

NEW YORK CITY FIRE DEPARTMENT

**AGREEMENT ALLOWING USE OF
IN-BUILDING AUXILIARY RADIO COMMUNICATION SYSTEM ON
FIRE DEPARTMENT RADIO FREQUENCIES**

AGREEMENT made as of this ____ day of _____ 20____, between THE CITY OF NEW YORK (“City”), acting by and through its agency, the NEW YORK CITY FIRE DEPARTMENT, with its headquarters at 9 MetroTech Center, Brooklyn, New York, 11201-3857 (“FDNY”), and _____ (“Owner”), the owner of the building located at _____, New York _____ (“Subject Premises”).

Owner Name

Street Address, City Zip Code

WITNESSETH:

WHEREAS, FDNY provides firefighting, emergency rescue, emergency medical service (“EMS”) and other services to the people of New York City; and

WHEREAS, the New York City Building Code requires Owner to install and maintain an In-Building Auxiliary Radio Communication System (“ARC System”), a wireless two-way communication system designed to transmit wireless Fire Department communications, in the Subject Premises, and to maintain such system, including periodic testing, preventative maintenance and repair, in compliance with the requirements of the New York City Fire Code and Fire Department rules; and

WHEREAS, the City, acting through the New York City Department of Information, Technology and Telecommunications (“DOITT”), holds a Federal Communications Commission (“FCC”) license and FDNY is authorized to use such license to transmit for firefighting and emergency medical service purposes on a radio frequency (“RF”) bandwidth (“FDNY Frequencies”); and

WHEREAS, DOITT and FDNY may install signal boosters on the FDNY Frequencies and/or allow building owners to install such boosters, without the need for separate licenses, provided that such boosters do not extend the licensed service contour; and

WHEREAS, Owner has requested permission from FDNY to use the FDNY Frequencies for purposes of installation and maintenance of its ARC System in compliance with the Building Code and Fire Code; and

WHEREAS, in order to install and maintain an ARC System, Owner must first obtain FDNY plan approval of the ARC System design, conduct a commissioning test of the installed ARC system, arrange for and pass an FDNY acceptance test, and obtain an FDNY permit to maintain and operate an ARC System in accordance with Fire Code Sections FC 105.6 and FC 511 (“FDNY Permit”); and

WHEREAS, upon plan approval, FDNY will temporarily authorize Owner's use of the FDNY Frequencies, in accordance with the terms and conditions of this Agreement, for purposes of installing the ARC System and conducting a commissioning test and, upon successful completion of a FDNY acceptance test and obtaining a FDNY Permit, will give final consent to Owner's use of the FDNY Frequencies for the purposes set forth in this Agreement in accordance with the terms and conditions thereof,

NOW, THEREFORE, the parties hereby covenant and agree as follows:

I. CONSENT TO OPERATE ON FDNY FREQUENCIES

- A. FDNY hereby authorizes Owner to operate on the FDNY Frequencies solely to install and maintain an ARC System in the Subject Premises.
- B. Owner acknowledges that the foregoing consent to operate on FDNY Frequencies is solely for purposes of installing and maintaining an ARC System for FDNY use, and does not authorize Owner to operate on such frequencies for any other purpose. Owner has no right to use the FDNY Frequencies on a continuous, regular basis.
- C. Notwithstanding any other provision of this Agreement, FDNY reserves the right to terminate this consent at will, in its sole discretion, with or without cause, upon written notice to the Owner.
- D. This consent is limited to the Owner's use of the FDNY Frequencies solely for the purposes of installing and maintaining the ARC System as set forth in this Agreement. Nothing contained herein shall be construed to authorize the Owner to allow any third party to operate on the FDNY Frequencies at any location or for any purpose, except authorized agents of the Owner in connection with the installation or maintenance of the ARC System in the Subject Premises, including the testing and repair of such system.
- E. Owner's use of the FDNY Frequencies is subject to FCC requirements. Owner's use of the FDNY Frequencies may not interfere with other lawful transmissions. Owner is responsible for preventing and expeditiously correcting any interference caused by its operation of the ARC System on the FDNY Frequencies.
- F. Owner acknowledges that any violation of the terms and condition of this Agreement could cause irreparable harm and injury and could jeopardize public life and safety. Accordingly, FDNY shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to an injunction enjoining and restraining Owner from operating on the FDNY Frequencies in the event of such a violation.
- G. Nothing in this Agreement shall be construed to constitute a warranty or representation by FDNY to Owner that Owner has authority from the FCC or is otherwise in compliance with FCC requirements. Owner shall be solely responsible for ensuring that its operation on such frequencies is conducted in compliance with all FCC requirements.

II. TERM AND TERMINATION

- A. This Agreement shall take effect on the date first set forth above.
- B. The consent granted by this Agreement as of the date first set forth above shall constitute temporary authorization to operate on the FDNY Frequencies for purposes of installing the ARC System and conducting a commissioning test. Such temporary authorization shall terminate on the earlier of: (1) one year from the date first set forth above; (2) a change in ownership of the Subject Premises; (3) the earlier termination of this Agreement by either party, with or without cause, upon written notice to the other party; or (4) the granting of final consent (“Final Consent”) pursuant to Section II(C) below.
- C. Upon FDNY’s issuance of the FDNY Permit, the consent granted by this Agreement to operate on the FDNY Frequencies shall be deemed Final Consent. Such Final Consent shall terminate upon the earlier of: (1) a change in ownership of the Subject Premises; (2) a change in the use or occupancy of the Building; or (3) the earlier termination of the Agreement, by either party, with or without cause, upon written notice to the other party.

III. GENERAL PROVISIONS

- A. This Agreement shall be binding upon the parties hereto, their successors, legal representatives and assigns.
- B. This Agreement may not be assigned by the Owner.
- C. Owner shall maintain a copy of this Agreement and shall present same to FDNY or FCC representatives upon request.
- D. The obligations set forth in Sections III, IV, V, and VI hereof shall survive the expiration of this Agreement or its sooner termination by either party.

IV. INDEMNIFICATION

- A. Nothing contained herein shall be construed to hold FDNY, the City of New York, its agencies, officers, employees or agents, including FDNY, responsible for Owner’s installation or maintenance of the ARC System at the Subject Premises or Owner’s use of the FDNY Frequencies.
- B. Owner shall indemnify and hold the City of New York, its agencies, officers, employees and agents, including FDNY (“Indemnitees”), harmless from any and all liability, claims, causes of action, judgments, damages, penalties and expenses (including reasonable attorneys’ fees) for personal injury or property damage arising from Owner’s installation or maintenance of the ARC System at the Subject Premises or Owner’s use of the FDNY Frequencies.

V. NOTICES

- A. Except as otherwise specifically provided herein, any notices pursuant to this Agreement shall be delivered; mailed via certified mail, return receipt requested;

or faxed and mailed; to the following representatives, or such other representatives that the parties designate in writing:

For FDNY:

Deputy Commissioner for Strategic Initiatives and Policy
New York City Fire Department
9 MetroTech Center, 8th Floor
Brooklyn, NY 11201-3857

With a copy to:

General Law Unit
New York City Fire Department
9 MetroTech Center, 4th Floor
Brooklyn, NY 11201-3857

For Owner:

Name: _____
Title: _____
Business Address: _____

VI. APPLICABLE LAW AND VENUE

- A. This Agreement shall be deemed to be executed in New York City, regardless of the domicile of Owner, and shall be governed by and construed in accordance with the laws of the State of New York, regardless of the application of conflicts of laws principles.
- B. The parties agree that any and all claims asserted by or against the FDNY arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City or in the courts of the State of New York located in the City and County of New York.

VII. NO THIRD PARTY BENEFICIARY

- A. The provisions of this Agreement shall be for the sole benefit of the parties hereto and no other person or entity shall be a third party beneficiary hereof, including, but not limited to, any employee of Owner.

VIII. MERGER AND MODIFICATION

- A. This Agreement constitutes the entire agreement between the parties and merges all prior discussions, agreements or understandings into it. No prior agreement, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto.

- B. This Agreement may be modified only by a writing signed by authorized representatives of the parties. This Agreement may not be amended, extended or otherwise modified orally.

IN WITNESS WHEREOF, the undersigned authorized representatives of the parties hereto have caused this Agreement to be executed as of the day and date first above written.

THE CITY OF NEW YORK, acting by and through
THE NEW YORK CITY FIRE DEPARTMENT

By

Deputy Commissioner
for Strategic Initiatives and Policy

Date:

PRINT NAME OF COMPANY:

By:

Signature of Authorized Representative

Print Name:

Title:

Date:

[Acknowledgements Attached]

REVIEWED & APPROVED:

General Law Unit
New York City Fire Department

ARC System agreement (4/12/16)

