. Any failure to replace or renew a Security Fund letter of credit by a date which is thirty (30) days prior to the impending cancellation or expiration of such a letter of credit shall constitute an Event of Default under this Agreement, which the City may cure by (a) drawing on the Security Fund and itself holding the proceeds as a replacement

Security Fund (with all rights to draw on the proceeds for Security Fund purposes as provided under this Agreement) until such time as the Company completes the required letter of credit replacement or renewal, or (b) exercising any other lawful remedy or remedies. Interest earned on proceeds held by the City as a replacement Security Fund shall be retained the City.

SECTION 6 RIGHT OF WAY MANAGEMENT IMPLEMENTATION MATTERS

6.1 Protection from Disclosure To the extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information submitted to or made available by the Company to the City under this Agreement provided that the Company notifies the City of, and clearly labels, the information which the Company deems to be confidential, proprietary information as such. Such notification and labeling shall be the sole responsibility of the Company.

6.2 Management and Records To the extent necessary to preserve, protect and otherwise manage the Inalienable Property, the City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, operation and upgrade of the System located within the Inalienable Property, including any part thereof, in accordance with the provisions of this Agreement and applicable law. To the extent consistent with the City's right to thus preserve, protect and otherwise manage the Inalienable Property, and/or the City's right to assure that it is being and will be paid the compensation due under this Agreement, the Company shall establish and maintain managerial and operational records, standards, procedures and controls to enable the Company to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that the Company is complying with the terms of this Agreement. The Company shall retain such records for not less than six (6) years following their creation and for such additional period as DoITT may reasonably direct consistent with the goals of such record retention described in this Section 6.2. In order to support the City's ability to appropriately preserve, protect and otherwise manage the Inalienable Property, the Company shall on an annual basis provide DoITT with a report (in form and format reasonably acceptable to the Commissioner) describing any construction or installation of wire, Fiber, or other facilities within the Inalienable Property (phrases such as "within the Inalienable Property", "of the Inalienable Property," "manage the Inalienable Property" etc. as used in this Agreement shall be deemed to refer to and include, in addition to the surface of the Inalienable Property, any space on, over and under the surface of the Inalienable Property, unless expressly stated otherwise) that has occurred during the previous twelve months, which report shall include a map of such constructed or installed facilities that is consistent in form with the requirements of Section B.4. of Appendix A attached hereto. Each such report shall include safety and compliance review and inspection documentation as required by law and as further reasonably required by DoITT. The first such report shall be delivered no earlier than January 1 of the first full calendar year falling entirely within the Term and no later than the first anniversary of the Effective Date, with each successive report thereafter to be delivered annually between January 1 and the anniversary of the Effective Date. In order to further advance the City's ability to appropriately preserve, protect and otherwise manage the Inalienable Property, the Company shall on an annual basis, provide DoITT with a report describing the Company's reasonably anticipated plans for the coming twelve months for any construction or installation of cable, wire, Fiber or other facilities

and equipment within the Inalienable Property. The first such report shall be delivered no earlier than January 1 of the first full calendar year falling entirely within the Term and no later than the first anniversary of the Effective Date, with each successive report thereafter to be delivered annually between January 1 and the anniversary of the Effective Date. The Company shall further provide to the City, upon the City's request, and within a reasonable period under the circumstances, any additional information, material and/or reports that the City reasonably deems necessary to the City's efforts to preserve, protect and otherwise manage the Inalienable Property or to assure that the City is being and will be paid the compensation due from the Company under this Agreement.

6.3 Rules and Regulations To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue (in accordance with lawful procedures for such adoption or issuance) such rules, regulations, orders, or other directives that are not inconsistent with the terms of this Agreement and are reasonably necessary or appropriate in the lawful exercise of the City's authority as manager of the Inalienable Property and its police powers, and the Company agrees to comply with all such lawful rules, regulations, orders, or other directives.

6.4 Ownership Reports In order to assist the City in determining whether the Company is capable of ongoing compliance with this Agreement, including without limitation ongoing payment of the amounts payable by the Company hereunder, the Company shall promptly report to the City any change in ownership of the Company which is inconsistent with the description of ownership set forth in Appendix D hereof or the most recently submitted previous such report.

6.5 Books and Records/Audit

6.5.1 Records To the extent appropriate to assist the City in determining whether the Company is taking appropriate care of the Inalienable Property, complying with the terms of this Agreement, and paying the amounts payable by the Company hereunder, the Company shall throughout the Term maintain complete and accurate records of the operations of the Company with respect to the System in a manner that allows the City at all times to determine whether the Company is in compliance with this Agreement. All records required to be maintained hereunder shall be retained for not less than six (6) years from the date of their creation.

6.5.2 Right of Inspection To the extent appropriate to assist the City in determining whether the Company is taking appropriate care of the Inalienable Property, complying with the terms of this Agreement, and paying the amounts payable by the Company hereunder, the Commissioner and the Comptroller, or their designated representatives, shall have the right to inspect, examine or audit during normal business hours and upon reasonable notice to the Company under the circumstances, all documents, records or other information which pertain to the Company or any Affiliate with respect to the System and its operation or the Company's performance under this Agreement. All such documents shall be made available within New York City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit, provided, however, that if such documents are located outside of the City, then, upon notice to the Company, the Company shall pay the reasonable expenses incurred by the Commissioner, the Comptroller or their designated representatives in traveling to such location. Access by the City to any of the documents covered by this Section 6.5.2 shall not

be denied by the Company on grounds that such documents are alleged by the Company to contain confidential, proprietary or privileged information, provided that this requirement shall not be deemed to constitute a waiver of the Company's right to assert that confidential, proprietary or privileged information contained in such documents should not be disclosed by the City as described in Section 6.1 above.

SECTION 7 TRANSFERS AND ASSIGNMENTS

7.1 City Approval Required. The ownership and control structure of the Company as of the date of execution of this Agreement is set forth in Appendix D hereof. Subject to the provisions of this Article, the Company shall apply to the City for approval of any transaction in which any change is proposed with respect to ten percent (10%) or more for voting interests or twenty-five percent (25%) or more for non-voting interests of the ownership of the Company, the System, or the System assets, or the franchise granted hereunder, provided, however, that the foregoing requirements of this Section 7.1 shall not be applicable with respect to (a) transfers of any ownership interests expressly permitted in the "Pre-Approved Transactions" section, if any, of Appendix D, or (b) which are effectuated as a result of any transactions involving the exchange of publicly traded shares. The application shall be made at least one hundred twenty (120) calendar days prior to the contemplated effective date of the transaction. Such application shall contain complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

(a) any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;

(b) a report detailing any changes in ownership of voting or non-voting interests of over five percent (5%);

(c) other information necessary to provide an accurate understanding of the financial position of the Company and the System before and after the proposed transaction; and

(e) any contracts that relate to the proposed transaction as it affects the City and, upon request by the City, all documents and information that are related or referred to therein and which are necessary to understand the proposed transaction;

provided, however, that if the Company believes that the requested information is confidential and proprietary, then the Company must provide the following documentation to the City: (i) specific identification of the information; (ii) a statement attesting to the reason(s) the Company believes the information is confidential; and (iii) a statement that the documents are available at the Company's designated offices for inspection by the City.

7.2 City Action on Transfer. To the extent not prohibited by federal law, the City may: (i) grant, (ii) grant subject to conditions directly related to concerns relevant to the transaction, or (iii) deny, its approval of any such transaction.

7.3 Waiver of Transfer Application Requirements. To the extent consistent with federal law, the City may waive in writing any requirement that information be submitted as part of the transfer application, without thereby waiving any rights the City may have to request such information after the application is filed.

7.4 Subsequent Approvals. The City's approval of a transaction described in this Article in one instance shall not render unnecessary approval of any subsequent transaction.

7.5 Approval Does Not Constitute Waiver. Approval by the City of a transfer described in this Article shall not constitute a waiver or release of any of the rights of the City under this Agreement, whether arising before or after the date of the transfer.

7.6 No Consent Required For Transfers Securing Indebtedness. The Company shall not be required to file an application or obtain the consent or approval of the City for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Company in the System, System assets or the franchise granted hereunder in order to secure indebtedness. However, the Company will notify the City within ten (10) days if at any time there is a mortgage or security interest granted on the System, the franchise granted hereunder or substantially all of the assets of the System. The submission of the Company's audited financial statements prepared for the Company's bondholders shall constitute such notice.

7.7 No Consent Required For Any Affiliate Transfers. The Company shall not be required to pay any fee or file an application or obtain the consent or approval of the City for any transfer of an ownership or other interest in the Company, the System or System assets to the parent of the Company or to an Affiliate; transfer of an interest in the franchise granted hereunder or the rights held by the Company under the Franchise to the parent of the Company or to an Affiliate; any action which is the result of a merger of the parent of the Company; or any action which is the result of a merger of an Affiliate. However, the Company will notify the City within thirty (30) days if at any time a transfer covered by this subsection occurs.

7.8 Preliminary Determination Procedure. In the event that a change in direct or indirect ownership interest or interests in the Company, the franchise granted hereunder, the System or System assets is planned and the Company seeks the City's view of whether such transaction is one that would require the City's approval as described in Section 7.1 above, the Company may submit a written request to the Commissioner (in accordance with the notice requirements of Section 10.4 hereof) describing the proposed transaction and seeking a determination as to whether such approval is required and including any arguments the Company wishes to make that the consent of the City is not required. Upon review of such written request, the Commissioner shall notify the Company in writing of the Commissioner's determination whether such approval by the City is required, provided that prior to such determination, if the Commissioner reasonably requests any information relevant to such determination, the Company shall provide such information.

SECTION 8 LIABILITY AND INSURANCE

8.1 Liability and Indemnification The Company shall be liable for, and the Company and each affiliate (not including a limited partner or an individual shareholder) shall indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the "Indemnitees") harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements) (collectively "Liabilities" and each individually a "Liability", and including, without limitation, damages or loss to any real or personal property of, or any injury to or death of, any Person or the City), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of the construction, operation, maintenance, upgrade, repair, removal or relocation of the System or otherwise arising out of or related to this Agreement; provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this Section 8.1 shall not apply to any gross negligence or willful misconduct of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors. Further, it is a condition of this Agreement that the City assumes no liability for any Liability or Liabilities to either Persons or property on account of the same, except as expressly provided herein.

8.2 Limitation on Liability for Public Work, etc. None of the City, its officers, agents, servants, employees, attorneys, consultants or independent contractors shall have any liability to the Company for any damage as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the System by or on behalf of the Company or the City in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Inalienable Property, or the elimination, discontinuation, closing or demapping of any Inalienable Property. When reasonably possible, the Company shall be consulted prior to any such activity and shall be given the opportunity to perform such work itself, but the City shall have no liability to the Company in the event it does not so consult the Company. All costs to repair or replace the System, or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company; provided, however, that the foregoing obligations of the Company pursuant to this Section 8.2 shall not apply to any gross negligence or willful misconduct of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

8.3 Limitation on Liability for Damages None of the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors shall have any liability to the Company for any special, incidental, consequential, punitive, or other damages as a result of the lawful exercise of any right of the City pursuant to this Agreement or applicable law; provided, however, that the foregoing limitation on liability pursuant to this Section 8.3 shall not apply to any willful misconduct of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

8.4 Defense of Claim, etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 8.1 hereof, then upon demand by the City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Company's

insurance carrier (if such claim, action or proceeding is covered by insurance) or by the Company's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Company shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

8.5 Liability for Damages to City Property The Company shall reimburse, indemnify and hold harmless the City for any and all loss or damage to any municipal structure, Inalienable Property or other property of the City occurring during the course of any construction, operation, maintenance, upgrade, repair, relocation or removal of the System. This Section 8.5 shall not apply to loss or damage which is the result of the gross negligence or willful misconduct of the City.

8.6 Insurance

8.6.1 Insurance Specifications. At or before the Closing, the Company shall, at its own cost and expense, obtain (or arrange for continuation of) a Commercial General Liability insurance policy or policies, in a form acceptable to the Commissioner, together with evidence acceptable to the Commissioner, demonstrating that the premiums for said policy or policies have been paid and evidencing that said policy or policies shall take effect and be furnished on or before the Effective Date. Such policy or policies shall be issued by companies duly licensed to do business in the State of New York and acceptable to the Commissioner, but the Commissioner's consent may not be withheld based on the fact that the policy or policies are merged in a policy or policies maintained by an Affiliate adequate to cover the minimum limitations stated below. Unless the Commissioner approves otherwise, such companies must carry a rating by Best of not less than "A-". Such policy or policies shall insure (i) the Company (as named insured) and (ii) as additional insureds, the City and its officers, boards, commissions, elected officials, agents and employees (through appropriate endorsements if necessary) against all Liabilities referred to in Section 8.1 hereof (subject to such policy terms and conditions as set forth in the form of policy acceptable to the Commissioner described above) in the minimum combined amount of Ten Million Dollars ($10,000,000.00 Each Occurrence and $10,000,000.00 Aggregate)) for bodily injury and property damage. The limit can be composed of primary and umbrella/excess liability policies. The foregoing minimum limitation shall not prohibit the Company from obtaining a liability insurance policy or policies in excess of such limitations, provided that the City, its officers, boards, commissions, elected officials, agents and employees shall be named as additional insureds to the full extent of any limitation contained in any such policy or policies obtained by the Company.

8.6.2 Maintenance. The Commercial General Liability insurance policy or policies required by Section 8.6.1 hereof shall be maintained by the Company throughout the term of this Agreement and such other period of time during which the Company operates or is engaged in the removal of the System. Each such liability insurance policy shall contain the following endorsement (or endorsement of comparable language and the same effect): "It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew." Within thirty (30) days after receipt by the City of said

notice, and in no event later than fifteen (15) days prior to said cancellation, the Company shall obtain and furnish to the Comptroller, with a copy to the Commissioner, a replacement insurance policy or policies in a form reasonably acceptable to the Commissioner.

8.7 Operations of the Company.

(a) Acceptance by the City of a certificate hereunder does not excuse the Company from securing a policy consistent with all provisions of this Section 12 or of any liability arising from its failure to do so.

(b) the Company shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to provide service pursuant to this Agreement and the franchise granted hereunder only during the effective period of all required coverage (in the event authorization to provide service hereunder ceases by reason of the non-effectiveness of any such required insurance coverage, such authorization to provide service shall be automatically restored, without any additional required action by any party, upon the effectiveness of all required insurance coverage being restored).

(c) In the event of any loss, damage, injury or accident arising under this Agreement, the Company shall promptly notify in writing the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising under this Agreement from the operations of the Company or its subcontractors, promptly, but not later than 20 days after the Company becomes aware of such event. The Company's notice to the commercial general liability insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Company as Named Insured." The Company's notice to the insurance carrier shall contain the following information: the name of the Company, the number of the applicable policy, the date of the occurrence, the location (street address and borough) of the occurrence, and, to the extent known to the Company, the identity of the persons or things injured, damaged or lost. Additionally:

(i) at the time notice is provided to the insurance carrier(s), the Company shall provide copies of such notice to the Comptroller and the Commissioner. Notice to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street — Room 1222, New York, New York 10007 (or replacement addresses of which the City notifies the Company). Notice to the Commissioner shall be sent to the address set forth in Section 18.6 hereof; and

(ii) if the Company fails to provide any of the foregoing notices in a timely and complete manner, the Company shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

8.8 Insurance Notices, Filings, Submissions. Wherever reference is made in this Article 12 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Section 10.4 hereof.

8.9 Disposal of Hazardous Materials. If pursuant to this Agreement the Company is involved in the disposal of hazardous materials, the Company shall dispose of such materials only at sites where the disposal site operator maintains Pollution Legal Liability Insurance in the amount of at least Two Million Dollars ($2,000,000) for losses arising from such disposal site.

8.10 Other Remedies. Insurance coverage in the minimum amounts provided for herein shall not relieve the Company or subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or applicable law.

SECTION 9 BREACHES AND REMEDIES

9.1 Not Exclusive The Company agrees that the City shall have the specific rights and remedies set forth in this Section 9 to the fullest extent permitted by law, but subject to the provisions of Appendix E. These rights and remedies are in addition to and cumulative of any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement. Such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City, except as provided herein. The exercise of one or more rights or remedies by the City shall not be deemed a waiver by the City of the right to exercise at the same time or thereafter any other right or remedy nor shall any delay in, or omission of, the exercise of any remedy be construed to be a waiver by the City of or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any liability under this Agreement, provided, however, that the City shall in no case be entitled to duplicate recoveries from different sources. Anything to the contrary notwithstanding, the provisions of this Section 9 shall be subject to the provisions of Appendix E

9.2 Default

9.2.1 Events of Default

Any of the following shall constitute an Event of Default:

(i) any default or breach which is not cured within ten (10) days after notice is received by the Company of a provision of the Agreement requiring the Company (x) to make any payment to the City when due, or (y) to maintain a liability insurance policy as set forth in Section 8.6, or (z) to maintain and/or replenish the Security Fund as required pursuant to this Agreement;

(ii) any default or breach which is not cured within thirty (30) days after notice is received by the Company of the Company's obligation hereunder to use facilities in the

Inalienable Property only for installation, operation, and maintenance of fiber optic lines and related or similar facilities to help facilitate the connection of mobile communications signals being delivered to and from the SSMN facilities to other networks, including the public switched telephone network and the Internet (for example, any action that constitutes the offering of a wholesale or retail communications service to service providers or end-user customers that involves more than the delivery of mobile communications signals to and from the SSMN facilities to other networks, including the public switched telephone network and the Internet would constitute, if not cured within the above-described cure period, an Event of Default) ; or

(iii) any other default or breach of this Agreement by the Company that is not cured within thirty (30) days after notice is received by the Company (or such longer period as DoITT may deem appropriate in its discretion).

9.2.2 Notice and Cure Procedures

(a) Notices described in Section 9.2.1 above of defaults or breaches by the Company shall be provided in accordance with Section 10.4 hereof. Each such notice shall specify the alleged default(s) or breach(es) with reasonable particularity. Within fifteen (15) days after the notice of a default or breach, the Company may present a written response to the Commissioner presenting facts and/or arguments refuting that a default or breach has occurred. The submission of such a response, provided there is a bona fide, reasonable basis for such response, shall toll the running of any applicable cure period provided for in Section 9.2.1 hereof, such tolling to be effective until the City responds in writing to such submission.

(b) Notwithstanding anything to the contrary in this Agreement, no Event of Default described in clause (iii) of Section 9.2.1(a) shall exist if a default or breach is curable but work to be performed, acts to be done, or conditions to be removed cannot, by their nature, reasonably be performed, done or removed within the cure period remaining, so long as the Company shall have commenced curing the same within the cure period provided and shall diligently and continuously prosecute the same promptly to completion. For purposes of this Section 9, "cure" includes not only the Company coming into compliance with the Agreement on a going-forward basis, but also compensating the City for any injury or damages it has suffered during the period of non-compliance, unless such non-compliance resulted from events beyond the Company's reasonable control.

(c) Notwithstanding anything to the contrary in this Agreement, no Event of Default described in clause (ii) of Section 9.2.1(a) shall exist so long as the Company (x) submits, or has submitted, within the cure period provided, to DoITT a request for a franchise or amendment to franchise which would authorize (on terms reflecting the City then most recently prevailing form for the grant of comparable franchises) the applicable unauthorized use of the Inalienable Property, and thereafter diligently and continuously pursues its effort to obtain such franchise or amendment to franchise to completion, and (y) pays in full the applicable liquidated damages accruing from the first day the unauthorized use began.

(d) The provisions of Appendix E relative to notice, cure and other rights afforded to the Company's lenders shall be in addition to the rights contemplated by the other provisions of this Section 9.2.2.

9.3 Remedies of the City

9.3.1 Remedies. Upon an Event of Default DoITT may (subject to the provisions of Appendix E) at its option take any one or more of the following actions: cause a withdrawal from the Security Fund; seek money damages (and if such damages are awarded collect such) from the Company as compensation for the breach of this Agreement; terminate this Agreement; seek to restrain by injunction the Event of Default; and/or invoke any other available remedy that would be permitted by law. DoITT shall give the Company notice in writing when it determines to pursue one or more such remedies, but nothing herein shall prevent DoITT from electing more than one remedy, simultaneously or consecutively, for any breach, provided, however, that the City shall in no case be entitled to duplicate recoveries from different sources and provided, further, however, that the provisions of this Section 9.3 shall be subject in their entirety to the provisions of Appendix E. Notwithstanding anything to the contrary in the preceding, in the case of a breach or default with respect to which liquidated damages are due hereunder, the City's remedies shall be limited the collection of such liquidated damages and/or, if such default matures into an Event of Default, to termination of this Agreement).

9.3.2 Liquidated Damages The parties agree that it would be impracticable and extremely difficult to ascertain the amount of actual damages caused by a breach or default of this Agreement of the type described in Section 9.2.1(a)(ii) and that therefore if a default occurs as described in said Section 9.2.1(a)(ii), the following amounts shall constitute liquidated damages (and shall accrue throughout the entire period of such default and shall be due and payable in the same manner as, and simultaneously with, the quarterly payments of monetary compensation due under Section 3.2.1(b) hereof) which the parties agree represent is a reasonable estimate of the losses to which the City would be subject in the event of such a default. Therefore the Company shall, in the event of such a default, pay to the City as such liquidated damages the following amount (the "Quarterly LD Payment") per full or partial calendar quarter: thirty (30) cents (adjusted each quarter by the Phased Adjustment as defined below) per calendar quarter per foot of Installation Area, as that term is defined below (except that the Quarterly LD Payment thus due for a partial quarter shall be reduced from what it would otherwise be by multiplying it by a fraction equal to the Stub Adjustment as defined below). For purposes of this Section 9.3.1, the following terms shall be defined as follows:

The Stub Adjustment for any period less than a full calendar quarter is the percentage equal to the number of days in the applicable period divided by 90.

The Installation Area shall be defined pursuant to the following provisions:

(x) The Installation Area shall be calculated by adding together the Block Linear Feet applicable to every Block in the City in which the Company has installed facilities within the Inalienable Property. Block Linear Feet applicable to any Block in the City shall

mean the number of feet (rounded to the nearest foot) that results by measuring a straight line along the surface of the street from the midpoint of the intersection at one end of the block to the midpoint of the intersection at the other end of the block. A Block means a mapped street of the City running from one intersection with another mapped street of the City to the next intersection with another mapped street of the City.

(y) If the Company maintains multiple systems at any Block, as a result of, for example, multiple systems having been constructed or the merger of multiple companies that had each constructed systems, Installation Area shall be calculated separately with respect to each system, and the sum of the multiple Installation Areas shall be applied in the calculation of the Quarterly LD Payment as described above.

The Phased Adjustment shall mean an increase, with respect to each calendar quarter after the first full calendar quarter to occur during the Term and through and including the twentieth full calendar quarter to occur during the Term, in the amount of two cents ($.02), such that, for example, with respect to the second full quarter to occur during the Term the Quarterly LD Payment shall be 32 cents per calendar quarter per foot of Installation Area, in the third full quarter to occur during the Term the Quarterly LD Payment shall be 34 cents per calendar quarter per foot of Installation Area, etc.. Beginning with the twenty-first full calendar quarter to occur during the Term, the Phased Adjustment shall mean an increase each calendar quarter in the amount of three cents, such that for example, with respect to the twenty-first full quarter to occur during the Term the Quarterly LD Payment shall be 3 cents more per calendar quarter per foot of Installation Area than it was for the twentieth such quarter, in the twenty-second such quarter the Quarterly LD Payment shall be 3 cents more per calendar quarter per foot of Installation Area than it was in the twenty-first such quarter, etc..

The liquidated damages described above shall be payable, and shall be calculated as having begun to accrue as of the time the default began, regardless of whether or when the breach or default triggering such liquidated damages matures into an Event of Default that would authorize the City to terminate this Agreement.

SECTION 10 MISCELLANEOUS

10.1 Appendices The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in said Appendices, incorporated herein by reference and expressly made a part of this Agreement.

10.2 Entire Agreement This Agreement, including all Appendices hereto, embodies the entire understanding and agreement of the City and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements and understandings, whether oral or written, between the City and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the City or the Company.

10.3 Delays and Failures Beyond Control of Company Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in the performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure where the Company has exercised all due care in the prevention thereof, or other causes or events, to the extent that such causes or events are beyond the control of the Company (provided that mere financial incapacity shall not constitute a cause or event beyond the control of the Company for purposes of this Section 10.3). In the event that any such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct said cause(s). The Company agrees that in correcting said cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible. The Company shall notify DoITT in writing of the occurrence of an event covered by this Section 10.3 within five (5) business days of the date upon which the Company learns or should have learned of its occurrence.

10.4 Notices Every notice, order, petition, document, or other direction or communication to be served upon the City or the Company shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested or by an overnight delivery service such as Federal Express. Every such communication to the Company shall be sent to its office located at 45-18 Court Square, Suite 401, Long Island City, New York 11101, or to such other location in New York City as the Company may designate by notice hereunder to the City from time to time. Every communication from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to "the City," or to "DoITT" in which case such communication shall be sent to DoITT at 75 Park Place, Ninth Floor, New York, New York 10007 Attention: General Counsel or to such other location in New York City as the City may designate by notice hereunder to the Company from time to time. A required copy of each communication from the Company shall be sent to New York City Law Department, 100 Church Street, New York, New York 10007, Attention: Chief, Economic Development Division, or to such other location in New York City as the City may designate by notice hereunder to the Company from time to time. Except as otherwise provided herein, the

mailing of such notice, direction, or order shall be equivalent to direct personal notice and shall be deemed to have been given when mailed.

10.5 General Representations, Warranties and Covenants of the Company In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City), that, as of the Effective Date:

10.5.1 The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York and is duly authorized to do business in the State of New York. The Company has all requisite power and authority to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Certified copies of the Company's organizational and governing documents, as amended to date, have been delivered to the Commissioner, and are complete and correct. The Company is qualified to do business and is in good standing in the State of New York. The description of the ownership of the Company in Appendix D attached hereto is accurate and complete as of the Effective Date.

10.5.2 The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the Company has furnished the City with a certified copy of authorizations for the execution and delivery of this Agreement. This Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery by the Company and the City will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms (provided however that such warranty and covenant by the Company shall not constitute a waiver of any right, claim or matter that is not waivable by the Company under federal law). The Company has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

10.5.3 No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, or in connection with any submission to the City in connection with the Company's request for the franchise granted hereunder or the preparation of this Agreement.

10.6 Additional Covenants

10.6.1 In order to assure that the Inalienable Property and the use by the public thereof is adequately protected, the Company agrees that it will, prior to any construction, operation, maintenance, upgrade, repair or removal of the System in the Inalienable Property, secure all necessary permits, licenses and authorizations in connection with the construction, operation, maintenance, upgrade, repair or removal of the System, or any part thereof. The Company shall

not permit to occur, or shall promptly take corrective action if there shall occur, any event which could result in the revocation or termination of any such permit, license or authorization or, after notice or lapse of time or both, would permit revocation or termination of any such permit, license or authorization.

10.6.2 In order to assure that the Company is able to comply with the lawful terms of this Agreement, the Company will (a) preserve and maintain its existence, its business, and all of its rights and privileges necessary or desirable in the normal operation of the System in the Inalienable Property, and (b) shall maintain its good standing and authority to do business in the State of New York.

10.6.3 All of the properties, assets and equipment used as part of the System will be maintained at a level of good repair, working order and good condition that is necessary to assure the safety and protection of the Inalienable Property and the safe and efficient use of said Inalienable Property.

10.7 Binding Effect This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement shall apply to the Company, its successors, and assigns.

10.8 Rights Upon Termination

(a) Upon the termination of this Agreement, whether at its scheduled expiration or otherwise, the Company shall at the City's election (i) remove the System located on, over or under the Inalienable Property at the Company's own cost and expense, pursuant to subsection (e) hereof, and/or (ii) sell to the City or to the City's designee the portions of the System within the Inalienable Property and all equipment necessary for the functioning of such portions of the System.

(b) The price to be paid to the Company upon an acquisition pursuant to the preceding subsection (a) shall be the fair value of the System within the Inalienable Property, with no value allocable to the terminated or expired franchise itself, which price shall be the fair value as provided in Section 363(h)(5) of the City Charter, as it may be amended, or under any successor provision. Subject to the limitations found in the next sentence, to the extent the City effects an acquisition pursuant to clause (ii) of Section 10.8(a) above herein and within one year thereafter sells that portion of the System acquired to a third party, and the amount received by the City from such sale exceeds the price paid by the City to the Company pursuant to this Section 10.8, the City shall pay such excess amount to the Company after deducting all reasonable expenses incurred by the City in connection with such acquisition, interim operation and sale. The preceding sentence shall apply only in cases where the Agreement has not terminated by reason of termination for breach or default of this Agreement by the Company. The date of valuation for purposes of setting the price referred to in the first sentence of this subsection (b) shall be the date of termination of the Agreement. For the purpose of determining such valuation, the parties shall select a mutually agreeable independent appraiser to compute the purchase price in accordance with industry practice and the aforementioned standards. If they cannot agree on an appraiser in ten (10) days, the parties will seek an appraiser from the American Arbitration Association. The appraiser shall be instructed to make

the appraisal as expeditiously as possible, but in no more than sixty (60) days and shall submit to both parties a written appraisal. The appraiser shall be afforded access to the Company's books and records, as necessary to make the appraisal. Notwithstanding anything to the contrary in this Agreement, the parties shall share equally the costs and expenses of the appraiser.

(c) The City will notify the Company, within thirty (30) days after receipt of the appraisal described in the preceding subsection (b) of this Section 10.8, of its election pursuant to subsection (a) above of this Section 10.8. If it elects to make the purchase permitted under (a)(ii) above, the City will purchase the same at a closing to occur within a reasonable time after its election. The Company agrees, at the request of the City, (i) to operate the System within the Inalienable Property on behalf of the City pursuant to the provisions of this Agreement and such additional terms and conditions as are equitable to the City and the Company for a period of up to twelve (12) months after the termination of this Agreement, until the City either elects not to purchase any portion of the System within the Inalienable Property, or closes on such a purchase, or (ii) to cease all construction and operational activities affecting the portion of the System to be purchased in a prompt and workmanlike manner.

(d) In the event of any acquisition by the City or the City's designee pursuant to this Section 10.8 hereof, the Company shall:

(i) cooperate with the City to effectuate an orderly transfer of all necessary or appropriate records and information concerning the assets to be transferred to the City;

(ii) promptly execute all appropriate documents to transfer to the City, subject to any liabilities, title to the assets being transferred as well as any contracts, leases, licenses, permits, rights-of-way, and any other rights, contracts or understandings necessary to maintain and operate such assets, as appropriate; provided, that such transfers shall be made subject to the rights, under Article 9 of the Uniform Commercial Code as in effect in the State of New York and, to the extent that any collateral consists of real property, under the New York Real Property Law, of banking or any other lending institutions which are secured creditors or mortgagees of the Company at the time of such transfers; and provided, that, with respect to such creditors or mortgagees, the City shall have no obligation following said transfers to pay, pledge, or otherwise commit in any way any general or any other revenues or funds of the City, other than the gross operating revenues received by the City from its operation of the assets purchased, in order to repay any amounts outstanding on any debts secured by such assets which remain owing to such creditors or mortgagees; and provided, finally, that the total of such payments by the City to such creditors and mortgagees, from the gross operating revenues received by the City from its operation of the such purchased assets, shall in no event exceed the lesser of: (i) the fair market value of such assets on the date of the transfer of title to the City or (ii) the outstanding debt owed to such creditors and mortgagees on said date(nothing in this Section 10.8 shall be construed to limit the rights of any such secured creditors to exercise its or their rights as secured creditors or mortgagees at any time prior to the payment of all amounts due pursuant to the applicable debt instruments); and

(iii) promptly supply the City with all necessary records (i) to reflect the City's ownership of the System within the Inalienable Property; and (ii) to operate and maintain the System within the Inalienable Property including, without limitation, plant and equipment layout documents.

(e) In the event of an election by the City of the alternative set forth in clause (i) of subsection (a)(i) of this Section 10.8 upon any termination of this Agreement, the City may, but shall not be obligated to, direct the Company to remove, at the Company's sole cost and expense, all, or any portion designated by the City, of the System from the Inalienable Property in accordance with all applicable requirements of the City and subject to the following:

(i) this provision shall not apply to those buried portions of the System which, in the reasonable judgment of the City, cannot be removed without undue adverse effect on public use of the Inalienable Property;

(ii) in removing System facilities and equipment from the Inalienable Property the Company shall refill and compact, at its own cost and expense, any excavation that shall be made by it and shall leave, in all material aspects, all Inalienable Property and other property in as good condition as that prevailing prior to the Company's removal of the System from the Inalienable Property and without affecting, altering or disturbing in any way any electric, telephone or other cables, wires, structures or attachments owned by the City or any Person other than the Company;

(iii) the City shall have the right to inspect and approve the condition of such Inalienable Property after removal and, to the extent that the City reasonably determines that said Inalienable Property has not been left in materially as good condition as that prevailing prior to the Company's removal of the System therefrom, the Company shall be liable to the City for the cost of restoring the Inalienable Property and other property to said condition;

(iv) the Security Fund, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all affected Inalienable Property, and for not less than one hundred twenty (120) days after final completion thereof; and

(v) removal shall be commenced within thirty (30) days of the removal order by the City and shall be substantially completed within twelve (12) months thereafter including all reasonably associated repair of the Inalienable Property.

(f) If, in the reasonable judgment of the Commissioner, the Company fails to commence removal of the System from the Inalienable Property as designated by DoITT, within thirty (30) days after DoITT's removal order, or if the Company fails to substantially complete such removal, including all associated repair of the Inalienable Property, within twelve (12) months thereafter, then, to the extent not inconsistent with applicable law, the City shall have the right to either:

(i) remove all or part of the System located within the Inalienable Property at the Company's cost and expense, such removal to be performed by City personnel or, at the City's option, by another Person; or at the City's option

(ii) take ownership of any portion of the Company's System within the Inalienable Property designated by the City for removal and not timely removed by the Company, which portion shall belong to and become the property of the City without payment to the Company (notwithstanding the provisions of subsections (a)(ii), (b), (c) and (d) of this Section 10.8) and the Company shall execute and deliver such documents, as the Commissioner shall request, in form and substance acceptable to the Commissioner, to evidence such ownership by the City (although failure by the Company to execute and/or deliver such documents shall not limit, compromise or affect the City's ownership of the applicable facilities).

(g) None of the decisions, directions or actions of the City pursuant to this Section 10.8 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

(h) Upon the later of the date one hundred and twenty (120) days after the termination of this Agreement for any reason or the date of the completion of removal of the System from and associated repair of the Inalienable Property pursuant to this Section 10.8 (or in the case of portions of the System that are, pursuant to a City decision under this Section 10.8, not being removed from the Inalienable Property, the date on which the Company delivers documentation confirming transfer of such portion of the System to the City), the Company shall be entitled to the return of the Security Fund deposited pursuant to Section 5 hereof, or such portion thereof as remains on deposit with the City at said termination, provided that all offsets necessary (i) to reflect any withdrawals by the City from the Security Fund permitted pursuant to this Agreement, (ii) to cover any costs, loss or damage incurred by the City as a result of any Event of Default, and (iii) to reimburse the City for any and all costs and expenses incurred by the City related to removal of the System from the Inalienable Property pursuant to this Section 10.

(i) The City and the Company shall negotiate in good faith all other terms and conditions of any acquisition or transfer of the System located within the Inalienable Property, except that the Company hereby waives its rights (to the fullest extent such rights are lawfully waivable), if any, to relocation costs arising out of the termination of this Agreement pursuant to this Section 10.8 that may be provided by law and except that, in the event of any acquisition of the System within the Inalienable Property by the City: (i) the City shall not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by the Company or any other obligations of the Company or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System acquired by it in any manner.

10.9 No Waiver; Cumulative Remedies No failure on the part of the City to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies

provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of the City under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City at any other time. In order for any waiver of the City to be effective, it must be in writing. The failure of the City to take any action regarding a breach or default of this Agreement or an Event of Default hereunder by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City to take any action permitted by this Agreement at any other time regarding such breach, default or Event of Default which has not been cured, or with respect to any other breach, default or Event of Default by the Company.

10.10 Partial Invalidity. Except as expressly set forth otherwise in this Agreement, if any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid or unenforceable, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, then the party which had been the beneficiary of such invalidated portion shall have the right (except as may be limited by law), at its option, to terminate this Agreement (as if the scheduled expiration of the Term had occurred pursuant to Section 2.1 hereof) and invoke the termination provisions hereof as set forth in Sections 2.3.2 and 10.8 hereof, except that if the other party waives such invalidity and continues to comply voluntarily with such invalidated portion then so long as such voluntary compliance continues the right to terminate described in this Section 10.10 shall not apply. To the extent this Section 10.10 is itself determined to be inconsistent with law, it shall be deemed to be narrowed in its scope to the extent necessary to render it lawful.

10.11 Headings The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby," "herein," "hereof," "hereinafter," "hereunder," and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

10.12 No Agency The Company shall conduct any work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

10.13 Governing Law This Agreement shall be deemed to be executed in the City of New York and State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York, as applicable to contracts entered into and to be performed entirely within that State.

10.14 Survival of Representations and Warranties All representations and warranties contained in this Agreement shall survive the end of the Term.

10.15 Delegation of City Rights The City reserves the right to delegate and redelegate, from time to time and to the extent permitted by law, any of its rights or obligations under this Agreement to any governmental body or organization, or official of any other governmental body or organization, and to revoke any such delegation or redelegation. Any such delegation or redelegation by the City shall be effective upon written notice by the City to the Company of such delegation or redelegation. Upon receipt of such notice by the Company, the Company shall be bound by all terms and conditions of the delegation or redelegation not in conflict with this Agreement. Any such delegation, revocation or redelegation, no matter how often made, shall not be deemed an amendment to this Agreement or require the Company's consent.

10.16 Claims Under Agreement The City and the Company agree and intend that, except to the extent such agreement would be impermissible under applicable law, any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in a court of the United States ("Federal Court") located in New York City or in a court of the State of New York ("New York State Court") located in the City and County of New York. To effect this agreement and intent, the Company agrees that:

(a) If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in Section 10.18 hereof;

(b) With respect to any action between the City and the Company in New York State Court, the Company hereby expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court outside of the City of New York; and (iii) to move for a change of venue to a court of the State of New York outside New York County;

(c) With respect to any action between the City and the Company in Federal Court, the Company expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York; and

(d) If the Company commences any action against the City in a court located other than in the City and State of New York, then, upon request of the City, the Company shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City of New York. When the Company either gives such consent or dismisses such action, to allow for such reinstitution, the City agrees, where it is able, to waive any statute of limitation, provided the

Company has brought such action at least three (3) months prior to the expiration of the statute of limitation and has provided the City with notice pursuant to this Agreement.

10.17 Modification Except as otherwise provided in this Agreement, any Appendix to this Agreement or applicable law, no provision of this Agreement nor any Appendix to this Agreement shall be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the City and the Company, and approved as required by applicable law. Appendix E shall not be modified without the prior written consent of the Collateral Agent (as such term is defined in Appendix E).

10.18 Third Party Beneficiary. The Collateral Agent and the Lenders (as each such term is defined in Appendix E) shall be third party beneficiaries of and shall be entitled to enforce the provisions of Appendix E.

10.19 Service of Process Process may be served on the Company either in person, wherever the Company may be found, or by registered mail addressed to the Company at its office in the City, or as set forth in Section 10.4 of this Agreement, or to such other location as the Company may provide to the City in writing, or to the Secretary of State of the State of New York.

10.20 Matching Provision In the event that the City, after the date that this Agreement has been fully executed, enters into a binding, written franchise agreement granting a franchisee other than the Company authority to use the Inalienable Property to provide facilities and services in a manner comparable to that authorized hereunder, and such franchise agreement contains provisions imposing lesser obligations on the franchisee thereunder than are imposed by the provisions of this Agreement, then the Company may petition DoITT for a reduction in its obligations hereunder, which petition DoITT shall not unreasonably delay or deny if DoITT, acting reasonably, determines

(i) that the reduction in obligations sought by the Company must be granted in order to ensure fair and equal treatment between the Company and the other franchisee, and

(ii) that the Company is in compliance with this its obligations under this Agreement, and

(iii) that the obligations imposed on the Company under this Agreement, taken as a whole, place the Company at a substantial competitive disadvantage in relation to the obligations imposed on the other franchisee, and

(iv) that the reason for the City's imposition of lesser obligations on the other franchisee are not the result of the differing nature of the City's legal authority with respect to such other franchisee or its activities, and

(v) that the City's imposition of lesser obligations on the other franchisee are not justified by other benefits to the City or its citizens that are being received in connection with such other franchisee's services and are not being received in connection with the Company's services.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Execution Date.

THE CITY OF NEW YORK

By: _____
Deputy Mayor

By: Department of Information Technology and Telecommunications

By: _____

Approved as to form and certified as to legal authority:

_____
Acting Corporation Counsel

TRANSIT WIRELESS, LLC

By: _____
Title:

_____
City Clerk

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Execution Date.

APPENDIX A

CONSTRUCTION TERMS

A. Location of Cable

1. In order to assure efficient management and use of the City's public rights-of-way, the Company shall install all cables and other equipment located within the Inalienable Property in a manner consistent with existing telephone or public utility lines, which general requirement shall include, without limitation, the following specific obligations:

(a) If and when the Company seeks to install cables and related equipment in an area of the City in which lines within the Inalienable Property are installed within the duct and conduit facilities of Empire City Subway Company, Ltd. (ECS) or Consolidated Edison Company of New York Inc. (CECONY), or their successors, the Company shall install its cables and related equipment that are to be located within the Inalienable Property within the duct and conduit facilities of ECS or CECONY (and if no space is available within the facilities of ECS or CECONY, the Company shall apply to either ECS or CECONY for construction of new facilities necessary to support the Company's installation). The selection of which entity to use, ECS or CECONY, shall be at the Company's discretion wherever a choice is available. If the City's contractual arrangements with ECS and CECONY as they exist as of the Effective Date should change in a material manner or be replaced during the term of this franchise, the terms of this subsection (a) shall be deemed adjusted to reflect such reasonable new arrangements regarding management and use of common duct and conduit facilities as may be adopted by the City.

(b) In any area of the City where existing landline communications cables within the Inalienable Property are located underground, the Company shall install its cable and related facilities underground, except as otherwise provided in this Agreement or as otherwise approved by the agencies of the City having jurisdiction over such matters (it is understood that among other conditions that an agency of the City may place on the granting of any such approval may be, to the fullest extent permitted by law, a requirement of additional compensation for use of the Inalienable Property in addition to and not in lieu of that contemplated in Section 3 of this Agreement, which Section 3 compensation is only intended to cover compensation for use of the Inalienable Property in a manner that does not require such additional approval).

2. Whenever possible, the Company shall, in order to minimize the burden on the public rights-of-way, install its cables and other equipment (not otherwise covered by Section 1(a) above of this Appendix) using existing telephone or utility (as that term is defined in 47 USC § 224 in effect as of the Effective Date) ducts, conduits, poles or similar facilities. If and when space for the Company to install its cables and related equipment using such existing ducts, conduits, poles or similar facilities cannot be obtained, the Company may install its own such facilities, provided that:

(a) The Company shall first obtain all necessary permits from the City's Department of Transportation and/or other applicable City agencies, including, without limitation, with respect to additional above ground poles or similar facilities, possible land use review pursuant to Department of City Planning requirements and possible requirement of additional compensation in a manner comparable to that referred to in the parenthetical in Section 1(b) above of this Appendix (in addition, prior to applying for any such permit, the Company shall have submitted to DoITT for DoITT's approval, and received DoITT's approval of, a plan indicating all anticipated requests for permits to be made pursuant to this provision, which plan may be updated from time to time by submission and approval of an updated plan);

(b) all above-ground facilities will be maintained in accordance with such maintenance standards applicable to such facilities as are or may hereafter be established by the City; and

(c) the use of pedestal boxes installed on sidewalks, or similar street-level equipment, is not authorized by this franchise.

3. In the event of any inconsistency between this Appendix A and applicable provisions of the New York City Administrative Code or rules of the New York City Department of Transportation (the "Department of Transportation"), or other rules of the City, such provisions and rules shall prevail.

B. Additional Construction Terms

1. The Company shall comply with all applicable federal, state and City laws, rules, codes, and other requirements, in connection with the construction, repair, upgrade and maintenance of the System within the Inalienable Property of the City, now or hereafter in effect, provided such are lawful and not preempted.

2. The installation of all cables, wires, or other component parts of the System in or on any structure within the Inalienable Property shall be undertaken in a manner which does not interfere with the operation or use of any existing conduit or preexisting system or facility of any third party.

3. The Company must comply with, and shall ensure that its subcontractors comply with, all applicable lawful rules, regulations and standards of the Department of Transportation provided such are lawful and not preempted. If the construction, upgrade, repair, maintenance or operation of the System does not comply with such lawful, non-preempted rules, regulations and standards, the Company must, at its sole cost, remove and reinstall such cables, wires or other component parts of the System to ensure compliance with such rules, regulations and standards.

4. The Company shall comply with requirements as may be adopted from time to time by the City regarding the periodic inspection by the Company of any of its facilities that are located within the Inalienable Property and which are on the surface of the ground or above ground, provided such requirements are reasonable for the purpose of assuring compliance with reasonable safety and esthetic standards for such facilities.

5. (a) The Company shall provide, in a format acceptable to the Commissioner, and to the extent (pursuant to subparagraph (c) below) different from the requirements set forth in subparagraph (b) below, consistent with industry standards, maps and other information detailing the location of the System installed in the streets of the City pursuant to this Agreement.

(b) As of the Effective Date, the following format is acceptable to the Commissioner:

(i) For any installation where the Company initiated a street cut and installed its own duct and Fiber, all locations of such infrastructure elements must be produced utilizing the City's accurate physical base map (NYCMAP). The submission must be digital – provided on a CD, DVD or external hard drive and the infrastructure elements depicted must be accurate within two feet vertically and six inches horizontally, to match with the NYCMap.

(ii) For any installation where the Company used the ducts of a third party, the Company shall use its best efforts to create maps using such specific source information, datapoints and detail as may have been made available to the Company upon the Company's request from the third party owning the underlying facilities where the System is installed.

(iii) The data, both graphical and attribute, must be formatted so that it can be easily read into an Oracle 10g database. Line styles and symbols must conform to DoITT standards and all data must be structured according to DoITT specifications. Acceptable formats include, but are not limited to: ESRI shapefiles (preferred) and drawing interchange file.

(c) Upon written notice to the Company, the Commissioner may reasonably change the format requirements described in (b) above.

APPENDIX B

IN-KIND COMPENSATION

A. (i) The Company will provide the City, for the City's use, with the lesser of (x) six fiber strands, or (y) ten percent (10%) of the total strands, within a total of twenty miles of the Company's fiber optic network "backbone". The term "backbone" as used in this Appendix B shall mean any portion of the Company's fiber optic network that contains twenty-four (24) or more fiber strands. The selection of the particular twenty miles of fiber backbone in which the capacity described above will be provided for the City's use shall be made by the City, subject to the approval of the Company, which approval shall not be unreasonably withheld.

(ii) The fiber strands provided to the City in accordance with this Appendix B shall be of the same type, quality and capacity standard as the other fiber strands installed. In the event of the use of a technology other than fiber optic strands, reasonably equivalent in-kind compensation will be provided to the City. The fiber strands provided to the City as in-kind compensation hereunder will be owned by the City and the City will hold title to such strands, which title shall be free of encumbrance by actions of the Company. Upon termination of this Agreement, the City's title to such strands will remain in effect, except that if the City directs the removal of all or part of the Company's facilities from the Inalienable Property after termination under Section 10.8 of this Agreement, then the City's title to such strands will terminate upon the removal by the Company of those cables removed pursuant to such City direction. The Company shall, as part of its in-kind compensation to the City for use of the public right-of-way maintain and keep in good repair (or provide for the maintenance and good repair of) the fiber strands set aside for the City hereunder to the same standard as it applies to strands used by the Company's customers or by the Company to provide service to its customers, but the Company shall have no responsibility for any maintenance or repair of any fiber outside the boundaries of the Company's Fiber located in the Inalienable Property. The parties agree that it is not the intention of this Exhibit B to require the Company to provide "drops" (i.e., electronics and wiring not located in the Inalienable Property that is within or serving particular buildings) to the City or to pay any of the operational costs associated with such "drops", for example third party rental costs.

B. (i) In addition to and not in lieu of the in-kind compensation described in Section A. above, the Company hereby grants the City, and the City hereby holds, an option to purchase from the Company a "First Responder Subway Station Communications System" (or "First Com System"), as defined below. Said option is referred to hereinafter as the First Com Option. The procedure by which the First Com Option would be exercised by the City if it chooses to do so, the price the City would pay for the First Com System, and the terms on which the First Com System would be provided are described in this Section B. A First Com System is a system that would provide communications services, within subway stations in which the Company has or will have facilities, to first responders such as police, fire and/or emergency medical services.

(ii) If the City decides at any time during the first six (6) years of the Term that it wishes to commence a system design process which may result in the City's exercise of the First Com Option, the City will provide a written notice to the Company (the "Initial Notice") notifying the Company that the City is commencing a process to determine whether the City will exercise the First Com Option and describing the general specifications of the First Com System which the City is considering purchasing from the Company. Within 120 days after the day such Initial Notice is delivered to the Company, the Company shall provide to the City, in written form, a detailed proposal for the construction of a First Com System that accords with the general specifications described in the Initial Notice, which detailed proposal shall include (1) detailed plans and specifications, (2) a proposed schedule of work, and (3) a proposed price including a reasonably detailed breakdown of price components (which proposed price and breakdown shall conform with the with the requirements for system pricing described in subsection (iii) below). Preparation by the Company of such proposal shall be at no cost to the City unless the City ultimately chooses to exercise the First Com Option. Within 60 days after delivery of the Company's proposal, the City shall notify the Company either of any additions or changes it seeks in the Company's proposal, or alternatively that such proposal is acceptable to the City to serve as a proposal with respect to which the City will subsequently either exercise the First Com Option or not. If the City's notice requests additions or changes, the Company shall provide within 60 days of the delivery of the City's notice, a revised proposal reflecting such requested changes or additions. Each time the Company delivers a revised proposal, the City shall have a further opportunity within 60 days to notify the Company of further additions or changes sought and the Company shall thereafter have 60 days to deliver a responsive proposal, such back and forth continuing until the City indicates that the most recently revised proposal is acceptable to serve as a final proposal on which the City will thereafter make its decision whether or not to exercise its option. Such notice from the City shall then trigger a further 30-day period during which the City shall deliver a notice to the Company indicating that the City is or is not exercising its option to purchase the proposed system at the proposed price in accordance with plans and specifications and project schedule. The Company shall act reasonably in developing any proposal in response to an Initial Notice and in response to any requested changes from the City submitted in response to a proposal or revised proposal, and the City shall act reasonably in requesting changes to any proposal or revised proposal (in all cases such reasonableness to reflect reasonable efforts to enhance the effectiveness and responsiveness of first responders to emergency conditions in the applicable subway stations) in a manner consistent with the City's Initial Proposal.

(iii) The price of a First Com System purchased pursuant to the exercise of a First Com Option shall be the sum of (x) the Company's documentable out-of-pocket, incremental, marginal costs (i.e., the actual out-of-pocket costs to the Company of providing the First Com System as compared to what its costs and expense would be if it did not provide such a system), plus (y) ten percent (10%) of the amount described in the preceding clause (x), which amount the parties agree to accept as a fair reflection of overhead costs and reasonable administrative fees in connection with the First Com System. To the extent the First Com System that the City proposes includes ongoing operation and maintenance services by the Company in addition to initial construction/installation, the pricing of such ongoing maintenance and operation within the overall of the system shall be determined using the same method as in the previous sentence. The Company shall not be obligated to perform ongoing operation and/or maintenance as part of

a First Com System obligation beyond the scheduled expiration date of this Agreement, although the subject of continuing such operation and/or maintenance services beyond such date may at the discretion of the parties be a topic of discussion in connection with negotiation of any renewal of this Agreement.

(iv) Notwithstanding anything to the contrary above, in no event will a First Com System be of a nature such that it would interfere with the operation of the NYCTA WICOM network as it is then operating pursuant to the License.

APPENDIX C

STANDARD CITY CONTRACT PROVISIONS

The following standard City contract provisions are applicable to this Agreement and thus absent any state or federal law to the contrary shall be binding on the Company. However, to the extent it is determined by a court of competent jurisdiction and after all appeals have been exhausted that any one or more such provisions are beyond the City's authority to enforce or to require in the context of this Agreement, then each such provision that is the subject of such a determination shall be treated, as the case may be, as either unenforceable or as excised from this Agreement and not applicable hereunder. All the provisions set forth in this Appendix C are intended to be severable, and thus any such unenforceability or excision and nonapplicability as described in the preceding sentence shall (notwithstanding anything to the contrary stated within such provisions) not result in the termination of this Agreement generally or of any provisions of this Agreement that remain enforceable or that are not thus excised and rendered nonapplicable.

A. INVESTIGATIONS CLAUSE

1.1 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York ("State") or City of New York ("City") governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

1.2 (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

1.2 (b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in a investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

1.3 (a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

1.3 (b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 1.5 below without the City incurring any penalty or damages for delay or otherwise.

1.4 The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

1.5 The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on a unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 1.4 above, provided that the party or entity has given actual notice to the commissioner or at the hearing called for in 1.3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

1.6 (a) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(b) The term "person" as used in this Section A. of Appendix C shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receive monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

1.7 In addition to and notwithstanding any other provision of this agreement the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less that three (3) days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or things of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

B. MACBRIDE PRINCIPLES PROVISIONS

ARTICLE I. MACBRIDE PRINCIPLES

NOTICE TO ALL PROSPECTIVE CONTRACTORS

Local Law No. 34 of 1991 became effective on September 10, 1991 and added Section 6-115.1 to the Administrative Code of the City of New York. The local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of workplace opportunity.

Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business in Northern Ireland operations conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker of the City Council or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the City that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

PART A

In accordance with Section 6-115.1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

PART B

For purposes of this section, the following term shall have the following meaning:

"MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

(1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

(2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

(3) ban provocative religious or political emblems from the workplace;

(4) publicly advertise all Job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

(5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

(6) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

(7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade ad improve the skills of workers from underrepresented religious groups;

(8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

(9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE II. ENFORCEMENT OF ARTICLE I.

The contractor agrees that the covenants and representations in Article I above are material conditions to this contract, unless otherwise expressly set forth herein. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

C. EMPLOYMENT AND PURCHASING

1. Right to Bargain Collectively The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize and deal with the representatives duly designated or selected by a majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, and hours of employment or any other terms, conditions or privileges of employment. The Company shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

2. Local Preference The Company shall, at its own cost and expense, develop and maintain a plan for the recruitment, education, training and employment of residents of the City, for the opportunities to be created by the construction, operation, marketing and maintenance of the System within the Inalienable Property. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. Such plan shall be designed so as to ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Company. Such plan shall be updated from time to time as the City deems reasonably necessary. The Company shall, throughout the Term, implement such plan, at its own cost and expense, by ensuring, to the maximum feasible extent, the recruitment, education, training, and employment of City residents.

3. City Vendors To the maximum feasible extent, after taking into account price and quality considerations, the Company shall utilize vendors located in the City in connection with the construction, operation, marketing and maintenance of the System. The Company shall, after taking into account price and quality considerations, in the purchase of comparable materials, equipment, services or supplies of any nature, give effect to a preference for such items which are assembled, manufactured, or otherwise produced, in whole or in part, within the City.

4. Equal Employment Opportunity The Company agrees to comply with the provisions of Mayor's Executive Order No. 50 (April 25, 1980) (codified at Title 10 Sections 1-14 of the Rules of the City of New York) and City Administrative Code 6-108 and all rules and regulations promulgated thereunder (collectively, the "EEO Requirements"), as such EEO Requirements may be amended, modified or

superseded throughout the Term. Notwithstanding that the EEO Requirements may not apply on their face to the Company based solely on its status as a party to this Agreement, the Company shall comply in all respects with the provisions of such EEO Requirements and successor and replacement laws, orders and regulations adopted following the Effective Date. As required by said Executive Order No. 50, the provisions of Sections 50.30 and 50.31 of the Final Rule implementing said Order are incorporated herein by this reference. The Company agrees to make a reasonable inquiry and to engage in reasonable compliance monitoring efforts with all unions to ensure that all contractors and subcontractors comply with the required contractual language in Paragraph 5 of this Section C. of this Appendix C. The Company shall not contract with and shall discontinue any contract entered into after the Effective Date with any union, contractor or subcontractor that refuses to agree to or fails to comply with the contractual language in said Section 5.

5. Enforcement The Company shall take steps to ensure that the requirements of the preceding Paragraph 4 are adhered to by each union with which the Company deals, each officer, employee, agent, contractor or subcontractor of the Company, and each Person performing work pursuant to this Agreement with respect to the System for, on behalf of, or at the discretion of, the Company. The requirements of said Paragraph 4 hereof shall apply to every contract relating to the System between the Company and: (i) any union; (ii) any contractor; (iii) any subcontractor; or (iv) any Person with which any of the foregoing Persons has a relationship in connection with any aspect of the System. To comply with the obligations of said Paragraph 4 and this Paragraph 5, the Company shall include, in all contracts described in the foregoing sentence which are entered into following the Effective Date (which shall include any renewals, amendments and modifications of existing contracts), the following language, stating that such party: "has received a copy of Section C of Appendix B of a certain agreement by and between the City of New York and the Company dated as of [insert Effective Date] pursuant to which the Company agreed to comply with each term, condition and requirement of said Section C, which terms, conditions and requirements are deemed to be incorporated herein by this reference."

D. ADDITIONAL COVENANTS

Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, the Company agrees that it will comply with the following affirmative covenants, unless the City otherwise consents in writing:

The Company shall comply with: (a) all laws, rules, regulations, orders, writs, decrees and judgments applicable to the System within the Inalienable Property (including, but not limited to, those of the PSC and the FCC and any other federal or state agency or authority of competent jurisdiction); and (b) all local laws and all rules, regulations, orders, or other directives of the City, DoITT, and the Commissioner related to management of the Inalienable Property to the extent lawful and nor preempted.

The Company agrees to comply in all respects with the City's Vendor Information Exchange System, as the same may be amended from time to time.

APPENDIX D

COMPANY CONTROL AS OF THE EFFECTIVE DATE

A. Ownership Interests as of the Effective Date:

Broadcast Australia US Corp.: 55.58%

NABQ Wireless LLC: 24.33%

TCP NY Underground LLC: 20.09%

B. Pre-Approved Transactions:

Any transfer of an ownership interest in the Company which (a) after giving effect to such transfer Broadcast Australia US Corp. maintains not less than a 50% ownership interest in the Company, and (b) is such that no transferee of a 10% or greater ownership interest is a Prohibited Person as that term is defined in Appendix E of the Agreement.

APPENDIX E

COMPANY LENDER PROVISIONS

ARTICLE 1

DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Section 1.01 Definitions

Capitalized terms used but not otherwise defined in this Appendix E have the respective meanings set forth in the Agreement to which this Appendix E is appended. In addition, the following terms have the meanings specified below:

City Notice has the meaning given to it in Section 2.02(a) of this Appendix E.

Collateral Agent means an entity, designated by Lenders and acceptable to the City, acting as agent for the Lenders.

Cure Period means the period commencing on the date that the Collateral Agent receives a City Notice pursuant to Section 2.02(a) of this Appendix E and ending on the earliest of:

(a) the relevant Cure Period Completion Date;

(b) any Step-out Date or Substitution Effective Date; or

(c) the last day of the Term.

Cure Period Completion Date means, subject to Section 8.02 of this Appendix E, the date falling thirty (30) days after the date that the Collateral Agent receives a City Notice.

Designated Account means an account designated by the Collateral Agent by notice given to the City in accordance with this Agreement.

Discharge Date means the date on which all of the obligations of the Company under the Finance Documents have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

Finance Documents means the Loan Agreement and the agreements, documents and instruments executed by the Company in favor of the Lenders as contemplated thereby.

Finance Documents Event of Default has the meaning given to the term Event of Default in the Finance Documents.

Franchise Agreement Event of Default has the meaning given to the term Event of Default in Section 9.2.1 of the Agreement.

Lender means the lenders under the Loan Agreement.

License Agreement Event of Default has the meaning given to the term Event of Default in the License Agreement.

Loan Agreement means the loan agreement the proceeds of which will be used by the Company to perform its obligations under the License Agreement and the Agreement.

NYCT Direct Agreement means the direct agreement, dated as of the date of the Loan Agreement, by and among the Collateral Agent, the NYCTA and the Company.

"Prohibited Person" shall mean any Person if:

(a) such Person or any of its Affiliated Persons is in monetary default or in breach of any non-monetary obligation under any written agreement with the State of New York (including without limitation for all purposes of this definition, MTA or NYCTA) or the City of New York after notice and beyond any applicable cure periods, unless, in each instance, such monetary default or breach either (i) has been waived in writing by the State or City of New York, (ii) is being disputed in a court of law, administrative proceeding, arbitration or other similar forum, (iii) is cured within thirty (30) days after a determination and notice to the Company from the City that such Person or such Affiliated Person is a Prohibited Person as a result of such default or breach, or (iv) is in connection with a payment default under a mortgage loan that is either recourse or non-recourse to a single purpose entity borrower and issued by an agency or authority of the State or City of New York other than MTA or its subsidiaries;

(b) such Person or any of its Affiliated Persons has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude, is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or has had a contract terminated by any governmental agency for breach of contract or for any cause directly or indirectly related to an indictment or conviction. The determination as to whether any Person or such Affiliated Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure for purposes of this paragraph (b) shall be within the sole discretion of the City acting in good faith;

(c) such Person or any of its Affiliated Persons is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization, including those Persons included on any relevant lists maintained by the United Nations, the North Atlantic Treaty Organization, the Organization for Economic Cooperation and Development, the Financial Action Task Force, or the Office of Foreign Assets Control, Securities and Exchange Commission, Federal Bureau of Investigation, Central Intelligence Agency or Internal Revenue Service of the United States, all as may be amended from time to time. The determination as to whether any Person or such Affiliated Person is a terrorist or terrorist organization or is reputed to have substantial business or other affiliations with a terrorist or terrorist organization for purposes of this paragraph (c) shall be within the sole discretion of the City, which discretion shall be exercised in good faith, provided however that with respect to this subsection (c) and subsections (a) and (b) above an Affiliated Person who is alleged by the City to be a Prohibited Person shall upon fifteen days written notice by the City to the Company have opportunity to withdraw from such affiliation and shall upon such withdrawal cease to be considered an Affiliated Person;

(d) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, which is (i) finally determined, beyond right to appeal, by the Federal Government of the United States or any agency, branch or department thereof to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or (ii) subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court or by the Federal Government of the United States or any agency, branch or department thereof;

(e) such Person is a government, or is directly or indirectly controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended; or

(f) such Person has received written notice of default in the payment to the City of any real property taxes, sewer rents or water charges, in an amount greater than Ten Thousand Dollars ($10,000), unless such default is then being contested in good faith in accordance with applicable legal requirements with due diligence in proceedings in a court or other appropriate forum or unless such default is cured within thirty (30) days after a determination and notice to the Company from the City that such Person is a Prohibited Person as a result of such default.

Property means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Qualified Substitute Franchisee means a Person who:

(a) has the legal capacity, power and authority to become a party to, and perform the obligations of the Company under, the License Agreement as determined by NYCTA, and this Agreement, as determined by the City;

(b) has the resources available to it (including committed financial resources) to perform the obligations of the Company under the License Agreement as determined by NYCTA and this Agreement, as determined by the City;

(c) employs or subcontracts with Persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Company under the License Agreement as determined by NYCTA and this Agreement, as determined by the City;

(d) has successfully completed an up-to-date City Vendex review process, and

(e) is not a Prohibited Person, and

(f) succeeds to the interest of the Company under the License Agreement.

Shareholders means Broadcast Australia US Corporation, Tailwind NY Underground LLC, and NAB Q Wireless LLC;

Step-in Date has the meaning given to it in Section 4.01(c) of this Appendix E.

Step-in Entity has the meaning given to it in Section 4.01(b) of this Appendix E.

Step-in Entity Accession Agreement means the agreement to be entered into by a Step-in Entity pursuant to Section 4.01(c) of this Appendix E.

Step-in Notice has the meaning given to it in Section 4.01(a) of this Appendix E.

Step-in Period in relation to a Step-in Entity means the period from and including the Step-in Date until the earliest of:

(a) the last day of the Cure Period;

(b) the Substitution Effective Date;

(c) the Step-out Date;

(d) the date of termination of the License Agreement by the NYCTA in accordance with the License Agreement; and

(e) the last day of the Term.

Step-out Date in relation to a Step-in Entity means the date upon which any Step-out Notice is served by such Step-in Entity pursuant to Section 4.03 of this Appendix E.

Step-out Notice has the meaning given to it in Section 4.03(a) of this Appendix E.

Substitute has the meaning given to it in Section 5.01 of this Appendix E.

Substitute Accession Agreement means the agreement to be entered into by a Substitute pursuant to Section 6.01 of this Appendix E.

Substitution Effective Date has the meaning given to it in Section 6.01 of this Appendix E.

Substitution Notice has the meaning given to it in Section 5.01 of this Appendix E.

Section 1.02 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the Agreement and the provisions of this Appendix E, the provisions of this Appendix E shall prevail.

Section 1.03 No Effect on Agreement

Nothing in this Agreement amends or modifies any of the Company's obligations to the City under the Agreement.

ARTICLE 2

CONSENT TO SECURITY AND NOTICES

Section 2.01 Consent to Security

Notwithstanding anything to the contrary in the Agreement:

(a) the City acknowledges notice and receipt of and consents to:

(i) the assignment by the Company to the Collateral Agent of all of the Company's interests in the Agreement pursuant to the Finance Documents; and

(ii) the grant by each of the Shareholders to the Collateral Agent of a security interest in their respective equity interests in the Company, in each case pursuant to the Finance Documents;

(b) none of the security interests referred to in Section 2.01(a) of this Appendix E:

(i) constitute (or with the giving of notice or lapse of time, or both, could constitute) either a breach of the Agreement or a default on the part of the Company under the Agreement; or

(ii) require any consent of the City that is either additional or supplemental to those granted pursuant to this Section 2.01 of this Appendix E;

(c) for so long as any amount under the Finance Documents is outstanding, the City shall not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation of the Agreement or any interest therein by the Company, other than as specified in this Appendix E.

Section 2.02 Notice Requirements

(a) The City shall give the Collateral Agent written notice (a "City Notice") within five days after becoming aware of the occurrence of any event or occurrence that, with the passage of time or the giving of notice or both, could constitute a Franchise Agreement Event of Default giving rise to the City's right to terminate or give notice terminating the Agreement, and shall specify in the City Notice:

(i) the unperformed obligations of the Company under the Agreement of which the City is aware (having made reasonable inquiry) and grounds for termination of the Agreement in sufficient detail to enable the Collateral Agent to assess the scope and amount of any liability of the Company resulting therefrom;

(ii) all amounts due and payable by the Company to the City under the Agreement, if any, on or before the date of the City Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of the Agreement, the nature of the Company's obligation to pay such amounts; and

(iii) the amount of any payments that the City reasonably foresees will become due from the Company during the applicable Cure Period.

(b) The City shall update any City Notice issued pursuant to Section 2.02(a) of this Appendix E as and when it becomes aware of any event or occurrence that, with the passage of time or the giving of notice or both, could constitute a Franchise Agreement Event of Default giving rise to the City's right to terminate or give notice terminating this Agreement that were not specified in the relevant City Notice.

Section 2.03 City Payments under the Agreement

The City shall, unless directed otherwise by the Collateral Agent, deposit all amounts payable by it under the Agreement, in respect of a First Com System as described in Appendix B of the Agreement or otherwise, into the Designated Account and the Company agrees that any payment made in accordance with this Section 2.03 of this Appendix E shall constitute a complete discharge of the City's relevant payment obligations under the Agreement.

ARTICLE 3

RIGHTS AND OBLIGATIONS DURING THE CURE PERIOD

Section 3.01 No Termination during the Cure Period

At any time during a Cure Period, the City shall not, subject to the terms of this Agreement:

(a) terminate or give notice terminating the Agreement for a Franchise Agreement Event of Default or exercise any rights under Section 9.1, Section 9.3 or Section 10.8 of the Agreement; or

(b) take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Company or for the composition or readjustment of the Company's debts, or any similar insolvency procedure in relation to the Company, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Company or for any part of the Company's Property.

Section 3.02 Collateral Agent Rights

(a) At any time during an Event of Default without giving a Step-in Notice, the Collateral Agent may (but shall have no obligation to), at its sole option and discretion, perform or arrange for the performance of any act, duty, or obligation required of the Company under the Agreement, or remedy any breach of the Company thereunder at any time, which performance or remedy by or on behalf of the Collateral Agent shall be accepted by the City in lieu of performance by the Company and in satisfaction of the Company's obligations under the Agreement. To the extent that any breach of the Company under the Agreement is remedied and/or any payment liabilities or obligations of the Company are performed by the Collateral Agent under this Section 3.02(a) of this Appendix E, such action shall discharge the relevant liabilities or obligations of the Company to the City. No such performance by or on behalf of the Collateral Agent under this Section 3.02(a) of this Appendix E shall be construed as an

assumption by the Collateral Agent, or any person acting on the Collateral Agent's behalf, of any of the covenants, agreements or other obligations of the Company under the Agreement.

(b) At any time during a Cure Period or a Franchise Agreement Event of Default, the Collateral Agent may:

(i) issue a Step-in Notice in accordance with the requirements of Section 4.01; or

(ii) issue a Substitution Notice in accordance with the requirements of Section 5.01.

ARTICLE 4

STEP-IN ARRANGEMENTS

Section 4.01 Step-in Notice

(a) Provided that all unperformed payment obligations of the Company identified in a City Notice shall have been remedied in full or waived by the City on or before the Step-in Date, the Collateral Agent may provide the City with a written notice ("Step-in Notice") under this Section 4.01 at any time during any Franchise Agreement Event of Default, License Agreement Event of Default or Finance Documents Event of Default.

(b) The Collateral Agent shall nominate, in any Step-in Notice, any one of:

(i) the Collateral Agent, a Lender or any of their respective Affiliates; or

(ii) any Person approved or deemed to have been approved by the NYCTA to exercise step-in rights under Section 4.01 of the NYCT Direct Agreement,

(each a "Step-in Entity"), stating that the Step-in Entity is to become a joint and several obligor with the Company under the Agreement in accordance with the terms of this Appendix E.

(c) The Step-in Entity named in the Step-in Notice shall be deemed to become a party to the Agreement on and from the date it executes a duly completed Step-in Entity Accession Agreement, substantially in the form attached hereto as Annex 1 (Form of Step-in Entity Accession Agreement), and submits it to the City (the "Step-in Date").

Section 4.02 Rights and Obligations on Step-in

(a) On and from the Step-in Date and during the Step-in Period, the Step-in Entity shall be:

(i) jointly and severally entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to the Company under the Agreement;

(ii) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Entity under this Appendix E; and

(iii) jointly and severally liable with the Company for the payment of all sums due from the Company under or arising out of the Agreement at the Step-in Date and for the performance of all of the Company's obligations under or arising out of the Agreement on or after the Step-in Date.

(b) Without prejudice to Article 7 of this Appendix E (*Reinstatement of Remedies*), during the Step-in Period:

(i) the City undertakes:

(A) not to terminate or give notice terminating the Agreement for Company Default or exercise any of its rights under Section 9.1, Section 9.3 or Section 10.8 of the Agreement, unless the grounds for termination or giving notice of termination or exercise of any of its rights under Section 9.1, Section 9.3 or Section 10.8 of the Agreement arose during the Step-in Period; and:

(B) not to take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Company or for the composition or readjustment of the Company's debts, or any similar insolvency procedure in relation to the Company, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Company or for any part of the Company's Property;

(C) not to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Company) under the Agreement, unless the grounds for suspension of performance arose during the Step-in Period; and

(D) to continue to make payments required to be made to Company under the Agreement, in respect of a First Com System as described in Appendix B of the Agreement or otherwise, to the Designated Account.

(ii) the City shall owe its obligations this Agreement to the Company and such Step-in Entity jointly; provided, however, that:

(A) subject to Section 4.02(b)(ii)(B) of this Appendix E, the performance of such obligations by the City in favor of either such Step-in Entity or the Company shall be a good and effective discharge of such obligations under the Agreement; and

(B) the Collateral Agent shall be entitled at any time by notice in writing to the City to direct (such direction being binding on the Collateral Agent, the City and the Company) that, at all times thereafter while such Step-in Entity is deemed to be a party to the Agreement and subject to any further notice from the Collateral Agent, such Step-in Entity shall be solely entitled to make any

decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with the City under the Agreement.

(c) The Company shall not be relieved from any of its obligations under the Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Entity becoming a party to the Agreement pursuant to a Step-in Entity Accession Agreement, except to the extent provided in Section 3.02(a) and Section 6.02(a) of this Appendix E.

Section 4.03 Step Out

(a) A Step-in Entity may, at any time, by giving not less than 30 Days' prior written notice ("Step-out Notice") to the City, terminate its obligations to the City under the Agreement, whereupon the Step-in Entity shall, upon the expiry of such notice, no longer be deemed to be a party to the Agreement and shall be released from all obligations under the Agreement. The obligations of the City to the Step-in Entity in such capacity under the Agreement shall also terminate upon the expiry of such notice.

(b) Nothing in this Section 4.03 of this Appendix E shall have the effect of releasing the Step-in Entity from any liability that relates to the performance or non-performance of the Agreement by the Company or the Step-in Entity during the Step-in Period.

ARTICLE 5

SUBSTITUTION PROPOSALS

Section 5.01 Notice of Proposed Substitute

To the extent that the Collateral Agent or the Lenders at any time propose to require the Company to assign its rights and obligations under the Agreement to a Person (a "Substitute") designated by the Collateral Agent or the Lenders (whether by mutual agreement or enforcement of rights under the Finance Documents), the effectiveness of such assignment shall be conditional upon:

(a) the Collateral Agent issuing a notice (a "Substitution Notice") to the City requesting the prior approval of the proposed Substitute;

(b) the City approving the identity of the proposed Substitute pursuant to Sections 5.02 or 5.03 of this Appendix E; and

(c) the proposed Substitute executing a Substitute Accession Agreement in accordance with Section 6.01.

Section 5.02 Grounds for Refusing Approval

The City shall only be entitled to withhold its approval to any proposed Substitute that is the subject of a Substitution Notice if:

(a) the proposed Substitute is not a Qualified Substitute Franchisee; or

(b) subject to Section 6.04, there are outstanding breaches of the Agreement that have been previously notified by the City to the Collateral Agent and have not, to the reasonable satisfaction of the City, been remedied or waived prior to the date of the Substitution Notice; unless the City has approved (such approval not to be unreasonably withheld or delayed) a plan specifying the remedial action that the Substitute will be required to take after the Substitution Effective Date in order to remedy each such breach.

Section 5.03 Deemed Approval

If the City has failed to respond to the Collateral Agent within 60 days of the date on which the Company has provided to the City evidence that the proposed Substitute is a Qualified Substitute Franchisee, the approval of the City shall be deemed to have been given.

ARTICLE 6

SUBSTITUTION

Section 6.01 Substitution Effective Date

If a Substitute has lawfully succeeded to the interest of the Company under the Agreement and the City approves (or is deemed to have approved) the identity of the proposed Substitute pursuant to Article 5, the Substitute shall execute a duly completed Substitute Accession Agreement substantially in the form set out in Annex 2 to this Appendix E and submit it to the City (with a copy of it to the other parties to this Agreement). Such assignment shall become effective on and from the date on which the City countersigns the Substitute Accession Agreement or the date that is 10 days after the date the City receives the completed Substitute Accession Agreement if the City fails to countersign the Substitute Accession Agreement (the "Substitution Effective Date").

Section 6.02 Effectiveness of Substitution

On and from the Substitution Effective Date:

(a) such Substitute shall become a party to the Agreement in place of the Company who shall be immediately released from its obligations arising under, and cease to be a party to, the Agreement from that Substitution Effective Date; and

(b) such Substitute shall exercise and enjoy the rights and perform the obligations of the Company under the Agreement, and

(c) the City shall owe its obligations (including, without limitation, any undischarged liability in respect of any loss or damage suffered or incurred by the Company prior to the Substitution Effective Date) under the Agreement to such Substitute in place of the Company and any Step-in Entity.

Section 6.03 Facilitation of Transfer

The City shall use its reasonable efforts to facilitate the transfer to the Substitute of the Company's obligations under the Agreement.

Section 6.04 Settlement of Outstanding Financial Liabilities

(a) The Substitute shall pay to the City within 30 Days after the Substitution Effective Date any amount due from the Company to the City under the Agreement as of the Substitution Effective Date (as notified by the City to the Substitute reasonably in advance of such Substitution Effective Date).

(b) If the Substitute fails to satisfy its obligations pursuant to Section 6.04(a), the City shall be entitled to exercise its rights under the Agreement in respect of the amount so due and unpaid.

Section 6.05 Consequences of Substitution

On and from the Substitution Effective Date:

(a) subject to Section 6.04 of this Appendix E, any right of termination or any other right suspended by virtue of Section 3.01 of this Appendix E shall be of no further effect and the City shall not be entitled to terminate the Agreement by virtue of any act, omission or circumstance that occurred prior to such Substitution Effective Date; and

(b) if any Step-in Entity is a party to or has any obligations under the Agreement and this Agreement on the Substitution Effective Date, such Step-in Entity shall cease to be a party thereto and hereto and shall be discharged from all obligations thereunder and hereunder.

ARTICLE 7

REINSTATEMENT OF REMEDIES

If a City Notice has been given, the grounds for that notice are continuing and have not been remedied or waived by the City and:

(a) no Step-in Entity or Substitute becomes a party to the Agreement before the Cure Period Completion Date relating thereto; or

(b) a Step-in Entity becomes a party to the Agreement, but the Step-in Period relating to such Step-in Entity ends without a Substitute becoming a party to the Agreement,

then, on and from the Cure Period Completion Date or the date such Step-in Period expires, the City shall be entitled to:

(i) act upon any and all grounds for termination available to it in relation to the Agreement in respect of Franchise Agreement Events of Defaults under this Agreement that have not been remedied or waived by the City;

(ii) pursue any and all claims and exercise any and all remedies against the Company in accordance with the terms of the Agreement; and

(iii) if and to the extent that it is then entitled to do so under the Agreement, take or support any action of the type referred to in Section 3.01(b) of this Appendix E.

ARTICLE 8

IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS

Section 8.01 Rejection of this Agreement

(a) If this Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving the Company and, within 150 days after such rejection or termination, the Collateral Agent shall so request and shall certify in writing to the City that the Collateral Agent or the Collateral Agent's permitted designee or assignee, including a Qualified Substitute Franchisee, intends to perform the obligations of the Company as and to the extent required under this Agreement, the City will execute and deliver to the Collateral Agent (or any Substitute satisfying the requirements of this Agreement if directed to do so by the Collateral Agent) a new Agreement to the extent consistent with and authorized by applicable law. The new Agreement shall to the extent consistent with and authorized by applicable law contain conditions, agreements, terms, provisions and limitations which are the same as those of the Agreement, except for any obligations that have been fulfilled by the Company, any party acting on behalf of or stepping-in for the Company or the Collateral Agent prior to such rejection or termination. References in this Appendix E to the "Agreement" shall be deemed also to refer to any such new Agreement.

(b) The effectiveness of any new Agreement referred to in Section 8.01(a) of this Appendix E above will be conditional upon the Collateral Agent first reimbursing the City in respect of its Allocable Costs incurred in connection with the execution and delivery of such new Agreement.

Section 8.02 Extension of Cure Period Completion Date

To the extent that the Collateral Agent is prohibited by any court order, bankruptcy or insolvency proceedings from:

(a) remedying the Franchise Agreement Event of Default that is the subject of a City Notice; or

(b) from commencing or prosecuting foreclosure proceedings,

the Cure Period Completion Date shall be extended by a period of time equal to the shorter of the period of such prohibition or 150 Days.

ARTICLE 9

TERMINATION OF THIS APPENDIX E

This Appendix E shall remain in effect until the earliest to occur of:

(a) the Discharge Date;

(b) the time at which all of the parties' respective obligations and liabilities under the Agreement have expired or have been satisfied in accordance with the terms of the Agreement; and

(c) any assignment to a Substitute has occurred under Article 6 of this Appendix E and the City shall have entered into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Company has been replaced as a party by the Substitute.

ARTICLE 10

GENERAL PROVISIONS

Section 10.01 Successors and Assigns

The Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Finance Documents.

Section 10.02 Notices and Communications

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for the City or the Company to serve any approval, notice, request, demand, report or other communication on the Collateral Agent, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed to the Collateral Agent in a manner designated by the Company by notice given to the City in accordance with this Agreement.

(b) The Collateral Agent may, from time to time, by notice in writing served upon the City and the Company in accordance with Section 10.4 of the Agreement, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (provided, that the original is thereafter delivered as aforesaid).

Section 10.03 Collateral Agent

(a) Notwithstanding anything to the contrary in this Agreement, but subject to Article 4 (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity), Section 10.01 and Section 10.13(b) of this Appendix E, the Collateral Agent shall not have any liability to the City under this Agreement, unless the Collateral Agent expressly assumes such liability in writing.

(b) The City acknowledges and agrees that the Collateral Agent shall not be obligated or required to perform any of Company's obligations under the Agreement, except during any Step-in Period (but only to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity).

* * *

ANNEX 1

FORM OF STEP-IN ENTITY ACCESSION AGREEMENT

[*Date*]

To: [*City/DoITT*]

From: [*Step-in Entity*]

TRANSIT WIRELESS

STEP-IN ENTITY ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Franchise Agreement, dated as of [_] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Agreement"), between the City of New York (the "City") and Transit Wireless, LLC (the "Company") of which [ ], as Collateral Agent, is a third party beneficiary of the provisions of Appendix E of the Agreement.

Terms not otherwise defined herein shall have the same meaning given to them in Appendix E of the Agreement.

1. We hereby confirm that we are a Step-in Entity pursuant to Article 4 of Appendix E of the Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Step-in Entity Accession Agreement, we will become a party to the Agreement jointly and severally with the Company as a Step-in Entity and, accordingly, shall have the rights and powers and assume the obligations of the Company under the Agreement in accordance with the terms of Appendix E of the Agreement.

3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

   [*contact details of Step-in Entity*]

4. This Step-in Entity Accession Agreement shall be governed by and construed in accordance with the laws of the State of New York, without resort to any jurisdiction's conflict of laws rules, laws or doctrines. Any claims arising out of this Step-in Entity Accession Agreement shall be submitted to the courts located in New York, New York which shall have exclusive jurisdiction regarding disputes under this Step-in Entity Accession Agreement, In any action on or related to the terms of this Step-in Entity Accession Agreement, the parties (for themselves and their successors and assignees) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

The terms set forth herein are hereby agreed to:

[*Step-in Entity*]

By _____
Name:
Title:

ANNEX 2

FORM OF SUBSTITUTE ACCESSION AGREEMENT

[*Date*]

To: [*City/DoITT*]

From: [*Substitute*]

TRANSIT WIRELESS

SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Agreement, dated as of [ ] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Agreement"), between the City of New York (the "City") and Transit Wireless, LLC (the "Company") of which [ ], as Collateral Agent, is a third party beneficiary of the provisions of Appendix E of the Agreement.

Terms defined not otherwise defined herein shall have the same meaning given to them in the Direct Agreement.

1. We hereby confirm that we are a Substitute pursuant to Article 6 of Appendix E of the Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Agreement as a Substitute and, accordingly, shall have the rights and powers and assume the obligations of the Company under the Agreement in accordance with the terms of Appendix E of the Agreement.

3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[*contact details of Substitute*]

4. This Substitute Accession Agreement shall be governed by and construed in accordance with the laws of the State of New York, without resort to any jurisdiction's conflict of laws rules, laws or doctrines. Any claims arising out of this Substitute Accession Agreement shall be submitted to the courts located in New York, New York which shall have exclusive jurisdiction regarding disputes under this Substitute Accession Agreement. In any action on or related to the terms of this Substitute Accession Agreement, the parties (for themselves and their successors and assignees) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

The terms set forth herein are hereby agreed to:

[*Substitute*]

By: _____
Name:
Title:

Agreed for and on behalf of:
City of New York

By: _____
Name:
Title:

[*Provided under separate cover*]