NOTICE OF PUBLIC HEARING

NOTICE OF A SPECIAL JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Information Technology & Telecommunications (DoITT) to be held on January 13, 2020 commencing at 2:30 PM at 2 Lafayette Street, 14th Floor, Borough of Manhattan on the following calendar items: Cal. item #1) a proposed mobile telecommunications services franchise agreement between the City of New York and Crown Castle Fiber LLC; Cal. item #2) a proposed mobile telecommunications services franchise agreement between the City of New York and Crown Castle NG East LLC; Cal. item #3) a proposed mobile telecommunications services franchise agreement between the City of New York and Crown Castle Solutions LLC; Cal. item #4) a proposed mobile telecommunications services franchise agreement between the City of New York and CSC Wireless, LLC; Cal. Item #5) a proposed mobile telecommunications services franchise agreement between the City of New York and ExteNet Systems, Inc. (ExteNet 1); Cal. item #6) a proposed mobile telecommunications services franchise agreement between the City of New York and ExteNet Systems, Inc. (ExteNet 2); Cal. item #7) a proposed mobile telecommunications services franchise agreement between the City of New York and Mobilitie, LLC; Cal. item #8) a proposed mobile telecommunications services franchise agreement between the City of New York and New Cingular Wireless PCS, LLC; Cal. item #9) a proposed mobile telecommunications services franchise agreement between the City of New York and New York SMSA Limited Partnership; Cal. item #10) a proposed mobile telecommunications services franchise agreement between the City of New York and Transit Wireless LLC; Cal. item #11) a proposed mobile telecommunications services franchise agreement between the City of New York and Transmission Network NY, LLC; and Cal. item #12) a proposed mobile telecommunications services franchise agreement between the City of New York and ZenFi Networks, LLC.

The proposed franchise agreements would authorize the franchisees to install, operate and maintain equipment and facilities, including base stations and access point facilities, on 1) City-owned street light poles and traffic light poles, and certain privately-owned utility poles located on the City streets and 2) subject to necessary further approvals, LinkNYC Kiosks, bus stop shelters and automatic public toilets, all in connection with the provision of mobile telecommunications services. The proposed franchise agreements have a term of ten years.

A copy of the proposed franchise agreements may be viewed at The Department of Information Technology and Telecommunications, 15 MetroTech Center, 18th Floor, Brooklyn, New York 11201, commencing January 6, 2020 through January 13, 2020, between the hours of 9:30 AM and 3:30 PM, excluding Saturdays, Sundays and holidays. Hard copies of the proposed franchise agreements may be obtained, by appointment, at a cost of $.25 per page. All payments shall be made at the time of pickup by check or money order made payable to the New York City Department of Finance. The proposed franchise agreements may also be obtained in PDF form at no cost, by email request. Interested parties should contact Brett Sikoff at (718) 403-6722 or by email at franchiseopportunities@doitt.nyc.gov.

This location is accessible to individuals using wheelchairs or other mobility devices. For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 788-0010. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least three (3) business days in advance of the hearing to ensure availability.

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115.

RECOMMENDATION FOR AWARD OF FRANCHISE AGREEMENT MEMORANDUM COVER SHEET

(Attach, in the following order, FRFA Checklist and Narrative and "Responsibility Determination" form)

AGENCY **Department of Information Technology and Telecommunications** **# VOTES required for proposed action = 5**	**RECOMMENDED FRANCHISEE** **Name: Mobilitie, LLC ("Mobilitie I")** **Address: 660 Newport Center, Ste 200, Newport Beach, CA, 92660** **Telephone # 877-999-7070 ☒ EIN ☐ SSN # 65-1212646**	**FRANCHISE I.D. #** **# 8582018FRANCH1-007**

DESCRIPTION OF FRANCHISE (Attach Proposed Resolution and Proposed Agreement)

The proposed award of a mobile telecommunications services franchise agreement between the City of New York and Mobilitie, LLC ("Mobilitie I") for the installation, operation, maintenance of equipment and facilities, including base stations and access point facilities, on 1) City-owned street light poles and traffic light poles, and certain privately-owned utility poles located on the City streets and 2) subject to necessary further approvals, LinkNYC kiosks, bus stop shelters and automatic public toilets, all in connection with the provision of mobile telecommunications services.

Borough(s) Location of Franchise: All/Citywide **C.B.(s) All**

PUBLIC SERVICE TO BE PROVIDED

Telecommunications services

SELECTION PROCEDURE

☒ Request for Proposals **☐ Other _____**

FRANCHISE AGREEMENT TERM	**SUBSIDIES TO FRANCHISEE ☒ N/A**
Initial Term From: Notice to Proceed To: 10 years **Renewal Option(s) Term N/A**	**$_____**

DCP determined the franchise would have land use impacts or implications. **☐ YES ☒ NO**
If YES, proposed franchise reviewed and approved pursuant to Sections 197-c and 197-d of the City Charter.

☐ CPC approved on:

☐ City Council approved on ___/___/___ **☒ N/A**

☒ Law Department determined RFP/other solicitation document consistent with adopted authorizing resolution on: June 4, 2018

☐ Law Department approved franchise agreement on:

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the proposed franchisee to be responsible and approve of the award of the subject franchise agreement. This is to further certify that the subject franchise agreement was approved by the FCRC on ___/___/___ by a vote of ___ to ___.

Name: Andrew M. Manshel **Title: Assistant Commissioner**

Signature _____ **Date __/__/__**

CERTIFICATE OF PROCEDURAL REQUISITES

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject franchise agreement.

Signature _____ **Date __/__/__**
City Chief Procurement Officer

RECOMMENDATION FOR AWARD OF FRANCHISE AGREEMENT MEMORANDUM

Instructions: *Check all applicable boxes and provide all applicable information requested below. If any requested date or information is unavailable, describe the reason it cannot be ascertained.*

A. AUTHORIZING RESOLUTION (Attach copy)

1. Mayor's Office of Legislative Affairs transmitted proposed authorizing resolution to City Council on 12/16/2015.
2. City Council conducted public hearing on 01/16/2016.
3. City Council adopted authorizing resolution on 03/09/2016.

B. SOLICITATION/EVALUATION/AWARD

1. RFP/solicitation document issued on 06/12/2018. (Attach copy)

2. ☒ The Agency certifies that it complied with all the procedures for the solicitation, evaluation and/or award of the subject franchise as set forth in the applicable authorizing resolution and request for proposals, if applicable.

Basis for Award:

Instructions: *Check applicable box below; attach a list of proposed franchisee's Board of Directors.*

☐ Recommended franchisee is highest rated proposer and offered highest amount of revenue (overall or for the competition pool).

☐ Recommended franchisee was sole proposer or was determined to be only responsive proposer (overall or for the competition pool), and the and agency certifies that a sufficient number of other entities had a reasonable opportunity to propose, the recommended franchisee meets the minimum requirements of the RFP or other solicitation and award is in the best interest of the City. *Explain:*

☒ The subject franchise is a non-exclusive franchise and the recommended franchisee has been determined to be both technically qualified and responsible.

☐ Other *Describe:*

C. PUBLIC HEARING & APPROVAL

1. Agency filed proposed agreement with FCRC on 2/3/2020.

2. Public Hearing Notice

☒ a. Agency published, for at least 15 business days immediately prior to the public hearing, a public hearing notice and summary of the terms and conditions of the proposed agreement in the City Record from 12/26/2019-1/13/2020, and republished from 2/3/2020-2/10/2020.

☒ b. Agency provided written notice containing a summary of the terms and conditions of the proposed agreement to each affected CB, each affected BP and each affected Council Member by 11/22/2019. (Check the applicable box below and provide the requested information)

☐ Franchise relates to property in one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___/___/___ and ___/__/___. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___.

☒ Franchise relates to property in more than one borough and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in New York Daily News, a NYC daily, citywide newspaper on 11/26/2019 and 11/27/2019, and in AMNY, also a NYC daily, citywide newspaper on 11/26/2019 and 11/27/2019. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by 11/22/2019.

☐ Franchise relates to a bus route contained within one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___/___/___ and ___/__/___. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___.

☐ Franchise relates to a bus route that crosses one or more borough boundaries and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, also a NYC daily, citywide newspaper on ___/___/___ and ___/__/___. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by ___/___/___. A notice was posted in the buses operating upon the applicable route.

☐ b. Franchise relates to extension of the operating authority of a private bus company that receives a subsidy from the City and, as such, at least 1 business

day prior to the public hearing the Agency published a public hearing notice in the City Record on ___/___/___.

3. FCRC conducted a public hearing within 30 days of filing on 2/10/2020.

RESOLUTION

FRANCHISE AND CONCESSION REVIEW COMMITTEE

CITY OF NEW YORK

Cal. No. __

In the matter of approval of a proposed mobile telecommunications services franchise agreement (the "Franchise Agreement") between the City of New York and Mobilitie, LLC ("Mobilitie I") for the installation, operation, maintenance of equipment and facilities, including base stations and access point facilities, on: 1) City-owned street light poles and traffic light poles, and certain privately-owned utility poles located on the City streets; and 2) subject to necessary further approvals, LinkNYC Kiosks, bus stop shelters and automatic public toilets, all in connection with the provision of mobile telecommunications services.

WHEREAS, on March 9, 2016, Authorizing Resolution 935 was adopted by New York City Council, granting the New York City Department of Information Technology and Telecommunications ("DoITT") the authority to grant franchises for the provision of mobile telecommunications services, as permitted by said Authorizing Resolution; and

WHEREAS, on March 1, 2018, the New York City Department of City Planning reviewed a request for proposals for the provision of mobile telecommunications services ("RFP") submitted by DoITT and determined that a franchise, consistent with the RFP, would not have land use impacts or implications and that review under Section 197-c of the New York City Charter would not be necessary; and

WHEREAS, on June 12, 2018, DoITT issued the RFP;

WHEREAS, Mobilitie I responded to said RFP; and

WHEREAS, Mobilitie I has been given opportunity to review a Franchise Agreement consistent with the RFP and has expressed intent to pursue said Franchise Agreement; and

WHEREAS, the Franchise and Concession Review Committee held a public hearing regarding the proposed Franchise Agreement on February 10, 2020, which was a full public proceeding in compliance with the requirements of the New York City Charter, and said hearing was closed on that date.

NOW, THEREFORE, BE IT

RESOLVED, that the Franchise and Concession Review Committee does hereby approve the proposed Franchise Agreement between the City of New York and Mobilitie I; and be it further

RESOLVED, that the grant of the above franchise to Mobilitie I is subject to the execution and delivery of the Franchise Agreement and submission of the documents set forth in Section 2.2 of the Franchise Agreement by Mobilitie I within 60 days of the adoption of this resolution.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE FRANCHISE AND CONCESSION REVIEW COMMITTEE ON:

February 13, 2020

Date:_____

Signed_____

Title: Director of the Mayor's Office of Contract Services

Execution Copy

Between

THE CITY OF NEW YORK

And

MOBILITIE, LLC (MOBILITIE I)

FRANCHISE FOR THE INSTALLATION AND USE OF TELECOMMUNICATIONS EQUIPMENT AND FACILITIES, INCLUDING BASE STATIONS AND ACCESS POINT FACILITIES, ON CITY-OWNED STREET LIGHT POLES AND TRAFFIC LIGHT POLES, AND CERTAIN UTILITY POLES AND OTHER FACILITIES LOCATED ON CITY STREETS, IN CONNECTION WITH THE PROVISION OF MOBILE TELECOMMUNICATIONS SERVICES

Dated as of

_____, 2020

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AGREEMENT

This AGREEMENT (the "Agreement"), dated as of _____, 2020 (the "Execution Date"), is by and between THE CITY OF NEW YORK (the "City") and MOBILITIE, LLC (the "Company"), whose principal place of business is located at 660 Newport Center Drive, Suite 200, Newport Beach, CA 92660.

W I T N E S S E T H:

WHEREAS, the New York City Department of Information Technology and Telecommunications ("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 for the purposes described in this Agreement; and

WHEREAS, DoITT, pursuant to authorization granted by Resolution No. 935 (adopted by the New York City Council on March 9, 2016) (the "Authorizing Resolution"), issued on June 12, 2018, a Request for Proposals (the "RFP") for franchises of a type which includes the franchise described in this Agreement; and

WHEREAS, the New York City Department of City Planning determined, as evidenced in its letter dated March 1, 2018, that franchises issued pursuant to the RFP would have no land use impacts and that therefore review of such RFP pursuant to Section 197-c of the New York City Charter (the "City Charter") was not required; and

WHEREAS, DoITT, as lead agency pursuant to Section 5-03(e) of Title 62 of the Rules of the City of New York, reviewed the proposed action of granting this franchise for its potential environmental impacts and has issued a "negative declaration", that is, a determination, pursuant to City Environmental Quality Review, as set forth in Chapter 5 of Title 62 of the Rules of the City of New York, that such action will not have a significant effect on the environment; and

WHEREAS, on February 10, 2020, the New York City Franchise and Concession Review Committee (the "FCRC") held a public hearing on the Company's proposal for a franchise, which was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the City Charter, including without limitation publication of notice of such hearing in accordance with Section 371 of the City Charter; and

WHEREAS, on February 13, 2020, the FCRC voted on and adopted a resolution approving the grant of a franchise to the Company on the terms set forth in this Agreement; and

WHEREAS, (i) City-owned property, such as street light poles ("SLPs") and traffic light poles ("TLPs") located on City streets (SLPs and TLPs collectively referred to herein as "Street Operations Poles"), (ii) poles that are lawfully located on the City's inalienable property which are privately-owned poles owned by a "utility" as that term is defined in 47 USC Section 224 (herein referred to as "Street Utility Poles"), (iii) LinkNYC Kiosks (as defined in Section 1 hereof), and (iv) Coordinated Franchise Structures (as defined in Section 1 hereof) are some, but not the only, or even the preponderant, type of location that can be used to locate mobile

telecommunications facilities and equipment (indeed, the mobile telecommunications industry has largely developed to date using private property to locate facilities and equipment, access to which private property requires no authority pursuant to a City franchise) and the parties recognize that while it may be in the public interest for the City to make both Street Operations Poles as well as Street Utility Poles (together, "Street Poles") along with certain other City property available for the purposes described in this Agreement, any decision by the City not to make such property available to one or more entities, or to condition the availability of such property in any manner the City determines to be appropriate would not be intended to prohibit or effectively prohibit any such entity from providing its services, which may be provided using private property (with respect to which no additional franchise is required); and

WHEREAS, any commercial installations on Street Poles, LinkNYC Kiosks, Coordinated Franchise Structures sitting on City property or the rights of way, and other City property must be consistent with and must accommodate current and projected operational activities of City agencies using and maintaining City facilities in connection with the provision and support of City services to the public and must include an appropriate compensation (i.e., rent) to the City for use of City property; and

WHEREAS, the primary use of the Street Operations Poles and other City property is first and foremost for the original uses such as street lighting, traffic signals, highway sign support and other designated City uses; and

WHEREAS, on or about June 26, 2006, the City acting by and through its New York City Department of Transportation ("DOT") entered into a franchise agreement for the installation, operation and maintenance of Coordinated Franchise Structures with Cemusa Inc., a company which thereafter assigned its interest in said franchise agreement to Cemusa NY, LLC, d/b/a JCDecaux Street Furniture New York, LLC ("JCDecaux") (the "Coordinated Street Furniture Franchise"); and

WHEREAS, JCDecaux currently owns a non-exclusive franchise providing the right and consent to install, operate and maintain Coordinated Franchise Structures on, over and under the Inalienable Property of the City; and

WHEREAS, on December 19, 2014, the City, acting by and through its DoITT, entered into a Public Communications Structure franchise agreement with CityBridge, LLC for the installation, operation and maintenance of LinkNYC Kiosks and said franchise agreement was subsequently amended in 2015 and in 2018 (the "LinkNYC Franchise"); and

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.

1.1 "Affiliated Person" means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Company; (ii) each Person in which the Company has, directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, or other Person holding an interest of five percent (5%) or more, joint venturer or joint venture partner of the Company; and (iv) each Person, directly or indirectly, controlling, controlled by or under common Control with the Company; provided that "Affiliated Person" shall in no event mean the City, any Person holding an interest of less than five percent (5%) of the Company or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person.

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

1.3 “Authorizing Resolution” has the meaning set forth in the second Whereas clause of this Agreement.

1.4 “Base Stations” means the equipment housing and antennas, and the associated equipment, all as described in Section I of Appendix A, installed at a fixed location for the reception and/or transmission of wireless, radio frequency telecommunications signals.

1.5 "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.

1.6 “City Charter” has the meaning set forth in the third Whereas clause of this Agreement.

1.7 “City Code” means the New York City Administrative Code.

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

1.9 "Company" means Mobilitie, LLC, a limited liability company organized and existing under the laws of the State of Nevada whose principal place of business is located at 660 Newport Center Drive, Suite 200, Newport Beach, CA 92660.

1.10 “Compensation Street Pole(s)” has the meaning set forth in Section II(B) of Appendix D hereof.

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

1.12 “Control” or “Controlling Interest” means working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the Facilities or of the Company. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than ten percent (10%) of any Person (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

1.13 “Coordinated Franchise Structure(s)” means (1) structures intended as bus stop shelters (including seating, if installed) which provide meaningful protection from precipitation, wind, and sun, (2) automatic public toilets installed, and (3) any associated equipment, wiring, and/or cables that are attached to such Coordinated Franchise Structures (other than any such associated equipment, wiring, and/or cables that are owned by third parties) and the advertising panels, installed on, over and under the Inalienable Property of the City. Coordinated Franchise Structures shall not include newsstands or public service structures.

1.14 “Coordinated Street Furniture Franchise” has the meaning set forth in the tenth Whereas clause of this Agreement.

1.15 “Customer” means any Person lawfully receiving any service provided by the Company by means of the Facilities.

1.16 “DoITT” means the Department of Information Technology and Telecommunications of the City of New York, or any successor thereto.

1.17 “DOT” means the Department of Transportation of the City of New York, or any successor thereto.

1.18 “Effective Date” means the date stated in a notice issued by the City to the Company, which date shall be ten (10) 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, and (b) all the documents have been submitted as required by Section 2.2 hereof, (c) the City’s vendor disclosure review process known as PASSPort of the Company has been favorably completed, and (d) payment has been made to the City of the Initial Payment, the Security Fund amount pursuant to Section I of Exhibit C hereof, and the FCRC publication costs as described in Section 7.2.1 hereof.

1.19 “Execution Date” means the date set forth on the cover page of this Agreement.

1.20 “Facilities” means, collectively, the Base Stations and equipment ancillary thereto, including but not limited to fiber handholds.

1.21 “FCC” means the Federal Communications Commission or any successor thereto.

1.22 “FCRC” means the Franchise and Concession Review Committee of the City of New York, or any successor thereto.

1.23 “Fiber” has the meaning set forth in Section 2.4.2 hereof.

1.24 “Franchise Area” means each or, or any combination of, Zone A, Zone B, and Zone C for which the Company is permitted to install Facilities on Street Poles pursuant to this Agreement.

1.25 “Inalienable Property” means the rights of the City in and to its waterfront, ferries, wharf property, bridges, land under water, public landings, wharves, docks, streets, avenues, highways, parks, waters, waterways and all other public places.

1.26 “Initial Payment” shall have the meaning set forth therefor in Section V of Appendix D attached hereto.

1.27 Intentionally Omitted.

1.28 “LinkNYC Franchise” has the meaning set forth in the twelfth Whereas clause of this Agreement.

1.29 “LinkNYC Kiosks” shall mean Public Communications Structures installed, operated, and/or maintained pursuant to the LinkNYC Franchise or any successor thereto.

1.30 “Mayor” means the chief executive officer of the City, the Mayor’s designee, or any successor to the executive powers of the present Mayor.

1.31 “Mobile Telecommunications Services” means mobile telecommunications services as defined in the Authorizing Resolution.

1.32 “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.

1.33 “Pre-Pole Compensation Period” shall mean a period beginning on the date on which a Street Pole becomes a Reserved Pole and expiring on the Pre-Pole Compensation Period Expiration Date (as hereinafter defined) during which no Street Pole Compensation is due.

1.34 “Pre-Pole Compensation Period Expiration Date” shall mean the 31st day after which a Street Pole becomes a Reserved Pole.

1.35 “Priority List” means the list of priorities that Street Pole Franchisees are to follow in the submission of Reservation Notices as set forth in Section II (B) of Appendix A. Such Priority List was distributed to all Street Pole Franchisees at the conclusion of the RFP process and is intended to obviate conflicting demands for specific locations.

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

1.37 “Public Communications Structure(s)” or “PCS” shall mean a structure that provides free Wi-Fi and/or additional telecommunications services as determined by the City.

1.38 “Reservation Notice” has the meaning set forth in Section II (B)(1) of Appendix A hereof.

1.39 “Reserved Pole” means a Street Pole which has been reserved to a Street Pole Franchisee under Section II (B) of Appendix A hereof.

1.40 "RFP" has the meaning set forth in the second Whereas clause of this Agreement.

1.41 “Scheduled Term” means the period from and including the Effective Date until and including the tenth anniversary of the Execution Date.

1.42 “Security Fund” means a cash security fund or letter of credit, as described in Section 5 and Appendix C hereof.

1.43 “SLP” has the meaning set forth in the seventh Whereas clause of this Agreement.

1.44 “Street Operations Pole(s)” shall have the meanings set forth in the seventh Whereas clause of this Agreement subject further to the requirements of this Agreement.

1.45 “Street Pole(s)” shall have the meaning set forth in the seventh Whereas clause of this Agreement subject further to the requirements of this Agreement.

1.46 “Street Utility Pole(s)” shall have the meaning set forth in the seventh Whereas clause of this Agreement.

1.47 “Street Pole Compensation” shall mean, collectively, Street Operations Pole Compensation and Street Utility Pole Compensation as they are respectively defined in Appendix D.

1.48 “Old Street Pole Franchise” means any franchise granted by the City of New York and approved by the FCRC between July 14, 2004 and November 30, 2019, authorizing installation of Base Stations on Street Poles.

1.49 “Street Pole Franchise” means any franchise granted by the City of New York and approved by the FCRC after November 30, 2019, authorizing installation of Base Stations on Street Poles.

1.50 “Street Pole Franchisee” means any company granted a Street Pole Franchise pursuant to a Street Pole Franchise agreement.

1.51 “New Reservation Phase” means the selection of Street Operations Poles subject to and accordance with the requirements set forth in Section II (B)(1) of Appendix A of this Agreement.

1.52 “Old Street Pole Franchisees” means any company granted a Street Pole Franchise pursuant to an Old Street Pole Franchise agreement.

1.53 “Term” has the meaning set forth in Section 2.1 hereof.

1.54 “TLP(s)” has the meaning set forth in the seventh Whereas clause of this Agreement.

1.55 “Unavoidable Delay” means a delay due to strike; war or act of war; insurrection; riot; fire, flood or similar act of providence; or other similar causes or events to the extent that such

causes or events are beyond the control of the Company and beyond normal and reasonable expectation, provided in each case that the Company has taken and continues to take all reasonable actions to avoid or mitigate such delay and provided that the Company notifies DoITT in writing of the occurrence of such delay within five (5) business days of the date upon which the Company learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall constitute an "Unavoidable Delay" in such an occurrence, but only if such delay is materially beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the Company has taken and continues to take all reasonable steps to pursue such decision. In no event will a government entity's final decision, whether positive or negative, once made constitute an Unavoidable Delay (the term "final decision" in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). Except to the extent required by any applicable state or federal law, the financial incapacity of the Company or other financial matters shall not constitute an Unavoidable Delay.

1.56 "Zone" means each and any of Zone A, Zone B, or Zone C.

1.57 "Zone A" means the portion of the Borough of Manhattan which includes 96th Street (inclusive of the northernmost boundary of the north side sidewalk of 96th Street) and all parts of said Borough that lie south of 96th Street.

1.58 "Zone B" means all portions of the City not within Zone A or Zone C.

1.59 "Zone C" means Community Districts 1, 2, 4, 5, and 7 in the Borough of the Bronx and Community Districts 13 and 16 in the Borough of Brooklyn.

1.60 "Zone Compensation" shall have the meaning set forth in Section I of Appendix D hereof.

SECTION 2 – GRANT OF AUTHORITY

2.1 Term.

Scheduled Term. This Agreement, and the franchise granted hereunder, shall commence upon and include the Effective Date, and shall continue for a maximum of 10 years unless this Agreement is earlier terminated by mutual agreement of the parties, or upon earlier termination of this Agreement and the franchise pursuant to the terms of this Agreement. The period of time that this Agreement remains in effect is herein referred to as the "Term." Notwithstanding the preceding, if the Effective Date does not occur within 130 days of the Execution Date, this Agreement shall be deemed immediately terminated and no obligations of the parties to one another shall thereafter accrue under this Agreement except as this Agreement expressly provides for the survival of certain obligations or provisions.

2.2 Documents Required for Occurrence of the Effective Date; No Installation Prior to Effective Date.

The Effective Date is subject to among other things, the submission to the City by the Company of the following documents as described in this Section 2.2: (a) a certificate of liability insurance pursuant to Section 10.2.6 hereof, (b) an opinion of the Company's counsel dated as of the

Execution Date, in form reasonably satisfactory to the City opining that this Agreement has been duly authorized, executed and delivered by the Company and is a binding obligation of the Company, (c) an affirmation signed by an authorized officer or representative of the Company in the form set forth in Exhibit D of the RFP, (d) an IRS W-9 form certifying the Company's tax identification number, and (e) organizational and authorizing documents as described in Sections 12.5.1 and 12.5.2 hereof. No installation by the Company on Street Poles, LinkNYC Kiosks or Coordinated Franchise Structures or otherwise on, over or under the Inalienable Property, granted pursuant to this Agreement, shall be permitted until the occurrence of the Effective Date. The City shall issue a notice to the Company setting forth the Effective Date, such notice to be issued within ten (10) days of the first date on which all required conditions to occurrence of the Effective Date, as set forth in this Section 2.2 and in Section 1.18, have been met.

2.3 Nature of Franchise, Effect of Termination and Renewal.

2.3.1 Nature of Franchise.

(a) The City hereby grants the Company, commencing on the Effective Date and thereafter for the period of the Term, subject to the terms and conditions of this Agreement, a nonexclusive franchise providing the right and consent to install, operate, repair, maintain, remove and replace cable, wire, Fiber (or other transmission medium that may be used in lieu of cable, wire or Fiber) and related equipment and facilities on, over and under the Inalienable Property of the City, for the provision of Mobile Telecommunications Services, provided however, that such grant is expressly limited to the locations, facilities and services described in Section 2.4.2 hereof and Appendix A hereto.

(b) Before offering or providing any services using the Facilities, the Company shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to DoITT upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

(c) The Company shall surrender any Old Street Pole Franchise(s) previously granted to it by the City upon the Effective Date. Pole reservations granted pursuant to Old Street Pole Franchises, including any authorized Facilities installed in connection therewith, will be transferred over to the Company and will be governed by all terms and conditions as stated in this Agreement.

(d) In the event that the Company desires to install, maintain and operate a Facility on or within a Coordinated Furniture Structure, the Company must enter into an agreement with the Coordinated Street Furniture Franchisee as identified in this Agreement, and such agreement must be subject to DOT approval.

(e) In the event that the Company desires to install, maintain and operate a Facility on or within a LinkNYC Kiosk, the Company must enter into an agreement with a company granted such a franchise by the City. Such agreement is subject to DoITT approval.

2.3.2 Effect of Termination. Upon termination of this Agreement, the franchise shall expire, all rights of the Company in the franchise shall cease, with no value allocable to the franchise itself;

and the rights and obligations of the City and the Company shall be determined as provided in Sections 11.3 through 11.5 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 City, the Company or any other Person, as applicable, which accrued prior to such termination except as this Agreement expressly provides for the survival of certain obligations or provisions and except that in the event of a termination by reason of a breach or default of one or more obligations hereunder, the breaching or defaulting party shall be liable for any damages for breach or default of this Agreement for which the breach or defaulting entity would be liable under applicable law.

2.3.3 Renewal. This Agreement does not grant to the Company any right to renewal of this Agreement or the franchise granted hereunder, and there shall be no such right. If the Company seeks renewal of this Agreement and/or the franchise granted hereunder, the City shall have the fullest discretion permitted by law to grant or withhold such renewal.

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 to any Person a franchise, consent or right to occupy and use the Inalienable Property, or any part thereof, for the construction, operation and/or maintenance of a system to provide any services (including without limitation Mobile Telecommunications Services), pursuant to the terms of this Agreement, including but not limited to Section II(B) of Appendix A.

2.4.2 Construction of Facilities.

(a) The Company is only authorized, under the franchise granted pursuant to this Agreement, to install, within the Franchise Area:

(i) Base Stations on Street Poles;

(ii) Base Stations on or within LinkNYC Kiosks are subject to (x) agreements between the Company and the owner of the LinkNYC Kiosk; (y) subject to the terms and conditions of the associated LinkNYC Franchise Agreement; and (z) review and approval by DoITT;

(iii) Base Stations on or within Coordinated Franchise Structures, subject to (x) agreements between the Company and the owner of the Coordinated Franchise Structures; (y) subject to the terms and conditions of the Coordinated Street Furniture Franchise and (z) review and approval by DOT; and

(iv) for purposes of connecting Base Stations installed on Street Poles or other authorized structures, to one another or to a supporting telecommunications system (such supporting telecommunications system may include, without limitation, Base Stations installed on, over or under property other than the Inalienable Property), cable, wire or optical fiber, or other transmission medium that may be used in lieu of cable, wire or optical fiber, (collectively "Fiber") on, over or under the Inalienable Property of the City within the Franchise Area.

(b) If at any time the Company seeks to use, or make available to others, Fiber installed pursuant to this Agreement or the Coordinated Street Furniture Franchise or the LinkNYC Franchise for purposes other than the sole purpose of transmission of signals among Base Stations or between Base Stations and a supporting telecommunications system, the Company must obtain (if it does not already have), as a condition to such use or availability, an additional franchise from the City authorizing such use or availability.

(c) The Company acknowledges and agrees that all installations pursuant to this Section 2.4.2 shall be subject to the terms of this Agreement and to any further review and approval required by the City and/or any applicable local, state or federal law.

(d) The Company shall use its commercially reasonable efforts to coordinate construction and maintenance of the Facilities with the appropriate City agencies to minimize unnecessary disruption. Construction and maintenance of the Facilities shall be performed in accordance with all rules related to construction and management of the Inalienable Property, and property and equipment located thereon as the City may have in place or adopt from time to time.

(e) The Company shall obtain all construction, building or other permits or approvals necessary before installing Base Stations or Fiber under this Agreement. The Company shall provide copies of any such permits and approvals to DoITT upon request.

(f) Unless otherwise specifically permitted by the City, nothing in this Agreement is intended to authorize the Company to install poles or other new structures including Coordinated Street Furniture or LinkNYC Kiosks on the Inalienable Property of the City.

(g) Any agreements referenced in sub-Sections 2.4.2(a)(ii) and (iii) above between the Company and owners of Coordinated Franchise Structures and/or LinkNYC Kiosks for the placement of Base Stations on or within Coordinated Franchise Structures and/or LinkNYC Kiosks shall be subject to the prior approval of the City, to be given in the City's sole and absolute discretion.

2.4.3 Public Works and Improvements. Nothing in this Agreement shall abrogate the right of the City (itself or through its contractors) to construct, operate, maintain, repair or remove any public works or public improvements of any description. In the event that the Facilities interfere with the construction, operation, maintenance, repair or removal of any public works or public improvements, the Company shall, at its own cost and expense, promptly protect or alter or relocate the Facilities, or any part thereof, as directed by the City. If practicable, the City shall use reasonable efforts to provide reasonable prior notice to the Company of such interference and the City's direction. In the event that the Company thereafter fails to so protect, alter or relocate all or part of the Facilities, the City shall have the right to break through, remove, alter, or relocate all or any part of the Facilities without any liability to the Company, and the Company shall pay to the City the reasonable costs incurred in connection with such breaking through, removal, alteration, or relocation (provided that the City shall not place any of the Company's Base Station equipment on any Street Pole without the Company's agreement).

2.4.4 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 Persons

utilizing the Facilities to secure the appropriate permits or authorizations for such use, provided that no fee or charge may be imposed upon the Company for any such additional permit or authorization other than the standard fees or charges generally applicable to all Persons for such permits or authorizations.

2.4.5 No Release.

(a) Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Inalienable Property. In the event that any action by the City results in the elimination of a Street Operations Pole, LinkNYC Kiosk, and/or Coordinated Franchise Structure in the Inalienable Property within the Franchise Area all rights and privileges granted pursuant to this Agreement with respect to said Inalienable Property, shall cease upon the date of such elimination. The City shall use reasonable efforts to provide reasonable prior notice to the Company of any such elimination. If said elimination is undertaken for the benefit of any private Person, the City shall make efforts to condition its consent to said elimination on the agreement of said private Person to (i) grant the Company the right to continue to occupy and use the applicable property or (ii) reimburse the Company for the reasonable costs of relocating the affected part of the Facilities. Notwithstanding any other provision herein to the contrary, the Company shall not be liable to the City for any such damage or loss to the extent the City is compensated by the insurance which the Company is obligated to maintain pursuant to this Agreement.

(b) It is not the intention of the parties that anything in the preceding subsection (a) is inconsistent with the provisions of Section II (B) (3) of Appendix A regarding the opportunity of the Company to gain access to an alternative Street Operations Pole for a Base Station, if a Street Operations Pole on which one of the Company's Base Station is located, or a Reserved Pole that is reserved for the Company, is removed temporarily or permanently.

(c) Unless otherwise expressly set forth in this Agreement, nothing herein shall alter the rights and responsibilities of either party pursuant to any agreement previously entered into by the parties.

SECTION 3 – SERVICE

3.1 No Interference. In the operation of the Facilities, the Company agrees not to interfere with the technical operation of any system or service, including, but not limited to, telecommunications system or service operated by or on behalf of the City in support of the City's public safety activities, transportation activities, pedestrian or vehicular traffic, other Street Pole Franchisees', LinkNYC Franchise franchisees, Coordinated Franchise Structures franchisees or other public activities. The Company will immediately terminate (or cease any such interference by adjusting) the use of any portion of the Facilities that is interfering with such activities of the City (provided that if the Company could not have reasonably anticipated that its operations would result in such interference, and the Company acts promptly to remove or relocate the portion of the Facilities resulting in such interference, then the Company shall be entitled to an abatement of any Street Pole Compensation attributable to any such interfering Facilities the use of which has been terminated, for the period during which such use is terminated). Interference, as such concept is referred to in the preceding sentences of this Section 3.1, shall be understood to refer to both spectrum interference and any other forms of interference. With respect to other

telecommunications systems not operated by or on behalf of or under the auspices of the City the Company agrees to comply with the federal Communications Act, as amended (the "Act") and applicable FCC rules and regulations with respect to radio spectrum interference.

3.2 No Discrimination. The Company shall not discriminate in the provision of its services using the Facilities on the basis of actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service or alienage or citizenship status.

3.3 Continuity. In the event the Company, with the consent of the City as required and in accordance with the provisions of Section 9, sells or otherwise transfers the Facilities, the franchise granted hereunder or Control thereof to any Person, the Company shall transfer such in an orderly manner in order to maintain continuity of service to Customers.

SECTION 4 – CONSTRUCTION AND TECHNICAL REQUIREMENTS

4.1 General Requirement. The Company agrees to comply with each of the terms set forth in this Section and in Appendix B governing construction and technical requirements for its Facilities, in addition to any other reasonable construction or technical requirements or procedures specified by the City in writing.

4.2 Quality of Work on City Property, Consistency with City Use. All work involved in the construction, operation, maintenance, repair, and removal of the Facilities shall be performed in a safe, thorough, reliable and resilient manner with a qualified and trained workforce, with relevant certifications as may be required by the City, using materials of good and durable quality. In the case of installations on Street Poles all such work shall be performed in a manner and using materials consistent with the City's use of the Street Operations Poles. If, at any time, it is reasonably determined by the City (acting within the scope of its lawful proprietary and/or governmental authority) or any other governmental agency or authority of competent jurisdiction that any part of the Facilities is harmful to the public health or safety, including worker, vendor and subcontractor safety, then the Company shall, at its own cost and expense, promptly correct any and all such harmful conditions (provided however that with respect to radio frequency emissions the provisions of Section I (G) of Appendix A hereof shall apply).

4.3 Licenses and Permits. The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain or repair the Facilities, including but not limited to any necessary approvals, if applicable, from Persons who may hold private rights affecting the Company's proposed use. The Company shall obtain any required permit, license, approval or authorization prior to the commencement of the activity for which the permit, license, approval or authorization is required (including without limitation any applicable authority of a district management association (or similar entity) of a business improvement district or special assessment district, as set forth in Section I (E)(2) of Appendix A hereof). DoITT will reasonably cooperate in assisting the Company in obtaining such permits listed in Section I (E)(2) of Appendix A hereof.

4.4 Relocation of the Facilities.

4.4.1 New Grades or Lines. If the grades or lines of any Inalienable Property within the Franchise Area are changed at any time during the Term in a manner affecting the Facilities, then the Company shall, at its own cost and expense and upon reasonable prior notice by the City, promptly protect or promptly alter or relocate the Facilities, or part thereof, so as to conform with such new grades or lines. In the event that, after such notice, the Company unreasonably refuses or neglects to so protect, alter or relocate all or part of the Facilities, the City shall have the right to break through, remove, alter or relocate such part of the Facilities 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. This provision shall not be construed to authorize the Company to relocate any Facilities, including without limitation Base Stations, to any other location on, over or under the Inalienable Property except to the extent otherwise permitted under this Agreement (see, for example, Section II (B)(3) of Appendix A). If relocation to such other location on, over or under the Inalienable Property cannot be accomplished consistent with the provisions of this Agreement, then the Company may relocate such Facilities to a location on private property, subject to its reaching an agreement for such relocation with such private property owner and subject further to any and all applicable approvals required by this Franchise Agreement and City laws, rules and regulations.

4.4.2 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 or cut power to any Fiber, amplifiers, appliances, Base Stations or any other parts of the Facilities on, over or under the Inalienable Property, in which event the City shall not be liable therefore to the Company. The City shall, if practicable, notify the Company in writing prior to undertaking such action, or, if prior notice is impracticable, then the City shall notify the Company as soon as practicable after such action has been taken and in any case no later than the next business day following any such action.

4.4.3 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 any applicable Facilities to permit the moving of said structure. The Company may require payment of the actual reasonable costs to move its Facilities from any Person other than the City for any such movement of its Facilities, which the Company may require be payable in full prior to any such movement. Relocation of Base Stations on Street Operations Poles shall be subject to the provisions of Section II (B)(3) of Appendix A hereof.

4.5 Protect Structures. In connection with the construction, operation, maintenance, repair or removal of the Facilities, the Company, which shall bear the reasonable cost and expense thereof, shall protect any and all existing structures and equipment belonging to the City and all designated landmarks, as well as all other structures within any designated historic district. The Company shall obtain the prior approval of the City before altering any water main, sewerage or drainage system, or any other municipal structure or equipment on, over or under the Inalienable Property. Any such alteration shall be made by the Company, which shall pay the reasonable cost and expense thereof, 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 condition immediately prior to

the disturbance or damage, in a manner as may be reasonably specified by the City, any municipal structure or any other property or equipment located on, over or under the Inalienable Property that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company.

4.6 No Obstruction. In connection with the construction, operation, maintenance, repair or removal of the Facilities, the Company shall not unreasonably obstruct the Inalienable Property, or subways, railways, passenger travel, river navigation, or other traffic to, from or within the Franchise Area without the prior consent of the appropriate authorities. To the extent that the City permits or suffers the installation of facilities or equipment (by entities other than the Company or its affiliates) which substantially obstructs the Company's ability to use a Base Station then the Company shall be entitled to an appropriate abatement of the Street Pole Compensation due to the City hereunder applicable to such Base Station for the period the Company's use of such Base Station is thus obstructed (provided that the Company notifies the City of the obstructive effect of such obstruction promptly after the Company becomes aware of such effect).

4.7 Safety Precautions. The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents and protect worker safety at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting.

SECTION 5 – SECURITY FUND

5.1 General Requirement. As security for the performance of its obligation under this Agreement, the Company will deposit with the City (and replenish as required in this Agreement) a Security Fund, in form and amount as set forth in Appendix C hereof. Throughout the Term, and for one hundred twenty (120) days thereafter (or longer if required by Section 11.4.1(d) hereof), the Company shall maintain the Security Fund in the amount specified in Appendix C.

5.2 Purposes. The Security Fund shall serve as security for:

(a) the faithful performance by the Company of all terms, conditions and obligations of this Agreement;

(b) payment to the City for any expenditure, damage, or loss reasonably incurred by the City occasioned by the Company's failure to comply with all written rules, regulations, orders, permits and other directives of the City applicable to the Company's activities pursuant to this Agreement;

(c) payment of the compensation described in Section 7 and Appendix D hereof;

(d) payment of premiums for the liability insurance required pursuant to Section 10 hereof;

(e) removal of the Facilities from the Inalienable Property of the City at the termination of the Agreement, at the election of the City, pursuant to Section 11.4 hereof;

(f) payment to the City of any amounts for which the Company is liable pursuant to Section 10.1.1 hereof which are not paid by the Company's insurance;

(g) payment of any other amounts which become due to the City pursuant to this Agreement or to legal requirements applicable to this Agreement; and

(h) payment of any other costs, losses or damages incurred by the City as a result of a breach or default of the Company's obligations under this Agreement.

5.3 Withdrawals from the Security Fund. The City may draw from the Security Fund such amounts (a) as have not been timely paid to the City when due as provided in this Agreement, (b) as are appropriate to pay the costs of, or reimburse the City for its full costs incurred in undertaking, any activity which the Company is obligated to perform hereunder but has failed to timely perform, and (c) as are appropriate to indemnify and hold harmless the City from any expenses, losses or damages incurred (and not previously paid or reimbursed) as a result of any breach or default by the Company of any obligation of the Company under this Agreement. Withdrawals from the Security Fund shall not be deemed a cure of the default(s) that led to such withdrawals, but the City may not seek recourse against the Security Fund or the Company 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 withdrawals from the Security Fund, the City shall confirm by written notice to the Company of the date and amount thereof, provided, however, that the City shall not make any withdrawals from the Security Fund by reason of any breach or default of this Agreement (including, without limitation, non-payment of compensation or of other amounts payable hereunder) unless: (x) such breach or default has ripened into an Event of Default, and (y) the City notifies the Company in advance of such impending withdrawal and at least ten (10) days have elapsed after such notice. 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. The right to make withdrawals from the Security Fund shall not be construed as the City's right to greater compensation than the Company is obligated to pay pursuant to the terms of this Agreement.

5.5 Replenishment. Within thirty (30) days after receipt of confirmation notice from the City that any amount has been withdrawn from the Security Fund, as provided in this Section 5, the Company shall restore the Security Fund to the amount specified in Appendix C hereof, provided that, if a court finally determines that said withdrawal by the City was improper, the City shall refund the improperly withdrawn amount (plus any interest accrued thereon between such improper withdrawal and such refund) to the Security Fund or to the Company such that the balance in the Security Fund shall not exceed the amount specified in Appendix C hereof. The City shall supply to the Company a written statement of deposits to and withdrawals from the Security Fund upon request of the Company, but not more often than once in any calendar quarter.

5.6 Not a Limit on Liability. The obligations of the Company and the liability of the Company pursuant to this Agreement shall not be limited by the City's acceptance of the Security Fund required by this Section 5; the City's remedies shall in no way be limited by its recourse to the Security Fund (except that the City shall not be entitled to double recovery of the same damages from both the Security Fund and other sources); and the City shall not be required to draw from the Security Fund prior to or in lieu of pursuing any alternate remedies.

SECTION 6 – EMPLOYMENT AND PURCHASING

6.1 Right to Bargain Collectively.

(a) 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, deal, and bargain in good faith, 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, 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.

(b) The concepts and terms set forth in the preceding subsection (a) shall be applied and construed in a manner consistent with their use in Chapter 7 of Title 29 of the United States Code (or any successor provisions thereto).

6.2 City Vendors. To the maximum feasible extent, after taking into account price and quality considerations, the Company shall utilize vendors and subcontractors located in the City in connection with the construction, and maintenance of the Facilities. "Located in the City" means, at a minimum, that the vendor maintains a real property business address in New York City to which full time employees regularly physically report. Such vendors and subcontractors will comply with all federal, state and local labor and employment laws and pursuant to Section 6.1(b) above.

6.3 Equal Employment Opportunity. The Company agrees and will require its vendors and subcontractors to comply with the provisions of the Executive Order No. 50 (April 25, 1980) of the Mayor of the City of New York (codified at Section 1-14 of Title 10 of the Rules of the City of New York), and the rules and regulations promulgated thereunder, as such Order or regulations may be amended, modified or succeeded throughout the Term, to the fullest extent such provisions are applicable.

SECTION 7 – COMPENSATION AND OTHER PAYMENTS

7.1 Compensation.

7.1.1 Compensation. As compensation for the franchise granted hereunder, the Company agrees to pay to the City the compensation amounts set forth in Appendix D hereof, as and when due as described in said Appendix D.

7.1.2 Records and Audits. The Company shall keep, for the term of this Agreement including any Continuing Obligation and any Holdover pursuant to Section 7.6 plus at least six years, at its principal executive office or such other location of its choosing (provided that such other location does not adversely affect the City's inspection rights as set forth in this Agreement), comprehensive itemized records in sufficient detail to enable the City to determine whether all compensation owed to the City pursuant to Section 7.1 is being paid to the City.

7.1.3 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 shall be subject to audit and re-computation by the City.

7.1.4 Ordinary Business Expense. Nothing contained in this Section 7.1 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation and other payments that it may pay pursuant to this Agreement as an ordinary expense of doing business and, accordingly, from deducting said payments from gross income in any local, state, or federal income tax return.

7.2 Other Payments.

7.2.1 Pre-Payment/Reimbursement of Publication Costs. The Company shall, as a condition to the occurrence of the Effective Date of this Agreement, either pre-pay or reimburse the City for costs incurred by the City for compliance with legal notice publication requirements in connection with the award of this franchise. The Company expressly agrees that the payments referred to in this Section 7.2.1 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 Section 7.1 hereof or any other amount that may be payable to the City.

7.2.2 Future Costs. The Company shall pay to the City or to third parties, at the direction of the City, an amount equal to the actual out of pocket costs and expenses which the City incurs for the services of third parties (including but not limited to attorneys, accountants and other consultants) in connection with any Company-initiated renegotiation, transfer, amendment or other modification of this Agreement or the franchise granted hereunder. Before any work subject to such reimbursement is performed, the City will advise the Company that the City will be incurring the services of third parties pursuant to the preceding sentence and will provide an estimate of said anticipated costs and expenses. The Company expressly agrees that the payments made pursuant to this Section 7.2.2 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 Section 7.1 hereof or any other amount that may be payable to the City.

7.3 No Credits or Deductions. The Company expressly acknowledges and agrees that:

(a) The compensation and other payments to be made pursuant to this Section 7 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 Affiliated Person 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

(b) The Company expressly relinquishes and waives any rights it may have 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 any subsequent law, rule, regulation, or order which would purport to permit any of the acts prohibited by this Section 7.3, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any such deduction or other credit; and

(c) Except as permitted by Section 7.1.4, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made or services to be provided pursuant to this Agreement from or against any City or other governmental taxes of general applicability or other fees or charges which the Company or any Affiliated Person is required to pay to the City or other governmental agency; and

(d) Except as permitted by Section 7.1.4, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply or seek to apply all or any part of the amount of the compensation or other payments to be made or services 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 Affiliated Persons; and

(e) The Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person 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 compensation or other payments to be made or services to be provided pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons.

7.4 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 until received at a rate equal to the rate of interest then in effect charged by the City for late payments of real estate taxes.

7.5 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 made to the City's Department of Finance, by electronic deposit or wire transfer arranged in advance with the Department of Finance, or by check and the Company shall send a copy of the documentation of such payment or a copy of such check to DoITT.

7.6 Continuing Obligation and Holdover.

(a) In the event the Company continues to operate all or any part of the Facilities on, over or under the Inalienable Property after the Term, then 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 ("Holdover"), 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, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the Term, including, but not limited to, damages and restitution.

(b) In the event this Agreement terminates for any reason whatsoever and the Company fails to cease providing service over the Facilities, 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 7.

SECTION 8 – RECORDS, REPORTING, AND RULES

8.1 Protection from Disclosure. To the extent permissible under applicable law, the City shall use reasonable efforts to protect from disclosure any confidential, proprietary information submitted to the City under this Agreement or made available to the City pursuant to this Section 8, provided that the Company notifies the City of, and clearly labels the information which the Company deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Company. Information that, at the time of disclosure, was publicly available is not, for the purposes of this Agreement, confidential, proprietary information.

8.2 Oversight. DoITT shall have the right to oversee, regulate and inspect periodically the installation, construction and maintenance of the Facilities, and any part thereof, in accordance with the provisions of this Agreement and applicable law. The Company shall establish and maintain, at its principal executive offices or such other location of its choosing (provided that such other location does not adversely affect the City's inspection and oversight rights) such managerial and operational records, standards, procedures and controls as enable the Company to document, in reasonable detail, to the reasonable satisfaction of the City at all times throughout the Term, that the Company is in compliance with 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.

8.3 Reports.

8.3.1 Status Report. The Company shall, on an annual basis, during the month preceding each anniversary of the Effective Date, provide DoITT and DOT with a report describing any construction or installation of Facilities that has occurred during the previous twelve months. Such information may include, but no be limited to, data or information related to the type of equipment and the Company's reasonably anticipated plans for such construction and installation for the coming twelve months. It is understood by the parties that the Company shall have the unrestricted right to adjust such reasonably anticipated plans and such report of anticipated plans shall not restrict the Company’s rights under this Agreement to reserve space for, and install, Facilities in a manner and at locations which may not be consistent with such report of anticipated plans.

8.3.2 Street Pole Installation Completion Reporting. Within ten (10) days of the completion of installation of the Facilities on a Street Pole, the Company shall report such installation to DoITT and DOT via franchisee-accessible computer application, or by such alternative reporting procedure as DoITT and DOT shall specify.

8.3.3 LinkNYC Kiosks and Coordinated Franchise Structures Installation Completion Reporting. Within ten (10) days of the completion of installation of the Facilities on or within a LinkNYC Kiosk and Coordinated Franchise Structure, the Company shall report such installation to DoITT and DOT via franchisee-accessible computer application, or by such alternative reporting procedure and format as DoITT and DOT shall specify.

8.3.4 Additional Information and Reports. Upon the request of the Commissioner, the Company shall submit to DoITT and DOT, within 14 days, any information or report reasonably related to the Facilities and this Agreement, or to the Company's obligations under this Agreement in such form and containing such information, reasonably related to the Facilities and this Agreement, as the Commissioner shall reasonably specify. Such information may include, but not be limited to, reports identified in Appendix H, and data or information related to the type of equipment and technology deployed pursuant to this Agreement, the radio frequencies in use, and the names of all wireless operator(s) or holders of applicable spectrum licenses (to the extent that it may be an entity other than the Street Pole Franchisee itself) on whose behalf the Company is installing Facilities. Such information or report shall be accurate and complete.

8.4 City Rules. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives governing the Facilities that are consistent with the terms of this Agreement and that it finds necessary or appropriate in the lawful exercise of its police powers, and the Company expressly agrees to comply with all such lawful rules, regulations, orders, or other directives.

8.5 Books and Records/Audit.

8.5.1 Books and Records. The Company, for the Term of this Agreement and including any Holdover pursuant to Section 7.6 plus at a minimum six years, shall maintain complete and accurate books of accounts and records of the business, ownership, and operations of the Company with respect to the Facilities in a manner that allows the City at all times to determine whether the Company is in compliance with the Agreement in accordance with Generally Accepted Accounting Principles. If the City reasonably determines that the records are not being maintained in such a manner, the Company shall alter the manner in which the books and/or records are maintained so that the Company comes into compliance with this Section within a reasonable time. The Company shall ensure that its financial accounts are annually audited by an independent, certified public accountant. Such accountant shall produce a full and unredacted signed report of such audit which will be submitted to the City on an annual basis.

8.5.2 Right of Inspection. The Commissioner and the Comptroller, or their authorized representatives shall have the right to audit, to examine, and to make and receive copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Company, including, but not limited to those kept by the Company, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files; ledgers; cancelled checks; deposit slips; bank statements; journals; and correspondence or other information which pertain to the Facilities, their installation, operation and maintenance, as may be necessary or appropriate to review the Company's compliance with its obligations pursuant to this Agreement. The Company shall at any time requested by the City, whether during or after completion of this Agreement, and at the Company's sole expense make such records available for inspection and audit (including copies and extracts of records as required) by the City. Such records shall be made available to the City during normal business hours at the Company's office or place of business and subject to three-day written notice. All such documents shall be made available within New York City or in such other place that the City may in its discretion agree upon in writing in order to facilitate said

inspection, examination, or audit, provided, however, that if such documents are made available by the Company outside of the City, then the Company shall pay the reasonable expenses incurred by the Commissioner, the Comptroller or their designated representatives in traveling to such location. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the City. All of such documents shall be retained by the Company for a minimum of six (6) years following termination of this Agreement. Access by the Commissioner, the Comptroller or their designated representatives to any of the documents covered by this Section 8.5.2 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, subject to Section 8.1 hereof. In order to determine the validity of such assertion and withholding by the Company, the Commissioner, the Comptroller or their designated representatives (as the case may be) agree to review the alleged proprietary information, and/or a log of the documents believed by the Company to be privileged reflecting sufficient information to establish the privilege claimed, at the Company's premises, or at a mutually acceptable location within the City, and, in connection with such review, to limit access to the alleged proprietary information to those individuals who require the information in the exercise of the City's rights under this Agreement. If the Corporation Counsel of the City, or by injunction or other action a court with subject matter jurisdiction, concurs with the Company's assertion regarding the proprietary nature of such information, the City will hold such information in confidence to the extent authorized by and in accordance with applicable law and will not remove from the Company's premises and/or will immediately return to the Company all embodiments of the proprietary portion of any document or other intangible thing that contains such proprietary information (without maintaining any copies for archival or any other purposes). If the Corporation Counsel of the City, or by injunction or other action a court with subject matter jurisdiction, concurs with the Company's assertion regarding the privileged nature of such information, then the Company will not be required to disclose such information. If the Corporation Counsel of the City does not concur with such assertions, then the Company shall promptly provide such documents, including the alleged proprietary or privileged portion thereof, to the City, provided that the Company shall not be required to provide the proprietary or privileged portion thereof during the pendency of any court challenge to such provision or inconsistently with any final court decision. The records and materials subject to inspection under this Section 8.5 shall not include Customer specific information or records and materials of Affiliated Persons, unless the City can reasonably show why such Customer-specific information or records and materials of Affiliated Persons may be necessary or appropriate to review or audit the Company's compliance with its obligations pursuant to this Agreement.

8.5.3 Subcontracts. The Company shall ensure the City has these rights with respect to the Company's employees, agents, assigns, successors, vendors and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Company and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Company's obligations to the City hereunder.

8.5.4 Audit Costs. In the event that the City, in the course of any audit (including, but not limited to a City audit and/or a third party audit) or an inspection of records by the City, 1) identifies any

underpayment by the Company to the City in excess of one percent (1%) of all compensation paid by the Company to the City during the audit period; or 2) discovers substantive findings related to fraud, misrepresentation, or non-performance, the costs of any such audit will be borne by the Company.

Any adjustments and/or payments that must be made as a result of any such audit (including, but not limited to a City audit and/or a third party audit) or inspection of the Company's records as well as any costs associated with any such audit or inspection of the Company's records shall be made to the City within thirty (30) days from any notification by the City to the Company that such funds are due the City. The City may recoup the costs of any such audit, adjustment and/or payment directly from the Security Fund.

In addition to any other amounts due the City, the Company shall pay to the City interest on any such underpayment at the Prime Rate plus two (2%) percent. "Prime Rate" shall mean the prime rate as published in the Money Rates Section of The Wall Street Journal; however, if such rate is, at any time during the term of this Agreement, no longer so published, the term Prime Rate shall mean the average of the prime interest rates which are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States which publish a prime, base or reference rate, in any case not to exceed the maximum rate permitted by law.

8.6 Compliance With "Investigations Clause." The Company agrees to comply in all respects with the City's "Investigations Clause," a copy of which is attached at Appendix E hereto.

SECTION 9 – RESTRICTIONS AGAINST ASSIGNMENT AND OTHER TRANSFERS

9.1 Transfer of Interest. Except as expressly provided otherwise in this Agreement, and excepting conveyances and leases of real or personal property in the ordinary course of the operation of the Facilities (but not excepting leases which by their size or nature are the functional equivalent of transfers of the Facilities), neither the franchise granted herein nor any rights or obligations of the Company in the Facilities or pursuant to this Agreement shall be encumbered, assigned, sold, transferred, pledged, leased, sublet, or mortgaged in any manner, in whole or in part, to any Person, nor shall title therein, either legal or equitable, or any right or interest therein, pass to or vest in any Person, either by act of the Company, by act of any Person holding Control of or any interest in the Company or the Facilities or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City pursuant to the procedures set forth in this Section 9, provided that the City shall consider any such action in accordance with its usual procedural rules.

9.2 Transfer of Control or Stock. A complete description of the ownership and Control of the Company as of the Effective Date is set forth in Appendix F to this Agreement. Notwithstanding any other provision of this Agreement, except as provided in Section 9.6 hereof, no change in Control of the Company, the Facilities or the franchise granted herein shall occur after the Effective Date, by act of the Company, by act of any Person holding Control of the Company, the Facilities or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City granted pursuant to the procedures set forth in this Section 9. The requirements of Section 9.3 hereof shall also apply whenever any change is proposed of ten percent (10%) or more of the ownership of the Company, the Facilities, the franchise granted herein or of any Person

holding Control of the Company or in the Facilities or in the franchise (but nothing herein shall be construed as suggesting that a proposed change of less than ten percent (10%) does not require consent of the City (acting pursuant to the procedures set forth in this Section 9) if it would in fact result in a change in Control of the Company, the Facilities or the franchise granted herein), and any other event which could result in a change in Control of the Company, regardless of the manner in which such Control is evidenced (e.g., stock, bonds, debt instruments or other indicia of ownership or Control).

9.3 Petition. The Company shall promptly notify (in advance when possible) the Commissioner and DOT of any action requiring the consent of the City pursuant to Sections 9.1 or 9.2 hereof or to which this Section 9.3 applies by submitting to DoITT (pursuant to the notice provisions set forth in Section 12.4 hereof) and DOT a petition requesting the submission by the Commissioner of such petition to the FCRC and approval thereof by the FCRC or requesting a determination that no such submission and approval is required and its argument why such submission and approval is not required. Each petition shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, the Company's argument as to why such action would not involve a change in Control of the Company, the Facilities or the franchise, and such additional supporting information as the Commissioner and/or the FCRC may reasonably require in order to review and evaluate the proposed action. The Commissioner shall expeditiously review the petition and shall (a) notify the Company in writing if the Commissioner determines that the submission by the Commissioner and the approval of the FCRC is not required or (b) if the Commissioner determines that such submission and approval is required, either (i) notify the Company that the Commissioner does not approve the proposed action and therefore will not submit the petition to the FCRC, or (ii) submit the petition to the FCRC for its approval.

9.4 Consideration of the Petition. DoITT and the FCRC, as the case may be, may take such actions as either deems appropriate in considering the petition and determining whether consent is required or should be granted (provided that in no event will DoITT or the FCRC act in a manner prohibited by law or take into account matters which they would be prohibited by law from considering). After receipt of a petition, the FCRC may, as it deems necessary or appropriate, schedule a public hearing on the petition. The Company shall provide all requested assistance to DoITT and the FCRC in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

9.5 Assumption. As a condition to the granting of any consent required by this Section 9, the Commissioner and/or the FCRC may require that each Person involved in any action described in Sections 9.1 or 9.2 hereof shall execute an agreement, in a form and containing such conditions as may reasonably be specified by the City, providing that such Person assumes and agrees to be bound by all applicable provisions of this Agreement and such other conditions which the City reasonably deems necessary or appropriate in the circumstances. The execution of such agreement by such Person(s) shall in no way relieve the Company, or any other transferor involved in any action described in Section 9.1 or 9.2 hereof, of its accrued obligations pursuant to this Agreement.

9.6 Permitted Encumbrances; Pre-Approved Transfers.

(a) Nothing in this Section 9 shall be deemed to prohibit (or require consent of the City to) any encumbrance, assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the Facilities, or any right or interest therein, for bona fide financing purposes, provided that each such encumbrance, assignment, pledge, lease, sublease, mortgage, or other transfer shall be subject to the rights of the City pursuant to this Agreement and applicable law (the actions permitted in this Section include, without limitation, promissory notes and financial and security agreements for the financing of the Facilities with a third party financing entity). The consent of the City shall not be required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of the Company of all or any part of the Facilities pursuant to the rights of such secured creditor under Article 9 of the Uniform Commercial Code, as in effect in the State of New York, and, to the extent that the collateral consists of real property, under the New York Real Property Law; provided, further that, such transfer to or taking of possession shall be subject to the rights of the City pursuant to the provisions of this Agreement and any rights of any banking or lending institution shall be subordinate to any rights that the City may have under this Agreement and/or to the Facilities. The City waives any lien rights it may have concerning Base Station antennas and equipment boxes, which are deemed personal property of the Company and not fixtures, and the Company shall at all times have the right to remove same at any time without the consent of the City (except (i) to the extent such consent is required by DOT with respect to access to and care of the applicable Street Operations Pole or Street Operations Poles, and (ii) subject to any rights of the utility owner of an Street Utility pole from which the company seeks to remove Facilities). The City agrees that such Base Station antennas and equipment boxes shall be exempt from execution, foreclosure, sale, levy, or attachment, provided that such agreement by the City is not intended to limit the City's rights to remove all or part of the Facilities as expressly set forth in this Agreement.

(b) Notwithstanding anything to the contrary in this Section 9 or this Agreement, any sale, assignment or other form of transfer of the franchise granted herein or of the Company's interest in this Agreement or of any related interest which requires the approval of the City pursuant to this Section 9 shall be deemed approved by the City, and therefore will not require any additional approval or consent of the City (although the Company shall be obligated to provide notice to the City of such transaction and the City may require appropriate assumption or similar documentation of such transaction), if such transaction is:

(i) to a direct or indirect subsidiary of the Company that is wholly owned by the Company,

(ii) to an entity of which the Company is a direct or indirect subsidiary wholly owned by such entity,

(iii) an entity which is wholly owned by an entity which also wholly owns the Company,

(iv) a transfer of publicly traded securities through open market transactions over a securities exchange or dealer quotation system on which such securities are traded, provided that such transfer occurs independent of management of the

Company and does not result in a change in more than 25% of the equity or voting interest in the Company, or

(v) a transfer to another Street Pole Franchisee, provided that in the event of any such transfer the Zone Compensation payable to the City under both the transferor's and transferee's Street Pole Franchises shall continue to be due, and provided that the provisions of Section III, IV. and V of Appendix A hereof shall apply in full.

9.7 Consent Not a Waiver. The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the City, as required in this Section 9.

9.8 Petitions from Persons Other Than the Company Seeking Control over the Company. Notwithstanding the foregoing, DoITT reserves the right, on a case-by-case basis, to accept, hear and/or grant petitions seeking approval of the transfer of Control of the Company, the Facilities or the franchise granted herein from Persons seeking to obtain Control of the Company (if appropriate to protect this Agreement from being breached upon the consummation of such a transfer of Control). The City shall provide the Company with reasonable notice of any such petitions. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall not be liable to the Company or any other Person for exercising its rights herein. This Section 9.8 shall not be construed to unilaterally transfer franchise rights under this Agreement.

9.9 Transfers Relating To Street Operations Poles. The agreements of the parties regarding transactions with respect to particular Street Operations Pole reservation rights are set forth in Section III of Appendix A.

SECTION 10 – LIABILITY AND INSURANCE

10.1 Liability and Indemnity.

10.1.1 Company. The Company shall be liable for, and the Company 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 (even if the claim is without merit), costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of the construction, operation, maintenance, repair or removal of the Facilities 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 10.1 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses to the extent such liabilities, etc. arise out of any intentional tortious acts or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors. Notwithstanding the preceding, it is not the intention of this Agreement that the Company, if it hires or retains for its own purposes a consultant or contractor which also happens to be a consultant or contractor of the City, be obligated to indemnify such consultant or contractor, with respect to work such consultant or

contractor performs for the Company, in any manner inconsistent with the applicable agreement between the Company and such consultant or contractor.

10.1.2 No 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 Facilities 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, as provided in Section 2.4.3 and Section 4 hereof or other actions of the City referred to in Section 4. When reasonably possible, the Company shall be consulted prior to any such activity, 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 Facilities, or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company, provided, however, that the foregoing obligation of the Company pursuant to this Section 10.1.2 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any intentionally tortious act or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

10.1.3 No 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 proper and lawful exercise of any right of the City pursuant to this Agreement or applicable law, including, without limitation, the rights of the City to terminate this Agreement or the franchise granted herein as provided herein; provided, however, that the foregoing limitation on liability pursuant to this Section 10.1.3 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any intentionally tortious act or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

10.1.4 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 10.1.1 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 (because, for example, a conflict of interest exists which makes joint representation of the Indemnitee by Company's counsel inadvisable), 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.

10.2 Insurance.

10.2.1 Insurance. The Company shall, on the Effective Date, have all insurance required by this Section 10.2 and the Company shall ensure continuous insurance coverage in the manner, form

and limits required by this Section 10.2 throughout the Term and so long as the Company has facilities within the Inalienable Property.

10.2.2 Commercial General Liability Insurance.

(a) The Company shall maintain Commercial General Liability insurance covering the Company as a named insured in the minimum amount of $10,000,000 per occurrence and a minimum of $10,000,000 aggregate. The use of an excess or umbrella policy is allowable to meet the limit. Such insurance shall protect the Company, and the City, its officials and employees, from claims of property damage and bodily injury, including death, that may arise from any of the operations under this Agreement. Such insurance shall have a minimum products-completed operations aggregate limit of no less than $10,000,000. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, and shall be occurrence based rather than "claims-made". Such policy shall include an endorsement providing that no cancellation or non-renewal of such policy will be effective without at least thirty (30) days prior written notice to the City delivered by either registered mail or other delivery method that provides proof of receipt.

(b) Such Commercial and General Liability insurance and any Umbrella and Excess Insurance shall name the City, together with its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO Forms CG 20 26 and CG 20 37.

10.2.3 Workers' Compensation, Disability Benefits and Employer's Liability Insurance. The Company shall maintain Workers' Compensation Insurance, Disability Benefits Insurance and Employer's Liability Insurance, in accordance with laws of the State of New York, on behalf of, or with regard to, all employees undertaking activities pursuant to or authorized by this Agreement.

10.2.4 Unemployment Insurance. To the extent required by law, the Company shall provide Unemployment Insurance for its employees.

10.2.5 Business Automobile Liability Insurance.

(a) If vehicles are used in the provision of services under this Agreement, then the Company shall maintain Business Automobile Liability insurance in the amount of at least $1,000,000 each accident combined single limit for bodily injury and property damage and Excess or Umbrella Liability insurance to raise the aggregate coverage to a minimum of $2,000,000 per accident for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles to be used in connection with this Agreement; and such coverage shall be at least as broad as the most recently issued ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, then the Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48), as well as proof of MCS-90.

10.2.6 General Requirements for Insurance Coverage and Policies.

(a) All required insurance policies shall be maintained with companies that may lawfully issue the required policy and that have an A.M. Best rating of at least A- / "VII" or a Standard and

Poor's rating of at least A, unless prior written approval is obtained from the City's Law Department;

(b) All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City;

(c) The Company shall be solely responsible for the timely payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy;

(d) There shall be no self-insurance program with regard to any insurance required under this Section 10.2, unless approved in advance in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Section 10.2, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies; and

(e) The City's limits of coverage for all types of insurance required under this Section 10.2 shall be the greater of (i) the minimum limits set forth in this Section 10.2, or (ii) the limits provided to the Company as a named insured under all primary, excess, and umbrella policies of that type of coverage.

10.2.7 Proof of Insurance.

(a) For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Company shall provide as a condition to the occurrence of the Effective Date one of the following (ACORD forms are not acceptable proof of workers' compensation coverage):

(i) Form C-105.2, Certificate of Workers' Compensation Insurance;

(ii) Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;

(iii) Form SI-12, Certificate of Workers' Compensation Self-Insurance;

(iv) Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;

(v) Form DB-120.1, Certificate of Disability Benefits Insurance;

(vi) Form DB-155, Certificate of Disability Benefits Self-Insurance;

(vii) Form CE-200 – Affidavit of Exemption;

(viii) Other forms approved by the New York State Workers' Compensation Board; or

(ix) Other proof of insurance in a form acceptable to the City.

(b) For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Company shall, as a condition to the occurrence of the Effective Date, file a certificate of insurance with DoITT. All certificates of insurance shall be (a) in a form acceptable

to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Company's general liability policy by which the City has been made an additional insured pursuant to Section 10.2.2 above. All certificates of insurance shall also be accompanied by either a duly executed "Certification by Broker" in the form provided by the City or copies of all policies referenced in the certificate of insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted;

(c) Certificates of insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Section 10.2. Such certificates of insurance shall comply with the requirements of this Section 10.2 as applicable;

(d) The Company shall provide the City with a copy of any policy required under this Section 10.2 upon the demand for such policy by the Commissioner or the City's Law Department;

(e) Acceptance by the Commissioner of a certificate or a policy does not excuse the Company from maintaining policies consistent with all provisions of this Section or from any liability arising from its failure to do so; and

(f) In the event the Company receives any notice from an insurance company or other person that any insurance policy required under this Section shall expire or be cancelled or terminated for any reason, the Company shall immediately forward a copy of such notice to the City.

10.2.8 Miscellaneous Insurance Matters.

(a) Whenever any notice of any loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Section, the Company shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Company may not have coverage under such policy (for example, where one of the Company's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Company shall simultaneously send a copy of such notice to the "City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007". If the Company fails to comply with the requirements of this paragraph, then 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;

(b) The Company's failure to maintain any of the insurance required by this Section shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time;

(c) Insurance coverage in the minimum amounts required in this Section shall not relieve the Company 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;

(d) The Company waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured, or claims are paid thereunder) or any other insurance applicable to the operations of the Company in connection with this Agreement.

(e) The Company will be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and is 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 will be automatically restored, without any additional required action by any party, upon the effectiveness of all required insurance coverage being restored).

SECTION 11 – DEFAULT AND TERMINATION

11.1 Remedies Not Exclusive. The Company agrees that the City shall have the specific rights and remedies set forth in this Section 11. 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 shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver 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. Notwithstanding anything to the contrary in this Section 11.1, nothing in this provision shall entitle the City to duplicative collection of damages.

11.2 Defaults and Event of Defaults.

11.2.1 Notice of Default. Upon the occurrence of a breach or default by the Company of any agreement, duty or obligation under this Agreement, DoITT may notify the Company of said breach or default. Such notice shall be provided in accordance with Section 12.4 hereof and shall specify the alleged breach or default with reasonable particularity. Such notice shall be a condition precedent to the ripening of a breach or default into an Event of Default, as described in the following Section 11.2.2.

11.2.2 Events of Default. Any of the following shall constitute an Event of Default, with the attendant remedies available to the City therefore as set forth in Section 11.2.3 hereof:

(a) any failure to timely make any payment to the City pursuant to this Agreement that is not cured within ten (10) days after notice to the Company given pursuant to Section 11.2.1 hereof;

(b) any breach or default of any other material provision of this Agreement (including, without limitation, the provisions of Appendices A, B, C or D) by the Company that is not cured within thirty (30) days after notice to the Company given pursuant to Section 11.2.1 hereof, except that if such breach or default is curable by work to be performed, acts to be done, or conditions to be

removed which cannot, by their nature, reasonably be performed, done or removed within the cure period provided, then such breach or default shall not constitute an Event of Default so long as the Company shall have commenced curing the same within the thirty (30) day cure period and shall thereafter diligently and continuously prosecute the same promptly to completion; or

(c) any recurring or persistent failure by the Company to timely comply with any of the material provisions, terms or conditions of this Agreement or with any applicable rules, regulations or duly authorized orders of the City, provided DoITT has notified the Company, pursuant to Section 11.2.1 hereof, of the City's finding of such recurring or persistent failure and ten (10) days have elapsed after such notice.

11.2.3 Remedies of the City on an Event of Default.

(a) Upon an Event of Default, DoITT may:

(i) cause a withdrawal from the Security Fund for any specified amount due the City under this Agreement;

(ii) seek and/or pursue money damages from the Company as compensation for such Event of Default;

(iii) bar the Company from using some or all Street Poles or LinkNYC Kiosks or Coordinated Franchise Structures as a site for the Company's equipment, or from the reserving use of some or all Street Operations Poles, or revoke the franchise granted hereunder with respect to any specific Street Pole or group of Street Poles;

(iv) revoke the franchise granted pursuant to this Agreement by termination of this Agreement following the expiration of thirty (30) days (or such longer period as may be specified by the City in such notice) after notice from the City to the Company;

(v) accelerate the due date of the Zone Compensation due under Section I of Appendix D hereof, such that all amounts due thereunder for the remainder of the Scheduled Term become immediately due and payable as if such full and immediate payment and due date were expressly provided in Section I of Appendix D hereof (provided that in no event shall the amount thus due and payable as the result of such acceleration exceed the present value of the stream of Zone Compensation payments which would have been due and payable during the remainder of the Scheduled Term absent such acceleration, said present value to be calculated using a discount rate reasonably designated by the City);

(vi) seek to restrain by injunction the applicable breach or default by the Company; and/or

(vii) invoke any other available remedy that would be permitted by law.

(b) Nothing herein shall prevent the City from electing more than one remedy, simultaneously or consecutively, for any Event of Default so long as there is no duplicative recovery of damages.

11.3 Termination.

11.3.1 Termination Events.

(a) In addition to termination of this Agreement pursuant, to Section 11.2.3(iv) above, occurrence of any of the following shall result in termination of the Agreement:

(i) the condemnation by public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the Facilities, the effect of which would materially frustrate or impede the ability of the Company to carry out its obligations and the purposes of this Agreement and the Company fails to demonstrate to the reasonable satisfaction of DoITT, within thirty (30) days after notice that such condemnation, sale or dedication would not materially frustrate or impede such ability of the Company;

(ii) if (A) the Company shall make an assignment of the Company or the Facilities for the benefit of creditors (except as permitted in Section 9.6 of this agreement), shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of or for it or any substantial part of its property or assets, including all or any substantial part of the Facilities; (B) a writ or warranty of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (C) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or of any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereinafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings; or (D) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company; or

(iii) if there shall occur any denial, forfeiture or revocation by any federal, state or local governmental authority having regulatory jurisdiction over the Company of any authorization required by law or the expiration without renewal of any such authorization, and such events, either individually or in the aggregate, materially jeopardize the Facilities or their operation, and the Company fails to take steps to obtain or restore such authorization within thirty (30) days after notice, provided that termination shall not occur if the authorization is not restored upon the expiration of such period if, despite the Company's diligent efforts, obtaining or restoring such authorization is not possible within thirty (30) days, so long as the Company continues to diligently pursue the obtaining or restoring of such authorization.

(b) Notwithstanding the occurrence of one or more of the events detailed in the preceding subsection 11.3.1(a) or in Section 11.2.3(iv), this Agreement shall not be deemed terminated if applicable federal law (including federal bankruptcy law) or state law would prohibit such termination.

11.4 Removal.

11.4.1 Discretion of DoITT and DOT. Upon any termination of this Agreement and upon expiration or termination of any third-party agreements with a LinkNYC franchisee or a Coordinated Franchise Structure franchisee, DoITT and DOT, in its sole discretion, may, but shall not be obligated to, direct the Company to remove, at the Company's sole cost and expense, all of the Facilities, or any portion of the Facilities designated by DoITT and DOT. Further, the Company upon its own initiative and at its sole cost and expense, may remove all of the Facilities, from the Inalienable Property in accordance with all applicable rules and requirements of the City and subject to the following:

(a) the Company's option to remove Facilities from the Inalienable Property at its own initiative (if the City does not require such removal) shall not apply to those buried portions of the Facilities (if any) which, in the opinion of DoITT and DOT, cannot practicably be removed without excessive disruption of the Inalienable Property or other facilities and equipment located on, over or under such Inalienable Property;

(b) in removing the Facilities, or part thereof, 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 and equipment, including without limitation Street Operations Poles, in as good condition as that prevailing prior to the Company's removal of the Facilities, ordinary wear and tear not caused by the Company or the Facilities excepted, and without affecting, altering or disturbing in any way any electric, telephone or other cables, wires, structures or attachments;

(c) the City shall have the right to inspect and approve the condition of such Inalienable Property and other property and equipment after removal and, to the extent that the City determines that said Inalienable Property and other property and equipment of the City have not been left in materially as good condition as that prevailing prior to the Company's removal of the Facilities (ordinary wear and tear not caused by the Company or the Facilities excepted) the Company shall be liable to the City for the cost of restoring the Inalienable Property and other property and equipment of the City to said condition;

(d) 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 Inalienable Property and other property and equipment of the City, and for not less than one hundred twenty (120) days thereafter; and

(e) removal shall be commenced within sixty (60) days of the removal order by DoITT and shall be substantially completed within twelve (12) months thereafter including all reasonably associated repair of the Inalienable Property and other property and equipment of the City.

11.4.2 Failure to Commence Removal. If, in the reasonable judgment of the City, the Company fails to commence removal of the Facilities as designated by DoITT or DOT, within sixty (60) days after DoITT's or DOT's removal order, or if the Company fails to substantially complete such removal, including all associated repair of the Inalienable Property and other property and equipment of the City, within twelve (12) months thereafter, then, to the extent not inconsistent

with applicable law, the City shall have the right to remove, or authorize removal by another Person of, the Facilities, at the Company's cost and expense. Any portion of the Facilities not timely removed by the Company shall belong to and become the property of the City without payment to the Company, and the Company shall execute and deliver such documents as the City shall reasonably request, in form and substance acceptable to the City, to evidence such ownership by the City of such Facilities, but not in any other property of the Company, intellectual or otherwise.

11.4.3 No Condemnation. None of the declaration, connection, use, transfer or other actions by the City under Section 11.4.2 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

11.5 Return of Security Fund. 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 Facilities from and associated repair of the Inalienable Property and other property and equipment of the City pursuant to Section 11.4.1 hereof, the Company shall be entitled to the return of the Security Fund deposited pursuant to Section 5 and Appendix C hereof, or such portion thereof as remains on deposit at said termination, provided that all offsets necessary (a) to compensate the City pursuant to Section 5.2 and/or Section 5.3 hereof, (b) to cover any costs, loss or damage incurred by the City as a result of any Event of Default, in the event of termination of this Agreement by the City pursuant to Section 11.3 hereof, and (c) to reimburse the City for the cost of removal of the Facilities pursuant to Section 11.4.2 hereof have been taken by the City.

SECTION 12 – MISCELLANEOUS

12.1 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are incorporated herein by reference and expressly made a part of this Agreement as if they were part of the body of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification of the body of this Agreement.

12.2 Action Taken by City. Any action to be taken by DoITT pursuant to this Agreement shall be taken in accordance with the applicable provisions of the City Charter as said Charter may be amended or modified throughout the Term, except insofar as the City Charter permits its provisions to be varied by contract, in which case the terms and provisions set forth herein shall control, and except insofar as the City Charter is found by a court of competent jurisdiction, with all appeals exhausted, to be preempted by State or Federal law. Whenever, pursuant to the provisions of this Agreement, the City, the Company, or any other Person is required or permitted to take any action, including, without limitation, the making of any request or the granting of any consent, approval, or authorization, the propriety of said action shall be measured against the standard of reasonableness such that each such action shall be undertaken in a reasonable manner, unless this Agreement authorizes the City, the Company, or other Person to take such action in its sole discretion.

12.3 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.

12.4 Notices. Every notice, order, petition, document, or other direction or communication (collectively referred to in this Section as a "notice") to be served upon the City or the Company shall (unless expressly provided to the contrary in this Agreement), in order to have a legal or contractual effect, be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested or by nationally recognized overnight delivery service, requiring a sign receipt of delivery. Every such notice to the Company shall be sent to its office located at 660 Newport Center Drive, Suite 200, Newport Beach, CA 92660. Every notice 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 15 Metro Tech Center, Brooklyn, NY 11201, 19th Floor, Attention: Assistant Commissioner for Franchise Administration. A required copy of each notice from the Company shall be sent to each of the following addresses: (1) DoITT, 15 Metro Tech Center, 18th Floor, Brooklyn, New York 11201 Attention: General Counsel, (2) DOT, 55 Water Street, 9th Floor, New York, New York 10041 Attention: General Counsel, and (3) New York City Law Department, 100 Church Street, New York, New York 10007, Attention: Chief, Economic Development Division. 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. Either party to this Agreement may change any notification address set forth in this Section 12.4 by notice to the other party.

12.5 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:

12.5.1 Organization, Standing and Power. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada and is duly authorized to do business in the State of New York and in the City. The Company has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and 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 current articles of incorporation and certificate of good standing (or documents of comparable import if the Company is not a corporation) will be delivered to the City as a condition to the occurrence of the Effective Date, and will be complete and correct as thus delivered. The Company is qualified to do business and is in good standing in the State of New York. The Company holds or shall obtain any and all necessary licenses and permits from the New York State Public Service Commission, the Federal Communications Commission, and any other governmental body having jurisdiction over provision of services by the Company.

12.5.2 Authorization; Non-Contravention. The execution and delivery 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 shall furnish the City with a certified copy of authorizations for the execution and delivery of this Agreement as a condition to the occurrence of the Effective Date. 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 will constitute) the binding obligations of the Company. 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.

12.5.3 No Additional Consent Required. No consent, approval or authorization of, or declaration or filing with, any public, governmental or other authority is required for the valid execution and delivery of this Agreement or any other agreement or instrument, if any, executed or delivered in connection herewith.

12.5.4 Compliance with Law. The Company certifies that, to the best of its knowledge after reasonable investigation, it is in compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the Facilities, including, without limitation, any applicable antitrust laws and rate regulations, and has filed, has obtained or will file for and obtain all government licenses, permits, and authorizations necessary for the installation, operation and maintenance of the Facilities.

12.5.5 Criminal Acts. Neither the Company, nor, to the best of the Company's knowledge after reasonable investigation, any Person holding a Controlling Interest in the Company, nor any director or officer of the Company nor any employee or agent of the Company nor any Controlling Person, acting pursuant to the express direction, or with the actual consent of the foregoing, has been convicted (where such conviction is a final, non-appealable judgment) or has entered a guilty plea with respect to any criminal offense arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, or (iii) any act to be taken following the Effective Date, pursuant to this Agreement by the City, its officers, employees, or agents, including, without limitation, bribery or fraud arising out of or in connection with (i), (ii) or (iii).

12.5.6 Misrepresentation. No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, in connection with any submission to the City, including the Company’s response to the RFP, or in connection with the negotiation of this Agreement.

12.6 Additional Covenants. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the franchise granted herein, the Company agrees that it will comply with the following affirmative covenants, unless the City otherwise consents in writing:

12.6.1 Compliance with Laws; Licenses and Permits.

(a) The Company shall comply with: (i) all applicable laws and judgments (including, but not limited to, those of the PSC and the FCC and any other federal or state agency or authority of

competent jurisdiction) affecting this Agreement, the franchise, and the Facilities; and (ii) all local laws and all rules, regulations and duly authorized orders of the City.

(b) The Company shall have the sole responsibility for obtaining or causing to be obtained all permits, licenses and other forms of approval or authorization necessary to construct, operate, maintain, repair or remove the Facilities, or any part thereof. The Company will, prior to any construction, operation, maintenance, repair or removal of the Facilities, secure all necessary permits, licenses and authorizations in connection with the construction, operation, maintenance, repair or removal of the Facilities, or any part thereof, and will file all required registrations, applications, reports and other documents with, the FCC, the PSC and other entities exercising jurisdiction over the provision of telecommunications services or the construction of delivery systems therefor.

(c) The Company shall not permit to occur, or shall promptly take corrective action if there shall occur, any event which (i) could result in the revocation or termination of any such license or authorization, (ii) could materially and adversely affect any significant rights of the Company, or (iii) permits or, after notice or lapse of time or both, would permit, revocation or termination of any such license or which materially and adversely affects or reasonably can be expected to materially and adversely affect the Facilities or any part thereof.

12.6.2 Criminal Acts. The Company shall not permit any of the convictions or guilty pleas of the types listed in Section 12.5.5 to occur during the term of this Agreement, arising out of or in connection with (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, or (iii) any act to be taken following the Effective Date, pursuant to this Agreement by the City, its officers, employees, or agents, and it shall be an Event of Default if any such convictions or guilty pleas shall occur during the term of this Agreement, provided that the City's right to take enforcement action under this Agreement in the event of said convictions or guilty pleas shall arise only with respect to any of the foregoing convictions or guilty pleas of the Company itself or, with respect to any of the foregoing convictions or guilty pleas of any of the other Persons specified in Section 12.5.5, if the Company shall have failed to disassociate itself from, or terminate the employment of, said Person or Persons within thirty (30) days after the City orders such disassociation.

12.6.3 Maintain Existence. The Company will preserve and maintain its existence, its business, and all of its rights and privileges necessary to fulfill the obligations of the Company hereunder. The Company shall maintain its good standing in its state of organization and continue to qualify to do business and remain in good standing in the State of New York and shall conduct business in accordance with its governing documents.

12.6.4 Condition of Facilities. All of the properties, assets and equipment that constitute the Facilities will be maintained in good repair, working order and good condition.

12.7 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 City and the Company and their successors and assigns.

12.8 No Waiver; Cumulative Remedies. No failure on the part of either party 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. No failure of the Company or the City to insist on strict performance by the other of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of their respective rights hereunder shall be considered a waiver of such rights, and the Company and the City shall each have the right to enforce such respective rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. 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 either under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by either party at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by either party at any other time. In order for any waiver of either party to be effective, it must be in writing. The failure of either party to take any action regarding a breach or default, or an Event of Default, by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of either party 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.

12.9 Partial Invalidity. The clauses and provisions of this Agreement are intended to be severable. If any clause, provision, section, subsection, sentence, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, then such provision shall be deemed a separate, distinct and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect, but only so long as the fundamental assumptions underlying this Agreement are not undermined. If, however, the fundamental assumptions underlying this Agreement are undermined as a result of any such provision being declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, and such declaration is not stayed within 30 days by a court pending resolution of a legal challenge thereto or an appeal thereof, the adversely affected party shall notify the other party in writing of such declaration of invalidity and the effect of such declaration of invalidity and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such declaration of invalidity, provided, however, that any such modifications shall be subject to all City approvals and authorizations and compliance with all City procedures and processes. If the parties cannot come to an agreement modifying this Agreement within 120 days (which 120-day period shall be tolled during any stay contemplated above) of such notice, then this Agreement shall terminate with such consequences that would ensue if it had been terminated by the City pursuant to Section 11.4 hereof.

In addition, in the event any applicable federal, state, or local law or any regulation or order is passed or issued, or any existing federal, state, or local law or regulation or order is changed (or any judicial interpretation thereof is developed or changed) in any way which undermines the fundamental assumptions underlying this Agreement, the adversely affected party shall notify the other part in writing of such change and the effect of such change and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such change, provided, however, that any such modifications shall be subject to all City approvals and authorizations and

compliance with all City procedures and processes. If the parties cannot come to an agreement modifying this Agreement within 120 days of such change, then this Agreement shall terminate with such consequences that would ensue if it had been terminated by the City pursuant to Section 11.4 hereof.

12.10 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.

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

12.12 Governing Law. This Agreement shall be deemed to be executed in the City of New York, 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.

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

12.14 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.

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

(a) if either party initiates any action against the other in Federal Court or in New York State Court, service of process may be made as provided in Section 12.17 hereof;

(b) with respect to any action between the City and the Company in New York State Court, each party 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, each party expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York; and

(d) if either party commences any action against the other in a court located other than in the City and State of New York, then, upon request of the other, such party 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, such party 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.

12.16 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.

12.17 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 address as set forth in Section 12.4 of this Agreement, to such other location as the Company may provide to the City by notice in writing, or to the Secretary of State of the State of New York.

12.18 Compliance With Certain City Requirements. Not in limitation of the requirements of the Agreement, the Company agrees to comply with the City's "MacBride Principles", a copy of which is attached at Appendix G hereto and with PASSPort, as the same may be amended from time to time.

12.19 Business Days and Calendar Days. References herein to periods of time numbered in days shall be deemed to refer to calendar days unless expressed defined in the applicable section hereof as business days. Business days shall mean calendar days that are not Saturdays, Sundays or legal public holidays for U.S. federal employees.

— end of page —

[signatures appear on next page]

IN WITNESS WHEREOF, the City, by its duly authorized representatives, has caused the corporate name of said City to be hereunto signed, and the Company, by its duly authorized officer, has caused its name to be hereunto signed, as of the date and year first above written.

THE CITY OF NEW YORK

By: _____
Deputy Mayor Date

Department of Information Technology and Telecommunications

By: _____
Commissioner Date

Mobilitie, LLC [1]

By: _____

Name: _____

Title: _____

Date:

Approved as to form and
certified as to legal authority:

_____
Acting Corporation Counsel

Date:

Attest: _____
City Clerk

Date:

[1] The franchise granted under this Agreement is referred to as "Mobilitie I".

On the ______ day of __________ in the year 2020 before me, the undersigned, personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

On the ______ day of __________ in the year 2020 before me, the undersigned, personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

On the ______ day of __________ in the year 2020 before me, the undersigned, personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

On the ______ day of __________ in the year 2020 before me, the undersigned, personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

APPENDIX A

Base Station Location and Design

I. Design of Street Pole Base Station Equipment

(A) Permitted Components and Size of Base Station Equipment. Base Stations to be installed on Street Operations Poles pursuant to this Agreement are permitted to be comprised of one, two or all three of the following elements, which shall be consistent the following design parameters:

Element (1): Equipment Housings. One equipment housing (which may enclose, incorporate or consist of one or more than one antenna of any type, or other form of equipment) within either of the two following size parameters:

(a) An equipment housing with a volume no greater than 2.8 cubic feet (i.e., 4,840 cubic inches) with maximum dimensions of 35 inches (H) by 15 ½ inches (W) by 9 inches (D).

(b) An equipment housing with a volume no greater than 2.8 cubic feet (i.e. 4,840 cubic inches) with maximum dimensions of 25 inches (H) by 18 inches (W) by 11 inches (D).

Element (2): Stick-Type Antennas. One stick-type antenna, no more than two (2) inches in diameter and extending no more than sixty (60) inches in length, extending vertically from a base at the top of the pole. Special consideration may be given for attachment of antennae on certain Street Operations Pole designs that do not contain a pole cap. Approval by the City for installations on poles of this type will be given on a case by case basis and require submission of detailed mounting drawings.

Element (3) Interconnecting Wiring/Cabling: Wire or cable interconnecting the above elements with each other and with underground power and/or other supporting utility facilities (in areas of the City where such utility facilities are located above ground, then such wire interconnection shall be permitted to connect to such above ground facilities), with as much of such wire or cable being located inside the Street Operations Pole, rather than externally, as practicable. Company is encouraged to use wireless backhaul technologies, where practicable, to interconnect its facilities to minimize the disruption to City streets.

(B) Permitted Location and Orientation on Pole of Base Station Equipment.

(1) Unless otherwise specifically permitted by the City, all equipment on a Street Operations Pole will be located on the vertical shaft portion of the pole (that is, unless otherwise specifically permitted by the City, no equipment will be located on any horizontal portion or "arm" of the Street Operations Pole) and equipment housings shall be oriented vertically so that the largest dimension is the height.

(2) Notwithstanding anything to the contrary in this Appendix A, any facilities located on "bishop's crook" design SLPs shall be installed only within the "limit zone", defined as a four-foot zone of minimal or no decoration generally located on such poles from about fifteen feet above street level to about nineteen feet above street level.

(C) Permitted Visual Appearance of Equipment Housing.

(1) Each equipment housing must be painted the same color as the pole on which it is sited, or otherwise be made to color match the Street Pole using a pre-approved method. Street Pole Franchisees shall be required to replace, re-finish, or re-paint Base Stations as directed by the City to address color fading or other appearance-changing occurrences.

(2) No unauthorized writing, symbol, logo or other such graphic representation that is visible from the street or sidewalk shall appear on any exterior surface of an equipment housing. The City may require the placement of a standard identifying barcode or comparable mark.

(3) If the City adopts a new design or designs for Street Operations Poles the Company will use an appropriate enclosure for any equipment boxes to be located on such newly designed Street Operations Poles which enclosure shall be esthetically consistent with such new design or designs, and the Company will cooperate with the City in the City's replacement of old with new pole structures, including the Company cooperating to temporarily remove equipment on a Street Operations Pole during any transition of such Street Operations Pole to a newly designed version.

(D) Permitted Weight of Base Station Equipment. All equipment to be installed on a Street Operations Pole must be of a weight no greater than that compatible with the capacity of the pole to safely and securely support such equipment. Calculation of such compatible weights shall as appropriate take into account snow load, wind load, and the weight of other equipment commonly found on Street Operations Poles such a traffic signals, street light luminaires, banners, or other reasonably predictable weight burdens to which equipment may be subject in the field. Street Pole Franchisees are required to submit for review by the City a structural analysis performed by a licensed engineer to account for each type of Street Operations Pole.

(E) Review Requirements for Design and Installation of Base Station Equipment on Street Operations Poles.

(1) Installation of equipment on Street Operations Poles pursuant to this Agreement shall be subject to the City's right to review and approve the final design and appearance of all equipment to:

(a) ensure compliance with all applicable laws, rules and regulations of the City (including but not limited to those specific requirements described in Section I (E)(2) below),

(b) ensure public safety, the integrity of City facilities and non-interference with pedestrians and vehicular traffic, and

(c) ensure esthetic consistency with the Street Operations Poles to which the equipment will be attached (including signage and other items or matter that may be located on such Street Operations Poles) and the surrounding context.

(2) In addition to the general requirement that installations on Street Operations Poles are subject to City review for compliance with all applicable laws, rules and regulations of the City, the following specific approval requirements shall be applicable to Street Operations Poles installations:

(a) Installation of Base Stations on Street Operations Poles shall be subject to approval by the City's Public Design Commission (Public Design Commission means the Public Design Commission of the City of New York, or any successor thereto) of the design of the Company's proposed form of Base Station installation, as provided in Section 854 of the City Charter. During the Franchise Term, Street Pole Franchisees may propose modified equipment specifications and designs for which the City, in its fullest discretion and if authorized by applicable law, may approve. Such approval will be subject to the review and approval by all City agencies of applicable jurisdiction, which may include, without limitation, DOT and the Public Design Commission. The City, in is sole discretion, subject to the terms and conditions of the Franchise, may approve one or more additional designs of equipment attachments.

(b) Approval of installations within "historic districts" as defined in Section 25-302 of the City Code are subject to prior review by the City Landmarks Preservation Commission pursuant to Section 25-318 of the City Code, and no approval for such installation shall be effective unless and until a report as described in said Section 25-318 is received.

(c) Approval of installations within City parks shall be subject to prior review by DoITT in consultation with the New York City Department of Parks and Recreation, and no approval for such installation shall be effective unless and until DoITT, in consultation with the New York City Department of Parks and Recreation, has reviewed and approved the proposed installation.

(d) Base Station equipment designs may, in the City's sole discretion, require modification to maintain consistency with special Street Pole designs (including for example, without limitation, poles specially designed for historic districts, business improvement districts or other types of areas). Such modification will not be considered an approval

of a new design to be used outside of the designated areas that include such special Street Pole designs.

(F) Power Supply. The Company will be solely responsible for obtaining and paying all costs for electrical power for its equipment. The Company shall either (1) obtain the written agreement of the electrical power provider that such provider will not look to the City for payment of such costs of electrical power even if the Company fails to pay such costs, or (2) deposit an additional amount into the Security Fund for each Base Station it installs equal to one year of reasonably estimated charges for electrical power to such Base Station (the City and the Company to reasonably agree on such reasonably estimated charges prior to installation of such Base Station). In any event, Base Station equipment must be designed so that power usage by the Base Station can be shut off remotely, without climbing up to the antenna or equipment box.

(G) Radio Frequency Energy Exposure Limits. The Company shall, with respect to all the Facilities, (1) comply on an on-going basis with FCC maximum permitted levels of radio frequency energy exposure, (2) continue, on an on-going basis, to comply with such FCC maximum permitted levels (calculated on an aggregate basis with any other radio frequency energy emitters that may be present), (3) comply with all FCC rules and requirements, regarding the protection of health and safety with respect to radio frequency energy exposure, in the operation and maintenance of such Facilities (taking into account the actual conditions of human proximity to Base Stations on Street Operations Poles), and (4) at the direction of the City, pay the costs of testing such Facilities for compliance with the preceding clauses (1), (2) and (3), which testing may be directed by the City from time to time, without limitation, and which is to be conducted by independent experts selected by the City after consultation with the Company and which testing shall be conducted in accordance with the FCC's OET (Office of Engineering and Technology) Bulletin 65 (or a successor thereto) unless the City reasonably determines that alternative testing procedures that reflect sound engineering practice are appropriate. Any such Facility non-compliant with applicable radio frequency exposure limits shall be immediately deactivated until such time that the Company can demonstrate, to the City's satisfaction, full compliance with all applicable FCC rules and requirements. Failure by the Company to promptly deactivate its Facilities pursuant to this provision and/or fully comply with FCC rules and requirements may constitute an Event of Default as contemplated in Section 11.2.2 (b) of this Agreement.

(H) Street Utility Poles. Notwithstanding anything to the contrary in the preceding subsections of this Section I, the design and location of Facilities on Street Utility Poles shall be consistent with the provisions of this Section I to the maximum extent permitted by safety, legal and use requirements associated with the use of such poles for the applicable pre-existing utility uses.

II. Location and Number of Pole Sites

(A) Location Requirements.

Street Operations Poles will only be available pursuant to this Agreement in accordance with the following provisions:

(1) No more than one Base Station, in total, is permitted on a Street Operations Pole pursuant to this Agreement and the other Street Pole Agreements, so that once a Street Operations Pole becomes a Reserved Pole reserved to a Street Pole Franchisee (see Section II(B)(1) of this Appendix A) such Street Operations Pole is not available for use by any other Street Pole Franchisee as long as such Street Operations Pole remains a Reserved Pole.

(2) Base Stations will be permitted on Street Operations Poles located at both intersection and mid-block locations, as described herein.

(3) Base Stations will be permitted on Street Operations Pole sites within an intersection only up to the number which leaves two (2) Street Operations Pole sites within such intersection without any Base Stations installed by Street Pole Franchisees (including the Company), and thus available for future potential use for purposes to be determined by the City. The City will review, on a case-by-case basis, requests for Street Operations Poles at certain intersections which leave fewer than two (2) Street Operations Pole sites without Base Stations. Street Operations Poles shall be "within an intersection" if any part of the base of the Street Operations Pole is thirty (30) feet or less from two different street beds or at a comparable location at the intersection of two (2) streets

(4) Due to City operational needs, TLPs on which a traffic signal controller box is located (usually one pole per intersection with a traffic light) are not available for use by the Company for Base Stations. Other TLPs will only be approved on a case by case review by DOT.

(5) Base Stations installed on Street Operations Poles pursuant to this Agreement shall be placed, located and operated so as not to interfere with public safety or traffic operations or any other City, state or federal government operations. The Company agrees to immediately remove any Base Station that is operating inconsistently with this subsection (5) if such inconsistency cannot be immediately cured.

(6) Base Stations installed on Street Operations Poles pursuant to this Agreement shall be placed, located and operated by the Company so as not to illegally interfere with the operation of Base Stations of other Street Pole Franchisees or other radio frequency spectrum users generally. The City shall, to the extent permitted, require the foregoing clause to be placed in all Street Pole Franchises granted now or during the Term. The Company recognizes, however, that the City is not a guarantor of, nor is it obligated to the Company to enforce, the Company's freedom from radio frequency interference that may affect the Company's Base Stations. Even if the City has some authority as a site location provider to act against such interference, and the City may choose to exercise such authority in any particular instance, the Company hereby recognizes and agrees that the

City shall have no legal or contractual obligation to the Company to exercise such authority and may choose not to do so.

(7) This Agreement does not authorize the placement of Base Stations on sites, structures or facilities other than Street Operations Poles and other certain authorized LinkNYC Kiosks or Coordinated Franchise Structures as limited to and as described herein except as such placement may be expressly authorized by DoITT and DOT pursuant to procedures established by DoITT and DOT. The City reserves the right to grant, at any time, to any party, upon terms and conditions determined by the City in its discretion, separate and distinct rights to place such equipment on other sites (such as City buildings) or other types of street facilities, equipment or furniture.

(8) Prior to the installation of a Base Station on any Street Operations Pole on a City street where the pole is less than ten (10) feet from an existing building, DoITT will provide not less than fifteen (15) business days' notice of, and opportunity to submit written comment regarding, such proposed installation to the Community Board and City Council member in whose district such building lies. (For purposes of this provision, the distance from a pole to a building shall be measured by the distance from the base of the pole facing the building to the building line.)

(9) The City reserves the right at any time to waive any of the above restrictions (or other restrictions in this Agreement), with or without conditions, in its discretion.

(10) Street Utility Poles. Notwithstanding anything to the contrary in the preceding subsections of this Section II (A), the location of Facilities on Street Utility Poles shall be consistent with the provisions of said subsections to the maximum extent permitted by safety, legal and use requirements associated with the use of such poles for the applicable pre-existing utility uses.

(B) Allocation of Street Operations Pole Sites Among Street Pole Franchisees.

The Company shall not install any facilities or equipment on any Street Operations Pole unless and until such Street Operations Pole has been reserved for the Company under this subsection (B). Notwithstanding a pending reservation, the Company shall not install Facilities on a Street Operations Pole where equipment has been reserved or installed pursuant to this Franchise or is otherwise in use or reserved by the City or for which the City has granted a permit to use the pole to another party. Company is responsible for providing accurate coordinates and mapping of desired Street Poles.

(1) New Reservation Phases. From time to time the City will notify all Street Pole Franchisees of a period during which new pole reservations may be made (a "New Reservation Phase"). Such notice shall include the requirements for such New Reservation Phase including but not limited to the maximum per-Zone number. Franchisees shall in turn, in accordance with the Priority list, select Street Operations Poles in any Zone for which they are paying Zone Compensation. All selections must be posted in a manner determined by the Commissioner which shall be accessible to the City and all other Street Pole Franchisees. Such list may not include any Reserved Poles.

(2) Expiration of Reservation. Reservations granted for a Street Operations Pole expire upon the occurrence of the earliest to occur of the following:

(i) Upon the termination of the Street Pole Franchise.

(ii) The Company surrenders an unoccupied Reserved Pole. Surrender of the Reserved Pole is effective upon receipt by the City of written notice of the surrender of the reservation(s) and notice to the other Street Pole Franchisees (in a manner comparable to the manner of posting Reservation Notices).

(iii) If (A) a Street Pole Franchisee does not commence construction activity (or fails to otherwise notify the City that is has started construction) for the installation of a Base Station on a Reserved Street Operations Pole within one year of the posting of a Reservation Notice creating such reservation, (B) the City thereafter commences a further New Reservation Phase, (C) the City notifies Street Pole Franchisees that such Reserved Pole is subject to inclusion on new Reservation Notices[1], and (D) if a Street Pole Franchisee requests such Street Operations Pole during a New Reservation Phase as described in this subsection (iii). At the sole discretion of the City, the one-year period set forth in the preceding sentence may be subject to extension for Unavoidable Delays in the applicable Base Station installation.

(iv) If (A) an operational Base Station becomes non-operational and is not restored to operability within sixty (60) days of becoming non-operational, or (B) a Base Station repeatedly becomes non-operational in a manner that, despite repeated restoration of operability within the required time period, suggests that the Base Station is not being significantly relied on for the provision of service, then the Reserved Pole status of such Street Operations Pole shall expire thirty (30) days after notice from the City of such expiration.[2]

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[1] If no Street Pole Franchisee requests such Street Operations Pole during a New Reservation Phase as described in this subsection (iii), such Street Operations Pole's status as a Reserved Pole shall continue (unless it otherwise expires under subsections (i), (ii) or (iv) of this subsection (3)) until the next New Reservation Phase.

[2] The intention of this subsection (iv) is to allow Reserved Poles that are not are not fulfilling the intended purpose of providing service to be made available to other Street Pole Franchisees who may be interested in using such Street Operations Pole for provision of service. This subsection (iv) is not intended to cause the expiration of Reserved Pole status for Base Stations which are installed for the specific purpose of providing service only on occasions of unusual demand or specific need, and which are intentionally out of service for extended periods in a manner consistent with such limited use goals. Such limited use Facilities shall not be considered as "non-operational" for purposes of this subsection (iv) so long as they are operational when placed in service for their intended, occasional use and so long as the number of such limited use installations

Continued…

(v) If after posting a Reservation Notice, the Company fails within 30 days of such posting to pay the City such amount as is necessary to meet the requirements of Appendix C of this Agreement for deposit into the Security Fund, in a manner reflecting the addition of such Reserved Poles as are reserved pursuant to such Reservation Notice, then that number of Reserved Poles reserved by such Reservation Notice shall have their Reserved Pole status expire as is necessary to reduce the Company's Security Fund obligation under Appendix C hereof to the actual amount contained in the Security Fund.[3]

(3) Temporary or Permanent Replacement Reservation. In the event that a Street Operations Pole, on which the Company has placed a Base Station in accordance with the provisions of this Agreement, temporarily or permanently is rendered substantially unusable for the purpose intended under this Agreement (for reasons unrelated to the Company and its operations because, for example, the City has removed the Street Operations Pole, temporarily or permanently), the City will reasonably cooperate with the Company to attempt to locate an alternative Street Operations Pole that can serve as an alternative location. If the City and the Company reach an agreement on such an alternative Street Operations Pole, the City shall designate it a Reserved Pole until either (1) the original Reserved Pole is restored as an available site or (2) the City and the Company agree to terminate the original reservation. During any period that a Reserved Pole on which the Company has placed a Base Station in accordance with the provisions of this Agreement becomes (for reasons unrelated to the Company and its operations) unavailable for location of a Base Station, any compensation to the City due under Section II of Appendix D attributed to such Street Pole shall be abated in full, provided that for the period that an alternative Street Pole becomes designated as a Reserved Pole as described in this subsection (4), then compensation will be due with respect to such alternative location, calculated pursuant to Section II.

(4) Reasonable Revision of Allocation Procedures. If DoITT, acting reasonably, determines at any time that all or any part of the Street Operations Pole Allocation procedures set forth in this Section II is impracticable in fulfilling the purposes for which such procedures were intended, DoITT may, after consultation with all Street Pole Franchisees, issue revised procedures reasonably structured to better fulfill such purposes.

(C) Allocation of Street Utility Pole Sites Among Street Pole Franchisees.

Allocation of Street Utility Poles shall be pursuant to procedures of the utility company owner or owners of the applicable poles. Said Street Utility Pole owner's written approval (in the

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shall not be installed on more than 10% of the Company's Reserved Poles and so long as the Company, upon written request of the City, provides an annual list to the City of such limited use installations on Reserved Poles.

[3] Where some but not all Reserved Poles are not sufficiently funded as required by Appendix C hereof within said thirty (30) day period and are therefore subject to expiration of their Reserved Pole status under this subsection, it shall be within the City's sole discretion to select which of said Reserved Poles to designate as having their Reserved Pole status expire.

form of a signed pole attachment license including signed survey or walk sheet, or alternative documentation as deemed acceptable by the City) for Company's use of Street Utility Poles shall be provided to the City prior to the installation of Facilities on Street Utility Poles.

III. Transfer of Street Operations Pole Reservations Among Street Pole Franchisees.

The City recognizes that in the ordinary course of business, the Company and other Street Pole Franchisees may, during the course of implementing the Street Pole Franchises, enter into arrangements to utilize services in connection with one another's Facilities (indeed, the City acknowledges that it is the expressly contemplated business plan of several of the Street Pole Franchisees to sell capacity on, or service from, their Facilities to cellular and/or personal communications service providers, which providers may include certain other Street Pole Franchisees). It is not the intention of this Agreement to limit or restrict the ability of the Company and other Street Pole Franchisees to, in the ordinary course of business, buy or sell capacity on, or service from, Facilities installed pursuant to this Agreement and other Street Pole Franchise Agreements. Furthermore, it is not the City's intention to prohibit in this Agreement cooperation among Street Pole Franchisees to identify Street Operations Poles where such cooperation would promote the ability of each of the cooperating Street Pole Franchisees to reserve sufficient Street Operations Poles at sufficiently appropriate locations to meet its service goals, in a manner that minimizes incompatible demands for site reservations in any New Reservation Phase. {The parties note that because priority positions have previously been determined as part of the RFP process with respect to conflicting demands for individual sites, and as the compensation the City receives from each Company for each site in each Zone has been established as part of the completed RFP process, the City is not prejudiced with respect to compensation by Street Pole Franchisees cooperating among themselves to minimize conflicting reservation requests for individual Street Operations Pole sites (such conflicting requests do not increase the potential for compensation to the City in the way they might if individual Street Operations Pole reservations were auctioned on a site-by-site basis). However, it is *not* the intention of the parties to this Agreement that Street Pole Franchisees be permitted to collude to reduce franchise compensation payments to the City by arranging, for example, for one Street Pole Franchisee to use Reserved Poles reserved to a second Street Pole Franchisee solely for installation of Facilities that are not bona fide facilities for the use of the second Street Pole Franchisee.[4] Such non-permitted collusion shall be considered a default of the Street Pole Franchise Agreements of all colluding parties, including, if it involves the Company, of this Agreement. Further, it is not intended as a general matter that the reservation of individual Street Operations Poles is to be a transferable right to be transferred among Street Pole Franchisees.} If a Street Pole Franchisee chooses not to use a Reserved Pole reserved to it for actual installation of a Base Station for its own use, or chooses to terminate an installation on a Reserved Pole, the procedure intended hereunder is that the Street Pole Franchisee will invoke the provisions regarding voluntary termination of a reservations (under Section II(B)(2)(ii) of this

[4] For example, Street Pole Franchisee A, which purchased a higher priority in the reservation process by agreeing to pay a higher per Street Operations Pole compensation, may not solicit Street Pole Franchisee B, which has agreed to pay the City a lesser amount in per Street Operations Pole compensation, to submit requests for reservations in the name of B but which will actually be used by A.

Appendix A), after which the affected Street Operations Pole would become available for other Street Pole Franchisees to seek to reserve during the next New Reservation Phase. However, DoITT reserves the right to approve individual transfers of reservations on a case-by-case basis if the public interest would be served by any specific proposed transfer.

IV. Option to Expand Franchise Area; Option to Obtain Additional Reservation Phase Pole Allotment.

(A) The Company (and all Street Pole Franchisees) will have the option to expand its Franchise Area during the life of the Term. By way of example, any Street Pole Franchisee that has initially selected a Franchise Area that includes only Zone C shall have the option, once a year during the Term, to expand such area to include either Zone B, or both Zone B and Zone A. Any Street Pole Franchisee that has initially selected a Franchise Area that includes only Zones B and C, shall have the option, once a year during the Term, to expand such area to include Zone A. Such expanded Franchise Area will be available to the Company provided that:
the Company provides notice to the City of its exercise of such option not earlier than one hundred twenty (120) days, but not later than sixty (60) days, prior to each anniversary of the Effective Date, with such expansion to become effective on that anniversary of the Effective Date which occurs immediately after said notice;

(1) the Company agrees to an adjustment in the Zone Compensation due under Section I of Appendix D of this Agreement to match, commencing on the day such Franchise Area expansion becomes effective and thereafter going forward, the compensation due for such expanded Franchise Area (any applicable increase in Zone Compensation to be payable on the date such Franchise Area expansion becomes effective);

(2) the Company agrees to an adjustment of its Security Fund obligations under this Agreement to match the increase in Zone Compensation pursuant in subsection (2) above (any applicable increase in such Security Fund obligations to be payable on the date such expansion becomes effective);

(3) the Company agrees that it shall, with respect to the newly added Zone or Zones, take a place lower on the Priority List than any Street Pole Franchisee that previously had such Zone or Zones within its Franchise Area; and

(4) the Company agrees to pay compensation per Compensation Street Pole, within the newly added Zone or Zones, under Section II of Appendix D hereof, which matches the amount paid with respect to such Zone or Zones by the Street Pole Franchisee which was previously the lowest on the Priority List with respect to the newly added Zone or Zones.

(B) The Company (and all Street Pole Franchisees) shall have the option (non-rescindable by the Company and exercisable during the window period described in subsection (1) below) to acquire one additional reservation phase pole allotment (an "Additional Pole Allotment") during the life of the Term. If such option is exercised, the Additional Pole Allotment will be available to the Company during every subsequent New Reservation Phase during the remainder of the Term provided that:

(1) the Company provides notice to the City of its intention to exercise its non-rescindable option not earlier than sixty (60) days, but not later than thirty (30) days, prior to each anniversary of the Effective Date, with such Additional Pole Allotment to become effective following the anniversary of the Effective Date which occurs immediately after said notice and upon the commencement of New Reservation Phase;

(2) in addition to Zone Compensation under Section I of Appendix D and Street Pole Compensation under Section II of Appendix D, the Company agrees to an additional annual recurring payment (the "Additional Pole Allotment Fee") for the remainder of the Term equivalent to its Zone Compensation;

(3) the Company agrees to pay additional Street Pole Compensation per Street Operations Pole for each reservation made with its Additional Pole Allotment that is equivalent to the rate of its per pole compensation pursuant to Section II of Appendix D;

(4) the Company agrees to take a place lower on the Priority List than that of any franchisees previously granted the right to selection Street Poles for each zone and whose rank at the bottom of the Priority List for its additional pole allotment for each zone will be ranked, together with any other Street Pole Franchisees exercising its additional pole allotment, based on its ranking on the original Priority List within that zone;

(5) such Street Pole Franchisee agrees to an adjustment of its Security Fund obligations pursuant to Section I of Appendix C, which adjustment shall include (i) an increase in the amount deposited commensurate with the annual increase in Street Pole Compensation pursuant to subsection (3) above and (ii) an additional deposit in the amount of one year of the Additional Pole Allotment Fee.

V. Total Maximum Number of Poles Per Street Pole Franchisee; Merger of Street Pole Franchises.

(A) At no time shall the Company have Base Station facilities on more than four thousand (4000) Street Poles in total throughout the Franchise Area, unless the City agrees in advance in writing to an increase in such maximum number. Once the Company's total number of reservations of Street Operations Poles plus Utility Company Street Utility Poles reaches 4000 cumulatively, the Company shall not be permitted to reserve any additional Street Operations Poles if reserving such additional Street Operations Poles would have the effect of providing the Company with the right to place equipment on more than 4000 Street Poles. In addition, DoITT will inform the owner of Street Utility Poles that the Company has reached the 4000 Street Pole limit and no longer has City approval to install equipment on any Street Poles[5]. Notwithstanding the foregoing and for the avoidance of doubt, the Company, by agreement with other franchisees, can have its Base Station facilities on poles reserved by another franchisee such that the total

[5] The effect of this provision is intended to limit the number of Street Operations Poles on which each Street Pole Franchisee is permitted to use for Base Station facilities to a number equal to 4000 minus the number of its Street Utility Pole Base Station facilities.

number of the Company's Base Stations on Street Poles pursuant to this Agreement and other franchisee's agreements exceeds 4000 Street Poles.

(B) In the event that a transaction occurs involving two Street Pole Franchises such that one of the Street Pole Franchises involved in such transaction remains in effect and the other does not (with one of the two Street Pole Franchisees seeking to continue to occupy sites or seek future reservations pursuant to the eliminated franchise) the surviving Street Pole Franchisee shall be obligated to pay Zone Compensation and Street Pole Compensation as if both of the Street Pole Franchises continued in effect (and the Zone Compensation under the surviving Street Pole Franchise shall be deemed increased to reflect such obligation). For example and for the avoidance of doubt, an assignment, the result of which is a consolidation of two franchises, then and in such event as required by Section 9.6(b)(v) of this Agreement, the reservation priority system and maximum number of poles provisions of this Appendix A shall be applied as if the surviving Street Pole Franchisee continued to hold the rights that were held under the no longer surviving Street Pole Franchise. For further example and for the avoidance of doubt, if Street Pole Franchisees holding the third and fifth priority ranks in Zone C were to undertake a consolidation transaction in which the third priority Street Pole Franchisee were to be the surviving entity, (i) the third priority Street Pole Franchise would be deemed to require an increased Zone Compensation, equal to the total sum of the Zone Compensation due under both of the now consolidated Street Pole Franchises, (ii) the third priority Street Pole Franchisee would now be entitled to maintain Base Stations on those Street Operations Poles the fifth priority Street Pole franchisee had previously been entitled to maintain, (iii) in each New Reservation Phase, the third priority Street Pole Franchisee would be entitled to submit a Reservation Notice in both the third priority reservation rank and the fifth priority reservation rank for each Phase for each Zone, and (iv) the permitted installation limit pursuant to the preceding paragraph (A) would be a total of eight thousand Base Station facilities.

VI. Waiver.

The City reserves the right to waive any requirement imposed on the Company or any other Street Pole Franchisees pursuant to this Appendix A, provided that the City agrees not to waive any requirement with respect to one or more Street Pole Franchisees the result of which would unreasonably adversely affect the Company's pole allocation priority as set forth on the Priority List. The City agrees that, to the maximum extent permitted by law and subject to the other terms of this Agreement, if the City grants additional Street Pole Franchises in addition to those previously listed on the Priority List, any Street Pole reservation priority rights that are to be provided under any such subsequent Street Pole Franchisee shall be lower in priority rank than those previously listed on the Priority List.

APPENDIX B

Construction and Maintenance Terms and Conditions Related to Construction of the Facilities on Street Poles

In addition to all provisions in the body of this Agreement regarding construction, maintenance and operation of the Facilities, the parties shall observe all the following requirements regarding construction, operation and maintenance of the Facilities:

I. Base Station Provisions

(A) Prior to any installation of Base Station equipment on any Street Operations Pole, DOT shall have the right to conduct an inspection of the Street Operations Pole and to review and approve the proposed installation for technical compatibility (which shall include, but not be limited to, a review and evaluation of the Street Operations Pole's electrical and structural status) with City facilities and operations.

(B) The Company must obtain prior approval from DOT in the form of a construction permit(s) for any construction work involving the opening of a roadway or sidewalk, lane closure, or any other street work deemed applicable by the City in connection with a Company's Base Station.

(C) All equipment installed under the Franchise shall be maintained by the Company, and the City will not be responsible for the maintenance or repair of any such equipment.

(D) All construction shall be performed in a manner consistent with the requirements of DOT, pursuant to its authority to protect the integrity, operability, reliability and appearance of Street Operations Poles and to manage vehicular and pedestrian traffic.

(E) When City maintenance work on a Street Operations Pole on which the Company has located a Base Station requires that such a Base Station be removed, the City will attempt to provide ten (10) days written notice to the Company to remove the Base Station. Upon notice to the Company of the completion of the City's maintenance work, the Company may reinstall the Base Station.

(F) When a Street Operations Pole on which a Base Station is located is knocked down (or damaged to the extent it must be removed), the City's maintenance contractor will remove the Street Operations Pole. The City will notify the Company as promptly as may be practicable regarding the Street Operations Pole's removal. Upon notice of the completion of any repair work to and reinstallation of the Street Operations Pole by the City to the Company, it shall be the responsibility of the Company to reinstall the Base Station.

(G) In connection with any special event (for example without limitation, the Thanksgiving Day Parade) in connection with which the City determines it is required to undertake work involving Street Operations Poles, the Company shall take any action with respect to any Base Stations, as may be required by the City.

(H) It shall at all times be the responsibility of the Company to maintain any required electric service to the Company's equipment. Maintenance of fuses, cables, breakers, etc. shall be exclusively the responsibility of the Company.

(I) The Company will cooperate with the City on location and design of Base Station installations to ensure appropriate coordination with street signage and other items located on Street Operations Poles.

(J) The Company shall comply with all DOT directions with respect to any foundation work required to accommodate connections between Base Stations and any other Company equipment. In the event of any failure of the Company to properly comply with such DOT directions, the City may perform or arrange for the performance of any work which may be necessary to bring such foundation work into compliance, and to draw on the Security Fund to reimburse the City for any such costs.

(K) As described in Section I(C)(1) of Appendix A, Base Station equipment housings must be painted, or otherwise be made to color match using a pre-approved method, the same color as the Street Pole. As of the Effective Date, the following are the paint specifications to be used for Street Operations Poles:

(1) The paint shall have a semi-gloss sheen and shall be one of the following Federal Standard 595B colors: Green #14036, Brown #10049 or Black #27038, or as otherwise approved by the DOT. All painted posts and/or painted surfaces shall be cleaned of all foreign matter (such as loose paint, rust, dirt and grease) prior to painting.

(2) Paint used must be of the anti-graffiti, corrosion resisting, semi-gloss type as manufactured by Armor Products, Inc., BC Products International, Inc., Con-Lux Coatings, Inc. or an approved equal.

(3) The protective coating of all paint used must exhibit the following characteristics:

(i) Display exceptional resistance to ultra violet light, road salt compounds, and industrial chemical fumes.

(ii) Display high impact resistance to withstand 160 psi of wind without cracking, chipping or peeling.

(iii) Display a water transmission rate of less than 0.00000005 Perms.

(iv) Bend over 180 degrees and one-eighth inch (1/8") mandrel without cracking.

(v) Be suitable for applications in below freezing temperatures.

(vi) Resist solvents for removal of graffiti from painted surfaces.

(vii) Resist flame or high temperatures to 400 degrees Fahrenheit.

(viii) Possess unique molecular structure suitable for brush, roll or spray application to achieve high quality, general purpose usage, exceptional spreadability and adhesion.

(ix) Exhibit corrosion resistance equal to that tested as part of Painting System #41 by the Steel Structures Painting Council.

(4) All paint used must conform to the following chemical requirements:

(i) No more than twenty percent (20%) Oxal Hexel, seventeen percent (17%) Butyl Acetate, three percent (3%) Xylol.

(ii) Maximum of forty percent (40%) volatile by volume.

(iii) Minimum of 60 degrees Fahrenheit Flashpoint.

(iv) Formulated with air-out additives for flowability.

(v) Two-part aliphatic urethane with a three-to-one (3:1) mixture ration and an absolute minimum of sixty percent (60%) solid content.

(vi) Maximum VOC of 3.45 per gallon.

II. Provisions Regarding Installation of Fiber Connecting Base Stations To Each Other Or To Supporting Telecommunications Systems ("Connecting Fiber").

(A) The Company shall install all Connecting Fiber in a manner consistent with existing telephone or public utility lines and within the facilities of Empire City Subway Company, Ltd. or Consolidated Edison Company of New York Inc. wherever existing telephone and/or other fiber optic cable lines are thus installed. Provided, however, that such fiber was installed lawfully. Where such lines are underground at a particular location (other than on private property), the Company shall install its Connecting Fiber underground, except as otherwise provided in this Agreement or as otherwise approved by the agencies of the City having jurisdiction over such matters. Any above-ground Connecting Fiber will be maintained in accordance with maintenance standards established by the City.

(B) Whenever possible, the Company shall utilize existing telephone or public utility poles, ducts, conduits or other facilities for the installation of Connecting Fiber. Where the Company performs any excavation of any street, the Company will abide by all DOT rules, regulations, requirements and permit conditions regarding such excavation, including, without limitation, requirements regarding the replacement and restoration of excavated street surfaces and materials, including, where applicable, the replacement and restoration of streets (which term includes, without limitation, the sidewalk portion of the streets) of distinctive design.

(C) (1) On July first of each year the Company shall provide to the City, in a format acceptable to the Commissioner, and to the extent different from the requirements set forth in subparagraph (2) below, consistent with industry standards, up-to-date maps, resiliency

information, and other information detailing the location of Connecting Fiber pursuant to this Agreement.

(2) As of the Effective Date, the following format for mapping as described in the preceding subsection (1) is acceptable to the Commissioner:

(i) for any installation where the Company initiates a street cut and installs Connecting Fiber without the use of duct of a third party, all locations of such Connecting Fiber must be produced utilizing the City's accurate physical base map (NYCityMap). The submission must be digital, provided on a CD, or in an alternative format deemed acceptable by the City, and the infrastructure elements depicted must be accurate within two feet horizontally and six inches vertically using State Plane Coordinates in the Long Island East Zone NAD 1983/92, NAVD 1988.

(ii) for any installation where the Company uses the ducts or fiber optic cables of a third party, the Company shall use its best efforts to create maps using such specific source information, data points 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 Connecting Fiber is installed.

(iii) mapping data, underlying metadata that provides information on the coordinate reference system used, individual data objects, attributes, fields, and business or semantic rules on how this data is persisted in its data repository. Attribute information must be structured according to DoITT specifications. Mapping data should be represented spatially in a defined coordinate reference system with both vertical and horizontal datums specified, including the elevation (height of land above sea level) information. Acceptable formats for spatial representation of point, polyline, and polygon mapping data are shapefile, CSV, File GeoDatabase, Tab File, KML or GeoJSON format.

(3) Upon written notice to the Company, the Commissioner may reasonably change the format requirements described in (2) above.

III. General Provisions.

(A) The Company must comply with, and shall ensure that its subcontractors comply with, all rules, regulations and standards of the DOT. If the construction, upgrade, repair, maintenance or operation of the Facilities does not comply with such rules, regulations and standards, the Company must, at its sole costs, remove and reinstall such portions of the Facilities to ensure compliance with such rules, regulations and standards.

(B) In the event of any inconsistency between this Appendix B and applicable provisions of the New York City Administrative Code or rules of the DOT, or other rules of the City, such provisions and rules shall prevail.

IV. Pole Management Requirements.

(A) Any Facility located on any Street Operations Pole will be subject to the City's operational needs with respect to such Street Operations Pole.

(B) In addition, if the City determines that it is appropriate to move or remove any Street Operations Pole temporarily to accommodate City or public activities (for example a parade such as the annual Thanksgiving Day parade), then the Company will be required to cooperate, at the Company's sole expense, with such temporary move or removal.

(C) All installations shall be performed in a manner consistent with the requirements of DOT implementing its authority to protect the integrity, operability, reliability and appearance of Street Operations Poles and to manage vehicular and pedestrian traffic.

APPENDIX C

Security Fund

I. Security Fund Amount. The Security Fund shall be in the form of a cash security fund or Letter of Credit to be held by the City separate from any other funds. Beginning no later than the Effective Date and at all times throughout the Term, the amount of the Security Fund shall always, at minimum, be equal to the sum of (a) one year's annual payment due pursuant to Section I of Appendix D, plus (b) the equivalent of one year of pole compensation for all reserved Street Poles, and where applicable, all LinkNYC Kiosks or Coordinated Franchise Structures for which the Company has obtained the authority to utilize for the deployment of Base Stations, plus (c) one year's Additional Pole Allotment Fee pursuant to Section IV(A)(2) of Appendix hereof, the total amount which shall be updated periodically during the Term.

II. Interest. Any interest which accrues on the Security Fund shall accrue to the benefit of the Security Fund, such that any future required deposit by the Company into the Security Fund to achieve a required increase in the balance of the Security Fund may be reduced by the amount by which accrued interest has increased the balance in the Security Fund beyond the required balance. Accrued interest shall follow the balance of the Security Fund.

III. Refunds of Excess Amounts. On the ninetieth day after each anniversary of the Effective Date (each such ninetieth day referred to herein as a "Refund Date") if the number of Street Poles reserved to the Company (or, in the case of Street Utility Poles, written approval by the owner of the Street Utility Pole for the placement of the Company's Facilities on the Street Utility Pole), authorized LinkNYC Kiosks or Coordinated Street Furniture Structures has declined during the twelve months preceding such Refund Date, such that the amount in the Security Fund is more than the amount required to be maintained in the Security Fund as calculated herein, and if the Company is not then in breach or default of any provision of this Agreement which has been the subject of a notice from the City pursuant to Section 11.2.1 of this Agreement, then the City shall refund to the Company (at the Company's option) from the Security Fund the excess amount over the amount required to be maintained in the Security Fund.

IV. Deposits Under Old Franchise Agreements. In the event that the Company has deposited a security fund pursuant to an Old Street Pole Franchise agreement, the Company may request that the City transfer such funds to the Security Fund, provided that the Company supplements such old funds with an amount necessary to meet the requirements of Section I of this Appendix C.

APPENDIX D

Franchise Compensation

I. Zone Compensation For Street Poles.

(A) The Company will be required to compensate the City with a minimum annual compensation based on the geographic area in which it elects to reserve Street Poles ("Zone Compensation"). Zone Compensation shall be as follows:

(1) $200,000 per year for use of Street Poles in all three zones, even if the Company has Reserved Poles in only Zone A, only Zones A and B, or only Zones A and C;

(2) $100,000 per year for use of Street Poles only in Zones B and C, even if the Company has Reserved Poles in only Zone B;

(3) $20,000 per year for use of Street Poles only in Zone C.

(B) The Company assumes the risk of paying minimum compensation notwithstanding the fact that pole reservation phases may be paused or ceased during the Term.

(C) Zone Compensation shall be in addition to, and not in lieu of, the Street Pole Compensation payments described in Section II of Appendix D.

II. Compensation for Use of Street Poles.

(A) The Company shall pay to the City monthly "Street Operations Pole Compensation," for the use or reservation of Street Operations Poles to install Base Stations, in the following amounts: $399.00 per Street Operations Pole that is a Compensation Street Pole and is located in Zone A, $255.00 per Street Operations Pole that is a Compensation Street Pole and is located in Zone B, and $105.00 per Street Operations Pole that is a Compensation Street Pole and is located in Zone C; in each case such amount per Compensation Street Pole is subject to the annual escalation as defined below.

(B) The Company shall pay to the City monthly "Street Utility Pole Compensation," for the use of Street Utility Poles to install Base Stations, in the following amounts: $25.00 (twenty five dollars) per Street Utility Pole that is a Compensation Street Pole and is located in Zone B, and $10.00 (ten dollars) per Street Utility Pole that is a Compensation Street Pole and is located in Zone C. (For the prevention of doubt, notwithstanding anything any other provision of this Agreement, the location of Facilities on Street Utility Poles in Zone A is not permitted under this Agreement). In each case such amount per Compensation Street Pole is to be subject to the annual escalation as defined below.

(C) "Compensation Street Pole" means:

(1) any Reserved Pole on which the Company's facilities are installed pursuant to an Old Street Pole Franchise,

(2) any Reserved Pole on which the Company's facilities are not yet installed after the Pre-Pole Compensation Period Expiration Date (as defined in Section D below),

(3) any Reserved Pole on which the Company voluntarily surrenders pursuant to Section II(B)(2)(ii) of Appendix A of this Agreement, shall continue to be a Compensation Street Pole for one year from the date of the voluntary surrender, or until reserved by another Street Pole Franchisee,

(4) any Street Operations Pole reserved by a Street Pole Franchisee whose franchise has been terminated until such time as the Facilities have been entirely removed from the Street Operations Pole.

Notwithstanding the foregoing, however, a Street Operations Pole shall cease being treated as a Compensation Street Pole immediately at such time as the City determines that the Reserved Pole is ineligible to receive the City's approval for using such Street Operations Pole to install a Base Station thereon.

Moreover, any Street Utility Pole for which the owning utility company terminates approval for the Company's use of such Street Utility Pole will no longer be considered a Compensation Street Pole. The City shall stop billing for the said Street Utility Pole upon 10 days written notice from the Company.

(D) Pre-Pole Compensation Period. New Street Pole reservations shall be subject to a Prepayment Period to allow for a reasonable amount of time for the Company to submit to the City documentation required to complete its application after which such Street Pole becomes a Compensation Street Pole. The Company shall only be permitted one Pre-Pole Compensation Period for any individual Street Pole.

(E) Amounts payable pursuant to this Section II will be in addition to and not in lieu of any amounts payable as described in Section I, and any other compensation or amounts otherwise payable to the City under the terms of this Agreement.

III. Compensation for Use of LinkNYC Kiosks; Coordinated Franchise Structures.

The Company shall pay to the City monthly compensation for the use or reservation of LinkNYC Kiosks or Coordinated Franchise Structures for the purpose of the installation, operation and maintenance of Base Stations on or within LinkNYC Kiosks or Coordinated Franchise Structure(s) in the following amounts: $105.00 (one hundred five dollars) for each LinkNYC Kiosk and Coordinated Franchise Structure in Zone A, $75.00 (seventy five dollars) for each LinkNYC Kiosk and Coordinated Franchise Structure in Zone B, and $30.00 (thirty dollars) for each LinkNYC Kiosk and Coordinated Franchise Structure in Zone C. Such compensation is in addition to any compensation that the Company is obligated to pay the owner of the LinkNYC Kiosk or Coordinated Franchise Structure in accordance with the terms and conditions agreed upon between the parties.

IV. Annual Escalation.

The amounts of Street Pole Compensation, LinkNYC Kiosks compensation and Coordinated Franchise Structures compensation set forth in Section II of this Appendix D, shall be subject to a four percent (4%) annual escalation effective upon the first anniversary of the effective date of this Agreement and each subsequent anniversary thereafter during the Term.

V. Timing of Payments.

(A) Payment of Zone Compensation and Street Pole Franchisees' additional pole allotment compensation as contemplated in Appendix A Section IV of this agreement shall be made annually in advance and shall be due and payable on the Effective Date (the payment of Zone Compensation due and payable on the Effective Date is referred to in this Agreement as the "Initial Payment") and on each anniversary of the Effective Date.

(B) Street Pole Compensation shall be due in arrears on a quarterly basis on the fifteenth day after the receipt of an invoice, with the amount due on such date to be the total Street Pole Compensation which accrued during the preceding three calendar months for all Street Poles which constituted Compensation Street Poles at any time during such quarter. In addition to the full monthly amount accruing for each full month that a Street Pole constituted a Compensation Street Pole, there shall also accrue a pro rata portion of the applicable monthly amount with respect to any Street Pole that constituted a Compensation Street Pole for only part of a month, such pro rata share to be calculated by dividing (x) the number of days in such month that such Street Pole constituted a Compensation Street Pole by (y) the total number of days in such month. The payment obligations under this Section IV shall survive the end of the Term until payment is made with respect to all compensation accrued during the Term (and any amount which continues to accrue based on any holdover presence of Facilities on, over or under the Inalienable Property after the end of the Term). To the extent the final period of compensation accrual is less than a full payment period, the final payment due hereunder after the end of the Term shall be based on a pro rata calculation of compensation due based on the number of days in the final payment period as a fraction of a full payment period.

APPENDIX E

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;

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an 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.

(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 herein 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 than 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.

APPENDIX F

COMPANY CONTROL AS OF THE EFFECTIVE DATE

Full list of 10% or more direct or indirect interests in the franchise assets as of the Effective Date:

Gary Jabara – 99.9%

APPENDIX G

MacBride Principles

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 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.

<u>PART A</u>

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 and 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.

APPENDIX H

Additional Reports

1.1 Worker Safety. The Company shall, on an annual basis, compile and transmit to DoITT a report describing the safety conditions regarding workers performing installation, maintenance, and other related work pursuant to this Agreement ("relevant work"), including at a minimum the following information. The information provided in this report shall not be labeled as confidential or proprietary information.

(a) A list of all companies employing the workers performing the relevant work pursuant to this Agreement for the prior year, including the Company itself, or another company or companies ("contracted companies");

(b) A description of the relationship between the Company and contracted companies, including whether the Company and contracted companies have a direct contractual relationship or whether work is subcontracted through another entity or entities, and if so, a description of such other entity or entities;

(c) Copies of all policies and procedures maintained by the Company and contracted companies related to safety standards for the relevant work, including, but not limited to, description of safety training requirements, copies of training materials, and description of any personal protective equipment required, provided that if policies and procedures have previously been provided pursuant to this Agreement, only revisions to such policies and procedures or new policies and procedures must be submitted after the date of original submittal;

(d) For the Company and each of the contracted companies, a description of each job title performing relevant work and a list of any certifications or licenses required of each job title;

(e) For the Company and each of the contracted companies, the total number of workers performing relevant work, disaggregated by job title, and for each job title, the number of workers with required certifications and licenses, along with a statement of whether each worker has required experience and training;

(f) A certification that the Company and contracted companies maintain workers' compensation insurance to the fullest extent required by applicable federal, New York States, and New York City law;

(g) Documentation evidencing that the Company and any contracted company performing relevant work in the prior year, and any contracted company with which the Company intends to work with in the following year, are registered to do business in New York and properly licensed for the work to be conducted;

(h) To the extent permitted by law and policy of relevant investigatory agency, for the Company and each contracted company the Company has worked with in the prior year, the number and a description of any open investigations against the Company or contracted company for violations of the Occupational Safety and Health Act, the National Labor Relations Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and New York Labor and

Employment Laws, and a list of findings against the contracted company for violations of the Occupational Safety and Health Act, the National Labor Relations Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and New York Labor and Employment Laws within the last two years;

(i) For the Company and each contracted company performing relevant work with in the prior year, a description of whether or not workers are required to or requested to execute arbitration agreements with the contracted company or Company, and if so, a copy of the arbitration agreements;

(j) For the company and each contracted company performing relevant work in the prior year, a list of all arbitration matters involving safety issues and copies of all resolutions, including formal resolutions through an arbitrator's decision or informal resolutions through settlement agreement.

End of Document

NOTICE OF PUBLIC HEARING

NOTICE OF A SPECIAL JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Information Technology & Telecommunications (DoITT) to be held on January 13, 2020 commencing at 2:30 PM at 2 Lafayette Street, 14th Floor, Borough of Manhattan on the following calendar items: Cal. item #1) a proposed mobile telecommunications services franchise agreement between the City of New York and Crown Castle Fiber LLC; Cal. item #2) a proposed mobile telecommunications services franchise agreement between the City of New York and Crown Castle NG East LLC; Cal. item #3) a proposed mobile telecommunications services franchise agreement between the City of New York and Crown Castle Solutions LLC; Cal. item #4) a proposed mobile telecommunications services franchise agreement between the City of New York and CSC Wireless, LLC; Cal. Item #5) a proposed mobile telecommunications services franchise agreement between the City of New York and ExteNet Systems, Inc. (ExteNet 1); Cal. item #6) a proposed mobile telecommunications services franchise agreement between the City of New York and ExteNet Systems, Inc. (ExteNet 2); Cal. item #7) a proposed mobile telecommunications services franchise agreement between the City of New York and Mobilitie, LLC; Cal. item #8) a proposed mobile telecommunications services franchise agreement between the City of New York and New Cingular Wireless PCS, LLC; Cal. item #9) a proposed mobile telecommunications services franchise agreement between the City of New York and New York SMSA Limited Partnership; Cal. item #10) a proposed mobile telecommunications services franchise agreement between the City of New York and Transit Wireless LLC; Cal. item #11) a proposed mobile telecommunications services franchise agreement between the City of New York and Transmission Network NY, LLC; and Cal. item #12) a proposed mobile telecommunications services franchise agreement between the City of New York and ZenFi Networks, LLC.

The proposed franchise agreements would authorize the franchisees to install, operate and maintain equipment and facilities, including base stations and access point facilities, on 1) City-owned street light poles and traffic light poles, and certain privately-owned utility poles located on the City streets and 2) subject to necessary further approvals, LinkNYC Kiosks, bus stop shelters and automatic public toilets, all in connection with the provision of mobile telecommunications services. The proposed franchise agreements have a term of ten years.

A copy of the proposed franchise agreements may be viewed at The Department of Information Technology and Telecommunications, 15 MetroTech Center, 18th Floor, Brooklyn, New York 11201, commencing January 6, 2020 through January 13, 2020, between the hours of 9:30 AM and 3:30 PM, excluding Saturdays, Sundays and holidays. Hard copies of the proposed franchise agreements may be obtained, by appointment, at a cost of $.25 per page. All payments shall be made at the time of pickup by check or money order made payable to the New York City Department of Finance. The proposed franchise agreements may also be obtained in PDF form at no cost, by email request. Interested parties should contact Brett Sikoff at (718) 403-6722 or by email at franchiseopportunities@doitt.nyc.gov.

This location is accessible to individuals using wheelchairs or other mobility devices. For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 788-0010. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least three (3) business days in advance of the hearing to ensure availability.

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115.

RECOMMENDATION FOR AWARD OF FRANCHISE AGREEMENT MEMORANDUM COVER SHEET

(Attach, in the following order, FRFA Checklist and Narrative and "Responsibility Determination" form)

AGENCY **Department of Information Technology and Telecommunications** **# VOTES required for proposed action = 5**	**RECOMMENDED FRANCHISEE** **Name: Mobilitie, LLC ("Mobilitie II")** **Address: 660 Newport Center, Ste 200, Newport Beach, CA, 92660** **Telephone # 949-760-5373 ☒ EIN ☐ SSN # 65-1212646**	**FRANCHISE I.D. #** **# 8582018FRANCH1-011**

DESCRIPTION OF FRANCHISE (Attach Proposed Resolution and Proposed Agreement)

The proposed award of a mobile telecommunications services franchise agreement between the City of New York and Mobilitie, LLC ("Mobilitie II") for the installation, operation, maintenance of equipment and facilities, including base stations and access point facilities, on 1) City-owned street light poles and traffic light poles, and certain privately-owned utility poles located on the City streets and 2) subject to necessary further approvals, LinkNYC kiosks, bus stop shelters and automatic public toilets, all in connection with the provision of mobile telecommunications services.

Borough(s) Location of Franchise: All/Citywide **C.B.(s) All**

PUBLIC SERVICE TO BE PROVIDED

Telecommunications services

SELECTION PROCEDURE

☒ Request for Proposals **☐ Other _____**

FRANCHISE AGREEMENT TERM	**SUBSIDIES TO FRANCHISEE ☒ N/A**
Initial Term From: Notice to Proceed To: 10 years **Renewal Option(s) Term N/A**	**$_____**

DCP determined the franchise would have land use impacts or implications. **☐ YES ☒ NO**
If YES, proposed franchise reviewed and approved pursuant to Sections 197-c and 197-d of the City Charter.

☐ CPC approved on:

☐ City Council approved on ___/___/___ **☒ N/A**

☒ Law Department determined RFP/other solicitation document consistent with adopted authorizing resolution on: June 4, 2018

☐ Law Department approved franchise agreement on:

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the proposed franchisee to be responsible and approve of the award of the subject franchise agreement. This is to further certify that the subject franchise agreement was approved by the FCRC on ___/___/___ by a vote of ___ to ___.

Name: Andrew M. Manshel **Title: Assistant Commissioner**

Signature _____ Date __/__/__

CERTIFICATE OF PROCEDURAL REQUISITES

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject franchise agreement.

Signature _____ Date __/__/__
City Chief Procurement Officer

RECOMMENDATION FOR AWARD OF FRANCHISE AGREEMENT MEMORANDUM

Instructions: *Check all applicable boxes and provide all applicable information requested below. If any requested date or information is unavailable, describe the reason it cannot be ascertained.*

A. AUTHORIZING RESOLUTION (Attach copy)

1. Mayor's Office of Legislative Affairs transmitted proposed authorizing resolution to City Council on 12/16/2015.
2. City Council conducted public hearing on 01/16/2016.
3. City Council adopted authorizing resolution on 03/09/2016.

B. SOLICITATION/EVALUATION/AWARD

1. RFP/solicitation document issued on 06/12/2018. (Attach copy)

2. ☒ The Agency certifies that it complied with all the procedures for the solicitation, evaluation and/or award of the subject franchise as set forth in the applicable authorizing resolution and request for proposals, if applicable.

Basis for Award:

Instructions: *Check applicable box below; attach a list of proposed franchisee's Board of Directors.*

☐ Recommended franchisee is highest rated proposer and offered highest amount of revenue (overall or for the competition pool).

☐ Recommended franchisee was sole proposer or was determined to be only responsive proposer (overall or for the competition pool), and the and agency certifies that a sufficient number of other entities had a reasonable opportunity to propose, the recommended franchisee meets the minimum requirements of the RFP or other solicitation and award is in the best interest of the City. *Explain:*

☒ The subject franchise is a non-exclusive franchise and the recommended franchisee has been determined to be both technically qualified and responsible.

☐ Other *Describe:*

C. PUBLIC HEARING & APPROVAL

1. Agency filed proposed agreement with FCRC on 2/3/2020.

2. Public Hearing Notice

☒ a. Agency published, for at least 15 business days immediately prior to the public hearing, a public hearing notice and summary of the terms and conditions of the proposed agreement in the City Record from 12/26/2019-1/13/2020, and republished from 2/3/2020-2/10/2020.

☒ b. Agency provided written notice containing a summary of the terms and conditions of the proposed agreement to each affected CB, each affected BP and each affected Council Member by 11/22/2019. (Check the applicable box below and provide the requested information)

☐ Franchise relates to property in one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___/___/___ and ___/__/___. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___.

☒ Franchise relates to property in more than one borough and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in New York Daily News, a NYC daily, citywide newspaper on 11/26/2019 and 11/27/2019, and in AMNY, also a NYC daily, citywide newspaper on 11/26/2019 and 11/27/2019. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by 11/22/2019.

☐ Franchise relates to a bus route contained within one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___/___/___ and ___/__/___. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___.

☐ Franchise relates to a bus route that crosses one or more borough boundaries and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, also a NYC daily, citywide newspaper on ___/___/___ and ___/__/___. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by ___/___/___. A notice was posted in the buses operating upon the applicable route.

☐ b. Franchise relates to extension of the operating authority of a private bus company that receives a subsidy from the City and, as such, at least 1 business

day prior to the public hearing the Agency published a public hearing notice in the City Record on ___/___/___.

3. FCRC conducted a public hearing within 30 days of filing on 2/10/2020.

RESOLUTION

FRANCHISE AND CONCESSION REVIEW COMMITTEE

CITY OF NEW YORK

Cal. No. __

In the matter of approval of a proposed mobile telecommunications services franchise agreement (the "Franchise Agreement") between the City of New York and Mobilitie, LLC ("Mobilitie II") for the installation, operation, maintenance of equipment and facilities, including base stations and access point facilities, on: 1) City-owned street light poles and traffic light poles, and certain privately-owned utility poles located on the City streets; and 2) subject to necessary further approvals, LinkNYC Kiosks, bus stop shelters and automatic public toilets, all in connection with the provision of mobile telecommunications services.

WHEREAS, on March 9, 2016, Authorizing Resolution 935 was adopted by New York City Council, granting the New York City Department of Information Technology and Telecommunications ("DoITT") the authority to grant franchises for the provision of mobile telecommunications services, as permitted by said Authorizing Resolution; and

WHEREAS, on March 1, 2018, the New York City Department of City Planning reviewed a request for proposals for the provision of mobile telecommunications services ("RFP") submitted by DoITT and determined that a franchise, consistent with the RFP, would not have land use impacts or implications and that review under Section 197-c of the New York City Charter would not be necessary; and

WHEREAS, on June 12, 2018, DoITT issued the RFP;

WHEREAS, Transmission Network NY, LLC responded to said RFP and subsequently, with the consent of DOITT, transferred the response to the proposal to Mobilitie, LLC; and

WHEREAS, Mobilitie II has been given opportunity to review a Franchise Agreement consistent with the RFP and has expressed intent to pursue said Franchise Agreement; and

WHEREAS, the Franchise and Concession Review Committee held a public hearing regarding the proposed Franchise Agreement on February 10, 2020, which was a full public proceeding in compliance with the requirements of the New York City Charter, and said hearing was closed on that date.

NOW, THEREFORE, BE IT

RESOLVED, that the Franchise and Concession Review Committee does hereby approve the proposed Franchise Agreement between the City of New York and Mobilitie II; and be it further

RESOLVED, that the grant of the above franchise to Mobilitie II is subject to the execution and delivery of the Franchise Agreement and submission of the documents set forth in Section 2.2 of the Franchise Agreement by Mobilitie II within 60 days of the adoption of this resolution.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE FRANCHISE AND CONCESSION REVIEW COMMITTEE ON:

February 13, 2020

Date:_____

Signed_____

Title: Director of the Mayor's Office of Contract Services

Execution Copy

Between

THE CITY OF NEW YORK

And

MOBILITIE, LLC (MOBILITIE II)

FRANCHISE FOR THE INSTALLATION AND USE OF TELECOMMUNICATIONS EQUIPMENT AND FACILITIES, INCLUDING BASE STATIONS AND ACCESS POINT FACILITIES, ON CITY-OWNED STREET LIGHT POLES AND TRAFFIC LIGHT POLES, AND CERTAIN UTILITY POLES AND OTHER FACILITIES LOCATED ON CITY STREETS, IN CONNECTION WITH THE PROVISION OF MOBILE TELECOMMUNICATIONS SERVICES

Dated as of

_____, 2020

TABLE OF CONTENTS

AGREEMENT

This AGREEMENT (the "Agreement"), dated as of _____, 2020 (the "Execution Date"), is by and between THE CITY OF NEW YORK (the "City") and Mobilitie, LLC (the "Company"), whose principal place of business is located at 660 Newport Center Drive, Suite 200, Newport Beach, CA 92660.

W I T N E S S E T H:

WHEREAS, the New York City Department of Information Technology and Telecommunications ("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 for the purposes described in this Agreement; and

WHEREAS, DoITT, pursuant to authorization granted by Resolution No. 935 (adopted by the New York City Council on March 9, 2016) (the "Authorizing Resolution"), issued on June 12, 2018, a Request for Proposals (the "RFP") for franchises of a type which includes the franchise described in this Agreement; and

WHEREAS, the New York City Department of City Planning determined, as evidenced in its letter dated March 1, 2018, that franchises issued pursuant to the RFP would have no land use impacts and that therefore review of such RFP pursuant to Section 197-c of the New York City Charter (the "City Charter") was not required; and

WHEREAS, DoITT, as lead agency pursuant to Section 5-03(e) of Title 62 of the Rules of the City of New York, reviewed the proposed action of granting this franchise for its potential environmental impacts and has issued a "negative declaration", that is, a determination, pursuant to City Environmental Quality Review, as set forth in Chapter 5 of Title 62 of the Rules of the City of New York, that such action will not have a significant effect on the environment; and

WHEREAS, on February 10, 2020, the New York City Franchise and Concession Review Committee (the "FCRC") held a public hearing on the Company's proposal for a franchise, which was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the City Charter, including without limitation publication of notice of such hearing in accordance with Section 371 of the City Charter; and

WHEREAS, on February 13, 2020, the FCRC voted on and adopted a resolution approving the grant of a franchise to the Company on the terms set forth in this Agreement; and

WHEREAS, (i) City-owned property, such as street light poles ("SLPs") and traffic light poles ("TLPs") located on City streets (SLPs and TLPs collectively referred to herein as "Street Operations Poles"), (ii) poles that are lawfully located on the City's inalienable property which are privately-owned poles owned by a "utility" as that term is defined in 47 USC Section 224 (herein referred to as "Street Utility Poles"), (iii) LinkNYC Kiosks (as defined in Section 1 hereof), and (iv) Coordinated Franchise Structures (as defined in Section 1 hereof) are some, but not the only, or even the preponderant, type of location that can be used to locate mobile

telecommunications facilities and equipment (indeed, the mobile telecommunications industry has largely developed to date using private property to locate facilities and equipment, access to which private property requires no authority pursuant to a City franchise) and the parties recognize that while it may be in the public interest for the City to make both Street Operations Poles as well as Street Utility Poles (together, "Street Poles") along with certain other City property available for the purposes described in this Agreement, any decision by the City not to make such property available to one or more entities, or to condition the availability of such property in any manner the City determines to be appropriate would not be intended to prohibit or effectively prohibit any such entity from providing its services, which may be provided using private property (with respect to which no additional franchise is required); and

WHEREAS, any commercial installations on Street Poles, LinkNYC Kiosks, Coordinated Franchise Structures sitting on City property or the rights of way, and other City property must be consistent with and must accommodate current and projected operational activities of City agencies using and maintaining City facilities in connection with the provision and support of City services to the public and must include an appropriate compensation (i.e., rent) to the City for use of City property; and

WHEREAS, the primary use of the Street Operations Poles and other City property is first and foremost for the original uses such as street lighting, traffic signals, highway sign support and other designated City uses; and

WHEREAS, on or about June 26, 2006, the City acting by and through its New York City Department of Transportation ("DOT") entered into a franchise agreement for the installation, operation and maintenance of Coordinated Franchise Structures with Cemusa Inc., a company which thereafter assigned its interest in said franchise agreement to Cemusa NY, LLC, d/b/a JCDecaux Street Furniture New York, LLC ("JCDecaux") (the "Coordinated Street Furniture Franchise"); and

WHEREAS, JCDecaux currently owns a non-exclusive franchise providing the right and consent to install, operate and maintain Coordinated Franchise Structures on, over and under the Inalienable Property of the City; and

WHEREAS, on December 19, 2014, the City, acting by and through its DoITT, entered into a Public Communications Structure franchise agreement with CityBridge, LLC for the installation, operation and maintenance of LinkNYC Kiosks and said franchise agreement was subsequently amended in 2015 and in 2018 (the "LinkNYC Franchise"); and

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.

1.1 "Affiliated Person" means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Company; (ii) each Person in which the Company has, directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, or other Person holding an interest of five percent (5%) or more, joint venturer or joint venture partner of the Company; and (iv) each Person, directly or indirectly, controlling, controlled by or under common Control with the Company; provided that "Affiliated Person" shall in no event mean the City, any Person holding an interest of less than five percent (5%) of the Company or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person.

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

1.3 “Authorizing Resolution” has the meaning set forth in the second Whereas clause of this Agreement.

1.4 “Base Stations” means the equipment housing and antennas, and the associated equipment, all as described in Section I of Appendix A, installed at a fixed location for the reception and/or transmission of wireless, radio frequency telecommunications signals.

1.5 "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.

1.6 “City Charter” has the meaning set forth in the third Whereas clause of this Agreement.

1.7 “City Code” means the New York City Administrative Code.

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

1.9 "Company" means Mobilitie, LLC, a limited liability company organized and existing under the laws of the State of Nevada whose principal place of business is located at 660 Newport Center Drive, Suite 200, Newport Beach, CA 92660.

1.10 “Compensation Street Pole(s)” has the meaning set forth in Section II(B) of Appendix D hereof.

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

1.12 “Control” or “Controlling Interest” means working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the Facilities or of the Company. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than ten percent (10%) of any Person (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

1.13 “Coordinated Franchise Structure(s)” means (1) structures intended as bus stop shelters (including seating, if installed) which provide meaningful protection from precipitation, wind, and sun, (2) automatic public toilets installed, and (3) any associated equipment, wiring, and/or cables that are attached to such Coordinated Franchise Structures (other than any such associated equipment, wiring, and/or cables that are owned by third parties) and the advertising panels, installed on, over and under the Inalienable Property of the City. Coordinated Franchise Structures shall not include newsstands or public service structures.

1.14 “Coordinated Street Furniture Franchise” has the meaning set forth in the tenth Whereas clause of this Agreement.

1.15 “Customer” means any Person lawfully receiving any service provided by the Company by means of the Facilities.

1.16 “DoITT” means the Department of Information Technology and Telecommunications of the City of New York, or any successor thereto.

1.17 “DOT” means the Department of Transportation of the City of New York, or any successor thereto.

1.18 “Effective Date” means the date stated in a notice issued by the City to the Company, which date shall be ten (10) 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, and (b) all the documents have been submitted as required by Section 2.2 hereof, (c) the City’s vendor disclosure review process known as PASSPort of the Company has been favorably completed, and (d) payment has been made to the City of the Initial Payment, the Security Fund amount pursuant to Section I of Exhibit C hereof, and the FCRC publication costs as described in Section 7.2.1 hereof.

1.19 “Execution Date” means the date set forth on the cover page of this Agreement.

1.20 “Facilities” means, collectively, the Base Stations and equipment ancillary thereto, including but not limited to fiber handholds.

1.21 “FCC” means the Federal Communications Commission or any successor thereto.

1.22 “FCRC” means the Franchise and Concession Review Committee of the City of New York, or any successor thereto.

1.23 “Fiber” has the meaning set forth in Section 2.4.2 hereof.

1.24 “Franchise Area” means each or, or any combination of, Zone A, Zone B, and Zone C for which the Company is permitted to install Facilities on Street Poles pursuant to this Agreement.

1.25 “Inalienable Property” means the rights of the City in and to its waterfront, ferries, wharf property, bridges, land under water, public landings, wharves, docks, streets, avenues, highways, parks, waters, waterways and all other public places.

1.26 “Initial Payment” shall have the meaning set forth therefor in Section V of Appendix D attached hereto.

1.27 Intentionally Omitted.

1.28 “LinkNYC Franchise” has the meaning set forth in the twelfth Whereas clause of this Agreement.

1.29 “LinkNYC Kiosks” shall mean Public Communications Structures installed, operated, and/or maintained pursuant to the LinkNYC Franchise or any successor thereto.

1.30 “Mayor” means the chief executive officer of the City, the Mayor’s designee, or any successor to the executive powers of the present Mayor.

1.31 “Mobile Telecommunications Services” means mobile telecommunications services as defined in the Authorizing Resolution.

1.32 “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.

1.33 “Pre-Pole Compensation Period” shall mean a period beginning on the date on which a Street Pole becomes a Reserved Pole and expiring on the Pre-Pole Compensation Period Expiration Date (as hereinafter defined) during which no Street Pole Compensation is due.

1.34 “Pre-Pole Compensation Period Expiration Date” shall mean the 31st day after which a Street Pole becomes a Reserved Pole.

1.35 “Priority List” means the list of priorities that Street Pole Franchisees are to follow in the submission of Reservation Notices as set forth in Section II (B) of Appendix A. Such Priority List was distributed to all Street Pole Franchisees at the conclusion of the RFP process and is intended to obviate conflicting demands for specific locations.

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

1.37 “Public Communications Structure(s)” or “PCS” shall mean a structure that provides free Wi-Fi and/or additional telecommunications services as determined by the City.

1.38 “Reservation Notice” has the meaning set forth in Section II (B)(1) of Appendix A hereof.

1.39 “Reserved Pole” means a Street Pole which has been reserved to a Street Pole Franchisee under Section II (B) of Appendix A hereof.

1.40 "RFP" has the meaning set forth in the second Whereas clause of this Agreement.

1.41 “Scheduled Term” means the period from and including the Effective Date until and including the tenth anniversary of the Execution Date.

1.42 “Security Fund” means a cash security fund or letter of credit, as described in Section 5 and Appendix C hereof.

1.43 “SLP” has the meaning set forth in the seventh Whereas clause of this Agreement.

1.44 “Street Operations Pole(s)” shall have the meanings set forth in the seventh Whereas clause of this Agreement subject further to the requirements of this Agreement.

1.45 “Street Pole(s)” shall have the meaning set forth in the seventh Whereas clause of this Agreement subject further to the requirements of this Agreement.

1.46 “Street Utility Pole(s)” shall have the meaning set forth in the seventh Whereas clause of this Agreement.

1.47 “Street Pole Compensation” shall mean, collectively, Street Operations Pole Compensation and Street Utility Pole Compensation as they are respectively defined in Appendix D.

1.48 “Old Street Pole Franchise” means any franchise granted by the City of New York and approved by the FCRC between July 14, 2004 and November 30, 2019, authorizing installation of Base Stations on Street Poles.

1.49 “Street Pole Franchise” means any franchise granted by the City of New York and approved by the FCRC after November 30, 2019, authorizing installation of Base Stations on Street Poles.

1.50 “Street Pole Franchisee” means any company granted a Street Pole Franchise pursuant to a Street Pole Franchise agreement.

1.51 “New Reservation Phase” means the selection of Street Operations Poles subject to and accordance with the requirements set forth in Section II (B)(1) of Appendix A of this Agreement.

1.52 “Old Street Pole Franchisees” means any company granted a Street Pole Franchise pursuant to an Old Street Pole Franchise agreement.

1.53 “Term” has the meaning set forth in Section 2.1 hereof.

1.54 “TLP(s)” has the meaning set forth in the seventh Whereas clause of this Agreement.

1.55 “Unavoidable Delay” means a delay due to strike; war or act of war; insurrection; riot; fire, flood or similar act of providence; or other similar causes or events to the extent that such

causes or events are beyond the control of the Company and beyond normal and reasonable expectation, provided in each case that the Company has taken and continues to take all reasonable actions to avoid or mitigate such delay and provided that the Company notifies DoITT in writing of the occurrence of such delay within five (5) business days of the date upon which the Company learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall constitute an "Unavoidable Delay" in such an occurrence, but only if such delay is materially beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the Company has taken and continues to take all reasonable steps to pursue such decision. In no event will a government entity's final decision, whether positive or negative, once made constitute an Unavoidable Delay (the term "final decision" in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). Except to the extent required by any applicable state or federal law, the financial incapacity of the Company or other financial matters shall not constitute an Unavoidable Delay.

1.56 "Zone" means each and any of Zone A, Zone B, or Zone C.

1.57 "Zone A" means the portion of the Borough of Manhattan which includes 96th Street (inclusive of the northernmost boundary of the north side sidewalk of 96th Street) and all parts of said Borough that lie south of 96th Street.

1.58 "Zone B" means all portions of the City not within Zone A or Zone C.

1.59 "Zone C" means Community Districts 1, 2, 4, 5, and 7 in the Borough of the Bronx and Community Districts 13 and 16 in the Borough of Brooklyn.

1.60 "Zone Compensation" shall have the meaning set forth in Section I of Appendix D hereof.

SECTION 2 – GRANT OF AUTHORITY

2.1 Term.

Scheduled Term. This Agreement, and the franchise granted hereunder, shall commence upon and include the Effective Date, and shall continue for a maximum of 10 years unless this Agreement is earlier terminated by mutual agreement of the parties, or upon earlier termination of this Agreement and the franchise pursuant to the terms of this Agreement. The period of time that this Agreement remains in effect is herein referred to as the "Term." Notwithstanding the preceding, if the Effective Date does not occur within 130 days of the Execution Date, this Agreement shall be deemed immediately terminated and no obligations of the parties to one another shall thereafter accrue under this Agreement except as this Agreement expressly provides for the survival of certain obligations or provisions.

2.2 Documents Required for Occurrence of the Effective Date; No Installation Prior to Effective Date.

The Effective Date is subject to among other things, the submission to the City by the Company of the following documents as described in this Section 2.2: (a) a certificate of liability insurance pursuant to Section 10.2.6 hereof, (b) an opinion of the Company's counsel dated as of the

Execution Date, in form reasonably satisfactory to the City opining that this Agreement has been duly authorized, executed and delivered by the Company and is a binding obligation of the Company, (c) an affirmation signed by an authorized officer or representative of the Company in the form set forth in Exhibit D of the RFP, (d) an IRS W-9 form certifying the Company's tax identification number, and (e) organizational and authorizing documents as described in Sections 12.5.1 and 12.5.2 hereof. No installation by the Company on Street Poles, LinkNYC Kiosks or Coordinated Franchise Structures or otherwise on, over or under the Inalienable Property, granted pursuant to this Agreement, shall be permitted until the occurrence of the Effective Date. The City shall issue a notice to the Company setting forth the Effective Date, such notice to be issued within ten (10) days of the first date on which all required conditions to occurrence of the Effective Date, as set forth in this Section 2.2 and in Section 1.18, have been met.

2.3 Nature of Franchise, Effect of Termination and Renewal.

2.3.1 Nature of Franchise.

(a) The City hereby grants the Company, commencing on the Effective Date and thereafter for the period of the Term, subject to the terms and conditions of this Agreement, a nonexclusive franchise providing the right and consent to install, operate, repair, maintain, remove and replace cable, wire, Fiber (or other transmission medium that may be used in lieu of cable, wire or Fiber) and related equipment and facilities on, over and under the Inalienable Property of the City, for the provision of Mobile Telecommunications Services, provided however, that such grant is expressly limited to the locations, facilities and services described in Section 2.4.2 hereof and Appendix A hereto.

(b) Before offering or providing any services using the Facilities, the Company shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to DoITT upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

(c) The Company shall surrender any Old Street Pole Franchise(s) previously granted to it by the City upon the Effective Date. Pole reservations granted pursuant to Old Street Pole Franchises, including any authorized Facilities installed in connection therewith, will be transferred over to the Company and will be governed by all terms and conditions as stated in this Agreement.

(d) In the event that the Company desires to install, maintain and operate a Facility on or within a Coordinated Furniture Structure, the Company must enter into an agreement with the Coordinated Street Furniture Franchisee as identified in this Agreement, and such agreement must be subject to DOT approval.

(e) In the event that the Company desires to install, maintain and operate a Facility on or within a LinkNYC Kiosk, the Company must enter into an agreement with a company granted such a franchise by the City. Such agreement is subject to DoITT approval.

2.3.2 Effect of Termination. Upon termination of this Agreement, the franchise shall expire, all rights of the Company in the franchise shall cease, with no value allocable to the franchise itself;

and the rights and obligations of the City and the Company shall be determined as provided in Sections 11.3 through 11.5 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 City, the Company or any other Person, as applicable, which accrued prior to such termination except as this Agreement expressly provides for the survival of certain obligations or provisions and except that in the event of a termination by reason of a breach or default of one or more obligations hereunder, the breaching or defaulting party shall be liable for any damages for breach or default of this Agreement for which the breach or defaulting entity would be liable under applicable law.

2.3.3 Renewal. This Agreement does not grant to the Company any right to renewal of this Agreement or the franchise granted hereunder, and there shall be no such right. If the Company seeks renewal of this Agreement and/or the franchise granted hereunder, the City shall have the fullest discretion permitted by law to grant or withhold such renewal.

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 to any Person a franchise, consent or right to occupy and use the Inalienable Property, or any part thereof, for the construction, operation and/or maintenance of a system to provide any services (including without limitation Mobile Telecommunications Services), pursuant to the terms of this Agreement, including but not limited to Section II(B) of Appendix A.

2.4.2 Construction of Facilities.

(a) The Company is only authorized, under the franchise granted pursuant to this Agreement, to install, within the Franchise Area:

(i) Base Stations on Street Poles;

(ii) Base Stations on or within LinkNYC Kiosks are subject to (x) agreements between the Company and the owner of the LinkNYC Kiosk; (y) subject to the terms and conditions of the associated LinkNYC Franchise Agreement; and (z) review and approval by DoITT;

(iii) Base Stations on or within Coordinated Franchise Structures, subject to (x) agreements between the Company and the owner of the Coordinated Franchise Structures; (y) subject to the terms and conditions of the Coordinated Street Furniture Franchise and (z) review and approval by DOT; and

(iv) for purposes of connecting Base Stations installed on Street Poles or other authorized structures, to one another or to a supporting telecommunications system (such supporting telecommunications system may include, without limitation, Base Stations installed on, over or under property other than the Inalienable Property), cable, wire or optical fiber, or other transmission medium that may be used in lieu of cable, wire or optical fiber, (collectively "Fiber") on, over or under the Inalienable Property of the City within the Franchise Area.

(b) If at any time the Company seeks to use, or make available to others, Fiber installed pursuant to this Agreement or the Coordinated Street Furniture Franchise or the LinkNYC Franchise for purposes other than the sole purpose of transmission of signals among Base Stations or between Base Stations and a supporting telecommunications system, the Company must obtain (if it does not already have), as a condition to such use or availability, an additional franchise from the City authorizing such use or availability.

(c) The Company acknowledges and agrees that all installations pursuant to this Section 2.4.2 shall be subject to the terms of this Agreement and to any further review and approval required by the City and/or any applicable local, state or federal law.

(d) The Company shall use its commercially reasonable efforts to coordinate construction and maintenance of the Facilities with the appropriate City agencies to minimize unnecessary disruption. Construction and maintenance of the Facilities shall be performed in accordance with all rules related to construction and management of the Inalienable Property, and property and equipment located thereon as the City may have in place or adopt from time to time.

(e) The Company shall obtain all construction, building or other permits or approvals necessary before installing Base Stations or Fiber under this Agreement. The Company shall provide copies of any such permits and approvals to DoITT upon request.

(f) Unless otherwise specifically permitted by the City, nothing in this Agreement is intended to authorize the Company to install poles or other new structures including Coordinated Street Furniture or LinkNYC Kiosks on the Inalienable Property of the City.

(g) Any agreements referenced in sub-Sections 2.4.2(a)(ii) and (iii) above between the Company and owners of Coordinated Franchise Structures and/or LinkNYC Kiosks for the placement of Base Stations on or within Coordinated Franchise Structures and/or LinkNYC Kiosks shall be subject to the prior approval of the City, to be given in the City's sole and absolute discretion.

2.4.3 Public Works and Improvements. Nothing in this Agreement shall abrogate the right of the City (itself or through its contractors) to construct, operate, maintain, repair or remove any public works or public improvements of any description. In the event that the Facilities interfere with the construction, operation, maintenance, repair or removal of any public works or public improvements, the Company shall, at its own cost and expense, promptly protect or alter or relocate the Facilities, or any part thereof, as directed by the City. If practicable, the City shall use reasonable efforts to provide reasonable prior notice to the Company of such interference and the City's direction. In the event that the Company thereafter fails to so protect, alter or relocate all or part of the Facilities, the City shall have the right to break through, remove, alter, or relocate all or any part of the Facilities without any liability to the Company, and the Company shall pay to the City the reasonable costs incurred in connection with such breaking through, removal, alteration, or relocation (provided that the City shall not place any of the Company's Base Station equipment on any Street Pole without the Company's agreement).

2.4.4 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 Persons

utilizing the Facilities to secure the appropriate permits or authorizations for such use, provided that no fee or charge may be imposed upon the Company for any such additional permit or authorization other than the standard fees or charges generally applicable to all Persons for such permits or authorizations.

2.4.5 No Release.

(a) Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Inalienable Property. In the event that any action by the City results in the elimination of a Street Operations Pole, LinkNYC Kiosk, and/or Coordinated Franchise Structure in the Inalienable Property within the Franchise Area all rights and privileges granted pursuant to this Agreement with respect to said Inalienable Property, shall cease upon the date of such elimination. The City shall use reasonable efforts to provide reasonable prior notice to the Company of any such elimination. If said elimination is undertaken for the benefit of any private Person, the City shall make efforts to condition its consent to said elimination on the agreement of said private Person to (i) grant the Company the right to continue to occupy and use the applicable property or (ii) reimburse the Company for the reasonable costs of relocating the affected part of the Facilities. Notwithstanding any other provision herein to the contrary, the Company shall not be liable to the City for any such damage or loss to the extent the City is compensated by the insurance which the Company is obligated to maintain pursuant to this Agreement.

(b) It is not the intention of the parties that anything in the preceding subsection (a) is inconsistent with the provisions of Section II (B) (3) of Appendix A regarding the opportunity of the Company to gain access to an alternative Street Operations Pole for a Base Station, if a Street Operations Pole on which one of the Company's Base Station is located, or a Reserved Pole that is reserved for the Company, is removed temporarily or permanently.

(c) Unless otherwise expressly set forth in this Agreement, nothing herein shall alter the rights and responsibilities of either party pursuant to any agreement previously entered into by the parties.

SECTION 3 – SERVICE

3.1 No Interference. In the operation of the Facilities, the Company agrees not to interfere with the technical operation of any system or service, including, but not limited to, telecommunications system or service operated by or on behalf of the City in support of the City's public safety activities, transportation activities, pedestrian or vehicular traffic, other Street Pole Franchisees', LinkNYC Franchise franchisees, Coordinated Franchise Structures franchisees or other public activities. The Company will immediately terminate (or cease any such interference by adjusting) the use of any portion of the Facilities that is interfering with such activities of the City (provided that if the Company could not have reasonably anticipated that its operations would result in such interference, and the Company acts promptly to remove or relocate the portion of the Facilities resulting in such interference, then the Company shall be entitled to an abatement of any Street Pole Compensation attributable to any such interfering Facilities the use of which has been terminated, for the period during which such use is terminated). Interference, as such concept is referred to in the preceding sentences of this Section 3.1, shall be understood to refer to both spectrum interference and any other forms of interference. With respect to other

telecommunications systems not operated by or on behalf of or under the auspices of the City the Company agrees to comply with the federal Communications Act, as amended (the "Act") and applicable FCC rules and regulations with respect to radio spectrum interference.

3.2 No Discrimination. The Company shall not discriminate in the provision of its services using the Facilities on the basis of actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service or alienage or citizenship status.

3.3 Continuity. In the event the Company, with the consent of the City as required and in accordance with the provisions of Section 9, sells or otherwise transfers the Facilities, the franchise granted hereunder or Control thereof to any Person, the Company shall transfer such in an orderly manner in order to maintain continuity of service to Customers.

SECTION 4 – CONSTRUCTION AND TECHNICAL REQUIREMENTS

4.1 General Requirement. The Company agrees to comply with each of the terms set forth in this Section and in Appendix B governing construction and technical requirements for its Facilities, in addition to any other reasonable construction or technical requirements or procedures specified by the City in writing.

4.2 Quality of Work on City Property, Consistency with City Use. All work involved in the construction, operation, maintenance, repair, and removal of the Facilities shall be performed in a safe, thorough, reliable and resilient manner with a qualified and trained workforce, with relevant certifications as may be required by the City, using materials of good and durable quality. In the case of installations on Street Poles all such work shall be performed in a manner and using materials consistent with the City's use of the Street Operations Poles. If, at any time, it is reasonably determined by the City (acting within the scope of its lawful proprietary and/or governmental authority) or any other governmental agency or authority of competent jurisdiction that any part of the Facilities is harmful to the public health or safety, including worker, vendor and subcontractor safety, then the Company shall, at its own cost and expense, promptly correct any and all such harmful conditions (provided however that with respect to radio frequency emissions the provisions of Section I (G) of Appendix A hereof shall apply).

4.3 Licenses and Permits. The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain or repair the Facilities, including but not limited to any necessary approvals, if applicable, from Persons who may hold private rights affecting the Company's proposed use. The Company shall obtain any required permit, license, approval or authorization prior to the commencement of the activity for which the permit, license, approval or authorization is required (including without limitation any applicable authority of a district management association (or similar entity) of a business improvement district or special assessment district, as set forth in Section I (E)(2) of Appendix A hereof). DoITT will reasonably cooperate in assisting the Company in obtaining such permits listed in Section I (E)(2) of Appendix A hereof.

4.4 Relocation of the Facilities.

4.4.1 New Grades or Lines. If the grades or lines of any Inalienable Property within the Franchise Area are changed at any time during the Term in a manner affecting the Facilities, then the Company shall, at its own cost and expense and upon reasonable prior notice by the City, promptly protect or promptly alter or relocate the Facilities, or part thereof, so as to conform with such new grades or lines. In the event that, after such notice, the Company unreasonably refuses or neglects to so protect, alter or relocate all or part of the Facilities, the City shall have the right to break through, remove, alter or relocate such part of the Facilities 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. This provision shall not be construed to authorize the Company to relocate any Facilities, including without limitation Base Stations, to any other location on, over or under the Inalienable Property except to the extent otherwise permitted under this Agreement (see, for example, Section II (B)(3) of Appendix A). If relocation to such other location on, over or under the Inalienable Property cannot be accomplished consistent with the provisions of this Agreement, then the Company may relocate such Facilities to a location on private property, subject to its reaching an agreement for such relocation with such private property owner and subject further to any and all applicable approvals required by this Franchise Agreement and City laws, rules and regulations.

4.4.2 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 or cut power to any Fiber, amplifiers, appliances, Base Stations or any other parts of the Facilities on, over or under the Inalienable Property, in which event the City shall not be liable therefore to the Company. The City shall, if practicable, notify the Company in writing prior to undertaking such action, or, if prior notice is impracticable, then the City shall notify the Company as soon as practicable after such action has been taken and in any case no later than the next business day following any such action.

4.4.3 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 any applicable Facilities to permit the moving of said structure. The Company may require payment of the actual reasonable costs to move its Facilities from any Person other than the City for any such movement of its Facilities, which the Company may require be payable in full prior to any such movement. Relocation of Base Stations on Street Operations Poles shall be subject to the provisions of Section II (B)(3) of Appendix A hereof.

4.5 Protect Structures. In connection with the construction, operation, maintenance, repair or removal of the Facilities, the Company, which shall bear the reasonable cost and expense thereof, shall protect any and all existing structures and equipment belonging to the City and all designated landmarks, as well as all other structures within any designated historic district. The Company shall obtain the prior approval of the City before altering any water main, sewerage or drainage system, or any other municipal structure or equipment on, over or under the Inalienable Property. Any such alteration shall be made by the Company, which shall pay the reasonable cost and expense thereof, 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 condition immediately prior to the disturbance or damage, in a manner as may be reasonably specified by the City, any municipal structure or any other property or equipment located on, over or under the Inalienable Property

that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company.

4.6 No Obstruction. In connection with the construction, operation, maintenance, repair or removal of the Facilities, the Company shall not unreasonably obstruct the Inalienable Property, or subways, railways, passenger travel, river navigation, or other traffic to, from or within the Franchise Area without the prior consent of the appropriate authorities. To the extent that the City permits or suffers the installation of facilities or equipment (by entities other than the Company or its affiliates) which substantially obstructs the Company's ability to use a Base Station then the Company shall be entitled to an appropriate abatement of the Street Pole Compensation due to the City hereunder applicable to such Base Station for the period the Company's use of such Base Station is thus obstructed (provided that the Company notifies the City of the obstructive effect of such obstruction promptly after the Company becomes aware of such effect).

4.7 Safety Precautions. The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents and protect worker safety at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting.

SECTION 5 – SECURITY FUND

5.1 General Requirement. As security for the performance of its obligation under this Agreement, the Company will deposit with the City (and replenish as required in this Agreement) a Security Fund, in form and amount as set forth in Appendix C hereof. Throughout the Term, and for one hundred twenty (120) days thereafter (or longer if required by Section 11.4.1(d) hereof), the Company shall maintain the Security Fund in the amount specified in Appendix C.

5.2 Purposes. The Security Fund shall serve as security for:

(a) the faithful performance by the Company of all terms, conditions and obligations of this Agreement;

(b) payment to the City for any expenditure, damage, or loss reasonably incurred by the City occasioned by the Company's failure to comply with all written rules, regulations, orders, permits and other directives of the City applicable to the Company's activities pursuant to this Agreement;

(c) payment of the compensation described in Section 7 and Appendix D hereof;

(d) payment of premiums for the liability insurance required pursuant to Section 10 hereof;

(e) removal of the Facilities from the Inalienable Property of the City at the termination of the Agreement, at the election of the City, pursuant to Section 11.4 hereof;

(f) payment to the City of any amounts for which the Company is liable pursuant to Section 10.1.1 hereof which are not paid by the Company's insurance;

(g) payment of any other amounts which become due to the City pursuant to this Agreement or to legal requirements applicable to this Agreement; and

(h) payment of any other costs, losses or damages incurred by the City as a result of a breach or default of the Company's obligations under this Agreement.

5.3 Withdrawals from the Security Fund. The City may draw from the Security Fund such amounts (a) as have not been timely paid to the City when due as provided in this Agreement, (b) as are appropriate to pay the costs of, or reimburse the City for its full costs incurred in undertaking, any activity which the Company is obligated to perform hereunder but has failed to timely perform, and (c) as are appropriate to indemnify and hold harmless the City from any expenses, losses or damages incurred (and not previously paid or reimbursed) as a result of any breach or default by the Company of any obligation of the Company under this Agreement. Withdrawals from the Security Fund shall not be deemed a cure of the default(s) that led to such withdrawals, but the City may not seek recourse against the Security Fund or the Company 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 withdrawals from the Security Fund, the City shall confirm by written notice to the Company of the date and amount thereof, provided, however, that the City shall not make any withdrawals from the Security Fund by reason of any breach or default of this Agreement (including, without limitation, non-payment of compensation or of other amounts payable hereunder) unless: (x) such breach or default has ripened into an Event of Default, and (y) the City notifies the Company in advance of such impending withdrawal and at least ten (10) days have elapsed after such notice. 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. The right to make withdrawals from the Security Fund shall not be construed as the City's right to greater compensation than the Company is obligated to pay pursuant to the terms of this Agreement.

5.5 Replenishment. Within thirty (30) days after receipt of confirmation notice from the City that any amount has been withdrawn from the Security Fund, as provided in this Section 5, the Company shall restore the Security Fund to the amount specified in Appendix C hereof, provided that, if a court finally determines that said withdrawal by the City was improper, the City shall refund the improperly withdrawn amount (plus any interest accrued thereon between such improper withdrawal and such refund) to the Security Fund or to the Company such that the balance in the Security Fund shall not exceed the amount specified in Appendix C hereof. The City shall supply to the Company a written statement of deposits to and withdrawals from the Security Fund upon request of the Company, but not more often than once in any calendar quarter.

5.6 Not a Limit on Liability. The obligations of the Company and the liability of the Company pursuant to this Agreement shall not be limited by the City's acceptance of the Security Fund required by this Section 5; the City's remedies shall in no way be limited by its recourse to the Security Fund (except that the City shall not be entitled to double recovery of the same damages from both the Security Fund and other sources); and the City shall not be required to draw from the Security Fund prior to or in lieu of pursuing any alternate remedies.

SECTION 6 – EMPLOYMENT AND PURCHASING

6.1 Right to Bargain Collectively.

(a) 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, deal, and bargain in good faith, 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, 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.

(b) The concepts and terms set forth in the preceding subsection (a) shall be applied and construed in a manner consistent with their use in Chapter 7 of Title 29 of the United States Code (or any successor provisions thereto).

6.2 City Vendors. To the maximum feasible extent, after taking into account price and quality considerations, the Company shall utilize vendors and subcontractors located in the City in connection with the construction, and maintenance of the Facilities. "Located in the City" means, at a minimum, that the vendor maintains a real property business address in New York City to which full time employees regularly physically report. Such vendors and subcontractors will comply with all federal, state and local labor and employment laws and pursuant to Section 6.1(b) above.

6.3 Equal Employment Opportunity. The Company agrees and will require its vendors and subcontractors to comply with the provisions of the Executive Order No. 50 (April 25, 1980) of the Mayor of the City of New York (codified at Section 1-14 of Title 10 of the Rules of the City of New York), and the rules and regulations promulgated thereunder, as such Order or regulations may be amended, modified or succeeded throughout the Term, to the fullest extent such provisions are applicable.

SECTION 7 – COMPENSATION AND OTHER PAYMENTS

7.1 Compensation.

7.1.1 Compensation. As compensation for the franchise granted hereunder, the Company agrees to pay to the City the compensation amounts set forth in Appendix D hereof, as and when due as described in said Appendix D.

7.1.2 Records and Audits. The Company shall keep, for the term of this Agreement including any Continuing Obligation and any Holdover pursuant to Section 7.6 plus at least six years, at its principal executive office or such other location of its choosing (provided that such other location does not adversely affect the City's inspection rights as set forth in this Agreement), comprehensive itemized records in sufficient detail to enable the City to determine whether all compensation owed to the City pursuant to Section 7.1 is being paid to the City.

7.1.3 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 shall be subject to audit and re-computation by the City.

7.1.4 Ordinary Business Expense. Nothing contained in this Section 7.1 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation and other payments that it may pay pursuant to this Agreement as an ordinary expense of doing business and, accordingly, from deducting said payments from gross income in any local, state, or federal income tax return.

7.2 Other Payments.

7.2.1 Pre-Payment/Reimbursement of Publication Costs. The Company shall, as a condition to the occurrence of the Effective Date of this Agreement, either pre-pay or reimburse the City for costs incurred by the City for compliance with legal notice publication requirements in connection with the award of this franchise. The Company expressly agrees that the payments referred to in this Section 7.2.1 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 Section 7.1 hereof or any other amount that may be payable to the City.

7.2.2 Future Costs. The Company shall pay to the City or to third parties, at the direction of the City, an amount equal to the actual out of pocket costs and expenses which the City incurs for the services of third parties (including but not limited to attorneys, accountants and other consultants) in connection with any Company-initiated renegotiation, transfer, amendment or other modification of this Agreement or the franchise granted hereunder. Before any work subject to such reimbursement is performed, the City will advise the Company that the City will be incurring the services of third parties pursuant to the preceding sentence and will provide an estimate of said anticipated costs and expenses. The Company expressly agrees that the payments made pursuant to this Section 7.2.2 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 Section 7.1 hereof or any other amount that may be payable to the City.

7.3 No Credits or Deductions. The Company expressly acknowledges and agrees that:

(a) The compensation and other payments to be made pursuant to this Section 7 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 Affiliated Person 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

(b) The Company expressly relinquishes and waives any rights it may have 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 any subsequent law, rule, regulation, or order which would purport to permit any of the acts prohibited by this Section 7.3, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any such deduction or other credit; and

(c) Except as permitted by Section 7.1.4, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made or services to be provided pursuant to this Agreement from or against any City or other

governmental taxes of general applicability or other fees or charges which the Company or any Affiliated Person is required to pay to the City or other governmental agency; and

(d) Except as permitted by Section 7.1.4, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply or seek to apply all or any part of the amount of the compensation or other payments to be made or services 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 Affiliated Persons; and

(e) The Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person 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 compensation or other payments to be made or services to be provided pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons.

7.4 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 until received at a rate equal to the rate of interest then in effect charged by the City for late payments of real estate taxes.

7.5 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 made to the City's Department of Finance, by electronic deposit or wire transfer arranged in advance with the Department of Finance, or by check and the Company shall send a copy of the documentation of such payment or a copy of such check to DoITT.

7.6 Continuing Obligation and Holdover.

(a) In the event the Company continues to operate all or any part of the Facilities on, over or under the Inalienable Property after the Term, then 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 ("Holdover"), 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, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the Term, including, but not limited to, damages and restitution.

(b) In the event this Agreement terminates for any reason whatsoever and the Company fails to cease providing service over the Facilities, 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 7.

SECTION 8 – RECORDS, REPORTING, AND RULES

8.1 Protection from Disclosure. To the extent permissible under applicable law, the City shall use reasonable efforts to protect from disclosure any confidential, proprietary information submitted to the City under this Agreement or made available to the City pursuant to this Section 8, provided that the Company notifies the City of, and clearly labels the information which the Company deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Company. Information that, at the time of disclosure, was publicly available is not, for the purposes of this Agreement, confidential, proprietary information.

8.2 Oversight. DoITT shall have the right to oversee, regulate and inspect periodically the installation, construction and maintenance of the Facilities, and any part thereof, in accordance with the provisions of this Agreement and applicable law. The Company shall establish and maintain, at its principal executive offices or such other location of its choosing (provided that such other location does not adversely affect the City's inspection and oversight rights) such managerial and operational records, standards, procedures and controls as enable the Company to document, in reasonable detail, to the reasonable satisfaction of the City at all times throughout the Term, that the Company is in compliance with 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.

8.3 Reports.

8.3.1 Status Report. The Company shall, on an annual basis, during the month preceding each anniversary of the Effective Date, provide DoITT and DOT with a report describing any construction or installation of Facilities that has occurred during the previous twelve months. Such information may include, but no be limited to, data or information related to the type of equipment and the Company's reasonably anticipated plans for such construction and installation for the coming twelve months. It is understood by the parties that the Company shall have the unrestricted right to adjust such reasonably anticipated plans and such report of anticipated plans shall not restrict the Company’s rights under this Agreement to reserve space for, and install, Facilities in a manner and at locations which may not be consistent with such report of anticipated plans.

8.3.2 Street Pole Installation Completion Reporting. Within ten (10) days of the completion of installation of the Facilities on a Street Pole, the Company shall report such installation to DoITT and DOT via franchisee-accessible computer application, or by such alternative reporting procedure as DoITT and DOT shall specify.

8.3.3 LinkNYC Kiosks and Coordinated Franchise Structures Installation Completion Reporting. Within ten (10) days of the completion of installation of the Facilities on or within a LinkNYC Kiosk and Coordinated Franchise Structure, the Company shall report such installation to DoITT and DOT via franchisee-accessible computer application, or by such alternative reporting procedure and format as DoITT and DOT shall specify.

8.3.4 Additional Information and Reports. Upon the request of the Commissioner, the Company shall submit to DoITT and DOT, within 14 days, any information or report reasonably related to the Facilities and this Agreement, or to the Company's obligations under this Agreement in such

form and containing such information, reasonably related to the Facilities and this Agreement, as the Commissioner shall reasonably specify. Such information may include, but not be limited to, reports identified in Appendix H, and data or information related to the type of equipment and technology deployed pursuant to this Agreement, the radio frequencies in use, and the names of all wireless operator(s) or holders of applicable spectrum licenses (to the extent that it may be an entity other than the Street Pole Franchisee itself) on whose behalf the Company is installing Facilities. Such information or report shall be accurate and complete.

8.4 City Rules. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives governing the Facilities that are consistent with the terms of this Agreement and that it finds necessary or appropriate in the lawful exercise of its police powers, and the Company expressly agrees to comply with all such lawful rules, regulations, orders, or other directives.

8.5 Books and Records/Audit.

8.5.1 Books and Records. The Company, for the Term of this Agreement and including any Holdover pursuant to Section 7.6 plus at a minimum six years, shall maintain complete and accurate books of accounts and records of the business, ownership, and operations of the Company with respect to the Facilities in a manner that allows the City at all times to determine whether the Company is in compliance with the Agreement in accordance with Generally Accepted Accounting Principles. If the City reasonably determines that the records are not being maintained in such a manner, the Company shall alter the manner in which the books and/or records are maintained so that the Company comes into compliance with this Section within a reasonable time. The Company shall ensure that its financial accounts are annually audited by an independent, certified public accountant. Such accountant shall produce a full and unredacted signed report of such audit which will be submitted to the City on an annual basis.

8.5.2 Right of Inspection. The Commissioner and the Comptroller, or their authorized representatives shall have the right to audit, to examine, and to make and receive copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Company, including, but not limited to those kept by the Company, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files; ledgers; cancelled checks; deposit slips; bank statements; journals; and correspondence or other information which pertain to the Facilities, their installation, operation and maintenance, as may be necessary or appropriate to review the Company's compliance with its obligations pursuant to this Agreement. The Company shall at any time requested by the City, whether during or after completion of this Agreement, and at the Company's sole expense make such records available for inspection and audit (including copies and extracts of records as required) by the City. Such records shall be made available to the City during normal business hours at the Company's office or place of business and subject to three-day written notice. All such documents shall be made available within New York City or in such other place that the City may in its discretion agree upon in writing in order to facilitate said inspection, examination, or audit, provided, however, that if such documents are made available by the Company outside of the City, then the Company shall pay the reasonable expenses incurred by the Commissioner, the Comptroller or their designated representatives in traveling to such

location. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the City. All of such documents shall be retained by the Company for a minimum of six (6) years following termination of this Agreement. Access by the Commissioner, the Comptroller or their designated representatives to any of the documents covered by this Section 8.5.2 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, subject to Section 8.1 hereof. In order to determine the validity of such assertion and withholding by the Company, the Commissioner, the Comptroller or their designated representatives (as the case may be) agree to review the alleged proprietary information, and/or a log of the documents believed by the Company to be privileged reflecting sufficient information to establish the privilege claimed, at the Company's premises, or at a mutually acceptable location within the City, and, in connection with such review, to limit access to the alleged proprietary information to those individuals who require the information in the exercise of the City's rights under this Agreement. If the Corporation Counsel of the City, or by injunction or other action a court with subject matter jurisdiction, concurs with the Company's assertion regarding the proprietary nature of such information, the City will hold such information in confidence to the extent authorized by and in accordance with applicable law and will not remove from the Company's premises and/or will immediately return to the Company all embodiments of the proprietary portion of any document or other intangible thing that contains such proprietary information (without maintaining any copies for archival or any other purposes). If the Corporation Counsel of the City, or by injunction or other action a court with subject matter jurisdiction, concurs with the Company's assertion regarding the privileged nature of such information, then the Company will not be required to disclose such information. If the Corporation Counsel of the City does not concur with such assertions, then the Company shall promptly provide such documents, including the alleged proprietary or privileged portion thereof, to the City, provided that the Company shall not be required to provide the proprietary or privileged portion thereof during the pendency of any court challenge to such provision or inconsistently with any final court decision. The records and materials subject to inspection under this Section 8.5 shall not include Customer specific information or records and materials of Affiliated Persons, unless the City can reasonably show why such Customer-specific information or records and materials of Affiliated Persons may be necessary or appropriate to review or audit the Company’s compliance with its obligations pursuant to this Agreement.

8.5.3 Subcontracts. The Company shall ensure the City has these rights with respect to the Company’s employees, agents, assigns, successors, vendors and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Company and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Company’s obligations to the City hereunder.

8.5.4 Audit Costs. In the event that the City, in the course of any audit (including, but not limited to a City audit and/or a third party audit) or an inspection of records by the City, 1) identifies any underpayment by the Company to the City in excess of one percent (1%) of all compensation paid by the Company to the City during the audit period; or 2) discovers substantive findings related to

fraud, misrepresentation, or non-performance, the costs of any such audit will be borne by the Company.

Any adjustments and/or payments that must be made as a result of any such audit (including, but not limited to a City audit and/or a third party audit) or inspection of the Company's records as well as any costs associated with any such audit or inspection of the Company's records shall be made to the City within thirty (30) days from any notification by the City to the Company that such funds are due the City. The City may recoup the costs of any such audit, adjustment and/or payment directly from the Security Fund.

In addition to any other amounts due the City, the Company shall pay to the City interest on any such underpayment at the Prime Rate plus two (2%) percent. "Prime Rate" shall mean the prime rate as published in the Money Rates Section of The Wall Street Journal; however, if such rate is, at any time during the term of this Agreement, no longer so published, the term Prime Rate shall mean the average of the prime interest rates which are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States which publish a prime, base or reference rate, in any case not to exceed the maximum rate permitted by law.

8.6 Compliance With "Investigations Clause." The Company agrees to comply in all respects with the City's "Investigations Clause," a copy of which is attached at Appendix E hereto.

SECTION 9 – RESTRICTIONS AGAINST ASSIGNMENT AND OTHER TRANSFERS

9.1 Transfer of Interest. Except as expressly provided otherwise in this Agreement, and excepting conveyances and leases of real or personal property in the ordinary course of the operation of the Facilities (but not excepting leases which by their size or nature are the functional equivalent of transfers of the Facilities), neither the franchise granted herein nor any rights or obligations of the Company in the Facilities or pursuant to this Agreement shall be encumbered, assigned, sold, transferred, pledged, leased, sublet, or mortgaged in any manner, in whole or in part, to any Person, nor shall title therein, either legal or equitable, or any right or interest therein, pass to or vest in any Person, either by act of the Company, by act of any Person holding Control of or any interest in the Company or the Facilities or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City pursuant to the procedures set forth in this Section 9, provided that the City shall consider any such action in accordance with its usual procedural rules.

9.2 Transfer of Control or Stock. A complete description of the ownership and Control of the Company as of the Effective Date is set forth in Appendix F to this Agreement. Notwithstanding any other provision of this Agreement, except as provided in Section 9.6 hereof, no change in Control of the Company, the Facilities or the franchise granted herein shall occur after the Effective Date, by act of the Company, by act of any Person holding Control of the Company, the Facilities or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City granted pursuant to the procedures set forth in this Section 9. The requirements of Section 9.3 hereof shall also apply whenever any change is proposed of ten percent (10%) or more of the ownership of the Company, the Facilities, the franchise granted herein or of any Person holding Control of the Company or in the Facilities or in the franchise (but nothing herein shall be construed as suggesting that a proposed change of less than ten percent (10%) does not require

consent of the City (acting pursuant to the procedures set forth in this Section 9) if it would in fact result in a change in Control of the Company, the Facilities or the franchise granted herein), and any other event which could result in a change in Control of the Company, regardless of the manner in which such Control is evidenced (e.g., stock, bonds, debt instruments or other indicia of ownership or Control).

9.3 Petition. The Company shall promptly notify (in advance when possible) the Commissioner and DOT of any action requiring the consent of the City pursuant to Sections 9.1 or 9.2 hereof or to which this Section 9.3 applies by submitting to DoITT (pursuant to the notice provisions set forth in Section 12.4 hereof) and DOT a petition requesting the submission by the Commissioner of such petition to the FCRC and approval thereof by the FCRC or requesting a determination that no such submission and approval is required and its argument why such submission and approval is not required. Each petition shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, the Company's argument as to why such action would not involve a change in Control of the Company, the Facilities or the franchise, and such additional supporting information as the Commissioner and/or the FCRC may reasonably require in order to review and evaluate the proposed action. The Commissioner shall expeditiously review the petition and shall (a) notify the Company in writing if the Commissioner determines that the submission by the Commissioner and the approval of the FCRC is not required or (b) if the Commissioner determines that such submission and approval is required, either (i) notify the Company that the Commissioner does not approve the proposed action and therefore will not submit the petition to the FCRC, or (ii) submit the petition to the FCRC for its approval.

9.4 Consideration of the Petition. DoITT and the FCRC, as the case may be, may take such actions as either deems appropriate in considering the petition and determining whether consent is required or should be granted (provided that in no event will DoITT or the FCRC act in a manner prohibited by law or take into account matters which they would be prohibited by law from considering). After receipt of a petition, the FCRC may, as it deems necessary or appropriate, schedule a public hearing on the petition. The Company shall provide all requested assistance to DoITT and the FCRC in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

9.5 Assumption. As a condition to the granting of any consent required by this Section 9, the Commissioner and/or the FCRC may require that each Person involved in any action described in Sections 9.1 or 9.2 hereof shall execute an agreement, in a form and containing such conditions as may reasonably be specified by the City, providing that such Person assumes and agrees to be bound by all applicable provisions of this Agreement and such other conditions which the City reasonably deems necessary or appropriate in the circumstances. The execution of such agreement by such Person(s) shall in no way relieve the Company, or any other transferor involved in any action described in Section 9.1 or 9.2 hereof, of its accrued obligations pursuant to this Agreement.

9.6 Permitted Encumbrances; Pre-Approved Transfers.

(a) Nothing in this Section 9 shall be deemed to prohibit (or require consent of the City to) any encumbrance, assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the Facilities, or any right or interest therein, for bona fide financing purposes, provided that each such encumbrance, assignment, pledge, lease, sublease, mortgage, or other transfer shall be subject to the rights of the City pursuant to this Agreement and applicable law (the actions permitted in this Section include, without limitation, promissory notes and financial and security agreements for the financing of the Facilities with a third party financing entity). The consent of the City shall not be required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of the Company of all or any part of the Facilities pursuant to the rights of such secured creditor under Article 9 of the Uniform Commercial Code, as in effect in the State of New York, and, to the extent that the collateral consists of real property, under the New York Real Property Law; provided, further that, such transfer to or taking of possession shall be subject to the rights of the City pursuant to the provisions of this Agreement and any rights of any banking or lending institution shall be subordinate to any rights that the City may have under this Agreement and/or to the Facilities. The City waives any lien rights it may have concerning Base Station antennas and equipment boxes, which are deemed personal property of the Company and not fixtures, and the Company shall at all times have the right to remove same at any time without the consent of the City (except (i) to the extent such consent is required by DOT with respect to access to and care of the applicable Street Operations Pole or Street Operations Poles, and (ii) subject to any rights of the utility owner of an Street Utility pole from which the company seeks to remove Facilities). The City agrees that such Base Station antennas and equipment boxes shall be exempt from execution, foreclosure, sale, levy, or attachment, provided that such agreement by the City is not intended to limit the City's rights to remove all or part of the Facilities as expressly set forth in this Agreement.

(b) Notwithstanding anything to the contrary in this Section 9 or this Agreement, any sale, assignment or other form of transfer of the franchise granted herein or of the Company's interest in this Agreement or of any related interest which requires the approval of the City pursuant to this Section 9 shall be deemed approved by the City, and therefore will not require any additional approval or consent of the City (although the Company shall be obligated to provide notice to the City of such transaction and the City may require appropriate assumption or similar documentation of such transaction), if such transaction is:

(i) to a direct or indirect subsidiary of the Company that is wholly owned by the Company,

(ii) to an entity of which the Company is a direct or indirect subsidiary wholly owned by such entity,

(iii) an entity which is wholly owned by an entity which also wholly owns the Company,

(iv) a transfer of publicly traded securities through open market transactions over a securities exchange or dealer quotation system on which such securities are traded, provided that such transfer occurs independent of management of the Company and does not result in a change in more than 25% of the equity or voting interest in the Company, or

(v) a transfer to another Street Pole Franchisee, provided that in the event of any such transfer the Zone Compensation payable to the City under both the transferor's and transferee's Street Pole Franchises shall continue to be due, and provided that the provisions of Section III, IV. and V of Appendix A hereof shall apply in full.

9.7 Consent Not a Waiver. The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the City, as required in this Section 9.

9.8 Petitions from Persons Other Than the Company Seeking Control over the Company. Notwithstanding the foregoing, DoITT reserves the right, on a case-by-case basis, to accept, hear and/or grant petitions seeking approval of the transfer of Control of the Company, the Facilities or the franchise granted herein from Persons seeking to obtain Control of the Company (if appropriate to protect this Agreement from being breached upon the consummation of such a transfer of Control). The City shall provide the Company with reasonable notice of any such petitions. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall not be liable to the Company or any other Person for exercising its rights herein. This Section 9.8 shall not be construed to unilaterally transfer franchise rights under this Agreement.

9.9 Transfers Relating To Street Operations Poles. The agreements of the parties regarding transactions with respect to particular Street Operations Pole reservation rights are set forth in Section III of Appendix A.

SECTION 10 – LIABILITY AND INSURANCE

10.1 Liability and Indemnity.

10.1.1 Company. The Company shall be liable for, and the Company 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 (even if the claim is without merit), costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of the construction, operation, maintenance, repair or removal of the Facilities 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 10.1 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses to the extent such liabilities, etc. arise out of any intentional tortious acts or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors. Notwithstanding the preceding, it is not the intention of this Agreement that the Company, if it hires or retains for its own purposes a consultant or contractor which also happens to be a consultant or contractor of the City, be obligated to indemnify such consultant or contractor, with respect to work such consultant or contractor performs for the Company, in any manner inconsistent with the applicable agreement between the Company and such consultant or contractor.

10.1.2 No 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 Facilities 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, as provided in Section 2.4.3 and Section 4 hereof or other actions of the City referred to in Section 4. When reasonably possible, the Company shall be consulted prior to any such activity, 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 Facilities, or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company, provided, however, that the foregoing obligation of the Company pursuant to this Section 10.1.2 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any intentionally tortious act or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

10.1.3 No 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 proper and lawful exercise of any right of the City pursuant to this Agreement or applicable law, including, without limitation, the rights of the City to terminate this Agreement or the franchise granted herein as provided herein; provided, however, that the foregoing limitation on liability pursuant to this Section 10.1.3 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any intentionally tortious act or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

10.1.4 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 10.1.1 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 (because, for example, a conflict of interest exists which makes joint representation of the Indemnitee by Company's counsel inadvisable), 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.

10.2 Insurance.

10.2.1 Insurance. The Company shall, on the Effective Date, have all insurance required by this Section 10.2 and the Company shall ensure continuous insurance coverage in the manner, form and limits required by this Section 10.2 throughout the Term and so long as the Company has facilities within the Inalienable Property.

10.2.2 Commercial General Liability Insurance.

(a) The Company shall maintain Commercial General Liability insurance covering the Company as a named insured in the minimum amount of $10,000,000 per occurrence and a minimum of $10,000,000 aggregate. The use of an excess or umbrella policy is allowable to meet the limit. Such insurance shall protect the Company, and the City, its officials and employees, from claims of property damage and bodily injury, including death, that may arise from any of the operations under this Agreement. Such insurance shall have a minimum products-completed operations aggregate limit of no less than $10,000,000. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, and shall be occurrence based rather than "claims-made". Such policy shall include an endorsement providing that no cancellation or non-renewal of such policy will be effective without at least thirty (30) days prior written notice to the City delivered by either registered mail or other delivery method that provides proof of receipt.

(b) Such Commercial and General Liability insurance and any Umbrella and Excess Insurance shall name the City, together with its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO Forms CG 20 26 and CG 20 37.

10.2.3 Workers' Compensation, Disability Benefits and Employer's Liability Insurance. The Company shall maintain Workers' Compensation Insurance, Disability Benefits Insurance and Employer's Liability Insurance, in accordance with laws of the State of New York, on behalf of, or with regard to, all employees undertaking activities pursuant to or authorized by this Agreement.

10.2.4 Unemployment Insurance. To the extent required by law, the Company shall provide Unemployment Insurance for its employees.

10.2.5 Business Automobile Liability Insurance.

(a) If vehicles are used in the provision of services under this Agreement, then the Company shall maintain Business Automobile Liability insurance in the amount of at least $1,000,000 each accident combined single limit for bodily injury and property damage and Excess or Umbrella Liability insurance to raise the aggregate coverage to a minimum of $2,000,000 per accident for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles to be used in connection with this Agreement; and such coverage shall be at least as broad as the most recently issued ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, then the Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48), as well as proof of MCS-90.

10.2.6 General Requirements for Insurance Coverage and Policies.

(a) All required insurance policies shall be maintained with companies that may lawfully issue the required policy and that have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City's Law Department;

(b) All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City;

(c) The Company shall be solely responsible for the timely payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy;

(d) There shall be no self-insurance program with regard to any insurance required under this Section 10.2, unless approved in advance in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Section 10.2, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies; and

(e) The City's limits of coverage for all types of insurance required under this Section 10.2 shall be the greater of (i) the minimum limits set forth in this Section 10.2, or (ii) the limits provided to the Company as a named insured under all primary, excess, and umbrella policies of that type of coverage.

10.2.7 Proof of Insurance.

(a) For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Company shall provide as a condition to the occurrence of the Effective Date one of the following (ACORD forms are not acceptable proof of workers' compensation coverage):

(i) Form C-105.2, Certificate of Workers' Compensation Insurance;

(ii) Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;

(iii) Form SI-12, Certificate of Workers' Compensation Self-Insurance;

(iv) Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;

(v) Form DB-120.1, Certificate of Disability Benefits Insurance;

(vi) Form DB-155, Certificate of Disability Benefits Self-Insurance;

(vii) Form CE-200 – Affidavit of Exemption;

(viii) Other forms approved by the New York State Workers' Compensation Board; or

(ix) Other proof of insurance in a form acceptable to the City.

(b) For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Company shall, as a condition to the occurrence of the Effective Date, file a certificate of insurance with DoITT. All certificates of insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Company's general liability policy by which the City has been made an additional insured pursuant to Section 10.2.2 above. All certificates of insurance shall also be accompanied by either a duly executed

"Certification by Broker" in the form provided by the City or copies of all policies referenced in the certificate of insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted;

(c) Certificates of insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Section 10.2. Such certificates of insurance shall comply with the requirements of this Section 10.2 as applicable;

(d) The Company shall provide the City with a copy of any policy required under this Section 10.2 upon the demand for such policy by the Commissioner or the City's Law Department;

(e) Acceptance by the Commissioner of a certificate or a policy does not excuse the Company from maintaining policies consistent with all provisions of this Section or from any liability arising from its failure to do so; and

(f) In the event the Company receives any notice from an insurance company or other person that any insurance policy required under this Section shall expire or be cancelled or terminated for any reason, the Company shall immediately forward a copy of such notice to the City.

10.2.8 Miscellaneous Insurance Matters.

(a) Whenever any notice of any loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Section, the Company shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Company may not have coverage under such policy (for example, where one of the Company's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Company shall simultaneously send a copy of such notice to the "City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007". If the Company fails to comply with the requirements of this paragraph, then 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;

(b) The Company's failure to maintain any of the insurance required by this Section shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time;

(c) Insurance coverage in the minimum amounts required in this Section shall not relieve the Company 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;

(d) The Company waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured, or claims are paid thereunder) or any other insurance applicable to the operations of the Company in connection with this Agreement.

(e) The Company will be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and is 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 will be automatically restored, without any additional required action by any party, upon the effectiveness of all required insurance coverage being restored).

SECTION 11 – DEFAULT AND TERMINATION

11.1 Remedies Not Exclusive. The Company agrees that the City shall have the specific rights and remedies set forth in this Section 11. 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 shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver 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. Notwithstanding anything to the contrary in this Section 11.1, nothing in this provision shall entitle the City to duplicative collection of damages.

11.2 Defaults and Event of Defaults.

11.2.1 Notice of Default. Upon the occurrence of a breach or default by the Company of any agreement, duty or obligation under this Agreement, DoITT may notify the Company of said breach or default. Such notice shall be provided in accordance with Section 12.4 hereof and shall specify the alleged breach or default with reasonable particularity. Such notice shall be a condition precedent to the ripening of a breach or default into an Event of Default, as described in the following Section 11.2.2.

11.2.2 Events of Default. Any of the following shall constitute an Event of Default, with the attendant remedies available to the City therefore as set forth in Section 11.2.3 hereof:

(a) any failure to timely make any payment to the City pursuant to this Agreement that is not cured within ten (10) days after notice to the Company given pursuant to Section 11.2.1 hereof;

(b) any breach or default of any other material provision of this Agreement (including, without limitation, the provisions of Appendices A, B, C or D) by the Company that is not cured within thirty (30) days after notice to the Company given pursuant to Section 11.2.1 hereof, except that if such breach or default is curable by work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within the cure period provided, then such breach or default shall not constitute an Event of Default so long as the Company shall have commenced curing the same within the thirty (30) day cure period and shall thereafter diligently and continuously prosecute the same promptly to completion; or

(c) any recurring or persistent failure by the Company to timely comply with any of the material provisions, terms or conditions of this Agreement or with any applicable rules, regulations or duly authorized orders of the City, provided DoITT has notified the Company, pursuant to Section 11.2.1 hereof, of the City's finding of such recurring or persistent failure and ten (10) days have elapsed after such notice.

11.2.3 Remedies of the City on an Event of Default.

(a) Upon an Event of Default, DoITT may:

(i) cause a withdrawal from the Security Fund for any specified amount due the City under this Agreement;

(ii) seek and/or pursue money damages from the Company as compensation for such Event of Default;

(iii) bar the Company from using some or all Street Poles or LinkNYC Kiosks or Coordinated Franchise Structures as a site for the Company's equipment, or from the reserving use of some or all Street Operations Poles, or revoke the franchise granted hereunder with respect to any specific Street Pole or group of Street Poles;

(iv) revoke the franchise granted pursuant to this Agreement by termination of this Agreement following the expiration of thirty (30) days (or such longer period as may be specified by the City in such notice) after notice from the City to the Company;

(v) accelerate the due date of the Zone Compensation due under Section I of Appendix D hereof, such that all amounts due thereunder for the remainder of the Scheduled Term become immediately due and payable as if such full and immediate payment and due date were expressly provided in Section I of Appendix D hereof (provided that in no event shall the amount thus due and payable as the result of such acceleration exceed the present value of the stream of Zone Compensation payments which would have been due and payable during the remainder of the Scheduled Term absent such acceleration, said present value to be calculated using a discount rate reasonably designated by the City);

(vi) seek to restrain by injunction the applicable breach or default by the Company; and/or

(vii) invoke any other available remedy that would be permitted by law.

(b) Nothing herein shall prevent the City from electing more than one remedy, simultaneously or consecutively, for any Event of Default so long as there is no duplicative recovery of damages.

11.3 Termination.

11.3.1 Termination Events.

(a) In addition to termination of this Agreement pursuant, to Section 11.2.3(iv) above, occurrence of any of the following shall result in termination of the Agreement:

(i) the condemnation by public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the Facilities, the effect of which would materially frustrate or impede the ability of the Company to carry out its obligations and the purposes of this Agreement and the Company fails to demonstrate to the reasonable satisfaction of DoITT, within thirty (30) days after notice that such condemnation, sale or dedication would not materially frustrate or impede such ability of the Company;

(ii) if (A) the Company shall make an assignment of the Company or the Facilities for the benefit of creditors (except as permitted in Section 9.6 of this agreement), shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of or for it or any substantial part of its property or assets, including all or any substantial part of the Facilities; (B) a writ or warranty of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (C) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or of any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereinafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings; or (D) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company; or

(iii) if there shall occur any denial, forfeiture or revocation by any federal, state or local governmental authority having regulatory jurisdiction over the Company of any authorization required by law or the expiration without renewal of any such authorization, and such events, either individually or in the aggregate, materially jeopardize the Facilities or their operation, and the Company fails to take steps to obtain or restore such authorization within thirty (30) days after notice, provided that termination shall not occur if the authorization is not restored upon the expiration of such period if, despite the Company's diligent efforts, obtaining or restoring such authorization is not possible within thirty (30) days, so long as the Company continues to diligently pursue the obtaining or restoring of such authorization.

(b) Notwithstanding the occurrence of one or more of the events detailed in the preceding subsection 11.3.1(a) or in Section 11.2.3(iv), this Agreement shall not be deemed terminated if applicable federal law (including federal bankruptcy law) or state law would prohibit such termination.

11.4 Removal.

11.4.1 Discretion of DoITT and DOT. Upon any termination of this Agreement and upon expiration or termination of any third-party agreements with a LinkNYC franchisee or a Coordinated Franchise Structure franchisee, DoITT and DOT, in its sole discretion, may, but shall not be obligated to, direct the Company to remove, at the Company's sole cost and expense, all of the Facilities, or any portion of the Facilities designated by DoITT and DOT. Further, the Company upon its own initiative and at its sole cost and expense, may remove all of the Facilities, from the Inalienable Property in accordance with all applicable rules and requirements of the City and subject to the following:

(a) the Company's option to remove Facilities from the Inalienable Property at its own initiative (if the City does not require such removal) shall not apply to those buried portions of the Facilities (if any) which, in the opinion of DoITT and DOT, cannot practicably be removed without excessive disruption of the Inalienable Property or other facilities and equipment located on, over or under such Inalienable Property;

(b) in removing the Facilities, or part thereof, 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 and equipment, including without limitation Street Operations Poles, in as good condition as that prevailing prior to the Company's removal of the Facilities, ordinary wear and tear not caused by the Company or the Facilities excepted, and without affecting, altering or disturbing in any way any electric, telephone or other cables, wires, structures or attachments;

(c) the City shall have the right to inspect and approve the condition of such Inalienable Property and other property and equipment after removal and, to the extent that the City determines that said Inalienable Property and other property and equipment of the City have not been left in materially as good condition as that prevailing prior to the Company's removal of the Facilities (ordinary wear and tear not caused by the Company or the Facilities excepted) the Company shall be liable to the City for the cost of restoring the Inalienable Property and other property and equipment of the City to said condition;

(d) 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 Inalienable Property and other property and equipment of the City, and for not less than one hundred twenty (120) days thereafter; and

(e) removal shall be commenced within sixty (60) days of the removal order by DoITT and shall be substantially completed within twelve (12) months thereafter including all reasonably associated repair of the Inalienable Property and other property and equipment of the City.

11.4.2 Failure to Commence Removal. If, in the reasonable judgment of the City, the Company fails to commence removal of the Facilities as designated by DoITT or DOT, within sixty (60) days after DoITT's or DOT's removal order, or if the Company fails to substantially complete such removal, including all associated repair of the Inalienable Property and other property and equipment of the City, within twelve (12) months thereafter, then, to the extent not inconsistent with applicable law, the City shall have the right to remove, or authorize removal by another Person of, the Facilities, at the Company's cost and expense. Any portion of the Facilities not timely

removed by the Company shall belong to and become the property of the City without payment to the Company, and the Company shall execute and deliver such documents as the City shall reasonably request, in form and substance acceptable to the City, to evidence such ownership by the City of such Facilities, but not in any other property of the Company, intellectual or otherwise.

11.4.3 No Condemnation. None of the declaration, connection, use, transfer or other actions by the City under Section 11.4.2 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

11.5 Return of Security Fund. 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 Facilities from and associated repair of the Inalienable Property and other property and equipment of the City pursuant to Section 11.4.1 hereof, the Company shall be entitled to the return of the Security Fund deposited pursuant to Section 5 and Appendix C hereof, or such portion thereof as remains on deposit at said termination, provided that all offsets necessary (a) to compensate the City pursuant to Section 5.2 and/or Section 5.3 hereof, (b) to cover any costs, loss or damage incurred by the City as a result of any Event of Default, in the event of termination of this Agreement by the City pursuant to Section 11.3 hereof, and (c) to reimburse the City for the cost of removal of the Facilities pursuant to Section 11.4.2 hereof have been taken by the City.

SECTION 12 – MISCELLANEOUS

12.1 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are incorporated herein by reference and expressly made a part of this Agreement as if they were part of the body of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification of the body of this Agreement.

12.2 Action Taken by City. Any action to be taken by DoITT pursuant to this Agreement shall be taken in accordance with the applicable provisions of the City Charter as said Charter may be amended or modified throughout the Term, except insofar as the City Charter permits its provisions to be varied by contract, in which case the terms and provisions set forth herein shall control, and except insofar as the City Charter is found by a court of competent jurisdiction, with all appeals exhausted, to be preempted by State or Federal law. Whenever, pursuant to the provisions of this Agreement, the City, the Company, or any other Person is required or permitted to take any action, including, without limitation, the making of any request or the granting of any consent, approval, or authorization, the propriety of said action shall be measured against the standard of reasonableness such that each such action shall be undertaken in a reasonable manner, unless this Agreement authorizes the City, the Company, or other Person to take such action in its sole discretion.

12.3 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.

12.4 Notices. Every notice, order, petition, document, or other direction or communication (collectively referred to in this Section as a "notice") to be served upon the City or the Company shall (unless expressly provided to the contrary in this Agreement), in order to have a legal or contractual effect, be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested or by nationally recognized overnight delivery service, requiring a sign receipt of delivery. Every such notice to the Company shall be sent to its office located at 660 Newport Center Drive, Suite 200, Newport Beach, CA 92660. Every notice 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 15 Metro Tech Center, Brooklyn, NY 11201, 19th Floor, Attention: Assistant Commissioner for Franchise Administration. A required copy of each notice from the Company shall be sent to each of the following addresses: (1) DoITT, 15 Metro Tech Center, 18th Floor, Brooklyn, New York 11201 Attention: General Counsel, (2) DOT, 55 Water Street, 9th Floor, New York, New York 10041 Attention: General Counsel, and (3) New York City Law Department, 100 Church Street, New York, New York 10007, Attention: Chief, Economic Development Division. 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. Either party to this Agreement may change any notification address set forth in this Section 12.4 by notice to the other party.

12.5 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:

12.5.1 Organization, Standing and Power. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada and is duly authorized to do business in the State of New York and in the City. The Company has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and 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 current articles of incorporation and certificate of good standing (or documents of comparable import if the Company is not a corporation) will be delivered to the City as a condition to the occurrence of the Effective Date, and will be complete and correct as thus delivered. The Company is qualified to do business and is in good standing in the State of New York. The Company holds or shall obtain any and all necessary licenses and permits from the New York State Public Service Commission, the Federal Communications Commission, and any other governmental body having jurisdiction over provision of services by the Company.

12.5.2 Authorization; Non-Contravention. The execution and delivery 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 shall furnish the City with a certified copy of authorizations for the execution

and delivery of this Agreement as a condition to the occurrence of the Effective Date. 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 will constitute) the binding obligations of the Company. 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.

12.5.3 No Additional Consent Required. No consent, approval or authorization of, or declaration or filing with, any public, governmental or other authority is required for the valid execution and delivery of this Agreement or any other agreement or instrument, if any, executed or delivered in connection herewith.

12.5.4 Compliance with Law. The Company certifies that, to the best of its knowledge after reasonable investigation, it is in compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the Facilities, including, without limitation, any applicable antitrust laws and rate regulations, and has filed, has obtained or will file for and obtain all government licenses, permits, and authorizations necessary for the installation, operation and maintenance of the Facilities.

12.5.5 Criminal Acts. Neither the Company, nor, to the best of the Company's knowledge after reasonable investigation, any Person holding a Controlling Interest in the Company, nor any director or officer of the Company nor any employee or agent of the Company nor any Controlling Person, acting pursuant to the express direction, or with the actual consent of the foregoing, has been convicted (where such conviction is a final, non-appealable judgment) or has entered a guilty plea with respect to any criminal offense arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, or (iii) any act to be taken following the Effective Date, pursuant to this Agreement by the City, its officers, employees, or agents, including, without limitation, bribery or fraud arising out of or in connection with (i), (ii) or (iii).

12.5.6 Misrepresentation. No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, in connection with any submission to the City, including the Company’s response to the RFP, or in connection with the negotiation of this Agreement.

12.6 Additional Covenants. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the franchise granted herein, the Company agrees that it will comply with the following affirmative covenants, unless the City otherwise consents in writing:

12.6.1 Compliance with Laws; Licenses and Permits.

(a) The Company shall comply with: (i) all applicable laws and judgments (including, but not limited to, those of the PSC and the FCC and any other federal or state agency or authority of

competent jurisdiction) affecting this Agreement, the franchise, and the Facilities; and (ii) all local laws and all rules, regulations and duly authorized orders of the City.

(b) The Company shall have the sole responsibility for obtaining or causing to be obtained all permits, licenses and other forms of approval or authorization necessary to construct, operate, maintain, repair or remove the Facilities, or any part thereof. The Company will, prior to any construction, operation, maintenance, repair or removal of the Facilities, secure all necessary permits, licenses and authorizations in connection with the construction, operation, maintenance, repair or removal of the Facilities, or any part thereof, and will file all required registrations, applications, reports and other documents with, the FCC, the PSC and other entities exercising jurisdiction over the provision of telecommunications services or the construction of delivery systems therefor.

(c) The Company shall not permit to occur, or shall promptly take corrective action if there shall occur, any event which (i) could result in the revocation or termination of any such license or authorization, (ii) could materially and adversely affect any significant rights of the Company, or (iii) permits or, after notice or lapse of time or both, would permit, revocation or termination of any such license or which materially and adversely affects or reasonably can be expected to materially and adversely affect the Facilities or any part thereof.

12.6.2 Criminal Acts. The Company shall not permit any of the convictions or guilty pleas of the types listed in Section 12.5.5 to occur during the term of this Agreement, arising out of or in connection with (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, or (iii) any act to be taken following the Effective Date, pursuant to this Agreement by the City, its officers, employees, or agents, and it shall be an Event of Default if any such convictions or guilty pleas shall occur during the term of this Agreement, provided that the City's right to take enforcement action under this Agreement in the event of said convictions or guilty pleas shall arise only with respect to any of the foregoing convictions or guilty pleas of the Company itself or, with respect to any of the foregoing convictions or guilty pleas of any of the other Persons specified in Section 12.5.5, if the Company shall have failed to disassociate itself from, or terminate the employment of, said Person or Persons within thirty (30) days after the City orders such disassociation.

12.6.3 Maintain Existence. The Company will preserve and maintain its existence, its business, and all of its rights and privileges necessary to fulfill the obligations of the Company hereunder. The Company shall maintain its good standing in its state of organization and continue to qualify to do business and remain in good standing in the State of New York and shall conduct business in accordance with its governing documents.

12.6.4 Condition of Facilities. All of the properties, assets and equipment that constitute the Facilities will be maintained in good repair, working order and good condition.

12.7 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 City and the Company and their successors and assigns.

12.8 No Waiver; Cumulative Remedies. No failure on the part of either party 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. No failure of the Company or the City to insist on strict performance by the other of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of their respective rights hereunder shall be considered a waiver of such rights, and the Company and the City shall each have the right to enforce such respective rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. 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 either under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by either party at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by either party at any other time. In order for any waiver of either party to be effective, it must be in writing. The failure of either party to take any action regarding a breach or default, or an Event of Default, by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of either party 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.

12.9 Partial Invalidity. The clauses and provisions of this Agreement are intended to be severable. If any clause, provision, section, subsection, sentence, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, then such provision shall be deemed a separate, distinct and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect, but only so long as the fundamental assumptions underlying this Agreement are not undermined. If, however, the fundamental assumptions underlying this Agreement are undermined as a result of any such provision being declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, and such declaration is not stayed within 30 days by a court pending resolution of a legal challenge thereto or an appeal thereof, the adversely affected party shall notify the other party in writing of such declaration of invalidity and the effect of such declaration of invalidity and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such declaration of invalidity, provided, however, that any such modifications shall be subject to all City approvals and authorizations and compliance with all City procedures and processes. If the parties cannot come to an agreement modifying this Agreement within 120 days (which 120-day period shall be tolled during any stay contemplated above) of such notice, then this Agreement shall terminate with such consequences that would ensue if it had been terminated by the City pursuant to Section 11.4 hereof.

In addition, in the event any applicable federal, state, or local law or any regulation or order is passed or issued, or any existing federal, state, or local law or regulation or order is changed (or any judicial interpretation thereof is developed or changed) in any way which undermines the fundamental assumptions underlying this Agreement, the adversely affected party shall notify the other part in writing of such change and the effect of such change and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such change, provided, however, that any such modifications shall be subject to all City approvals and authorizations and

compliance with all City procedures and processes. If the parties cannot come to an agreement modifying this Agreement within 120 days of such change, then this Agreement shall terminate with such consequences that would ensue if it had been terminated by the City pursuant to Section 11.4 hereof.

12.10 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.

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

12.12 Governing Law. This Agreement shall be deemed to be executed in the City of New York, 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.

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

12.14 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.

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

(a) if either party initiates any action against the other in Federal Court or in New York State Court, service of process may be made as provided in Section 12.17 hereof;

(b) with respect to any action between the City and the Company in New York State Court, each party 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, each party expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York; and

(d) if either party commences any action against the other in a court located other than in the City and State of New York, then, upon request of the other, such party 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, such party 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.

12.16 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.

12.17 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 address as set forth in Section 12.4 of this Agreement, to such other location as the Company may provide to the City by notice in writing, or to the Secretary of State of the State of New York.

12.18 Compliance With Certain City Requirements. Not in limitation of the requirements of the Agreement, the Company agrees to comply with the City's "MacBride Principles", a copy of which is attached at Appendix G hereto and with PASSPort, as the same may be amended from time to time.

12.19 Business Days and Calendar Days. References herein to periods of time numbered in days shall be deemed to refer to calendar days unless expressed defined in the applicable section hereof as business days. Business days shall mean calendar days that are not Saturdays, Sundays or legal public holidays for U.S. federal employees.

— end of page —

[signatures appear on next page]

IN WITNESS WHEREOF, the City, by its duly authorized representatives, has caused the corporate name of said City to be hereunto signed, and the Company, by its duly authorized officer, has caused its name to be hereunto signed, as of the date and year first above written.

THE CITY OF NEW YORK

By: _____
Deputy Mayor Date

Department of Information Technology and Telecommunications

By: _____
Commissioner Date

Mobilitie, LLC [1]

By: _____

Name: _____

Title: _____

Date:

Approved as to form and
certified as to legal authority:

_____
Acting Corporation Counsel

Date:

Attest: _____
City Clerk

Date:

[1] The franchise granted under this Agreement is referred to as "Mobilitie II".

On the ______ day of __________ in the year 2020 before me, the undersigned, personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

On the ______ day of __________ in the year 2020 before me, the undersigned, personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

On the ______ day of __________ in the year 2020 before me, the undersigned, personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

On the ______ day of __________ in the year 2020 before me, the undersigned, personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

APPENDIX A

Base Station Location and Design

I. Design of Street Pole Base Station Equipment

(A) Permitted Components and Size of Base Station Equipment. Base Stations to be installed on Street Operations Poles pursuant to this Agreement are permitted to be comprised of one, two or all three of the following elements, which shall be consistent the following design parameters:

Element (1): Equipment Housings. One equipment housing (which may enclose, incorporate or consist of one or more than one antenna of any type, or other form of equipment) within either of the two following size parameters:

(a) An equipment housing with a volume no greater than 2.8 cubic feet (i.e., 4,840 cubic inches) with maximum dimensions of 35 inches (H) by 15 ½ inches (W) by 9 inches (D).

(b) An equipment housing with a volume no greater than 2.8 cubic feet (i.e. 4,840 cubic inches) with maximum dimensions of 25 inches (H) by 18 inches (W) by 11 inches (D).

Element (2): Stick-Type Antennas. One stick-type antenna, no more than two (2) inches in diameter and extending no more than sixty (60) inches in length, extending vertically from a base at the top of the pole. Special consideration may be given for attachment of antennae on certain Street Operations Pole designs that do not contain a pole cap. Approval by the City for installations on poles of this type will be given on a case by case basis and require submission of detailed mounting drawings.

Element (3) Interconnecting Wiring/Cabling: Wire or cable interconnecting the above elements with each other and with underground power and/or other supporting utility facilities (in areas of the City where such utility facilities are located above ground, then such wire interconnection shall be permitted to connect to such above ground facilities), with as much of such wire or cable being located inside the Street Operations Pole, rather than externally, as practicable. Company is encouraged to use wireless backhaul technologies, where practicable, to interconnect its facilities to minimize the disruption to City streets.

(B) Permitted Location and Orientation on Pole of Base Station Equipment.

(1) Unless otherwise specifically permitted by the City, all equipment on a Street Operations Pole will be located on the vertical shaft portion of the pole (that is, unless otherwise specifically permitted by the City, no equipment will be located on any horizontal portion or "arm" of the Street Operations Pole) and equipment housings shall be oriented vertically so that the largest dimension is the height.

(2) Notwithstanding anything to the contrary in this Appendix A, any facilities located on "bishop's crook" design SLPs shall be installed only within the "limit zone", defined as a four-foot zone of minimal or no decoration generally located on such poles from about fifteen feet above street level to about nineteen feet above street level.

(C) Permitted Visual Appearance of Equipment Housing.

(1) Each equipment housing must be painted the same color as the pole on which it is sited, or otherwise be made to color match the Street Pole using a pre-approved method. Street Pole Franchisees shall be required to replace, re-finish, or re-paint Base Stations as directed by the City to address color fading or other appearance-changing occurrences.

(2) No unauthorized writing, symbol, logo or other such graphic representation that is visible from the street or sidewalk shall appear on any exterior surface of an equipment housing. The City may require the placement of a standard identifying barcode or comparable mark.

(3) If the City adopts a new design or designs for Street Operations Poles the Company will use an appropriate enclosure for any equipment boxes to be located on such newly designed Street Operations Poles which enclosure shall be esthetically consistent with such new design or designs, and the Company will cooperate with the City in the City's replacement of old with new pole structures, including the Company cooperating to temporarily remove equipment on a Street Operations Pole during any transition of such Street Operations Pole to a newly designed version.

(D) Permitted Weight of Base Station Equipment. All equipment to be installed on a Street Operations Pole must be of a weight no greater than that compatible with the capacity of the pole to safely and securely support such equipment. Calculation of such compatible weights shall as appropriate take into account snow load, wind load, and the weight of other equipment commonly found on Street Operations Poles such a traffic signals, street light luminaires, banners, or other reasonably predictable weight burdens to which equipment may be subject in the field. Street Pole Franchisees are required to submit for review by the City a structural analysis performed by a licensed engineer to account for each type of Street Operations Pole.

(E) Review Requirements for Design and Installation of Base Station Equipment on Street Operations Poles.

(1) Installation of equipment on Street Operations Poles pursuant to this Agreement shall be subject to the City's right to review and approve the final design and appearance of all equipment to:

(a) ensure compliance with all applicable laws, rules and regulations of the City (including but not limited to those specific requirements described in Section I (E)(2) below),

(b) ensure public safety, the integrity of City facilities and non-interference with pedestrians and vehicular traffic, and

(c) ensure esthetic consistency with the Street Operations Poles to which the equipment will be attached (including signage and other items or matter that may be located on such Street Operations Poles) and the surrounding context.

(2) In addition to the general requirement that installations on Street Operations Poles are subject to City review for compliance with all applicable laws, rules and regulations of the City, the following specific approval requirements shall be applicable to Street Operations Poles installations:

(a) Installation of Base Stations on Street Operations Poles shall be subject to approval by the City's Public Design Commission (Public Design Commission means the Public Design Commission of the City of New York, or any successor thereto) of the design of the Company's proposed form of Base Station installation, as provided in Section 854 of the City Charter. During the Franchise Term, Street Pole Franchisees may propose modified equipment specifications and designs for which the City, in its fullest discretion and if authorized by applicable law, may approve. Such approval will be subject to the review and approval by all City agencies of applicable jurisdiction, which may include, without limitation, DOT and the Public Design Commission. The City, in is sole discretion, subject to the terms and conditions of the Franchise, may approve one or more additional designs of equipment attachments.

(b) Approval of installations within "historic districts" as defined in Section 25-302 of the City Code are subject to prior review by the City Landmarks Preservation Commission pursuant to Section 25-318 of the City Code, and no approval for such installation shall be effective unless and until a report as described in said Section 25-318 is received.

(c) Approval of installations within City parks shall be subject to prior review by DoITT in consultation with the New York City Department of Parks and Recreation, and no approval for such installation shall be effective unless and until DoITT, in consultation with the New York City Department of Parks and Recreation, has reviewed and approved the proposed installation.

(d) Base Station equipment designs may, in the City's sole discretion, require modification to maintain consistency with special Street Pole designs (including for example, without limitation, poles specially designed for historic districts, business improvement districts or other types of areas). Such modification will not be considered an approval

of a new design to be used outside of the designated areas that include such special Street Pole designs.

(F) Power Supply. The Company will be solely responsible for obtaining and paying all costs for electrical power for its equipment. The Company shall either (1) obtain the written agreement of the electrical power provider that such provider will not look to the City for payment of such costs of electrical power even if the Company fails to pay such costs, or (2) deposit an additional amount into the Security Fund for each Base Station it installs equal to one year of reasonably estimated charges for electrical power to such Base Station (the City and the Company to reasonably agree on such reasonably estimated charges prior to installation of such Base Station). In any event, Base Station equipment must be designed so that power usage by the Base Station can be shut off remotely, without climbing up to the antenna or equipment box.

(G) Radio Frequency Energy Exposure Limits. The Company shall, with respect to all the Facilities, (1) comply on an on-going basis with FCC maximum permitted levels of radio frequency energy exposure, (2) continue, on an on-going basis, to comply with such FCC maximum permitted levels (calculated on an aggregate basis with any other radio frequency energy emitters that may be present), (3) comply with all FCC rules and requirements, regarding the protection of health and safety with respect to radio frequency energy exposure, in the operation and maintenance of such Facilities (taking into account the actual conditions of human proximity to Base Stations on Street Operations Poles), and (4) at the direction of the City, pay the costs of testing such Facilities for compliance with the preceding clauses (1), (2) and (3), which testing may be directed by the City from time to time, without limitation, and which is to be conducted by independent experts selected by the City after consultation with the Company and which testing shall be conducted in accordance with the FCC's OET (Office of Engineering and Technology) Bulletin 65 (or a successor thereto) unless the City reasonably determines that alternative testing procedures that reflect sound engineering practice are appropriate. Any such Facility non-compliant with applicable radio frequency exposure limits shall be immediately deactivated until such time that the Company can demonstrate, to the City's satisfaction, full compliance with all applicable FCC rules and requirements. Failure by the Company to promptly deactivate its Facilities pursuant to this provision and/or fully comply with FCC rules and requirements may constitute an Event of Default as contemplated in Section 11.2.2 (b) of this Agreement.

(H) Street Utility Poles. Notwithstanding anything to the contrary in the preceding subsections of this Section I, the design and location of Facilities on Street Utility Poles shall be consistent with the provisions of this Section I to the maximum extent permitted by safety, legal and use requirements associated with the use of such poles for the applicable pre-existing utility uses.

II. Location and Number of Pole Sites

(A) Location Requirements.

Street Operations Poles will only be available pursuant to this Agreement in accordance with the following provisions:

(1) No more than one Base Station, in total, is permitted on a Street Operations Pole pursuant to this Agreement and the other Street Pole Agreements, so that once a Street Operations Pole becomes a Reserved Pole reserved to a Street Pole Franchisee (see Section II(B)(1) of this Appendix A) such Street Operations Pole is not available for use by any other Street Pole Franchisee as long as such Street Operations Pole remains a Reserved Pole.

(2) Base Stations will be permitted on Street Operations Poles located at both intersection and mid-block locations, as described herein.

(3) Base Stations will be permitted on Street Operations Pole sites within an intersection only up to the number which leaves two (2) Street Operations Pole sites within such intersection without any Base Stations installed by Street Pole Franchisees (including the Company), and thus available for future potential use for purposes to be determined by the City. The City will review, on a case-by-case basis, requests for Street Operations Poles at certain intersections which leave fewer than two (2) Street Operations Pole sites without Base Stations. Street Operations Poles shall be "within an intersection" if any part of the base of the Street Operations Pole is thirty (30) feet or less from two different street beds or at a comparable location at the intersection of two (2) streets

(4) Due to City operational needs, TLPs on which a traffic signal controller box is located (usually one pole per intersection with a traffic light) are not available for use by the Company for Base Stations. Other TLPs will only be approved on a case by case review by DOT.

(5) Base Stations installed on Street Operations Poles pursuant to this Agreement shall be placed, located and operated so as not to interfere with public safety or traffic operations or any other City, state or federal government operations. The Company agrees to immediately remove any Base Station that is operating inconsistently with this subsection (5) if such inconsistency cannot be immediately cured.

(6) Base Stations installed on Street Operations Poles pursuant to this Agreement shall be placed, located and operated by the Company so as not to illegally interfere with the operation of Base Stations of other Street Pole Franchisees or other radio frequency spectrum users generally. The City shall, to the extent permitted, require the foregoing clause to be placed in all Street Pole Franchises granted now or during the Term. The Company recognizes, however, that the City is not a guarantor of, nor is it obligated to the Company to enforce, the Company's freedom from radio frequency interference that may affect the Company's Base Stations. Even if the City has some authority as a site location provider to act against such interference, and the City may choose to exercise such authority in any particular instance, the Company hereby recognizes and agrees that the

City shall have no legal or contractual obligation to the Company to exercise such authority and may choose not to do so.

(7) This Agreement does not authorize the placement of Base Stations on sites, structures or facilities other than Street Operations Poles and other certain authorized LinkNYC Kiosks or Coordinated Franchise Structures as limited to and as described herein except as such placement may be expressly authorized by DoITT and DOT pursuant to procedures established by DoITT and DOT. The City reserves the right to grant, at any time, to any party, upon terms and conditions determined by the City in its discretion, separate and distinct rights to place such equipment on other sites (such as City buildings) or other types of street facilities, equipment or furniture.

(8) Prior to the installation of a Base Station on any Street Operations Pole on a City street where the pole is less than ten (10) feet from an existing building, DoITT will provide not less than fifteen (15) business days' notice of, and opportunity to submit written comment regarding, such proposed installation to the Community Board and City Council member in whose district such building lies. (For purposes of this provision, the distance from a pole to a building shall be measured by the distance from the base of the pole facing the building to the building line.)

(9) The City reserves the right at any time to waive any of the above restrictions (or other restrictions in this Agreement), with or without conditions, in its discretion.

(10) Street Utility Poles. Notwithstanding anything to the contrary in the preceding subsections of this Section II (A), the location of Facilities on Street Utility Poles shall be consistent with the provisions of said subsections to the maximum extent permitted by safety, legal and use requirements associated with the use of such poles for the applicable pre-existing utility uses.

(B) Allocation of Street Operations Pole Sites Among Street Pole Franchisees.

The Company shall not install any facilities or equipment on any Street Operations Pole unless and until such Street Operations Pole has been reserved for the Company under this subsection (B). Notwithstanding a pending reservation, the Company shall not install Facilities on a Street Operations Pole where equipment has been reserved or installed pursuant to this Franchise or is otherwise in use or reserved by the City or for which the City has granted a permit to use the pole to another party. Company is responsible for providing accurate coordinates and mapping of desired Street Poles.

(1) New Reservation Phases. From time to time the City will notify all Street Pole Franchisees of a period during which new pole reservations may be made (a "New Reservation Phase"). Such notice shall include the requirements for such New Reservation Phase including but not limited to the maximum per-Zone number. Franchisees shall in turn, in accordance with the Priority list, select Street Operations Poles in any Zone for which they are paying Zone Compensation. All selections must be posted in a manner determined by the Commissioner which shall be accessible to the City and all other Street Pole Franchisees. Such list may not include any Reserved Poles.

(2) Expiration of Reservation. Reservations granted for a Street Operations Pole expire upon the occurrence of the earliest to occur of the following:

(i) Upon the termination of the Street Pole Franchise.

(ii) The Company surrenders an unoccupied Reserved Pole. Surrender of the Reserved Pole is effective upon receipt by the City of written notice of the surrender of the reservation(s) and notice to the other Street Pole Franchisees (in a manner comparable to the manner of posting Reservation Notices).

(iii) If (A) a Street Pole Franchisee does not commence construction activity (or fails to otherwise notify the City that is has started construction) for the installation of a Base Station on a Reserved Street Operations Pole within one year of the posting of a Reservation Notice creating such reservation, (B) the City thereafter commences a further New Reservation Phase, (C) the City notifies Street Pole Franchisees that such Reserved Pole is subject to inclusion on new Reservation Notices[1], and (D) if a Street Pole Franchisee requests such Street Operations Pole during a New Reservation Phase as described in this subsection (iii). At the sole discretion of the City, the one-year period set forth in the preceding sentence may be subject to extension for Unavoidable Delays in the applicable Base Station installation.

(iv) If (A) an operational Base Station becomes non-operational and is not restored to operability within sixty (60) days of becoming non-operational, or (B) a Base Station repeatedly becomes non-operational in a manner that, despite repeated restoration of operability within the required time period, suggests that the Base Station is not being significantly relied on for the provision of service, then the Reserved Pole status of such Street Operations Pole shall expire thirty (30) days after notice from the City of such expiration.[2]

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[1] If no Street Pole Franchisee requests such Street Operations Pole during a New Reservation Phase as described in this subsection (iii), such Street Operations Pole's status as a Reserved Pole shall continue (unless it otherwise expires under subsections (i), (ii) or (iv) of this subsection (3)) until the next New Reservation Phase.

[2] The intention of this subsection (iv) is to allow Reserved Poles that are not are not fulfilling the intended purpose of providing service to be made available to other Street Pole Franchisees who may be interested in using such Street Operations Pole for provision of service. This subsection (iv) is not intended to cause the expiration of Reserved Pole status for Base Stations which are installed for the specific purpose of providing service only on occasions of unusual demand or specific need, and which are intentionally out of service for extended periods in a manner consistent with such limited use goals. Such limited use Facilities shall not be considered as "non-operational" for purposes of this subsection (iv) so long as they are operational when placed in service for their intended, occasional use and so long as the number of such limited use installations

Continued…

(v) If after posting a Reservation Notice, the Company fails within 30 days of such posting to pay the City such amount as is necessary to meet the requirements of Appendix C of this Agreement for deposit into the Security Fund, in a manner reflecting the addition of such Reserved Poles as are reserved pursuant to such Reservation Notice, then that number of Reserved Poles reserved by such Reservation Notice shall have their Reserved Pole status expire as is necessary to reduce the Company's Security Fund obligation under Appendix C hereof to the actual amount contained in the Security Fund.[3]

(3) Temporary or Permanent Replacement Reservation. In the event that a Street Operations Pole, on which the Company has placed a Base Station in accordance with the provisions of this Agreement, temporarily or permanently is rendered substantially unusable for the purpose intended under this Agreement (for reasons unrelated to the Company and its operations because, for example, the City has removed the Street Operations Pole, temporarily or permanently), the City will reasonably cooperate with the Company to attempt to locate an alternative Street Operations Pole that can serve as an alternative location. If the City and the Company reach an agreement on such an alternative Street Operations Pole, the City shall designate it a Reserved Pole until either (1) the original Reserved Pole is restored as an available site or (2) the City and the Company agree to terminate the original reservation. During any period that a Reserved Pole on which the Company has placed a Base Station in accordance with the provisions of this Agreement becomes (for reasons unrelated to the Company and its operations) unavailable for location of a Base Station, any compensation to the City due under Section II of Appendix D attributed to such Street Pole shall be abated in full, provided that for the period that an alternative Street Pole becomes designated as a Reserved Pole as described in this subsection (4), then compensation will be due with respect to such alternative location, calculated pursuant to Section II.

(4) Reasonable Revision of Allocation Procedures. If DoITT, acting reasonably, determines at any time that all or any part of the Street Operations Pole Allocation procedures set forth in this Section II is impracticable in fulfilling the purposes for which such procedures were intended, DoITT may, after consultation with all Street Pole Franchisees, issue revised procedures reasonably structured to better fulfill such purposes.

(C) Allocation of Street Utility Pole Sites Among Street Pole Franchisees.

Allocation of Street Utility Poles shall be pursuant to procedures of the utility company owner or owners of the applicable poles. Said Street Utility Pole owner's written approval (in the

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shall not be installed on more than 10% of the Company's Reserved Poles and so long as the Company, upon written request of the City, provides an annual list to the City of such limited use installations on Reserved Poles.

[3] Where some but not all Reserved Poles are not sufficiently funded as required by Appendix C hereof within said thirty (30) day period and are therefore subject to expiration of their Reserved Pole status under this subsection, it shall be within the City's sole discretion to select which of said Reserved Poles to designate as having their Reserved Pole status expire.

form of a signed pole attachment license including signed survey or walk sheet, or alternative documentation as deemed acceptable by the City) for Company's use of Street Utility Poles shall be provided to the City prior to the installation of Facilities on Street Utility Poles.

III. Transfer of Street Operations Pole Reservations Among Street Pole Franchisees.

The City recognizes that in the ordinary course of business, the Company and other Street Pole Franchisees may, during the course of implementing the Street Pole Franchises, enter into arrangements to utilize services in connection with one another's Facilities (indeed, the City acknowledges that it is the expressly contemplated business plan of several of the Street Pole Franchisees to sell capacity on, or service from, their Facilities to cellular and/or personal communications service providers, which providers may include certain other Street Pole Franchisees). It is not the intention of this Agreement to limit or restrict the ability of the Company and other Street Pole Franchisees to, in the ordinary course of business, buy or sell capacity on, or service from, Facilities installed pursuant to this Agreement and other Street Pole Franchise Agreements. Furthermore, it is not the City's intention to prohibit in this Agreement cooperation among Street Pole Franchisees to identify Street Operations Poles where such cooperation would promote the ability of each of the cooperating Street Pole Franchisees to reserve sufficient Street Operations Poles at sufficiently appropriate locations to meet its service goals, in a manner that minimizes incompatible demands for site reservations in any New Reservation Phase. {The parties note that because priority positions have previously been determined as part of the RFP process with respect to conflicting demands for individual sites, and as the compensation the City receives from each Company for each site in each Zone has been established as part of the completed RFP process, the City is not prejudiced with respect to compensation by Street Pole Franchisees cooperating among themselves to minimize conflicting reservation requests for individual Street Operations Pole sites (such conflicting requests do not increase the potential for compensation to the City in the way they might if individual Street Operations Pole reservations were auctioned on a site-by-site basis). However, it is *not* the intention of the parties to this Agreement that Street Pole Franchisees be permitted to collude to reduce franchise compensation payments to the City by arranging, for example, for one Street Pole Franchisee to use Reserved Poles reserved to a second Street Pole Franchisee solely for installation of Facilities that are not bona fide facilities for the use of the second Street Pole Franchisee.[4] Such non-permitted collusion shall be considered a default of the Street Pole Franchise Agreements of all colluding parties, including, if it involves the Company, of this Agreement. Further, it is not intended as a general matter that the reservation of individual Street Operations Poles is to be a transferable right to be transferred among Street Pole Franchisees.} If a Street Pole Franchisee chooses not to use a Reserved Pole reserved to it for actual installation of a Base Station for its own use, or chooses to terminate an installation on a Reserved Pole, the procedure intended hereunder is that the Street Pole Franchisee will invoke the provisions regarding voluntary termination of a reservations (under Section II(B)(2)(ii) of this

[4] For example, Street Pole Franchisee A, which purchased a higher priority in the reservation process by agreeing to pay a higher per Street Operations Pole compensation, may not solicit Street Pole Franchisee B, which has agreed to pay the City a lesser amount in per Street Operations Pole compensation, to submit requests for reservations in the name of B but which will actually be used by A.

Appendix A), after which the affected Street Operations Pole would become available for other Street Pole Franchisees to seek to reserve during the next New Reservation Phase. However, DoITT reserves the right to approve individual transfers of reservations on a case-by-case basis if the public interest would be served by any specific proposed transfer.

IV. Option to Expand Franchise Area; Option to Obtain Additional Reservation Phase Pole Allotment.

(A) The Company (and all Street Pole Franchisees) will have the option to expand its Franchise Area during the life of the Term. By way of example, any Street Pole Franchisee that has initially selected a Franchise Area that includes only Zone C shall have the option, once a year during the Term, to expand such area to include either Zone B, or both Zone B and Zone A. Any Street Pole Franchisee that has initially selected a Franchise Area that includes only Zones B and C, shall have the option, once a year during the Term, to expand such area to include Zone A. Such expanded Franchise Area will be available to the Company provided that:
the Company provides notice to the City of its exercise of such option not earlier than one hundred twenty (120) days, but not later than sixty (60) days, prior to each anniversary of the Effective Date, with such expansion to become effective on that anniversary of the Effective Date which occurs immediately after said notice;

(1) the Company agrees to an adjustment in the Zone Compensation due under Section I of Appendix D of this Agreement to match, commencing on the day such Franchise Area expansion becomes effective and thereafter going forward, the compensation due for such expanded Franchise Area (any applicable increase in Zone Compensation to be payable on the date such Franchise Area expansion becomes effective);

(2) the Company agrees to an adjustment of its Security Fund obligations under this Agreement to match the increase in Zone Compensation pursuant in subsection (2) above (any applicable increase in such Security Fund obligations to be payable on the date such expansion becomes effective);

(3) the Company agrees that it shall, with respect to the newly added Zone or Zones, take a place lower on the Priority List than any Street Pole Franchisee that previously had such Zone or Zones within its Franchise Area; and

(4) the Company agrees to pay compensation per Compensation Street Pole, within the newly added Zone or Zones, under Section II of Appendix D hereof, which matches the amount paid with respect to such Zone or Zones by the Street Pole Franchisee which was previously the lowest on the Priority List with respect to the newly added Zone or Zones.

(B) The Company (and all Street Pole Franchisees) shall have the option (non-rescindable by the Company and exercisable during the window period described in subsection (1) below) to acquire one additional reservation phase pole allotment (an "Additional Pole Allotment") during the life of the Term. If such option is exercised, the Additional Pole Allotment will be available to the Company during every subsequent New Reservation Phase during the remainder of the Term provided that:

(1) the Company provides notice to the City of its intention to exercise its non-rescindable option not earlier than sixty (60) days, but not later than thirty (30) days, prior to each anniversary of the Effective Date, with such Additional Pole Allotment to become effective following the anniversary of the Effective Date which occurs immediately after said notice and upon the commencement of New Reservation Phase;

(2) in addition to Zone Compensation under Section I of Appendix D and Street Pole Compensation under Section II of Appendix D, the Company agrees to an additional annual recurring payment (the "Additional Pole Allotment Fee") for the remainder of the Term equivalent to its Zone Compensation;

(3) the Company agrees to pay additional Street Pole Compensation per Street Operations Pole for each reservation made with its Additional Pole Allotment that is equivalent to the rate of its per pole compensation pursuant to Section II of Appendix D;

(4) the Company agrees to take a place lower on the Priority List than that of any franchisees previously granted the right to selection Street Poles for each zone and whose rank at the bottom of the Priority List for its additional pole allotment for each zone will be ranked, together with any other Street Pole Franchisees exercising its additional pole allotment, based on its ranking on the original Priority List within that zone;

(5) such Street Pole Franchisee agrees to an adjustment of its Security Fund obligations pursuant to Section I of Appendix C, which adjustment shall include (i) an increase in the amount deposited commensurate with the annual increase in Street Pole Compensation pursuant to subsection (3) above and (ii) an additional deposit in the amount of one year of the Additional Pole Allotment Fee.

V. Total Maximum Number of Poles Per Street Pole Franchisee; Merger of Street Pole Franchises.

(A) At no time shall the Company have Base Station facilities on more than four thousand (4000) Street Poles in total throughout the Franchise Area, unless the City agrees in advance in writing to an increase in such maximum number. Once the Company's total number of reservations of Street Operations Poles plus Utility Company Street Utility Poles reaches 4000 cumulatively, the Company shall not be permitted to reserve any additional Street Operations Poles if reserving such additional Street Operations Poles would have the effect of providing the Company with the right to place equipment on more than 4000 Street Poles. In addition, DoITT will inform the owner of Street Utility Poles that the Company has reached the 4000 Street Pole limit and no longer has City approval to install equipment on any Street Poles[5]. Notwithstanding the foregoing and for the avoidance of doubt, the Company, by agreement with other franchisees, can have its Base Station facilities on poles reserved by another franchisee such that the total

[5] The effect of this provision is intended to limit the number of Street Operations Poles on which each Street Pole Franchisee is permitted to use for Base Station facilities to a number equal to 4000 minus the number of its Street Utility Pole Base Station facilities.

number of the Company's Base Stations on Street Poles pursuant to this Agreement and other franchisee's agreements exceeds 4000 Street Poles.

(B) In the event that a transaction occurs involving two Street Pole Franchises such that one of the Street Pole Franchises involved in such transaction remains in effect and the other does not (with one of the two Street Pole Franchisees seeking to continue to occupy sites or seek future reservations pursuant to the eliminated franchise) the surviving Street Pole Franchisee shall be obligated to pay Zone Compensation and Street Pole Compensation as if both of the Street Pole Franchises continued in effect (and the Zone Compensation under the surviving Street Pole Franchise shall be deemed increased to reflect such obligation). For example and for the avoidance of doubt, an assignment, the result of which is a consolidation of two franchises, then and in such event as required by Section 9.6(b)(v) of this Agreement, the reservation priority system and maximum number of poles provisions of this Appendix A shall be applied as if the surviving Street Pole Franchisee continued to hold the rights that were held under the no longer surviving Street Pole Franchise. For further example and for the avoidance of doubt, if Street Pole Franchisees holding the third and fifth priority ranks in Zone C were to undertake a consolidation transaction in which the third priority Street Pole Franchisee were to be the surviving entity, (i) the third priority Street Pole Franchise would be deemed to require an increased Zone Compensation, equal to the total sum of the Zone Compensation due under both of the now consolidated Street Pole Franchises, (ii) the third priority Street Pole Franchisee would now be entitled to maintain Base Stations on those Street Operations Poles the fifth priority Street Pole franchisee had previously been entitled to maintain, (iii) in each New Reservation Phase, the third priority Street Pole Franchisee would be entitled to submit a Reservation Notice in both the third priority reservation rank and the fifth priority reservation rank for each Phase for each Zone, and (iv) the permitted installation limit pursuant to the preceding paragraph (A) would be a total of eight thousand Base Station facilities.

VI. Waiver.

The City reserves the right to waive any requirement imposed on the Company or any other Street Pole Franchisees pursuant to this Appendix A, provided that the City agrees not to waive any requirement with respect to one or more Street Pole Franchisees the result of which would unreasonably adversely affect the Company's pole allocation priority as set forth on the Priority List. The City agrees that, to the maximum extent permitted by law and subject to the other terms of this Agreement, if the City grants additional Street Pole Franchises in addition to those previously listed on the Priority List, any Street Pole reservation priority rights that are to be provided under any such subsequent Street Pole Franchisee shall be lower in priority rank than those previously listed on the Priority List.

APPENDIX B

Construction and Maintenance Terms and Conditions Related to Construction of the Facilities on Street Poles

In addition to all provisions in the body of this Agreement regarding construction, maintenance and operation of the Facilities, the parties shall observe all the following requirements regarding construction, operation and maintenance of the Facilities:

I. Base Station Provisions

(A) Prior to any installation of Base Station equipment on any Street Operations Pole, DOT shall have the right to conduct an inspection of the Street Operations Pole and to review and approve the proposed installation for technical compatibility (which shall include, but not be limited to, a review and evaluation of the Street Operations Pole's electrical and structural status) with City facilities and operations.

(B) The Company must obtain prior approval from DOT in the form of a construction permit(s) for any construction work involving the opening of a roadway or sidewalk, lane closure, or any other street work deemed applicable by the City in connection with a Company's Base Station.

(C) All equipment installed under the Franchise shall be maintained by the Company, and the City will not be responsible for the maintenance or repair of any such equipment.

(D) All construction shall be performed in a manner consistent with the requirements of DOT, pursuant to its authority to protect the integrity, operability, reliability and appearance of Street Operations Poles and to manage vehicular and pedestrian traffic.

(E) When City maintenance work on a Street Operations Pole on which the Company has located a Base Station requires that such a Base Station be removed, the City will attempt to provide ten (10) days written notice to the Company to remove the Base Station. Upon notice to the Company of the completion of the City's maintenance work, the Company may reinstall the Base Station.

(F) When a Street Operations Pole on which a Base Station is located is knocked down (or damaged to the extent it must be removed), the City's maintenance contractor will remove the Street Operations Pole. The City will notify the Company as promptly as may be practicable regarding the Street Operations Pole's removal. Upon notice of the completion of any repair work to and reinstallation of the Street Operations Pole by the City to the Company, it shall be the responsibility of the Company to reinstall the Base Station.

(G) In connection with any special event (for example without limitation, the Thanksgiving Day Parade) in connection with which the City determines it is required to undertake work involving Street Operations Poles, the Company shall take any action with respect to any Base Stations, as may be required by the City.

(H) It shall at all times be the responsibility of the Company to maintain any required electric service to the Company's equipment. Maintenance of fuses, cables, breakers, etc. shall be exclusively the responsibility of the Company.

(I) The Company will cooperate with the City on location and design of Base Station installations to ensure appropriate coordination with street signage and other items located on Street Operations Poles.

(J) The Company shall comply with all DOT directions with respect to any foundation work required to accommodate connections between Base Stations and any other Company equipment. In the event of any failure of the Company to properly comply with such DOT directions, the City may perform or arrange for the performance of any work which may be necessary to bring such foundation work into compliance, and to draw on the Security Fund to reimburse the City for any such costs.

(K) As described in Section I(C)(1) of Appendix A, Base Station equipment housings must be painted, or otherwise be made to color match using a pre-approved method, the same color as the Street Pole. As of the Effective Date, the following are the paint specifications to be used for Street Operations Poles:

(1) The paint shall have a semi-gloss sheen and shall be one of the following Federal Standard 595B colors: Green #14036, Brown #10049 or Black #27038, or as otherwise approved by the DOT. All painted posts and/or painted surfaces shall be cleaned of all foreign matter (such as loose paint, rust, dirt and grease) prior to painting.

(2) Paint used must be of the anti-graffiti, corrosion resisting, semi-gloss type as manufactured by Armor Products, Inc., BC Products International, Inc., Con-Lux Coatings, Inc. or an approved equal.

(3) The protective coating of all paint used must exhibit the following characteristics:

(i) Display exceptional resistance to ultra violet light, road salt compounds, and industrial chemical fumes.

(ii) Display high impact resistance to withstand 160 psi of wind without cracking, chipping or peeling.

(iii) Display a water transmission rate of less than 0.00000005 Perms.

(iv) Bend over 180 degrees and one-eighth inch (1/8") mandrel without cracking.

(v) Be suitable for applications in below freezing temperatures.

(vi) Resist solvents for removal of graffiti from painted surfaces.

(vii) Resist flame or high temperatures to 400 degrees Fahrenheit.

(viii) Possess unique molecular structure suitable for brush, roll or spray application to achieve high quality, general purpose usage, exceptional spreadability and adhesion.

(ix) Exhibit corrosion resistance equal to that tested as part of Painting System #41 by the Steel Structures Painting Council.

(4) All paint used must conform to the following chemical requirements:

(i) No more than twenty percent (20%) Oxal Hexel, seventeen percent (17%) Butyl Acetate, three percent (3%) Xylol.

(ii) Maximum of forty percent (40%) volatile by volume.

(iii) Minimum of 60 degrees Fahrenheit Flashpoint.

(iv) Formulated with air-out additives for flowability.

(v) Two-part aliphatic urethane with a three-to-one (3:1) mixture ration and an absolute minimum of sixty percent (60%) solid content.

(vi) Maximum VOC of 3.45 per gallon.

II. Provisions Regarding Installation of Fiber Connecting Base Stations To Each Other Or To Supporting Telecommunications Systems ("Connecting Fiber").

(A) The Company shall install all Connecting Fiber in a manner consistent with existing telephone or public utility lines and within the facilities of Empire City Subway Company, Ltd. or Consolidated Edison Company of New York Inc. wherever existing telephone and/or other fiber optic cable lines are thus installed. Provided, however, that such fiber was installed lawfully. Where such lines are underground at a particular location (other than on private property), the Company shall install its Connecting Fiber underground, except as otherwise provided in this Agreement or as otherwise approved by the agencies of the City having jurisdiction over such matters. Any above-ground Connecting Fiber will be maintained in accordance with maintenance standards established by the City.

(B) Whenever possible, the Company shall utilize existing telephone or public utility poles, ducts, conduits or other facilities for the installation of Connecting Fiber. Where the Company performs any excavation of any street, the Company will abide by all DOT rules, regulations, requirements and permit conditions regarding such excavation, including, without limitation, requirements regarding the replacement and restoration of excavated street surfaces and materials, including, where applicable, the replacement and restoration of streets (which term includes, without limitation, the sidewalk portion of the streets) of distinctive design.

(C) (1) On July first of each year the Company shall provide to the City, in a format acceptable to the Commissioner, and to the extent different from the requirements set forth in subparagraph (2) below, consistent with industry standards, up-to-date maps, resiliency

information, and other information detailing the location of Connecting Fiber pursuant to this Agreement.

(2) As of the Effective Date, the following format for mapping as described in the preceding subsection (1) is acceptable to the Commissioner:

(i) for any installation where the Company initiates a street cut and installs Connecting Fiber without the use of duct of a third party, all locations of such Connecting Fiber must be produced utilizing the City's accurate physical base map (NYCityMap). The submission must be digital, provided on a CD, or in an alternative format deemed acceptable by the City, and the infrastructure elements depicted must be accurate within two feet horizontally and six inches vertically using State Plane Coordinates in the Long Island East Zone NAD 1983/92, NAVD 1988.

(ii) for any installation where the Company uses the ducts or fiber optic cables of a third party, the Company shall use its best efforts to create maps using such specific source information, data points 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 Connecting Fiber is installed.

(iii) mapping data, underlying metadata that provides information on the coordinate reference system used, individual data objects, attributes, fields, and business or semantic rules on how this data is persisted in its data repository. Attribute information must be structured according to DoITT specifications. Mapping data should be represented spatially in a defined coordinate reference system with both vertical and horizontal datums specified, including the elevation (height of land above sea level) information. Acceptable formats for spatial representation of point, polyline, and polygon mapping data are shapefile, CSV, File GeoDatabase, Tab File, KML or GeoJSON format.

(3) Upon written notice to the Company, the Commissioner may reasonably change the format requirements described in (2) above.

III. General Provisions.

(A) The Company must comply with, and shall ensure that its subcontractors comply with, all rules, regulations and standards of the DOT. If the construction, upgrade, repair, maintenance or operation of the Facilities does not comply with such rules, regulations and standards, the Company must, at its sole costs, remove and reinstall such portions of the Facilities to ensure compliance with such rules, regulations and standards.

(B) In the event of any inconsistency between this Appendix B and applicable provisions of the New York City Administrative Code or rules of the DOT, or other rules of the City, such provisions and rules shall prevail.

IV. Pole Management Requirements.

(A) Any Facility located on any Street Operations Pole will be subject to the City's operational needs with respect to such Street Operations Pole.

(B) In addition, if the City determines that it is appropriate to move or remove any Street Operations Pole temporarily to accommodate City or public activities (for example a parade such as the annual Thanksgiving Day parade), then the Company will be required to cooperate, at the Company's sole expense, with such temporary move or removal.

(C) All installations shall be performed in a manner consistent with the requirements of DOT implementing its authority to protect the integrity, operability, reliability and appearance of Street Operations Poles and to manage vehicular and pedestrian traffic.

APPENDIX C

Security Fund

I. Security Fund Amount. The Security Fund shall be in the form of a cash security fund or Letter of Credit to be held by the City separate from any other funds. Beginning no later than the Effective Date and at all times throughout the Term, the amount of the Security Fund shall always, at minimum, be equal to the sum of (a) one year's annual payment due pursuant to Section I of Appendix D, plus (b) the equivalent of one year of pole compensation for all reserved Street Poles, and where applicable, all LinkNYC Kiosks or Coordinated Franchise Structures for which the Company has obtained the authority to utilize for the deployment of Base Stations, plus (c) one year's Additional Pole Allotment Fee pursuant to Section IV(A)(2) of Appendix hereof, the total amount which shall be updated periodically during the Term.

II. Interest. Any interest which accrues on the Security Fund shall accrue to the benefit of the Security Fund, such that any future required deposit by the Company into the Security Fund to achieve a required increase in the balance of the Security Fund may be reduced by the amount by which accrued interest has increased the balance in the Security Fund beyond the required balance. Accrued interest shall follow the balance of the Security Fund.

III. Refunds of Excess Amounts. On the ninetieth day after each anniversary of the Effective Date (each such ninetieth day referred to herein as a "Refund Date") if the number of Street Poles reserved to the Company (or, in the case of Street Utility Poles, written approval by the owner of the Street Utility Pole for the placement of the Company's Facilities on the Street Utility Pole), authorized LinkNYC Kiosks or Coordinated Street Furniture Structures has declined during the twelve months preceding such Refund Date, such that the amount in the Security Fund is more than the amount required to be maintained in the Security Fund as calculated herein, and if the Company is not then in breach or default of any provision of this Agreement which has been the subject of a notice from the City pursuant to Section 11.2.1 of this Agreement, then the City shall refund to the Company (at the Company's option) from the Security Fund the excess amount over the amount required to be maintained in the Security Fund.

IV. Deposits Under Old Franchise Agreements. In the event that the Company has deposited a security fund pursuant to an Old Street Pole Franchise agreement, the Company may request that the City transfer such funds to the Security Fund, provided that the Company supplements such old funds with an amount necessary to meet the requirements of Section I of this Appendix C.

APPENDIX D

Franchise Compensation

I. Zone Compensation For Street Poles.

(A) The Company will be required to compensate the City with a minimum annual compensation based on the geographic area in which it elects to reserve Street Poles ("Zone Compensation"). Zone Compensation shall be as follows:

(1) $200,000 per year for use of Street Poles in all three zones, even if the Company has Reserved Poles in only Zone A, only Zones A and B, or only Zones A and C;

(2) $100,000 per year for use of Street Poles only in Zones B and C, even if the Company has Reserved Poles in only Zone B;

(3) $20,000 per year for use of Street Poles only in Zone C.

(B) The Company assumes the risk of paying minimum compensation notwithstanding the fact that pole reservation phases may be paused or ceased during the Term.

(C) Zone Compensation shall be in addition to, and not in lieu of, the Street Pole Compensation payments described in Section II of Appendix D.

II. Compensation for Use of Street Poles.

(A) The Company shall pay to the City monthly "Street Operations Pole Compensation," for the use or reservation of Street Operations Poles to install Base Stations, in the following amounts: $353.00 per Street Operations Pole that is a Compensation Street Pole and is located in Zone A, $253.00 per Street Operations Pole that is a Compensation Street Pole and is located in Zone B, and $103.00 per Street Operations Pole that is a Compensation Street Pole and is located in Zone C; in each case such amount per Compensation Street Pole is subject to the annual escalation as defined below.

(B) The Company shall pay to the City monthly "Street Utility Pole Compensation," for the use of Street Utility Poles to install Base Stations, in the following amounts: $25.00 (twenty five dollars) per Street Utility Pole that is a Compensation Street Pole and is located in Zone B, and $10.00 (ten dollars) per Street Utility Pole that is a Compensation Street Pole and is located in Zone C. (For the prevention of doubt, notwithstanding anything any other provision of this Agreement, the location of Facilities on Street Utility Poles in Zone A is not permitted under this Agreement). In each case such amount per Compensation Street Pole is to be subject to the annual escalation as defined below.

(C) "Compensation Street Pole" means:

(1) any Reserved Pole on which the Company's facilities are installed pursuant to an Old Street Pole Franchise,

(2) any Reserved Pole on which the Company's facilities are not yet installed after the Pre-Pole Compensation Period Expiration Date (as defined in Section D below),

(3) any Reserved Pole on which the Company voluntarily surrenders pursuant to Section II(B)(2)(ii) of Appendix A of this Agreement, shall continue to be a Compensation Street Pole for one year from the date of the voluntary surrender, or until reserved by another Street Pole Franchisee,

(4) any Street Operations Pole reserved by a Street Pole Franchisee whose franchise has been terminated until such time as the Facilities have been entirely removed from the Street Operations Pole.

Notwithstanding the foregoing, however, a Street Operations Pole shall cease being treated as a Compensation Street Pole immediately at such time as the City determines that the Reserved Pole is ineligible to receive the City's approval for using such Street Operations Pole to install a Base Station thereon.

Moreover, any Street Utility Pole for which the owning utility company terminates approval for the Company's use of such Street Utility Pole will no longer be considered a Compensation Street Pole. The City shall stop billing for the said Street Utility Pole upon 10 days written notice from the Company.

(D) Pre-Pole Compensation Period. New Street Pole reservations shall be subject to a Prepayment Period to allow for a reasonable amount of time for the Company to submit to the City documentation required to complete its application after which such Street Pole becomes a Compensation Street Pole. The Company shall only be permitted one Pre-Pole Compensation Period for any individual Street Pole.

(E) Amounts payable pursuant to this Section II will be in addition to and not in lieu of any amounts payable as described in Section I, and any other compensation or amounts otherwise payable to the City under the terms of this Agreement.

III. Compensation for Use of LinkNYC Kiosks; Coordinated Franchise Structures.

The Company shall pay to the City monthly compensation for the use or reservation of LinkNYC Kiosks or Coordinated Franchise Structures for the purpose of the installation, operation and maintenance of Base Stations on or within LinkNYC Kiosks or Coordinated Franchise Structure(s) in the following amounts: $105.00 (one hundred five dollars) for each LinkNYC Kiosk and Coordinated Franchise Structure in Zone A, $75.00 (seventy five dollars) for each LinkNYC Kiosk and Coordinated Franchise Structure in Zone B, and $30.00 (thirty dollars) for each LinkNYC Kiosk and Coordinated Franchise Structure in Zone C. Such compensation is in addition to any compensation that the Company is obligated to pay the owner of the LinkNYC Kiosk or Coordinated Franchise Structure in accordance with the terms and conditions agreed upon between the parties.

IV. Annual Escalation.

The amounts of Street Pole Compensation, LinkNYC Kiosks compensation and Coordinated Franchise Structures compensation set forth in Section II of this Appendix D, shall be subject to a four percent (4%) annual escalation effective upon the first anniversary of the effective date of this Agreement and each subsequent anniversary thereafter during the Term.

V. Timing of Payments.

(A) Payment of Zone Compensation and Street Pole Franchisees' additional pole allotment compensation as contemplated in Appendix A Section IV of this agreement shall be made annually in advance and shall be due and payable on the Effective Date (the payment of Zone Compensation due and payable on the Effective Date is referred to in this Agreement as the "Initial Payment") and on each anniversary of the Effective Date.

(B) Street Pole Compensation shall be due in arrears on a quarterly basis on the fifteenth day after the receipt of an invoice, with the amount due on such date to be the total Street Pole Compensation which accrued during the preceding three calendar months for all Street Poles which constituted Compensation Street Poles at any time during such quarter. In addition to the full monthly amount accruing for each full month that a Street Pole constituted a Compensation Street Pole, there shall also accrue a pro rata portion of the applicable monthly amount with respect to any Street Pole that constituted a Compensation Street Pole for only part of a month, such pro rata share to be calculated by dividing (x) the number of days in such month that such Street Pole constituted a Compensation Street Pole by (y) the total number of days in such month. The payment obligations under this Section IV shall survive the end of the Term until payment is made with respect to all compensation accrued during the Term (and any amount which continues to accrue based on any holdover presence of Facilities on, over or under the Inalienable Property after the end of the Term). To the extent the final period of compensation accrual is less than a full payment period, the final payment due hereunder after the end of the Term shall be based on a pro rata calculation of compensation due based on the number of days in the final payment period as a fraction of a full payment period.

APPENDIX E

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;

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an 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.

(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 herein 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 than 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.

APPENDIX F

COMPANY CONTROL AS OF THE EFFECTIVE DATE

Full list of 10% or more direct or indirect interests in the franchise assets as of the Effective Date:

Gary Jabara – 99.9%

APPENDIX G

MacBride Principles

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 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.

<u>PART A</u>

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 and 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.

APPENDIX H

Additional Reports

1.1 Worker Safety. The Company shall, on an annual basis, compile and transmit to DoITT a report describing the safety conditions regarding workers performing installation, maintenance, and other related work pursuant to this Agreement ("relevant work"), including at a minimum the following information. The information provided in this report shall not be labeled as confidential or proprietary information.

(a) A list of all companies employing the workers performing the relevant work pursuant to this Agreement for the prior year, including the Company itself, or another company or companies ("contracted companies");

(b) A description of the relationship between the Company and contracted companies, including whether the Company and contracted companies have a direct contractual relationship or whether work is subcontracted through another entity or entities, and if so, a description of such other entity or entities;

(c) Copies of all policies and procedures maintained by the Company and contracted companies related to safety standards for the relevant work, including, but not limited to, description of safety training requirements, copies of training materials, and description of any personal protective equipment required, provided that if policies and procedures have previously been provided pursuant to this Agreement, only revisions to such policies and procedures or new policies and procedures must be submitted after the date of original submittal;

(d) For the Company and each of the contracted companies, a description of each job title performing relevant work and a list of any certifications or licenses required of each job title;

(e) For the Company and each of the contracted companies, the total number of workers performing relevant work, disaggregated by job title, and for each job title, the number of workers with required certifications and licenses, along with a statement of whether each worker has required experience and training;

(f) A certification that the Company and contracted companies maintain workers' compensation insurance to the fullest extent required by applicable federal, New York States, and New York City law;

(g) Documentation evidencing that the Company and any contracted company performing relevant work in the prior year, and any contracted company with which the Company intends to work with in the following year, are registered to do business in New York and properly licensed for the work to be conducted;

(h) To the extent permitted by law and policy of relevant investigatory agency, for the Company and each contracted company the Company has worked with in the prior year, the number and a description of any open investigations against the Company or contracted company for violations of the Occupational Safety and Health Act, the National Labor Relations Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and New York Labor and

Employment Laws, and a list of findings against the contracted company for violations of the Occupational Safety and Health Act, the National Labor Relations Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and New York Labor and Employment Laws within the last two years;

(i) For the Company and each contracted company performing relevant work with in the prior year, a description of whether or not workers are required to or requested to execute arbitration agreements with the contracted company or Company, and if so, a copy of the arbitration agreements;

(j) For the company and each contracted company performing relevant work in the prior year, a list of all arbitration matters involving safety issues and copies of all resolutions, including formal resolutions through an arbitrator's decision or informal resolutions through settlement agreement.

End of Document