

PAA, FCC Regulations and P.S.C. rules and regulations shall be grounds for termination or revocation of Franchisee's Franchise and this Agreement. A determination by the FCC that a Franchisee is not in compliance with the PAA, or a determination by the P.S.C. that Franchisee has violated P.S.C. regulations regarding pole attachments, shall be grounds for revocation or termination of this Franchise and this Agreement pursuant to Section 21 (Forfeiture and Revocation) of this Agreement or Applicable Law.

## **SECTION 10. NECESSITY FOR UNDERGROUND FACILITIES**

10.1. **Requirement for Underground Facilities.** Where a Utility Underground condition exists in the Right-of-Way, Franchisee shall adhere to the Cell Tower Regulations for installing facilities underground.

10.2. **Procedure to Bury Existing Overhead Facilities.** With respect to any Facilities, equipment, cables and lines of Franchisee that are or have been installed aboveground in the Right-of-Way, Franchisee may be required subsequently to bury those facilities at its expense subject to the provisions of this Agreement and/or City ordinances, rules and regulations. Once Franchisee is permitted to install its Facilities aboveground, the City may require Franchisee to bury its Facilities in conformance with City ordinance, rules or regulations only on the condition that all utilities in the Right-of-Way are also required to bury their facilities. Such a requirement to bury Utility or Telecommunications System Facilities shall be taken pursuant to a written plan adopted by the (City Council/City Commission/Fiscal Court) or the planning and zoning or other authorized agency with jurisdiction over the affected Rights-of-Way.

## **SECTION 11. TREE TRIMMING**

Franchisee shall have the right, at its own expense, to trim trees located in or overhanging the Right-of-Way and that are interfering with the Operation of its Telecommunications System, Facilities, Franchisee Poles and/or related equipment in the Right-of-Way only to the extent necessary to keep the branches of the trees from coming into contact with such Facilities, Franchisee Poles or equipment. All trimming and pruning shall be approved by an arborist and shall comply with all Applicable Laws and ordinances of the City. Notwithstanding the foregoing and prior to engaging in such activity, Franchisee shall submit to the Authorized City Official a tree trimming or pruning plan for approval. Except for branches or limbs of trees and bushes overhanging the Right-of-Way, Franchisee shall secure the consent of the private property owner, upon whose property the tree or bush is located, prior to cutting or trimming such tree or bush. Any Person engaged by Franchisee to provide tree trimming or pruning services shall be deemed, for purposes of this Agreement, an employee or agent of Franchisee, and in no event shall such Person be deemed an employee or agent of the Authority.

## **SECTION 12. RELOCATION OF FACILITIES**

12.1. **Requirement to Relocate.** The City may require Franchisee to relocate its Telecommunications System, Facilities, Franchisee Poles and related equipment at the expense of Franchisee: (a) in order to allow the City to make any public use of or improvements to the Right-of-Way; (b) as made necessary due to a change in grade or other change in the Right-of-Way made by the City; (c) as a result of traffic conditions or public safety or the widening or reconfiguring

streets, highways or lanes; (d) as a result of the Construction or Installation of any public structure or public improvement by the City, the State or other public agency or district; or (e) in connection with any decision or action by the City to abandon or vacate a street, road, highway, avenue, lane, path, alley, public way, sidewalk or other Right-of-Way space or area. Nothing in this Agreement or the Franchise granted pursuant hereto shall abrogate the right of the City, or any governmental authority, to perform or carry out any public works or public improvements of any description, provided that the City shall comply with the provisions of the Telecommunications Act. The City shall not be liable for lost revenues sustained by Franchisee, however caused, because of damage to, modification, alteration, or destruction of Franchisee's Facilities in the Right-of-Way, where such costs or lost revenue result from any one or more of the conditions or requirements listed above in subclauses (a) through (e) of this Section 12.1, or from the Construction, Installation, Operation, and/or Maintenance of City facilities, structures and/or the Right-of-Way.

12.2. **Notice.** The City shall provide 60 days' prior written notice of the necessary relocation.

12.3. **Additional Time.** If Franchisee believes that it cannot complete the relocation of its Telecommunications System, Facilities, Franchisee Poles or related equipment within 60 days of receiving written notice from the City, it shall contact the Authorized City Official and request additional time, but such request for additional time may not or cannot be granted by the City by virtue of timing, construction, safety or other constraints.

12.4. **Authority to Perform.** If Franchisee fails to complete the Work within the time allotted by the City, the City or other public agency or district may perform the Work at the expense of Franchisee.

12.5. **Right to Remove.** In the event Franchisee refuses or neglects to alter or relocate its Telecommunications System, Facilities, Franchisee Poles or related equipment in a timely fashion, the City or other public agency shall have the right to break through, remove, alter or relocate such facilities, equipment and poles as necessary without any damages or liability owing to Franchisee, and Franchisee shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation. Franchisee shall pay to the City, within thirty (30) days of billing, the costs incurred by the City in connection with its relocation, removal and/or alteration of the Telecommunications System, Facilities, Franchisee Poles and/or related equipment.

12.6. **Emergency.** In cases of emergency, the City may cut, remove, or relocate the Franchisee's Telecommunications System, Facilities, Franchisee Poles and related equipment immediately at Franchisee's expense without notice to Franchisee, provided that the City shall undertake efforts to notify Franchisee as soon as practicable. Franchisee shall bear all costs of reinstallation, repair or other costs arising out of the emergency cutting, removal or relocation. As provided in Section 12.5 (Right to Remove) above, all costs incurred by the City in cutting, removing or relocating such facilities, poles and equipment shall be paid by Franchisee within thirty (30) days of billing by the City.

### SECTION 13. LIABILITY INSURANCE

13.1. **Insurance Requirements, Scope and Limits.** Throughout the Term of this Agreement and any Renewal thereof, Franchisee shall maintain, at its own cost and expense, insurance to protect the City and Franchisee and its officers, agents and employees from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the Construction, Installation, Maintenance, Operation, removal or relocation of, or any Work on, the Telecommunications System, Facilities, Franchisee Poles and any related equipment and against every form of liability referred to in Section 14 (Indemnity). The amount of such insurance shall be no less than the following:

#### General Liability Insurance

Bodily injury per person	\$3,000,000.00
Bodily injury per occurrence	5,000,000.00
Property damage per occurrence	1,000,000.00
Property damage aggregate	1,000,000.00

#### Automobile Insurance

Bodily injury per person	\$1,000,000.00
Bodily injury per occurrence	3,000,000.00
Property damage per occurrence	1,000,000.00

Such automobile liability insurance shall be for owned, non-owned and leased vehicles. Workers' Compensation insurance, including disability benefits and any other legally required employee benefits, shall be provided in statutory amounts as required by the laws of the Commonwealth of Kentucky.

13.2. **Endorsements and Acceptability of Insurers.** The City shall be named as additional insureds on the policies, which (a) shall be issued by companies duly licensed to do business in the Commonwealth of Kentucky, carrying a rating by Best's, or some other nationally recognized rating service, of not less than A, and (b) shall provide thirty (30) days' notice to City in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective. Copies of certificates of insurance for all policies required hereunder shall be furnished to and filed with the City prior to Franchisee obtaining any Permit pursuant to this Agreement and shall be updated annually throughout the Term of this Agreement.

13.3. **Self-Insurance - Workers' Compensation.** If the Commonwealth of Kentucky permits Franchisee to self-insure, then Franchisee may exercise its rights to self-insure with respect to Workers' Compensation insurance, so long as the minimal amounts of insurance coverage outlined in this section are met and maintained for the entire period that Franchisee is self-insured.

13.4. **Increase of Insurance Limits.** The City reserves the right to increase by a reasonable amount the insurance coverage required by this Agreement at any time. In determining whether to increase the coverage, the City shall take into account at least the following factors: (a) any increased exposure to Franchisee respecting its operations; (b) inflationary factors; and (c) insurance amounts commonly carried by other franchisees or licensees in similar circumstances.

13.5. **No Limitation on Liability.** None of the provisions of this Franchise or any insurance policy required herein, or any damages recovered by the City hereunder, shall be construed to excuse the faithful performance by Franchisee or limit Franchisee's liability for damages either to the limits of such policies or otherwise.

13.6. **Subrogation.** Franchisee Waives any claim or right of subrogation to recover against the City, its elected officials, officers, agents or employees and each of Franchisee's insurance policies must on its face or by endorsement state that the issuer waives any claim or right of subrogation to recover against the City, its elected officials, officers, agents or employees.

## SECTION 14. INDEMNITY

14.1. **Scope of Indemnity.** To the extent permitted by Applicable Law, Franchisee shall at all times fully defend, indemnify, protect, save harmless, and exempt the City and its elected officials, employees, officers, agents and representatives (individually, an "**Indemnitee**" and collectively, the "**Indemnites**"), from and against any and all actions, liabilities, losses, fines, penalties, damages, expenses, costs, demands, or charges arising out of, or in any way connected with, any and all claims, demands, suits, damages, causes of action, or judgments or awards of damages, whether compensatory or punitive (collectively, "**Claims**"), arising therefrom, including reasonable attorneys' fees, either at law or in equity, which might be claimed now or in the future, which may arise out of, or be caused by, whether directly or indirectly:

14.1.1. The Construction, Installation, Maintenance, Operation, removal, relocation or restoration of, or any Work on, the Telecommunications System, Facilities, Franchisee Poles or any related equipment or any portion thereof, within or relating to the Franchise Area by a wrongful or negligent act or the omission or commission of an act by Franchisee, its agents or employees, Contractors, Users, subcontractors, independent contractors, or implied or authorized agents or representatives;

14.1.2. Franchisee's failure to comply with the provisions of any Applicable Law;

14.1.3. Environmental hazards or pollutants transported to, stored on or disposed of or released in the Right-of-Way or any portion thereof; and

14.1.4. Franchisee's failure to comply with the terms and conditions contained in this Agreement.

14.2. **Franchisee's Duty to Employ Counsel.** With respect to any Claim, suit, demand or cause of action made or brought against any of the Indemnites by reason of any event to which reference is made in this Section 14, Franchisee shall obtain counsel for the Indemnites at the sole cost and expense of Franchisee.

14.3. **Indemnitees' Right to Employ Own Counsel.** With respect to the Indemnitees' own defense of such actions noted in this Section 14, it is understood that the Indemnitees reserve the right to select and retain, without Franchisee's approval, counsel of the Indemnitees' choice, at Indemnitees' own expense.

14.4. **Duty to Give Notice and Tender Defense.** The Indemnitee(s) shall give Franchisee timely written notice of the making of any Claim or the commencement of any action, suit or other proceeding covered by the indemnity in this Section 14. In the event any such Claim arises, the Indemnitee(s) shall tender the defense thereof to Franchisee, and Franchisee shall have the right and duty to defend any Claims arising hereunder and the Indemnitees shall cooperate fully therein.

14.5. **Disclaimer.** Notwithstanding any other provision of this Agreement, City shall not have any liability to Franchisee for any loss of profit or revenue, loss of use of the Telecommunications System, Facilities, Franchisee poles or any related equipment or system, claims of customers or clients of Franchisee for service interruptions or indirect, incidental, special, economic or consequential damages, as a result of or related to the Telecommunications System or Facilities, Franchisee poles or other related equipment or systems, the existence of the Telecommunications System or Facilities, Franchisee poles or other related equipment or systems in the right-of-way or in an approved location(s), or this Agreement, whether arising in contract, tort (including, without limitation, negligence, product liability) or otherwise.

14.6. **Non-Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to Franchisee, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Franchisee, its successors and assigns, or for any obligation of the City under this Agreement.

14.7. **No Liability for Damage, Death or Bodily Injury.** Neither the City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Franchisee, its officers, agents, employees, Contractors, Users or subcontractors, or their employees, or for any bodily injury or death to such Persons, resulting or arising from the Telecommunications System, Facilities, Franchisee Poles, related equipment, or activities authorized by this Agreement, the condition of any City property, including the Rights-of-Way, subject to this Agreement or Franchisee's use of any City property, including the Rights-of-Way, except to the extent caused by the City's gross negligence or willful misconduct.

14.8. **Waiver of Claims regarding Fitness of Poles and Structures Located on Public Ways.** Franchisee acknowledges that the City has made no warranties or representations regarding the fitness, suitability, appropriateness, adequacy or availability of any of Utility Poles, City Poles or City-owned structure, infrastructure or property for the Construction or Installation thereon of Franchisee's Telecommunications System, Facilities, or related equipment, or for any other activities permitted under this Agreement, and that, except as expressly provided in this Agreement, any Construction, Installation and/or performance of any Work or costs incurred by Franchisee is at Franchisee's sole risk. Except as otherwise expressly provided in this Agreement, Franchisee, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, the City and its elected officials, employees, officers,

representatives and agents, from any and all Claims, whether direct or indirect known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Utility Poles and/or City Poles located in Rights-of-Way, any City owned structure, infrastructure or property, including the Rights-of-Way, affected by this Agreement, or any law or regulation applicable thereto. In the event this Agreement authorizes the use of City Poles or City-owned structure, infrastructure or property, the City agrees: (i) to allow Franchisee to investigate the location of a City Pole facility, and (ii) to work cooperatively with Franchisee to facilitate the investigation of City-Owned Property, under consideration for attachment of Franchisee's Facilities or related equipment for the possible presence of lead based paint, asbestos, or other hazardous substances (as that term may be defined under any Applicable Law), and the City shall facilitate such investigation as necessary.

### **SECTION 15. REMOVAL AND RESTORATION**

Upon the termination, revocation or expiration of this Agreement, and unless Franchisee Transfers its Telecommunications System, Facilities, Franchisee Poles and related equipment to another carrier or communications provider in a manner consistent with this Agreement, Franchisee shall remove its Telecommunications System, Facilities, Franchisee Poles and related equipment from the Rights-of-Way within one hundred twenty (120) days of the date of the termination, revocation or expiration of this Agreement; provided, however, any such Facility, pole or equipment that is not exclusive to Franchisee and is being utilized by other carriers may remain with permission of the City. Franchisee shall restore any property, whether public or private, to as good a condition as it was just before the removal. Restoration of public property, including the Rights-of-Way, shall be at the expense of Franchisee in accordance with the directions and specifications of the Authorized City Official and Applicable Law. If such removal and restoration is not completed within one hundred twenty (120) days of the termination or expiration of this Agreement, all of Franchisee's Telecommunications System, Facilities, Franchisee Poles and related equipment remaining in the Right-of-Way shall be deemed Abandoned, and shall become, at the option of the City, the property of the City. In the alternative to taking possession of the Telecommunications System, Facilities, Franchisee Poles and related equipment and systems, the City may remove them, or cause them to be removed, at the sole cost and expense of Franchisee. Any such cost or expense may be recovered by the City as against any Performance Bond maintained by Franchisee pursuant to the terms of this Agreement, as provided in Sections 21.4.2 and 18 (Performance Bond) and against Franchisee directly by submitting to Franchisee an invoice for all such cost and expense. Such invoice shall be paid by Franchisee within thirty (30) days of receipt. In addition to declaring the grantee in default under the Performance Bond, the City may pursue any other remedy available to it under this Agreement or Applicable Law.

### **SECTION 16. PAYMENT OF FEES FOR USE OF THE RIGHT-OF-WAY**

16.1. **Nature of Payment.** It is the intention of the City that Franchisee compensate City for the use of the City's Rights-of-Way, as they are valuable assets of the City that: (a) the City acquired and maintains at the expense of its taxpayers and citizens; (b) the City holds in trust for its citizens; and (c) the grant to Franchisee of the use of the Rights-of-Way is a valuable right without which Franchisee would be required to invest substantial capital in right-of-way costs and acquisitions. Accordingly, it is the intention of the City to obtain fair and reasonable compensation

from Franchisee in the manner provided in Sections 16.2 (Application Fee), 16.3 (Franchise Fee) and 16.4 (Alternate Compensation to Franchise Fee). The City explicitly states herein that such compensation is in the nature of rent as permitted by the laws and Constitution of the Commonwealth of Kentucky, and the City and Franchisee agree that the compensation and other payments to be made pursuant to this Agreement are not a tax and are not in the nature of a tax, but are in addition to any and all taxes of general applicability or other fees or charges which Franchisee shall be required to pay to the City or to any other governmental authority; and Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments made pursuant to the Agreement or from or against any taxes of general applicability or fees or damages which Franchisee is required to pay. The payment of compensation by Franchisee in no way limits the right of the City to charge fees for any Permits Franchisee is required to obtain under this Agreement. Notwithstanding the foregoing, in the event the City chooses to (a) withdraw from and elect not to participate in the monthly hold harmless account or fund as provided in KRS 136.650 [Required participation funds – Computation Amounts – Designated monthly hold harmless amount] and (b) impose the Franchise Fee called for under Section 16.3 (Franchise Fee), Franchisee will be permitted to offset payments of Franchisee Fees against the state tax of 1.3% of gross revenues, as provided under KRS 136.616, received by Franchisee for the provision of communications services, as sourced under the provisions of KRS 136.605.

16.2. **Application Fee.** In addition to all other fees, permits or charges, Franchisee shall pay to the City at the time of Application, or amendment to its Application, the sum equal to \$2,500.00. This payment is to cover the cost and expense incurred by the City, PDS and/or the Public Works Department in reviewing, processing and administering the Application and issuing any initial Permits leading to the Construction or Installation of the Telecommunications System, Facilities, Franchisee Poles and/or related equipment. If after review, the City does not approve Franchisee's Application, sums not directly attributed to the City's cost of reviewing, processing and administering the Application shall be returned to Franchisee.

16.3. **Franchise Fee.** Franchisee shall be obligated to pay a "**Franchise Fee**" of 3% of Gross Receipts received within the Franchise Area and such obligation shall commence on the earlier of the "**Completion Date**" or the date when the System or any part thereof become operational. For purposes of this Section 16.3, the "**Completion Date**" shall be the date of completion of the Initial System. This percentage shall apply to all Telecommunications Service providers using the Rights-of-Way. All Franchise Fees and other compensation due and payable under this Agreement shall be paid automatically by Franchisee without any notice or other request from City.

#### 16.4 Reserved

16.5 **Definition of Gross Receipts.** For purposes of this Section 16.5, "**Gross Receipts**" means any and all revenues or receipts (as determined in accordance with generally accepted accounting principles), including cash, credits, or other consideration of any kind or nature, derived directly or indirectly from the Telecommunications System (including the Fiber Optic Network), Facilities and Franchisee Poles including: (a) revenues or receipts which Franchisee and/or its Affiliates receive in connection with Telecommunications Services or other services provided in accordance with this Agreement; (b) revenues or receipts which Franchisee and/or its Affiliates

receive from their respective customers or subscribers, including residential, industrial and commercial entities within the Franchise Area for the sale, transmission, rendering and/or provision of Telecommunications Services, under rates, temporary or permanent, whether authorized or not by the Public Service Commission and represents amounts billed under such rates, as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments; (c) any revenues or receipts earned or received within the Franchise Area for the leasing, licensing, rental, lending, or usage of Franchisee's Telecommunications System, Facilities, Franchisee Poles or any part or portion thereof, including Franchisee's Fiber Optic Network and communications system as provided under Section 2.7 (Notices of Other Users); and (d) any revenues or receipts received for rendering other services, products or charges (including installation, maintenance and service charges) relating or pertaining to, or in connection with, the Telecommunications System, Facilities, Franchisee Poles, the transmission, rendering, sale or provision of Telecommunications Services, or both. Gross Receipts shall include any revenue or receipts received by any Affiliate of Franchisee where such revenue or receipts in the ordinary course of business should have, according to existing practices, been paid to Franchisee in connection with the Operation, ownership or control of the businesses or services detailed in sub-clauses (a), (b), (c) and/or (d) of this Section 16.5. Gross Receipts do not include miscellaneous service charges, including but not limited to turn-ons, meter sets, non-sufficient charges, late fees and interest, which are related to but are not part of the actual sale, transmission, rendering or provision of Telecommunication Services.

**16.6 Gross Receipts Linked Tariff.** At a minimum and if applicable, the Franchise Fee is intended to apply to Gross Receipts related to those services which include the Franchise Fee as part of the Company's tariff (defined herein as the PSC Tariff) filed with the Public Service Commission as of the Effective Date (i.e. the adoption date of the Franchise), and Franchisee expressly agrees that it will continue to pay the Franchise Fee on Gross Receipts derived from these services including the Telecommunications Services, for the Term of this Franchise Agreement. Franchisee will also assess and pay the Franchise Fee on any such Gross Receipts from revised, amended, or additional tariffs (except for nonrecurring charges in the City, and subject to any necessary approval by the Public Service Commission, if applicable. Following any changes to calculations of amounts payable hereunder, such payments shall commence with the first billing period following any necessary tariff approval by the Public Service Commission. Until such time, Franchisee will continue collecting and remitting payments of Franchise Fees to the City under the terms of its existing PSC Tariff and this Franchise Agreement until such time as this tariff is obtained.

**16.7 Quarterly Payments.** The Franchise Fee shall be paid by Franchisee on a quarterly basis and shall be made directly to the City within thirty (30) days after the expiration of each calendar quarter (i.e., by April 30, July 30, October 30 and January 30). The initial payment of Franchise Fees shall be prorated over that calendar quarter it becomes due. Thereafter, quarterly payments of Franchise Fees shall be due quarterly, as provided above. Simultaneously with the payment of the Franchise Fee, Franchisee shall file with the City a detailed revenue statement clearly showing the Gross Receipts received by Franchisee during the preceding quarter and certified by a certified public accountant or an officer of Franchisee attesting to the accuracy, completeness and veracity of the revenue figures consistent with the definition of Gross Receipts as defined in this Agreement. Simultaneously with its payment of the Franchise Fee, Franchisee shall file a



certification from an officer of Franchisee describing the amount consistent with the basis for the calculation of its Franchise Fee.

**16.8 Late Payments.** In addition to any other remedies provided in this Franchise Agreement, Franchisee shall pay interest on any late payments made to the City at the rate of one percent (1%) for each month or portion thereof that the payment is late.

**16.9 Right of Audit of Franchisee's Books and Records.** City reserves the right to audit or review Franchisee's books and records as they relate to the payment of the Franchise Fee if the City deems it necessary. If an audit or review by the City results in a finding by the City that Franchisee has underpaid the Franchise Fee due and owing by three percent (3%) or more, Franchisee shall reimburse the City its reasonable costs associated with determining the correct amount owed, including the expense of the audit and review. If such audit or review is performed in connection with the granting of a new or extended franchise, a Transfer, or a substantive modification of the terms to, or a Transfer of this Franchise, Franchisee shall reimburse the City for all of the reasonable costs and expenses associated with the audit or review, including all out-of-pocket costs for attorneys, accountants and other consultants.

**16.10 Right of Inspection of Franchisee's Facilities.** In addition to the inspection rights provided in Section 7.12 (Inspections) of this Agreement, the City reserves the additional right to conduct a physical inspection of Franchisee's Telecommunication System, Facilities and Fiber Optic Network in the Right-of-Way in order to determine whether Franchisee is complying with this Section 16. In such a case, the City shall give Franchisee ten (10) days' notice of its intention to inspect. An authorized representative of Franchisee shall accompany the representative of the City and bring to the City's attention all of the Telecommunications System, Facilities, Franchise Poles, including the Fiber Optic Network, contained within or using the Right-of-Way. If the City determines that Franchisee has underpaid the Franchise Fee due and owing by three percent (3%) [or 1% - see 16.10], then Franchisee shall reimburse the City and pay for all inspection costs, all as provided in Section 16.10 (Right of Audit of Franchisee's Books and Records).

**16.11 Other Payments.** In addition to all other fees to be paid to City under this Agreement, Franchisee shall timely pay to the City all applicable deposit fees, Permit fees, and other fees and amounts Franchisee is required by Applicable Law to pay to the City in connection with obtaining Permits or performing Work under this Agreement.

**16.12 Not in Lieu of Other Fees.** Payments made by Franchisee to the City pursuant to this Section 16 shall be in addition to and not in lieu of all other fees, assessments, taxes, or payments which are now or hereafter required to be paid by Franchisee by any Applicable Law.

**16.13 Acceptance Not to be Construed as Accord.** Acceptance and receipt of any payment by the City shall not constitute a release, waiver or accord and satisfaction by the City of any claim or its right to collect any fee owing under this Agreement during the Term of this Franchise or of any other obligation of Franchisee. All amounts paid shall be subject to audit and re-computation by the City.

**16.14 Transition to Payment of Franchise Fees.** Prior to the Effective Date and pursuant to KRS 136.660 (Prohibitions – Local Franchise Fee or Tax Defined), every political subdivision of

this State was prohibited from (1) levying any franchise fee or tax on multichannel video programming or communications services, (2) requiring any provider (cable operator or communications provider) to enter into or extend the term of a franchise or other agreement that requires the payment of a franchise fee or tax, or (c) enforcing any provision of any ordinance or agreement to the extent that the provision obligates a provider to pay the political subdivision a franchise fee or tax. On June 15, 2017, the Kentucky Supreme Court issued a decision in the case of *Kentucky CATV Association, Inc. v. City of Florence, Kentucky, et al., and Lori Hudson Flannery, in her official capacity as Secretary of the Finance and Administration Cabinet, et al. (2015-AC-000178-DO)* holding that the aforesaid statute and prohibitions were unconstitutional and void. The Parties agree to participate and cooperate with each other in good faith in the transition to and resumption of the payment of franchise fees by providers should the City choose or elect such transition and receive franchise fees payments directly from Franchisee, as opposed to remaining and participating in the “monthly hold harmless amount” and receiving its “local historical percentage,” all as provided in KRS 136.650 [Required participation funds – Computation of amounts – Designated monthly hold harmless amount]. [Now that the S. Ct. decision allows or] Department of Revenue (“DOR”) otherwise give political subdivisions the right and option to (1) withdraw from and elect not to participate in the monthly “hold harmless amount or fund” and/or (2) return to or be reinstated in the monthly “hold harmless amount or fund” and receive its local historical amount, as opposed to receiving direct franchise fee payments from cable operators or communication providers, Franchisee agrees to cooperate in good faith with the City in making any such withdrawals and returns or reinstatements to the monthly “hold harmless amount or fund.” In this regard, Franchisee shall also take all such action as is necessary or appropriate with the DOR or the State in order to meet or otherwise comply with the obligations or requirements of the statutory provisions of KRS 136.600 through 136.660, as applicable. For any given period of time that the City participates in monthly “hold harmless amount or fund,” Franchisee shall provide the City with the Franchise Fee reports set forth in this Section 16.

## SECTION 17. TRANSFER OF OWNERSHIP

17.1. **Valid Transfer Required.** Franchisee may sell, assign or otherwise transfer by operation of law its rights and privileges (“**Transfer**”) under this Agreement and the Franchise to another Person (the “**Transferee**”) without the consent of the (County/City) only in the manner set forth in this section.

17.2. **No Rights Transferred.** The Transferee shall have no rights under this Agreement to occupy or use the Right-of-Way of the City unless it has complied with the terms of this Section 17.

17.3. **Notice.** Franchisee shall provide no less than a thirty (30) day written notice to the City that it intends to Transfer its rights and privileges under this Agreement.

17.4. **Transfer Application.** The Transferee shall complete a transfer application in a form required by City, providing the following information:

17.4.1. Name, post office address, E-mail address, fax number and telephone number of Transferee, parent of Transferee, and any Affiliate of Transferee who may be or is

expected to lease, use or operate Transferee's Telecommunications System, Facilities, Franchisee Poles and related equipment, or make any payment, in whatever form, to Transferee in order to utilize Transferee's Telecommunications System, Facilities, Franchisee Poles and related equipment.

17.4.2. Address and telephone number of local office of Transferee, if any.

17.4.3. Method to contact Transferee on a 24-hour basis in case of emergency with respect to its Telecommunications System, Facilities, Franchisee Poles and related equipment.

17.4.4. The articles of incorporation or organization of Transferee, the state in which Transferee was formed, and whether Transferee is in good standing in that state.

17.4.5. Whether Transferee is qualified to do business in the Commonwealth of Kentucky.

17.4.6. The name, address and telephone number of Transferee's agent for service of process in Kentucky.

17.4.7. A statement signed by an officer of Transferee certifying that Transferee has obtained authorization from the Kentucky Public Service Commission to provide Telecommunications Services in Kentucky, and a copy of the document constituting that authorization. If no approval is required by the Public Service Commission, the Transferee shall identify the statute or regulation exempting Transferee from the necessity to obtain approval.

17.4.8. An agreement signed by Transferee and Franchisee stating that Transferee: (a) has read this Agreement, (b) will comply with all its terms and conditions, and (c) has accepted and assumed all obligations and liabilities arising under this Agreement.

17.5. **Failure to Comply.** Should Franchisee attempt to effect a Transfer of this Agreement without fully complying with this Section 17, or should Transferee fail to comply with the requirements of this Section 17, such assignment or transfer shall be invalid, unless ratified by the City. The Transferee shall be liable for all costs incurred by the City with regard to the Transfer, including reasonable attorneys' fees, and shall reimburse City within thirty (30) days of billing.

17.6. **Continuation of Liability.** Notwithstanding a Transfer of this Agreement to the Transferee, Franchisee shall remain liable and obligated for any debts or obligations incurred to the City by Franchisee prior to the date of the Transfer.

## **SECTION 18. PERFORMANCE BOND**

18.1. **Bond Required.** Franchisee shall, prior to obtaining any Permit specified in Section 4 (Site Approval and Compliance) of this Agreement, deliver a performance bond to the City in favor of City in the amount of One Hundred Thousand Dollars (\$100,000.00) (the "Performance Bond").

18.2. **Conditions.** The Performance Bond must include the following conditions:

18.2.1. that all Work is done in a good and workmanlike manner and in compliance with this Agreement and in compliance with all Applicable Law relating to: (a) the Construction, Installation, Maintenance, Operation, removal or relocation of the Telecommunications System, Facilities, Franchisee Poles and/or related equipment and the restoration and/or (b) the repair or restoration of the Right-of-Way, any disturbed land surrounding or abutting the Right-of-Way, and private property.

18.2.2. that the City must be fully indemnified and be held whole and harmless from any and all costs and expense, including reasonable attorneys' fees, losses or damages, on account of any injury done to any Person or property in the prosecution or and any completion of such Work, or that may arise out of or be occasioned by the performance of such Work;

18.2.3. that Franchisee, without additional cost to the City, shall Maintain and warrant all restoration and repair Work to the Right-of-Way for a period of one year(1) year from the date of completion of the Work to the satisfaction of the City;

18.2.4. that Franchisee shall remain in compliance with the terms and conditions of this Agreement; and

18.2.5. the City's removal of any of Franchisee's Telecommunications System, Facilities, Franchisee Poles that are Abandoned or left in place after the termination, revocation or expiration of this Agreement.

18.3. **Replenishment.** If the Performance Bond is decreased because of any recovery that may be obtained arising out of the violation of any condition of the Performance Bond, City shall require an additional bond to be given in accordance with this Section 18 in an amount sufficient, when added to the unexhausted amount of the original Performance Bond, to return the Performance Bond to the original face amount.

18.4. **Maintenance of Suit.** The City may for itself, or the use and benefit of any Person injured or damaged as a result of any failure by Franchisee to perform its obligations under this Agreement, maintain suit on the Performance Bond in any court of competent jurisdiction, or suit may be maintained by any Person injured by reason of Franchisee's failure to perform.

18.5. **Drawing upon Bond.** If Franchisee fails to perform its obligations in accordance with this Agreement, the City may draw against the Performance Bond on behalf of the City to the extent necessary to cause Franchisee's obligations to be performed by sending the appropriate notice of default to Franchisee, and if Franchisee fails to adequately respond, to call upon the surety on the Performance Bond to fulfill its obligations thereunder.

18.6. **Requirements for Surety.** The surety on the Performance Bond shall be authorized to do business in the Commonwealth of Kentucky. The Performance Bond shall be continued throughout the life of this Agreement. The rights reserved to the City with respect to the Performance Bond are in addition to all other rights the City may have under this Agreement or any Applicable Law.

18.7. **Endorsement.** The Performance Bond shall contain the following endorsement: "It is hereby understood and agreed that this Performance Bond may not be canceled without the

consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew.

18.8. **Grounds for Revocation.** Failure to maintain the Performance Bond as required by this Section 18 shall be grounds for revocation or termination of this Agreement in addition to all other remedies available to the City under this Agreement or Applicable Law.

## SECTION 19. RESERVED

## SECTION 20. ENVIRONMENTAL LAWS

20.1. **Compliance.** Franchisee shall comply with, and shall cause its Users, Contractors, sub-contractors and vendors to comply with, all rules, regulations, statutes or orders of the U.S. Environmental Protection Agency, the Kentucky Department for Environmental Protection and any other governmental agency with the authority to promulgate and enforce environmental rules and regulations applicable to Franchisee's use of any portion of the Right-of-Way under this Agreement ("**Environmental Laws**"). Franchisee shall promptly reimburse the City for any fines or penalties levied against the City because of Franchisee's failure, and/or the failure of its Users, Contractors, subcontractors and/or vendors to comply with Environmental Laws.

20.2. **Hazardous Materials.** Neither Franchisee nor its Users, Contractors, subcontractors or vendors shall possess, use, generate, release, discharge, store, dispose of or transport any Hazardous Materials on, under, in, above, to or from the site except in compliance with the Environmental Laws. "**Hazardous Materials**" mean any substances, materials or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state or local laws, regulations, ordinances or orders. Neither Franchisee, nor its clients, Users, Vendors or Contractors, if any, shall deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials or substances in the City's storm sewer system or sanitary sewer system or elsewhere on or in the Right-of-Way in violation of the Environmental Laws. Except for its Users, Contractors, subcontractors and vendors, Franchisee will not have any responsibility for managing, monitoring or abating, nor be the owner of, nor have any liability for, any Hazardous Materials that it did not bring into or on the Right-of-Way or any portion thereof.

## SECTION 21. FORFEITURE AND REVOCATION

21.1. **Default and Right to Revoke.** The City reserves the right to revoke or terminate this Agreement and Franchise and to rescind all rights and privileges associated with this Agreement and Franchise in the following circumstances, each of which shall represent a material default and breach under this Agreement:

21.1.1. Failure by Franchisee to provide or maintain in full force and effect the liability insurance and indemnification coverage, or the Performance Bond as required by this Agreement;

21.1.2. Violation by Franchisee of any orders, rulings or regulations of any state, federal or local regulatory body, including the City, PDS and/or the Public Works Department, as applicable, relating to this Agreement and Franchise;

21.1.3. Attempt by Franchisee to evade any of the provisions of this Agreement or the practice of any fraud or deceit upon the City or any regulatory body, including PDS and/or the Public Works Department;

21.1.4. Franchisee becomes insolvent, unable or unwilling to pay its debts, is placed into the hands of a receiver, files a petition in bankruptcy or involuntarily is placed in bankruptcy;

21.1.5. Material misrepresentation of fact in the Application or any Permit Application filed with PDS and/or the Public Works Department, as applicable, or in any statement or information provided to any other regulatory agency, including the City and the departments thereof;

21.1.6. Failure to complete the Construction and Installation of its Telecommunications System, Facilities, Franchisee Poles and related equipment and systems within the timeframes as set forth in Sections 7 (Conditions of Use of Streets and Public Ways) and 2.6 (Continuation of Existing Facilities and Expansion) of this Agreement;

21.1.7. Failure to complete a project or Work for which a Permit is required within the time allotted, provided that if Franchisee obtains additional time from the Authorized City Official, such failure shall not be grounds under this section for revocation;

21.1.8. Failure to appropriately perform restoration Work in violation of Section 7 (Conditions of Use of Streets and Public Ways);

21.1.9. Failure to comply with the requirements of Section 10 (Necessity for Underground Facilities) with regard to underground facilities;

21.1.10. Failure to pay in a timely manner any Franchise Fee or other payment(s) or annual fee, if applicable, or any other sums or payments due under this Agreement;

21.1.11. Effecting a Transfer without fully complying with the mandatory provisions of Section 17 (Transfer of Ownership), including the requirement to secure the prior approval of the City;

21.1.12. Breach, default or violation by Franchisee in the performance of any of the material obligations or requirements of this Agreement; or

21.1.13. Franchisee knowingly and repeatedly fails to comply with, or violates a provision of this Agreement, regardless of whether any single provision not complied with or violated is deemed material.

21.2. **Force Majeure.** It shall be a defense to any claim, except with respect to the payment of any fee or other payments called for under this Agreement, by the City that Franchisee has breached or violated a material term of this Agreement that the breach or violation directly resulted from a cause that was beyond the reasonable control of Franchisee, including but not limited to, acts of God, civil emergencies, failure on the part of electric utilities, and labor strikes, provided further, however, that Franchisee has notified the City in writing within thirty (30) days

of its discovery of the occurrence of such an event. Franchisee's inability to obtain capital, material or labor, or general economic conditions, shall not constitute an event beyond Franchisee's reasonable control for purposes of this section.

21.3. **Procedure Prior to Revocation.** In the case the City chooses to revoke or terminate this Agreement and Franchise, the following procedures shall apply:

21.3.1. The (Mayor/City Manager/County Judge) shall make written demand that Franchisee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation or termination. If the failure, refusal or neglect of Franchisee continues for a period of thirty (30) days following such written demand, the City may place a request for revocation or termination of this Agreement upon a regular (commission/council/fiscal court) meeting agenda.

21.3.2. At the regular (commission/council/fiscal court) meeting, the (commission/council/fiscal court) may choose to: (a) provide additional time to Franchisee within which it shall comply with the terms of this Agreement and remedy any defect or failure to comply of which Franchisee has been notified pursuant to Section 21.3.1 of this Agreement; (b) schedule a revocation hearing; (c) make a determination that Franchisee has remedied the breach or failure to comply; and/or (d) defer any action until a time the (commission/council/fiscal court) considers appropriate.

21.3.3. If the (commission/council/fiscal court) chooses to schedule a revocation or termination hearing as provided in Section 21.3.2 of this Agreement, it shall provide at least thirty (30) days' written notice via certified mail to Franchisee of such hearing. The (commission/council/fiscal court) may choose to designate a hearing officer for the purpose of taking testimony and making nonbinding recommendations to the (commission/council/fiscal court) regarding revocation or termination. The rules and procedures to be followed at the hearing shall afford due process to Franchisee, allow for the participation of interested Persons, and shall be approved by the (commission/council/fiscal court) prior to the hearing, with adequate notice being given to Franchisee.

21.3.4. After receiving evidence at a revocation or termination hearing or after receiving the hearing officer's recommendation (if such officer was appointed) concerning the alleged breach or failure to comply with this Agreement and Franchise, the (City Council/City Commission/County Commission) may, as an alternative to revoking this Agreement, choose to allow Franchisee to continue to operate under this Agreement, provided that Franchisee complies with an order of the (commission/council/fiscal court) that, at the discretion of the (City Council/City Commission/County Commission), is intended to bring Franchisee into compliance with this Agreement in a timely manner. After the issuance of such an order, if the (City Council/City Commission/County Commission) determines that Franchisee has failed to comply with the order, the (City Council/City Commission/County Commission) may declare this Agreement and Franchise revoked and terminated without further hearing or proceeding.

21.3.5. Franchisee may appeal any revocation or termination to the appropriate Circuit Court, which shall have exclusive jurisdiction of such appeal.

21.4. **Disposition of Facilities.** In the event this Agreement expires and is not renewed, or revoked or otherwise terminated, as provided herein, the City may in its sole discretion, do any of the following:

21.4.1. effect a Transfer of ownership of the Telecommunications System, Facilities, Franchisee Poles and related equipment to another Person;

21.4.2. order the removal of the Telecommunications System, Facilities, Franchisee Poles and related equipment from the Right-of-Way within a reasonable period of time. If the City orders the removal of the Telecommunications System, Facilities, Franchisee Poles and related equipment, Franchisee shall remove all of its Telecommunications System, Facilities, Franchisee Poles and related equipment at Franchisee's expense and under the supervision of the Authorized City Official, and restore the Right-of-Way and all property, public or private, to its original condition prior to the installation of the Telecommunications System, Facilities, Franchisee Poles and related equipment. If all of Franchisee's Facilities, Franchisee Poles and/or equipment are not removed within one hundred-twenty (120) days after delivery in writing of the City's order requiring removal, as provided in Section 15 (Removal and Restoration) Franchisee's System Facilities, Franchisee Poles and related equipment shall be deemed Abandoned and shall, at the option of the City, become the property of the City, as provided in Section 15 (Removal and Restoration). In the event Franchisee fails or refuses to remove its Telecommunications System, Facilities, Franchisee Poles and related equipment within such time period, the City, at its option, may perform such Work and collect the cost thereof from Franchisee, as provided in Section 15 (Removal and Restoration). The surety on any Performance Bond identified in Section 18 (Performance Bond) of this Agreement shall not be discharged until Franchisee has certified to the City that its Telecommunications System, Facilities, Franchisee Poles and related equipment have been dismantled and removed, and all other property has been restored to reasonable satisfaction of the City.

21.4.3. Notwithstanding the foregoing provisions of this Section 21, Franchisee does not waive any rights it may have pursuant to Applicable Law.

21.5. **Revocation for Public Purpose.** The City may revoke Franchisee's Franchise issued pursuant to this Agreement for any public purpose as determined by the City as follows:

21.5.1. **Written Notice.** The City shall provide thirty (30) days' written notice by certified mail to Franchisee of the City's intent to revoke.

21.5.2. **Time of Removal.** Franchisee shall have one hundred twenty (120) days after receiving notice from the City of its intent to revoke to remove its Telecommunications System, Facilities, Franchisee Poles and related equipment from the Right-of-Way and restore Right-of-Way as provided in Section 15 (Removal and Restoration). If Franchisee does not remove its Telecommunications System, Facilities, Franchisee Poles and related equipment, then they shall be deemed by the City to be Abandoned and the procedures set forth in Sections 21.4 (Disposition of Facilities) of this Agreement shall apply.

21.6. **Right of Appeal.** Franchisee may appeal any revocation or termination to the appropriate Circuit Court, which shall have exclusive jurisdiction of such appeal.



## SECTION 22. MISCELLANEOUS PROVISIONS

22.1. **Acceptance and Approval; Consent.** An approval by the Authorized City Official, PDS and/or the Public Works Department, as applicable, or any other instrumentality of City of any part of the Franchisee's performance shall not be construed to waive compliance with this Agreement or to establish a standard of performance other than required or permitted by this Agreement or by Applicable Law. Where this Agreement contains a provision that either Party approve or consent to any action of the other Party, such approval or consent shall not be unreasonably withheld or delayed. Except as provided for in this Agreement, the Authorized City Official, PDS or the Public Works Department is not authorized to vary the terms of this Agreement.

22.2. **Representations and Warranties.** In addition to the representations, warranties and covenants of the Franchisee to the City set forth elsewhere herein, the Franchisee 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 and throughout the Term of this Agreement:

22.2.1. **Organization, Standing and Power.** The Franchisee is a Telecommunications provider duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized to do business in the Commonwealth of Kentucky. Franchisee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted, to offer Telecommunications Services within the Commonwealth of Kentucky, and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

22.2.2. **Truthful Statements.** Franchisee warrants, to the best of its knowledge and belief, that information provided and statements made in connection with its Application to the City and the Permit Applications to PDS and/or the Public Works Department, as applicable, for or in connection with this Agreement were true and correct when made and are true and correct upon the execution hereof and/or upon the issuance of any Permit.

22.3. **Statement of Acceptance.** Franchisee and City, for themselves, their successors and assigns, hereby accept and agree to be bound by all terms, conditions and provisions of this Agreement.

22.4. **Relationship of the Parties.** Franchisee shall be responsible and liable for its Users, Contractors, subcontractors, sublicensees and vendors. The City has no control or supervisory powers over the manner or method of Franchisees', Users', Contractors', subcontractors' and sublicensees' performance under this Agreement. All personnel Franchisee uses or provides are its employees, Contractors, subcontractors or sublicensees and not the (City/County's) employees, agents, or subcontractors for any purpose whatsoever. The relationship between City and Franchisee is at all times solely that of franchisor and franchisee, not that of partners or joint venturers.

22.5. **Severability.** If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

22.6. **Entire Agreement.** This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

22.7. **Written Amendment.** Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the (City Council/Fiscal Court)) and Franchisee.

22.8. **Applicable Law and Venue.** This Agreement is subject to the laws of the Commonwealth of Kentucky, the City ordinances, the laws of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction over the Franchisee, Telecommunications Services, and/or the subject matter of this Agreement (collectively, “**Applicable Law**”), including any lawful court or administrative decisions, judgments or orders that have been fully and finally adjudicated, including any appeals of such decisions, judgments or orders. If any material provision of this Agreement is superseded or affected by Applicable Law, then the Parties shall negotiate in good faith to revise this Agreement.

22.9. **Notices.** All notices to either Party to this Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set forth below or other address the receiving party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

City of Bromley, Kentucky  
226 Boone Street  
Bromley KY 41016

FRANCHISEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

22.10. **Captions.** Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section of this Agreement.

22.11. **Non-Waiver.** If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other’s breach of a term, that waiver does not waive a later breach of this Agreement.

22.12. **Enforcement.** The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. Franchisee shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining Franchisee's compliance with this Agreement, with the exception of those documents made confidential by Applicable Law.

22.13. **Ambiguities.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

22.14. **Survival.** Franchisee and the City shall remain obligated to the other Party under all provisions of this Agreement that expressly or by their nature extend beyond the termination, revocation or expiration of this Agreement, including, but not limited to, the provisions regarding warranty and indemnification, restoration, removal or relocation of the Telecommunications System, Facilities, Franchisee Poles and related equipment. All representations and warranties contained in this Agreement shall survive the Term of this Agreement.

22.15. **Parties in Interest.** This Agreement does not bestow any rights upon any third-party, but binds and benefits the City and Franchisee only.

22.16. **Remedies Cumulative.** Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

22.17. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which is an original. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all Parties.

22.18. **Authority.** The signer of this Agreement for the Franchisee and the City hereby represent and warrant that he or she has full authority to execute this Agreement on behalf of Franchisee or the City, respectively.

22.19. **Cross Default.** The occurrence and continuance of any event or condition that constitutes an event of default or breach under any other agreement or contract between the City and Franchisee shall be a default or breach under this Agreement.

22.20. **Liens.** Franchisee must keep the Approved Locations and all other portions of the Right-of-Way wherein its Telecommunications System, Facilities, Franchisee Poles and related equipment is located or placed free from any liens or encumbrances arising from any Work performed, materials furnished, or obligations incurred by or at the request of Franchisee. Franchisee may allow the Telecommunications System, Facilities, Franchisee Poles to serve as collateral in financial transactions, as provided in Section 17 (Transfer of Ownership), but only to the extent that City's rights and interests are not affected. If any lien is filed against the Right-of-Way or any portion thereof or other property belonging to the City as a result of the acts or omissions of Franchisee or Franchisee's employees, agents, Users or Contractors, Franchisee must discharge the lien or bond the lien off in a manner satisfactory to the City within thirty (30) days after Franchisee receives written notice from any party or Person that the lien has been filed.

Failure to discharge or bond off any lien within the stated period of time will constitute a default under this Agreement.

22.21. **Timely Response.** Each Party shall take such prompt action as may be reasonably be requested by the other Party for the implementation of continuing performance of this Agreement.

22.22. **Subordination.** This Agreement is subject and subordinate at all times to the lien of all mortgages and deeds of trust issued by City and securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Rights-of-Way or all other property owned or controlled by the City or on or against the City's interest or estate therein, and any underlying ground license, lease or instrument on a particular Approved Location or site within the Right-of-Way, all without the necessity of having further instruments executed by Franchisee to the effect such subordination with respect to any such liens, leases and licenses arising subsequent to the execution of this Agreement and Franchise.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF BROMLEY, KY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Authority: Pursuant to Ordinance/Resolution No. \_\_ duly adopted and passed \_\_\_\_\_, 2019

Date: \_\_\_\_\_, 201\_\_

**FRANCHISEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 201\_\_

**EXHIBIT A**

**[Application of Franchisee]**

## EXHIBIT B

### Description of Telecommunications Services

The Agreement and Franchise to which this Exhibit B is attached and made a part thereof, only authorizes Franchisee to use its Telecommunications System, Facilities, Franchisee Poles and related equipment in offering and making available to customers or subscribers within the Franchise Area the following described Telecommunications Services:

- Competitive local exchange, voice and data communications services;
- Internet access;
- Private line service;
- Cell site front-haul and back-haul using fiberoptic cables; and
- Leasing of Conduit, Conduit Systems, Ducts and/or Dark Fiber to Users under a User Contract pursuant to Section 2.7 (Notice of Other Users) of this Agreement:

No services will be offered to residential customers or subscribers.

As provided in the definition of "Telecommunication Services" in this Agreement, such services do include Commercial Mobile Radio Services, Personal Communications Services, pay phone services, Cable Services, Multichannel Video Services or information services.

