FRANCHISE AGREEMENT

Between

THE CITY OF NEW YORK

and

ZENFI NETWORKS, INC.

Franchise for the Installation and Use, On City Street Light Poles, Traffic Light Poles, Highway Sign Support Poles and Certain Utility Poles Located on City Streets, of Telecommunications Equipment and Facilities, Including Base Station and Access Point Facilities, and for the Installation and Use of Related Facilities, in Connection with the Provision of Mobile Telecommunications Services

Dated as of

~~July~~ AUGUST 4, 2015

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AGREEMENT

This AGREEMENT (the "Agreement"), dated as of ~~July~~ AUGUST 4, 2015 (the "Execution Date"), is by and between THE CITY OF NEW YORK (the "City") and ZENFI NETWORKS, INC. (the "Company"), whose principal place of business is located at 90 White Street, New York, NY 10013.

WITNESSETH:

WHEREAS, the New York City Department of Information Technology and Telecommunications ("DoITT"), on behalf of the City, has the authority to grant franchises involving the occupation or use of the Inalienable Property (as defined in Section 1 hereof) of the City for the purposes described in this Agreement; and

WHEREAS, DoITT, pursuant to authorization granted by Resolution No. 191 (adopted by the New York City Council on August 25, 2010) (the "Authorizing Resolution"), issued on May 6, 2015, a Request for Proposals (the "RFP") for franchises of a type which includes the franchise described in this Agreement; and

WHEREAS, the New York City Department of City Planning determined, as evidenced in its letter dated May 1, 2015, that franchises issued pursuant to the RFP would have no land use impacts and that therefore review of such RFP pursuant to Section 197-c of the New York City Charter (the "City Charter") was not required; and

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

WHEREAS, on July 6, 2015 the New York City Franchise and Concession Review Committee (the "FCRC") held a public hearing on the Company's proposal for a franchise, which was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the City Charter, including without limitation publication of notice of such hearing in accordance with Section 371 of the City Charter; and

WHEREAS, on July 8, 2015 the FCRC voted on and adopted a resolution approving the grant of a franchise to the Company on the terms set forth in this Agreement; and

WHEREAS, City-owned and/or -managed property, such as street light poles ("SLPs"), traffic light poles ("TLPs") and highway sign support poles ("HSSPs") located on City streets (SLPs, TLPs and HSSPs collectively referred to herein as "Street Operations Poles"), and poles that are lawfully located on the City's inalienable property which are privately-owned poles owned by a "utility" as that term is defined in 47 USC Section 224 (herein referred to as "Street Utility Poles") are some, but not the only, or even the preponderant, type of location that can be used to locate mobile telecommunications facilities and equipment (indeed, the mobile

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

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

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

SECTION 1 – DEFINED TERMS

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

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

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

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

1.4 "Base Stations" means mobile telecommunications equipment for reception and/or transmission of wireless, radio frequency telecommunications signals, for example, but without limitation, microcell antennas, 802.*11x* access points and other types of transceivers, and related

equipment (such as, without limitation, batteries, amplifiers and connective cabling) to support and facilitate wireless telecommunications.

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

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

1.7 "City Code" means the New York City Administrative Code.

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

1.9 "Company" means Zenfi Networks, Inc., a corporation organized and existing under the laws of the State of Delaware whose principal place of business is located at 90 White Street, New York, NY 10013.

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

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

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

1.13 "Customer" means any Person lawfully receiving any service provided by the Company by means of the Facilities.

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

1.15 "Effective Date" means the date stated in a notice issued by the City to the Company, which date shall be ten (10) days after the first date on which all of the following conditions have been met: (a) this Agreement has been registered with the Comptroller as provided in Sections 375 and 93.p. of the City Charter, and (b) all the documents have been submitted as required by Section 2.2 hereof, (c) the City's Vendex review process of the Company has been favorably completed, and (d) payment has been made to the City of the Initial Payment, the Initial Security Fund Deposit and the FCRC publication costs as described in Section 7.2.1 hereof.

1.16 "Execution Date" means the date set forth on the cover page of this Agreement.

1.17 "Facilities" means the facilities and equipment (including, without limitation, cell and antenna facilities) the use and installation of which is authorized pursuant to this Agreement.

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

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

1.20 "Fiber" has the meaning set forth in Section 2.4.2 hereof.

1.21 "Franchise Area" means Zone A, Zone B, and Zone C.

1.22 "HSSP" has the meaning set forth in the seventh Whereas clause of this Agreement.

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

1.24 "Initial Payment" shall have the meaning set forth therefor in Section IV. of Appendix D attached hereto.

1.25 "Initial Security Fund Deposit" shall have the meaning set forth therefor in Appendix C attached hereto.

1.26 "Mayor" means the chief executive officer of the City, the Mayor's designee, or any successor to the executive powers of the present Mayor.

1.27 "Mobile Telecommunications Services" means mobile telecommunications services as defined in the Authorizing Resolution.

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

1.29 "Priority List" means the list of priorities that Street Pole Franchisees are to follow in the submission of Reservation Notices as set forth in Section II.(B) of Appendix A; which list of priorities shall be consistent with prior notifications from the City..

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

1.31 "Reservation Notice" has the meaning set forth in Section II.(B)(1)(a) of Appendix A hereof.

1.32 "Reserved Pole" means a Street Pole which has been reserved to a Street Pole Franchisee under Section II.(B)(1)(b) of Appendix A hereof.

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

1.34 "Scheduled Term" means the period from and including the Effective Date until and including the fifteenth anniversary of the Execution Date of the franchise contracts entered into in 2004.

1.35 "Security Fund" means the security fund described in Section 5 and Appendix C hereof.

1.36 "SLP" has the meaning set forth in the seventh Whereas clause of this Agreement.

1.37 "Street Operations Pole", "Street Utility Pole" and "Street Pole" have the meanings set forth in the seventh Whereas clause of this Agreement (except as otherwise authorized by DoITT and DOT pursuant to the first sentence of Section II.(A)(9) of Appendix A hereof).

1.38 "Street Pole Compensation" shall have the meaning set forth in Section II. of Appendix D hereof.

1.39 "Street Pole Franchises" means the franchises approved by the FCRC on or after July 14, 2004, authorizing installation of Base Stations on Street Poles.

1.40 "Street Pole Franchisees" means the Company and all other franchisees under the Street Pole Franchises.

1.41 "Term" has the meaning set forth in Section 2.1 hereof.

1.42 "TLP" has the meaning set forth in the seventh Whereas clause of this Agreement.

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

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

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

1.46 "Zone C" means Community Districts 1, 2, 3, 4, 5, 6 and 7 in the Borough of the Bronx, Community Districts 3, 4, 5 and 16 in the Borough of Brooklyn, and Community Districts 10 and 11 in the Borough of Manhattan.

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

SECTION 2 – GRANT OF AUTHORITY

2.1 Term.

(a) Scheduled Term. This Agreement, and the franchise granted hereunder, shall commence upon and include the Effective Date, and shall continue until November 14th 2019 unless this Agreement is earlier terminated by mutual agreement of the parties, or upon a termination of this Agreement and the franchise pursuant to Section 11.3 hereof. The period of time that this Agreement remains in effect is herein referred to as the "Term." Notwithstanding the preceding, if the Effective Date does not occur within 130 days of the Execution Date, this Agreement shall be deemed immediately terminated and no obligations of the parties to one another shall thereafter accrue under this Agreement except as this Agreement expressly provides for the survival of certain obligations or provisions.

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

As provided in Section 1.15 above, the occurrence of the Effective Date is conditional on, among other things, the submission to the City by the Company of certain documents as described in this Section 2.2. Said documents shall be (a) a certificate of liability insurance pursuant to Section 10.2.6 hereof, (b) an opinion of the Company's counsel dated as of the Execution Date, in form reasonably satisfactory to the City opining that this Agreement has been duly authorized, executed and delivered by the Company and is a binding obligation of the Company, (c) an affirmation signed by an authorized officer or representative of the Company in the form set forth in Exhibit C of the RFP, (d) an IRS W-9 form certifying the Company's tax identification number, and (e) organizational and authorizing documents as described in Sections 12.5.1 and 12.5.2 hereof. No installation by the Company on Street Poles or otherwise on, over or under the Inalienable Property shall be permitted until the occurrence of the Effective Date. The City shall issue a notice to the Company setting forth the Effective Date, such notice to be issued within ten (10) days of the first date on which all required conditions to occurrence of the Effective Date, as set forth in this Section 2.2 and in Section 1.15, have been met.

2.3 Nature of Franchise, Effect of Termination and Renewal

2.3.1 Nature of Franchise. (a) The City hereby grants the Company, commencing on the Effective Date and thereafter for the period of the Term, subject to the terms and conditions of this Agreement, a nonexclusive franchise providing the right and consent to install, operate, repair, maintain, remove and replace cable, wire, Fiber (or other transmission medium that may be used in lieu of cable, wire or Fiber) and related equipment and facilities on, over and under the Inalienable Property of the City, for the provision of Mobile Telecommunications Services, provided however,

that such grant is expressly limited to the locations, facilities and services described in Section 2.4.2 hereof and Appendix A hereto.

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

2.3.2 Effect of Termination. Upon termination of this Agreement, the franchise shall expire, all rights of the Company in the franchise shall cease, with no value allocable to the franchise itself; and the rights and obligations of the City and the Company shall be determined as provided in Sections 11.3 through 11.5 hereof. The termination of this Agreement and the franchise granted hereunder shall not, for any reason, operate as a waiver or release of any obligation of the City, the Company or any other Person, as applicable, which accrued prior to such termination except as this Agreement expressly provides for the survival of certain obligations or provisions and except that in the event of a termination by reason of a breach or default of one or more obligations hereunder, the breaching or defaulting party shall be liable for any damages for breach or default of this Agreement for which the breach or defaulting entity would be liable under applicable law.

2.3.3 Renewal. This Agreement does not grant to the Company any right to renewal of this Agreement or the franchise granted hereunder, and there shall be no such right. If the Company seeks renewal of this Agreement and/or the franchise granted hereunder, the City shall have the fullest discretion permitted by law to grant or withhold such renewal. If the parties, each acting with the fullest discretion permitted by law, choose to negotiate toward renewal of the franchise granted hereunder, then each will make good faith efforts to commence such negotiations by the date which is 24 months prior to the scheduled expiration of the Term, so as to allow time for either conclusion of such negotiations or for the Company to arrange for alternative locations or procedures for the provision of its services after expiration of the Term.

2.4 Conditions and Limitations on Franchise

2.4.1 Not Exclusive. Nothing in this Agreement shall affect the right of the City to grant to any Person a franchise, consent or right to occupy and use the Inalienable Property, or any part thereof, for the construction, operation and/or maintenance of a system to provide any services (including without limitation Mobile Telecommunications Services), except that the City agrees not to subsequently grant Street Pole Franchises in a manner that would unfairly and adversely affect the Company's pole allocation priority as set forth in Section II.(B) of Appendix A attached hereto.

2.4.2 Construction of Facilities. (a) The Company is only authorized, under the franchise granted pursuant to this Agreement, to install, within the Franchise Area and in all cases subject to the terms and conditions of this Agreement:

(i) Base Stations on Street Poles, and

(ii) for purposes of connecting Base Stations installed on Street Poles to one another or to a supporting telecommunications system (such supporting telecommunications system may include, without limitation, Base Stations installed on, over or under property other than the Inalienable Property), cable, wire or optical fiber, or other transmission medium that may be used in lieu of cable, wire or optical fiber, on, over or under the Inalienable Property of the City within the Franchise Area (such cable, wire or optical fiber or other transmission medium used in lieu thereof to be referred to hereinafter as "Fiber") (if at any time the Company seeks to use, or make available to others, Fiber installed pursuant to this Agreement for purposes other than the transmission of signals among Base Stations or between Base Stations and a supporting telecommunications system, the Company must obtain (if it does not already have), as a condition to such use or availability, an additional franchise from the City authorizing such use or availability).

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

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

(d) Nothing in this Agreement is intended to authorize the Company to install poles on the Inalienable Property of the City.

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

2.4.4 No Waiver. Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the City or of the City's right to require the Company or Persons utilizing the Facilities to secure the appropriate permits or authorizations for such use, provided that no fee or charge may be imposed upon the Company for any such permit or authorization other than the standard fees or charges generally applicable to all Persons for such permits or authorizations. To the extent the Company chooses to use in whole or in part the design for

Facilities installations previously approved by the City's Art Commission (Art Commission means the Art Commission of the City of New York, or any successor thereto), payment by the Company of a fair portion of the costs for outside architectural and design work associated with such design being shared among other Poletop Franchisees seeking to use such design shall be treated as a "standard fee or charge" pursuant to this Section 2.4.4. Any such standard fee or charge shall not be an offset against the compensation the Company is required to pay to the City pursuant to Section 7 or Appendix D of this Agreement.

2.4.5 No Release. (a) Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Inalienable Property. In the event that any of the Inalienable Property within the Franchise Area is eliminated, discontinued, closed or demapped, all rights and privileges granted pursuant to this Agreement with respect to said Inalienable Property, or any part thereof so eliminated, discontinued, closed or demapped, shall cease upon the effective date of such elimination, discontinuance, closing or demapping. The City shall use reasonable efforts to provide reasonable prior notice to the Company of any such elimination, discontinuance, closing or demapping. If said elimination, discontinuance, closing or demapping is undertaken for the benefit of any private Person, the City shall make reasonable efforts to condition its consent to said elimination, discontinuance, closing or demapping on the agreement of said private Person to (i) grant the Company the right to continue to occupy and use the applicable property or (ii) reimburse the Company for the reasonable costs of relocating the affected part of the Facilities. Notwithstanding any other provision herein to the contrary, the Company shall not be liable to the City for any such damage or loss to the extent the City is compensated by the insurance which the Company is obligated to maintain pursuant to this Agreement.

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

SECTION 3 – SERVICE

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

comply with the federal Communications Act and applicable FCC rules and regulations with respect to radio spectrum interference.

3.2 No Discrimination. The Company shall not discriminate in the provision of its services using the Facilities on the basis of race, creed, color, national origin, sex, age, handicap, marital status, or real or perceived sexual orientation.

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

SECTION 4 – CONSTRUCTION AND TECHNICAL REQUIREMENTS

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

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

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

4.4 Relocation of the Facilities.

4.4.1 New Grades or Lines. If the grades or lines of any Inalienable Property within the Franchise Area are changed at any time during the Term in a manner affecting the Facilities, then the Company shall, at its own cost and expense and upon reasonable prior notice by the City, promptly protect or promptly alter or relocate the Facilities, or part thereof, so as to conform with

such new grades or lines. In the event that, after such notice, the Company unreasonably refuses or neglects to so protect, alter or relocate all or part of the Facilities, the City shall have the right to break through, remove, alter or relocate such part of the Facilities without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation. This provision shall not be construed to authorize the Company to relocate any Facilities, including without limitation Base Stations, to any other location on, over or under the Inalienable Property except to the extent otherwise permitted under this Agreement (see, for example, Section II.(B)(3) of Appendix A). If relocation to such other location on, over or under the Inalienable Property cannot be accomplished consistent with the provisions of this Agreement, then the Company may relocate such Facilities to a location on private property, subject to its reaching an agreement for such relocation with such private property owner.

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

4.4.3 Company Required to Move Facilities. The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any applicable Facilities to permit the moving of said structure, with an appropriate abatement of compensation to the City for the period the Company does not have the use of such Facilities. The Company may require payment of the actual reasonable costs to move its Facilities from any Person other than the City for any such movement of its Facilities, which the Company may require be payable in full prior to any such movement. Relocation of Base Stations on Street Operations Poles shall be subject to the provisions of Section II.(B)(3) of Appendix A hereof.

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

4.6 No Obstruction. In connection with the construction, operation, maintenance, repair or removal of the Facilities, the Company shall not unreasonably obstruct the Inalienable Property, or

subways, railways, passenger travel, river navigation, or other traffic to, from or within the Franchise Area without the prior consent of the appropriate authorities. To the extent that the City permits or suffers the installation of facilities or equipment (by entities other than the Company or its affiliates) which substantially obstructs the Company's ability to use a Base Station (for example, the installation of a banner, on a Street Operations Pole on which the Company has installed a Base Station, in such a way that the banner substantially obstructs the Company's use of its Base Station for its intended purpose) then the Company shall be entitled to an appropriate abatement of the Street Pole Compensation due to the City hereunder applicable to such Base Station for the period the Company's use of such Base Station is thus obstructed (provided that the Company notifies the City of the obstructive effect of such obstruction promptly after the Company becomes aware of such effect).

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

SECTION 5 – SECURITY FUND

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

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

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

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

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

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

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

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

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

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

5.3 Withdrawals from the Security Fund. The City may draw from the Security Fund such amounts (a) as have not been timely paid to the City when due as provided in this Agreement, (b) as are appropriate to pay the costs of, or reimburse the City for its full costs incurred in undertaking, any activity which the Company is obligated to perform hereunder but has failed to timely perform, and (c) as are appropriate to indemnify and hold harmless the City from any expenses, losses or damages incurred (and not previously paid or reimbursed) as a result of any breach or default by the Company of any obligation of the Company under this Agreement. Withdrawals from the Security Fund shall not be deemed a cure of the default(s) that led to such withdrawals, but the City may not seek recourse against the Security Fund or the Company for any costs or damages for which the City has previously been compensated through a withdrawal from the Security Fund or otherwise by the Company.

5.4 Notice of Withdrawals. Within one (1) week after any withdrawals from the Security Fund, the City shall confirm by written notice to the Company of the date and amount thereof, provided, however, that the City shall not make any withdrawals from the Security Fund by reason of any breach or default of this Agreement (including, without limitation, non-payment of compensation or of other amounts payable hereunder) unless such breach or default has ripened into an Event of Default, and shall not make any withdrawals from the Security Fund for any reason other than a breach or default unless the City notifies the Company in advance of such impending withdrawal and at least ten (10) days have elapsed after such notice. The withdrawal of amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of the Company to the City but only to the extent of said withdrawal. The right to make withdrawals from the Security Fund shall not be construed as the City's right to greater compensation than the Company is obligated to pay pursuant to the terms of this Agreement.

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

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

SECTION 6 – EMPLOYMENT AND PURCHASING

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

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

6.2 City Vendors. To the maximum feasible extent, after taking into account price and quality considerations, the Company shall utilize vendors located in the City in connection with the construction, and maintenance of the Facilities.

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

SECTION 7 – COMPENSATION AND OTHER PAYMENTS

7.1 Compensation

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

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

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

7.1.4 Ordinary Business Expense. Nothing contained in this Section 7.1 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation and other payments that it may pay pursuant to this Agreement as an ordinary expense of doing business and,

accordingly, from deducting said payments from gross income in any local, state, or federal income tax return.

7.2 Other Payments

7.2.1 Reimbursement of Publication Costs. The Company shall, as a condition to the occurrence of the Effective Date of this Agreement, reimburse the City for costs incurred by the City for compliance with legal notice publication requirements in connection with the award of this franchise. The Company expressly agrees that the payments referred to in this Section 7.2.1 are in addition to and not in lieu of, and shall not be offset against, the compensation to be paid to the City by the Company pursuant to Section 7.1 hereof or any other amount that may be payable to the City.

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

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

(a) The compensation and other payments to be made pursuant to this Section 7 shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or other fees or charges which the Company or any Affiliated Person shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company; and

(b) The Company expressly relinquishes and waives any rights it may have to a deduction or other credit pursuant to Section 626 of the New York State Real Property Tax Law and any successor or amendment thereto, and to any subsequent law, rule, regulation, or order which would purport to permit any of the acts prohibited by this Section 7.3, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any such deduction or other credit; and

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

(d) Except as might be permitted by Section 7.1.4, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply or

seek to apply all or any part of the amount of the compensation or other payments to be made or services to be provided pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons; and

(e) The Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made or services to be provided pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons.

7.4 Interest on Late Payments. In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon shall accrue from such date until received at a rate equal to the rate of interest then in effect charged by the City for late payments of real estate taxes.

7.5 Method of Payment. Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement shall be made to the City's Department of Finance, by check (or other payment method, such as electronic deposit or wire transfer, as is agreed upon by the City's Department of Finance) and the Company shall send a copy of such check (or, if payment is by other than check, than appropriate alternative documentation of such payment) to DoITT.

7.6 Continuing Obligation and Holdover. (a) In the event the Company continues to operate all or any part of the Facilities on, over or under the Inalienable Property after the Term, then the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the franchise granted pursuant to this Agreement, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the Term, including, but not limited to, damages and restitution.

(b) In the event this Agreement terminates for any reason whatsoever and the Company fails to cease providing service over the Facilities, the City, in addition to all other remedies available to it under this Agreement or by law, shall be entitled to receive all payments it is entitled to receive under this Agreement including, but not limited to, the compensation set forth in Section 7.

7.7 Abatement for Required Base Station Removal. In the event any Base Station installed by the Company on a Street Pole in accordance with this Agreement is removed (or otherwise rendered substantially unusable for the purposes intended) by the City, or by the Company at the direction of the City, for reasons (including the reasons described in Sections 4.4.2, 4.4.3, 4.5 or 4.6 hereof) other than a breach or default of this Agreement by the Company, the Company shall be entitled to an abatement of Street Pole Compensation applicable to such Street Pole for the period from the date the Company's equipment is removed from such Street Pole (or otherwise rendered

substantially unusable for the purposes intended) until such equipment is re-installed (or otherwise returned to substantial usefulness).

SECTION 8 – RECORDS, REPORTING AND RULES

8.1 Protection from Disclosure. To the extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information submitted to the City under this Agreement or made available to the City pursuant to this Section 8, provided that the Company notifies the City of, and clearly labels the information which the Company deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Company.

8.2 Oversight. DoITT shall have the right to oversee, regulate and inspect periodically the installation, construction and maintenance of the Facilities, and any part thereof, in accordance with the provisions of this Agreement and applicable law. The Company shall establish and maintain, at its principal executive offices or such other location of its choosing (provided that such other location does not adversely affect the City's inspection and oversight rights) such managerial and operational records, standards, procedures and controls as enable the Company to document, in reasonable detail, to the reasonable satisfaction of the City at all times throughout the Term, that the Company is in compliance with this Agreement. The Company shall retain such records for not less than six (6) years following their creation, and for such additional period as DoITT may reasonably direct.

8.3 Reports

8.3.1 Status Report. The Company shall, on an annual basis, during the month preceding each anniversary of the Effective Date, provide DoITT with a report describing any construction or installation of Facilities that has occurred during the previous twelve months and the Company's reasonably anticipated plans for such construction and installation for the coming twelve months. It is understood by the parties that the Company shall have the unrestricted right to adjust such reasonably anticipated plans and such report of anticipated plans shall not restrict the Company's rights under this Agreement to reserve space for, and install, Facilities in a manner and at locations which may not be consistent with such report of anticipated plans.

8.3.2 Street Pole Installation Completion Reporting. The Company shall, within ten (10) days of the completion of installation of any Base Station on a Street Pole, report to DoITT by e-mail, or by such alternative reporting procedure as DoITT shall specify, of the completion of such installation.

8.3.3 Additional Information and Reports. Upon the request of the Commissioner, the Company shall promptly submit to DoITT any information or report reasonably related to the Facilities and this Agreement, or to the Company's obligations under this Agreement in such form and containing such information, reasonably related to the Facilities and this Agreement, as the Commissioner shall reasonably specify. Such information or report shall be accurate and complete.

8.4 City Rules. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives governing the Facilities that are consistent with the terms of this Agreement and that it finds necessary or

appropriate in the lawful exercise of its police powers, and the Company expressly agrees to comply with all such lawful rules, regulations, orders, or other directives.

8.5 Books and Records/Audit

8.5.1 Books and Records. Throughout the Term, the Company shall maintain complete and accurate books of account and records of the business, ownership, and operations of the Company with respect to the Facilities in a manner that allows the City at all times to determine whether the Company is in compliance with the Agreement. If the City reasonably determine that the records are not being maintained in such a manner, the Company shall alter the manner in which the books and/or records are maintained so that the Company comes into compliance with this Section.

8.5.2 Right of Inspection. The Commissioner and the Comptroller, or their designated representatives, shall have the right to inspect, examine or audit during normal business hours and upon reasonable (and not less than one business day's) prior notice to the Company under the circumstances, all documents, records or other information which pertain to the Facilities, their installation, operation and maintenance, as may be necessary or appropriate to review the Company's compliance with its obligations pursuant to this Agreement. All such documents shall be made available within New York City or in such other place that the City may in its discretion agree upon in writing in order to facilitate said inspection, examination, or audit, provided, however, that if such documents are made available by the Company outside of the City, then the Company shall pay the reasonable expenses incurred by the Commissioner, the Comptroller or their designated representatives in traveling to such location. All of such documents shall be retained by the Company for a minimum of six (6) years following termination of this Agreement. Access by the Commissioner, the Comptroller or their designated representatives to any of the documents covered by this Section 8.5.2 shall not be denied by the Company on grounds that such documents are alleged by the Company to contain confidential, proprietary or privileged information, provided that this requirement shall not be deemed to constitute a waiver of the Company's right to assert that confidential, proprietary or privileged information contained in such documents should not be disclosed, subject to Section 8.1 hereof. In order to determine the validity of such assertion and withholding by the Company, the Commissioner, the Comptroller or their designated representatives (as the case may be) agree to review the alleged proprietary information, and/or a log of the documents believed by the Company to be privileged reflecting sufficient information to establish the privilege claimed, at the Company's premises, or at a mutually acceptable location within the City, and, in connection with such review, to limit access to the alleged proprietary information to those individuals who require the information in the exercise of the City's rights under this Agreement. If the Corporation Counsel of the City, or by injunction or other action a court with subject matter jurisdiction, concurs with the Company's assertion regarding the proprietary nature of such information, the City will hold such information in confidence to the extent authorized by and in accordance with applicable law and will not remove from the Company's premises and/or will immediately return to the Company all embodiments of the proprietary portion of any document or other intangible thing that contains such proprietary information (without maintaining any copies for archival or any other purposes). If the Corporation Counsel of the City, or by injunction or other action a court with subject matter jurisdiction, concurs with the Company's assertion regarding the privileged nature of such information, then the Company will not be required to disclose such information. If the Corporation Counsel of the City

does not concur with such assertions, then the Company shall promptly provide such documents, including the alleged proprietary or privileged portion thereof, to the City, provided that the Company shall not be required to provide the proprietary or privileged portion thereof during the pendency of any court challenge to such provision or inconsistently with any final court decision. The records and materials subject to inspection under this Section 8.5 shall not include Customer-specific information or records and materials of Affiliated Persons, unless the City can reasonably show why such Customer-specific information or records and materials of Affiliated Persons may be necessary or appropriate to review or audit the Company's compliance with its obligations pursuant to this Agreement.

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

SECTION 9 - RESTRICTIONS AGAINST ASSIGNMENT AND OTHER TRANSFERS

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

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

9.3 Petition. The Company shall promptly notify (in advance when possible) the Commissioner of any action requiring the consent of the City pursuant to Sections 9.1 or 9.2 hereof or to which

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

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

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

9.6 Permitted Encumbrances; Pre-Approved Transfers. (a) Nothing in this Section 9 shall be deemed to prohibit (or require consent of the City to) any encumbrance, assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the Facilities, or any right or interest therein, for bona fide financing purposes, provided that each such encumbrance, assignment, pledge, lease, sublease, mortgage, or other transfer shall be subject to the rights of the City pursuant to this Agreement and applicable law (the actions permitted in this Section include, without limitation, promissory notes and financial and security agreements for the financing of the Facilities with a third party financing entity). The consent of the City shall not be required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of the Company of all or any part of the Facilities pursuant to the rights of such secured creditor under Article 9 of the Uniform Commercial Code, as in effect in the State of New York, and, to the extent that the collateral consists of real property, under the New York Real Property Law; provided, further that, such transfer to or taking possession shall be subject to the rights of the City pursuant to and other provisions of this Agreement. The City waives any lien rights it may

have concerning Base Station antennas and equipment boxes, which are deemed personal property of the Company and not fixtures, and the Company shall at all times have the right to remove same at any time without the consent of the City (except (i) to the extent such consent is required by DOT with respect to access to and care of the applicable Street Operations Pole or Street Operations Poles, and (ii) subject to any rights of the utility owner of an Street Utility pole from which the company seeks to remove Facilities). The City agrees that such Base Station antennas and equipment boxes shall be exempt from execution, foreclosure, sale, levy, or attachment, provided that such agreement by the City is not intended to limit the City's rights to remove all or part of the Facilities as expressly set forth in this Agreement.

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

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

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

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

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

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

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

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

liable to the Company or any other Person for exercising its rights herein. This Section 9.8 shall not be construed to unilaterally transfer franchise rights under this Agreement.

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

SECTION 10 – LIABILITY AND INSURANCE

10.1 Liability and Indemnity

10.1.1 Company. The Company shall be liable for, and the Company shall indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the "Indemnitees") harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of the construction, operation, maintenance, repair or removal of the Facilities or otherwise arising out of or related to this Agreement; provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this Section 10.1 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses to the extent such liabilities, etc. arise out of any willful misconduct or negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors. Notwithstanding the preceding, it is not the intention of this Agreement that the Company, if it hires or retains for its own purposes a consultant or contractor which also happens to be a consultant or contractor of the City, be obligated to indemnify such consultant or contractor, with respect to work such consultant or contractor performs for the Company, in any manner inconsistent with the applicable agreement between the Company and such consultant or contractor. The parties agree that the reference to matters "arising out of the construction, operation, maintenance, repair or removal of the Facilities or otherwise arising out of or related to this Agreement" is not intended to refer to matters in which the nexus of the Company and the Facilities to a matter is solely the presence of the Company's rights hereunder in a chain of title to the Inalienable Property or to the property and equipment installed thereon (so that, for example, a claim against the City arising from an injury to a third party using the Inalienable Property would not be subject to the indemnification provisions hereof merely by reason of the existence of franchise rights with respect the Inalienable Property granted to the Company hereunder, but would become subject to said indemnification provisions if there is any nexus between such claim and the construction, operation, maintenance, repair or removal of the Facilities or between such claim and this Agreement).

10.1.2 No Liability for Public Work, etc.. None of the City, its officers, agents, servants, employees, attorneys, consultants or independent contractors shall have any liability to the Company for any damage as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the Facilities by or on behalf of the Company or the City in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Inalienable Property, or the elimination, discontinuation, closing or demapping of any Inalienable Property, as provided in Section 2.4.3 and Section 4 hereof or other actions of the City referred to in Section 4. When

reasonably possible, the Company shall be consulted prior to any such activity, but the City shall have no liability to the Company in the event it does not so consult the Company. All costs to repair or replace the Facilities, or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company, provided, however, that the foregoing obligation of the Company pursuant to this Section 10.1.2 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any willful misconduct or negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

10.1.3 No Liability for Damages. None of the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors shall have any liability to the Company for any special, incidental, consequential, punitive, or other damages as a result of the proper and lawful exercise of any right of the City pursuant to this Agreement or applicable law, including, without limitation, the rights of the City to terminate this Agreement or the franchise granted herein as provided herein; provided, however, that the foregoing limitation on liability pursuant to this Section 10.1.3 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any willful misconduct or negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

10.1.4 Defense of Claim, etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 10.1.1 hereof; then upon demand by the City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Company's insurance carrier (if such claim, action or proceeding is covered by insurance) or by the Company's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation (because, for example, a conflict of interest exists which makes joint representation of the Indemnitee by Company's counsel inadvisable), such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Company shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

10.2 Insurance

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

10.2.2 Commercial General Liability Insurance. (a) The Company shall maintain Commercial General Liability insurance covering the Company as a named insured in the minimum amount of $10,000,000 per occurrence and a minimum of $10,000,000 aggregate. The use of an excess or umbrella policy is allowable to meet the limit. Such insurance shall protect the Company, and the City, its officials and employees, from claims of property damage and bodily injury, including death, that may arise from any of the operations under this Agreement. Such insurance shall cover,

inter alia, products liability. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, and shall be occurrence based rather than "claims-made". Such policy shall include an endorsement providing that no cancellation or non-renewal of such policy will be effective without at least thirty (30) days prior written notice to the City delivered by either registered mail or other delivery method that provides proof of receipt.

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

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

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

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

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

10.2.6 General Requirements for Insurance Coverage and Policies

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

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

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

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

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

10.2.6 Proof of Insurance.

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

C-105.2 Certificate of Workers' Compensation Insurance;

U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;

Request for WC/DB Exemption (Form CE-200);

Equivalent or successor forms used by the New York State Workers' Compensation Board; or

Other proof of such insurance in a form acceptable to the City;

(b) For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Company shall, as a condition to the occurrence of the Effective Date, file a certificate of insurance with DoITT. All certificates of insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Company's general liability policy by which the City has been made an additional insured pursuant to Section 10.2.2 above. All certificates of insurance shall also be accompanied by either a duly executed "Certification by Broker" in the form provided by the City or copies of all policies referenced in the certificate of insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted;

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

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

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

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

10.2.7 Miscellaneous Insurance Matters.

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

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

(c) Insurance coverage in the minimum amounts required in this Section shall not relieve the Company of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or applicable law;

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

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

SECTION 11 – DEFAULT AND TERMINATION

11.1 Remedies Not Exclusive. The Company agrees that the City shall have the specific rights and remedies set forth in this Section 11. These rights and remedies are in addition to and cumulative of any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement. Such rights and

remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any liability under this Agreement. Notwithstanding anything to the contrary in this Section 11.1, nothing in this provision shall entitle the City to duplicative collection of damages.

11.2 Defaults and Event of Defaults.

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

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

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

(b) any breach or default of any other material provision of this Agreement by the Company that is not cured within thirty (30) days after notice to the Company given pursuant to Section 11.2.1 hereof, except that if such breach or default is curable but work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within the cure period provided, then such breach or default shall not constitute an Event of Default so long as the Company shall have commenced curing the same within the thirty (30) day cure period and shall thereafter diligently and continuously prosecute the same promptly to completion; or

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

11.2.3 Remedies of the City on an Event of Default. (a) Upon an Event of Default, DoITT may:

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

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

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

(iv) revoke the franchise granted pursuant to this Agreement by termination of this Agreement as provided in Section 11.3 hereof;

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

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

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

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

11.3 Termination

11.3.1 Termination Events. (a) The occurrence of any of the following shall result in termination of the Agreement:

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

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

such proceedings; or (D) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company; or

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

(iv) the expiration of thirty (30) days (or such longer period as may be specified by the City in such notice) after notice from the City to the Company that the City is invoking its option under Section 11.2.3 to terminate this Agreement after an Event of Default.

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

11.4 Removal

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

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

(b) in removing the Facilities, or part thereof, the Company shall refill and compact, at its own cost and expense, any excavation that shall be made by it and shall leave, in all material aspects, all Inalienable Property and other property and equipment, including without limitation Street Operations Poles, in as good condition as that prevailing prior to the Company's removal of the Facilities, ordinary wear and tear not caused by the Company or the Facilities excepted, and without affecting, altering or disturbing in any way any electric, telephone or other cables, wires, structures or attachments;

(c) the City shall have the right to inspect and approve the condition of such Inalienable Property and other property and equipment after removal and, to the extent that the City determines that said Inalienable Property and other property and equipment of the City have not been left in materially as good condition as that prevailing prior to the Company's removal of the Facilities

(ordinary wear and tear not caused by the Company or the Facilities excepted) the Company shall be liable to the City for the cost of restoring the Inalienable Property and other property and equipment of the City to said condition;

(d) the Security Fund, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all Inalienable Property and other property and equipment of the City, and for not less than one hundred twenty (120) days thereafter; and

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

11.4.2 Failure to Commence Removal. If, in the reasonable judgment of the City, the Company fails to commence removal of the Facilities as designated by DoITT, within sixty (60) days after DoITT's removal order, or if the Company fails to substantially complete such removal, including all associated repair of the Inalienable Property and other property and equipment of the City, within twelve (12) months thereafter, then, to the extent not inconsistent with applicable law, the City shall have the right to remove, or authorize removal by another Person of, the Facilities, at the Company's cost and expense. Any portion of the Facilities not timely removed by the Company shall belong to and become the property of the City without payment to the Company, and the Company shall execute and deliver such documents as the City shall reasonably request, in form and substance acceptable to the City, to evidence such ownership by the City of such Facilities, but not in any other property of the Company, intellectual or otherwise.

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

11.5 Return of Security Fund. Upon the later of the date one hundred and twenty (120) days after the termination of this Agreement for any reason or the date of the completion of removal of the Facilities from and associated repair of the Inalienable Property and other property and equipment of the City pursuant to Section 11.4.1 hereof, the Company shall be entitled to the return of the Security Fund deposited pursuant to Section 5 and Appendix C hereof, or such portion thereof as remains on deposit at said termination, provided that all offsets necessary (a) to compensate the City pursuant to Section 5.2 and/or Section 5.3 hereof, (b) to cover any costs, loss or damage incurred by the City as a result of any Event of Default, in the event of termination of this Agreement by the City pursuant to Section 11.3 hereof, and (c) to reimburse the City for the cost of removal of the Facilities pursuant to Section 11.4.2 hereof have been taken by the City.

SECTION 12 – MISCELLANEOUS

12.1 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are incorporated herein by reference and expressly made a part of this Agreement as if they were part of the body of this Agreement. The procedures for approval of any

subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification of the body of this Agreement.

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

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

12.4 Notices. Every notice, order, petition, document, or other direction or communication (collectively referred to in this Section as a "notice") to be served upon the City or the Company shall (unless expressly provided to the contrary in this Agreement), in order to have a legal or contractual effect, be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested. Every such notice to the Company shall be sent to its office located at 90 White Street, New York, NY 10013, Attention: Ray LaChance, President. Every notice from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to "the City" or to "DoITT" in which case such communication shall be sent to DoITT at 2 Metro Tech Center, Brooklyn, NY 11201, Attention: Assistant Commissioner for Franchise Administration. A required copy of each notice from the Company shall be sent to each of the following addresses: (1) DoITT, 255 Greenwich Street, 9th Floor, New York, New York 10007 Attention: General Counsel, and (2) New York City Law Department, 100 Church Street, New York, New York 10007, Attention: Chief, Economic Development Division. Except as otherwise provided herein, the mailing of such notice, direction, or order shall be equivalent to direct personal notice and shall be deemed to have been given when mailed. Either party to this Agreement may change any notification address set forth in this Section 12.4 by notice to the other party.

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

12.5.1 Organization, Standing and Power. The Company is a corporation duly organized, validly existing and in good standing 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. The Company has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Certified copies of the Company's current articles of incorporation and certificate of good standing (or documents of comparable import if the Company is not a corporation) will be delivered to the City as a condition to the occurrence of the Effective Date, and will be complete and correct as thus delivered. The Company is qualified to do business and is in good standing in the State of New York. The Company holds or shall obtain any and all necessary licenses and permits from the New York State Public Service Commission, the Federal Communications Commission, and any other governmental body having jurisdiction over provision of services by the Company.

12.5.2 Authorization; Non-Contravention. The execution and delivery of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the Company shall furnish the City with a certified copy of authorizations for the execution and delivery of this Agreement as a condition to the occurrence of the Effective Date. This Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery will constitute) the binding obligations of the Company. The Company has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

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

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

12.5.5 Criminal Acts. Neither the Company, nor, to the best of the Company's knowledge after reasonable investigation, any Person holding a Controlling Interest in the Company, nor any director or officer of the Company nor any employee or agent of the Company nor any Controlling Person, acting pursuant to the express direction, or with the actual consent of the foregoing, has been convicted (where such conviction is a final, nonappealable judgment) or has entered a guilty plea with respect to any criminal offense arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, or (iii) any act to be taken following the Effective Date, pursuant to this Agreement by the City, its officers, employees, or

agents, including, without limitation, bribery or fraud arising out of or in connection with (i), (ii) or (iii).

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

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

12.6.1 Compliance with Laws; Licenses and Permits. (a) The Company shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments (including, but not limited to, those of the PSC and the FCC and any other federal or state agency or authority of competent jurisdiction) affecting this Agreement, the franchise, and the Facilities; and (ii) all local laws and all rules, regulations and duly authorized orders of the City.

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

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

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

from, or terminate the employment of, said Person or Persons within thirty (30) days after the City orders such disassociation.

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

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

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

12.8 No Waiver; Cumulative Remedies. No failure on the part of either party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. No failure of the Company or the City to insist on strict performance by the other of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of their respective rights hereunder shall be considered a waiver of such rights, and the Company and the City shall each have the right to enforce such respective rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of either under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by either party at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by either party at any other time. In order for any waiver of either party to be effective, it must be in writing. The failure of either party to take any action regarding a breach or default, or an Event of Default, by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of either party to take any action permitted by this Agreement at any other time regarding such breach, default or Event of Default which has not been cured, or with respect to any other breach, default or Event of Default by the Company.

12.9 Partial Invalidity. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, then the party which had been the beneficiary of such invalidated portion shall have the right to terminate this Agreement and invoke the termination provisions hereof as set forth in Section 11.3 hereof, except that if the other party waives such invalidity and continues to comply voluntarily with such invalidated portion then so long as such voluntary compliance continues the right to terminate described in this Section 12.9 shall not apply.

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

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

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

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

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

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

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

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

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

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

12.16 Modification. Except as otherwise provided in this Agreement, any Appendix to this Agreement or applicable law, no provision of this Agreement nor any Appendix to this Agreement shall be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the City and the Company, and approved as required by applicable law.

12.17 Service of Process. Process may be served on the Company either in person wherever the Company may be found, or by registered mail addressed to the Company at its address as set forth in Section 12.4 of this Agreement, to such other location as the Company may provide to the City by notice in writing, or to the Secretary of State of the State of New York.

12.18 Compliance With Certain City Requirements. The Company agrees to comply with the City's "MacBride Principles", a copy of which is attached at Appendix G hereto. The Company agrees to comply with the City's Vendor Information Exchange System, as the same may be amended from time to time.

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

--end of page—

[signatures appear on next page]

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

THE CITY OF NEW YORK

By: [redacted]
Deputy Mayor

By: Department of Information Technology and Telecommunications

[redacted]
Commissioner

BY: CHARLES R. FRASER
GENERAL COUNSEL

Approved as to form:

[redacted]
Acting Corporation Counsel

Attest:

[redacted]
City Clerk

ZENFI NETWORKS, INC.

By: [redacted]

Name: Victoria O'Kane
Title: COO

On the 21st day of July in the year 2015 before me, the undersigned, personally appeared VICTORIA O'KANE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[redacted]

Notary Public

[redacted]

On the 22nd day of JULY in the year 2015 before me, the undersigned, personally appeared CHARLES R. FRASER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[redacted]

Notary Public

[redacted]

On the 4th day of August in the year 2015 before me, the undersigned, personally appeared Anthony Shorris, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[redacted]

Notary Public

[redacted]

On the 7 day of August in the year 2015 before me, the undersigned, personally appeared Michael McSweeney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[redacted]

Notary Public

[redacted]

APPENDIX A

Base Station Location and Design

I. Design of Base Station Equipment

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

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

(a) An equipment housing with a volume no greater than 2.8 cubic feet (i.e., 4,840 cubic inches). Equipment housings that are of a volume no greater than 2.8 cubic feet, but that are not "sub-sized housings" under subsection (b) below are referred to in this Agreement as "standard housings". Standard housings shall have a maximum width (i.e., a maximum horizontal dimension, perpendicular to the pole and parallel to the ground) of eighteen inches unless a substantial operational need for a larger width is demonstrated to the satisfaction of DoITT and the City's Department of City Planning ("DCP"). Any determination of satisfaction by DoITT and DCP pursuant to the preceding sentence may be in the form of an approval of a specific Street Pole use proposal or may be made in more generic form covering all or a category of Street Poles or potential installations, as DoITT and DCP may determine.

(b) An equipment housing with maximum dimensions of 13 inches by 9 inches by 4 inches (that is, no more than thirteen inches in its longest dimension, nine inches in its second longest dimension and four inches in its shortest dimension). Equipment housings complying with this subsection (b) are referred to in this Agreement as "sub-sized housings".

Equipment housings installed pursuant to this Agreement shall be sub-sized housings unless an operational need for a standard housing is demonstrated to DoITT's satisfaction. Any determination of satisfaction by DoITT and DCP pursuant to the preceding sentence may be in the form of an approval of a specific Street Pole use proposal or may be made in more generic form covering all or a category of Street Poles or potential installations, as DoITT and DCP may determine.

Element (2): Stick-Type Antennas. Up to two stick-type antennas, each no more than two inches in diameter and extending no more than thirty-six inches in length,

extending vertically (either up or down) from a base either at the top of the pole or on the related equipment housing; provided that where such equipment is installed on "bishop's crook" design SLPs and located within the "limit zone" defined in Section I.(B)(3) of this Appendix A below, such antennas must be attached to the equipment housing and not extend more than one foot above the limit zone or the widest part of the flared decorative element directly above the limit zone, whichever is shorter, or the start of the flared decorative element below the limit zone, unless an exemption to these height restrictions has been made by DCP and DoITT upon the determination that the antenna designs are inconspicuous.

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

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

(1) Unless otherwise specifically permitted by the City, all equipment on a Street Pole will be located on the vertical shaft portion of the pole (that is, unless otherwise specifically permitted by the City, no equipment will be located on the horizontal portion or "arm" of the Street Pole) and equipment housings shall be oriented vertically so that the largest dimension is the height. Notwithstanding the preceding sentence however sub-sized housings and equipment related thereto may be located at the top of the curved arm of an SLP with a cobra-head fixture (immediately adjacent to the luminaire itself) or at the junction of the curved arm and the vertical portion of the pole. (if, pursuant to this sentence, housings are located on a horizontal "arm", such housings shall be oriented so that their largest dimension is also horizontal).

(2) On TLPs with signal "arms," housings shall be located in the "arm zone" (the "arm zone" is defined as the portion of the pole above the curved "arm" and below the short cross bar carrying the tension rods supporting the "arm"). Where a housing, the dimensions of which comply with the dimensional requirements of this Agreement, is longer than the "arm zone", the requirement that such housing be located within said arm zone shall be met if the housing is located such that it runs the full length of the arm zone with a minimum of any additional length stretching above or below the arm zone. On TLPs without signal "arms," and on SLPs, housings shall be located (except as expressly permitted by the City) in an area no lower than fifteen feet above curb level (except that sub-sized housings may be located as described in the final sentence of the preceding subsection (1) even if such location would be inconsistent with such height requirement).

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

(C) Permitted Visual Appearance of Equipment Housing.

(1) Each equipment housing must be painted the same color as the pole on which it is sited.

(2) No writing, symbol, logo or other such graphic representation that is visible from the street or sidewalk shall appear on any exterior surface of an equipment housing.

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

(D) Permitted Weight of Base Station Equipment. All equipment to be installed on a Street Pole must be of a weight no greater than that compatible with the capacity of the pole to safely and securely support such equipment.

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

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

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

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

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

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

(a) Installation of Base Stations on Street Poles shall be subject to approval by the City's Art Commission (Art Commission means the Art Commission of the City of New York, or any successor thereto) of the design of the Company's proposed form of Base Station installation, as provided in Section 854 of the City Charter.

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

(c) Installation within business improvement districts or special assessment districts is subject to rights the applicable district management association (or similar entity) may have, if any (which rights shall be in addition to and not in lieu of the rights of the City to full compliance with this Agreement in all respects).

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

(e) Installation equipment on specially designed poles (for example, without limitation, poles specially designed for historic districts or business improvement districts) may, at the City's discretion, be required to modify otherwise permitted equipment designs for consistency with special pole designs.

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

(G) Radio Frequency Energy Exposure Limits. The Company shall, with respect to all the Facilities installed on, over or under the Inalienable Property, (1) comply on an on-going

basis with FCC maximum permitted levels of radio frequency energy exposure (calculated on an aggregate basis with any other radio frequency energy emitters that may be present), (2) comply with all FCC rules and requirements, regarding the protection of health and safety with respect to radio frequency energy exposure, in the operation and maintenance of such Facilities (taking into account the actual conditions of human proximity to Base Stations on Street Poles), and (3) and at the direction of the City, pay the costs of testing such Facilities for compliance with the preceding clauses (1) and (2), which testing may be directed by the City from time to time and which is to be conducted by independent experts selected by the City after consultation with the Company and which testing shall be conducted in accordance with the FCC's OET (Office of Engineering and Technology) Bulletin 65 (or a successor thereto) unless the City reasonably determines that alternative testing procedures that reflect sound engineering practice are appropriate.

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

II. Location and Number of Pole Sites

(A) Location Requirements.

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

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

(2) Base Station installations on Street Poles will only be permitted on SLPs and Street Utility Poles if such SLPs or Street Utility Poles are located within intersections, except that such base stations may be placed on SLPs located other than within intersections upon a demonstration, to the satisfaction of DoITT and DCP, that there is an operational need for such placement at non-intersection sites (in the event of such approved location at non-intersection sites, only sub-sized housings will be placed at such non-intersection sites unless there is a further demonstration to the satisfaction of DoITT and DCP that there is an operational need for standard housings at such sites). Any determination of satisfaction by DoITT and DCP pursuant to the preceding sentence (including the parenthetical sentence therein) may be in the form of an approval of a specific Street Pole use proposal or may be made in more generic form covering all or a category of Street Poles or potential installations, as DoITT and DCP may determine. For purposes of this subsection (2) and the following subsection (3), a Street Pole shall be "within an intersection" if any part of the base of the Street Pole is ten (10) yards or less

from two different street beds or at a comparable location at the conjunction of two (2) streets.

(3) Base Stations will be permitted on SLP sites within an intersection only up to the number which leaves two SLP sites within such intersection without any Base Stations installed by Street Pole Franchisees (including the Company), and thus available for future potential use for purposes to be determined by the City, except that such Base Stations may be permitted at locations which reduce below two the number of SLPs within an intersection left without such Base Stations upon a demonstration, to the satisfaction of DoITT and DCP, that there is an operational need for such siting. Any determination of satisfaction by DoITT and DCP pursuant to the preceding sentence may be in the form of an approval of a specific Street Pole use proposal or may be made in more generic form covering all or a category of Street Poles or potential installations, as DoITT and DCP may determine.

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

(5) Base Station installations on Street Poles will only be permitted on TLPs that support a signal "arm" reaching into the roadbed, except that if at an intersection there are no TLPs with such a signal arm, then up to two TLPs without signal arms may be used for Base Stations at such intersection.

(6) Base Stations installed on Street Poles pursuant to this Agreement shall be placed, located and operated so as not to interfere with public safety or traffic operations or any other City, state or federal government operations. The Company agrees to remove any Base Station that is operating inconsistently with this subsection (6) if such inconsistency cannot be immediately cured.

(7) Base Stations installed on Street Poles pursuant to this Agreement shall be placed, located and operated by the Company so as not to illegally interfere with the operation of Base Stations of other Street Pole Franchisees or other radio frequency spectrum users generally. The City shall, to the extent permitted, require the foregoing clause to be placed in all Street Pole Franchises granted now or during the Term. The Company recognizes, however, that the City is not a guarantor of, nor is it obligated to the Company to enforce, the Company's freedom from radio frequency interference that may affect the Company's Base Stations. Even if the City has some authority as a site location provider to act against such interference, and the City may choose to exercise such authority in any particular instance, the Company hereby recognizes and agrees that the City shall have no legal or contractual obligation to the Company to exercise such authority.

(8) The highway sign supports (HSSPs) available for use for installation of Base Stations shall be limited to those located on limited access highways (and only those limited access highways which are part of the Inalienable Property) and only those

supports that support signs which fully traverse the traffic lanes of the highway in at least one traffic direction. Supports for other types of signs (such as roadside traffic signs) shall not be used unless specifically authorized in writing by the City.

(9) This Agreement does not authorize the placement of Base Stations on sites, structures or facilities other than SLPs, TLPs, HSSPs, and Street Utility Poles except as such placement may be expressly authorized by DoITT and DOT pursuant to procedures established by DoITT and DOT. The City reserves the right to grant, at any time, to any party, upon terms and conditions determined by the City in its discretion, rights to place such equipment on other sites (such as City buildings) or other types of street facilities, equipment or furniture.

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

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

(12) Street Utility Poles. Notwithstanding anything to the contrary in the preceding subsections (1) and (2) of this Section II.(A)., the location of Facilities on Street Utility Poles shall be consistent with the provisions of said subsections (1) and (2) to the maximum extent permitted by safety, legal and use requirements associated with the use of such poles for the applicable pre-existing utility uses.

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

The Company shall not install any facilities or equipment on any Street Operations Pole unless and until such Street Operations Pole has been reserved for the Company under this subsection (B).

(1) New Reservation Phases.

(a) From time to time the City will notify the Company and all other Street Pole Franchisees of the opening of a "New Reservation Phase". Not later than thirty (30) days after such notice, the Street Pole Franchisee that is the highest on the Priority List for each Zone may post, in a manner accessible to the City and the other Street Pole

Franchisees[1], a list, for each Zone in which such Street Pole Franchisee is the highest on the Priority List, of Street Operations Poles in such Zone on which such Street Pole Franchisee seeks to site Base Stations (such list to include no more than the maximum number of proposed Street Operations Pole sites than is permitted under whichever is applicable of subsections II.(B)(1)(c),(d), (e) or (f) below), which list may not include any Reserved Poles[2]. Upon the posting of such list (such posting referred to herein as a "Reservation Notice"), the Street Operations Poles on such list shall become Reserved Poles, reserved to the Street Pole Franchisee that posted the list. Not later than thirty (30) days after the earlier of (i) posting of such Reservation Notice with respect to any particular Zone, or (ii) the expiration of the time period for the posting of such Reservation Notice, the Street Pole Franchisee that is second on the Priority List for such Zone may submit its own Reservation Notice, such list again to include no more than the maximum number of proposed Street Operations Pole sites than is permitted under whichever is applicable of subsections II.(B)(1)(c),(d), (e) or (f) below, and such list not to include any Reserved Poles. Thereafter, not later than thirty (30) days after each posting of a Reservation Notice (or if earlier, the expiration of the time period for the posting of such Reservation Notice) with respect to any particular Zone, the Street Pole Franchisee next on the Priority List for that Zone may submit its own Reservation Notice, in each case not to exceed the maximum permitted number of proposed sites under whichever is applicable of subsections II.(B)(1)(c),(d), (e) or (f) below and in each case not to include any Reserved Poles. Such process will be repeated until each Street Pole Franchisees has had the opportunity to submit a Reservation Notice with respect to each Zone in its Franchise Area. On the date that all Street Pole Franchisees have filed a Reservation Notice for all Zones in their Franchise Areas, or the opportunity to file such a Reservation Notice has expired, the particular New Reservation Phase shall be considered completed.

(b) A "Reserved Pole" reserved to a particular Street Pole Franchisee is a Street Operations Pole (i) that has been reserved, pursuant to the procedures described in this Appendix A, to that Street Pole Franchisee for installation of a Base Station thereon, and (ii) with respect to which no event has occurred which is described in subsection (3) below of this Section I.(B). When the term "Reserved Pole" is used generally rather than with specific reference to being reserved to a particular Street Pole Franchisee, it is intended to refer to Reserved Poles reserved to any Street Pole Franchisee.

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[1] Such forum may be an e-mail list, a password accessible web site, an overnight mail delivery to all members of a mailing list, or other system, as chosen by the City after consultation with the Street Pole Franchisees.

[2] During new reservation phases, there will be no Reserved Poles in a Zone until the Street Pole Franchisee that is highest on the Priority List for such Zone posts its list for such Zone.

(c) Upon the Commencement of each New Reservation Phase, the City shall set a "Maximum Per-Zone Number" applicable to that New Reservation Phase and a "Maximum Per-Phase Number" applicable to that New Reservation Phase

(d) During each New Reservation Phase to occur during the Term, the Company (and each of the other Street Pole Franchisees) shall include no more than the applicable Maximum Per-Zone Number of Street Operations Poles on any Reservation Notice for any Zone, and no more than the applicable Maximum Per-Phase Number of Street Operations Poles in total on all its Reservations Notices posted during such first New Reservation Phase.[3]

(e) During subsequent New Reservation Phases that occur during the Term, Reservation Notice limits to which the Company is subject during the subsequent New Reservation Phases shall be in addition to (i.e., they shall not be reduced by) the number of Reserved Poles reserved to the Company from the previous New Reservation Phase, but only if the Company has completed installation of Base Stations on such Reserved Poles. If the Company has Reserved Poles from the previous New Reservation Phase with respect to which it has not completed installation of Base Stations, then for each such Reserved Pole with respect to which installation is not complete, the zone and phase reservation limits for the applicable subsequent New Reservation Phase shall be reduced by one. On the other hand, however, if the Company included a Street Operations Pole in a Reservation Notice during the previous New Reservation Phase, but the Company was unable (despite commercially reasonable efforts by the Company) to receive DOT's approval for using such Street Operations Pole to install a Base Station thereon, despite a reasonable expectation on the part of the Company, based on the terms of this Agreement and on publicly accessible information, that such Street Operations Pole would be approved by DOT for use to install a Base Station thereon, then (provided the Company has voluntarily terminated its reservation of such Street Operations Pole pursuant to Section II.(B)(2)(ii) below of this Appendix A) the zone and phase reservation limits

[3] Thus, for example, if (as has been the case for reservation phases the City has conducted in the past under franchises comparable to this one), the Maximum Per-Zone Number for a particular New Reservation Phase is set by DoITT at 150 and the Maximum Per-Phase Number is set by DoITT at 300, then: Street Pole Franchisee X (with a Franchise Area that includes Zones A, B and C) may submit, during the first New Reservation Phase, Reservation Notices including, say, 150 Street Operations Poles in Zone A, 150 in Zone B and 0 in Zone C, or, as another example, 100 in Zone A, 100 in Zone B and 100 in Zone C, or any other variation as long as the total submitted by such Street Pole Franchisee adds up to no more than 300 and no Reservation Notice submitted by such Street Pole Franchisee for any one Zone includes more than 150 Street Operations Poles. As another, example (again using for this example the same 150 per zone and 300 per phase limits), Street Pole Franchisee Y (with a Franchise Area that includes only Zones B and C) may submit Reservation Notices with any number of Street Operations Poles up to 150 in a Zone B Reservation Notice and up to 150 in a Zone C Reservation Notice.

applicable to the Company during the subsequent New Reservation Phase shall be increased by one.

(f) It is anticipated that the City will continue to administer New Reservation Phases in the same manner as described in subsections II.(B)(1)(a), (b), (c) and (d), and in each case in commencing each New Reservation Phase, the City will designate an appropriate Maximum Per-Zone Number and an appropriate Maximum Per-Phase Number setting the maximum number of Street Operations Poles that can be requested for reservation, during such New Reservation Phase, based on the reasonable determination of the City balancing the City's ability to monitor the installation process, the interest of the Street Pole Franchisees in building their Facilities promptly, and the appropriate treatment of Street Pole Franchisees with higher and lower places on the Priority List.

(2) Expiration of Reservation. The status of a Street Operations Pole as a Reserved Pole, reserved to a particular Street Pole Franchisee, shall expire upon the occurrence of the earliest to occur of the following:

(i) If the Street Pole Franchisee's Street Pole Franchise terminates, then the status as Reserved Poles of all Reserved Poles reserved to such Street Pole Franchisee shall expire upon such termination.

(ii) If no facilities of a Street Pole Franchisee are installed on a particular Reserved Pole that is reserved to such Street Pole Franchisee, said Street Pole Franchisee may at any time post to the City and the other Street Pole Franchisees (in a manner comparable to the manner of posting Reservation Notices) that it chooses to voluntarily surrender such Reserved Pole status, in which event such Reserved Pole status shall expire immediately on the City's receipt of such notice.

(iii) If a Base Station has not been fully installed and become operational on a Reserved Pole within one year of the posting of a Reservation Notice creating such reservation, then at such time as the City thereafter commences a further New Reservation Phase the City will notify Street Pole Franchisees that such Reserved Pole's treatment as reserved is subject to inclusion on new Reservation Notices. (The one-year period set forth in the preceding sentence shall be subject to extension for Unavoidable Delays in the applicable Base Station installation.) Immediately upon the posting of a Reservation Notice, in connection with such further New Reservation Phase, reserving such Street Operations Pole, the status of such Street Operations Pole as a Reserved Pole reserved to the original reserving Street Pole Franchisee will be deemed expired and such Street Operations Pole will be treated as a Reserved Pole reserved to the newly reserving Street Pole Franchisee.[4]

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[4] If no Street Pole Franchisee requests such Street Operations Pole during a New Reservation Phase as described in this subsection (iii), such Street Operations Pole's status as a Reserved Pole shall continue (unless it otherwise expires under subsections (i), (ii) or (iv) of this subsection (3)) but failure to complete installation and notify the City of such completion by the

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(iv) If a Base Station becomes non-operational after initially becoming operational and is not restored to operability within sixty (60) days of becoming non-operational, or if a Base Station recurringly becomes non-operational in a manner that, despite repeated restoration of operability within the required time period, suggests that the Base Station is not being significantly relied on for the provision of service, then the Reserved Pole status of such Street Operations Pole shall expire thirty (30) days after notice from the City of such expiration.[5]

(v) If after posting a Reservation Notice, the Company fails within 30 days of such posting to pay the City, for deposit into the Security Fund, such amount as is necessary to meet the requirements of Appendix C of this Agreement in a manner reflecting the addition of such Reserved Poles as are reserved pursuant to such Reservation Notice, then that number of Reserved Poles reserved by such Reservation Notice shall have their Reserved Pole status expire as is necessary to reduce the Company's Security Fund obligation under Appendix C hereof to its actual amount.[6]

(3) Temporary or Permanent Replacement Reservation. In the event that a Street Operations Pole, on which the Company has placed a Base Station in accordance with the provisions of this Agreement, temporarily or permanently is rendered substantially unusable for the purpose intended under this Agreement (for reasons unrelated to the Company and its operations because, for example, the City has removed the Street Operations Pole, temporarily or permanently), the City will cooperate reasonably with the Company to attempt to locate an alternative Street Operations Pole (which is not otherwise a Reserved Pole reserved to the Company or any other Street Pole Franchisee) that can serve as an alternative location for the

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next successive New Reservation Phase shall again expose such Street Operations Pole to potential reservation by others as provided in this subsection (iii).

[5] The intention of this subsection (iv) is to allow Reserved Poles that are not are not fulfilling the intended purpose of providing service to be made available to other Street Pole Franchisees who may be interested in using such Street Operations Pole for provision of service. This subsection (iv) is not intended to cause the expiration of Reserved Pole status for Base Stations which are installed for the specific purpose of providing service only on occasions of unusual demand or specific need, and which are intentionally out of service for extended periods in a manner consistent with such limited use goals. Such limited use Facilities shall not be considered as "non-operational" for purposes of this subsection (iv) so long as they are operational when placed in service for their intended, occasional use and so long as the number of such limited use installations shall not be installed on more than 10% of the Company's Reserved Poles and so long as the Company, upon written request of the City, provides an annual list to the City of such limited use installations on Reserved Poles.

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

Base Station which was installed at such newly unavailable Street Operations Pole. If the City and the Company reach an agreement on such an alternative Street Operations Pole, the City shall designate such Street Operations Pole a Reserved Pole reserved to the Company, such Reservation Pole status to end when and if the original Reserved Pole is restored as an available site or, if earlier, when such status as a Reserved Pole would otherwise end pursuant to the preceding subsection (2) (provided that if the City and the Company agree that it would be more appropriate to keep an installed Base Station at its new location rather than moving it again, back to its original location, then the new location will be deemed to be the applicable Reserved Pole going forward, as if it had been the original Reserved Pole, and the original Reserved Pole's status as reserved will terminated). During any period that a Reserved Pole on which the Company has placed a Base Station in accordance with the provisions of this Agreement becomes (for reasons unrelated to the Company and its operations) unavailable for location of a Base Station, any compensation to the City due under Section II. of Appendix D attributed to such Street Operations Pole shall be abated in full, provided that for the period that an alternative Street Operations Pole becomes designated as a Reserved Pole as described in this subsection (4), then compensation will be due with respect to such alternative location, calculated pursuant to Section II. of Appendix D.

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

(5) If a New Reservation Phase is in process at the time this Agreement first becomes effective, the Company may participate in such New Reservation Phase in its applicable place in order with respect to each applicable zone (or if its place in such order has already passed, then at the next place in order after this Agreement becomes effective).

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

Allocation of Street Utility Poles shall be pursuant to procedures of the utility company owner or owners of the applicable poles. Said Street Utility Pole owner's written approval for Company's use of Street Utility Poles shall be provided to the City prior to the installation of Facilities on Street Utility Poles.

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

The City recognizes that in the ordinary course of business, the Company and other Street Pole Franchisees may, during the course of implementing the Street Pole Franchises, enter into arrangements to utilize services from one another's Facilities (indeed, the City recognizes that it is the expressly contemplated business plan of several of the Street Pole Franchisees to sell capacity on, or service from, their Facilities to cellular and/or personal communications service providers, which class may include certain other Street Pole Franchisees). It is not the intention

of this Agreement to limit or restrict the ability of the Company and other Street Pole Franchisees to, in the ordinary course of their business, buy or sell capacity on, or service from, Facilities installed pursuant to this Agreement and other Street Pole Franchise Agreements. Furthermore, it is not the City's intention to prohibit in this Agreement cooperation among Street Pole Franchisees to identify Street Operations Poles where such cooperation would promote the ability of each of the cooperating Street Pole Franchisees to reserve sufficient Street Operations Poles at sufficiently appropriate locations to meet its service goals, in a manner that minimizes incompatible demands for site reservations in any New Reservation Phase. The parties note, in this regard, that because priority positions in the event of conflicting demand for individual sites have previously been determined, as part of the RFP process, and the compensation the City will receive from each Company for each site in each Zone has been established as part of the completed RFP process, the City is not prejudiced from a compensation point of view by Street Pole Franchisees cooperating among themselves to minimize conflicting reservation requests for individual Street Operations Pole sites (such conflicting requests do not increase the potential for compensation to the City in the way they might if individual Street Operations Pole reservations were auctioned on a site-by-site basis). However, it is *not* the intention of the parties to this Agreement that Street Pole Franchisees be permitted to collude to reduce franchise compensation payments to the City by arranging, for example, for one Street Pole Franchisee to use Reserved Poles reserved to a second Street Pole Franchisee for installation of Facilities that are not bona fide facilities of the second Street Pole Franchisee.[7] Such non-permitted collusion shall be considered a default of the Street Pole Franchise Agreements of all colluding parties, including, if it involves the Company, of this Agreement. Further, it is not intended as a general matter that the reservation of individual Street Operations Poles is to be a transferable right to be transferred among Street Pole Franchisees. If a Street Pole Franchisee chooses not to use a Reserved Pole reserved to it for actual installation of a Base Station, or to terminate its installation on a Reserved Pole, the general procedure intended hereunder is that the Street Pole Franchisee invoke the provisions regarding voluntary termination of a reservation (under Section II.(B)(2)(ii) of this Appendix A), after which the affected Street Operations Pole would become available for others to seek to reserve during the next New Reservation Phase. However, DoITT reserves the right to approve individual transfers of reservations on a case-by-case basis if the public interest would be served by the specific proposed transfer.

IV. Option To Expand Franchise Area; Waiver

(A) Any Street Pole Franchisee with a Franchise Area that includes only Zone C shall have the option, once a year during the Term, to expand such area to include either Zone B, or both Zone B and Zone A, and any Street Pole Franchisee with a Franchise Area that includes

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

only Zones B and C shall have the option, once a year during the Term, to expand such area to include Zone A, provided that:

(1) such Street Pole Franchisee provides notice to the City of its exercise of such option not earlier than one hundred twenty (120) days, but not later than sixty (60) days, prior to each anniversary of the Effective Date, with such expansion to become effective on that anniversary of the Effective Date which occurs immediately after said notice;

(2) such Street Pole Franchisee agrees to an adjustment in the franchise compensation due under Section I. of Appendix D of this Agreement to match, commencing on the day such Franchise Area expansion becomes effective and thereafter going forward, the compensation payable by other Street Pole Franchisees with comparable Franchises Areas (any applicable increase in Zone Compensation to be payable on the date such expansion becomes effective);

(3) such Street Pole Franchisee agrees to an adjustment of the Security Fund obligations under this Agreement to match the Security Fund obligations of other Street Pole Franchisees with comparable Franchises Areas (any applicable increase in such Security Fund obligations to be payable on the date such expansion becomes effective);

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

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

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

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

(A) At no time shall the Company have Base Station facilities on more than three thousand (3000) Street Poles in total throughout the Franchise Area, unless the City agrees to an increase in such maximum number. Once the Companies total number of reservations of Street Operation Poles plus Utility Company approved Street Utility Poles reaches 3000 cumulatively, The Company shall not be permitted to reserve Street Operation Poles if reserving such Street Operations Poles would have the effect of providing the Company rights to place equipment on more than 3000 Street Poles. In addition DoITT will inform the owner of the Street Utility Pole

that the Company is at the 3000 Street Pole limit an no longer has City approval to install equipment on any Street Poles.

(B) In the event that a transaction occurs involving two Street Pole Franchises such that one of the Street Pole Franchises involved in such transaction remains in effect and the other does not (with one of the two Street Pole Franchisees seeking to continue to occupy sites or seek future reservations pursuant to the eliminated franchise), for example an assignment the result of which is a consolidation of two franchises into one, then as provided in Section 9.6(b)(v) of this Agreement, the surviving Street Pole Franchisee shall be obligated to pay Zone Compensation and Street Pole Compensation as if both of the Street Pole Franchises continued in effect (and the Zone Compensation under the surviving Street Pole Franchise shall be deemed increased to reflect such obligation), and the reservation priority system and maximum number of poles provisions of this Appendix A shall also be applied as if the surviving Street Pole Franchisee continued to hold the rights that were held under the no longer surviving Street Pole Franchise. Thus, for example, if the Street Pole Franchisees holding third and fifth priorities in Zone C were to undertake a consolidation transaction in which only the third priority Street Pole Franchise survives, and the third priority Street Pole Franchisee seeks to continue to exercise rights previously exercised by the eliminated franchise, then (i) the third priority Street Pole Franchise would be deemed to provide for a greater Zone Compensation, equal to the sum of the Zone Compensation under both Street Pole Franchises, (ii) the third priority Street Pole Franchisee would be entitled to maintain Base Stations on those Street Operations Poles the fifth priority Street Pole franchisee had been entitled to maintain, (iii) in each New Reservation Phase, the third priority Street Pole Franchisee would be entitled to submit a Reservation Notice in both the third priority reservation spot and the fifth priority reservation spot, and (iv) the total permitted installation limit pursuant to the preceding paragraph (A) would be one set of three thousand attributable to third priority selections plus a second set of three thousand attributable to fifth priority selections.

APPENDIX B

Construction and Maintenance Terms and Conditions Related to Construction of the Facilities

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

I. Base Station Provisions

(A) Prior to any installation of Base Station equipment on a Street Operations Pole, DOT shall have the right to conduct an inspection of the Street Operations Pole and to review and approve the proposed installation for technical compatibility with City facilities and operations.

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

(C) When City maintenance work on Street Operations Poles requires that a Street Operations Pole, on which the Company has located a Base Station in accordance with this Agreement, be removed for component replacement the City will notify the Company so that the Company can remove the Base Station equipment to the extent necessary and reinstall such equipment at the completion of such maintenance work (if such maintenance work will result in hardship to the Company or its Customers, which hardship can be mitigated by application of Section II.(B)(3) of Appendix A of this Agreement, then said Section II.(B)(3) will apply).

(D) When a Street Operations Pole is knocked down (or damaged to the extent it must be removed) due to a traffic accident, weather event, or similar occurrence, the City's maintenance contractor will remove the Street Operations Pole to a safe location as a unit. If the Company has a Base Station located on such Street Operations Pole, the City will notify the Company as promptly as practicable so that the Company may take appropriate action with respect to its Base Station. Upon completion of any repair work at that location, it will be the responsibility of the Company to reinstall the Company's equipment.

(E) For events or activities (such as, for example the Macy's Thanksgiving Day Parade) scheduled or unscheduled, in connection with which the City determines it is consistent with public safety or convenience to undertake certain work involving Street Operations Poles (whether such work be temporary removal, changes in positioning or other actions), the Company shall be required to timely take any action necessary or convenient with respect to any Base Stations it may have on the affected Street Operations Poles to permit the City to take whatever actions with respect to such Street Operations Poles the City determines are necessary or appropriate to facilitate the City's work. The City will cooperate with the Company to the extent practicable to advise the Company regarding the best methodologies for installation of

Base Stations, on those Street Operations Poles most likely to be affected by this provision, in manner that would minimize the impact of this provision on the Company.

(F) It shall be the responsibility of the Company to maintain electric service to the Company's equipment. Maintenance of fuses, cables, breakers, etc. shall be the Company's responsibility.

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

(H) For any Street Operations Pole with respect to which work on the foundation of such Street Operations Pole is necessary (in the reasonable judgment of DOT) to accommodate a connection proposed by the Company between a Base Station to be installed on such Street Operations Pole and other of the Company's Base Stations or a supporting telecommunications system, the Company shall comply with all DOT directions with respect to such foundation work, and failure to do so shall entitle the City to at the City's option and at the Company's cost, perform or arrange for the performance of any work necessary to bring such foundation work into compliance, and to draw on the Security Fund to reimburse the City for any costs incurred by the City in connection with the performance of such work.

(I) As described in Section I.(C)(1) of Appendix A, Base Station equipment housings must be painted the same color as the Street Pole. The following are the paint specifications to be used for Street Operations Poles:

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

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

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

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

(ii) Display high impact resistance forward and reverse to withstand 160 psi directly without cracking, chipping or peeling.

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

(iv) Bend over 180 degrees and one-eighth inch (1/8") mandrel without cracking and be suitable for applications in below freezing temperatures.

(v) Resist solvents for removal of graffiti off painted surfaces.

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

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

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

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

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

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

(iii) Minimum of 60 degrees Fahrenheit Flashpoint.

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

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

(vi) Maximum VOC of 3.45 per gallon.

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

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

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

(C) (1) The Company shall provide, in a format acceptable to the Commissioner, and to the extent different from the requirements set forth in subparagraph (2) below, consistent with industry standards, maps and other information detailing the location of Connecting Fiber pursuant to this Agreement.

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

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

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

(iii) mapping data, both graphical and attribute, must be formatted so that it can be easily read into an Oracle 8i database. Line styles and symbols must conform to DoITT standards and all data must be structured according to DoITT specifications.

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

III. General Provisions.

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

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

APPENDIX C

Security Fund

I. Security Fund Amount. The Security Fund shall be in the form of a cash security fund to be held by the City in an interest-bearing account, separate from any other funds. The initial amount required to be deposited into the Fund by the Company, which initial amount shall be payable to the City for deposit into the Security Fund as a condition to the occurrence of the Effective Date (the "Initial Security Fund Deposit"), shall be equal to one year's annual payment due pursuant to Section I. of Appendix D of this Agreement. Thereafter, the minimum funding level the Company shall be required to maintain in the Security Fund shall always be equal to the sum of (a) one year's annual payment due pursuant to Section I. of Appendix D, plus (b) $250 per Street Operations Pole which is a Reserved Pole reserved for the Company and $16 per Street Utility Pole for which DoITT has received the Street Utility Pole owner's written approval for the company to use the Street Utility Pole, except that said $250 per Reserved Pole amount shall be subject to the following adjustments:

(A) For any Reserved Pole with respect to which the contractor retained by the Company to install and maintain its facilities on such Reserved Pole is also the contractor retained by the City to maintain the Street Operations Pole itself, as a result of the reduced likelihood of inconsistent construction and maintenance resulting from such commonality of contracting, the standard $250 per Reserved Pole requirement as set forth above will be reduced to $125 per Reserved Pole.

(B) If applicable, adjustment pursuant to Section I.(F)(2) of Appendix A hereof.

Notwithstanding the preceding, the increase in the Security Fund minimum balance with the addition of each new Reserved Pole reserved to the Company shall not actually become effective until the date which is thirty days after the date of the Reservation Notice notifying the Company that a new reserved Pole has been designated to it, in order to allow the Company time to arrange for any payment to the City, for deposit into the Security Fund, that is necessary to maintain the Security Fund at the required minimum.

II. Interest. Any interest which accrues in the Security Fund shall accrue to the benefit of the Security Fund, such that any future required deposit by the Company into the Security Fund to achieve a required increase in the balance of the Security Fund may be reduced by the amount by which accrued interest has already increased the Security Fund balance in the Security Fund beyond the balance as of the previous deposit.[8] Accrued interest shall not be paid

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[8] The parties recognize that because of the annual inflation adjustment to the compensation due to the City under this Agreement, the amounts required for deposit into the Security Fund may increase by some amount each year even if there is no increase in the number of Reserved Poles,

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to the Company unless as part of a refund of excess amounts in the Security Fund to which the Company would otherwise be entitled.

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

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and that the provision for interest to accrue for the benefit of the Security Fund may help offset the need for ongoing additional deposits to recognize inflation adjustments.

APPENDIX D

Franchise Compensation

I. Zone Compensation.

The Company shall pay to the City annual "Zone Compensation" equal to $100,000, subject to the CPI Adjustment as defined below. Zone Compensation shall accrue commencing on the Effective Date, provided however that the Company shall be entitled to a credit against the payment of Zone Compensation due and payable on the first anniversary of the Effective Date. The amount of such credit shall be equal to a fraction of the Zone Compensation accruing during the year that runs from and includes the Effective Date until but not including the day prior to the first anniversary of the Effective Date. The numerator of such fraction shall be the number of days in the "Credit Period" and the denominator shall be 365. The "Credit Period" as used in the previous sentence shall mean the period from and including the Effective Date until but not including the day on which the Company posts its first Reservation Notice pursuant to the first New Reservation Phase in which the company participates under this Agreement. Compensation payable pursuant to this Section I. will be in addition to and not in lieu of any fees payable as described in Section II. of this Appendix D and all other compensation payable and other obligations due under this Agreement.

II. Compensation for Use of Street Poles.

(A) The Company shall pay to the City monthly "Street Operations Pole Compensation", for the use or reservation of Street Operations Poles to install Base Stations, in the following amounts: $255.00 per Street Operations Pole that is a Compensation Street Pole and is located in Zone A, $60.00 per Street Operations Pole that is a Compensation Street Pole and is located in Zone B, and $12.00 per Street Operations Pole that is a Compensation Street Pole and is located in Zone C; in each case such amount per Compensation Street Pole to be subject to the CPI Adjustment as defined below.

(B) The Company shall pay to the City monthly Street Utility Pole Compensation, for the use of Street Utility Poles to install Base Stations, in the following amounts: $16.00 (sixteen dollars) per Street Utility Pole that is a Compensation Street Pole and is located in Zone B, and $3.00 (three dollars) per Street Utility Pole that is a Compensation Street Pole and is located in Zone C. (Notwithstanding anything else in this Agreement, location of Facilities on Street Utility Poles in Zone A, if any were to exist, is not permitted under this Agreement). In each case such amount per Compensation Street Pole is to be subject to the CPI Adjustment as defined below.

(C) "Compensation Street Pole" means:

(1) any Reserved Pole reserved to the Company on which the Company's facilities are installed,

(2) any Reserved Pole reserved to the Company on which the Company's facilities are not yet installed but with respect to which the Prepayment Period Expiration Date (as defined below) has occurred,

(3) any Street Operations Pole which was a Reserved Pole reserved to the Company but with respect to which the Company voluntarily terminated the Reserved Pole status pursuant to Section II.(B)(2)(ii) of Appendix A of this Agreement, provided that such Street Operations Pole for which Reserved Pole status was voluntarily terminated shall only be a Compensation Street Pole so long as: (x) less than one year has passed since the voluntary termination became effective, and (y) such Street Operations Pole has not become a Reserved Pole reserved to any other Street Pole Franchisee,

(4) any Street Operations Pole which was a Reserved Pole reserved to the Company but the Reserved Pole status of which was terminated by the termination of the Company's franchise granted pursuant to this Agreement, provided that such Street Operations Pole shall only be a Compensation Street Pole as long as the Company's facilities have not been entirely removed from such Street Operations Pole, and

(5) any Street Utility Pole for which the City has received the Utility Company's written approval as provided for in Appendix A II (C) of this agreement and for which 90 days has elapsed thereafter. In the event that the Utility Company terminates approval for the Company's use of a Street Utility Pole that Street Utility Pole will no longer be considered a Compensation Street Pole.

Notwithstanding the preceding, however, a Street Operations Pole shall cease being treated as a Compensation Street Pole immediately at such time as the Company voluntarily terminates the Reserved Pole status pursuant to Section II.(B)(2)(ii) of Appendix A of this Agreement *if* the Company was unable (despite best efforts by the Company) to receive DOT's approval for using such Street Operations Pole to install a Base Station thereon, despite a reasonable expectation on the part of the Company (at the time it posted the applicable Reservation Notice) that, based on the terms of this Agreement and on publicly accessible information, such Street Operations Pole would be approved by DOT for use to install a Base Station thereon. Furthermore, the foregoing compensation provisions of this Section II. shall be subject to the abatement provisions described in Section 7.7 of this Agreement under the circumstances described in said Section 7.7.

(D) "Prepayment Period Expiration Date" as used in Section II.(B)(2) of this Appendix D means: (1) with respect to any Reservation Pole which was designated as a Reservation Pole as the result of the first New Reservation Phase conducted pursuant to this Agreement, the date which is the later of (a) three months after the date of the Reservation Notice (as defined in Section II.(B)(1)(b) of Appendix A to this Agreement) applicable to such Reservation Pole, or (b) nine (9) months after the Effective Date; and (2) with respect to any

Reservation Pole which was designated as a Reservation Pole as the result of any New Reservation Phase after the first one, the date which is three months after the date of the Reservation Notice applicable to such Reservation Pole; provided that the occurrence of the Prepayment Period Expiration Date, whether under clause (1) or (2) of this sentence, shall be subject to extension for Unavoidable Delays but in no event until a date later than one year after the applicable Reservation Notice. Notwithstanding the preceding, if a Street Pole Franchisee re-reserves, pursuant to Section II.(B)(2)(iii) of Appendix A hereof, a Street Operations Pole that it had previously reserved, then the Prepayment Period Expiration Date shall occur on the same date as the re-reservation Reservation Notice, so that there will be no lapse or interregnum in the accrual of such Street Pole Franchisee's payment obligation with respect to such Street Operations Pole.

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

III. <u>CPI Adjustment</u>.

(A) The amount of annual Zone Compensation set forth in Section I. of this Appendix D and the amounts of Street Pole Compensation set forth in Section II. of this Appendix D, shall be subject to adjustment (the "CPI Adjustment") every year on each anniversary of the Effective Date by multiplying the dollar amounts set forth in said Sections I. and II. by the greater of (x) the result of dividing the CPI as of such anniversary by the CPI as of the Effective Date, or (y) 1. Thus for example, with respect to the adjustment of the Zone Compensation dollar amount set forth in Section I. of this Appendix D above, if the CPI is 124 on the Effective Date, 127 on the first anniversary of the Effective Date and 128 on the second anniversary of the Effective Date, then the Zone Compensation due and payable on such first anniversary of the Effective Date will be the product of $100,000 multiplied by 127/124, rounded to the nearest dollar, and the Zone Compensation due and payable on such second anniversary of the Effective Date will be the product of $100,000 multiplied by 128/124, rounded to the nearest dollar.

(B) "CPI" shall mean the Consumer Price Index for all Urban Consumers (CPI-U), All Items, New York Metropolitan Area (1982-84 equals 100) published by the United States Department of Labor, Bureau of Labor Statistics; provided that if such index is discontinued or so substantially revised as to significantly reduce the continuity of the index as a measure of on-going inflation, then such index as adjusted or replaced (as reasonably determined by the City) to restore such continuity.

IV. <u>Timing of Payments</u>.

(A) Zone Compensation payments shall be made annually in advance and shall be due and payable on the Effective Date (the payment of Zone Compensation due and payable on the Effective Date is referred to in this Agreement as the "Initial Payment") and on each anniversary of the Effective Date. As provided in Section I. of this Appendix D, the second scheduled payment of Zone Compensation, due and payable on the first anniversary of the Effective Date, shall incorporate a credit against the generally applicable Zone Compensation.

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

APPENDIX E

Investigations Clause

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX F

COMPANY CONTROL AS OF THE EFFECTIVE DATE

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

Raymond LaChance
Victoria O'Kane
Hugh O'Kane
John O'Kane
Alexander O'Kane

APPENDIX G

Macbride Principles

ARTICLE I. MACBRIDE PRINCIPLES

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

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

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

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

PART A

In accordance with Section 6 115.1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the

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

PART B

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II. ENFORCEMENT OF ARTICLE I.

The contractor agrees that the covenants and representations in Article I above are material conditions to this contract, unless otherwise expressly set forth herein. In the event the

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

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