DRAFT (Submitted for FCRC December 2021)
Not a final document. Subject to final City review and approval.

Information Services

Franchise Agreement

between

The City of New York

and

Stealth Communications Services, LLC

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THIS AGREEMENT, dated as of the __ day of _____, 2021 , is by and between the CITY OF NEW YORK, acting by and through its Department of Information Technology and Telecommunications, and Stealth Communications Services, LLC, a New York limited liability company whose principal place of business is located at _____ (each, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, the City of New York acting by and through its Department of Information Technology and Telecommunications, has the authority to grant franchises involving the occupation or use of the Inalienable Property (as defined in § 1 hereof) of the City in connection with the provision of Information Services (as defined in § 1 hereof);

WHEREAS, the New York City Department of City Planning determined that a franchise granted pursuant to solicitation number 8582021FRANCHI dated May 20, 2021 would not have land use impacts or implications and that therefore the proposed franchise is not subject to the Uniform Land Use Review Procedures set forth in § 197-c of the New York City Charter;

WHEREAS, Stealth Communications Services, LLC has submitted to DoITT its proposal to obtain a franchise in response to a solicitation issued by DoITT pursuant to Resolution Number 1445-A (adopted by the New York City Council on December 17, 2020);

WHEREAS, on _____, 2021, the New York City Franchise and Concession Review Committee held a public hearing on a proposed franchise to construct, install, use, operate, and/or maintain wire, cable, and/or optical fiber and associated equipment on, over and under the Inalienable Property of the City of New York for the provision of Information Services, which hearing was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the New York City Charter;

WHEREAS, DoITT has, with respect to the proposed franchise, complied with the New York State Environmental Quality Act (§ 8-010 et. seq. of the New York State Environmental Conservation Law), the regulations pertaining to such Act set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations, and the City Environmental Quality Review process (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York);

WHEREAS, DoITT has made a priority of ensuring the equitable distribution of Information Services and Telecommunications Services (as defined in § 1 hereof), specifically by increasing the number of market participants in the provision of access to the internet; and

WHEREAS, DoITT has determined that the aforementioned solicitation will encourage new providers to enter the market, with the goal of stimulating greater competition in the marketplace and thereby increasing equitable and affordable access to Information Services to businesses and residents throughout the City.

NOW, THEREFORE, in consideration of the foregoing clauses, 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 capitalized terms, phrases, words, and their derivatives will have the meanings set forth in this Section.

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

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

1.3. "Block" has the meaning set forth therefor in § 3.2.2.1 hereof.

1.4. "Block Linear Feet" has the meaning set forth therefor in § 3.2.2.1 hereof.

1.5. "Books and Records" means all information, documents, and databases whatsoever or maintained in the performance, or ancillary to the performance, of this Agreement by, or on behalf of, the Company, in any physical or electronic form whatsoever, including but not limited to, contracts, accounting records, engineering records, conduit use records, designs, fiber and equipment maps, drawings, construction schedules, results of performance standard testing, manuals, and lists of permits (such as but not limited to those from the City's Department of Transportation).

1.6. "Cable Television Service" means "cable service" as that term is defined, as of the Effective Date, in 47 USC § 522(6).

1.7. "Cable Television Franchise" means a franchise granted by the City expressly authorizing the use of the Inalienable Property for the provision of Cable Television Service to residents.

1.8. "City" means the City of New York, including, 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.

1.9. "Commissioner" means the Commissioner of DoITT, or the Commissioner's designee, or any successor in function to the Commissioner.

1.10. "Company" means Stealth Communications Services, LLC, a limited liability company organized and existing under the laws of the State of New York and authorized to do business in the State of New York, whose principal place of business is located at _____, or a successor entity thereto permitted as provided in § 7 hereof.

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

1.12. "Confidential Information" means any information, including proprietary information regarding the Company's business or business activities that is not available to the general public. Confidential Information shall exclude information that: (i) at the time of disclosure by the Company to the City is generally available to the public; (ii) after disclosure by the Company to the City becomes generally available to the public by publication or otherwise through no fault or breach of this Agreement by the City; (iii) was in the City's possession prior to disclosure by the Company and the City did not previously acquire such information directly or indirectly from the Company, or that the City acquired such information from the Company on a non-confidential basis; (iv) was independently

developed by the City without reference to or use of the Confidential Information; or (v) was obtained from other sources.

1.13. "Control" of an entity, business, or asset 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 System or of the Company. A rebuttable presumption of the existence of Control shall arise from the beneficial ownership, directly or indirectly, by any Person, or a group of Persons acting in concert, of more than twenty percent (20%) of such entity, business, or asset.

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

1.15. "Effective Date" means the date set forth in a written notice from the City to the Company, which notice shall confirm that all of the following conditions have been met: (a) this Agreement has been registered with the Comptroller as provided in §§ 375 & 93.p of the City Charter; (b) all documents have been submitted as required by § 2.2.1 hereof; (c) PASSPort has been completed without disqualifying information having arisen; (d) the Initial Payment described in § 3.3.1 hereof has been paid to the City; (e) the Security Fund has been arranged by the Company and is available to the City in accordance with the terms and conditions of this Agreement; and (f) payment has been made of an amount sufficient to pay, or reimburse the City for, all costs incurred in publishing the legally required notice(s) with respect to the FCRC's hearing regarding the Franchise granted by this Agreement.

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

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

1.18. "Franchise Area" means the City of New York.

1.19. "Inalienable Property" means that property of the City which is inalienable pursuant to § 383 of the New York City Charter or a successor provision thereto. References to the Inalienable Property in this Agreement will be deemed to include the space on, over, and under the surface of the Inalienable Property, including through pipes, conduits, and similar improvements thereto (except that where the City's property rights to such Inalienable Property are expressly limited in a particular case to specified dimensional boundaries then such references shall be limited, in regard to such property, as thus expressly limited).

1.20. "Indemnitees" has the meaning set forth therefor in § 8.1 hereof.

1.21. "Information Service(s)" means "information service," as that term is defined in 47 USC § 153(24) as of the Effective Date.

1.22. "Information Services Franchise" or "Franchise" shall mean the right granted to the Company under this Agreement to construct, install, use, operate, and/or maintain wire, cable, and/or optical fiber and associated equipment on, over, and under the Inalienable Property of the City (including through pipes, conduits, and similar improvements thereto) for the provision of Information Services.

1.23. "Initial Payment" means the payment due as provided in § 3.3.1 hereof.

1.24. "Installation Area" has the meaning set forth in § 3.2.2 hereof.

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

1.26. "New Franchisee" means a Person or group of Persons with an Information Services Franchise that was not, nor was any Affiliate thereof, prior to the Effective Date, occupying the Inalienable Property of the City pursuant to an agreement with the City, including but not limited to any agreement entered into pursuant to Chapter 14 of the City Charter, or by operation of law.

1.27. "PASSPort" means the City's Procurement and Sourcing Solutions Portal System (NYC Admin. Code Section 6-116.2) and such other contractor review system(s) as may be utilized by the City during the Term, or any successor or substitute procedure.

1.28. "Person" means 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.

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

1.30. "Security Fund" means a letter of credit, security deposit, or comparable form of equivalent financial assurance.

1.31. "System" means the wire, cable, and/or optical fiber and associated equipment on, over, and under the Inalienable Property of the City used by the Company to provide Information Service.

1.32. "Telecommunications Service(s)" means "telecommunications service," as that term is defined in 47 USC § 153(53) as of the Effective Date.

1.33. "Term" has the meaning set forth therefor in § 2.1 hereof.

Section 2: Grant of Authority

2.1. Term. This Agreement and the Information Services Franchise granted hereunder will commence upon the Effective Date and will continue until and including the ten-year anniversary of the Effective Date (the "Initial Term"), unless earlier terminated as described herein. The Parties may, at DoITT's sole discretion, extend the Agreement for up to a further five-year period (the "Extended Term"), upon written petition from the Company made within six (6) months prior to expiration of the Initial Term and with DoITT's written permission. The Initial Term together with any Extended Term shall be known as the "Term".

2.2. Conditions to Effectiveness.

2.2.1. As provided in § 1.15 above, the occurrence of the Effective Date is conditional on, among other things, the submission to the City by the Company of the following documents: (a) evidence as described in § 8.6 below of the Company's liability insurance coverage pursuant to § 8 hereof; (b) an opinion of the Company's counsel dated as of the date this Agreement is executed by the Company, in form reasonably satisfactory to the City 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 the solicitation issued by DoITT seeking a proposal from the Company for the Franchise granted hereunder; (d) an IRS W-9 form certifying the Company's tax identification number; (e) organizational and authorizing documents as described in §§ 10.5(a)(i)-(ii) hereof; (f) documentation verifying that the Company has completed all required submissions under PASSPort, and the City's review thereof has been favorably completed; (g) documentation verifying that the City's review of the Company's submissions pursuant to Local Law 34 of 2007 has

been completed and the City has found that the Company is in compliance with the requirements of said Local Law 34; and (h) if determined necessary by DoITT, a corporate guaranty in the form of Appendix F.

2.3. Nature of Franchise. The City hereby grants the Company, subject to the terms and conditions of this Agreement, a nonexclusive franchise providing the Company with the right and the City's consent to construct, install, use, operate, and/or maintain, the System (authorization to install non-closed path transmission facilities, such as antennae and similar equipment which transmits or receives information wirelessly, within the Inalienable Property is not granted pursuant to this Agreement). The Franchise granted hereunder does not include the right to provide any of the following: (i) Telecommunications Services; (ii) "cable television services" as defined in the authorizing resolution adopted by the Council on May 15, 2012 as Resolution No. 1334, or any successor resolution thereto; (iii) "mobile telecommunications services" as defined in the authorizing resolution adopted by the Council on March 9, 2016 as Resolution No. 935, or any successor resolution thereto; and (iv) "public pay telephones" as defined in the authorizing resolution adopted by the Council on December 21, 2009 as Resolution No. 2309, or any successor resolution thereto.

2.4. Effect of Termination. Upon termination of this Agreement, the Franchise granted hereunder will expire; all rights of the Company in such Franchise will cease, without compensation to the Company and with no value allocable to such Franchise; and the rights of the City and the Company to the System, or any part thereof, will be determined as provided in § 10.8 hereof. Notwithstanding any other provisions of this Agreement, the Company shall not be relieved of liability to the City for damages sustained by the City by virtue of the Company's breach of the Agreement, or of its obligations pursuant to §§ 8.1 through 8.5 of this Agreement.

2.5. Renewal. This Agreement does not grant to the Company any right to renewal of this Agreement or the Franchise granted hereunder. At the end of the Initial Term or any Extended Term, the City will have the sole discretion to renew this Agreement, or not, pursuant to a distinct franchise process under Chapter 14 of the City Charter.

2.6. Conditions & Limitations on Franchise.

2.6.1. Not Exclusive. Nothing in this Agreement affects 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, installation, use, operation, and/or maintenance of a System in order to provide Information Services in the City, or the right of the City to (i) to construct, install, use, operate, and/or maintain a system to provide Information Services in the City, or (ii) acquire, in accordance with § 10.8 below, and operate the System.

Section 3: Compensation

3.1. Compensation. The Company agrees to provide reasonable compensation to the City in return for the benefit conferred by the City of the Franchise, to be as described in this § 3.

3.2. Monetary Compensation.

3.2.1. As a franchise fee to be paid as compensation in exchange for the benefit and privilege of using the Inalienable Property for the purpose of offering and providing Information Services, the Company shall pay to the City $0.19 per linear foot of Installation Area in the Franchise Area, calculated per calendar quarter, with such fee being subject to a 4% annual

escalation effective on the first anniversary of the Effective Date of this Agreement and each subsequent anniversary thereafter during the Term.

3.2.1.1. Exceptions to § 3.2.1 are as follows:

3.2.1.1.A. Where construction of portions of the Installation Area was initiated or completed prior to the Effective Date in the boroughs of the Bronx, Brooklyn, Queens, Staten Island or Manhattan above 96th Street, the Company shall pay to the City $0.09 per linear foot of Installation Area for such portions, calculated per calendar quarter, with such fee being subject to a 4% annual escalation fee effective on the first anniversary of the Effective Date of this Agreement and each subsequent anniversary thereafter during the Term;

3.2.1.1.B. Where construction of portions of the Installation Area is initiated and completed within the first five (5) years of the Term in one or more of the Boroughs of the Bronx, Brooklyn, Queens, Staten Island, or Manhattan above 96th Street, no fee shall be charged for such portions during the Term; and

3.2.1.1.C. Where construction of portions of the Installation Area is initiated or completed in one or more of the Boroughs of the Bronx, Brooklyn, Queens, Staten Island, or Manhattan above 96th Street after the first five (5) years of the Term, fees will be charged per foot of Installation Area for such portions at the rate indicated in § 3.2.1.1.A, including all applicable annual 4% escalations of such fees, calculated as of the Effective Date.

3.2.1.2. Notwithstanding anything to the contrary in § 3.2.1, in no event shall the Company pay to the City an amount per calendar quarter less than $10,000, except if the Company is a New Franchisee. Such amount shall be subject to a 4% annual escalation effective on the first anniversary of the Effective Date of this Agreement and each subsequent anniversary thereafter during the Term. However, if the Company is a New Franchisee, such $10,000 amount specified in this § 3.2.1.2 shall be reduced to $3,000 until but not including the first anniversary of the Effective Date and to $5,000 from the first anniversary of the Effective date until but not including the second anniversary of the Effective Date; such amount shall be $10,000 from the second anniversary of the Effective Date until but not including the third anniversary of the Effective Date. Upon the third anniversary of the Effective Date, a New Franchisee shall in no event pay to the City per calendar quarter an amount less than $10,000 plus a 4% annual escalation effective on such anniversary and each subsequent anniversary thereafter during the Term.

3.2.2. The "Installation Area" is defined pursuant to the following provisions:

3.2.2.1. Unless the Company submits documentation as described in § 3.2.2.2 below, the Installation Area in each borough or portion thereof will be calculated by adding together the Block Linear Feet applicable to every Block in such borough or portion thereof in which the Company has the System within the Inalienable Property. "Block Linear Feet" applicable to any Block in the City means the number of feet (rounded to the nearest foot) that results by measuring a straight line along the surface of the street from the midpoint of the intersection at one end of the block to the midpoint of the

intersection at the other end of the block. A "Block" means a mapped street of the City running from one intersection with another mapped street of the City to the next intersection with another mapped street of the City.

3.2.2.2. If the Company submits documentation to the City showing to the City's reasonable satisfaction that, with respect to any particular Block, the portion of the System located therein is located underground and runs less than the full Block Linear Feet of the length of such Block, then the Installation Area with respect to such Block will be adjusted to the actual length of such portion in lieu of the full Block Linear Feet of the Block.

3.2.2.3. If the Company maintains more than one System at any single Block, as a result of, for example, without limitation, multiple Systems having been originally constructed for different owners which have or may come under the common ownership of the Company, then the Installation Area will be calculated separately with respect to each such System, and the Installation Area shall constitute the system at that Block with the greatest length (or, if of equal length, the system of the City's choice).

3.2.2.4. To the extent the Company installs or has installed any portion of the System on a bridge or in a tunnel which is part of the Inalienable Property, the Installation Area shall include the length of the bridge or tunnel, or portion thereof, in which such portion runs and which are within the Inalienable Property. If such bridge or tunnel connects two boroughs, the Installation Area with respect to the bridge or tunnel shall be deemed to be within each such borough up to the geographic midpoint of such bridge or tunnel from the bulkhead line on the side of the bridge or tunnel originating from each such borough.

3.3. Timing.

3.3.1. Initial Payment. As a condition of the occurrence of the Effective Date, the Company shall make an initial payment which shall be comprised of the sum of (i) the Company's good faith estimate regarding the amount due under § 3.2 hereof attributable to the initial partial calendar quarter to occur within the Term and (ii) the Company's good faith estimate regarding the amount due under § 3.2 hereof attributable to the first full calendar quarter to occur within the Term (such sum, an "Initial Payment").

3.3.2. Subsequent Payments. All payments made pursuant to § 3.2 after the Initial Payment hereof must be made in advance on a quarterly basis no later than forty-five days prior to the beginning of each calendar quarter. The Company shall in good faith estimate each such quarterly payment based on the Installation Area expected to be applicable to the next quarter. Within one hundred twenty days following the end of each calendar year, the Company shall calculate the exact monetary compensation due to the City pursuant to § 3.2 hereof for all of the calendar quarters of said calendar year. Should the total monetary compensation for such calendar year thus calculated be found to have exceeded the estimated quarterly payments made by the Company for such calendar year, the Company shall, within the 120-day period following the end of the calendar year, remit to the City any balance due. Should the estimated quarterly payments made by the Company for the calendar year be found to have exceeded the total calculated monetary compensation for

the year, the overpayment will constitute a credit against the next payment or payments due from the Company hereunder.

3.4. Non-Monetary Compensation. As further compensation (and not in lieu of the monetary compensation required pursuant to § 3.2) in exchange for the benefit and privilege of using the Inalienable Property for the purpose of offering and providing Information Services pursuant to this Agreement, the Company shall provide non-monetary compensation to the City as described in Appendix B.

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

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

3.7. No Credits or Deductions.

3.7.1. The Company, as part and parcel of its agreement hereunder to pay reasonable compensation for the use of the Inalienable Property, expressly acknowledge and agrees that:

3.7.1.1. The compensation to be provided pursuant to this § 3 may not be deemed to be in the nature of a tax, and is in addition to any and all taxes or other fees or charges which the Company or any Affiliate must pay to the City or to any state or federal agency or authority, all of which are separate and distinct obligations of the Company;

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

3.7.1.3. The Company may not, and may not otherwise support any attempt by an Affiliate to, make any claim for any deduction of, or other credit for, all or any part of the amount of the compensation (whether monetary or in-kind), or other consideration to be provided pursuant to this Agreement from or against any City or other governmental taxes of general applicability or other fees or charges which the Company or any

Affiliate is required to pay to the City or other governmental agency, each of which are hereby deemed to be separate and distinct obligations of the Company and its Affiliates; and

3.7.1.4. The Company may not, and may not otherwise support any attempt by an Affiliate to, apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the consideration to be provided pursuant to this Agreement, each of which are hereby deemed to be separate and distinct obligations of the Company and the Affiliates.

3.8. 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 will accrue from such date until received at a rate equal to the rate of interest set forth, as of the Effective Date, in Section 5004 of the New York Civil Practice Law and Rules (which as of the Effective Date of this Agreement is nine percent (9%) per annum).

3.9. Method of Payment. Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement must be paid to the City's Department of Finance via ACH/EFT payments made according to instructions and to a bank account to be provided by DoITT, or sent to DoITT, c/o Director of Franchise Audits and Revenue, 2 Metrotech Center, P-1 Level Mail Room, Brooklyn, New York 11201, or to an alternative payee, address, and/or email address as DoITT may designate by written notice to the Company from time to time.

3.10. Continuing Obligation and Holdover. In the event the Company continues to operate within the Inalienable Property all or any part of the System after the Term for the purpose of providing Information Services, then (a) the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation may not be construed as an extension of the Term or a renewal 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, and (b) in addition to all other remedies available to the City under this Agreement or by law, the Company shall also pay to the City all payments that the City is entitled to receive under this Agreement including, but not limited to, the compensation set forth in this § 3 as if the Term remained in effect.

Section 4: Construction & Maintenance Requirements

4.1. Generally. The Company agrees to exercise its right described in § 2.3 above in accordance with the standards of work and operation as set forth in this § 4 and Appendix A attached hereto and incorporated herein. The System to be constructed, installed, used, operated, and/or maintained pursuant to this Agreement is not to materially exceed in size or otherwise differ in the nature of the imposition placed on the Inalienable Property from that which is standard in the industry with respect to the provision of Information Services.

4.2. Quality. In order to ensure that the Inalienable Property and its continuing use by the public is adequately protected, all work involved in the construction, installation, use, operation,

and/or maintenance of the System must be performed in a safe, thorough, and reliable manner using materials of good and durable and resilient quality. All of the properties, assets and equipment used as part of the System must be maintained at a level of good repair, working order and good condition that is necessary to assure the safety and protection of the Inalienable Property and the safe and efficient use thereof. If, at any time, it is determined by any entity with applicable authority or jurisdiction that any part of the System is harmful to the public health or safety, then the Company shall, at its own cost and expense, take all steps necessary to correct all such conditions. If the Company fails to do so, the City shall have the right, but not the obligation, to enter the Inalienable Property and access the System in order to correct all such conditions. Such correction shall be at the Company's sole cost and expense. The Company shall within ten days of demand reimburse the City for the City's cost of correcting the dangerous conditions, with interest thereon at the rate set forth in Section 3.8 accruing from the date the City incurs such costs.

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

4.4. Relocation of the System.

4.4.1. New Grades or Lines; Interference With Public Works or Improvements. If the grades or lines of the Inalienable Property are changed at any time during the Term in a manner affecting the System, or in the event that the City determines, in its sole discretion, that any part of the System interferes with the construction, installation, use, operation, and/or maintenance of public works or public improvements, 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 System, or part thereof, so as to conform with such new grades or lines or to cease interference with public works or improvements. In the event that after such notice, the Company refuses or neglects to so protect, alter or relocate all or part of the System within a reasonable period of time necessary for the Company to make such modifications, the City shall have the right to, upon prior notice to the Company, break through, remove, alter or relocate such part of the System without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation, with interest thereon at the rate set forth in § 3.8 accruing from the date the City incurs such costs. This provision shall not be construed to authorize the Company to relocate the System or any portion thereof to any other location on, over or under the Inalienable Property, except to the extent otherwise permitted under this Agreement. 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 System 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 Agreement and applicable law.

4.4.2. City Authority to Move the System. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any part of the System in 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, or by other method specified in writing by the Company that is acceptable to the City, prior to undertaking such action, or, if prior notice is impracticable, notify the Company as soon as practicable after such action has been taken but in no case later than the next business day following any such action.

4.4.3. Company Required to Move the System. The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, and within a reasonable amount of time under the circumstances, temporarily move any applicable System or portion thereof to permit the moving of such structure. The Company may require payment of actual reasonable costs to move its System from any Person other than the City for any such movement of its System. Relocation of the System or any portion thereof shall be subject to all applicable terms of this Agreement.

4.5. No Waiver. Nothing in this Agreement may be construed as a waiver of any codes, ordinances, or regulations of the City or of the City's right to require the Company, or other Persons constructing, installing, using, operating, and/or maintaining the System, to secure the appropriate permits or authorizations for such activity. Any fee or charge paid by Franchisee for such permits or authorizations may not be an offset against, or in lieu of, the amounts the Company has agreed to pay to the City pursuant to § 3 of this Agreement.

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

4.7. No Obstruction. In connection with the construction, installation, use, operation, and/or maintenance of the System, the Company may not, without the prior consent of the appropriate authorities, obstruct the Inalienable Property, or the subways, railways, passenger travel, river navigation, or other pedestrian or vehicular traffic that is using the Inalienable Property.

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

4.9. Coordination With Applicable City Agencies. The Company shall coordinate with and comply with any applicable legal requirements from appropriate City agencies to minimize disruption to the rights-of-way and the public. In addition to any other applicable requirements, construction within the Inalienable Property which falls within the boundaries of City parks will be subject to the approval of the City's Department of Parks (or any successor agency), acting with the fullest discretion permitted by law, and such discretion is a limit on the Franchise granted under this Agreement. Construction within the Inalienable Property which falls within the boundaries of the City waterfront or wharf property, as defined in § 1150 of the New York City Charter will be subject to the approval of the City's Department of Transportation or Department of Small Business Services, whichever has jurisdiction over the particular property under applicable law, or the appropriate successor agency, acting with the fullest discretion permitted by law, and such discretion is a limit on the scope of the Franchise covered hereby. To the extent that such construction activity within park, wharf, or waterfront property would materially interfere with the use of such property for park, wharf, or waterfront use, as the case may be, the responsible City agency may require reasonable compensation to the City for such interference (in addition to, and not in lieu of, the reasonable compensation for use of the Inalienable Property generally under this Agreement as set forth in § 3 hereof) to the fullest extent permitted by law.

Section 5: Security Fund & Guaranty

5.1. General Requirement. Prior to or simultaneously with the execution and delivery of this Agreement, the Company shall have arranged for the Security Fund to be available to the City in an amount equal to the product of four times the portion of the Initial Payment described in § 3.3.1 estimated to be attributable to the first full calendar quarter of the Initial Term. The Security Fund shall be in a form acceptable to the City and issued by a Person acceptable to the City, securing the Company's full payment and performance of its obligations under this Agreement. Throughout the Term, and for one year thereafter, the Company shall maintain the Security Fund in the amount specified in this § 5.1 provided that each time the monetary compensation payable by the Company to the City for any one calendar year under § 3.2 hereof exceeds the aggregate amount of the Security Fund by $50,000 or more then, within 120 days of the end of such calendar year, the aggregate amount of the Security Fund must be increased to and maintained (until any future such increase) at an amount equal to such compensation for such year rounded up to the next non-fractional multiple of $100,000. In no event shall the Security Fund in place after the 120th day of any calendar year be less than the minimum compensation payable for such calendar year under § 3.2.1 above.

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

5.3. Withdrawals from the Security Fund. In the circumstances described in § 9.3 hereof, the City may withdraw from the Security Fund such amount as necessary to satisfy (to the degree possible) the Company's obligations not otherwise met and to reimburse the City for costs, losses, or damages incurred as the result of the Company's failure(s) to meet its

obligations, provided, however, that the City may not make any withdrawal by reason of any breach or default until the Company has been given notice of such breach or default in accordance with § 9.2.2 hereof. The City may not seek recourse against the Security Fund for any costs or damages for which the City has previously been compensated through a withdrawal from the Security Fund or otherwise by the Company.

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

5.5. Replenishment by the Company. Within 30 days after receipt of notice from the City that any amount has been withdrawn from the Security Fund, as provided in § 5.4 hereof, the Company shall replenish the Security Fund to the amount specified in § 5.1 hereof, by submitting such documentation as may be necessary to restore the Security Fund to the full amount required by § 5.1. If the Company has not made the required replenishment of the Security Fund within such 30-day period, liquidated damages for such failure in the amount of such required replenishment will accrue interest at the rate specified in § 3.8 hereof, such accrual to commence at the end of such 30-day period, which shall be payable to the City as reasonable compensation to the City for its loss of security for the Company's obligations hereunder and not as a penalty.

5.6. Replenishment by the City. If a court finally determines that a withdrawal from the Security Fund by the City was improper, the City shall refund the improperly withdrawn amount to the Company such that the balance in the Security Fund will not exceed the amount specified in § 5.1 hereof.

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

5.8. Renewal. Any letter of credit that is to constitute the Security Fund required hereunder must provide that it will not be cancelled, and will not expire without renewal, except after at least 60 days' notice to the City of the impending cancellation, or expiration without renewal, of such letter of credit. Any failure to replace or renew a Security Fund letter of credit by a date which is 30 days prior to the impending cancellation or expiration of such a letter of credit will constitute an Event of Default under this Agreement, which the City may cure by (a) drawing on the Security Fund and itself holding the proceeds as a replacement Security Fund (with all withdrawal rights provided under this Agreement) until such time as the Company replaces or renews such letter of credit or (b) exercising any other lawful remedies. Interest earned on proceeds held by the City as a replacement Security Fund will be retained by the City.

Section 6: Recordkeeping and Franchise Implementation Terms

6.1. Protection from Disclosure. To the extent permissible under applicable law, the City will protect from disclosure any Confidential Information submitted to or made available by the Company to the City under this Agreement, provided that the Company notifies the City of, and clearly labels, the Confidential Information which the Company reasonably deems to be as such. Such notification and labeling will be the sole responsibility of the Company. Notwithstanding the foregoing, in the event that the City, pursuant to applicable

law or regulation or legal process, is requested or required to disclose any Confidential Information, the City shall provide the Company with prompt written notice of such request or requirement in order to enable the Company to seek an appropriate protective order or other remedy reducing the extent of Confidential Information that must be disclosed, except for those circumstances where the request to the City is made by a regulator or law enforcement entity and is accompanied by its own non-disclosure directive. In any event, the City shall disclose only such Confidential Information which it is advised by legal counsel is legally required in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Company). Further notwithstanding the foregoing, the City may disclose Confidential Information received from the Company to city, state and federal regulators.

6.2. Management and Records.

6.2.1. Throughout the Term, and for a minimum of six (6) years after the Company ceases to have constructed, installed, used, operated, and/or maintained the Systems pursuant to this Agreement, the Company shall maintain complete Books and Records to allow DoITT and the Comptroller to determine whether the Company is in compliance with this Agreement.

6.2.2. If DoITT or the Comptroller determines that the Company is not in compliance with § 6.2.1, the Company shall alter the manner in which the Books and Records are organized and maintained with respect to the System, as directed by the City, in order to comply. All Books and Records must be maintained in electronic or paper format, or both. The Company shall also maintain and provide any additional Books and Records as DoITT or the Comptroller determine necessary to ensure proper accounting of all payments due to the City.

6.2.3. Annual Report on Construction and Installation. In order to support the City's ability to appropriately preserve, protect, and otherwise manage its Inalienable Property, the Company shall provide to DoITT on an annual basis (in a form and format reasonably acceptable to the Commissioner) a report describing any construction or installation of cable, wire, fiber optical telecommunications cable, or other closed-path transmission medium used in lieu thereof, or other facilities and equipment within the Inalienable Property that has occurred during the previous twelve months, which report must include aa map of such constructed or installed facilities consistent in form with the requirements of § B.5 of Appendix A. The Company shall retain such records for not less than six years following their creation and for such additional period as DoITT may reasonably direct, consistent with the goals of record retention described in this § 6.2. Each report requested pursuant to this § 6.2.3 must include safety and compliance review and inspection documentation as required by law and as further reasonably required by DoITT.

6.2.3.1. In addition, the Company shall provide to DoITT on an annual basis with a report describing the Company's reasonably anticipated plans for the coming twelve months for any construction or installation of the System within the Inalienable Property.

6.2.4. The terms of this § 6.2 shall survive the expiration or earlier termination of this Agreement.

6.3. Right of Inspection.

6.3.1. DoITT or the Comptroller may, upon written demand with reasonable notice to the Company, inspect, examine, or audit during normal business hours, at the Company's New York City offices, the Books and Records, access computer systems, and interview staff that perform functions relating to or affecting the Company's obligations under this

Agreement. If access to the Books and Records, computer systems, , and staff cannot be provided in New York City, then the Company will provide access elsewhere and provide transportation and accommodations for a minimum of two auditors, all at the Company's expense.

6.3.2. Access by DoITT or the Comptroller to any of the documents in § 6.2 shall not be denied by the Company on the grounds that such documents are alleged by the Company to contain Confidential Information, provided that the requirement shall not be deemed to constitute a waiver of the Company's right to assert that Confidential Information contained in such documents should not be disclosed to a third party pursuant to § 6.1.

6.3.3. The terms of this § 6.3 shall survive the expiration or earlier termination of this Agreement.

6.4. Rules and Regulations. To the full extent permitted by applicable law, the City reserves the right, at any point in time, to adopt or issue such rules, regulations, orders, or other directives that are not inconsistent with the terms of this Agreement and are reasonably necessary or appropriate in the lawful exercise of the City's authority as manager of the Inalienable Property and its police powers, and the Company agrees to comply with all such lawful rules, regulations, orders, or other directives.

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

6.6. 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 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 such audit will be borne by the Company.

6.6.1. Any adjustments and/or payments that must be made as a result of any such audit (include, 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 30 days from any notification by the City to the Company that such funds are due the City. If the Company fails to make such adjustments and/or payments, the City may recoup the costs of any such audit, adjustment, and/or payment directly from the Security Fund.

6.6.2. In addition to any other amounts due the City, the Company shall pay to the City interest on any such underpayment at the rate set forth in § 3.8 of this Agreement from the date the Company first made such underpayment.

6.7. Employment & Purchasing.

6.7.1. Right to Bargain Collectively. The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize, 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. The concepts and terms set forth in this section 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).

6.7.2. 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 and in connection with the construction, installation, use, operation, and/or maintenance of the System. "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 applicable labor and employment laws and pursuant to § 6.7.1 above.

6.7.3. Equal Employment Opportunity. The Company agrees to comply and will require its vendors and subcontractors to comply with the provisions of the Executive Order No. 50 (Apr. 25, 1980) of the Mayor of the City of New York, as codified in §§ 10-01 *et seq*. of Title 66 of the Rules of the City of New York, as such Order and rules may be amended, modified, or succeeded throughout the Term, to the fullest extent such provisions are applicable.

6.7.4. The Company commits to strongly encourage utilization of vendors, where practicable, certified under the New York City Minority- and Women-Owned Business Enterprise ("M/WBE") Program, in accordance with applicable law and City policies.

6.7.5. By January 31st of each year this Agreement remains in force, the Company will submit to DoITT an annual worker safety report for the preceding calendar year, the substance of which is described in Appendix G.

6.7.6. Net Neutrality. In the provision of any Information Services pursuant to this Agreement, the Company shall comply with any service obligations in accordance with applicable law, including but not limited to providing such service on a net neutral basis, to the extent required by any such applicable law.

Section 7: Transfers and Assignments

7.1. City Approval Required. The ownership and Control (as defined in § 1.13 above) of the Company as of the date of execution of this Agreement is set forth in Appendix D hereof. Subject to the provisions of this Article, each of the following shall be subject to the prior approval of DoITT and the FCRC: (i) any sale, assignment or transfer of the Company's interest in this Agreement, the System, or the Franchise granted hereunder, and (ii) any other transaction in which a change in "Control" (of the Company, the System, or the Franchise granted hereunder) would occur, as determined by DoITT; provided, however, that the foregoing requirements of this § 7.1 will not be applicable with respect to transfers described in § 7.2 below. Application to the City for any approval required hereunder must be made at least 120 calendar days prior to the contemplated effective date of the transaction. Such application must contain complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

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

(b) a report detailing any changes in ownership of voting or non-voting interests of over five percent (5%), including corporate organizational charts describing the corporate ownership structure of the Company prior to and after the proposed transaction;

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

(d) information regarding any potential impact of the transaction on rates and service of subscribers; and

(e) any material contracts that relate to the proposed transaction as it affects the operations of the Company under this Agreement and, upon reasonable request by the City, all material documents and other information related or referred to therein and which are necessary to understand the proposed transaction;

provided, however, that if the Company believes that the requested information constitutes Confidential Information, then the Company may label such information accordingly pursuant to the procedures set forth in § 6.1.

7.2. Pre-Approved Transfers. Notwithstanding anything to the contrary in this Agreement, any sale, assignment, or other form of transfer of the Company, System, or the Franchise granted hereunder, which would otherwise require approval under this Section 7 shall be deemed approved by the City (although the Company must provide notice to the City of such sale, assignment, or transfer and the City may require appropriate documentation of such sale, assignment, or transfer) if such sale, assignment or transfer is: (i) to a direct or indirect subsidiary of the Company that is, as of the Effective Date, wholly owned by the Company; (ii) to an entity of which the Company is, as of the Effective Date, a direct or indirect subsidiary wholly owned by such entity; (iii) 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 (iv) a transfer made to another Information Services franchisee, provided that such transfer shall not reduce the compensation or any other payment due to the City under the transferor's and transferee's Information Services Franchises.

7.3. City Action on Transfer. To the extent consistent with applicable law, the City may, with respect to any transaction covered by § 7.1 requiring approval by both DoITT and the FCRC: (i) grant; (ii) grant subject to conditions directly related to concerns relevant to such transaction; or (iii) deny its approval of the transaction. To the extent consistent with federal law, DoITT may waive in writing any requirement that information be submitted as part of the transfer application covered by § 7.1, without thereby waiving any rights the City may have to request such information after the application is filed.

7.4. Subsequent Approvals. The City's approval of a transaction described in § 7.1 in one instance does not constitute approval of any subsequent transaction subject to such section.

7.5. Approval Does Not Constitute Waiver. Approval by the City of a transfer described in § 7.1 will not constitute a waiver or release of any of the rights of the City under this Agreement, whether arising before or after the date of the transfer, except that upon full assumption of the terms of this Agreement by an approved transferee, the transferor shall be fully released from any obligations accruing after the date of such assumption.

7.6. No Consent Required for Transfers Securing Indebtedness. The Company will not be required to file an application or obtain the consent or approval of the City for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Company in the System, system assets or the Franchise granted hereunder in order to secure indebtedness, provided that any such transaction must comply with § 7.8. However, the Company must notify the City within ten days after any such transaction and describe the measures taken to ensure compliance with § 7.8.

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

7.8. No Subordination.

7.8.1. Notwithstanding any other provision of this Agreement, the Company shall not enter into any agreement with any Person granting an encumbrance, lien, or other interest in the System of any type or any kind that would affect the rights or interests of the City under the terms of this Agreement. For the avoidance of doubt, the City's rights in the event of default, termination or expiration, the City's rights to payment, and the Company's obligation to maintain the Security Fund will remain superior in interest to that of any Person under any and all sets of circumstance, including without limited, any case or proceeding involving the Company under the United States Bankruptcy Code, 11 U.S.C. sections 101 *et seq.* and any action to enforce any agreement to which the Company is a party. For the further avoidance of doubt, this provision is intended to constitute a subordination agreement within the meaning of Section 510(a) of the Bankruptcy Code and to be enforceable as set forth therein.

7.8.2. In the event that the Company has entered or will enter into any agreement with any Person granting an encumbrance, lien, or other interest in the System of any type or kind, the Company shall include in such agreement a provision substantially in the form of the following:

"Notwithstanding any other provision of this Agreement, nothing herein shall create an encumbrance in any assets of the Company that would affect the rights or interests of the City of New York ("the City") under the terms of the Information Services Franchise Agreement by and between the Company and the City, including but not limited to the City's rights upon default, termination, or expiration. For the avoidance of doubt, the City's rights and interests under the Information Services Franchise Agreement will not be altered or impaired by the transactions contemplated by this Agreement, including without limitation, any case or proceeding involving the Company under the United States Bankruptcy Code, 11 U.S.C. sections 101 et seq. and any action to enforce any agreement among the parties hereto. Furthermore, the parties agree that this Agreement will be read in such manner as to be consistent with the City's and the Company's rights or obligations under the Information Services Franchise Agreement. In the event of a conflict, the Information Services Franchise Agreement will be given greater effect and take precedence over the terms and conditions of this Agreement."

7.8.3 In the event that the Company has entered or will enter into any agreement with any Person granting an encumbrance, lien, or other interest in the System of any type or kind, the Company shall ensure that any collateral securing the Company's obligations under such agreement is subject to any of the City's superior rights to such collateral under this Agreement.

Section 8: Liability and Insurance

8.1. Liability and Indemnification. The Company will be liable for, and the Company and each Affiliate (but not including any member of the Company or any owner of such member) will, to the greatest extent allowable by law, indemnify, defend, and hold the City, its officials, agents, servants, employees, attorneys, consultants and independent contractors (the "Indemnitees") harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) (collectively "Liabilities" and each individually a "Liability", and including, without limitation, damages or loss to any real or personal property of, or any injury to or death of, any Person or the City), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of the construction, installation, use, operation, and/or maintenance of the System or otherwise arising out of or related to this Agreement; provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this § 8.1 will not apply to any Liability to the extent caused by gross negligence or intentional tortious acts of the City, its officials, employees, servants, agents, attorneys, consultants or independent contractors, or caused solely by breach of this Agreement by the City. Further, it is a condition of this Agreement that the City assumes no liability, under this Agreement or otherwise, for any Persons or property, except as expressly stated in this Agreement. The terms of § 8.1 through § 8.5 of this Agreement shall survive the expiration or earlier termination of this Agreement.

8.2. Limitation on Liability for Public Work, etc. None of the City, its officials, agents, servants, employees, attorneys, consultants or independent contractors will have any liability to the Company for any damage as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the System

by or on behalf of the Company or the City in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Inalienable Property, or the elimination, discontinuation, closing, or demapping of any Inalienable Property. The City will endeavor to consult the Company prior to any such activity and give the Company a reasonable opportunity to perform such work itself, but the City will have no liability to the Company in the event it does not so consult the Company. All costs to repair or replace the System, or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company; provided, however, that this § 8.2 will not apply to the extent any gross negligence or intentional tortious acts of the City, its officials, employees, servants, agents, attorneys, consultants, or independent contractors or to damage caused solely by breach of this Agreement by the City.

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

8.4. Defense of Claim, etc. Upon demand by the City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Company's insurance carrier (if such claim, action or proceeding is covered by insurance) or by the Company's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Company shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

8.5. Liability for Damages to City Property. The Company shall reimburse, indemnify, and hold harmless the City for any and all loss of or damage to the Inalienable Property or structure of the City occurring during the course of any construction, installation, use, operation, and/or maintenance of the System. This § 8.5 will not apply to loss or damage caused by the gross negligence or willful misconduct of the City.

8.6. Insurance. The Company shall, on the Effective Date, have all insurance required by this § 8.6 and the Company shall ensure continuous insurance coverage in the manner, form and limits required by this § 8.6 throughout the Term and so long as the Company has any portion of the System within the Inalienable Property.

8.6.1. 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 in the aggregate, a minimum Products-Completed Operations minimum limit of $10,000,000, and a minimum Personal and Advertising Injury limit of $10,000,000. 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 cover, inter alia, products liability. 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 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.

8.6.2. 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.

8.6.3. 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 CA 00 01.

(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.

8.6.4. 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, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to 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 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 § 8.6, unless approved 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 § 8.6, 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 § 8.6 shall be the greater of (i) the minimum limits set forth in § 8.6.1, or (ii) the limits provided to the Company as a named insured under all primary, excess, and umbrella policies of that type of coverage.

8.6.5. 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):

- C- 105.2 Certificate of Workers' Compensation Insurance;
- U-26.3 State Insurance Fund Certificate of Workers' Compensation Insurance;
- SI-12 Certificate of Workers' Compensation Self-Insurance;
- GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
- DB-120.1, Certificate of Disability Benefits Insurance;
- DB-155, Certificate of Disability Benefits Self-Insurance;
- Request for WC/DB Exemption (Form CE-200),
- Equivalent or successor forms used by the New York State Workers' Compensation Board; or
- Other proof of such 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 § 8.6.1 above. All certificates of insurance shall also be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form attached as Appendix E 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 § 8.6. Such certificates of insurance shall comply with the requirements of this § 8.6 as applicable;

(d) The Company shall provide the City with a copy of any policy required under this § 8.6 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.

8.6.6. 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 § 8, 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 9: Breaches and Remedies

9.1. Not Exclusive. The Company agrees that the City will have the specific rights and remedies set forth in this § 9 to the fullest extent permitted by law. 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 will 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. The exercise of one or more rights or remedies by the City will not be deemed a waiver by the City of the right to exercise at the same time or thereafter any other right or remedy nor will any delay in, or omission of, the exercise of any remedy be construed to be a waiver by the City of or acquiescence to any default. The exercise of any such right or remedy by the City will not release the Company from its obligations or any liability under this Agreement.

9.2. Default.

9.2.1. Events of Default.

(a) Any of the following will constitute an Event of Default:

(i) any breach, not cured within fifteen days after notice from the City in accordance with § 9.2.2 below, of a provision of this Agreement requiring the Company (a) to make any payment to the City when due, (b) to maintain a liability insurance policy as set forth in § 8.6, or (c) to maintain, renew and/or replenish the Security Fund as required pursuant to this Agreement; or

(ii) any other breach of this Agreement by the Company that is not cured within thirty days (or such longer period as DoITT may deem appropriate in its discretion) after notice pursuant to § 9.2.2 below (provided, however, that no Event of Default will exist pursuant to this clause (ii) if a breach is curable but work to be performed, acts to be done, or conditions to be removed cannot, by their nature,

reasonably be performed, done or removed within the required thirty-day cure period, so long as the Company has commenced curing the same within said thirty-day cure period and shall diligently and continuously prosecute the same promptly to completion pursuant to a schedule identifying the timeline for such completion and procedures for such completion, which schedule shall be provided by the Company to DoITT prior to the expiration of the cure period and become effective only upon approval by DoITT. If the Company subsequently fails to conform to such schedule, such failure shall constitute a breach of this Agreement, there shall be no further cure period applicable to such breach, and such breach shall constitute an Event of Default.

(b) Notice and cure periods provided in this § 9.2.1, or elsewhere in this Agreement, shall not be construed as deferring the accrual of interest on the amount unpaid at the rate set forth in § 3.8 hereof, which interest shall accrue from the date was payment was due.

9.2.2. Notice of Breach and Cure Procedures.

(a) The Commissioner will notify the Company, in writing, of any breach by the Company of an obligation under this Agreement, in accordance with § 10.4 hereof. The notice will specify the breach(es). The Company shall either (i) if applicable, within the period of time specified in (as applicable) § 9.2.1(a) hereof, or such longer period of time as the Commissioner may in the Commissioner's discretion specify in such notice, cure such alleged breach(es); or (ii) in a written response submitted to the Commissioner within fifteen days after the notice of breach, present facts and arguments refuting that a breach has occurred. The submission of such a response, provided there is a bona fide, reasonable basis for such response, as determined by the Commissioner, in the Commissioner's sole discretion, will toll the running of the applicable cure period provided for in § 9.2.1(a) hereof, such tolling to be effective until the City responds in writing to such submission.

(b) If the Company fails to cure the breach within the applicable cure period and fails to submit a response to the Commissioner pursuant to § 9.2.2(a) hereof within the period provided herein for submitting such response, an Event of Default will be deemed to have occurred.

(c) If, after the Company submits a response to the Commissioner pursuant to § 9.2.2(a) hereof, the Commissioner determines, in the Commissioner's sole discretion, that a breach under this Agreement has occurred, the Company must cure such breach within the balance of the time period to cure that remained when the submission was made. If the Company fails to cure within the remaining time, the breach will be deemed to be an Event of Default. For purposes of this § 9, "cure" includes not only the Company coming into compliance with this Agreement on a going-forward basis, but

also compensating the City for any injury or damages it has suffered during the period of non-compliance as a result of such non-compliance.

9.3. Remedies of the City.

(a) Subject to § 9.3(b), upon an Event of Default (or upon any act or failure to act by the Company, or the occurrence of a set of circumstances relating to the Company or its activities, which under common law principles would constitute an anticipatory breach of this Agreement), DoITT may at its option take any one or more of the following actions: cause a withdrawal from the Security Fund; seek money damages (and if such damages are awarded collect such) from the Company as compensation for the breach of this Agreement; seek to restrain by injunction the Event of Default (or in the case of anticipatory breach the anticipated Event of Default); terminate this Agreement pursuant to § 9.3(b); and/or invoke any other available remedy that would be permitted by law. DoITT will give the Company notice in writing when it determines to pursue one or more such remedies, but nothing herein will prevent DoITT from electing more than one remedy, simultaneously or consecutively, for any breach.

(b) DoITT shall have the right to terminate this Agreement prior to its scheduled expiration only in connection with an Event of Default which (i) remains uncured after the expiration of the applicable cure period provided for in § 9.2.1 and (ii) constitutes a material breach of this Agreement that has deprived the City from receiving a significant portion of the rights or other entitlements, as expressly set forth in this Agreement, bargained for by the City (a "material and significant breach"), examples, without limitation, of a material and significant breach being (1) failure to pay any amount due to the City under this Agreement or maintain in effect the Security Fund as set forth in § 5 hereof, (2) if the Company intentionally makes a material false or misleading statement or representation to the City relating to the documentation of the Company's compliance with its obligations under this Agreement, (3) if the Company fails to maintain the insurance coverage required by or otherwise materially breaches § 8 of this Agreement, (4) if the Company engages in a course of conduct intentionally designed to practice fraud or deceit upon the City, (5) if the Company intentionally engages or has intentionally engaged in any material misrepresentation with respect to any representation or warranty contained herein, and (6) any Event of Default which constitutes part of a persistent pattern of failures by the Company to abide by one or more of its obligations under this Agreement, even if a single such failure might not by itself constitute a material and significant breach.

Section 10: Miscellaneous

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

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

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

10.4. Notices. Every notice, order, petition, document, or other direction or communication to be served upon the City or the Company must be in writing and be sent by registered or certified mail, return receipt requested or by a recognized overnight delivery service such as Federal Express. Every such communication to the Company must be sent to its office located at _____, or to such other location in the geographical boundaries of New York City as the Company may designate by notice hereunder to the City from time to time. A copy of each communication covered by the immediately preceding sentence shall be sent to _____, [attention of the President]____. Every communication from the Company must 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 must be sent to DoITT at 2 Metrotech Center, P-1 Mail Room, Attention: General Counsel, Brooklyn, NY 11201 or to such other location in the City as the City may designate by notice hereunder to the Company from time to time. A required copy of each communication from the Company must be sent to New York City Law Department, 100 Church Street, New York, New York 10007, Attention: Chief, Economic Development Division, or to such other location in New York City as the City may designate by notice hereunder to the Company from time to time. Except as otherwise provided herein, the mailing of such notice, direction, or order is equivalent to direct personal notice and will be deemed to have been given when received. Notwithstanding the foregoing, the City and the Company may each designate one or more email addresses through which some or all such notices may be provided, either in lieu of or in addition to the mailings required by this § 10.4, as each may designate.

10.5. General Representations, Warranties, and Covenants.

(a) 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 will not be affected or waived by any inspection or examination made by or on behalf of the City), that, as of the Effective Date:

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

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

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

10.6. Additional Covenants.

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

10.7. Binding Effect. This Agreement will 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 will apply to the Company, its successors, and assigns.

10.8. Rights Upon Termination.

(a) Upon the termination of this Agreement, whether at its scheduled expiration or otherwise, the Company shall at the City's election (i) remove the System at the Company's own cost and expense, pursuant to subsection (e) hereof, and/or (ii) subject to § 10.8(b) below, sell to the City or to the City's designee the portions of the System within the Inalienable Property (subject to the continuing right of the Company, on terms to be negotiated between the City and the Company each acting in good faith, to use the System to support operations outside the geographical boundaries of the City).

(b) The price to be paid to the Company upon an acquisition pursuant to the preceding subsection (a) will be the fair value of the System within the Inalienable Property, with no value allocable to the terminated or expired franchise itself, which price (as determined by the appraisal procedure as described hereafter in this subsection (b)) will be the fair value as that term is used in § 363(h)(5) of the City Charter, as it may be amended, or under any successor provision. The date of valuation for purposes of setting the price referred to in the first sentence of this subsection (b) will be the date of termination of the Agreement. For the purpose of such valuation, the Parties will select a mutually agreeable independent appraiser to compute the purchase price in accordance with industry practice and the aforementioned standards. If they cannot agree on an appraiser in ten days, the Parties will seek an appraiser from the American Arbitration Association. The Parties will instruct the appraiser to make the appraisal as expeditiously as possible, but in no more than sixty days and to submit to both Parties a written appraisal. The Company will provide the appraiser with access to the Company's books and records as necessary to make the appraisal. Notwithstanding anything to the contrary in this Agreement, the Parties will share equally the costs and expenses of the appraiser. No such valuation reached by an appraiser will be deemed binding.

(c) If the Parties agree to apply the valuation identified in the appraisal described in subsection (b) of this § 10.8, the City will notify the Company, within thirty days after receipt of such appraisal, of its election pursuant to subsection (a) above of this § 10.8. If it elects to make the purchase permitted under (a)(ii) above, the City will purchase the same at a closing to occur within a reasonable time (not to exceed twelve months) after its election. The Company agrees, at the request of the City, to continue to

provide service to its then-existing customers to the extent required by any applicable FCC or PSC rules regarding termination or continuity of service and, to the extent not inconsistent with such rules, (i) to operate the System within the Inalienable Property pursuant to the provisions of this Agreement for a period of up to twelve months after the termination of this Agreement, until the City either elects not to purchase any portion of the System within the Inalienable Property, or closes on such a purchase, or (ii) to cease all construction and operational activities affecting the portion of the System to be purchased in a prompt and workmanlike manner.

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

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

(ii) promptly execute all appropriate documents to transfer to the City clear title to the assets being transferred as well as any lawfully assignable contracts, leases, licenses, permits, rights-of-way, and any other rights, contracts or understandings necessary to maintain and operate such assets, as appropriate; and

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

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

(i) this provision will not apply to any portion of the System (regardless of how constructed, installed, used, operated, and/or maintained) which, in the reasonable judgment of the City, either (a) cannot be removed without undue adverse effect on the public or (b) would result in the Company incurring removal costs and expenses that are in excess of or otherwise disproportionate to any public benefit or use of the Inalienable Property reasonably expected by the City to be derived from the removal of such portion of the System;

(ii) in removing the System from the Inalienable Property the Company shall refill and compact, at its own cost and expense, any excavation that it makes and shall leave, in all material aspects, all Inalienable Property and other property in as good condition as that prevailing prior to the Company's removal of the System from the Inalienable Property and without affecting, altering or disturbing in any way any

electric, telephone or other cables, wires, structures or attachments owned by the City or any Person other than the Company;

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

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

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

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

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

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

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

(h) Upon the later of the date 120 days after the termination of this Agreement for any reason or the date of the completion of removal of the System from and associated repair of the Inalienable Property pursuant to this § 10.8 (or in the case of portions of the System that are, pursuant to a City decision

under this § 10.8, not being removed from the Inalienable Property, the date on which the Company delivers documentation confirming transfer of such portion of the System to the City), the Company will be entitled to the return of the Security Fund deposited pursuant to § 5 hereof, or such portion thereof as remains on deposit with the City at said termination, except for all offsets necessary (i) to reflect any withdrawals by the City from the Security Fund permitted pursuant to this Agreement, (ii) to cover any costs, loss or damage incurred by the City as a result of any Event of Default, and (iii) to reimburse the City for any and all costs and expenses incurred by the City related to removal of the System from the Inalienable Property pursuant to this § 10.

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

10.9. MARC. The Company agrees to apply for membership in the Mutual Aid and Restoration Consortium ("MARC") and if accepted for such membership, to execute the then applicable MARC agreement, and be fully active in MARC activities, including participation in MARC alerts, drills, and meetings.

10.10. 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 part 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 as set forth herein.

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 as set forth herein.

10.11. Headings. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and will 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 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 or nonbinary gender, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

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

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

10.14. Survival. Any provision of this Agreement which naturally survives the expiration or earlier Termination of this Agreement does so.

10.15. Survival of Representations and Warranties. All representations and warranties contained in this Agreement will survive the expiration or earlier termination of this Agreement.

10.16. 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 will 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 will 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, will not be deemed an amendment to this Agreement or require the Company's consent.

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

(a) If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in § 10.19 hereof;

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

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

(d) If the Company commences any action against the City in a court located other than in the City and State of New York, then, upon request of the City, the Company shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City of New York.

10.18. 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 may 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.

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

10.20. Matching Provision. In the event that the City, after the tenth anniversary of the Effective Date, enters into a binding, written franchise agreement granting such franchisee other than the Company the right to use the Inalienable Property to provide Information Services in a

manner comparable hereunder, and such new form of franchise agreement contains provisions imposing lesser obligations than are imposed under this Agreement, then the Company may petition DoITT, in writing, for such new form of franchise agreement to replace this Agreement. DoITT shall consider and grant any such petition in order to ensure fair and equitable treatment among the Company and other franchisees, if DoITT, in its sole discretion, reasonably determines that: (i) the Company is in compliance with its obligations under this Agreement and any other franchises, agreements, or other authorizations by and between the Company and the City; and (ii) the obligations imposed by this Agreement, taken in whole or in part, place the Company at a substantial competitive disadvantage in relation to the obligations imposed on the other franchisee. Further, DoITT will review any petition made pursuant to this section that the reason for the imposition of lesser obligations on the other franchisee are not the result of a differing nature of the City's legal authority with respect to such other franchisee or its activities, and that the lesser obligations are not justified by other benefits provided by the Company to the City or its residents.

10.21. Compliance With Certain City Requirements. Not in limitation of the requirements of this Agreement, the Company agrees to comply with the City's "Investigations Clause" and "MacBride Principles", copies of which are annexed hereto as Appendix C, as the same may be amended from time to time.

[DOCUMENT CONTINUES ON NEXT PAGE]

AGREED TO THIS _____ DAY OF _____, 2021

The City of New York:

By: _____
NAME
Deputy Mayor

By: _____
Jessica Tisch
Commissioner, DoITT

Approved to as to form and certified as to legal authority:

_____
NAME
Corporation Counsel

Attest:

By: _____
City Clerk [City Seal]

COMPANY

By: _____
NAME
Title

[Placeholder for notarization page]

Appendix A: Construction Terms

A. Location of Cable

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

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

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

2. Whenever possible, the Company shall, in order to minimize the burden on the public rights-of-way, install its cables and other equipment (not otherwise covered by Section 1(a) above of this Appendix) using existing telephone or utility (as that

term is defined in 47 USC § 224 in as of the Effective Date) ducts, conduits, poles, or similar facilities.

(a) If and when space for the Company to install its cables and related equipment using such existing ducts, conduits, or similar underground facilities cannot be obtained, the Company may install its own such underground facilities, provided that the Company shall first obtain all necessary permits from the City's Department of Transportation and/or other applicable City agencies, including, without limitation, possible land use review pursuant to Department of City Planning requirements and possible requirement of additional compensation in a manner comparable to that referred to in the parenthetical in § 1(b) above of this Appendix (in addition, prior to applying for any such permit, the Company must submit to DoITT for DoITT's approval, and receive DoITT's approval of, a plan indicating all anticipated requests for permits to be made pursuant to this provision, which plan may be updated from time to time by submission and approval of an updated plan);

(b) all above-ground portions of the System will be maintained in accordance with such maintenance standards applicable to such portion as are or may hereafter be established by the City.

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

4. Notwithstanding any provisions to the contrary set forth in this Appendix A or in this Agreement, the Company will be authorized pursuant to this Agreement to install, operate and/or maintain equipment pedestal boxes above ground on the surface of City sidewalks only if (a) the Company abides by the requirements of Attachment I attached to and made a part of this Appendix A and the Agreement and (b) such boxes are used to provide Cable Television Service pursuant to a Cable Television Franchise and/or to provide residential switched telephone service connecting to the public switched telephone network, and (c) such boxes are not located in those portions of the City in which Empire City Subway, Ltd. is required by contract with the City to construct and maintain conduits for communications lines.

B. Additional Construction Terms

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

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

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

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

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

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

      (i) For any installation where the Company initiated a street cut and installed its own duct and cable, wire, fiber optic telecommunications cable or other closed-path transmission medium that may be used in lieu of cable, wire or fiber optic telecommunications cable for the same purposes, all locations of such infrastructure elements must be produced utilizing the City's accurate physical base map (NYCMAP). The Company shall also indicate what type of cable, wire, fiber optic telecommunications cable or other closed-path transmission medium that may be used in lieu of cable, wire or fiber optic telecommunications cable it is using in each location, including above and below ground locations and for both microtrenching and traditional trenching. The submission must be digital — provided via email or secure digital file share, or on an external hard drive if email or digital file share is not possible, and the infrastructure elements depicted must be accurate within

two feet vertically and six inches horizontally, to match with the NYCMAP.

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

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

(c) Upon written notice to the Company, the Commissioner may reasonably change the format requirements described in (b) above. Annually, simultaneously with the first payment due during each calendar year pursuant to § 3.3.2, the Company shall submit to DoITT a certification representing that the most recently submitted mapping information submitted pursuant to this § 5 of this Appendix A is accurate and current as a description of the System installed in the streets of the City pursuant to this Agreement and including a statement of the Company's calculation of its Installation Area as defined in § 3.2.2 of this Agreement, such calculation to include a level of detail reasonably satisfactory to the City. Such certification shall be signed by a licensed professional engineer, except that if the compensation due pursuant to § 3.2 of this Agreement with respect to any calendar year is less than $280,000, the annual certification to be made during the following calendar year may, at the option of the Company, be signed by the chief executive officer of the Company (or if there is no chief executive officer, the individual of equivalent responsibility in the Company), or other officer of the Company designated in writing by such chief executive officer, in lieu of a professional engineer. The Company shall submit to DoITT updates of the mapping information described in this § 5 of this Appendix A promptly upon the completion of construction of each addition or change to the System which results in a change in the Installation Area as defined in § 3.2.2 of this Agreement, which update shall include a calculation of the resulting changes in the Company's Installation Area and the dates such changes became such calculation to include a level of detail reasonably satisfactory to the City. At the City's option, the Company will bear the costs for the City to retain a professional engineering firm to verify footage reports submitted by the Company.

Attachment 1 to Appendix A

STANDARDS FOR ON-STREET

TELECOMMUNICATIONS PEDESTAL STRUCTURES

1. Applicability. The standards described in this Attachment I shall apply, unless and until revised as described in § 10 of this Attachment l, to all "On-Street Pedestal Structures" (hereinafter to as "Pedestal Structures"), for which sidewalk opening permits are granted by the Department of Transportation ("DOT") after November 13, 2000, defined as any communication utility box and related construction, such as foundations and bollards, which are located, in whole or in part, above grade and within the right-of-way of a public street, except when such box is located on a pole.

2. Location Standards

    a. Clearance

        i. Corner Clearance Policy: Pedestal Structures shall comply with Executive Order #22 of April 13, 1995, plus an additional ten feet clearance; that is, there shall be a minimum distance of 20 feet between the "corner," as defined in Executive Order #22 (attached) or any superseding Executive Orders, and any Pedestal Structure.

        ii. The edge of any Pedestal Structure nearest the curb shall be a minimum of 18 inches and a maximum of 24 inches from the curb.

        iii. A minimum clear path of 8 feet or one-half the width of the sidewalk width, whichever is less, shall be maintained. However, in no case shall the minimum clear path be less than 4 feet.

        iv. Minimum Distance between Pedestal Structures and Other Street Furniture: Varies depending on adjoining furniture; see attached Table l.

    b. Required Distance from other Pedestal Structures

        i. A minimum distance of 100 feet shall be maintained between any two Pedestal Structures, regardless of ownership, along any block-front; and

        ii. A maximum of three Pedestal Structures shall be permitted on any single block-front.

3. Dimensional Standards

    a. Height: 2 feet-3 inches minimum and 4 feet maximum (excluding supporting base). The maximum height of any base structure, separate from the Pedestal Structure, shall be 4 inches.

    b. Length (dimension parallel to curb): 6 feet maximum

    c. Width (dimension perpendicular to curb): 2 feet-4 inches maximum

    d. Area:

i. Pedestal Structures greater than 3 feet in height shall have a maximum area as follows:

(1) 7 square feet if the width is less than or equal to 18 inches;

(2) 4.25 square feet if the width is greater than 18 inches;

ii. Pedestal Structures less than or equal to 3 feet in height shall have a maximum area of 14 square feet.

4. General Design Standards

a. All Pedestal Structures shall be constructed of steel or similar durable, vandal resistant materials.

b. Materials shall have a low degree of light reflectivity.

c. Pedestal Structures shall have no sharp edges or protuberances.

d. Advertising Prohibited: No advertising shall appear on any Pedestal Structure.

e. Identifying Information: Each Pedestal Structure shall have the following information permanently displayed on its surface.

i. Name of the telecommunications service provider; and

ii. The name, address and phone number of the telecommunications service provider contact for complaints regarding the pedestal Structure and a statement that the structure is subject to City jurisdiction and that complaints may be made by calling 311.

The required information shall be placed in an easily visible location facing the pedestrian pathway and appear in clearly legible letters a minimum of h inch in height. The logo of the telecommunications service provider may be included with the required information provided that the maximum coverage of all such information, including the logo, shall not exceed 48 square inches.

5. Company Management Statement. The following information shall be provided to the New York City Department of Information Technology and Telecommunications (DoITT) with respect to a proposed on-street Pedestal Structure:

a. Description of potential off-street and pole-mounted locations and reason(s) for their rejection.

b. The address and owner(s) name(s) where the telecommunications service provider has been refused off-street access to install equipment to be placed in the Pedestal Structure;

c. Description of alternate on-street locations which are consistent with these standards and reason(s) for their rejection;

d. When the telecommunications service provider is utilizing more than one size Pedestal Structure within the City, explanation of the technical and/or engineering

requirements for proposal to install other than the smallest Pedestal Box in current use by the provider; and

e. Where the proposed on-street location is determined to be unsatisfactory DoITT may require additional information as to the actions taken pursuant to sections (a), (b) and (c) above as well as to require consideration of additional off-street locations or the installation of a pole-mounted structure.

6. Company Engineering Plans: Submission Requirements. Concurrent with submission of the Company Management Statement, drawings showing the following information shall be provided to DoITT:

   a. Exact location and size of the proposed Pedestal Structure;

   b. Placement and distance of nearest Pedestal Structures;

   c. Placement and distance of other street furniture at and adjoining the proposed location;

   d. Number and location of homes served by the equipment to be installed in the proposed Pedestal Structure;

   e. List of the electronics to be placed in the Pedestal Structure; and

   f. A completed DOT permit form for sidewalk opening.

7. City Agency Approval

   a. DoITT: documentary and on-site review.

   b. Landmarks Preservation Commission approval, as necessary for Pedestal Structures to be located in historic districts

   c. DOT (following DoITT sign-off): review and issuance of sidewalk opening permit.

8. Maintenance. Pedestal Structures, including any supporting base, shall be maintained in accordance with the following:

   a. Any individual Pedestal Structure reported to a telecommunications service provider contact for complaints (identified pursuant to § 4(e)(ii) above) as having, graffiti or stickers shall be cleaned within 5 working days;

   b. The telecommunications service provider shall establish a regular 30-day cleaning cycle, or such other schedule as may be acceptable to DoITT, to ensure that the Pedestal Structure is maintained in a clean condition, free of litter, rust, debris, stickers, graffiti and grime; and

   c. The quarterly preventive maintenance report to DoITT must include certification that all Pedestal Structures were cleaned in accordance with the regular cleaning cycle, as well as a log showing dates of receipt of complaints with regard to individual Pedestal Structures and date of response.

9. Waiver. The Commissioner of DoITT may, in the Commissioner's sole discretion waive or modify these standards in specific cases when 1) compliance with the standards is impossible or impracticable, and precludes the petitioner form providing its standard

telecommunications services and 2) when, in the Commissioner's sole opinion, the public health, safety and general welfare will not be endangered thereby. The petitioner shall request such waiver in writing and shall provide any information requested by DoITT, which may assist the Commissioner in such determination.

10. Revision of Standards. The standards set forth in §§ 2, 3 & 4, and Table 1 of this Attachment 1 shall be subject to revision by the City's Department of City Planning ("DCP") as follows, and to the extent such standards are thus revised, the Company shall thereafter be subject to such revised standards as if they had been expressly set forth herein: DCP may adopt such revised standards provided such revised standards:

    (i) reflect streetscape and urban design considerations,

    (ii) are arrived at after the Company is given 30 days' notice and opportunity to comment in person and in writing and such comments, including any comments with respect to the cost of implementation, are duly considered,

    (iii) are consistent with the ability of the Company to provide the services authorized by the Franchise Agreement of which this Attachment is a part, and

    (iv) do not limit the continued operation and maintenance of the System installed pursuant to a franchise agreement, if any, previously executed by the City and the Company ("maintenance" as that term is used in this clause (iv) is understood to include, without limitation, replacement in kind of individual units as they are damaged or malfunction or otherwise reach the end of their useful life).

TABLE 1:

Minimum Distances Between Street Furniture (from DOT Revocable Consents)

Street Furniture	Minimum Clearance (ft.)
Subway Entrance (open side)	15
Sidewalk Cafes	15
Newsstand	15
Bus Stop (with/without shelter)	15
Fire Hydrant/Standpipe	10
Driveway	10
Bicycle Rack (including bicycles)	8
Street Tree	5
Bench	5
Principal Building Entrance	5
Ramp intended to provide access for people with disabilities	5
Subway Entrance (closed end or side)	5
Public Telephone	5
Planters on the sidewalk not adjacent to the building façade	5
Mailbox	4
Streetlights	4
Parking Meters	4
Edge of Tree Pit	3
Street Signs	3
Utility Hole Covers, Cellar Doors, Areaways	3
Transformer Vault*, Sidewalk Grates	3
All Other Legal Street Furniture	5
*This restriction does not apply to vaults owned by the Company or its Affiliates.	

Appendix B: In-Kind Compensation

Upon reasonable written notice by the City, the Company will provide the City, for the City's use, with ten percent of the capacity of the backbone of the Company's fiber optic network, but in no event more than six fiber strands within such backbone. Company also shall provide the City with additional capacity, equivalent to two fiber strands in addition to the six fiber strands, where the backbone consists of more than 80 strands of fiber. (The term "backbone" as used in this Appendix B will mean any portion of Company's fiber optic network that contains twenty-four or more fiber strands.)

The fiber strands provided to the City in accordance with this Appendix B must be of the same type, quality and capacity standard as the other fiber strands installed. In the event of the use of a technology other than fiber optic strands, reasonably equivalent in-kind compensation will be provided to the City. The fiber strands provided to the City as in-kind compensation hereunder will be owned by the City and the City will hold title to such strands, which title must be free of encumbrance by actions of the Company. Upon termination of this Agreement, the City's title to such strands will remain in effect, except that if the City directs the removal of all or part of the Company's System from the Inalienable Property after termination under § 10.8 of this Agreement, then the City's title to such strands will terminate upon the removal by the Company of those cables removed pursuant to such City direction. The Company shall, as part of its in-kind compensation to the City for use of the public right-of-way maintain and keep in good repair (or provide for the maintenance and good repair of) the fiber strands set aside for the City hereunder to the same standard as it applies to strands used by the Company's customers or by the Company to provide service to its customers. The Parties agree that it is not the intention of this Exhibit B to require the Company to provide "drops" (i.e., electronics and internal wiring located within or serving particular buildings) to the City, although the Company acknowledges that as a necessary element of its obligation to make the capacity described above available to the City as described herein, the Company will provide at no charge reasonable access and assistance as needed to allow the City to connect the City's facilities and equipment to the fiber strands being provided.

Appendix C: Standard City Contract Provisions

I. Investigations Clause

(A) The Parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a governmental agency or authority of New York State (the "State") or New York City (the "City") 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.

(B) (i) 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, or 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 applicable laws of the State, or;

(ii) 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;

(C) (i) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license (hereinafter, the "Commissioner") 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.

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

(D) The penalties that may attach after a final determination by the Commissioner may include but shall not exceed:

(i) 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

(ii) 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.

(E) The Commissioner shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subsections (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in subsections (iii) and (iv) below, in addition to any other information that may be relevant and appropriate:

(i) 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.

(ii) 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.

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (D) above, provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in I(i) 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.

(F) Definitions. For purposes of this Appendix C only, the following terms shall have the following meanings:

(i) The term "license" or "permit" as used in this Appendix C shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

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

(iii) The term "entity" as used in this Appendix C shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

(iv) The term "member" as used in this Appendix C shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

(G) In addition to and notwithstanding any other provision of this Agreement, the Commissioner may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Company fails to promptly report in writing to the Commissioner of Investigation for the City at 80 Maiden Lane, New York, NY 10038, any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the company, or affecting the performance of this Agreement.

II. MACBRIDE PRINCIPLES

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Company stipulates that the Company and any individual or legal entity in which the Company holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Company 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.

B. The Company agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Company is a not-for-profit corporation.

Appendix D: Company Control as of the Effective Date

[to be provided by franchisee]

Appendix E: Certificates of Insurance

CITY OF NEW YORK

CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attachedCertificate of Insurance is accurate in all material respects.

_____
[Name of broker or agent (typewritten)]

_____
[Address of broker or agent (typewritten)]

_____
[Email address of broker or agent (typewritten)]

_____
[Phone number/Fax number of broker or agent (typewritten)]

_____
[Signature of authorized official, broker, or agent]

_____
[Name and title of authorized official, broker, or agent (typewritten)]

State of .....)
) ss.:
County of .....)

Sworn to before me this_____day of_____20____

_____
NOTARY PUBLIC FOR THE STATE OF _____

Appendix F: Corporate Guaranty

In consideration of the award of an Information Services Franchise Agreement ("Agreement") by and between the City of New York and [COMPANY] ("Franchisee"), dated [DATE], we, [GUARANTOR NAME], hereby unconditionally and irrevocably agree to provide all the financial resources necessary for the satisfactory performance of the obligations of the Franchisee under the Agreement and also to be legally liable for the performance of the obligations of the Franchisee in case of default or revocation of the Agreement, to the extent such obligations survive revocation.

_____
Signature

Corporate Seal

_____
Type or Print Name

_____
Date

Appendix G: Safety Information Reporting Clause

1. 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"). Contracted companies include companies that are sole proprietors or independent contractors;

    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 new versions and revisions to such policies and procedures must be submitted after the date of original submission;

    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 ten years;

(i) For the Company and each contracted company performing relevant work within 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;

i. 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.