



**REVOCABLE LICENSE  
FOR CONDUIT OCCUPANCY**

between

TOWARDEX Technologies International, Inc.

and

[Customer Entity Name]

and

TWDX Infrastructure, LLC

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**THIS REVOCABLE LICENSE FOR CONDUIT OCCUPANCY** (the “**Agreement**”) is made and entered into as of [Month & Day], 20[YY] (the “**Effective Date**”) by and between TOWARDEX Technologies International, Inc., a Delaware corporation (the “**Licensor**”), [Customer Entity Name] a [Entity Type] (the “**Licensee**”) and TWDX Infrastructure, LLC, a body corporate incorporated with limited liability in the Commonwealth of Massachusetts (the “**Joint Trench Administrator**”) (individually each a “**Party**” or altogether the “**Parties**”).

## RECITALS

WHEREAS, the Licensor has made significant investments of time and capital in construction, development and maintenance of a high speed route for fiber optic communications to interconnect key internet infrastructure facilities in the Boston metropolitan region (the “**Hub Express System**”);

WHEREAS, the Licensor owns or controls underground multi-conduit or multi-cable fiber optic communications system and associated facilities of the Hub Express System, including duct banks, underground vaults and manholes (the “**HEX Conduit System**”);

WHEREAS, for the betterment of the regional economy and to promote further development of the internet infrastructure in the region, the Licensor values its close relationships with municipalities, state agencies and public institution partners in developing and maintaining the facilities of the HEX Conduit System installed over and under public ways;

WHEREAS, the Licensor has painstakingly made strenuous efforts to install multiple excess conduit capacities to be made available for use by other telecommunications providers to promote a fair, free and open internet infrastructure in the region;

WHEREAS, the Joint Trench Administrator is a wholly owned subsidiary of the Licensor to manage and lawfully regulate all aspects of operations over the HEX Conduit System, provided however, with the exclusion of limitations established by the law or governing agreements, the HEX Conduit System and the Hub Express System remain the property of the Licensor and Licensor’s right to own and control its own property and freedom and liberty to enter into all lawful contracts and undertakings in respect thereof are inalienable;

WHEREAS, the Licensor wishes to permit Licensee to use certain conduit capacity that is part of the HEX Conduit System in accordance with the terms and conditions of the Agreement set forth herein, and Licensee desires to obtain from the Licensor a non-exclusive, revocable license to use the specified conduit capacity;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

## 1. DEFINITIONS

Terms shall have meanings as defined in the list below or as first used and defined in this Agreement, as applicable:

1.1 “**Absolute Property**” means the property of the Licensor which is absolute, in accordance to the following definition: the rights of the Licensor in and to its HEX Conduit System, the Hub Express System and their corresponding real property interests, personal property, conduits, innerducts, duct banks, handholes, manholes, underground vaults, structures, rights of way agreements, encroachment rights and all other underlying rights to the Licensor’s properties are hereby declared to be absolute; but upon the closing or discontinuance of any portion of the HEX Conduit System, such discontinued portion of the property may be sold or otherwise disposed of by the Licensor as may be provided by law.

No Licensee may acquire any interest in the Absolute Property or create, cause or allow imposition by any party, any lien or encumbrance against the Absolute Property of the Licensor, and any and all alterations to the HEX Conduit System and its facilities shall, immediately upon installation, become the absolute property of the Licensor without any compensation to the Licensee. Nothing in this definition shall be deemed to create any lien, encumbrance or restrict the rights of a Licensee to Licensee’s own personal property installed within the Absolute Property as provided under this Agreement.

1.2 “**Approved Contractor**” shall mean any bonded or insured person, firm or company appointed as a contractor to perform installation, maintenance, operation, removal, renewal and replacement of Licensee’s facilities on behalf of the Licensee that is approved by Licensor to perform work in the HEX Conduit System.

1.3 “**Authority Having Jurisdiction**” means jurisdictions, approving agencies, local or state officials (including City and/or State Engineer), and/or property owners who may assume the role of an Authority Having Jurisdiction, given a statutory authority or legal responsibility.

1.4 “**Business Day**” shall mean any Day other than a Saturday, Sunday, or Day observed as an official holiday as defined by 5 U.S.C. § 6103.

1.5 “**Commencement Date**” shall mean the first to occur of (i) the date set forth in any Service Connection Notice or Notice of Completion, where Licensor communicates to Licensee that Licensed Facilities are ready for Licensee’s occupancy or use, unless the Licensee notifies Licensor or the Joint Trench Administrator within seventy-two (72) hours of receiving such notice that the Licensed Facilities are delivered in deficient quality or otherwise unsuitable condition for occupancy; or (ii) the date Licensee begins to occupy the Absolute Property.

1.6 “**Day**” means any calendar day, unless a Business Day is specified.

- 1.7 **“Expiration Date”** Final Day of the Initial Term or if the Agreement has been renewed any Renewal Term.
- 1.8 **“Grant of Location”** shall mean consent by municipal officers for a company to construct or alter lines upon, along, under or across a public way as provided by Massachusetts General Law Chapter 166 § 22.
- 1.9 **“Hazardous Materials”** shall mean any substance, waste or material in which, because of its quantity, concentration or physical or chemical properties is deemed by any federal, state or local authority to pose a potential hazard to human health or safety or the environment.
- 1.10 **“Licensed Facilities”** shall mean the specific innerduct, innerducts, conduit, conduits or a specific conduit capacity and any additional specific facilities (including but not limited to handholes, manholes, underground vaults and transverse crossings) licensed to the Licensee for occupancy in the Licensors’ Absolute Property, as defined under **“Exhibit A: Licensed Facilities”** in accordance to the terms, covenants, conditions, restrictions and specifications as set forth in this Agreement.
- 1.11 **“Licensee Operating Rules and Regulations”** shall mean the operating rules and regulations for all permitted works occurring on the HEX Conduit System, as published and kept updated by the Joint Trench Administrator. The Licensee Operating Rules and Regulations is published under a section in the “Guide to Utility Conduit Licensing, Hub Express System” publication, which is available online at the following link: [https://infrastructure.twdx.net/hex/HEX\\_Utility\\_Licensing.pdf](https://infrastructure.twdx.net/hex/HEX_Utility_Licensing.pdf)
- In the event that the Licensee Operating Rules and Regulations publication cannot be located for any reason (e.g. web site not available, or content has moved), the Licensee shall contact the Joint Trench Administrator or send a notice to the Licensors as provided under **Section 24: Notices** to request a latest copy of the publication.
- 1.12 **“Premises”** shall mean the overall area (including Licensed Facilities) and common facilities of the Absolute Property (including, but not limited to, duct banks, underground vaults, handholes, manholes, areas, structures, rights of way and the use of Licensors’ real property interests or encroachment rights by the Licensee in its enjoyment of Licensed Facilities, such as easement agreement, Grant of Location, license or franchise agreement) made available by the Licensors to support Licensee’s occupancy and use of the Licensed Facilities.
- 1.13 **“Underlying Rights”** shall mean all deeds, leases, easements, rights-of-way agreements, Grant of Location, encroachment grants, licenses, franchises, agreements, contracts and other rights, title and interests to use real property of any third person, which are necessary for the construction, placement, location, installation, operation, use, license, maintenance, repair or replacement by the Licensors for its Absolute Property.

- 1.14 “**XCU Hazards**” means hazards of explosion, collapse and underground and damage to underground property.

## 2. LICENSE TERM

- 2.1 The term of this Agreement is a period of five (5) years (the “**Initial Term**”) commencing upon the Commencement Date. The Agreement shall automatically renew for an additional period of three (3) years (a “**Renewal Term**”) commencing upon the expiration of the Initial Term, unless the Licensors and the Licensee agree in writing to not renew this Agreement at least thirty (“30”) Days prior to the expiration of the Initial Term. The Renewal Term will be on the same terms and conditions set forth in this Agreement, subject to the negotiation at the time of renewal of mutually acceptable price terms, terms and conditions.

## 3. GRANT OF LICENSE; LICENSE FEE

- 3.1 **Grant of License.** Subject to all of the terms, covenants and conditions under this Agreement, Licensee is hereby granted a revocable, non-exclusive, non-sublicensable and non-transferrable right to occupy the facilities within the Absolute Property as defined as Licensed Facilities in **Exhibit A: Licensed Facilities**. Licensee covenants that it shall not exceed its use or occupancy in any length, quantity, scope or scale in excess of the Licensed Facilities, without first obtaining an additional license or an amendment from the Licensors granting such additional occupancy or increase in use.
- 3.2 **All Rights Nonexclusive.** Notwithstanding any other provisions of this Agreement, any and all rights expressly or impliedly granted to Licensee under this Agreement shall be non-exclusive, and shall be subject and subordinate to the Licensors’ right to use and allow any other Licensee to use the Absolute Property and its Premises for uses that do not materially interfere with Licensee’s use of the Licensed Facilities pursuant to this Agreement, and the continuing right of the Licensors to use, and allow any other person or persons entitled to do so.
- 3.3 **License Fee.** In connection with the work to be performed and activities to be conducted by Licensee under this Agreement:
- (a) **Annual Fee.** Licensee shall duly and punctually pay to the Licensors the Annual Fee, in the amount specified under **Exhibit A: Licensed Facilities**. Licensors will invoice the Licensee for and the Licensee will pay each Annual Fee in advance for each period and within thirty (30) Days from the date of such invoice.
  - (b) **Ancillary Fees.** Subject to terms and conditions of this Agreement, Licensee shall pay any fees charged by the Licensors to support Licensee’s occupancy of the Licensed Facilities, including, but not limited to, any administrative charges, Make-Ready costs, assessments, inspection costs and so forth (the

**“Ancillary Fees”**), as specified under **Exhibit B: Schedule of Ancillary Fees**. Licensors will invoice the Licensee for any Ancillary Fees and Licensee shall pay any such invoice within thirty (30) Days from the date of such invoice.

- (c) **Annual Escalation**. Annual Fee due and payable by the Licensee in the amount specified under **Exhibit A: Licensed Facilities** will be increased by the greater of (i) three percent (3%); or (ii) Consumer Price Index – All Urban Consumers (CPI-U) issued by the U.S. Bureau of Statistics in December of the previous year (any such adjustment will reflect an increase, but not any decrease, in the Consumer Price Index for the previous twelve (12) months).

**3.4 Late Payment Charge.** If Licensee fails to pay any amounts payable under this Agreement within ten (10) Days following the due date thereof, and after written notice of such non-payment, such unpaid amount shall be subject to a late payment charge at the lesser of (i) the highest legal rate of interest for late payment permitted in the Commonwealth of Massachusetts or (ii) one and one-half percent (1.5%) per month of the unpaid amount for each instance. Licensee acknowledges that the late payment charge is a reasonable estimate of the additional administrative costs and detriment that the Licensors will incur as a result of any such failure by Licensee and that actual costs thereof are extremely difficult or impossible to determine.

**3.5 Work Stoppage During Payment Default.** If Licensee fails to pay any amounts payable under this Agreement within fifteen (15) Days following the due date thereof, Licensors without prejudice to its other rights and remedies available under this Agreement may, until all outstanding payments are received, (i) stop all work under this Agreement; (ii) suspend services specified under **Exhibit B: Schedule of Ancillary Fees**; and/or (iii) temporarily deny Licensee’s access and permission to work in the Absolute Property, including denial or revocation of any permits issued by the Joint Trench Administrator. Provided however, Licensors may allow Licensee’s work under this Agreement to resume, if (i) Licensee delivers a valid performance bond in accordance to Section 3.6 and Licensors immediately uses the bond to cover any expenses necessary to support the continuation of Licensee’s work or continued access into the Absolute Property; or (ii) an emergency occurs in which Licensee’s immediate access and work in the Absolute Property is necessary under extenuating circumstances, as determined by the Licensors in its sole and reasonable discretion. Neither the Licensors nor the Joint Trench Administrator shall be responsible for any damages incurred by the Licensee due to any work stoppage as provided in this section, in response to Licensee’s payment default.

**3.6 Security Deposit.** During any term or prior to the Commencement Date of any term of this Agreement, if (i) Licensee failed to make timely payments of any invoices due by their due dates by more than two (2) times in occurrence; or (ii) Licensors makes reasonable determination that the Licensee may lack sufficient financial resources to meet its obligations under this Agreement, the Licensors may, in its sole and reasonable discretion, require the Licensee to deliver to the Licensors, a valid performance bond in the sum of one hundred thousand dollars (\$100,000.00), issued by a surety company acceptable to the Licensors in the form attached hereto as **Exhibit C: Performance**



**Bond.** Licensee agrees and acknowledges that it will obtain a bond which allows for the use of the bond to cover incidental expenses and costs, damages and fees not covered by any insurance policies including but not limited to, interest, charges by the Licensor to remove Licensee's facilities or properties and unpaid Ancillary Fees. Licensee shall keep such surety bond, at its expense, in full force and effect until the sixtieth (60) Day after the Expiration Date or other termination hereof, to insure the faithful performance by Licensee of all of the covenants, terms and conditions of this Agreement. Such bond shall provide thirty (30) Days prior written notice to the Licensor of cancellation or material change thereof.

#### **4. JOINT TRENCH ADMINISTRATOR**

- 4.1 The Joint Trench Administrator is a wholly owned subsidiary of the Licensor for the purposes of managing and lawfully regulating all aspects of operations over the HEX Conduit System. The Licensor represents and warrants that the Joint Trench Administrator is duly authorized to carry out the powers and duties of enforcement and representation of Licensor's interests over all terms, covenants, conditions and provisions under this Agreement.
- 4.2 Nothing in this section affects the authority of the Licensor to control and manage the Absolute Property. The Joint Trench Administrator shall have neither the title nor ownership to any of the Absolute Property and is expressly prohibited from entering into any agreements or contracts which bind the Licensor or any of its Absolute Property, or create obligations on part of the Licensor without (i) the prior written authorization of the Licensor; or (ii) Licensor's becoming of a party bound to a tripartite or multi-party agreement together with the Joint Trench Administrator and the other party or parties seeking an agreement.

#### **5. UNDERLYING RIGHTS; CONDEMNATION**

- 5.1 Subject to the terms and provisions of this Agreement, the Licensor agrees that it has and will maintain during any terms all Underlying Rights necessary for the Licensor's construction, installation, maintenance and repair of the Premises and for the Licensor's grant to Licensee of the use of the Licensed Facilities in the manner contemplated by this Agreement.
- 5.2 In the event of a condemnation of all or any portion of the Premises, the Licensor will provide a reasonable alternative conduit route subject to all required permits on a timely basis to Licensee.



## 6. USE OF THE LICENSED FACILITIES

6.1 The Agreement hereby granted to Licensee provides Licensee with the right to install, maintain, operate, repair, renew, replace and remove Licensee's fiber optic cable, together with rights of ingress, egress and access thereto, subject to all required permits and Licensee Operating Rules and Regulations. Further, Licensee shall not use, or permit any other entity or person to use the Licensed Facilities, in violation of this Agreement, any law, rule, regulation or order of any governmental authority having jurisdiction over the Premises.

6.2 **No Subleases.** Notwithstanding any contrary provision in this Agreement, Licensee is expressly prohibited from leasing, subleasing, licensing or sublicensing the Licensed Facilities or any interests granted to the Licensee under this Agreement or any portions thereof. Provided however, for the avoidance of doubt, Licensee may lease, IRU or sell services in connection with the fiber on the fiber optic cable that Licensee places in the Licensed Facilities.

6.3 **Subordination to Operating Rules, Requirements.** Licensee accepts that all works permitted under the terms of this Agreement shall be subordinate to the requirements of the Joint Trench Administrator as set forth in the Licensee Operating Rules and Regulations and may be reasonably stopped or delayed, at any time, in response to each requirement, including matters of maintenance and operations, directions of Authority Having Jurisdiction, concerns for safety of any work crews, structure or the traveling public over public ways and private ways. The Licensors and the Joint Trench Administrator shall not be responsible for any damages incurred by Licensee as a result of any such work stoppage, delay or required relocation.

6.4 **Subordination of License.** Licensee agrees that all of its rights in the Premises and Licensed Facilities as provided under this Agreement shall be subject and subordinate to the lien of all mortgages, deeds of trust, security instruments, deeds to secure debt, ground leases, master leases and underlying agreements (including, but not limited to, easement agreements, Grant of Location, encroachment grants, license agreements, community host agreements, franchise agreements, and so forth) covering all or any part of the Absolute Property, and to all modifications, consolidations, renewals, replacements and extensions thereof, whether now existing or hereafter created. In confirmation of such subordination, Licensee shall execute promptly upon request by the Licensors all certificates, instruments of postponement or other instruments which may from time to time be requested, to give effect thereto.

6.5 **Use of Contractors.** Licensee is solely responsible for selecting and managing all contractors or subcontractors that perform technical services for the Licensee in support of Licensee's occupation within the Absolute Property. Licensee, however, must be sure that any such services are performed by an Approved Contractor authorized to perform work in the HEX Conduit System. Approval of any Approved Contractors shall in no way diminish Licensee's obligations to Licensors under this

Agreement. Licensee shall remain responsible to Licensors for all obligations hereunder, including but not limited to those undertaken by an Approved Contractor.

**6.6 Removal Upon Termination.** Except as otherwise provided in this Agreement, upon the expiration of this Agreement or its earlier termination for cause, Licensee at its sole cost and expense, shall promptly, safely and carefully remove fiber optic cable and facilities it owns installed pursuant to this Agreement from the Licensed Facilities and Premises, except to the extent that Licensee has other legal obligation or authorization from the Licensors to maintain a portion of its facilities for a longer time. Such obligation of the Licensee shall survive the expiration or earlier termination of this Agreement. If Licensee fails to complete this removal work on or before ninety (90) Days subsequent to the expiration or earlier termination of this Agreement pursuant to this Section 6.6, then the Licensors or the Joint Trench Administrator, upon written notice to Licensee, shall have the right at the Licensors' sole election, but not the obligation, to perform this removal work using qualified contractors and reasonable care in removal and handling of Licensee equipment and materials, and charge Licensee for the actual costs and expenses, including, but not limited to, reasonable administrative costs, provided that Licensee shall be allowed to continue its removal work beyond ninety (90) Days as long as it is diligently pursuing such removal. Licensee shall pay to the Licensors the reasonable costs and expenses incurred by the Licensors or the Joint Trench Administrator in performing any removal work and any storage of Licensee's property after removal, within thirty (30) Business Days of the date of a written demand for this payment from the Licensors. After the Licensors receive the reimbursement payment and any other outstanding payment of fees due and payable by the Licensee to the Licensors, the Licensors shall promptly return to Licensee the property belonging to Licensee and removed by the Licensors or the Joint Trench Administrator at no liability to the Licensors and the Joint Trench Administrator.

**6.7** If the Licensors do not receive the reimbursement payment from Licensee within thirty (30) Business Days pursuant to Section 6.6, or if the Licensors do not elect to remove such items at the Licensors' cost after Licensee fails to do so prior to ninety (90) Days subsequent to the issuance of notice pursuant to Section 6.6, any Licensee's property installed pursuant to this Agreement remaining on or about the Premises or stored by the Licensors after Licensors' removal thereof may, at the Licensors' discretion, be deemed abandoned and the Licensors may dispose of such property in any manner permitted by law. Alternatively, the Licensors may elect to take title to abandoned property, provided that Licensee shall submit to the Licensors an instrument satisfactory to the Licensors transferring to the Licensors the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

**6.8 Risk of Loss or Damage.** Licensee acknowledges and agrees that neither the Licensors nor the Joint Trench Administrator shall be held liable for any damages or cost of repair to Licensee's equipment and materials installed in the Absolute Property pursuant to this Agreement, including, without limitation, damages caused by the Licensors or the Joint Trench Administrator for removal of such pursuant to Section 6.6,

except to the extent that such loss or damage was caused by negligence, gross negligence, or willful misconduct of the Licensor or the Joint Trench Administrator.

**6.9 Use for Fiber Optic Communications Only.** Licensee acknowledges and agrees that all conduits and facilities of the HEX Conduit System are exclusively for placement of fiber optic cables for optical transmission of information via light or lasers in compliance with all applicable laws. Licensee is expressly prohibited from installing any cable, equipment, materials or facilities into its Licensed Facilities other than fiber optic cables and their associated unpowered facilities and materials to support the fiber optic cable plant as permitted under the terms of this Agreement.

**6.10** Licensee covenants that it shall not, nor shall it permit any of its affiliates, Approved Contractor or agents, to install any electrically powered equipment, facilities or cables or wires carrying any electric current (including, but not limited to, hybrid cable which provides both fiber optic strands and electric current carrying conductors in the same bundle) regardless of the voltage or current carrying capacity anywhere in the Absolute Property. To the extent permitted by the law, Licensee acknowledges that the Licensor shall consider willful or negligent placement of any electric current carrying conductors (regardless of their voltage or current carrying capacity) within the Absolute Property by the Licensee or its agents as a breach in covenant for purposes set forth in this Agreement, and may result in Licensor terminating the Agreement for cause. If placed by circumstances other than from negligence, upon notice (which can be made orally) by the Licensor or the Joint Trench Administrator, Licensee covenants that it shall promptly and carefully remove its electrical current carrying conductors or equipment from the Absolute Property to Licensor's satisfaction and if reasonably required by the Joint Trench Administrator, the Licensee shall test appurtenant structures or apparatus of the Premises, including manhole covers, for any stray voltage.

**6.11 Unauthorized Occupancies.** If any facilities or properties of Licensee or any other third party are found occupying any sections of the Absolute Property for which authorization has not been granted by Licensor, the Licensor without prejudice to its other rights or remedies under this Agreement, including termination or otherwise, may impose a charge and require Licensee to submit in writing, within ten (10) Business Days after receipt of written notification from Licensor of the unauthorized occupancy, as-built drawings of Licensee's facilities and properties installed without authorization, and require the Licensee to apply for a new license from the Joint Trench Administrator. If the Licensee does not cooperate in good faith and work diligently to apply for a new license within ten (10) Business Days after receipt of written notification from Licensor of unauthorized occupancy, Licensor may remove Licensee's facilities and properties without liability, and all reasonable costs of such removal, including storage of Licensee's property, shall be borne by the Licensee.

**6.12 No Reservation or Hoarding of Licensed Facilities.** No Licensed Facilities shall be held in reserve or otherwise remain unoccupied for future use. Licensee agrees to promptly work to begin occupying its Licensed Facilities in earnest, by no later than one hundred twenty (120) Days from the Commencement Date of the Agreement. If the Licensee does not cooperate in good faith and fails to begin occupying its Licensed

Facilities within one hundred twenty (120) Days from the Commencement Date, the Licensor may, with written notice provided to the Licensee, (i) terminate this Agreement; or (ii) require the Licensee to execute an amendment to this Agreement or enter into a new license modifying the scope of its Licensed Facilities, with the unoccupied or unused portions removed.

## 7. INTERFERENCE WORK, RELOCATION COSTS, MODIFICATIONS TO PREMISES AND INSPECTIONS

7.1 Licensor reserves to itself, its successors and assigns, the right to relocate and maintain the Absolute Property and to use and operate the Absolute Property in such a manner as will best enable the Licensor to fulfill its own service requirements.

7.2 Should the Licensor, or other Licensee, for their own service requirements, need to install additional facilities in any portions of the Absolute Property in which Licensee's Licensed Facilities is occupying, Licensee shall upon written notice from the Licensor, rearrange its facilities in the Absolute Property as reasonably determined by the Licensor so that the additional facilities of the Licensor, or other Licensee may be accommodated, provided that, except to the extent such relocation is required to accommodate the needs of the Licensor, such rearrangement does not materially interfere with Licensee's use of the Licensed Facilities pursuant to this Agreement. Licensee shall not be required to bear any of the costs of rearranging its facilities if such rearrangement is required as a result of an additional occupancy by any entity including Licensor or other licensees. Any such rearrangement costs shall be borne by the entity or entities requesting rearrangement. Licensee shall be solely responsible for collecting any such rearrangement costs incurred pursuant to this section. Licensor's sole responsibility shall be limited to reimbursement of its pro rata share of such costs caused by its own additional occupancies. If Licensee does not rearrange its facilities within sixty (60) Days after receipt of written notice from the Licensor requesting such rearrangement, the Licensor may perform or have performed such rearrangement and Licensee shall pay the cost thereof. The foregoing shall not preclude Licensee from thereafter seeking reimbursement of such rearrangements costs as if it had performed the work in accordance with this section.

7.3 **Relocation.** If Licensor replaces or relocates any portions of the Absolute Property, for any reason other than pursuant to Section 7.2 above, on which Licensee has facilities, Licensee must transfer its facilities to the new relocated portion of the Absolute Property, at its sole expense, within fifteen (15) days from receiving notification from Licensor or Joint Trench Administrator, unless such notice provides for a different time period. If the Parties utilize National Joint Utilities Notification System (NJUNS) or other similar notifying systems, then Licensee must transfer its facilities to the new relocated portion of the Absolute Property within fifteen (15) days of receiving the "next-to-go" notification. If Licensee fails to transfer its facilities within the prescribed timeframe, Licensor may, but will not be obligated to, transfer Licensee's facilities at Licensee's sole expense. If Licensor transfers Licensee's

facilities, Licensors will invoice Licensee for Licensors' cost to perform the work and Licensee will pay such invoice within thirty (30) days of receipt.

**7.4 Modifications to Premises.** In an emergency, Licensors or the Joint Trench Administrator may, in accordance with accepted industry practices or under the directions of a public authority, rearrange or if necessary, for the protection of the health and safety of crews or the public, or protection of the safety or reliability of Licensors' facilities, remove Licensee's facilities or properties occupying a specific section of the Absolute Property. Licensee may have an inspector present during such emergency repairs; provided however, that said inspector shall have no supervisory authority to control, direct or interfere with work force of the Licensors or those of the Joint Trench Administrator. Licensors shall not be required to defer emergency action if said inspector is not present. Licensors shall take all reasonable actions to provide prior notification to Licensee of any required rearrangement.

**7.5** Licensee must notify Licensors in writing of its request for additional facilities or for relocating, replacing, or otherwise modifying its existing facilities in the Absolute Property. Licensors shall then process such requests for additional or relocated licenses in the same manner as provided for herein subject to the same conditions and provisions set forth in this Agreement, and advise Licensee of Licensors' acceptance, rejection or modification of said request. Licensee shall reimburse Licensors for all costs involved for such modifications, upon submission of invoices.

**7.6 Inspections of Licensee's facilities.** In the event that Licensors, its contractor or the Joint Trench Administrator or its agent performs work on Licensed Facilities, Licensee shall have the right to have its inspector(s) present.

**7.7 Inspections by the Joint Trench Administrator.** Under no circumstances shall the Licensee or Licensee's Approved Contractor or agents perform work in or on the Absolute Property in the absence of the representative of the Joint Trench Administrator. The Joint Trench Administrator's representative shall have the right to stop work anywhere in or on the Absolute Property to enforce any provisions of the Agreement, including but not limited to, for matters of safety and enforcement of any code or work standards as provided herein. Licensee shall reimburse Licensors for the cost of Joint Trench Administrator's representatives and any inspections of Licensee's facilities as specified under ***"Inspection Fees"*** in **Exhibit B: Schedule of Ancillary Fees**.

**7.8** The making of post-construction, subsequent and periodic inspections or the failure to do so shall not release or relieve Licensee of any responsibility, obligation or liability specified in this Agreement.

## 8. WORK STANDARDS; DAMAGE TO OUTSIDE PLANT; HAZARDOUS MATERIALS

- 8.1 **Performance of Work.** In performance of all constructions, installations, technical works or procedures under this Agreement, Licensee, its agents and Approved Contractors shall exercise due care, caution, skill and expertise and shall take all reasonable steps to safeguard and maintain a clean and workmanlike manner at all work site areas, including, without limitation, the areas around the Absolute Property, including public ways, property or encroachment areas upon which such work is being performed. All works undertaken by the Licensee, its agents and Approved Contractors under this Agreement shall at all times be performed in generally accepted industry practices and in compliance with all laws.
- 8.2 **Method of Procedure.** Prior to any excavation or construction involving the Absolute Property in connection with this Agreement, Licensee shall submit a work plan, including but not limited to, engineering plans, conduit placement plan and/or excavation plan, including any diagrams and written work proposals detailing the scope and procedures to the Joint Trench Administrator for review and approval (the “**Method of Procedure**”). Further, prior to conducting any such work in the Absolute Property, Licensee shall provide to the Joint Trench Administrator a current emergency response plan identifying the foreman at the work site and staff who have authority to resolve, twenty-four (24) hours a Day, seven (7) Days a week, problems or complaints resulting, directly or indirectly, from the Licensee’s work being performed. As soon as is reasonably practical following any construction or excavation work involving the Absolute Property under this Agreement, Licensee shall deliver as-built drawings to the Joint Trench Administrator.
- 8.3 **Manhole Break-Outs and Conduit Penetrations.** If the Licensee, in its construction work occurring under this Agreement, needs to “break-out” from a Licensor owned manhole or underground vault, special care must be taken to protect the existing facilities of other licensees and/or the Licensor, and not undermine the structural integrity of the vault. Licensee shall submit a written Manhole Break-Out Plan detailing the construction plan in drawing and procedures to the Joint Trench Administrator for approval prior to conducting any such work. The Joint Trench Administrator requires that in the presence of pre-installed conduit knockouts in a HEX Conduit System manhole or underground vault, Licensee is prohibited from core drilling, jackhammering, or otherwise breaking the wall of the vault, and must make reasonable efforts to utilize the existing conduit knockouts as already provided. If in the event that the Licensee is unable to utilize a pre-installed knockout under reasonable circumstances, such as due to interference by nearby utilities, Licensee must first seek permission from the Joint Trench Administrator and provide a detailed Method of Procedure for approval prior to any such work taking place. In such circumstances, the Joint Trench Administrator may reasonably require the Licensee to repair the underground vault to its reasonable satisfaction, and/or develop a remediation plan to



restore the structural integrity of the vault, prevent disruption of any services and protect the nearby facilities owned by other licensees or the Licensor.

**8.4 No Disruption.** In performance of Licensee's obligations hereunder, or in enjoyment of Licensee's interests granted in this Agreement, Licensee shall not unreasonably disrupt in any manner any public or private facilities existing now or in the future located near or on the same road, highway, railroad, transverse crossing, bridge, tunnel, right-of-way, easement or limits of encroachment as the Absolute Property, including but not limited to, sanitary sewers, storm drains, water mains, gas lines, poles, aerial and underground electric, communications and television lines and other facilities, utilities or any municipal, state or federal property, without the express written approval of the owner or owners of such affected property or properties. Further, Licensee shall be responsible for repair and restoration of any damage to facilities belonging to the Licensor, to the extent that Licensee causes disruption resulting in such damage.

**8.5 Repair or Replacement of Damaged Facilities or Property.** Upon written request, Licensee agrees to repair or replace, to the Licensor's reasonable satisfaction based on standards equivalent to those the Joint Trench Administrator requires of any other similarly situated party, any portions of the Absolute Property that the Licensor or the Joint Trench Administrator determines has been damaged, destroyed, defaced or otherwise injured as result of work performed by Licensee, its Approved Contractor, or agents under this Agreement. Licensee shall perform such work at no expense to the Licensor or the Joint Trench Administrator, except to the extent that such damage, destruction, defacement or injury was caused by the gross negligence or willful misconduct of the Licensor or third party.

**8.6 Hazardous Materials.** If for any reason Hazardous Materials are found, and the Licensee is not responsible for Hazardous Materials at the Premises, then Licensee agrees to cooperate with the Joint Trench Administrator in the determination of the party liable, and for the remediation of the Premises under applicable federal and/or state laws and environmental regulations. Such cooperation may include temporary adjustments of the rights granted to Licensee hereunder, including relocation of Licensee's fiber optic cable, facilities or personal property effects installed in the Absolute Property, or temporary restriction of access to certain facilities to permit environmental remediation efforts.

**8.7 Interconnection from Electric Utilities.** Licensee accepts that the Licensor expressly prohibits direct interconnection or mating of a conduit or conduits belonging to an underground electric utility or electrical transmission system onto any facilities of the Absolute Property. To properly interconnect any conduit from an electric utility system, Licensee agrees that it shall follow all applicable building codes, laws, regulations and adopt design standards set forth and jointly agreed upon by the Joint Trench Administrator and the subtending electric utility company, including, but not limited to, requiring the Licensee, at its sole cost and expense, to install a separate, demarcating manhole at a standoff distance from the HEX Conduit System manhole, and fireproofing and installing firestops on all manhole penetrations facing the



Licensee's demarcating manhole and the electric utility. Licensee is solely responsible for undertaking such an endeavor and shall, at its sole cost and expense, obtain all of the necessary approvals and permits and so forth (including, but not limited to, Grant of Location, easement or other encroachment grants, insurance, bonding and any other requirements as provided by law and/or municipal codes) with all applicable authorities and governmental bodies at the site of the proposed interconnection. Provided however, Licensee is duly permitted to request the Licensors to grant an additional license to occupy a specific conduit capacity in any of the preexisting Licensors-owned interconnection facilities constructed between the HEX Conduit System and the said electric utility company, to the extent that such conduit capacity or facility is available for occupancy.

## 9. TITLE

9.1 All rights, title and interest in the Absolute Property, the Licensed Facilities and any other equipment or facility of the Licensors shall, at all times, remain exclusively with the Licensors. All right, title, and interests in the fiber optic cable placed within the Licensed Facilities by Licensee and any other equipment or facility of Licensee shall, at all times, remain exclusively with Licensee. Licensee, on behalf of itself and any permitted successor, or assign, accepts and understands that this Agreement may, subject to applicable laws, create an interest subject to taxation and that Licensee, its successor, lessee or assign may be subject to the payment of such taxes.

9.2 **No Real Property Interest Created.** Neither Licensee's use of the Licensed Facilities or other Licensors-owned property, nor anything contained in this Agreement, shall be deemed to grant, convey, create, or vest in Licensee a real property interest in any portion of the Absolute Property and its Premises or any other Licensors-owned property, including but not limited to, any fee, leasehold or easement interest.

## 10. LIENS AND ENCUMBRANCES

No Party, directly or indirectly, shall create or impose any lien on the property of the other party, or on the rights or title relating thereto, or any interest therein, or in this Agreement. Each Party will promptly, at its own expense, take such action as may be necessary to duly discharge any lien created by it on the property of the other. However, nothing in this Agreement shall be so construed as to prohibit the owner of any facilities from permitting the creation or imposition of a lien or security interest on facilities that it owns.

## 11. INDEMNIFICATIONS; LIMITATIONS OF LIABILITIES; WARRANTIES

11.1 Licensee will indemnify and hold the Licensors and the Joint Trench Administrator harmless against any and all loss, liability, damage and expense (including reasonable attorneys' fees) arising out of any demand, claim, suit or judgment including but not limited to, a suit or judgment for damages to any property or bodily injury to any

persons (including, without limitation, the agents and employees of Licensee or citizens of the traveling public over the public ways in which HEX Conduit System is located) which may arise out of or be caused by Licensee including but not limited to, Licensee's negligence, willful misconduct, violation of the Licensee Operating Rules and Regulations, grossly negligent act or omission of Licensee in connection with the Licensed Facilities. The foregoing indemnity shall not apply in the case of claims which solely arise from the gross negligence, willful misconduct or other fault of the Licensors or the Joint Trench Administrator.

11.2 Notwithstanding any contrary provision in this Agreement, in no event shall any Party be liable to the other or any third party for any indirect, special, incidental, punitive, exemplary, or consequential damages, including, without limitation, those based on loss of revenues, profits, or business opportunities, frustration of economic or business expectations, loss of capital, cost of substitute product(s), facilities, or services, or cost of downtime or service interruption, whether or not such party had or should have had any knowledge, actual or constructive, that such damages might be incurred, and even if such party was advised of the possibility of such damages.

11.3 Notwithstanding any provisions of this Agreement to the contrary, the maximum liability of any Party if any, to the other Party or its affiliates in connection with this Agreement shall be limited, in the aggregate, to a provable amount which shall be no greater than the amount of the License Fee that have been paid by Licensee to the Licensors for the Licensed Facilities at the time the claim is made. The foregoing limitation of maximum liability shall not apply to (i) claims for indemnification under this Agreement, (ii) License Fee and other payment obligations due and owing by Licensee to the Licensors or the Joint Trench Administrator, or (iii) damages arising from gross negligence or willful misconduct of a Party or its affiliates and shall not restrict any Party's right to proceed for injunctive relief.

11.4 Access to the Licensed Facilities and the Premises are provided as-is. Any and all express and implied warranties, including, but not limited to, warranties of merchantability and fitness for any purpose or use, are excluded and disclaimed by the Licensors and the Joint Trench Administrator.

## 12. LICENSEE COVENANTS

In addition to any covenants made by Licensee elsewhere in this Agreement, Licensee hereby covenants to Licensors as follows:

12.1 ***Covenant to Follow Safety Regulations.*** The Licensee agrees that it and its Approved Contractor, affiliates and agents shall perform all works under this Agreement in compliance to all safety rules, including those set forth in the Licensee Operating Rules and Regulations, and all applicable local, state and federal laws and regulations concerning occupational and process safety. The Licensee covenants that in the event of a complaint from its employee or agent, a member of the public, the Joint Trench Administrator or Authority Having Jurisdiction concerning the safety of Licensee's operation or work at the Premises, Licensee shall diligently take all

measures to cure safety violations in accordance to all applicable laws and safety regulations in effect. The Licensee agrees that it and its agents shall not enter a Licenser owned manhole, underground vault or any structure which is identified as Confined Space per 29 CFR 1910.146(b), without first following the approved protocol for entering a Permit Required Confined Space as required by regulation and enforced by the Joint Trench Administrator. The Licensee acknowledges that the adoption and enforcement of Permit-to-Work system and procedures by the Joint Trench Administrator is to ensure that the safety of all personnel and the traveling public near the Premises always comes first and ahead of any work being contemplated or performed under this Agreement, and that there can be no cost too high for safety. Licensee further covenants that it and its agents shall cooperate in good faith with the Joint Trench Administrator to ensure compliance to all applicable safety regulations and enhance standards of safety at all work sites across the HEX Conduit System.

**12.2 Covenant to Pay Taxes.** During any term of the Agreement, Licensee covenants and agrees to duly and punctually pay all real estate or personal property taxes due with respect to its operations across the Absolute Property, including personal property tax for Licensee's fiber optic cable or cables and all of Licensee owned facilities or properties installed in the Licensed Facilities, unless the Licensee is in good faith contesting its liability for the taxes, or lawfully exempted from payment of such taxes.

**12.3 Covenant to Protect Facilities.** Licensee acknowledges that any damages to utilities or the public infrastructure can cause grave harm or injury to the society at large. Therefore, Licensee covenants that during performance of any work contemplated under this Agreement by the Licensee and its agents, including any Approved Contractor, it will at its own expense, exercise every reasonable care and render protection to any facilities or properties belonging to others located nearby or inside the Premises from damages, including properties belonging to the Licenser, other licensees and users of the Absolute Property, and property and infrastructure belonging to the property owner or the public authority at the right-of-way.

**12.4 Covenant to Obtain Required Approvals.** Licensee covenants that it shall obtain at its sole cost and expense, any approvals, authorizations, permits from any government or Authority Having Jurisdiction required for Licensee's use, access and enjoyment of the Licensed Facilities. Further, at all times, no Licensee shall enter upon any Premises of the Absolute Property to work in the Licensed Facilities, without first obtaining an approval, permit or written permission from the Joint Trench Administrator. The Licensee further covenants that it shall always obtain approvals from the Joint Trench Administrator each and every time, prior to the Licensee's any access and/or work in the Licensed Facilities as provided in this Agreement.

**12.5 Performance by affiliates and subcontractors.** The Parties recognize that Licensee may perform some or all of its obligations under this Agreement through one or more of its affiliates or subcontractors; provided, in each case, that (a) none of the other Party's rights hereunder are diminished or otherwise adversely affected as a result of such delegation or subcontracting, and (b) each such affiliate or subcontractor undertakes performance obligations of the Licensee hereunder pursuant to all

covenants, terms and conditions of this Agreement, and provided further, that Licensee shall at all times be fully responsible for the performance and payment of such affiliate or subcontractor.

### 13. INSURANCE

13.1 Licensee shall secure and maintain (and ensure its subcontractors secure and maintain) all insurance and/or bonds required by law or this Agreement including without limitation:

- (a) Commercial General Liability insurance for personal injury, bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate covering all work performed on over or adjacent to Absolute Property and Licensed Facilities, including, but not limited to, all operations, contractor liability and coverage for XCU Hazards.
- (b) Automobile Liability insurance including the use of all vehicles owned, non-owned, leased and hired, in an amount not less than \$1,000,000 combined single limit covering all of the work in connection with the Agreement.
- (c) Worker's Compensation insurance including Employees, Liability Insurance, as provided by Massachusetts General Law Chapter 152, as amended, covering all of the work.
- (d) Umbrella Liability Coverage in an amount not less than \$5,000,000 per occurrence covering all of the work.
- (e) "All Risk" Property Insurance covering all of Licensee's personal property effects and facilities located in the Absolute Property.
- (f) ***Railroad Protective Liability insurance.*** If required by an underlying governing or right-of-way agreement or determined by the owner of a real property where Licensed Facilities are located, or if determined reasonably by the Joint Trench Administrator that the Licensee's work occurs on the property or right-of-way of a railroad, or within a zone of influence of a railroad, Railroad Protective Liability insurance must be purchased by the Licensee and/or its contractor performing work in the name of the railroad company(s) at the location of such work. Further, purchase of such Railroad Protective Liability insurance must be performed in accordance to the coverage and specific requirements of the railroad company(s) at the location of work.

13.2 All insurance policies must name the Licensor and the Joint Trench Administrator as additional insured as their interest appears and waive any rights of subrogation against the parties hereto. Licensee shall provide to Licensor and Joint Trench Administrator written documentation establishing that the Licensor and Joint Trench

Administrator have been named as additional insureds under all relevant insurance policies on or before the Commencement Date.

- 13.3 All insurance policies required herein shall require the insurance companies to endeavor to notify the Licensors and the Joint Trench Administrator at least thirty (30) Days prior to the effective date of any cancellation of such policies.

## 14. DEFAULT; TERMINATION

- 14.1 **Termination for Cause.** A default shall have deemed to have occurred under this Agreement if:

- (a) In the case of a failure to pay any amount due under this Agreement, the Licensee fails to pay such amount within thirty (30) Days after receipt of invoice or notice from the Licensors that such payment is due; or
- (b) Either the Licensee or the Licensors defaults in any material obligation hereunder and fails to cure such default within thirty (30) Days after receiving written notice from the non-breaching Party specifying such breach, provided that if the breach is of a nature that is curable but that cannot be cured in thirty (30) Days, a default shall not have occurred so long as the breaching Party in good faith has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

- 14.2 **Default in Covenants.** If the Licensee defaults in the performance of any covenants contained in this Agreement, the Licensors may avail itself one or more of the following remedies: (i) pursue any remedies it may have under applicable law or principles of equity, including specific performance; and (ii) terminate this Agreement by giving the Licensee written notice of termination.

- 14.3 **Effect of Termination.** In the event of termination of this Agreement, Licensee shall immediately cease all work being performed under this Agreement, except only that work which is necessary for Licensee to remove all of its fiber optic cables and facilities it owns installed in the Licensed Facilities pursuant to this Agreement as provided in Section 6.6. Termination of this Agreement as herein provided, shall constitute the withdrawal of the consent or authorization of the Licensors for Licensee to perform any construction, installation or other work under this Agreement in the Absolute Property excepting only that work necessary for Licensee to remove its fiber optic cables and facilities it owns from the Licensed Facilities and leave all work site areas in a clean and safe condition, or as the Licensors may otherwise expressly provide.

- 14.4 **Early Termination.** Upon any early termination prior to the Expiration Date of the Agreement term, the Licensors within ninety (90) Days, shall remit to the Licensee a prorated portion of the annual License Fee paid to the Licensors in accordance with Section 3.3(a) if the Licensee has fully removed its fiber optic cable and facilities in

conformance with Section 6.6 of this Agreement. Provided however, Licensor need not refund or pro-rate any monies paid for Ancillary Fees prior to, during or after any such early termination.

## 15. REPRESENTATIONS AND WARRANTIES

By execution of this Agreement, each Party represents and warrants that:

- (a) That the representing Party has full right and the authority to enter into and perform this Agreement in accordance with the terms and covenants hereof and thereof, and that by entering into or performing under this Agreement, the presenting Party is not in violation of its charter or bylaws, or any law, regulation or agreement by which it is bound or to which it is subject;
- (b) This Agreement constitutes a legal, valid and binding obligation enforceable against a Party in accordance with its terms;
- (c) That the execution, delivery and performance of this Agreement by such Party has been duly authorized by all requisite corporate action, that the signatories for such Party hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement by such Party.

## 16. WAIVER

The failure of any Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general or implied waiver or relinquishment on its part of any such provisions, but the same shall nevertheless be in full force and effect.

## 17. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to its choice of law principles. Jurisdiction and venue shall lie within Suffolk County of the Commonwealth of Massachusetts.

## 18. RULES OF CONSTRUCTION

The captions and headings in this Agreement are strictly for convenience and shall not be considered as interpreting it or amplifying or limiting any of its content.



## 19. ASSIGNMENT

19.1 Licensee shall not assign this Agreement, without the written express consent of the Licensors, which consent shall be at Licensors' sole discretion. Nor shall Licensee assign, transfer or sublease, directly or indirectly, on an integrated or unintegrated basis, in whole or in part, the Licensed Facilities or its right to use the Licensed Facilities and the Premises as granted herein without the express written consent of the Licensors, which consent shall be at the Licensors' sole discretion. Notwithstanding the foregoing, Licensee need not obtain consent of the Licensors to assign this Agreement (a) to a parent, affiliate or subsidiary of Licensee, or (b) to any entity formed by or surviving a merger or consolidation of Licensee and any other entity, or (c) to any entity that acquires all or substantially all of the assets or shares of Licensee, but shall give written notice to the Licensors of any such assignment no later than thirty (30) Days after such an assignment takes place. If, in connection with any assignment of this Agreement by Licensee, Licensee causes such assignee to contemporaneously therewith agree in writing to perform all of Licensee's obligations under this Agreement which arise after the effective date of assignment or transfer, then Licensee shall be released from liability hereunder.

19.2 This Agreement is fully assignable by the Licensors and shall inure to the benefit of any assignee or other legal successor in interest. The Licensors shall also have the right to delegate the performance of any portion or all of its obligations hereunder to third parties, whether the same are agents of the Licensors or independent contractors with whom the Licensors has contracted to provide such services. The Licensee agrees in advance to any such delegation by the Licensors of any part or portion of its obligations and duties hereunder.

## 20. FORCE MAJEURE

No Party shall be deemed to be in breach of this Agreement during any period of time in which it is unable to perform its obligations as a result of the occurrence of an event of force majeure, which shall include, but not limited to, acts of God, act or order of government, denial or access to or loss of utility service or facilities or any other circumstance beyond the reasonable control and not caused by the fault or negligence of the Party claiming force majeure. The required time for performance hereunder by the Party claiming force majeure shall be extended to account for any such force majeure event and the Party claiming force majeure shall use diligence to resume or remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

## 21. RELATIONSHIP OF THE PARTIES

The relationship between Licensee and the Licensors, and between Licensee and the Joint Trench Administrator shall not be that of partners, agents or joint ventures for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, agency, or joint venture agreement between them. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of any third-party.



## 22. AMENDMENTS

Neither this Agreement nor any of its terms or provisions may be changed, waived, discharged or terminated, except by written instrument signed by all of the Parties.

## 23. SEVERABILITY

Any provisions of this Agreement which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## 24. TIME IS OF THE ESSENCE

Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified.

## 25. ENTIRE AGREEMENT

This Agreement, including the Exhibits, which are hereby incorporated herein as an integral part of this Agreement, constitutes the entire agreement between the Parties hereto with respect to the subject matter and geographical locations referred to and preempts and supersedes any and all prior or contemporaneous agreements whether written or oral. This Agreement cannot be modified except in writing signed by the Party against whom enforcement of the modification is sought.

*[ continued on next page ]*

## 26. NOTICES

All notices, demands, requests or other communications given under this Agreement shall be (i) in writing, (ii) effective on the first Business Day following the date of receipt, and (iii) be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service or by computer email (followed by confirmation on the same or following day by overnight delivery or by mail as aforesaid) to the address set forth below or as may subsequently in writing be requested.

### **Licensor:**

James H. Jun, Chief Operating Officer  
TOWARDEX Technologies International, Inc.  
One Marina Park Drive, Suite 1410  
Boston, Massachusetts 02210  
Telephone: 617-849-7278 Ext. 179  
Email: [james.jun@towardex.com](mailto:james.jun@towardex.com)

With a Copy to:

TOWARDEX Technologies International, Inc.  
Attn: Law Department  
One Marina Park Drive, Suite 1474  
Boston, Massachusetts 02210  
Telephone: 617-849-8854  
Email: [legal@towardex.com](mailto:legal@towardex.com)

### **Joint Trench Administrator:**

Gavin R. Schoch, General Manager  
TWDX Infrastructure, LLC  
C/O TOWARDEX Technologies International, Inc.  
70 Inner Belt Road, Suite M1  
Somerville, Massachusetts 02143  
Telephone: 617-863-8325  
Email: [plantmaster@towardex.com](mailto:plantmaster@towardex.com)

### **Licensee:**

[Customer Entity Name]  
[Licensee's Person or Department for Legal Attention to]  
[Licensee Address for Legal Notices]  
Telephone: [Licensee Telephone]  
Email: [Licensee Email]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**LICENSOR:**

**TOWARDEX Technologies International, Inc.**  
a Delaware Corporation

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

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

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

Date: \_\_\_\_\_



**LICENSEE:**

**[Customer Entity Name]**  
a [Entity Type]

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

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

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

Date: \_\_\_\_\_

**JOINT TRENCH ADMINISTRATOR:**

**TWDX Infrastructure, LLC**  
a Massachusetts Limited Liability Company

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

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

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

Date: \_\_\_\_\_

## EXHIBIT A:

### LICENSED FACILITIES

#### 1. Conduit Occupancy for each fiber optic cable sized up to 1.05" in outer diameter:

Provide cable's manufacturer cut sheet and route diagram in KMZ for each occupancy.

Cable	System Section	Street name or locus description	From Manhole	To Manhole	Linear Foot (LF)	Submittals		No. of Transverse Crossings (Railroad or Highway)	No. of fiber optic strands (each cable must be ≤1.05" in outer diameter)	Line item cost and Remarks
						Route Map (kmz)	Catalog Cut - Fiber			
1	C19BA	Inner Belt Road	C19BA-098	C19BA-200	1400	Att'd	Att'd	0	288 fibers	\$_____/yr Mainline run
2										
3										
4										
5										
6										
7										
8										
9										
10										

**Note:** Licensee is not permitted to install any innerducts in the Premises. All Licensee owned fiber optic cables must be installed inside innerducts owned and provided by the Licensor.

#### 2. Manhole or Underground Vault Occupancies – list for every instance

Item	Manhole or Underground Vault	Type of Occupancy		Line item cost and Remarks
		(1) Cable Slack ≥ 25'	(1) Fiber optic enclosure	
1	C19BA-204	x	x	\$_____/yr Enclosure + slack for ring cut

**Note:** Any excess occupancies of a manhole or underground vault not listed herein, will be charged to the Licensee under **Exhibit B. Schedule of Ancillary Fees.**

#### 3. Annual Fee

Total Annual Fee for the Licensed Facilities pursuant to Section 3.3 of this Agreement:

**\$<Enter Fee> per year**

## **EXHIBIT B:**

### **SCHEDULE OF ANCILLARY FEES**

#### **1. Inspection Fees**

<b>Minimum Inspection Fee:</b> Charged at minimum anytime when inspection or access is required between 7:30 AM and 3:30 PM during a Business Day (the “ <b>Eight Hour Shift</b> ”), regardless of the scope of the work or even if actual hours of work performed is less than eight (8) hours.  <i>Provides for deployment of two (2) Inspection Crews: Each manhole requires at least one (1) Inspection Crew. It is Licensee’s responsibility to order as many inspections as necessary to ensure sufficient Inspection Crew coverage to support all simultaneous manhole openings occurring during the work.</i>	<b>\$1,500 minimum charge for Eight Hour Shift and provides two (2) Inspection Crews to simultaneously cover up to two (2) manhole openings.</b> Both Inspection Crews will be available to support Licensee’s access and/or work during the full Eight Hour Shift.  Outside of the Eight Hour Shift, charges will be assessed in accordance to <b>Overtime Inspector Costs</b> as provided below.
<b>Overtime Inspector Costs:</b> Overtime rate for one (1) Inspection Crew during any time outside of the Eight Hour Shift.  <i>Each manhole requires at least one (1) Inspection Crew. It is Licensee’s responsibility to order as many inspections as necessary to ensure sufficient Inspection Crew coverage to support all simultaneous manhole openings occurring during the work.</i>	<b>\$125 per hour for each one (1) Inspection Crew.</b>  <b>If a new dispatch is required by an Inspection Crew outside of the Eight Hour Shift, the Licensee will be charged a minimum of four (4) hours charge.</b> Otherwise, if the overtime costs are to support the Inspection Crew that is already on site, additional charges will accrue on an hourly basis outside of the Eight Hour Shift as provided herein.

#### **2. Application, Structural Review Fees and Survey Charges (Nonrefundable)**

<b>Application fee for a new license:</b>	<b>\$65</b>
<b>Structural and work plan or MOP review fee:</b> <i>If structural or MOP review is required as provided under the Agreement or by Form NC-2 Utility Work Permit</i>	<b>\$250</b>
<b>Manhole survey charges:</b> <i>Non-recurring fee charged upon execution of the Agreement to conduct field surveys</i>	<b>For each manhole crossed by Licensee’s cable or installation:</b> <b>\$500</b>

#### **3. Fees for corrections of any failures or substandard conditions left by Licensee:**

Failure by Licensee to order police detail	<b>For every site of failure:</b> <b>\$500 + police department costs to order detail</b>
Failure by Licensee to implement Temporary Traffic Control Plan (TTCP)	<b>For every site of failure:</b> <b>\$1,200 + Traffic Engineer mobilization, temporary traffic management services and dispatch costs</b>
Correction to any substandard condition left at the Premises by the Licensee	<b>Time and material costs + 10% administrative fee</b>

#### **4. True-up of any unlisted Manhole or Underground Vault Occupancies:**

Excess slack coil or splice enclosure installed by the Licensee, but not listed in advance under <b>Exhibit B. License Fees.</b>	<b>\$500 per year for each enclosure or cable slack in excess of 25’.</b>
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#### **5. Additional Services**

Construction services by the Licensor to accommodate Licensee’s project, including any requested construction of laterals, installation of fiber optic cable, fiber splicing, etc.	<b>Individual Case Basis (ICB)</b> <i>Joint Trench Administrator or the Licensor will issue an estimate or a proposal detailing the cost estimates for each project. A new agreement or a service order may be required.</i>
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**EXHIBIT C**  
**PERFORMANCE BOND**

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS, THAT** [Customer Entity Name] a [Entity Type] located at [Customer Full Address], as the Principal and [Surety Company Name], a corporation organized under the laws of [Surety Company State of Incorporation] and authorized to do business in the Commonwealth of Massachusetts and having its principal office at [Surety Company Full Address] (hereinafter called the "Surety"), as Surety, are held firmly bound unto TOWARDEX Technologies International, Inc., herein referred to as Obligee, in the full and just sum of [Bond Payment Dollar Amount Written Out in Words] (\$[Bond Payment Dollar Amount in Numeric Form]) to the payment of which sum well and truly be made, the Principal and Surety bind themselves, and each of their successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a certain written agreement entitled "Revocable License for Conduit Occupancy", dated [Month & Day], 20[YY], with Obligee (the "Agreement"), wherein the Obligee owns or controls certain underground multi-conduit or multi-cable fiber optic communications system and associated facilities (hereinafter called the "Absolute Property"), and Obligee has granted permission to the Principal to make attachment or use of certain conduit capacity or capacities and appurtenant structures and/or facilities which belong to the Obligee's Absolute Property;

**WHEREAS, THE OBLIGEE** is willing to permit such attachments and uses of the Absolute Property to be made subject to the terms and conditions of the aforesaid Agreement and providing, when requested, demanded or be required to provide in writing by the Obligee as provided in the Agreement, a bond is given by the Principal covering the true and faithful performance of said Agreement, which Agreement is or may be attached hereto for reference;

**NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that if the Principal shall well and truly perform and carry out the covenants, terms and conditions of said Agreement, then this obligation shall be void; otherwise it shall remain in full force and effect.

The Surety may cancel and terminate this bond by giving thirty (30) days written notice thereof by Registered Mail to the Obligee, in which event the cancellation and termination shall be effected thirty (30) days after Obligee received such notice, but notwithstanding said cancellation or said Expiration Date, this bond shall remain in full force and effect as to attachments and uses authorized under said Agreement prior to the effective date of cancellation or Expiration Date until all of said attachments and uses or occupancies of the Obligee's Absolute Property have been terminated and removed, and as to any other obligations or responsibilities accrued prior to said cancellation date or said Expiration Date.

**SIGNED, SEALED AND DELIVERED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PRINCIPAL:**

**SURETY:**

By:

By:

Name

Attorney-in-fact  
(Affix Corporate Seal Here)

**ATTEST:**

CMC CONTROL NUMBER 1188-05187  
FORM N1157 PERFORMANCE BOND