Cable Franchise Agreement

by and between

The City of New York

and

Time Warner Entertainment Company, L.P.

(Staten Island)

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THIS AGREEMENT (this "Agreement") is entered into by and between the City of New York ("the City"), a validly organized and existing political subdivision of the State of New York, and Time Warner Entertainment Company, L.P., a limited partnership duly organized under the applicable laws of the State of Delaware ("Franchisee").

WHEREAS, the City is a "franchising authority" in accordance with Title VI of the Communications Act, (see 47 U.S.C. § 522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended; and

WHEREAS, pursuant to Section 363(a) of the New York City Charter (the "City Charter"), franchises are to be awarded by the City in accordance with the provisions of authorizing resolutions adopted by the City Council of the City (the "City Council"); and

WHEREAS, the City Council adopted Resolution No. 538 on September 27, 2006 (the "Resolution") which authorizes, until September 27, 2011, the Department of Information Technology and Telecommunications ("DoITT") to grant nonexclusive franchises for the provision of cable television services; and

WHEREAS, on September 16, 1998 a franchise agreement was executed between the City and Franchisee (or the predecessor in interest to Franchisee) granting a franchise for the provision of certain services in the Franchise Area (as hereinafter defined), pursuant to the terms described therein, said franchise agreement referred to hereinafter as the "1998 Franchise"; and

WHEREAS, the scheduled term of the 1998 Franchise expired on September 16, 2008, and Franchisee sought a renewal of its rights to provide Cable Services in the Franchise Area (as hereinafter defined) pursuant to the terms of this Agreement and 47 U.S.C. § 546; and

WHEREAS, the City, pursuant to the terms of the Cable Act (as hereinafter defined), has identified the City's future cable-related community needs and interests and, pursuant to the City Charter, has issued a solicitation for cable television franchise renewals (the "Solicitation") to which Franchisee responded; and

WHEREAS, in response to the Solicitation, Franchisee submitted materials regarding the terms and conditions for its continued operation and maintenance of its Cable System and provision of Cable Services (as hereinafter defined) and other matters; and

WHEREAS, Franchisee and the City have completed arm's-length negotiations regarding the terms and conditions pursuant to which the City intends to grant to Franchisee, and Franchisee intends to accept from the City, a franchise (the "Franchise") described generally in Section 4.1 hereof and more specifically renewing Franchisee's rights to provide Cable Services in the Franchise Area (as hereinafter defined) pursuant to 47 U.S.C. § 546 and pursuant to the complete terms of this Agreement; and

WHEREAS, the City has, with respect to such proposed renewal franchise, complied with the New York State Environmental Quality Act ("SEQRA") (Section 8-0101 *et seq.* of the

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

WHEREAS, the Department of City Planning has determined pursuant to Section 363(c) of the City Charter that the franchise renewal granted pursuant to and consistent with the terms of the Solicitation would not have land use impacts or implications and therefore is not subject to the Uniform Land Use Review Procedure ("ULURP") set forth in Section 197-c of the City Charter; and

WHEREAS, Franchisee has completed all required submissions under the City's VENDEX process, and the City's review thereof has been completed; and

WHEREAS, pursuant to Section 371 of the City Charter, the Franchise and Concession Review Committee (the "FCRC") held a public hearing on a proposed franchise for Franchisee, with respect to the Franchise Area, and including terms of an agreement memorializing the terms and conditions of the proposed franchise; and

WHEREAS, said hearing before the FCRC was held within 30 days of the date that DoITT filed a proposed franchise agreement with the FCRC; and

WHEREAS, a notice of said hearing and a summary of the terms and conditions of the proposed Franchise were properly published in the City Record; and

WHEREAS, at least 15 days, excluding Sundays and legal holidays, elapsed between publication of said hearing notice and summary in the City Record and the commencement of such hearing before the FCRC; and

WHEREAS, before the FCRC hearing, the requirements regarding publication of notice of such hearing as set forth in Section 371 of the City Charter were met; and

WHEREAS, the FCRC has approved the grant to Franchisee of the Franchise and the terms of this Agreement as described herein; and

WHEREAS, pursuant to Section 895.1 of Title 16 of the New York Code of Rules and Regulations, Franchisee's technical ability, financial condition, and character were considered and approved by the City in a full public proceeding affording due process; Franchisee's plans for its Cable System (as hereinafter defined) were considered and found to be adequate and feasible in a full public proceeding affording due process; the Franchise complies with the franchise standards of the NY PSC (as hereinafter defined); and the Franchise is nonexclusive; and

WHEREAS, the City, following said public proceeding, determined that this Franchise granting Franchisee a nonexclusive franchise complies with the franchise standards set forth in the Cable Act, the Resolution, the aforementioned Public Service Law, the regulations of the NY PSC (including any necessary waivers that the parties may seek and obtain) and all other applicable laws and regulations; and

WHEREAS, the City and Franchisee have determined that this Agreement complies with the franchise standards set forth in the Resolution, Section 363 of the City Charter, Section 626 of the Cable Act as amended, Section 222 of the Public Service Law, the regulations of the NY PSC, and all other applicable laws and regulations; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Cable Law and the Communications Act are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1 *Access Channel (or "PEG Channel"):* Any Channel that is a Public Access Channel or a Government/Educational Access Channel.

1.2 *Additional Provided Services* shall be defined as provided in Section 4.1(b) hereof.

1.3 *Affiliate:* Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

1.4 *Application:* Application of Franchisee for a Cable Television Franchise in the City of New York, filed on or about December 3, 2010 in response to the Solicitation.

1.5 *Agreement:* This Agreement, including the Appendices attached hereto and all amendments or modifications hereof.

1.6 *Basic Service:* Any service tier which includes the retransmission of local television broadcast signals.

1.7 *Borough President:* The Borough President of the Borough of the City which constitutes the Franchise Area or in which the Franchise Area lies.

1.8 *Cable Act:* The Cable Communications Policy Act of 1984 (codified at 47 U.S.C. §§ 521-573), as of the Effective Date and as it may thereafter be amended.

1.9 *Cable Law:* The Cable Act, Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official

Compilation of Codes, Rules and Regulations of the State of New York, as amended, to the extent authorized under and consistent with federal law.

1.10 *Cable Service or Cable Services:* Shall be defined herein as it is defined under 47 U.S.C. § 522(6), as of the Effective Date and as it may thereafter be amended.

1.11 *Cable System or System:* Shall be defined herein as it is defined under 47 U.S.C. § 522(7), as of the Effective Date and as it may thereafter be amended.

1.12 *Channel:* Shall be defined herein as a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel.

1.13 *Channel Position:* The numeric or alphanumeric, or such other position or designation on a television receiver, tuner, converter or similar device, which is selected by each Subscriber using a particular device to receive a specific Channel.

1.14 *City:* The City of New York.

1.15 *Closing:* Shall be defined as provided in Section 2.1 hereof.

1.16 *Commissioner:* Shall mean the Commissioner of DoITT, the Commissioner's designee or any successor thereto.

1.17 *Communications Act:* The Federal Communications Act of 1934, as amended, including, without limitation, the Cable Act.

1.18 *Community Access Organization (or "CAO"):* Shall mean the nonprofit corporation that has been designated by the Borough President, as described in Section 8.1.7 of this Agreement, for the purposes described in that section.

1.19 *Controlling Person:* A Person with the ability to exercise de facto or de jure control over day-to-day policies and operations or the management of Franchisee's affairs.

1.20 *Corporation Counsel:* The Corporation Counsel of the City, the Corporation Counsel's designee, or any successor thereto.

1.21 *EDC:* The New York City Economic Development Corporation, or a successor entity of comparable role.

1.22 *Effective Date*: Shall have the meaning set forth therefor in Section 3.1 hereof.

1.23 *DoITT:* The New York City Department of Information Technology and Telecommunications, currently the agency responsible under the New York City Charter for the continuing administration of the Franchise granted hereunder, or any successor thereto.

1.24 *1998 Franchise:* The Cable Television Franchise Agreement for the Borough of Staten Island between the City of New York and Time Warner Cable of New York City, a division of Time Warner Entertainment Company, L.P., dated September 16, 1998.

1.25 *FCC:* The United States Federal Communications Commission, or successor governmental entity thereto.

1.26 *FCRC:* The Franchise and Concession Review Committee of the City of New York.

1.27 *Force Majeure:* An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidents of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's Cable System facilities are attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.28 *Franchise:* The rights of Franchisee as described in this Agreement, subject to the terms, conditions, obligations and duties to which such rights are subject under this Agreement.

1.29 *Franchise Area:* The Borough of Staten Island, including the entire existing territorial limits thereof and such additional areas as may be annexed or acquired so as to be included in said Borough.

1.30 *Franchisee:* Time Warner Entertainment Company, L.P. d/b/a Time Warner Cable of New York City and its lawful and permitted successors, assigns and transferees (including those for which consent of the City is required under Article 13 hereof).

1.31 *Government/Educational Access Channel:* An Access Channel which Franchisee shall make available to the City, at no charge, as provided, and for the purposes described, in Article 8 of this Agreement.

1.32 *Gross Revenue:*

(i) Gross Revenue includes, without limitation (unless expressly excluded hereinafter), all revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee (or any Affiliate) from the operation of the Cable System to provide Cable Service in the Franchise Area, including:

(1) all Subscriber revenues earned or accrued, net of bad debts, with respect to any and all forms and tiers of Cable Service (including, but not limited to, Basic Service, expanded service tiers and premium services) provided by Franchisee over the Cable System in the Franchise Area, including, without limitation, Cable Service related program guides, the installation, disconnection or reconnection of Cable Service;

revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, DVRs, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee;

(2) video on demand and pay-per-view; and

(3) charges described to Subscribers as attributable to "franchise fees."

(ii) Gross Revenue shall also include all advertising revenue which is received directly or indirectly by Franchisee or any Affiliate from or in connection with the distribution of any service over the System (and including, without limitation, compensation for use of studio or other facilities and equipment associated with production and distribution of any programming or advertising to be distributed as part of a Cable Service). Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

(iii) Gross Revenue shall also include revenues from the lease of channel(s) or channel capacity.

(iv) Gross Revenue shall also include compensation received by Franchisee that is derived from the operation of the Cable System to provide Cable Service with respect to commissions that are paid to Franchisee or an Affiliate providing Cable Service under this Franchise as compensation for promotion or exhibition of any products or services on the Cable System, such as a "home shopping" or similar channel, subject to the exceptions described below.

(v) In determining Gross Revenue, revenues generated as the result of agreements with Affiliates (for example, agreements with Affiliates that are program service providers pursuant to which Franchisee is entitled to sell advertising time on Affiliate-programmed channels) shall be deemed to be the revenue that would be derived from prevailing market arms-length agreements (with entities that are not Affiliates) of the same type.

(vi) Gross Revenue as defined in this Section 1.30 is intended to include not merely revenue received in cash form but also the fair market value of any consideration received in non-monetary (i.e., barter) transactions for goods or services, such as, for example, in return for the provision of Cable Services for which no or a reduced monetary payment is received.

(vii) Gross Revenues derived from Cable Services provided over the Cable System in the Franchise Area that are provided to Subscribers as part of a bundle of services that include Non-Cable Services shall be treated in accordance with Section 10.5 hereof.

(viii) Notwithstanding anything to the contrary in this Section 1.32, to the fullest extent permitted by applicable law and during whatever portion of the Term such is permitted by applicable law, each reference to the term "Cable Services" as used throughout this Section 1.32 shall be deemed to also include any Additional Provided Service to the extent permitted under applicable law (recognizing, however, that it is Franchisee's position, which position Franchisee fully reserves, that, under applicable law as of the date this Agreement is

executed, revenue derived from such Additional Provided Services is not subject to cable franchise fees. The City and Franchisee each reserve all of their respective rights with respect to the treatment of revenues derived from the provision of Additional Provided Services, and the City agrees that, absent any modification or clarification of existing law, the City will resolve any dispute between the City and Franchisee as to the treatment of such revenues for any Additional Provided Service solely by means of an action for declaratory judgment before a court or the Federal Communications Commission (to the extent the Commission can provide a forum for such a proceeding), and shall not contend that Franchisee's provision of Additional Provided Services without the payment, under this Agreement, of franchise or other fees with respect to such services constitutes a Default as defined in Article 15 of this Agreement, unless the City has first prevailed in such declaratory judgment action and the decision in such action is final without any further right to appeal.

(ix) Except as provided above, Gross Revenue shall *not* include:

(1) the revenue of any Person, including without limitation, a supplier of programming to Franchisee, to the extent said revenue is also included in Gross Revenue of Franchisee (the intention of this exclusion being to avoid the double-counting of the same revenue twice for the purposes of calculating franchise compensation under this Agreement);

(2) revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System;

(3) bad debts written off by Franchisee in the normal course of its business and in accordance with generally accepted accounting principles (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected);

(4) refunds, rebates or discounts made to Subscribers or other third parties;

(5) any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, provided, however, that any portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System paid to Franchisee or an Affiliate for the sale of such merchandise shall be included in Gross Revenue;

(6) the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer;

(7) the sale of Cable Services to customers, which are exempt, as required or allowed by the City including, without limitation, the provision of Cable Services to public institutions as required or permitted herein;

(8) any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including, without limitation, employees of Franchisee and public or other institutions designated in this Franchise (provided, however, that in any case where its services are provided for no or reduced cash payments but such services are provided in exchange for trades, barters, services or other items of value, the value of such trades, barters, services or other items received shall be included in Gross Revenue, except in the case of services provided to the CAO);

(9) sales tax collections or similar collections from Subscribers of taxes of general applicability imposed upon Franchisee or upon Subscribers by the City, a state, federal or any other governmental entity, if required to be collected by Franchisee and remitted to the taxing entity;

(10) taxes imposed on Subscribers by law, which Franchisee is obligated to collect;

(11) sales of capital assets or sales of surplus equipment;

(12) program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; and

(13) directory or Internet advertising revenue including, but not limited to, yellow pages, white pages, banner advertisement and electronic publishing.

1.33 *Information Services:* Shall be defined herein as it is defined under 47 U.S.C. § 153(20), as of the Effective Date and as it may thereafter be amended.

1.34 [Intentionally Deleted]

1.35 *Landlord:* The term "landlord" shall mean and include the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling, or any designee of the foregoing enumerated Persons formally authorized to approve physical alterations, improvements or modifications to such dwelling including the installation of Franchisee's facilities.

1.36 *Liabilities:* Any and all encumbrances, defects of title, easements, mortgages, security interests or agreements, pledges, liens, charges, damages, expenses, penalties, fines, costs, conditional sales agreements, title retention agreements, claims, assessments, restrictions, liabilities, obligations, debts, commitments, undertakings, taxes, covenants and responsibilities of every kind and character, known and unknown, contingent or otherwise, or arising or existing by operation of law, by judicial decree or judgment, by contract or otherwise, including, without limitation, those evidenced by contracts, agreements, memoranda, indentures, mortgages and security agreements, and conditional sales and other title retention agreements. "Liability" or "Liabilities" shall also mean any damage or loss to any real or personal property of, or any injury to or death of, any Person or the City.

1.37 *Local Franchise Authority (or "LFA" or the "City"):* The City of New York, New York, or the lawful successor, transferee, or assignee thereof.

1.38 *Multiple Dwelling:* Shall have the meaning set forth therefor in New York State Multiple Dwelling Law § 4(7). "MDU" or "Multiple Dwelling Unit" shall mean a household unit within a Multiple Dwelling.

1.39 *Non-Cable Services:* Any service that does not constitute Cable Service pursuant to law, including, but not limited to, Information Services and Telecommunications Services.

1.40 *Non-Residential Subscriber:* A Subscriber that is not a Resident.

1.41 *Non-Standard Installation:* Any installation which does not constitute a Standard Installation as defined in Section 1.51 hereof.

1.42 *Normal Business Hours:* Those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.43 *NY PSC:* The New York State Public Service Commission.

1.44 *PEG:* Public, Educational, and Governmental.

1.45 *Person:* An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.46 *Public Access Channel:* An Access Channel which Franchisee shall make available to the CAO, at no charge, as provided, and for the purposes described, in Article 8 of this Agreement.

1.47 *Public Rights-of-Way:* The surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds and public places or waters within and belonging to the City and any other property within the City, to the extent to which there exist public easements or public rights of way.

1.48 *Resident:* An occupant who: (i) resides in a dwelling which has or is entitled to receive from the City a residential certificate of occupancy, including, without limitation, a private dwelling, class A multiple dwelling, or an interim multiple dwelling; or (ii) has continuously resided in the same building as a permanent resident and who takes occupancy pursuant to a lease (or other similar arrangement) of at least six (6) months duration. For purposes of this Agreement, the terms "private dwelling," "class A multiple dwelling," and "interim multiple dwelling" shall have the same meaning as they have or may have in the New York State Multiple Dwelling Law, as such law may from time to time be amended.

1.49 *Residential Subscriber:* A Subscriber that is a Resident.

1.50 *Solicitation:* Shall be defined as it is defined in the seventh Whereas clause of this Agreement.

1.51 *Standard Installation:* Any installation to a household that constitutes a "home passed," except that with respect to households within a Multiple Dwelling building, only if Franchisee has obtained building access and prepositioned such of its facilities in such Multiple Dwelling building as are necessary for serving requesting households within such building.

1.52 *Subscriber:* A Person who lawfully receives Cable Service over the Cable System.

1.53 *Telecommunication Services:* Shall be defined herein as it is defined under 47 U.S.C. § 153(46), as of the Effective Date and as may thereafter be amended.

1.54 *Title VI:* Title VI of the Communications Act, Cable Communications, as amended.

1.55 *TWC Franchise Agreements:* This Agreement plus the four other franchise agreements executed simultaneously herewith, between the City and Franchisee or Affiliates of Franchisee.

1.56 *TWC Franchisees:* Franchisee and any and all other franchisees under the other TWC Franchise Agreements.

1.57 *TWC Service Area:* The collective area covered by all the "Franchise Areas" as that term is defined in each of the TWC Franchise Agreements, except that with respect to the TWC Franchise Agreement covering the Borough of Brooklyn, the "TWC Service Area" shall be defined as including the Initial Service Area and not the portions of the Franchise Area outside that Initial Service Area.

1.58 *Verizon Franchise Agreement:* The franchise agreement between the City and Verizon New York Inc. executed May 29, 2008.

1.59 *Video Programming:* Shall be defined herein as it is defined under 47 U.S.C. § 522(20), as of the Effective Date and as it may thereafter be amended.

1.60 *Wholly Owned Affiliate*: Any entity of which 100% of the ownership interest is ultimately held, directly or indirectly, by Time Warner Cable Inc. or any successor of Time Warner Cable Inc.

2. CLOSING; CLOSING CONDITIONS

2.1 *Closing:* This Agreement shall be executed and the obligations herein shall commence on the closing of this Agreement (herein referred to as the "Closing"). The Closing shall occur on the first day on which all of the following conditions have been met and this Agreement has been fully executed and delivered:

2.2 *FCRC Resolution:* The FCRC shall have adopted a resolution approving this Franchise;

2.3 *Certified Copies of Resolutions:* Franchisee shall have furnished the City with a certified copy of the resolution(s) duly adopted by the Board of Directors or other authorized representative of Franchisee, approving the execution, delivery and performance of this Agreement and approving the execution, delivery and performance of all other documents, certificates, and other instruments required to be furnished to the City by and pursuant to the terms of this Agreement;

2.4 *Opinion of Franchisee's Counsel:* The City shall have received an opinion dated as of the date of the Closing from outside counsel to Franchisee, comparable in substance to that provided in connection with the 1998 Franchise, and in form reasonabl y satisfactory to the Commissioner and the Corporation Counsel;

2.5 *Representations and Warranties:* Franchisee shall have provided the City with a certificate of an officer of Franchisee certifying that the representations and warranties made by Franchisee in this Agreement are true and correct as of the Closing;

2.6 *Government Approvals:* Franchisee shall have provided the City with evidence of approval of the transactions contemplated by this Agreement from any necessary governmental authorities, and all notice periods and waiting periods required by law to pass in connection with such transactions shall have passed, except the certificate of confirmation to be issued or renewed by the NY PSC pursuant to Section 891.4 of the NY PSC regulations and issuance of an FCC CUID;

2.7 *Performance Bond:* Franchisee shall have furnished to the City the renewed Performance Bond, pursuant to and increased in amount as described in Article 15 hereof;

2.8 *Security Fund/Letter of Credit:* Franchisee shall have taken any necessary actions to continue into the Term the Security Fund/Letter of Credit, pursuant to and as described in Article 15 hereof;

2.9 *Liability Insurance Policy:* Franchisee shall have provided evidence, reasonably satisfactory to DoITT, that it is maintaining its liability insurance policy pursuant to Article 12 hereof;

2.10 *Guaranty:* Franchisee shall have secured and delivered to the Commissioner and the Comptroller a guaranty (the "Guaranty") executed by Time Warner Cable Inc. ("the Guarantor") in the form set forth at Appendix H to this Agreement, which guaranty shall have been authorized, executed and delivered by the Guarantor;

2.11 *W-9 Form:* Franchisee shall have submitted an IRS W-9 form certifying Franchisee's tax ID number;

2.12 *VENDEX:* Franchisee has completed all required submissions under the City's VENDEX process, and the City's review thereof has been completed; and

2.13 *Other Documents:* Franchisee shall have delivered such other documents as are expressly contemplated as deliverable at the Closing by this Agreement and any other documents as may be reasonably requested by the City.

2.14 *Waiver:* To the extent permitted by law, any of the above Closing conditions may be waived by the Commissioner, provided such waiver shall not be a waiver of any substantive requirement of this Agreement as set forth hereinafter.

3. EFFECTIVE DATE AND TERM:

3.1 *Effective Date and Term:*

(a) *Effective Date & Scheduled Termination Date:* This Agreement and the Franchise granted herein shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date") following the Closing (which certificate Franchisee shall submit all required applications for within 30 days of the Closing); provided that implementation of this Agreement shall be subject to the applicable registration provisions of City Charter sections 375 and 328. The term (the "Term") of this Agreement and the Franchise granted herein shall run from the Effective Date until (but not including) July 18, 2020 (the "Scheduled Termination Date"), unless the Franchise is earlier terminated as provided herein. Franchisee shall memorialize the Effective Date by notifying the City in writing of the occurrence of said Effective Date, which notification shall become a part of this Franchise.

(b) *Early Termination Option:* If the City's "Applicable Franchise Fee Collections" attributable to any full calendar year, beginning with calendar year 2012, are less than 77.5% of the "Peak Franchise Fee Collections", then the City shall have the option (to be exercised as described below) to terminate this Agreement and the Franchise granted herein on a date which is 15 months after the date the option is exercised as described in subsection (f) below.

(c) *"Applicable Franchise Fee Collections"* is defined as the sum of (x) the amounts received by the City from Franchisee pursuant to the first sentence of Section 10.1 of this Agreement, plus (y) the amounts received by the City from the Verizon Franchise franchisee under the first sentence of Section 10.1 of said Verizon Franchise (or successor provision thereof of similar effect), to the extent reasonably attributable to the geographic area covered by the TWC Service Area defined in this Agreement, plus (z) the amounts received by the City, from any other franchise or franchises granted by the City for Cable Services, pursuant to a provision comparable to the first sentence of Section 10.1 of this Agreement, to the extent reasonably attributable to the TWC Service Area.

(d) *"Peak Franchise Fee Collections"* as of any date is defined as the highest Applicable Franchise Fee Collections received by the City with respect to the TWC Service Area in any full calendar year during the Term of this Agreement that has occurred prior to said date.

(e) *Applicability of Federal Renewal Procedures.* In the event that the City exercises the Early Termination Option described in subsection (b) above, the City agrees

that the City's determination as to whether such early termination shall be succeeded by a renewal of Franchisee's Franchise rights shall be determined in accordance with the provisions of 47 U.S.C. Section 546 (or successor provisions thereto) as they are in effect at the time, as if the notice contemplated in Section 546(a) thereof had been timely provided, whether or not such notice has actually been timely provided, and the City waives any right it may have to claim that the renewal procedures described in 47 U.S.C. Section 546(b) through (g) would be inapplicable after an exercise of the Early Termination Option because such notice has not been timely provided. Franchisee may, at its discretion, from time to time during the Term provide the City with a conditional notice requesting (as contemplated in 47 U.S.C. Section 546(a)(1)) the commencement of a renewal proceeding consistent with 47 U.S.C. Section 546 if the Early Termination Option is thereafter exercised, and in the event the City exercises the Early Termination Option the City agrees to recognize such conditional notice as having been "timely submission of such notice" as that phrase is used in 47 U.S.C. Section 546(a)(2)(A), but the provision of such conditional notice shall not be necessary for the applicability and enforceability of the City's agreement and waiver as described in the preceding, first sentence of this subsection (e).

(f) *Procedure for Exercise of Early Termination Option*: At any time during the calendar year immediately following a full calendar year for which attributable Applicable Franchise Fee Collections were low enough to trigger the City's Early Termination Option, the Commissioner may, in his or her sole discretion, exercise such Early Termination Option by providing written notice to Franchisee, in accordance with Section 18.6 of this Agreement, that the City is exercising its Early Termination Option and that this Agreement and the Franchise granted hereunder shall therefore terminate (unless renewed pursuant to renewal procedures as described in Subsection (e) above) on the date which is fifteen (15) months from the date of such notice. Franchisee may request documentation from the City showing the City's calculation of the Applicable Franchise Fee Collections and Peak Franchise Fee Collections which resulted in the triggering of the Early Termination Option, and Franchisee may challenge in court the City's determination that the Early Termination Option is applicable. In the event of a challenge in court by Franchisee of the City's determination, this Agreement and the Franchise granted hereunder shall remain in full force and effect pending a final judgment and exhaustion of all appeal rights in such challenge; provided, however, that in the event the City prevails in the court action: (a) the termination of the Franchise shall be deemed to be, or have become, effective fifteen (15) months from the date the City properly provided notice of its exercise of the Early Termination Option; and (b) the provisions of Subsection (e) above will still apply.

(g) *Inapplicability of Early Termination Option:* In the event the City collects franchise compensation from Franchisee calculated to reflect revenues generated from the provision of services offered by Franchisee to its Subscribers which are the type of services defined under federal law (as of the date this Agreement is executed) as "information services" in a manner and to an extent comparable to the manner in which, and the extent to which, it collects franchise compensation hereunder with respect to Cable Services, the provisions of subsections (b), (c), (d), (e) and (f) of this Section 3.1 shall be inapplicable and of no force or effect.

3.2 *Termination Generally:* The termination of this Agreement and the Franchise granted hereunder shall occur upon the earliest to occur of: (i) the Scheduled Termination Date; or (ii) the earlier termination of the Franchise and this Agreement as provided for in this Agreement. The Franchise shall be considered terminated automatically upon any termination of this Agreement as provided hereunder.

3.3 *Renewal on Expiration:* Subject to 47 U.S.C. § 546 and Section 3.1(e) and Articles 14 and 15 of this Agreement, the City reserves the right at the end of the Term to grant, or grant on new terms and conditions, or not grant, renewal of the Franchise without any presumption (other than such as may exist under federal law) in favor of a renewal of the Franchise.

4. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

4.1 *Grant of Authority:* (a) The City hereby grants Franchisee, subject to the terms and conditions of this Agreement, a nonexclusive franchise providing the right and consent to install, operate, repair, maintain, remove and replace cable, wire, fiber optic lines or other transmission medium that may be used in lieu of cable, wire or fiber optic lines for the same purposes, and related equipment and facilities, on, over and under the Public Rights-of-Way in order to provide Cable Services. The City and Franchisee agree that this franchise is a grant of the right to provide cable service pursuant to 47 U.S.C. § 541. It is the City's position that authorization to install non-closed path transmission facilities, such as antennae and related equipment, on, over or under the Public Rights-of-Way is not granted pursuant to this Agreement, although Franchisee is permitted to separately seek a franchise granting such authorization. It is the City's position that the franchise granted hereunder does not include the right or consent to use the Public Rights-of-Way for the transmission of any Information Service or Telecommunications Service, unless such authority is expressly granted hereinafter, although to the extent not thus expressly granted hereinafter Franchisee is permitted to separately seek authority from the City granting such authorization. It is the City's position that the franchise granted hereunder does not include the right or consent to install, maintain or operate any computer kiosks or other similar facilities on the Public Rights-of-Way the purpose of which is the reception and use of an Information Service, or any other service, by pedestrians, vehicles or others users or occupants of the Public Rights-of-Way, although Franchisee is permitted to separately seek authority from the City granting such authorization. Franchisee does not agree with all of these positions of the City, as it believes the City's grant of a franchise hereunder, as a matter of law, provides Franchisee with certain additional rights, and Franchisee reserves all rights, and does not waive any rights, in that regard.

(b) Without limiting the City's authority to argue that separate and additional franchise rights are required to provide Non-Cable Services where, as in this Agreement, it is the City's position that the right to offer such Non-Cable Services has, by express reservation, not been granted, to the extent Non-Cable Services are in fact provided by Franchisee pursuant to claimed legal authority rather than pursuant to one or more separately granted, express written franchises from the City, such shall be referred to in this Agreement as "Additional Provided Services".

(c) The City and Franchisee each reserve all of their respective rights with respect to Franchisee's provision of Non-Cable Services (including as provided in the preceding subsections (a) and (b)); provided, however, that the City agrees that, absent any modification or clarification of existing law, the City will resolve any dispute between the City and Franchisee as to such Non-Cable Services solely by means of an action for declaratory judgment, and shall not contend that Franchisee's provision of Non-Cable Services without the payment, under this Agreement, of franchise or other fees with respect to such services constitutes a Default as defined in Article 15 of this Agreement.

4.2 *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the City reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under law or this Franchise to provide Cable Service.

4.3 *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as may be amended, including but not limited to the Communications Act. Further, the parties to this Franchise agree that this Franchise is consistent with applicable federal and state law and the parties agree to be bound by the terms hereof.

4.4 *No Waiver:* The failure of either the City or Franchisee on one or more occasions to exercise a right under this Franchise, the Cable Law or other applicable state or federal law, or to require compliance or performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance of this Agreement, nor shall it excuse the other (neither the City nor Franchisee) from compliance or performance, unless such right or such compliance or performance has been specifically waived in writing.

4.5 *Construction of Agreement:*

4.5.1 The provisions of this Franchise shall be liberally construed to effectuate their objectives.

4.5.2 Nothing herein shall be construed to limit the scope or applicability of 47 U.S.C. § 545, as amended.

4.5.3 Should any change to applicable law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Agreement, then the parties shall negotiate in good faith to modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on either party of the material alteration. Any modification to this Franchise shall be in writing and shall be subject to Section 222 of the New York Public Service Law and Title 16, Chapter VIII, Part 892, Subpart 892-1, Section 892-1.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York requiring application to the NY PSC and approval of any modification.

4.6 *Police Powers:* Nothing in this Franchise shall be construed to prohibit the City's reasonable, necessary and lawful exercise of the City's police powers, including, without limitation, the implementation and enforcement of the provisions of this Agreement and existing applicable laws and regulations, including, without limitation, the provisions of New York City Administrative Code § 6-115.1 (the "MacBride Principles"), as well as the enactment, adoption, implementation and enforcement of such additional laws and regulations as the City may deem necessary in the exercise of its police power, including, without limitation, any lawful right to compel relocation of Cable System facilities in the Public Rights-of-Way in the event such facilities interfere with sewer and water line work, road-widenings and other adjustments (such as tree plantings) to the Public Rights-of-Way and to maintain consistency with the location of other utility type facilities (provided that, with respect to facilities that have previously been installed with the City's permission in a manner inconsistent with the installation of other utility type facilities in the same area, the TWC Franchisees collectively shall not be required: (a) during any one year to relocate more than 10% of such previously inconsistently-installed facilities installed by the TWC Franchisees; or (b) during the Franchise Term, to relocate more than 50% of such facilities); provided, however, that all such existing and additional laws and regulations are reasonable and not materially in conflict with the privileges granted in this Franchise and are consistent with all federal and state laws, regulations and orders.

4.7 *Restoration and Inspection of Municipal Property:* In order to avoid interference with the City's ability to deliver public services, any municipal property damaged or destroyed by Franchisee in the exercise of its rights hereunder shall be promptly repaired or replaced by Franchisee and restored to pre-existing condition.

4.8 *Restoration of Subscriber Premises:* Franchisee shall ensure that each Subscriber's premises are restored to at least their pre-existing condition if damaged by Franchisee's employees or agents in any respect in connection with the installation, repair, provision or disconnection of Cable Service, provided that Franchisee receives notice of such damage within a reasonable period of time thereof.

5. DEPLOYMENT; PROVISION OF CABLE SERVICE

5.1 *Residential Deployment:* As of the Effective Date, the System shall have passed all households that exist as of the Effective Date within the Franchise Area, except as the Commissioner has approved specific exceptions to such requirement. For purposes of this Agreement a household is "passed" when functioning System facilities have been installed in the street fronting the building in which such household is located, such that Service could be provided to such building in conformance with the provisions of Sections 5.3.1, 5.3.1.1, 5.3.1.2 and 5.3.1.3 (assuming no delays in gaining lawful access to any necessary private right-of-way).

5.2 *Availability of Cable Service to Residents:* Franchisee shall make Cable Service available, in accordance with Section 5.3 hereof, to all residential dwelling units in the Franchise Area, at Franchisee's expense, except that Franchisee may charge a standard installation fee. In addition, Franchisee shall continue to make service available to occupants of all buildings in the Franchise Area to which Franchisee was providing service, as of January 1, 2011, even if such occupants are not defined as Residents, provided such were defined as

Residents in the 1998 Franchise. The parties hereto agree that the terms of this Section 5.2. satisfy the minimum standards set forth in 16 NYCRR Section 895.5.

5.3 *Provision of Service:* Subject to the exceptions set forth in Subsection 5.4 hereof, Franchisee shall make Cable Service available to all households in the Franchise Area. Franchisee agrees that it shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income of residents in a local area.

5.3.1 *Installations of Cable Service – Standard Installations:* Franchisee shall perform all Standard Installations of Cable Service within seven (7) business days after any request for a Standard Installation is received by Franchisee, unless a later date is agreed to with the requesting potential residential Subscriber or except as set forth below.

5.3.1.1 If Franchisee is unable to fulfill a potential residential Subscriber's request for Standard Installation of Cable Service within seven (7) business days of Franchisee's receipt of such request or the later date as agreed to with the requesting potential residential Subscriber (as the case may be), Franchisee shall promptly provide notice to such potential residential Subscriber setting forth: (i) the basis for Franchisee's inability to perform the requested Standard Installation within seven (7) business days or the later date as agreed to with the requesting potential residential Subscriber (as the case may be); and (ii) the date by which Franchisee anticipates performing such Standard Installation. Such notice shall be provided in oral, written, electronic or other format acceptable to the Commissioner; provided, however, that, subject to Subsection 5.4 below, in no event shall Franchisee fulfill such Standard Installation request subsequent to the later of: (i) the date which is seven (7) business days from the date which is seven (7) business days following a potential Subscriber's initial request for Standard Installation or the later date as agreed to with the requesting potential residential Subscriber (as the case may be); or (ii) a further later date agreed to with the Subscriber.

5.3.1.2 All Standard Installations will be in accordance with applicable regulations governing appropriate grounding and connection of equipment to ensure reception of Cable Service.

5.3.1.3 Consistent with the requirements of Appendix A, Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform all Standard Installations.

5.3.2 *Installations of Cable Service – Non-Standard Installations:* Franchisee shall perform all Non-Standard Installations of Cable Service within six (6) months after any such request is received by Franchisee from a potential residential Subscriber, unless either a later date is agreed to with the requesting potential residential Subscriber or Franchisee advises the requesting potential residential Subscriber of the current unavailability of Cable Service at the location as set forth in Subsection 5.4.2.1, except as set forth below.

5.3.2.1 If Franchisee is unable to fulfill a potential residential Subscriber's request for Non-Standard Installation of Cable Service within six (6) months of Franchisee's receipt of such request or the later date as agreed to with the requesting potential residential Subscriber (as the case may be), Franchisee shall promptly provide notice to such potential residential Subscriber setting forth: (i) the basis for the current unavailability of Cable Service at the requesting location; and (ii) a good faith estimate of the date by which Franchisee believes that Cable Service may be available at the location. Such notice shall be provided in oral, written, electronic or other format acceptable to the Commissioner; provided, however, that, subject to Subsection 5.4 below, in no event shall Franchisee fulfill such Non-Standard Installation request subsequent to the later of: (i) the date which is six (6) months from the date which is six (6) months following a potential Subscriber's initial request for Non-Standard Installation or the later date as agreed to with the requesting potential residential Subscriber (as the case may be); or (ii) a further later date agreed to with the Subscriber.

5.4 *Exceptions:* Franchisee's Cable Service availability obligation as set forth in Section 5.3 shall be subject to the following exceptions: (a) the household served is not yet a "home passed" as that phrase is used in this Agreement, (b) for periods of Force Majeure; and (c) periods of delay caused by Franchisee's inability, after good faith efforts, to obtain valid legal authority to access any MDU in the Franchise Area for the purpose of providing Cable Service to units within such MDU on other than commercially unreasonable terms and conditions with respect to each such MDU.

5.4.1 *Commercial Unreasonability:* The phrase "commercially unreasonable terms and conditions" means any one or more of the following circumstances:

5.4.1.1 The landlord is imposing buildout, installation and/or maintenance requirements to serve the MDU that require a financial investment which would result in a return on invested capital ("ROIC") by four (4) years from the date on which installations within the MDU would become Standard Installations that is less than Franchisee's weighted average cost of capital, wherein ROIC = (Net Income + after tax interest)/Net Average Operating Assets;

5.4.1.2 The landlord is requiring removal or other remediation of hazardous materials;

5.4.1.3 The landlord, despite the legal requirements of Public Service Law Section 228, is demanding payment above the compensation contemplated by Section 228; and

5.4.1.4 A bulk sales, exclusive marketing or other arrangement is in effect in the MDU that reduces Franchisee's reasonably anticipated penetration rate resulting in a ROIC by four (4) years from the date on which installations within the MDU would become Standard Installations that is less than

Franchisee's weighted average cost of capital, wherein ROIC = (Net Income + after tax interest)/Net Average Operating Assets.

5.4.2 *Access:* The phrase "Franchisee's inability, after good faith efforts, to obtain valid legal authority" as used herein shall be understood in the context, where applicable, of the legal obligations of landlords under Section 228 of the New York State Public Service Law ("Section 228"), or any successor provision of like effect, and therefore in instances in which Franchisee believes that a landlord is in violation of Section 228, Franchisee is obligated to provide such landlord with notice of Section 228 and the legal obligations imposed upon such landlord pursuant thereto and pursue remedies available thereunder as appropriate in Franchisee's judgment, acting reasonably.

5.4.2.1 *Additional Procedures*: In each case in which Franchisee needs to obtain access to the property in response to a request for Cable Service, Franchisee shall undertake (and document in written form) the following steps within the following time periods:

5.4.2.1.1 Send promptly (but in no event later than thirty (30) days after receipt of a request for Cable Service) to the property owner or managing agent notice of its intent to wire for Cable Service;

5.4.2.1.2 Attempt to negotiate a survey date and wiring method with the property owner or agent;

5.4.2.1.3 If not yet successful in obtaining access, send a second (2nd) notice of intent to wire including specific reference to Franchisee's access rights, and attempt to wire;

5.4.2.1.4 If the property owner or agent prevents wiring, request assistance from the Commissioner and/or the NY PSC; and

5.4.2.1.5 If access is not provided within one hundred and eighty (180) days of the first notice to the property owner or agent of intention to wire, file a petition pursuant to 16 NYCRR § 898.4 seeking an order for entry to the property.

5.4.2.2 The Commissioner may waive, or extend the dates for complying with, the requirements of this Section 5.4.2 upon a showing of good cause by Franchisee.

5.5 *Periodic Reevaluation:* In the event that Franchisee delays service availability to any MDU in the Franchise Area pursuant to the terms of Section 5.4, Franchisee agrees that it will conduct periodic reevaluations of each such MDU to determine whether circumstances have changed in a manner that would enable Franchisee to obtain valid legal authority to access such MDU on commercially reasonable terms and conditions.

5.6 *Service to Previously Unserved Non-Residential Blocks:* By each anniversary of the Effective Date, Franchisee (or, if applicable, the franchisee under one or more other TWC Franchise Agreements) will have installed within the TWC Service Area since the Effective Date not less than the total Minimum Expansion Mileage of fiber optic cable, which will be used, among other things, to provide services to previously unserved non-Residential addresses. At each anniversary of the Effective Date, the total "Minimum Expansion Mileage" shall be defined as the product of 20 multiplied by the number of years that have passed since the Effective Date. The obligation described in this Section 5.6 shall, with respect to this Agreement, end at such time as Franchisee has installed fiber optic cable along every block in the Franchise Area (provided that the end of such obligation under this Agreement is not intended to end or otherwise affect parallel obligations in the other TWC Franchise Agreements, each of which is intended to remain in effect until the same full installation is achieved in the respective portion of the TWC Service Area covered by each such other TWC Franchise Agreement).

5.7 *Service to Previously Unserved Non-Residential Buildings:* To the extent that Franchisee has not previously provided Service in any non-Residential building and there is a non-Residential occupant of such building ready, willing and able to subscribe to Franchisee's Service at the standard commercial rate, then at the City's written request provided pursuant to Section 18.6 hereof, Franchisee will provide such Service to such occupant (at its standard commercial subscription rate) including construction of any facilities necessary to provide such Service; provided, however, that:

(a) the amount that all TWC Franchisees shall be collectively obligated to expend in construction of such facilities in order to provide such Service at the City's written direction shall not exceed an amount which would reduce to zero the Commercial Account, as defined in Section 5.7.1 below and as it stands at the time such written request is made by the City, and

(b) Franchisee shall not be obligated to provide such Service at the City's written direction as described above unless (i) prior to providing the written notice described above, the City has contacted the owner of the building identified in such notice and obtained assurances from said owner that Franchisee will be given access to such building to install its facilities consistent with the Franchisee's standard construction practices, and (ii) thereafter said owner actually provides such access.

The City and Franchisee each agree to use good faith efforts and to cooperate with one another to obtain building access as described in the preceding subsection (b), provided that such "good faith efforts" and cooperation on the part of Franchisee do not include taking the lead or undertaking initial outreach in obtaining the assurances described in clause (i) of the preceding subsection (b).

5.7.1 The "Commercial Account" shall be defined as a dollar amount which initially equals, as of the Effective Date, One Million Two Hundred Thousand Dollars ($1,200,000), and is thereafter (i) reduced by each amount expended by Franchisee in compliance with this Section 5.7 or the following Section 5.8 ("amount expended" as that term is used in this subsection and Section 5.8 below means each of Franchisee's marginal out-of-

pocket costs expended to construct facilities to serve such building plus 8% to reflect overhead costs), and (ii) increased on each anniversary of the Effective Date by the lesser of One Million Two Hundred Thousand Dollars ($1,200,000) or such amount as brings the Commercial Account to its maximum amount of Two Million Four Hundred Thousand Dollars ($2,400,000); provided, however, that the parties acknowledge and agree that the funds comprising the Commercial Account are not required to be segregated into a separate account.

5.8 *Service to the Entry Point for Previously Unserved Non-Residential Buildings:* As an alternative to requesting that Franchisee provide Service to a non-Residential occupant of a building as described in Section 5.7 above, which request under Section 5.7 would obligate Franchisee (subject to all the limitations described above in Section 5.7) to install at its expense all facilities necessary to provide such Service, the City may at its option, make a more limited request that Franchisee install facilities in a non-Residential building (provided that the building is less than twenty stories in height) to the point of entry into the building but not within the building itself, in which event Franchisee would not be obligated to provide Service to any occupant in the building unless and until Franchisee, the building owner, and/or occupants in the building commit sufficient resources to fund installation of facilities within the building itself that are needed to provide Service to occupants. In the event of a request by the City under this Section 5.8, the amount expended by Franchisee to serve such building shall reduce the Commercial Account as contemplated in clause (i) of Section 5.7.1 above to the extent such expenditures are attributable to facilities up to the point of entry to the building and not within the building itself (plus the contemplated markup to reflect overhead set forth in Section 5.7.1, as calculated on such attributable expenditures).

5.9 *Non-Residential Service Planning Meeting:* At the City's request, but not more frequently than once a year, Franchisee will participate in a meeting between the TWC Franchisees and City and/or EDC officials to discuss the TWC Franchisees' future plans for providing Service to non-Residential areas and buildings in the TWC Service Area, in order to facilitate coordination between the City's economic development plans and goals with the plans of the TWC Franchisees. Information received at each such meeting by the City and/or EDC from the TWC Franchisees regarding the future business plans of the TWC Franchisees shall be kept confidential to the fullest extent permitted by law.

5.10 [Intentionally Deleted]

5.11 *Services to Municipal and Other Facilities*: Franchisee shall provide Services to the municipal and other facilities specified in Appendix L to this Agreement under the conditions set forth in said Appendix.

6. SYSTEM FACILITIES; CONSTRUCTION AND MAINTENANCE

6.1 *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, and in a manner that limits disruption to public use of the Public Rights-of-Way, and all work involved in the construction, installation, maintenance and repair of the Cable System shall be performed in a safe, thorough and reliable

manner, and in a manner which protects the City's property from damage. All structures shall be maintained to ensure the safety of the public.

6.2 *System Characteristics:* During the Term hereof, Franchisee's Cable System shall meet or exceed the following requirements:

6.2.1 The System shall initially be designed and operated to provide for a minimum channel capacity of not less than 77 channels on the Effective Date.

6.2.2 The System shall be designed to be an active two-way plant for Subscriber interaction, if any, required for the selection or use of Cable Service.

6.2.3 Franchisee shall throughout the term of this Agreement take all such actions necessary to remain in compliance with Section 7.1 hereof.

6.2.4 The Cable System must conform to all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

6.2.4.1 Cable Law;

6.2.4.2 Occupational Safety and Health Administration ("OSHA") Safety and Health Standards;

6.2.4.3 National Electrical Code; and

6.2.4.4 National Electrical Safety Code ("NESC").

6.3 *Cable System Tests and Inspections:*

6.3.1 Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise, and to ensure that the Cable System components are operating as required; provided, however, that, if and when Franchisee operates a "fiber to the premises" system, Franchisee's testing obligations under this Article 6 shall be limited solely to those tests which are designed for, and applicable to, a fiber optic network. All tests shall be conducted in accordance with federal rules and any applicable United States National Cable Television Association's Recommended Practices for measurement and testing. In the event that the FCC's technical performance standards are repealed or are no longer applicable to the Cable System, such standards shall remain in force and effect until the Commissioner, or a designee thereof, and Franchisee agree to new standards. Further, Franchisee agrees that to the extent the FCC does not adopt technical performance standards for measuring and testing the performance of digital Channels, Franchisee and the Commissioner, or a designee thereof, will confer to develop reasonable tests to ascertain whether Franchisee is providing such digital Channels in accordance with prevailing industry best practices

with regard to transmission performance and quality (provided however, that this provision for digital testing shall only be applicable so long as (1) the Commissioner, acting reasonably and in writing at least once every two years, has determined that there is a reasonable continuing need for such testing, (2) the franchisees under all New York City franchises for the provision of Cable Services are also subject to such testing, and (3) the City is not preempted by federal law from requiring such testing).

6.3.2 Franchisee shall conduct tests as follows:

6.3.2.1 Proof of Performance tests on the Cable System at least once every six (6) months or as required by FCC rules, whichever is more often, except as federal law otherwise limits Franchisee's obligation. In consultation with DoITT, the Cable System monitor test points shall be established in accordance with good engineering practices and consistent with FCC guidelines;

6.3.2.2 Special Proof of Performance tests, as limited by the City, of the Cable System or a segment thereof when Subscriber complaints indicate tests are warranted;

6.3.2.3 Tests shall be supervised by a senior engineer of Franchisee, who shall sign all records of tests provided to the City;

6.3.2.4 The City shall have the right to designate a City employee (or a third party consultant operating on the City's behalf, provided that such third party consultant executes, in advance, a nondisclosure agreement in a form reasonably acceptable to Franchisee) to visually inspect Franchisee's Cable System in order to verify compliance with Section 6.1 hereof and witness and/or review all required Proof of Performance Tests. Franchisee shall provide the City with at least two (2) business days' notice of, and opportunity to observe, any such Proof of Performance Tests performed on the Cable System;

6.3.2.5 Franchisee shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the City upon the City's request. The City shall have the same rights the FCC has to inspect Franchisee's performance test data;

6.3.2.6 If any test indicates that any part or component of the Cable System fails to meet applicable requirements, Franchisee, without requirement of additional notice or request from the City, shall take corrective action, retest the locations and advise the City of the action taken and results achieved, and supply the City with a copy of the results within thirty days from the date corrective action was completed; and

6.3.2.7 The Commissioner may, for good cause shown, waive or limit the system test and inspection provisions in this Section 6.3.

6.4 *Interconnection:* Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the City. In order to facilitate the provision of

Access Channel programming to cable television subscribers in New York City, Franchisee shall, with respect to those locations where Access Channel facilities are collocated with Franchisee facilities, use reasonable efforts in cooperating with any and all other holders of Cable Service franchises granted by the City to interconnect with facilities of such other franchisees (provided that Franchisee may require that any holder of another Cable Service franchise granted by the City seeking such interconnection agree to reasonable terms and conditions in regard to such interconnection). In the event of disputes among Franchisees regarding interconnection activities or responsibilities, DoITT shall make itself available to mediate such disputes, and Franchisee will cooperate fully with reasonable efforts by DoITT to resolve such disputes.

6.5 *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and the State of New York, including the NY PSC's rules and regulations and the current New York EAS Plan, in order that emergency messages may be distributed over the System.

6.6 *Program Services:* Franchisee shall strive to offer over the Cable System a diversity of video programming services, including, without limitation, a broad category of programming that includes locally-based, not-for-profit, and minority-managed public interest educational programming; provided, however, that nothing contained in this Agreement shall be interpreted as a requirement for provision of specific video programming services (except the requirement for provision of PEG Access Channels).

6.7 *Construction and Maintenance Generally:* Franchisee agrees to exercise its rights as described in Section 4.1 above in accordance with the standards of work and operation as set forth in the following Sections 6.7.1 through 6.7.10, and Appendix E attached hereto and incorporated herein (including Attachment 1 to said Appendix E).

6.7.1 *Quality:* In order to assure that the Public Rights-of-Way and the continuing use by the public thereof is adequately protected, all work involved in the construction, operation, maintenance, repair, upgrade and removal of the System located within the Public Rights-of-Way shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, an entity with applicable authority or jurisdiction reasonably determines that any part of the System located within the Public Rights-of-Way is harmful to the public health or safety, then Franchisee shall, at its own cost and expense, take all steps necessary to correct all such conditions.

6.7.2 *Licenses and Permits:* In order to assure that the Public Rights-of-Way and the continuing use by the public thereof is adequately protected, Franchisee shall have the sole responsibility for diligently obtaining, at its own cost and expense, and thereafter complying with, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain, upgrade or repair the System located within the Public Rights-of-Way, 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 Public Rights-of-Way.

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

6.7.4 *No Waiver:* Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the City or of the City's right to require Franchisee, or other Persons using, constructing or maintaining the System, to secure the appropriate permits or authorizations for such use, provided that no fee or charge may be imposed for any such permit or authorization, other than the standard fees or charges generally applicable to all Persons for such permits or authorizations. Any such standard fee or charge shall not be an offset against, or in lieu of, the amounts Franchisee has agreed to pay to the City pursuant to Article 10 of this Agreement.

6.7.5 *Eliminated, Discontinued, Closed or Demapped Streets or Other Public Rights-of-Way:* In the event that all or any part of the Public Rights-of-Way within the Franchise Area 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 Public Rights-of-Way, all rights and privileges of Franchisee acknowledged and recognized pursuant to this Agreement with respect to said (formerly) Public Rights-of-Way, or any part thereof, so eliminated, discontinued, closed, demapped or otherwise recategorized, shall cease upon the effective date of such elimination, discontinuance, closing, demapping or other such recategorization and Franchisee shall, at its own expense (unless such elimination, discontinuance, closure or demapping is implemented in a manner which is illegally discriminatory in its effect on Franchisee or unless the Commissioner agrees otherwise), and at the direction of the City and upon reasonable notice from the City, remove any and all of Franchisee's facilities located within such property by a date not later than the effective date of such elimination, discontinuance, closing, demapping or other recategorization or such later date as the City shall direct. If the possible circumstances described in the first clause of the last sentence of Section 4.1 of the Verizon Franchise come into effect, the City will endeavor to include among the "terms and conditions" referred to in said last sentence of Section 4.1 of the Verizon Franchise provisions comparable to those set forth in this Section 6.7.5 and in the following Section 6.7.6, except to the extent the franchisee under the Verizon Franchise is or has become subject to the obligations described in said provisions as a matter of law such that inclusion of such in such "terms and conditions" would be unnecessary.

6.7.6 *Protection, Relocation, Alteration of the System:* Subject to the provisions of Subsection 6.7.5 above, in the event that the System interferes with a City project involving the Public Rights-of-Way (a "City project involving the Public Rights-of-Way" being defined for these purposes as the installation, construction, upgrade, operation, maintenance, repair, relocation or removal of public works or public improvements affecting the Public-Rights-Of-Way, or a change in the grades, lines or

boundaries of any Public Rights-of-Way) at any time during the Term, then Franchisee shall, at its own cost and expense (unless dedicated funds have been provided to the City by another entity specifically for such purpose, or unless the City is acting in a manner that is illegally discriminatory in effect on Franchisee), upon reasonable notice from the City, promptly protect, alter or relocate the System, or any part thereof, as directed by the City. In the event that Franchisee, after receipt of reasonable notice, refuses or neglects to so protect, alter or relocate all or part of the System, the City shall have the right, upon notice by the City, to break through, remove, alter or relocate all or any part of the System without any liability to Franchisee, and Franchisee shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation (unless dedicated funds have been provided to the City by another entity specifically for such purpose, or unless the City is acting in a manner that is discriminatory in effect on Franchisee).

6.7.7 *City Authority to Move Facilities:* The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any fiber optic lines, wires, cable, amplifiers, appliances or other parts of the System on, over or under the Public Rights-of-Way, in which event the City shall not be liable therefor to Franchisee. However, whenever practicable, the City shall, prior to such cutting or moving, notify Franchisee in writing, and if practicable, provide Franchisee an opportunity to perform the work itself, but in any event the City shall notify Franchisee in writing as soon as possible following any such action.

6.7.8 *Franchisee Required to Move Facilities:* Franchisee shall, upon prior written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move its facilities in the Public Rights-of-Way to permit the moving of said structure. Franchisee may impose a reasonable charge on any Person other than the City for any such movement of its facilities.

6.7.9 *Protect Structures:* In connection with the construction, operation, maintenance, repair, upgrade or removal of the System in the Public Rights-of-Way, Franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmark sites, as well as all other structures within any designated historic district. Franchisee shall obtain the prior approval of the City before undertaking any alteration of any water main, sewerage or drainage system, equipment or facility or any other municipal structure on, over or under the Public Rights-of-Way, required because of the presence of the System. Any such alteration shall be made by Franchisee, at its own cost and expense and in a manner reasonably prescribed by the City. Franchisee agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to its immediately prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Public Rights-of-Way involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of Franchisee.

6.7.10 *No Obstruction:* In connection with the construction, operation, maintenance, upgrade, repair or removal of the System, Franchisee shall not, without the prior consent of the appropriate authorities, obstruct the Public Rights-of-Way, or the subways, railways, passenger travel, river navigation, or other pedestrian or vehicular traffic that is using the Public Rights-of-Way.

6.7.11 *Safety Precautions:*

6.7.11.1 Franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites in the Public Rights-of-Way, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting.

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

7. COMPETITIVE SERVICE AND TECHNOLOGY

7.1 *Competitive Service and Technology:* Franchisee agrees that, throughout the Term, Franchisee will provide Subscribers, and offer to potential Subscribers, a valuable and attractive competitive option in terms of the quality, scope and technical sophistication of the services it provides pursuant to this Franchise. During the ninety day period prior to the third anniversary of the Effective Date, again during the ninety day period prior to the sixth anniversary of the Effective Date, and then again during the ninety day period prior to the ninth anniversary of the Effective Date, Franchisee shall present the City with a report describing its view of the status of then-current technologies being used nationally and internationally to offer the services that Franchisee offers pursuant to this Franchise, and the Franchisee's efforts, in the context of such technologies, to assure continuing compliance with the first sentence of this Section 7.1, but in each instance, only upon the request of the City.

8. PEG SERVICES

8.1 *PEG Set Aside:* In order to ensure universal availability of Public, Educational and Government Access programming, Franchisee shall provide on the Basic Service tier use of seventeen (17) Access Channels in total, subject to, and phased in over the Term as set forth below in, this Section 8.1:

8.1.1 *Continuing Public Access Channels:* Throughout the Term, four (4) Public Access Channels.

8.1.2 *Continuing Government/Educational Access Channels:* Throughout the Term, five (5) Government/Educational Access Channels, one of which is designated by the City for educational Access Channel programming.

8.1.3 *Additional Access Channels:* In addition to providing the Access Channels described in Sections 8.1.1 and 8.1.2 above, Franchisee shall provide the City with the following additional Access Channels on the Basic Service tier, subject to the conditions set forth below:

8.1.3.1 Commencing not later than sixty days after the Effective Date and thereafter throughout the Term, Franchisee shall provide: (i) an additional two (2) Public Access Channels; and (ii) one (1) additional Government/Educational Access Channel.

8.1.3.2 Commencing not later than the later to occur of (x) January 1, 2012, and (y) the one hundred eightieth (180th) day after Franchisee's receipt of a written request from the City for such additional channels, and then thereafter throughout the Term, Franchisee shall provide to the City: (i) one (1) further additional Public Access Channel; and (ii) two (2) further additional Government/Educational Access Channels.

8.1.3.3 Commencing not later than the later to occur of (x) July 15, 2014, and (y) the one hundred eightieth (180th) day after Franchisee's receipt of a written request from the City for such additional channels, and then thereafter throughout the Term, Franchisee shall provide to the City a further additional two (2) Public Access Channels.

8.1.3.4 No single additional Government/Educational Access Channel or additional Government/Educational Access Channels to be provided pursuant to this Section 8.1.3 shall be activated by Franchisee unless (a) the City has provided notice to Franchisee that additional programming is available for each such additional channel, and (b) all existing Government/Educational Access Channels are providing original, non-text, non-duplicative programming for at least eighty percent (80%) of the time between 6:00 AM and 12:00 AM for the preceding six (6) consecutive months. With respect to Public Access Channels, no single additional Public Access Channel or additional Public Access Channels to be provided pursuant to this Section 8.1.3 shall be activated by Franchisee unless all existing Public Access Channels are providing programming for at least eighty percent (80%) of the time between 6:00 AM and 12:00 AM for the preceding six (6) consecutive months

8.1.4 *Fallow Time:* In the event that one or more Public or Government/Educational Access Channels are not being utilized by the City or the CAO's, the provisions of 16 NYCRR 895.4 (c)(12) shall be applicable.

8.1.5 The City hereby authorizes Franchisee to transmit on the Access Channels the Access Channel programming the City submits to Franchisee for such transmission.

8.1.6 (a) All Access Channels shall be provided to Subscribers as part of the same tier of Service as are all those signals (hereinafter "must-carry signals") carried in fulfillment of the requirements of 47 U.S.C. §§ 534 and 535 (provided, however, that Franchisee reserves the right to claim that such a franchise requirement regarding the tier on which Access Channels must be carried is preempted, in whole or in part, by federal law). Provision of Access Channels on "the same tier of service" as must-carry signals, as that concept is expressed in the preceding sentence, shall mean provision of such channels for a package price (for a package of services which include the Access Channels, the must-carry signals and any other channels Franchisee in its discretion chooses to include in such tier). Notwithstanding the preceding provisions of this Subsection 8.1.6(a), (i) while the City and Franchisee each reserve all rights with respect to the format in which Franchisee provides Access Channels, the City agrees not to object to Franchisee's provision of the additional Access Channels required pursuant to Sections 8.1.3, 8.1.3.1, 8.1.3.2 and 8.1.3.3 hereof (as well as one existing Government/Educational Access Channel) in digital format even if other channels that are part of the Basic Service tier are provided in analog format; and (ii) the Commissioner, in his or her discretion, may approve the provision of any Government/Educational or (after consultation with the Community Access Organization) Public Access Channel in any manner that varies from said provisions upon a determination that such variance would be in the City's interest.

(b) Franchisee shall carry Access programming on each of the respective Public or Government/Educational Access Channels as indicated in Appendix J. In the future, Franchisee shall assign the Public or Government/Educational Access Channels on its channel line up as configured elsewhere within the City to the extent such channel assignments do not interfere with any other channels or fall outside the range of the Franchisee's respective channel lineup. Franchisee shall not arbitrarily or capriciously change such channel assignments, and Franchisee shall minimize the number of such changes; provided, however, that Franchisee may change such channel assignments as it deems appropriate so long as (i) Franchisee gives the appropriate CAO or the Government/Educational Access Channel programmer ninety (90) days notice of such change (if commercially practicable) but in no event less than forty-five (45) days, and (ii) Franchisee provides, free of charge, public announcements of such changes that shall include (A) to the extent Franchisee has advertising availability, advertising such Public or Government/Educational Access Channel change on advertising inserts on local channels carrying non-satellite programming in prime time at least thirty (30) seconds per day for the time period of thirty (30) to fifteen (15) days prior to such change and two (2) minutes per day for the fourteen (14) days prior to such change (provided, however, that if Franchisee does not have advertising availability at the commencement of the thirty (30) to fifteen (15) day period, as soon as advertising space becomes available, Franchisee shall then provide the advertising contemplated under this Subsection 8.1.6), and (B) providing notice of such change in at least two monthly Subscriber bill inserts prior to such change (if commercially practicable) but in no event less than one monthly Subscriber bill insert; provided, however, that such bill inserts shall not be necessary in the event the Franchisee provides the requisite notice of such changes to all Subscribers in a letter separate from their bill.

(c) Notwithstanding the preceding subsection (b), but subject to applicable law, Franchisee shall retain, throughout the Term, Channel Positions for Government/Educational Access Channels at Channel Positions 74 and 75, unless the Commissioner in the Commissioner's reasonable discretion approves other Channel Positions for such channels upon a written request by Franchisee (with supporting documentation), provided, however, that nothing in this Section 8.1.6(c) shall be construed to require Franchisee to allocate Channel Positions in a manner that conflicts with existing and/or any future applicable law governing the location of Channels, including, without limitation, the signal carriage and positioning requirements set forth in 47 C.F.R. §§ 76.51-76.70 and 47 U.S.C. §§ 534 and 535, as such may be amended or superseded during the Term of this Agreement. To the extent that Franchisee enters into an agreement with the Community Access Organization regarding Channel Positions for one or more of the Public Access Channels, then notwithstanding anything to the contrary herein, the Channel Positions for Public Access Channels as specified by such agreement, so long as it is in effect, shall be deemed to be required hereunder in lieu of any contrary provisions of this Agreement (except to the extent such affect the Channel Locations for Government/Educational Access Channels, in which event the provisions of this Agreement shall prevail).

8.1.7 The City shall provide a suitable video signal and a suitable audio signal for each Government/Educational Access Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the Government/Educational Access Channel signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and facilities and such cooperation of the City as is reasonably necessary for Franchisee to fulfill such obligations; provided, however, that neither Franchisee nor the required site work contemplated hereunder shall impose any unreasonable material burdens on the City.

8.1.7.1 Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of Government/Educational Access Channel signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to Government/Educational Access Channel facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the City, make such changes in either the equipment and facilities referred to in this Subsection 8.1.7 or in Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

8.1.7.2 The Government/Educational Access Channels shall be placed under the jurisdiction of the Mayor and shall be for the noncommercial use of the City, for noncommercial use by New York City public schools and the New York City Board of Education and other not-for-profit educational institutions chartered or

licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the City.

8.1.7.3 *Government/Educational Access Video on Demand:* In addition to the dedicated Government/Educational Access Channels described in Sections 8.1.2 and 8.1.3 hereof, Franchisee shall also provide to the City capacity on its video on demand server equipment, up to maximum capacity of 25 hours of standard definition programming, for Government/Educational Access Programming (defined below), such that VOD-enabled Subscribers will be able to select and watch such programs on a program-by-program basis using the video on demand system that Franchisee uses to offer other programming on a video on demand basis. Notwithstanding the preceding sentence, however, Franchisee's obligation under said sentence shall be limited to the provision of capacity for Government/Educational Access Programming which is delivered by the City in properly encoded form for use in video on demand systems. As used in this Section 8.1.7.3, the term Government/Educational Access Programming means programming which is, has been or could be provided on a Government/Educational Access Channel in accordance with the terms of this Agreement and applicable law.

8.1.7.4 *High Definition Access Channel:* Upon no less than ninety (90) days written notice from the City to Franchisee, one of the Government/Educational Access Channels being provided by Franchisee pursuant to this Section 8 shall, at the City's option, be provided in high-definition format (with a minimum resolution of 720p or 1080p resolution, the choice of such resolution to be at the City's option, provided such format is being used by Franchisee for at least five other high-definition programming services on the System). If the City is not capable of producing and delivering programming in the selected high definition format by the date described in the preceding sentence, then the obligation of Franchisee to transmit such programming in said format shall be delayed until such capability is achieved.

8.1.8 *Community Access Organizations:* The Staten Island Borough President has designated an independent, not-for-profit, nonmembership corporation, organized pursuant to the New York Not-for-Profit Corporation Law, to serve as the CAO for the Borough, under whose jurisdiction the Public Access Channels shall be placed for purposes of Article 8 of this Agreement. The CAO shall undertake such activities and shall adopt such rules and regulations as are required, and may adopt rules and regulations not inconsistent with this Agreement, the CAO Agreement (as hereinafter defined), a form of which is attached as Appendix C to this Agreement, the Certificate of Incorporation of the CAO, the By-Laws of the CAO, the rules and regulations of the NY PSC, and applicable law. The CAO shall maintain tax-exempt status under Section 501(c) of the Internal Revenue Code of 1986, as amended.

8.1.9 *Use of Public Access Channels.* The Public Access Channels for the Borough shall be under the jurisdiction of the CAO. Such Public Access Channels shall be used for the purpose of distributing noncommercial services by the public, any other charitable, nonprofit purpose or other similar purpose, including, without limitation, the

generation of revenues by activities reasonably related to such uses and purposes, or any other purpose agreed to between Franchisee and the CAO.

8.1.9.1 *Public Access Interconnection:* Franchisee shall effectuate the interconnection of any Public Access Channel facilities with the Cable System for purposes of transmitting the Public Access Channels contemplated in this Article 8 in accordance with the terms of the CAO Agreements (as hereinafter defined).

8.1.10 *No Editorial Control by Franchisee:* Consistent with applicable law, Franchisee shall not exercise editorial control over programming or distribution of services over any Access Channel used by any Person(s), so long as such Access Channel is being used for the purposes authorized herein and except where Franchisee is utilizing any such Access Channel pursuant to the fallow time provisions of the Cable Law.

8.1.11 *Access Channel Quality:* Each Public and Government/Educational Access Channel shall be delivered with transmission quality at least the same as the transmission quality of any other channel on Franchisee's Basic Service tier of service that is not an Access Channel; provided, however, that Franchisee shall have no responsibility to improve upon or modify the quality of any Public or Government/Educational Access Channels content provided to Franchisee by any Public or Government/Educational Access Channel programmer.

8.1.12 *Public Access Video on Demand and High Definition:* In addition to, and not in lieu of, the requirements described above in Sections 8.1.7.3 and 8.1.7.4, to the extent that Franchisee and the CAO have agreed pursuant to separate agreement that Franchisee will provide video on demand and/or high definition, such agreements by Franchisee shall be considered obligations of Franchisee hereunder as if expressly included herein.

8.2 *Government and Educational Access Grant:* Franchisee, together with the other TWC Franchisees, shall provide a combined, annual grant payable to the City to be used in support of the local Government/Educational Access Channel capital needs (the "Annual G/E Grant"). The amount of each Annual G/E Grant shall be an amount calculated by dividing Six Million Fifty Thousand Dollars ($6,050,000.00) by the number of payment due dates which are scheduled to occur prior to July 18, 2020. The first such annual payment shall be due on the sixtieth (60th) day after the Effective Date and each subsequent annual payment shall be due on the sixtieth (60th) day after each anniversary of the Effective Date.[1] Such grant shall be used solely by the City for Government/Educational Access Channel capital costs. Upon request by Franchisee, the City shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 8.2. In addition, Time Warner Franchisees will collectively provide $1.7 million of in-kind support through the cablecasting of thirty second PSAs regarding WNYE's channels as follows:

Year	Amount	# of PSAs @ $500

[1] If, for example, the Effective Date occurs before May 19, 2012, the amount of each Annual G/E Grant will be $672,222.

1	**$475,000**	**950**
2	**432,000**	**865**
3	**432,000**	**865**
4	**60,000**	**120**
5	**60,000**	**120**
6	**60,000**	**120**
7	**60,000**	**120**
8	**60,000**	**120**
9	**60,000**	**120**

8.3 *Community Access Grant:* Franchisee shall pay to the CAO certain funding (the "CAO Grant") pursuant to the terms of a Community Access Organization Grant and Use Agreement by and between the CAO and Franchisee (the "CAO Agreement"), substantially in the form attached hereto as Appendix C. Franchisee and the City acknowledge and agree that, consistent with applicable federal and state law, the City shall not exercise any editorial control over any programming carried on any Access Channels set aside for the CAO pursuant to this Agreement or the CAO Agreement. The CAO Grant, or any portion thereof, shall not constitute or be treated as a deduction or credit against Franchise Fees payable to the City by Franchisee pursuant to this Agreement (nor shall any provision of services or funds to the City pursuant to this Agreement constitute or be treated as such a deduction or credit).

8.4 *Franchisee PEG Liability Immunity:* In accordance with 47 U.S.C. §558, Franchisee shall not incur any liability arising from or in connection with any Access Channels.

8.5 *Recovery of Costs:* To the extent permitted by federal law, Franchisee shall be allowed to recover the costs of the grants referenced in this Article 8 and Section 5.6 from Subscribers and to include such costs as a separately billed line item on the applicable Subscribers' bills. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

9. INET

Requirements for an Institutional Network are set forth in Appendix D.

10. FRANCHISE FEES

10.1 *Payment to City:* Franchisee shall pay to the City a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. In the event that said payments are not received by the City within forty-five (45) days following the end of the applicable calendar quarter, following at least thirty (30) days written notice from the City that the Franchise Fee has not been paid, Franchisee shall pay interest on such overdue Franchise Fee amount at the then-current interest rate set forth in Section 5004 of the New York Civil Practice Law and Rules

(which as of the date of execution of this Agreement is nine percent (9%) per annum) to the City retroactive to the first day that such Franchise Fee payment was due. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded for any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

10.2 *Acceptance of Payment:* No acceptance of any such payment shall be construed as an accord that the payment is the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under this Agreement. Nothing herein shall be construed in such a way to affect a waiver by either party of applicable statutes of limitation with respect to Franchise Fee payments.

10.3 *Supporting Information:* Along with each quarterly Franchise Fee payment, Franchisee shall submit to DoITT, or such other entity as the Commissioner may designate, with a copy to the Comptroller, a report in a form acceptable to the Commissioner (the form of such report that is currently acceptable is attached hereto as Appendix K) showing the basis for the computation for such quarterly Franchise Fee payment.

10.4 *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due. Franchisee shall maintain the records necessary to confirm the accurate payment of Franchise Fees during this period and during the pendency of any litigation.

10.5 *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 10 are provided to Subscribers in conjunction with Non-Cable Services for a single aggregate price, and the total cost of such bundle reflects a discount from the aggregate retail prices of the services contained therein when provided separately, the Franchise Fee shall be applied to the retail price (when sold separately) of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount.

10.5.1 By way of illustrative example of the formula described in the foregoing Section 10.5, if Cable Service A is sold separately at a price of $40 a month, Non-Cable Service B is sold separately at a price of $40 a month and Non-Cable Service C is sold separately at a price of $40 a month, but the three services when purchased together are sold for a single aggregate price of $100 a month, the amount of the $100 per month collected by Franchisee from each Subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be $33.33 per month. As a second example, if Cable Service A is sold separately at a price of $50 a month, Non-Cable Service B is sold separately at a price of $63 a month, Non-Cable Service C is sold separately at a price of $74 a month, but the three services when purchased together are sold for a single aggregate price of $150 a month, the amount of the $150 per month collected by Franchisee from each Subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be $40.11 per month.

10.6 626 Offset: The Franchise Fee as defined herein shall not constitute a set off against the special franchise tax as provided for in N.Y. Real Property Tax Law Section 626; provided, however, that the City agrees that it shall impose the same special franchise tax offset waiver restriction upon all other existing and new providers of Cable Service or cable service (as such term may be defined by other providers) in the Franchise Area expressed in writing in the franchise agreement, or the renewal of any existing franchise agreement of each respective cable provider.

11. REPORTS AND RECORDS

11.1 *Open Books and Records:* Upon reasonable written notice to Franchisee and consistent with Section 11.1.1 below, the City shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise, including, but not limited to, the calculation of Franchise Fees in accordance with Section 10.5 hereof. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Any records to be inspected by the City pursuant to this Article 11 shall be made available by Franchisee to the City in a mutually agreeable format and location, including, at the City's request, at a designated office of Franchisee in the City. Franchisee may identify information being disclosed to the City hereunder as "proprietary or confidential." For purposes of this Section, "proprietary or confidential" information includes, but is not limited to: information related to the Cable System design; trade secrets; Subscriber lists; marketing plans; financial information unrelated to the calculation of Franchise Fees; or other information that is reasonably determined by Franchisee to be competitively sensitive. Subject to applicable law, including but not limited to Article 6 of the New York State Public Officers Law ("FOIL"), any such information disclosed to the City that Franchisee reasonably identifies as confidential or competitively sensitive (including, without limitation, financial information related to the calculation of Franchise Fees) shall be treated by the City as confidential under Section 87(2) (d) of the New York State Public Officers Law, and the City shall disclose such information only to employees, representatives, and agents thereof who have a need to know, or in order to monitor, enforce, or audit Franchisee's compliance with, the provisions hereof. If the City receives a request under FOIL or similar law for the disclosure of information that Franchisee has designated as confidential, competitively sensitive, a trade secret or proprietary, the City shall notify Franchisee of such request. If the City determines in good faith that public disclosure of the requested information is required under FOIL or pursuant to a court order, the City shall so notify Franchisee and before making disclosure shall give Franchisee a reasonable period of time to seek to obtain judicial redress to preclude disclosure. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. Nothing in this Article 11 is intended to impair in any way the authority of the Comptroller under Section 93(b) of the New York City Charter to perform audits. Notwithstanding anything to the contrary set forth in this Agreement, Franchisee shall not be required to disclose information (including its books and records and books and records of an Affiliate) that, in Franchisee's reasonable determination, does not relate to the provision of Cable Service in the Franchise Area pursuant to this Agreement.

11.1.1 *Franchisee's Response to Records Requests:* In the event the City provides Franchisee with a written request to inspect or review Franchisee's books and records pursuant to Section 11.1 above, Franchisee shall, within fifteen (15) days of Franchisee's receipt of such written request, provide the City with access to any information Franchisee is reasonably able to collect in response to such request and shall, within thirty (30) days from receipt of such request, make available to the City all pertinent information in response to such request, consistent with the terms of Section 11.1 above; provided however, that to the extent there is additional information which Franchisee is unable to reasonably collect in such thirty (30) day period, Franchisee shall provide the City with a written notice setting forth the nature of such additional information and the date on which Franchisee shall provide access to such additional information.

11.2 *Annual and Quarterly Reports:* Subject to the confidentiality requirements of Section 11.1 above and upon the determination of need by the Commissioner, Franchisee shall submit a written report to the Commissioner no later than forty-five (45) days after the end of each calendar year or calendar quarter, as the case may be, during the Term of this Franchise (except where otherwise expressly indicated herein), which report shall be in a form reasonably satisfactory to the Commissioner, that shall include the information described in Sections 11.2.1 through 11.2.3.

11.2.1 After July 1, 2012, Franchisee shall provide the City with an annual report regarding any MDUs for which Franchisee is using the "Additional Procedures" contained in section 5.4.2.1 of this Franchise and the status of such procedures.

11.2.2 A quarterly report regarding outages and service interruptions consistent with the form attached hereto as Appendix F, as such may be revised from time to time by reasonable agreement of Franchisee and the Commissioner to appropriately reflect the public interest in reasonable documentation of Franchisee's compliance with the requirements of this Franchise with respect to the minimization of, repair of and provision of credits for, service interruptions and outages.

11.2.3 In addition to the reports to be provided as expressly set forth in this Article 11, Franchisee shall also provide the reports described in Section 10.3 and Appendix A (including but not limited to Sections 2.5.3, 3.4.3, 6.5.3 and 7.5.3 of Appendix A) and Exhibit 2 to Appendix A of this Franchise.

11.3 *Records Required:* Franchisee shall at all times maintain:

11.3.1 Records of all written complaints for a period of six (6) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaint records will not be limited to records of complaints requiring an employee service call;

11.3.2 Records of outages for a period of six (6) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

11.3.3 Records of service calls for repair and maintenance for a period of six (6) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

11.3.4 Records of installation/reconnection and requests for service extension for a period of six (6) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended;

11.3.5 Records documenting Franchisee's compliance with the provisions of Sections 5.2 through 5.4 of this Agreement;

11.3.6 Accurate maps and improvement plans which show the location, size and a general description of all facilities installed in the Public Rights-of-Way and any power supply sources, including voltages and connections (maps shall be based on post-construction inspection to verify location); and

11.3.7 Notwithstanding the requirements of Section 11.1 of this Agreement, upon written notice, additional information that the Commissioner may request pursuant to this Franchise as may be reasonably necessary for the performance of any of the Commissioner's duties or any other City official's duty as it pertains to this Franchise. Franchisee's response to any such request may be provided to the Commissioner in oral or written form as appropriate, in Franchisee's sole discretion.

11.4 *Franchise-Wide Statistics:* Any valid reporting requirement in the Franchise may be satisfied with Franchise-wide statistics, except those related to Franchise Fees and consumer complaints, or if expressly described otherwise in this Franchise.

11.5 *File for Public Inspection:* Throughout the term of this Agreement, Franchisee shall maintain a file available for public inspection during normal business hours at its service centers, or such other business office as may be designated by Franchisee, as required by Appendix A to this Agreement.

12. INSURANCE AND INDEMNIFICATION

12.1 *Insurance:*

12.1.1 *Insurance Specifications:* At or before the Closing, Franchisee shall, at its own cost and expense, obtain (or arrange for continuation of) liability insurance policy or policies, in a form acceptable to the Commissioner, together with evidence acceptable to the Commissioner, demonstrating that the premiums for said policy or policies have been paid and evidencing that said policy or policies shall take

effect and be furnished on or before the Effective Date. Such policy or policies shall be issued by companies duly licensed to do business in the State of New York and acceptable to the Commissioner, but the Commissioner's consent may not be withheld based on the fact that the policy or policies are merged in a policy or policies maintained by an Affiliate or Affiliates adequate to cover the minimum limitations stated below. Unless the Commissioner approves otherwise, such companies must carry a rating by Best of not less than "A". Such policy or policies shall insure (i) Franchisee and (ii) the City and its officers, boards, commissions, elected officials, agents and employees (through appropriate endorsements if necessary) against each and every form of Liability of the Franchisee referred to in Sections 12.6 through 12.9 hereof in the minimum combined amount (for all TWC Franchisees) of a total of Fifty Million Dollars ($50,000,000.00) for bodily injury and property damage. The foregoing minimum limitation shall not prohibit Franchisee from obtaining a liability insurance policy or policies in excess of such limitations, provided that the City, its officers, boards, commissions, elected officials, agents and employees shall be named as additional insureds to the full extent of any limitation contained in any such policy or policies obtained by Franchisee.

12.1.2 *Maintenance* : The liability insurance policy or policies required by Section 12.1.1 hereof shall be maintained by Franchisee throughout the Term of this Agreement and such other period of time during which Franchisee operates or is engaged in the removal of the System. Each such liability insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew." Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, Franchisee shall obtain and furnish to the Comptroller, with a copy to the Commissioner, a replacement insurance policy or policies in a form reasonably acceptable to the Commissioner.

12.1.3 *Increased Insurance Coverage:* The City may, in the event of any changed circumstances which the City reasonably believes materially increases the risks associated with Franchisee's obligations or operations under this Agreement, following the Effective Date of this Agreement, unilaterally alter the minimum limitation of the liability insurance policy or policies required in Section 12.1.1 hereof, to the extent reasonable and customary within the practices of the cable industry.

12.2 *Operations of Franchisee:*

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

(b) Franchisee shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to provide service pursuant to this Agreement and the Franchise only during the effective period of all required coverage (in the event authorization to provide service hereunder ceases by reason of

the non-effectiveness of any such required insurance coverage, such authorization to provide service shall be automatically restored, without any additional required action by any party, upon the effectiveness of all required insurance coverage being restored).

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

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

(ii) If Franchisee fails to provide any of the foregoing notices in a timely and complete manner, Franchisee 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.

12.3 *Insurance Notices, Filings, Submissions:* Wherever reference is made in this Article 12 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Section 18.6 hereof.

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

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

12.6 *Franchisee Indemnification Obligations:* Franchisee shall indemnify, defend and hold the City, its officers, agents and employees (the "Indemnitees") harmless from any and all liabilities, suits, damages, claims and expenses (including, without limitation, reasonable attorneys' fees and disbursements) ("Damages") that may be imposed upon or asserted against any of the Indemnitees arising out of Franchisee's performance of, or its failure to perform, its obligations under this Agreement and/or its provision of services hereunder; provided, however, that the foregoing liability and indemnity obligation of Franchisee pursuant to this Section 12.6 shall not apply to any Damages to the extent arising out of any willful misconduct or gross negligence of an Indemnitee. Insofar as the facts and law relating to any Damages would preclude the City from being completely indemnified by Franchisee, the City shall be partially indemnified by Franchisee to the fullest extent provided by law, except to the extent such Damages arise out of any willful misconduct or gross negligence of any Indemnitee. This indemnification is independent of Franchisee's obligations to obtain insurance as provided under this Agreement.

12.7 *Defense of Claim, Etc:* If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 12.6 hereof, then upon demand by the City, Franchisee shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for or approved by Franchisee's insurance carrier (if the defense of such claim, action or proceeding is provided by the insurance carrier) or by Franchisee's attorneys. The foregoing notwithstanding, in the event an Indemnitee believes additional representation is needed, such Indemnitee may engage its own attorneys to assist such Indemnitee's defense of such claim, action or proceeding, as the case may be, at its sole cost and expense. Franchisee shall not settle any claim with respect to which Franchisee is required to indemnify the Indemnitees pursuant to Section 12.6 without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

12.8 *No Claims Against Officers, Employees, or Agents:* Franchisee agrees not to make any claim against any officer or employee of the City or officer or employee of an agent of the City, in their individual capacity, for, or on account of, anything done or omitted in connection with this Agreement, to the extent that such officer or employee of the City or officer or employee of an agent of the City was acting within the lawful course and scope of his or her employment or agency. Nothing contained in this Agreement shall be construed to hold the City liable for any lost profits, or any consequential damages incurred by Franchisee or any Person acting or claiming by, through or under Franchisee.

12.9 *Limitation on Indemnification:* As between the City and Franchisee, the indemnification obligations of Franchisee pursuant to Section 12.6 above shall not apply to any Damages arising out of the distribution of programming over the Government/Educational Access Channels, the Institutional Network available to and used by the City, and/or the Public Access Channels, to the extent that such claim does not arise out of an act or failure to act by Franchisee other than the distribution of such programming.

13. TRANSFER OF FRANCHISE

13.1 *City Approval Required:* The ownership and control structure of the Franchisee as of the date of execution of this Agreement is set forth in Appendix B hereof. Subject to the provisions of this Article, Franchisee shall apply to the City for approval of any transaction in which any change is proposed with respect to ten percent (10%) or more for voting interests or twenty-five percent (25%) or more for non-voting interests of the ownership of Franchisee, the Cable System, the Cable System assets, or the Franchise by submitting FCC Form 394 or such other form as the FCC may prescribe for that purpose; provided, however, that the foregoing requirements of this Section 13.1 shall not be applicable with respect to: (a) transfers of any ownership interests expressly permitted in the "Permitted Transfers" section, if any, of Appendix B; or (b) which are effectuated as a result of any transactions involving the exchange of publicly traded shares. The application shall be made at least one hundred twenty (120) calendar days prior to the contemplated effective date of the transaction. Such application shall contain complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

13.1.1 all information and forms required under federal law;

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

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

13.1.4 other information necessary to provide an accurate understanding of the financial position of the Cable System before and after the proposed transaction;

13.1.5 information regarding any potential impact of the transaction on Subscriber rates and service; and

13.1.6 any contracts that relate to the proposed transaction as it affects the City and, upon request by the City, all documents and information that are related or referred to therein and which are necessary to understand the proposed transaction; provided, however, that if Franchisee believes that the requested information is confidential and proprietary, then Franchisee must provide the following documentation to the City: (i) specific identification of the information; (ii) a statement attesting to the reason(s) Franchisee believes the information is confidential; and (iii) a statement that the documents are available at Franchisee's designated offices for inspection by the City.

13.2 *City Action on Transfer:* To the extent not prohibited by federal law, the City may: (i) grant; (ii) grant subject to conditions directly related to concerns relevant to the transaction; (iii) deny any such transaction; or (iv) not take action, in which case the transaction shall be deemed granted, unless the requesting party and the City expressly agree in writing to an extension, pursuant to Section 617 of the Communications Act, 47 U.S.C. § 537.

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

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

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

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

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

13.8 *Preliminary Determination Procedure*: In the event that a change in direct or indirect ownership interest or interests in Franchisee, the Franchise, the System or System assets is planned and Franchisee seeks the City's view of whether such transaction is one that would require the City's approval as described in Sections 13.1 and 13.2 above, Franchisee may submit a written request to the Commissioner (in accordance with the notice requirements of Section 18.6 hereof) describing the proposed transaction and seeking a determination as to whether such approval is required and including any arguments Franchisee wishes to make that the consent of the City is not required. Upon review of such written request, the Commissioner shall notify Franchisee 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, Franchisee shall provide such information.

14. RENEWAL OF FRANCHISE

14.1 *Governing Law:* The City and Franchisee agree that any proceedings undertaken by the City that relate to renewal or possible renewal of this Franchise shall be subject to, and shall not be inconsistent with, the Cable Law, including, without limitation, 47 U.S.C. § 546, as such may be amended from time to time.

14.2 *Informal Negotiations:* Notwithstanding anything to the contrary set forth herein, Franchisee and the City agree that at any time during the Term, while affording the public appropriate notice and opportunity to comment consistent with the Cable Law, New York State law and the City Charter, the City and Franchisee may, each acting in its discretion, agree to undertake and finalize, pursuant to 47 U.S.C. §546(h), informal negotiations regarding renewal of the Franchise granted hereunder and, if agreement is reached on the terms and conditions of such a renewal the City may grant such a renewal, consistent with the applicable procedures and requirements of the Cable Law, New York State law and the City Charter.

14.3 *Non-Renewal/Termination:* In the event that (i) the City (acting in accordance with 47 U.S.C. § 546 so long as and to the extent such provision is applicable), at the conclusion of the renewal process provided by law, including any legal challenges and appeals, denies a renewal of the Franchise at the scheduled expiration date of the Term; or (ii) this Agreement is terminated for any other lawful reason prior to the scheduled expiration of the Term, then the Term of the Franchise shall expire, and, except as provided for by applicable law, all rights of Franchisee under the Franchise shall cease, and the rights of the City and Franchisee to the System, or any part thereof, shall be determined as provided in Sections 15.8.3, 15.8.3.1, 15.8.3.1.1, and/or 15.8.3.1.2 hereof, as applicable; provided, however, that the termination of this Agreement and the Franchise granted hereunder shall not, for any reason, operate as a waiver or release of any obligation of Franchisee or any other Person, as applicable, for any liability existing as of such date (i) pursuant to Sections 12.6 and 12.7 hereof, which arose or arises out of any act or failure to act required hereunder prior to the termination; (ii) pursuant to Articles 10 or 11 hereof; and (iii) to maintain in full force and effect the Guaranty described in Section 2.10 hereof, the Performance Bond and Security Fund described in Article 15 hereof, and the coverage under the liability insurance policies required under and in accordance with Article 12 hereof.

14.4 *Consistent Terms:* Franchisee and the City consider the terms set forth in this Article 14 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law as they exist as of the Effective Date.

15. DEFAULT AND REMEDIES

15.1 *Defaults.* In the event of any breach, default, failure or other noncompliance by Franchisee in the performance of any obligation of Franchisee under this Agreement (each such breach, default, failure or other noncompliance being referred to herein as a "Default"), which Default is not cured within the specific cure period provided for in this Agreement (or if no specific cure period is provided for in this Agreement then within the cure period described in Section 15.3 below), then the City may:

15.1.1 make a demand upon the Performance Bond pursuant to the provisions of Section 15.9 herein;

15.1.2 draw down on the Letter of Credit pursuant to the provisions of Section 15.10 herein;

15.1.3 cause a withdrawal from the cash Security Fund, pursuant to the provisions of Section 15.11 herein;

15.1.4 pursue any rights the City may have under the Guaranty;

15.1.5 seek and/or pursue money damages from Franchisee as compensation for such Default (including, as applicable, liquidated damages as contemplated in Section 15.13 hereof);

15.1.6 seek to restrain by injunction the continuation of the Default; and/or

15.1.7 pursue any other remedy permitted by law, or in equity, or as set forth in this Agreement; provided, however, that the City shall only have the right to terminate this Agreement upon the occurrence of a Revocation Default (defined hereinafter).

15.2 *Notice of Default:* If at any time the City believes that Franchisee has committed any Default, the City shall notify Franchisee's designated Franchise manager, and the Franchisee representatives identified in Section 18.6 hereof, of such alleged Default. If, thereafter, the City determines that Franchisee is not in Default, the City shall promptly provide Franchisee with written notice of such determination. However, if the City determines that such notice has failed to result in a resolution of the matter, the City shall then notify Franchisee in writing of the alleged Default and identifying the specific provision of the Franchise on which the alleged Default is based (for purposes of this Article, the "Notice of Default").

15.3 *Franchisee's Right to Cure or Respond:* Except as set forth in Section 15.3.1 below, Franchisee shall have thirty (30) days from receipt of the Notice of Default to: (i) respond to the City, if Franchisee contests (in whole or in part) the allegation of Default; or (ii) cure such alleged Default. Upon cure of any alleged Default, the City shall provide written confirmation that such cure has, to the knowledge of the Commissioner or designated representative thereof, been effected.

15.3.1 With respect to the following Franchise obligations, Franchisee shall have ten (10) days from the receipt of Notice of Default to (i) respond to the City, if Franchisee contests (in whole or in part) the allegation of Default; or (ii) cure such alleged Default: (a) payment of Franchise Fees or Annual G/E Grants; and (b) maintenance of Security pursuant to Sections 15.9 and 15.10.

15.4 *Extended Time to Complete Cure:* Notwithstanding anything in the preceding to the contrary, no Default shall exist if a breach or default is curable, and a cure period is provided therefor in this Article 15 or otherwise, but work to be performed, acts to be

done, or conditions to be removed to effect such cure cannot, by their nature, reasonably be performed, done or removed within the cure period provided, so long as Franchisee shall have commenced curing the same within the specified cure period and shall diligently and continuously prosecute the same promptly to completion.

15.5 *Miscellaneous Matters Regarding Default, Cure and Remedies:* The rights and remedies described in Section 15.1 hereof shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed appropriate by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy, nor shall any delay or omission in taking any action or exercising any remedies with respect to any Default be construed to be a waiver of or acquiescence to any Default. The exercise of any such right or remedy by the City shall not release Franchisee from its obligations or any liability under this Agreement; provided, however, that nothing in this Section 15.5 or in this Agreement is intended to authorize or shall result in the double recovery of damages by the City.

15.6 *Revocation Defaults; Definition of Revocation Default:* A Revocation Default shall mean any of the following occurrences or events:

15.6.1 any failure by Franchisee to maintain in effect the Performance Bond described in Section 15.9 hereof in accordance with the provisions of said section, which failure continues for ten (10) business days after notice;

15.6.2 any failure by Franchisee to maintain in effect the Letter of Credit described in Section 15.10 hereof and/or the cash Security Fund described in Section 15.11 hereof in accordance with the provisions of said sections, which failure continues for ten (10) business days after notice;

15.6.3 if Franchisee intentionally makes a material false entry, or repeated false entries that are material in the aggregate, in the books of account of Franchisee applicable to this Agreement, or a material false statement (or repeated false statements that are material in the aggregate) in reports or other filings submitted to the City (materiality for purposes of this clause being defined as material with respect to accurately documenting Franchisee's compliance with its obligations under this Agreement);

15.6.4 if Franchisee fails to maintain insurance coverage or otherwise materially breaches Article 12 hereof and such failure continues for ten (10) business days after notice from the City to Franchisee;

15.6.5 if Franchisee engages in a course of conduct intentionally designed to practice fraud or deceit upon the City;

15.6.6 if Franchisee intentionally engages or has intentionally engaged in any material misrepresentation with respect to any representation or warranty contained herein;

15.6.7 if there is any transfer of the Franchise other than in accordance with Article 13 hereof;

15.6.8 the conviction, guilty plea or plea of nolo contendere of Franchisee, any Controlling Person, any director or officer of Franchisee, or any employee or agent of Franchisee or of any Controlling Person acting under the express direction or with the actual consent of any of the foregoing, of any offense, including, without limitation, bribery or fraud, arising out of or in connection with this Agreement or the award of the Franchise granted pursuant to this Agreement; provided, however, that such an event shall constitute a Revocation Default with respect to any of the foregoing with respect to a malfeasant director, officer, employee or agent of Franchisee or of any Controlling Person only if Franchisee or the applicable Controlling Person refuses to disassociate itself from, or terminate the employment of, said director, officer, employee or agent;

15.6.9 the conviction or guilty plea of any City officer, employee, or agent of the offense of bribery or fraud with respect to this Agreement which arises out of any act of Franchisee of any Controlling Person, or of any agent or employee thereof acting under the express direction or actual consent of the foregoing;

15.6.10 any abandonment of service in default of the obligations described in Section 15.14 hereof; and

15.6.11 any persistent and repeated pattern of material Defaults, even if individual Defaults constructing such a persistent and repeated pattern are subsequently cured after their occurrence or remediated by recourse to security provided to the City under Sections 15.9 through 15.11 hereof or by other means; provided, however, that this provision shall not apply to alleged Defaults subject to good faith disputes.

15.7 *Remedies of the City for Revocation Defaults:* In the event of a Revocation Default, the City may (in addition to any other remedy which the City may have under Section 15.1 hereof) at its option, give to Franchisee a written notice ("Notice of Revocation"), in accordance with Section 15.8 hereof, stating that this Agreement and the Franchise granted hereunder shall be revoked on the date specified in such notice (which date shall not be less than ninety (90) days from the giving of the notice), and this Agreement and the Franchise granted hereunder shall terminate on the date set forth in such notice as if such date were the date provided in this Agreement for the scheduled expiration of this Agreement and the Franchise granted herein. Notwithstanding the preceding however, during the period between the Notice of Revocation provided pursuant to this Section 15.7 and thirty days prior to the date of revocation set forth in such notice, Franchisee may submit to the City any material it wishes to document that no Revocation Default has occurred or that revocation as a remedy for such Revocation Default would not be in the best interests of the City. If the City after reviewing such material determines that a Revocation Default has not occurred, or determines in its discretion that termination as a remedy for such Revocation Default would not be in the best interests of the City, then the City shall notify Franchisee of its withdrawal of the Notice of Revocation which Notice shall thereby no longer be effective.

15.8 *Revocation/Termination Procedures:* In the event the City has not received a satisfactory response from Franchisee to the Notice of Revocation, it may then seek revocation of the Franchise at a hearing. The City shall cause to be served upon Franchisee, at least thirty (30) business days prior to such hearing, a written notice specifying the time and place of such hearing which shall not be earlier than as provided for in Section 15.7 and stating its intent to revoke the Franchise and the grounds therefor.

15.8.1 *Revocation Hearing:* At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the City, to compel the testimony of other persons as permitted by law, and to question and/or cross-examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

15.8.2 *Revocation Determination*: Following the hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to the City in writing, and thereafter the City shall determine (i) whether an event of Revocation Default has occurred under this Franchise; (ii) whether such event of Revocation Default is excusable; (iii) whether such event of Revocation Default has been cured or will be cured by Franchisee; and (iv) whether it is in the best interests of the City to require termination. The City shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to effect any cure. If the City determines that it will revoke the Franchise, the City shall promptly provide Franchisee with a written determination setting forth the City's reasoning for such revocation. Franchisee may appeal such written determination of the City to an appropriate court, which shall have the power to review the decision of the City de novo. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the City.

15.8.3 *Rights Upon Revocation or Termination:* In the event of a revocation of the Franchise as described in this Section 15.8 (with the result being termination of Franchisee's franchise rights under this Agreement) or any other termination of this Agreement and the Franchise without renewal (provided such has occurred in a manner consistent with federal law), then the removal, acquisition and/or transfer provisions of Section 15.8.3.1 below shall become applicable and, in addition, the City may: (i) direct Franchisee, subject to NY PSC authority, to operate the System on behalf of the City pursuant to the provisions of this Agreement and such additional terms and conditions as are equitable to the City and Franchisee, for a period of up to twelve (12) months; (ii) authorize any other Person to operate the System on behalf of the City; provided, however, that, in such event, Franchisee shall have received such compensation as is contemplated pursuant to the provisions of this Section 15; or (iii) order Franchisee to cease all construction and operational activities in a prompt and workmanlike manner.

15.8.3.1 City's Right To Order Removal or To Acquire or Effect a Transfer of the System.

15.8.3.1.1 The City and Franchisee intend that the System be permanent. However, in the event of unforeseen circumstances that may arise resulting in a termination, without any right of renewal, of the Franchise, under the circumstances described in clause (i) or clause (ii) of the first sentence of Section 14.3, the City, in addition to its rights under Section 15.8.3 above, may, in its sole discretion, but shall not be obligated to, direct Franchisee to remove, at Franchisee's sole cost and expense, all or any portion of the System from all Public Rights-of-Way and other public property within the City, subject to the following: (i) this provision shall not apply to underground cable, which cannot be removed; (ii) in removing the System, or part thereof, Franchisee shall refill and compact, at its own expense, any excavation that shall be made by it and shall leave all Public Rights-of-Way and other public property in as good condition as that prevailing prior to Franchisee's removal of the System and without affecting, altering or disturbing in any way any electric, telephone or other utility cables, wires or attachments (except to the extent such affecting, altering or disturbing is permitted by an agreement between Franchisee and the applicable owner of the cable, wires or attachments); (iii) the City shall have the right to inspect and approve the condition of such Public Rights-of-Way and other public property after removal; (iv) the Security Fund, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all Public Rights-of-Way and other public property; and (v) removal shall be commenced within thirty (30) days of the removal order by the City unless such commencement is delayed because the City does not grant Franchisee necessary permits, licenses, approvals or other authorizations required to begin such work within thirty (30) days, in which case Franchisee shall commence such removal within thirty (30) days following the granting of such required permit(s), license(s), approval(s) or authorization(s), and shall be completed within twelve (12) months thereafter including all associated repair of public property; provided, however, that, in the event the City causes any delays in such removal and associated repair of all Public Rights-of-Way, then the period for completion of such removal and repair of all Public Rights-of-Way shall be extended by the length of time of such delay (e.g., without limitation, after the commencement of the removal, the City requires Franchisee to obtain a permit to perform a portion of such removal work and the City takes 2 months to grant such permit, such 12-month period shall be extended by 2 months), and provided, further, that in the event that it is not commercially reasonable for Franchisee to perform such removal and associated repair of all Public Rights-of-Way within such 12-month period, then Franchisee shall be granted a commercially reasonable time period in which to perform such removal and associated repair of all Public Rights-of-Way.

If, in the reasonable judgment of the Commissioner, which judgment shall be subject to appeal by Franchisee to a court of competent jurisdiction and shall not become final until such a court issues a final, non-

appealable judgment, Franchisee fails to substantially complete such removal, including all associated repair of public property, within the period set forth above, and such failure is the result of actions taken, or the failure to act, by Franchisee and Franchisee is not making good faith efforts to complete such work, then, to the extent not inconsistent with applicable law, the City shall have the right to: (a) declare that (subject to the rights of third parties) all rights, title and interest to the System belong to the City with all rights of ownership, including, but not limited to, the right to operate the System or to effect a transfer of the System to another Person for operation; (b) authorize removal of the System, at Franchisee's cost, by another Person; and (c) to the extent not inconsistent with applicable law, any portion of the System not designated by the City for removal shall belong to and become the property of the City without compensation to Franchisee; and Franchisee shall execute and deliver such documents, as the Commissioner shall request, in form and substance acceptable to the Commissioner, to evidence such ownership by the City. Franchisee shall not be required to assign to the transferee proprietary information in the System, but shall provide, to the maximum extent feasible and practicable, a perpetual (or at least until the later of the end of the term of the Franchise or operation of the System) license to use such proprietary information, on terms reasonably acceptable to Franchisee (including, without limitation, terms ensuring the confidentiality and/or proprietary nature of such information); provided, however, that no such license shall be required with respect to proprietary information that was uniquely developed for use in Franchisee's and/or its Affiliate's cable systems and is not so integral to the operation of the System that the System cannot be operated on a commercially reasonable basis without such information, and provided further that the transferee shall be obligated to use all reasonable efforts to develop or acquire information to substitute for such proprietary information, and upon the development or acquisition, and use, of such substitute information, such license shall terminate.

15.8.3.1.2 *Acquisition or Transfer:*

(a) *Generally:* Subject to subsection 15.8.3.1.2(b) below, upon any termination (without renewal) of the Franchise and as an alternative to ordering removal of the System, the City shall have the right to, and may, in its sole discretion, acquire or effect a transfer to a third party acceptable to the City of all or any part of the System and all components thereof necessary to maintain and operate the System pursuant to the terms of this Agreement. Franchisee shall not be required to assign to the transferee proprietary information in the System, but shall provide, to the maximum extent feasible and practicable, a perpetual (or at least until the later of the end of the term of the Franchise or operation of the System) license to use such proprietary information, on terms reasonably acceptable to Franchisee (including, without limitation, terms ensuring the confidentiality and/or proprietary nature of such information); provided, however, that no such license shall be required with respect to proprietary information that was uniquely developed for use in Franchisee's and/or Affiliate's cable systems and is not so integral to the operation of the System that the System cannot be

operated on a commercially reasonable basis without such information, and provided further that the transferee shall be obligated to use all reasonable efforts to develop or acquire information to substitute for such proprietary information, and upon the development or acquisition, and use, of such substitute information, such license shall terminate.

(b) *Price*: The price to be paid to Franchisee upon an acquisition or transfer by the City to the City or a third party acceptable to the City shall depend upon the nature of the termination. If the Franchise terminates at the scheduled end of the Term and renewal of the Franchise is denied, then the price shall be fair market value, determined on the basis of the System valued as a going concern but with no value allocated to the Franchise itself (i.e., the fair market value of the System valued as a going concern, with a deduction for the value allocable to the Franchise itself) but the price shall in no event exceed the price the City is permitted to pay under the City Charter, unless otherwise preempted by applicable law. If the termination is due to the revocation of the Franchise after a Revocation Default, then the price shall be an equitable price, reasonably determined (provided that such determination shall be subject to challenge by Franchisee in a court of competent jurisdiction) with due regard to the injury to the City and its residents and with no value allocable to the Franchise itself, which price shall in no event exceed the price the City is permitted to pay under the City Charter, unless otherwise preempted by applicable law.

(c) *Valuation Date:* The date of valuation for purposes of any price determination pursuant to subsection (b) above shall be as of a date no later than the day before the City preliminarily elects to acquire or to effect a transfer of the System; provided, however, that the City shall not choose a date with the intent of unreasonably deflating the price. For the purpose of determining such valuation, the City shall select a qualified appraiser experienced in the valuation of cable television systems (provided that Franchisee shall be provided a meaningful opportunity to challenge the qualifications of such appraiser) to compute the purchase price in accordance with the aforementioned standards; provided, however, that any determination by such appraiser shall be subject to challenge by Franchisee in a court of competent jurisdiction and such determination shall not be deemed final unless and until a final non-appealable decision is rendered by such court. If the termination is due to an abandonment of the System by Franchisee, then there shall be no price due to Franchisee, except to any extent to which the City is expressly required by law to make a payment to Franchisee.

(d) *Franchisee's Obligations*: In the event of any acquisition or transfer pursuant to this Section 15.8.3.1.2, the following subsections (i), (ii) and (iii) shall be applicable:

(i) Franchisee shall cooperate in a commercially reasonable manner with the City or any third party in maintaining continuous and uninterrupted distribution of Services over the System;

(ii) Franchisee shall, as promptly as practicable, execute all appropriate documents to transfer to the City or third party title to the System, all components thereof necessary to operate and maintain the System pursuant to the terms and conditions of this Agreement, as well as all contracts, leases, licenses, permits, rights-of-way, and any other rights, contracts or understandings necessary to maintain the System and the distribution of Services over the System; provided, however, that such transfers shall be made subject to the rights, under Article 9 of the Uniform Commercial Code as in effect in the State of New York and, to the extent that any collateral consists of real property, under the New York Real Property Law, of banking or lending institutions which are secured creditors or mortgagees of Franchisee at the time of such transfers; and provided that, with respect to such creditors or mortgagees, the City shall have no obligation following said transfers to pay, pledge, or otherwise commit in any way any general or any other revenues or funds of the City, other than the net operating revenues received by the City from its operation of the System, in order to repay any amounts outstanding on any debts secured by the System which remain owing to such creditors or mortgagees; and provided, finally, that the total of such payments by the City to such creditors and mortgagees, from the net operating revenues received by the City from its operation of the System, shall in no event exceed the lesser of: (x) the fair market value of the System on the date of the transfer of title to the City or (y) the outstanding debt owed to such creditors and mortgagees on said date. Nothing in this subsection (d) shall be construed to limit the rights of any such banking or lending institutions to exercise its or their rights as secured creditors or mortgagees at any time prior to the payment of all amounts due pursuant to the applicable debt instruments; and

(iii) Franchisee shall promptly supply the Commissioner with all necessary records to reflect the City's or third party's ownership of the System and to operate and maintain the System, including, without limitation, all Subscriber records and plant and equipment layout documents.

(e) *Other Provisions:* The City and Franchisee shall negotiate in good faith all other terms and conditions of any such acquisition or transfer, except that, in the event of any acquisition of the System by the City: (i) the City shall not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by Franchisee or any other obligations of Franchisee 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 in any manner.

15.9. *Performance Bond*:

15.9.1. *Establishment*: Franchisee shall arrange for, and shall maintain throughout the term of this Agreement, a performance bond, for the benefit of the City, in the form attached hereto as Appendix G and from an institution satisfactory to the City, in an amount as provided in Section 15.9.2 below (the "Performance Bond"). The "City of New York acting by and through the Department of Information Technology and Telecommunications" shall serve as the sole obligee under the Performance Bond. The attorney-in-fact who signs the Performance Bond must file with the bond a certified copy of his/her power of attorney to sign the bond. The Performance Bond shall serve as security (together with the other elements of security provided for under this Agreement) for Franchisee's timely performance of its obligations under this Agreement.

15.9.2. *Amount and Term*: The total amount of the Performance Bond, for all of the TWC Franchisees combined, shall be six hundred and sixty-seven thousand dollars ($667,000). The Performance Bond provided hereunder shall provide that it shall remain in effect during the term of this Agreement and for one year thereafter unless within such one year period the Commissioner notifies Franchisee that the Performance Bond shall remain in full force and effect because of the pendency of any litigation or the assertion of any claim which has not been brought to final judgment and for which the Performance Bond provides security.

15.9.3. *Claim Against the Performance Bond*: The City may make a claim against the Performance Bond in such amounts as are necessary to satisfy (to the degree possible) the obligations referenced in Section 15.9.1 (and to reimburse the City for costs, losses or damages incurred as the result of any failure(s) to meet such obligations), as such claim may be permitted by a final judgment of a court of competent jurisdiction. The City may not seek recourse against the Performance Bond for any costs, losses or damages for which the City has previously been compensated (a) through a drawdown against the Performance Bond, (b) by recourse to the Letter of Credit, (c) by a withdrawal from the cash Security Fund, or (d) otherwise by Franchisee or Guarantor.

15.10. *Letter of Credit:*

15.10.1. *Establishment:* Franchisee shall arrange for, and shall maintain throughout the term of this Agreement and for one year thereafter, a letter of credit, for the benefit of the City, in a form and issued by a bank satisfactory to the City, in an amount as provided in Section 15.10.2 below (the "Letter of Credit"). The Letter of Credit shall serve as security (together with the other elements of security provided for under this Agreement and the four other TWC Franchise Agreements) for the TWC Franchisees' timely performance of their obligations under this Agreement and the four other TWC Franchise Agreements. The "City of New York acting by and through the Department of Information Technology and Telecommunications" shall be named as the beneficiary. The original Letter of Credit shall be deposited with the City. The Letter of Credit shall contain the following endorsement or with language with similar effect: "It is hereby understood and agreed that this letter of credit may not be canceled or not renewed by the issuer/surety until at least ninety (90) days after receipt by the New York

City Department of Information Technology and Telecommunications of a written notice stating such intention to cancel or not to renew."

15.10.2. *Amount:* The Letter of Credit shall be in the total amount (for all of the TWC Franchisees combined) of Thirteen Million Three Hundred Thirty Thousand Three Hundred Thirty-Three Dollars ($13,333,333.00).

15.10.3. *Drawdown Against the Letter of Credit:*

15.10.3.1. The City may draw down against the Letter of Credit such amounts as are necessary to satisfy (to the degree possible) Franchisee's obligations under this Agreement and/or obligations of each of the other TWC Franchisees under each of the respective TWC Franchise Agreements not otherwise met in accordance therewith (and to reimburse the City for costs, losses or damages incurred as the result of any failure(s) to meet such obligations), as such drawdown may be permitted by a judgment of a court of competent jurisdiction. The City may not seek recourse against the Letter of Credit for any costs, losses or damages for which the City has previously been compensated (a) through a drawdown against the Letter of Credit, (b) by recourse to the Performance Bond, (c) by a withdrawal from the cash Security Fund or (d) otherwise by Franchisee or Guarantor.

15.10.3.2. In addition to its right to draw down on the Letter of Credit for any of the reasons set forth in 15.10.3.1 hereof, the City may draw down in full on the Letter of Credit at any time such Letter of Credit has less than thirty (30) days to run before it is scheduled to expire and no replacement or renewal Letter of Credit has been given in its place. In the event of a drawdown for such reason, the City will hold the proceeds as cash security (paying to itself any interest earned) in lieu of a Letter of Credit (with the City having the right to make withdrawals for the same purposes as drawdowns are permitted on the Letter of Credit) until a replacement Letter of Credit is put in place, at which time such drawdown proceeds will be returned to Franchisee less any proper withdrawals and any reasonable transaction expenses. In the event of a drawdown on the Letter of Credit as contemplated by this Section 15.10.3.2, and until such time as a replacement Letter of Credit is obtained in accordance herewith, the replenishment obligations of Franchisee with respect to the moneys held by the City following such drawdown as cash security shall correspond to the replenishment obligations (and rights) of Franchisee applicable to the cash Security Fund under Section 15.11.

15.10.3.3. Within two business days after any drawdown against the Letter of Credit, the City shall notify Franchisee of the date and amount thereof.

15.10.4. *Replenishment:* Until the expiration of one year after the Term, within 30 days after receipt of notice (the "Replenishment Period") from the City that at

least One Hundred Thousand Dollars ($100,000) (cumulatively or in a single instance) has been drawn down against the Letter of Credit, Franchisee shall obtain a replacement or additional Letter of Credit such that the total amount available under the letter(s) of credit obtained shall be restored to the amount required in Section 15.10.2.

15.11. *Cash Security Fund:*

15.11.1. *Establishment and Amount:* Franchisee shall have deposited with DoITT as a condition to the Closing by certified check, bank check or wire transfer, payable to the "City of New York," or otherwise, in the total amount of Six Hundred Sixty Thousand Dollars ($660,000), to be held by the City as security (together with the other elements of security provided for under this Agreement) for all of the TWC Franchisees combined for performance of Franchisee's obligations under this Agreement (the "Security Fund") and the timely performance by each of the TWC Franchisees of their obligations under the TWC Franchise Agreements.

15.11.2. *Withdrawals From or Claims Under the Security Fund:* The City may make withdrawals from the Security Fund of such amounts as are necessary to satisfy (to the degree possible) Franchisee's obligations under this Agreement, and/or each franchisee's obligations under each of the other four TWC Franchise Agreements, not otherwise met in accordance therewith (and to reimburse the City for costs, losses or damages incurred as the result of any failure(s) to meet such obligations), to the extent that such withdrawal is permitted by a judgment of a court of competent jurisdiction. The City may not seek recourse against the Security Fund for any costs, losses or damages for which the City has previously been compensated (a) through a withdrawal from the Security Fund, (b) by recourse to the Performance Bond provided for in this Agreement; (c) by a drawdown against the Letter of Credit provided for in this Agreement or (d) otherwise by Franchisee or Guarantor. Within two business days after any withdrawal from the Security Fund, the City shall notify Franchisee of the date and amount thereof.

15.11.3. *Replenishment:* Until the expiration of one year after the end of the Term, within 30 days after receipt of notice (the "Replenishment Period") from the City that any amount has been withdrawn from the Security Fund as provided in Section 15.11.2, Franchisee shall restore to the Security Fund the amount thus withdrawn.

15.11.4. *Return of Security Fund:* Within thirty (30) days of the end of the Term, the City shall pay over to Franchisee any amounts remaining in the Security Fund.

15.12. *Not a Limit on Liability*: Neither Franchisee's obligations under this Agreement nor Franchisee's liability for non-performance of any such obligations are limited in nature or amount by the acceptance or availability of the Performance Bond provided pursuant to Section 15.9, the Letter of Credit provided pursuant to Section 15.10 or the cash Security Fund provided by Section 15.11, except to the extent the City is actually compensated through its resort to such security.

15.13 *Liquidated Damages:* Franchisee shall be liable to the City for failure to substantially comply with a material requirement of Appendix A, Part 1, to this Agreement which occurs prior to June 30, 2012 in the amount One Thousand Five Hundred Dollars ($1,500) per day for each day that such failure occurs or continues unless, within fifteen (15) business days after receipt of notice by Franchisee from the Commissioner, or such longer period as the Commissioner shall specify, Franchisee has cured the alleged failure, presented facts and arguments in refutation or excuse of each such alleged failure that reasonably satisfies the Commissioner, or provided a cure plan and schedule that reasonably satisfies the Commissioner. At the option of the City, such amounts may be withdrawn from the Security Fund and paid to the City or shall be paid in such other manner as may be reasonably determined by the City. Franchisee agrees that the foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term "franchise fee" provided by 47 U.S.C. § 542(g)(2)(A)-(D). Further, the payment of such liquidated damages shall not be deemed to be: (x) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by Franchisee pursuant to Article 10 hereof, or (y) part of the compensation to be paid to the City pursuant to Article 10 hereof. Nothing contained in this Section shall be construed to permit duplicative recovery from or payment by Franchisee or the Guarantor.

15.14 *Abandonment of Service:* Franchisee shall not abandon provision of any Cable Service or portion thereof in the City without the City's prior written consent as provided in the Cable Law.

16. CUSTOMER PROTECTION STANDARDS

16.1 *Phone Response Center Upgrade:* In order to enable ongoing improvements in Franchisee's ability to provide prompt and effective response to telephone contacts from Subscribers and potential Subscribers, Franchisee has recently completed a substantial upgrade of its call center in the City at a cost of approximately $7 million. Such upgrade has included the installation of up-to-date digital telephone switch technology that permits virtual operation of local call centers from a centralized location, as well as the installation of up-to-date interactive voice response (IVR) and other voice recognition technology that provides improved routing of calls to live representatives and automated tools for non-live representative service and support. Franchisee agrees to maintain its call center capacity at a standard sufficient to, at a minimum, meet the call center-related consumer protection standards set forth in Appendix A.

16.2 *Generally:* Franchisee shall comply with (1) the consumer protection standards set forth in Parts 890 and 896 of the NY PSC rules and regulations, (2) through July 1, 2012, the provisions of Appendix A, Part 1, and (3) after July 1, 2012, the provisions of Appendix A, Part 2 attached to and made a part of this Agreement.

16.3 *Privacy Protection:* Franchisee shall comply with the provisions of 47 U.S.C. § 551 and any other applicable law, including any local standards to the extent not inconsistent with the terms of this Franchise established in accordance with applicable law, with respect to the protection of the privacy of Subscribers.

16.4 *Parental Control:* Franchisee shall make available to any Subscriber, if not already incorporated in standard equipment that is offered to all Subscribers, a device that offers as an option the ability to limit access to programming to Persons who provide a personal identification number or other means provided by Franchisee only to a Subscriber, or other similar means of allowing parents to control children's access to programming in the Subscriber household; provided, however, that it is not the intention of the parties that this Agreement be construed as placing any responsibility or liability on Franchisee for the exercise of or failure to exercise such parental controls as are offered, and Franchisee shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls as are offered.

16.5 *Information to City:* Franchisee shall provide Subscriber information requested by the City for the purpose of enforcement of this Franchise, to the extent the provision of such information does not violate applicable law (including, without limitation, 47 U.S.C. § 551).

16.6 *Survey*: During the six months prior to each of the fourth and eighth anniversaries of the Effective Date, Franchisee shall, if it has been requested in writing to do so by DoITT, conduct, at its own expense, an ascertainment of the community's views regarding the nature and adequacy of Franchisee's Cable Services, including the adequacy of the broad categories of programming being provided, conducted by an independent non-affiliated entity using generally accepted market research techniques. The ascertainment shall consist of a telephone survey of a statistically valid sample of Franchisee's cable customers in the City. The survey questionnaire shall be developed by an independent research entity (such entity having been selected by Franchisee) with the participation of Franchisee and DoITT. A written summary of the findings, prepared by the independent entity and including a description of the methodology used, shall be provided to the City.

16.7 *Electronic Option*: To the extent consistent with federal and state law, any bill, notice or other communication provided or issued by Franchisee to any Subscriber in connection with this Agreement (including but not limited to the provisions of Appendix A) may be provided or issued, if such Subscriber affirmatively consents, solely by electronic means.

17. EMPLOYMENT AND PURCHASING

17.1 *Right to Bargain Collectively:* Franchisee shall recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. Franchisee shall recognize and deal with the representatives duly designated or selected by the 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 as required by law. Franchisee shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

17.2 *No Discrimination:* Franchisee shall not: (i) refuse to hire, train, or employ; (ii) bar or discharge from employment; or (iii) discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, without limitation, promotion, upgrading, demotion, downgrading, transfer, layoff,

and termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation in accordance with applicable law. Franchisee agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the term of this Agreement.

17.3 *Local Employment Plan:* Within thirty (30) days of the Effective Date hereof, Franchisee shall, at its own cost and expense, develop, maintain, implement and disclose to the City (subject to appropriate and lawful confidentiality restrictions), a plan, consistent with Franchisee's collective bargaining agreements, for the recruitment, education, training, and employment of residents of the City for the opportunities to be created by the deployment and provision of service contemplated in this Agreement.

17.4 *City Vendors:* To the extent feasible and consistent with applicable law, and with due regard to price and quality considerations, Franchisee shall utilize vendors located in the City in connection with the deployment and provision of service contemplated by this Agreement.

17.5 *Local Law Requirements:* Franchisee agrees to comply in all respects with the provisions of the Mayor's Executive Order No. 50 (April 25, 1980) (codified at Title 10 Sections 1-14 of the Rules of the City of New York) and City Administrative Code 6-108.1 (1984) and all rules and regulations promulgated thereunder) (collectively, the "EEO Requirements"), as such EEO Requirements may be amended, modified or succeeded throughout the Term of this Agreement. Notwithstanding the fact that the EEO Requirements do not apply on their face to Franchisee in its capacity as a franchisee, Franchisee shall comply in all respects with the provisions of such EEO Requirements and successor and replacement laws, orders and regulations adopted following the date of this Agreement. As required by said Executive Order No. 50, the provisions of Sections 50.30 and 50.31 of the Final Rule implementing said Order are incorporated herein by this reference.

18. MISCELLANEOUS PROVISIONS

18.1 *Competition:* The parties agree that this Agreement, when compared to the terms of the City's cable television franchise agreements in existence as of the Closing, contains economic and regulatory burdens which, when taken as a whole, are not greater or lesser than those placed upon other cable operators operating within the Franchise Area.

18.2 *Actions of Parties:* Any action to be taken by the City and/or the Commissioner pursuant to this Agreement shall be taken in accordance with the applicable provisions of the City Charter, as said Charter may be amended or modified throughout the Term of this Agreement. In any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned, unless expressly agreed otherwise.

18.3 *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

18.4 *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

18.5 *Force Majeure:* Subject to the procedures set forth in the last sentence of this Section 18.5, Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure; provided, however, that in the event that any delay in performance resulting from such a Force Majeure affects only part of Franchisee's capability to perform, Franchisee shall perform to the extent it is able to do so and shall take all steps, reasonably within its ability, to minimize the length and effect of such Force Majeure delay. Franchisee shall notify the Commissioner in writing of the occurrence of an event of Force Majeure, or a series of related events constituting an event of Force Majeure, which resulted in or is resulting in a delay in performance, such notice to be provided within twenty (20) business days of the event or series of events, or if notification within such period is not practicable under the circumstances, as soon as practicable.

18.6 *Notices:* Every notice, order, petition, document, or other direction or communication to be served upon the City or Franchisee shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, or by a nationally recognized overnight delivery service, to the following addresses (unless expressly stated otherwise in this Agreement):

If to Franchisee, to:

Time Warner Entertainment Company, L.P.
c/o Time Warner Cable of New York City
120 East 23rd Street
New York, New York 10010
Attention: President

with a copy to:

Paul Weiss Rifkind Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Attention: Allan J. Arffa, Esq.

If to the City, to:

Department of Information Technology and Telecommunications
75 Park Place, Ninth Floor

New York, NY 10007
Attention: Commissioner

with a copy to:

New York City Law Department
100 Church Street, Sixth Floor
New York, NY 10007
Attention: Chief, Economic Development Division

Except as otherwise provided herein, the receipt of such notice, direction, or order shall be equivalent to direct personal notice and shall be deemed to have been given when received. Either party may change the above notice addresses by notice to the other party.

18.7 *Additional Representations and Warranties:* In addition to the representations, warranties, and covenants of Franchisee to the City set forth elsewhere herein, Franchisee represents and warrants to the City and covenants and agrees that, as of the Closing:

18.7.1 *Organization, Standing and Power:* Franchisee is a limited partnership duly organized and validly existing under the laws of the State of Delaware and is duly authorized to do business in the State of New York and in the City. Franchisee 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 Franchisee's constituent documents, as amended to date, will be provided to the Commissioner upon request.

18.7.2 *Authorization:* The execution, delivery and performance of this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of Franchisee. This Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly executed and delivered by Franchisee and constitute (or upon execution and delivery will constitute) the valid and binding obligations of Franchisee.

18.7.3 *Ownership And Control As Of Date Of Execution:* The ownership and control structure of the Franchisee as of the date of execution of this Agreement is accurately set forth in Appendix B hereof.

18.7.4 *Compliance with Law:* Franchisee is in compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the provision of the services contemplated herein and has obtained or will obtain prior to the provision of service to the public all government licenses, permits, and authorizations necessary for the provision of the service, except approval by the NY PSC.

18.7.5 *Compliance with City Contracts:* Franchisee has not received notice from the City of any default or noncompliance with any existing written contract or other written agreement with the City, unless such default or noncompliance has subsequently been cured or otherwise resolved to the City's satisfaction or such notice

has been withdrawn by the City or otherwise determined by the City or a court of competent jurisdiction to have been issued in error.

18.8 *Compliance with Laws; Licenses and Permits:* With respect to its activities pursuant to this Agreement, Franchisee shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments (including, but not limited to, those of the NY PSC and the FCC) and any other federal, state agency or authority of competent jurisdiction; and (ii) all local laws and all rules, regulations, orders, of the City and of DoITT consistent with this Agreement. Franchisee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to construct, operate, maintain, upgrade, replace or repair the System, or any part thereof.

18.9 *Entire Agreement:* This Agreement and the Exhibits and Appendices hereto constitute the entire agreement between Franchisee and the City, and they supersede (and, going forward, render null and void) all prior or contemporaneous agreements, representations, statements or understandings (whether written or oral) of the parties regarding the subject matter hereof.

18.10 *Amendments and Modifications:* Amendments and/or modifications to this Franchise shall not be effective unless mutually agreed to in writing by the parties, and shall be subject to the approval of the NY PSC, to the extent required pursuant to the Cable Law.

18.11 *Captions; References:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the articles, sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement. Terms such as "hereby," "herein," "hereof," "hereinafter," "hereunder," and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires. Any capitalized term used in the Appendices and Exhibits to this Agreement, unless expressly defined otherwise in the Appendix or Exhibit in which it appears, shall have the meaning set forth therefore in the main body of this Agreement.

18.12 *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by a final order of any court of competent jurisdiction or by, or a final order of any state or federal regulatory authority having competent jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, subject to the obligations of the parties as applicable under Section 18.4 above.

18.13 *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

18.14 *NY PSC Approval:* This Franchise is subject to confirmation by the NY PSC. Franchisee shall file a petition for confirmation with the NY PSC within thirty (30) days after the date hereof. Franchisee shall also file any necessary notices with the FCC.

18.15 *Rates and Charges:* The rates and charges charged to Subscribers by Franchisee for Cable Service shall be subject to regulation if and only if such regulation is consistent with applicable law.

18.16 *Publishing Information:* Except as otherwise permitted in this Franchise, the City hereby requests that Franchisee omit publishing information specified in 47 C.F.R. § 76.952 from Subscriber bills.

18.17 *No Third Party Beneficiaries:* This Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

18.18 *City Official:* The Commissioner is the City official that is responsible for the continuing administration of this Agreement.

18.19 *Holdover:* To the extent required or permitted by NY PSC regulations, in the event Franchisee continues to provide Cable Service within the Franchise Area after the Term of this Agreement, Franchisee 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 shall in no way be construed as a renewal or other extension of this Agreement or the Franchise granted pursuant to this Agreement.

18.20 *Investigations Clause:* Franchisee shall comply with the City's standard "Investigations Clause" to be included in City contracts and agreements pursuant to Section 4(b) of Mayoral Executive Order 16 of 1978, as set forth in Appendix I hereto, and in the event of any failure as described therein shall be subject to the penalties set forth therein.

18.21 *Interpretation:* This Agreement and the provisions contained herein shall not be construed or interpreted for or against any party because that party drafted, or caused that party's legal representative to draft, any of its provisions.

18.22 *Voluntary Execution:* The parties acknowledge that each has read this Agreement, that each fully understands its rights, privileges and duties under this Agreement, and that each enters into this Agreement freely and voluntarily. Each party further acknowledges that it has had the opportunity to consult with counsel of its own choosing in the negotiation or and agreement to the provisions of this Agreement.

18.23 *Execution in Counterparts:* This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute a single agreement.

18.24 *Approval of Amendments:* In the event this Agreement is to be amended in any manner which affects the City's interest in an adverse and substantial manner, agreement by the City to such amendment shall only be effective if such amendment is approved by the FCRC.

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

18.26 *Claims Under Agreement:* The City and Franchisee, on its behalf and on behalf of Guarantor, agree that, except to the extent inconsistent with Section 635 of the Cable Act (47 U.S.C. § 555), any and all claims asserted by or against the City arising under this Agreement or related thereto to shall be heard and determined either in a court of the United States located in New York City ("Federal Court") or in a court of the State of New York located in the City and County of New York ("New York State Court"). To effectuate this agreement and intent, Franchisee agrees that if the City initiates any action against Franchisee in Federal Court or in New York State Court, service of process may be made on Franchisee either in person, wherever such Franchisee may be found, or by registered mail addressed to Franchisee, at its office set forth in Section 18.6 above, or to such other address Franchisee may provide to the City in writing.

18.27 *Level Playing Field:* The City agrees (to the extent consistent with federal law) not to approve, grant or enter into any franchise for the provision of Cable Service, nor any amendment(s) to any existing such franchise, if the resulting franchise would not comply with subsections (19) and (20) of Section H of the Resolution (as defined in the third WHEREAS clause of this Agreement), or successor provisions thereto of similar import, or with Section 895.3 of Title 16 of the New York State Code of Rules and Regulations, or successor provisions thereto of similar import. If provisions described in the preceding sentence (as they existed on the Effective Date) are repealed, substantially reduced in their effect or become inapplicable or unenforceable, and if the City grants, renews or renegotiates one or more franchises for the provision of Cable Services which would, in the judgment of Franchisee have been in violation of such provisions in their form as of the Effective Date, then Franchisee may request that the City, acting reasonably, make a determination to such effect. In the event of such a determination by the City, the City and Franchisee shall thereafter engage in good faith negotiations to amend this Franchise Agreement in a manner such that the subsequently granted, renewed or renegotiated franchise would have been compliant with the original terms (as of the Effective Date) of the state or local provisions referred to above.