

MASTER LICENSE AGREEMENT

FOR USE OF DISTRICT OF COLUMBIA PUBLIC RIGHT OF WAY

THIS MASTER LICENSE AGREEMENT ("Agreement") entered into on _____, 2018 ("Effective Date"), between the Government of the District of Columbia by and through the District of Columbia Department of Transportation and the District of Columbia Office of the Chief Technology Officer (hereinafter the "District"), and ExteNet Systems, Inc., a corporation organized and existing under the laws of Delaware, having its principal office in 3030 Wampanoag Rd. Ste 340 Lisle, IL 60532 ("Licensee") (collectively, the "Parties").

RECITALS

1. The District possesses the obligation and the right to reasonably manage the Public Right of Way in a manner most beneficial to the residents and businesses of the District.
2. Licensee has requested that the District authorize the placement of Licensee's Wireless Communications Facilities within the Public Right of Way of the District.
3. To ensure that residents, businesses and public safety operations in the District have reliable access to wireless telecommunications network technology and state of the art mobile broadband communication services, the District desires to accommodate the deployment of Wireless Communications Facilities and Services within the Public Right of Way of the District.
4. The District's reasonable long-term management of the Public Right of Way; the public health, safety and welfare; and other public purpose requirements of the District have first priority over any use of the Public Right of Way by Licensee.
5. The District desires to minimize potential negative impacts of Wireless Facility placement within the Public Right of Way.
6. The negative impact of Wireless Communications Facilities can be reduced by maintaining standards and objectives for location, visual impact, structural integrity, situational compatibility and the like, which do not unreasonably discriminate among similar users.
7. The DC Code authorizes the Mayor, or the Mayor's agent, designee, or representative to impose such conditions on the issuance of said Permit as the Mayor may require, D.C. Official Code §§ 10-1141.01 et seq. and D.C. Official Code §§ 50-921.05 and 50-921.06.
8. The District and Licensee desire to establish certain generally applicable terms under which Licensee may obtain and exercise one or more permits for the installation, operation and maintenance of Wireless Communications Facilities in the Public Right of Way, consistent with the reasonable management of the Public Right of Way by the District.

THEREFORE, in consideration of the mutual covenants, terms and conditions set out below, the Parties agree as follows:

1. DEFINITIONS

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific article or paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1. **Affiliate:** when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2. **Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance, and operation of Wireless Communications Facilities and the performance of all work in the Public Right of Way, and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), the regulations of the Federal Communications Commission ("FCC") or the Occupational Safety and Health Administration ("OSHA"), and provisions of the District's building, construction, zoning, and safety codes, including those of the District's Department of Transportation ("DDOT") related to Permits, each of which is incorporated by reference in to this Agreement, and/or other reasonable safety, engineering, architectural or aesthetic requirements of the District or federal authority having jurisdiction over such Wireless Communications Facilities.
- 1.3. **Day:** means a calendar day, unless otherwise specified.
- 1.4. **District Facilities:** means all personal property and real property owned by the District, including, but not limited to, light poles, conduit system, and related facilities.
- 1.5. **Department:** means the District of Columbia Department of Transportation or its designee.
- 1.6. **Emergency:** means a situation exists that, in the reasonable discretion of the Department or Licensee, if not remedied immediately, poses an imminent threat to public health, life, or safety, or damage to property.
- 1.7. **Equipment:** means pole-mounted equipment, including fiber cabinets, electrical boxes, amplifiers, antennas, and other components of a Wireless Communications Facility owned or installed by Licensee.
- 1.8. **Licensee:** means ExteNet and its successors and assigns, as permitted by this Agreement.
- 1.9. **Pedestals / Vaults:** means above- or below-ground housings that are not attached to Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point to the Wireless Communications Facilities.
- 1.10. **Permit:** means, collectively, a Public Space Permit and Public Right of Way Occupancy Permit, issued for the purpose of allowing the installation, operation and maintenance of Wireless Communications Facilities in the Public Right of Way.
- 1.11. **Person:** means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

1.12. Pole: means an above-grade structure located in the Public Right of Way, including a utility pole, streetlight pole, traffic light pole, wireless tower, or street furniture, whether or not owned by the District, upon which Licensee seeks to install or has installed Wireless Communications Facilities.

1.13. Public Right of Way: means the surface, the air space above the surface (including air space immediately adjacent to a private structure located in a public right-of-way), and the area below the surface of any public street, bridge, tunnel, highway, lane, path, alley, sidewalk, or boulevard. Public Right of Way shall not include any District buildings, District streetlight poles, or other structures or improvements, or any privately owned poles or facilities, regardless of whether they are situated in the Public Right of Way.

1.14. Public Right of Way Occupancy Permit: means written or electronic authorization by the Department for Licensee to occupy the Public Right of Way for the purpose of operating and maintaining certain Wireless Communications Facilities at one or more locations.

1.15. Public Space Permit: means written or electronic authorization by the District Department of Transportation for Licensee to install certain Wireless Communications Facilities at one or more locations.

1.16. Street Furniture: means objects placed or fixed in the Public Right of Way for public use.

1.17. TOPS: means the District of Columbia Transportation Online Permitting System.

1.18. Wireless Communications Facility ("Facility" or "Facilities"): means antennas, fiber optic, power, or other cables and connections, remote radioheads, brackets, devices, junction boxes, conduits, meters, ground-mounted equipment, Pedestals, Vaults, and all other related equipment deployed or to be deployed for the primary and ultimate purpose of providing Wireless Communications Service, owned or controlled by Licensee. A Wireless Communications Facility does not include an underlying Pole, or a replacement of such Pole.

1.18.1. Class A Wireless Communications Facility: means a Wireless Communications Facility or Facilities at a single site that cumulatively occupies more than five (5) cubic feet and less than twenty-eight (28) cubic feet of space.

1.18.2. Class B Wireless Communications Facility: means a Wireless Communications Facility that cumulatively occupies five (5) cubic feet of space or less, including any antenna unit and all associated equipment and facilities. Such facilities shall not be subject to annual Attachment Fees to District Poles and to existing cables and strands as set forth in Appendix B, but shall be subject to District permitting requirements and the Non-Recurring Fees specified in Appendix A.

1.19. Wireless Communications Service: means the wireless transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog signals using Wireless Communications Facilities, whether over licensed or unlicensed spectrum.

2. SCOPE OF AGREEMENT

2.1. Grant of General Authority. During the term of this Agreement, Licensee is authorized, on a non-exclusive basis, and subject to the terms of this Agreement and applicable Permitting requirements, to use the Public Right of Way for the installation, operation, and maintenance of Class A and Class B Wireless Communications Facilities for which Permits have been issued, and

for the provision of Wireless Communications Service. The right to install Wireless Communications Facilities shall include the right to reasonably access such Facilities, including but not limited to on foot and by vehicle, to connect such Facilities to electrical power and telecommunications service, to maintain such Facilities, to upgrade and modify such Facilities, in accordance with this Agreement, and to place replacement poles for non-District owned poles by third parties with the approval of such third parties. Licensee's Wireless Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal and District laws and Applicable Standards.

- 2.2. **No Grant of Specific Authority.** Nothing in this Agreement shall be construed as granting to Licensee the authority to install particular Wireless Communications Facilities at a particular location within the Public Right of Way. Specific authority shall be obtained from the Department through the issuance of Permit, as further described in Section 3.
- 2.3. **No Grant of Attachment Rights.** This Agreement does not confer any right to install Wireless Communications Facilities upon privately owned poles or structures. Appendix B describes the Terms and Conditions of attachment to a District owned pole or structure, for which a Permit must be issued before such attachment is allowed.
- 2.4. **No Franchise or Approval to Provide Cable Service, or Other Services.** This Agreement does not constitute a license or franchise to provide cable service as defined in Section 602 of the Communications Act of 1934, as amended, 47 U.S.C. § 522(6), nor any other service for which a franchise or other approval is required.
- 2.5. **Not a License to do Business.** This Agreement is not an authorization or a license agreement to do business in the District. Separate and apart from this Agreement, Licensee must obtain a Business License and/or register, as well as obtain all applicable authorizations from the Department of Consumer and Regulatory Affairs in order to operate a Wireless Communications Facility within the District.
- 2.6. **Clean Hands.** Licensee certifies that it has paid all of its taxes and is in good standing with the Office of Tax and Revenue.
- 2.7. **No Right, Title, or Interest.** Licensee expressly acknowledges that this Agreement does not constitute a conveyance of real property.
- 2.8. **Compliance with Applicable Law.** The Parties shall comply with all applicable laws, regulations, and rules. All Permits issued pursuant to this Agreement are subject to all laws, regulations and rules governing the Parties hereinafter enacted or promulgated. Meeting the terms of individual Permits shall not excuse any failure to comply with all applicable laws, regulations, and rules, whether or not these laws and regulations are specifically listed in such Permits.

3. **PERMIT AND OTHER REQUIRED AUTHORIZATIONS**

- 3.1. **Permit Required.** Licensee shall not install any Wireless Communications Facility in the Public Right of Way without first having obtained a Permit through TOPS from the Department authorizing such installation at a particular site. Licensee shall apply for and obtain a Permit in a manner specified by the Department.

3.2. Pole Attachments.

3.2.1. Pole Owner Assurances for Privately Owned Poles. In the case of a Wireless Communications Facility to be installed on a non-District-owned Pole, the Licensee shall provide, as part of its application, documentation demonstrating to the satisfaction of the Department that Licensee possesses authorization from the Pole owner to attach to such Pole, including provision for make-ready consistent with the District Wireless Access Point ("WAP") initiative described in Appendix C where the District has an existing pole attachment agreement.

3.2.2. District Owned Poles. To the extent Licensee seeks to attach to District owned poles, Licensee shall agree to and comply with the Terms and Conditions listed in Appendix B, and shall obtain all applicable permits and pay any requisite fees associated with such attachment(s).

3.3. Existing Facilities. Licensee's existing Wireless Communications Facilities present in the Public Right of Way as of the date TOPS is available for applications to be filed ("TOPS Opening Date") will be permitted temporarily for a period of one (1) year from the TOPS Opening Date, provided that, within thirty (30) days of that date, Licensee submits an executed Agreement, and Licensee demonstrates that: (1) such Facilities comply with Applicable Standards; (2) the Licensee provides written notice to the Department identifying its existing Facilities; and (3) the Licensee files applications for all required Permits to maintain such Facilities in place within ninety (90) days of the TOPS Opening Date.

3.4. Permit Application Review. The Department shall comply with applicable federal and District law concerning the time period for review following receipt of a completed application to install or modify a Wireless Communications Facility in the Public Right of Way.

3.5. Permit Denials. Any denial of Permit shall be in writing and sent to the applicant by electronic mail on the day the Permit is denied, or through TOPS, and supported by substantial evidence that the proposed installation would be inconsistent with one or more Applicable Standards or Permit conditions, with the reasonable management of the Public Right of Way, or with the health, safety and welfare of the District. The applicant may cure the deficiencies identified and resubmit the application within thirty (30) days after notice of the denial is sent to the applicant. The Department shall comply with applicable federal and District law concerning the time period for review following receipt of a completed application to install or modify a Wireless Communications Facility in the Public Right of Way.

3.6. No Unreasonable Discrimination. The Department shall evaluate and approve or deny Permit applications on a competitively neutral basis, with no unreasonable discrimination among similarly situated applicants and installations.

3.7. Failure to Exercise Access Rights. If Licensee does not diligently exercise any Public Right of Way access right granted pursuant to an applicable Permit(s) within one hundred twenty (120) days of the effective date of such Permit (unless such time period is extended in writing), the District may, but shall have no obligation to, use the Permitted space in the Public Right of Way for its own needs, make the space available to other entities, or for other purposes. If the Wireless Communications Facility is not used for its intended use within twelve (12) months from the date of Permit issuance, the Department may revoke the Permit.

- 3.8. Map and List of Facilities.** Licensee shall maintain, in a form reasonably acceptable to the Department, a current map and list of the location of all Wireless Communications Facilities it installs pursuant to this Agreement, as referenced in this Section and in Section 4.4. This map shall be available to the Department via GIS shape file, PDF or other format reasonably acceptable to both parties. If Licensee does not provide an accurate and complete list of Wireless Communications Facilities, any such Facilities found on District Poles that are not documented will be removed at the sole expense of Licensee.
- 3.9. Radiofrequency and Electromagnetic Frequency Emissions.** Licensee shall at times and in the manner specified by the Department certify that it complies with all FCC rules and requirements relating to radiofrequency propagation and avoidance of interference. The Department will not impose environmental testing, sampling, or monitoring requirements or other compliance measures for RF/EMF emissions on Wireless Communications Facilities that are categorically excluded under the FCC's rules for radiofrequency emissions pursuant to 4 CFR 1.1307(b)(1).
- 3.9.1.** Licensee is solely responsible for the emissions emitted by its Wireless Communications Facilities and associated equipment, and in ensuring that any exposure from its emissions is within the limits permitted under all applicable rules of the FCC. To the extent required by FCC rules, Licensee shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions.
- 3.9.2. Public questions or concerns concerning RF/EMF effects.** Upon request from the District, Licensee shall address public questions and concerns concerning RF/EMF effects of its Facilities by evidencing compliance with FCC standards, , and shall implement a process to address public questions or concerns regarding antennas and potential RF sources near houses and other properties.
- 3.9.3. Mitigation.** To avoid exposure to radio frequency electromagnetic fields by persons working on or in close proximity to the Facilities, and for emergency situations affecting public safety, Licensee shall implement a process, subject to the Department's prior review and approval, through which the Facilities may be turned off manually by the District, its employees, or contractors, through means of a disconnect switch accessible by the District, its employees, or contractors.
- 3.10. Deemed Granted.** In the event that an application for Permit is deemed granted by rule of law, all conditions and design parameters under this Agreement are applicable and required for the installation.
- 3.11. Effect of Consent to Construction.** Consent by the Department to the construction of any Wireless Communications Facility shall not be deemed consent, authorization, or acknowledgment that Licensee has obtained all required Permits and authorizations with respect to occupation of the Public Right of Way by such Facility.
- 3.12. Environmental, Landmarks, and Historic District Approvals:** Licensee is required to obtain all required federal approvals from appropriate federal agencies pertaining to siting of Wireless Communications Facilities in or near designated historic districts or environmentally sensitive areas.

4. CONSTRUCTION AND MAINTENANCE ACTIVITIES.

4.1. Development Plan. Within sixty (60) days of the Effective Date, Licensee shall submit to the Department and to the District of Columbia Office of the Chief Technology Officer a non-binding Initial Development Plan describing the expected use of the Public Right of Way for the installation of Licensee's Wireless Communications Facilities. Such plan shall describe the quantity, type, and general location of such facilities expected to be deployed within six (6) months, one (1) year, and two (2) years from the Effective Date. The Department may require submission of an updated development plan at any time during the Term.

4.1.1. Licensee may submit a Permit application prior to submitting the Initial Development Plan, but no Permit will be issued until an Initial Development Plan is submitted.

4.1.2. If properly identified as such by Licensee, the development plan will be treated as "Level 3 – Confidential" information pursuant to the District of Columbia Data Policy (Mayor's Order 2017-115), and will be exempt from disclosure to the extent permitted under applicable law.

4.2. Deployment Coordination Meeting. If requested by the Department, Licensee shall attend one or more coordination meetings with District personnel, including the District of Columbia Office of the Chief Technology Officer, at which Licensee shall provide relevant information concerning Licensee's anticipated deployment plans and activities within the Public Right of Way. The purpose of this meeting will be to facilitate the efficient deployment of Licensee's Facilities, to identify outstanding issues for resolution, and to otherwise coordinate and reconcile Licensee's efforts with the District's effective management of the Public Right of Way.

4.3. Installation. When a Permit is issued, Licensee's Wireless Communications Facilities shall be installed and maintained in accordance with the requirements and specifications of the Department, the applicable Permit(s), and must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Wireless Communications Facilities.

4.4. As-Built Records. Licensee shall provide the Department with on-demand access to an up-to-date electronic map and as-built records depicting the location of its Wireless Communications Facilities, in a format specified by the Department in accordance with Section 3.8.

4.5. No Interference With Existing Users or Management of Public Right of Way. Licensee shall not allow its Wireless Communications Facilities to impair or interfere with District operations, or the operations of preexisting third-party installations in the Public Right of Way. The Department will reasonably cooperate with the Licensee to permit activities and modifications that may effectively avoid or correct physical interference.

4.6. Maintenance of Facilities. Licensee, as Permit holder, shall make and maintain all Wireless Communications Facilities installed in the Public Right of Way in safe condition and good repair, sufficient to maintain the safety, integrity, and aesthetics of the Public Right of Way. Cabinets, facilities, wires and other equipment shall not appear to be unkempt. Maintenance concerns that are discovered by or made known to the Department will be reported to the Licensee, which shall then have thirty (30) days to correct the identified issue. If the issue is not corrected within such period, the Department reserves the right to take any action it deems necessary, including revocation of the Permit. In the case of an Emergency, the Department may take any corrective action that it deems reasonable, at the Licensee's expense. Maintenance and replacement of Wireless Communications Facilities shall be performed by the Licensee at Licensee's sole cost.

4.7. Emergency Contact Information. Licensee shall provide emergency after hours contact information to the Department to ensure proper notification in case of an Emergency. Information will include 24/7 telephone, cell phone and pager information, a list of duty managers by district, and escalation procedures.

4.8. Modifications to Facilities.

4.8.1. Any modification of a Wireless Communications Facility shall require submission to the Department of a detailed description of the modification, which shall include modified plans, photographs, and other information sufficient to enable the Department to evaluate the modification's impact on the Public Right of Way, and the proposed timeframe for completion of the work.

4.8.2. De minimis modifications to existing Wireless Communications Facility installations will not require a new Right of Way Public Space or Occupancy Permit or other prior approval of the Department. For the purposes of this section, "de minimis modification" means replacement of existing equipment with like kind, number, size, and weight.

4.8.3. All non-de minimis modifications as described in subsection 4.8.2, shall require a new Permit.

4.8.3.1. All Permit applications for proposed modifications that do not constitute a substantial modification shall be completed within sixty (60) days of the District's receipt of a completed Permit application. A modification will be deemed to be a "substantial modification" in accordance with the applicable FCC definition in effect at the time of the modification Permit application.

4.9. Voluntary Removal of Facilities. Licensee may at any time remove one or more of its Wireless Communications Facilities from the Public Right of Way, but shall give the Department prior written notice of such removals, shall coordinate such removal activities with the Department, and shall obtain any required permits and comply with all Department regulations and processes relating to such activity. Licensee shall restore areas affected by its Wireless Communications Facilities to their prior condition as of the commencement of the applicable Permit, reasonable wear and tear excepted. No refund of any license fee will be due on account of such removal. No additional license fee or Public Right of Way Occupancy Permit fee will be charged with respect to removed Facilities, once Licensee provides the Department with notice that such Facilities have been removed.

5. DEPLOYMENT AND DESIGN STANDARDS.

5.1. General Design Standards. In addition to Applicable Standards, Permit conditions, and other terms and conditions of this Agreement, Licensee's Wireless Communications Facilities shall comply with the following general design standards:

1. The installation shall be unobtrusive, harmonious with its surroundings, and streamlined in appearance. The Department may require camouflage or concealment efforts.
2. The height of any Wireless Communications Facility, including an underlying structure or Pole, (1) shall be comparable to nearby structures of similar type, and (2) shall not be more than fifty (50) feet above normal grade, including all antennas or other attachments; unless in the Department's discretion a greater height is accepted, depending on the type and structure of the existing facility and the proposed location.

3. The Wireless Communications Facility shall not block or interfere with light emanating from a streetlight.
4. All riser cabling and wiring must be contained in conduit, affixed directly to the face of the structure, or enclosed within the hollow interior of the Pole. No exposed slack or extra cable will be allowed.
5. No signage or advertising will be permitted on Licensee equipment, except as required by law or as specifically permitted or authorized by the Department.
6. Wireless Communications Facilities within a designated historic district shall comply with any special requirements applicable to such areas, and may be subject to additional agency or departmental review.

5.2 Pole Mounted Equipment. Equipment to be affixed to the surface of a Pole shall be mounted in a manner consistent with Applicable Standards and Pole owner requirements.

5.3 Pedestals and Vaults. A Permit for a Wireless Communications Facility that involves a Pedestal or Vault may be issued if the Department finds the following:

1. The Pedestal or Vault will not disrupt traffic or pedestrian circulation;
2. Space exists in the Public Right of Way to accommodate the Pedestal or Vault;
3. The Pedestal or Vault will not create a safety hazard;
4. The location of the Pedestal or Vault is designed to reasonably minimize impacts on adjacent property;
5. In any historical area, that the Pedestal or Vault does not detrimentally affect the historic nature of the area, to the satisfaction of the Department;
6. That Licensee has taken reasonable steps to identify options that would accommodate concerns of adjacent property owners and effective use and management of the Public Right of Way;
7. The Pedestal or Vault will not adversely impact the health, safety or welfare of the community; and
8. In the case of underground vaults, the Licensee has submitted, to the satisfaction of the Department, proposed construction specifications and plans for the proposed underground vault.

5.3.1 Excavation. Any contemplated surface or sub-surface work shall comply with the requirements of Title 24, Chapter 34 of the D.C. Municipal Regulations and the District Department of Transportation Standard Specifications for Highways and Structures.

5.4. Minimizing Impacts on Adjacent Property Owners.

5.4.1. Licensee shall design and install all Wireless Communications Facilities to minimize any impact on the immediately adjacent property owners (i.e., all properties on both sides of the block), and shall be required to mitigate any unreasonable adverse impacts relating to visibility from the adjacent property; access to and from the adjacent property; intrusion of light, sound, or smell as determined by the District.

5.4.2. No antenna shall be placed within ten (10) feet of the front of any door, balcony, or window, unless otherwise restricted by the Right of Way width.

5.4.3. As part of the Permit application process, the Department may require Licensee to provide prior notice to all immediately adjacent property owners (i.e., all properties on both sides of the block) concerning equipment to be placed in the Public Right of Way, and to provide

proof of notice in a form and manner specified by the Department, and responses to any of the Department questions, in advance of Permit issuance.

5.4.4.ANC and Councilmember Notice. Prior to submitting a Permit application for the location and installation of the first Wireless Communications Facility in any neighborhood of the District, Licensee shall provide notice to the affected Advisory Neighborhood Commission and relevant ward councilmember of its plans to locate and install such Facilities in the neighborhood. As part of any Permit application for the Licensee's first Wireless Communications Facility in a given neighborhood, Licensee shall certify that the above notice was provided. Failure to make such a certification shall cause the application to be deemed incomplete and it will not be reviewed or processed.

5.5. Location. The specific location of any Wireless Communications Facility within the Public Right of Way requires the approval of the Department, which approval may be withheld on a nondiscriminatory, competitive neutral basis for reasons of public health, safety, and welfare or with respect to the reasonable management of the Public Right of Way.

5.5.1. The Department may deny or impose conditions upon a Permit application based upon a determination, supported by substantial evidence, that the proposed installation, or set of installations, within the Public Right of Way will detract from the streetscape, landscape, skyline, beauty, or aesthetic interests of Washington, D.C. and its role as the Nation's Capital. In making such a determination, the District may consider such factors as:

- The character of the surrounding area, including whether it possesses particular historic or scenic interest, or is a residential neighborhood;
- The nature of the proposed installation, including the size and appearance of individual Facilities, the number and density of proposed Facilities, and existing facilities in the area;
- The use of camouflage or stealth methodologies by Licensee;
- Licensee's development plan; and
- Public comments.

5.5.2. One Attachment Per Pole. Absent DDOT's concurrence, due to engineering and loading requirements, only one (1) Class A Wireless Communications Facility will be permitted to be installed per Pole. The above notwithstanding, a single Wireless Communications Facility installation consisting of multiple antennae or nodes on the same Pole may be permissible.

5.5.3. First-in-Time Access. Access to a particular space in the Public Right of Way shall be authorized on a first-come-first-served basis, based upon the date when an application is deemed complete by the District.

5.6. Size. This Agreement shall not apply to, and no Permit will be issued for, a Wireless Communications Facility that cumulatively occupies more than twenty-eight (28) cubic feet at a particular site, including any Antennas, unless an exemption is granted on an individual case basis pursuant to the exemption procedure set forth in Section 7.

5.7. Electrical Power. The acquisition of electrical power shall be the sole responsibility of the Licensee.

6. RESERVATION OF DISTRICT AUTHORITY.

- 6.1.** The District at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve any site within the Public Right of Way where Wireless Communications Facilities are installed, as may be necessary and in keeping with the health, welfare and safety of the public. Such actions may temporarily interfere with the operation of a Wireless Communications Facility. The District will give the Licensee thirty (30) days written notification of such planned, non-Emergency actions that are reasonably likely to interfere with the operation of a Wireless Communications Facility. In the event of an Emergency the District shall give the owner notice within twenty-four (24) hours of such action.
- 6.2.** Nothing in this Agreement affects the District's right to regulate users of the Public Right of Way in a competitively neutral and nondiscriminatory manner. The District intends to exercise its authority with respect to the regulation, placement, construction and modification of Wireless Communications Facilities in the Public Right of Way to the fullest extent permitted by applicable law.

6.3. Corrections.

6.3.1. Emergency Conditions. In the event any of Licensee's Wireless Communications Facilities are found to be in violation of the Applicable Standards and such violation poses an Emergency situation, upon notice from the District, Licensee shall use all reasonable efforts to correct such violation immediately. Should Licensee fail or be unable to correct the conditions resulting in the Emergency situation immediately, the District may make the correction and bill Licensee for the actual and documented costs incurred. In addition, the Department also may proceed with an enforcement action and recover the costs of removal as described in Section 16.5 of this Agreement.

6.3.2. Non-Emergency Conditions. If any of Licensee's facilities are found to be in violation of the Applicable Standards and such violations do not pose potential Emergency conditions, the Department shall give Licensee reasonable notice, whereupon Licensee shall have thirty (30) calendar days from receipt of notice to correct any such violation, or within a longer, mutually agreed-to time frame if correction of the violation is not possible within thirty (30) calendar days, such extended time to be not more than an additional sixty (60) calendar days, after which the Department also may proceed with an enforcement action and recover the costs of removal as described in Section 16.5 of this Agreement.

6.4. Duty to Remove and Relocate Facilities.

- 6.4.1.** The Department may amend the Permit and may order Licensee to remove and relocate its Wireless Communications Facility at Licensee's expense, if the Facility interferes with the use of the Public Right of Way or District Facilities or services.
- 6.4.2.** If the Wireless Communications Facility is not removed voluntarily within fifteen (15) days following notice (unless an actual or potential hazard to the public exists), the Department, taking into account the nature and scope of interference and upon notice to the Licensee, may remove such Facilities at the Licensee's expense. The Department also may proceed with an enforcement action and recover the costs of removal as described in Section 16.5 of this Agreement.

6.4.3. Following revocation of a Permit, a Wireless Communications Facility shall be removed by the Licensee within ninety (90) days of such revocation order. The Licensee must obtain all required permits to effect the removal.

6.4.4. If the Department removes Facilities and the owner does not claim the property within sixty (60) days of its removal, the District may take whatever steps are available under the law to declare the property abandoned or surplus, and may sell it with the proceeds of such sale going to the District as permitted by law.

6.4.5. When Licensee removes its facilities from the Public Right of Way, the Licensee shall at its own expense and in the manner prescribed by Applicable Standards and the Department, replace and restore such Public Right of Way in accordance with repair standards.

7. **EXEMPTION PROCEDURES.**

7.1. Licensee may apply to the Department for an exemption from any of the requirements of this Agreement on the grounds that such requirement (a) is not feasible or (b) constitutes an undue hardship. Such exemption request must be part of the permit application.

7.2. An application for exemption shall include information necessary for the Department to make its decision, including but not limited to reports or studies showing the factual support for the claimed exemption. The Department may require the applicant to provide additional information to permit the Department to determine facts regarding the exemption application.

7.3. Following a review of the application, the Department may approve the exemption, in whole or in part, with or without conditions, provided all of the following findings of fact are made:

- (a) The subject requirement is not feasible or constitutes an undue hardship;
- (b) The Facility will serve a community benefit;
- (c) The requirements of this article are met, except for the requirement sought to be waived; and
- (d) The non-conforming aspects of the proposed facility can be mitigated so that its impacts do not result in a material change to the character or the location and relate harmoniously with the surrounding neighborhood.

7.4. Licensee may appeal an adverse decision of the Department under this Section by submitting a written request for a reconsideration before the Public Space Committee.

8. **TERM.**

8.1. This Agreement shall become effective as of its execution by both Parties (the Effective Date), and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of ten (10) years and, unless terminated by either party, shall automatically be renewed for two (2) additional five (5) year terms. Either party may terminate this Agreement at the end of the initial term or a successor term by giving written notice of intent to terminate the Agreement at the end of the then-current term. Such a notice must be given least ninety (90) calendar days prior to the end of the then-current term.

- 8.2. The term of any Permit shall be as specified on the Permit.
- 8.3. In the event of termination of this Agreement, all existing Permits shall terminate.
- 8.4. While Licensee's Wireless Communications Facilities remain in the Public Right of Way, even after the termination of this Agreement, Licensee's indemnity obligations shall continue with respect to any claims or demands related to Licensee's Wireless Communications Facilities, as provided for in Section 10.
- 8.5. Licensee shall continue to pay all fees and charges (as specified in Appendix A) and continue to comply with all obligations and Applicable Standards hereunder pending the actual removal of all Wireless Communications Facilities. Upon termination of this Agreement in accordance with the provisions here or in Section 16, Licensee shall remove its Attachments from the Public Right of Way within six (6) months of receiving notice. Licensee shall restore the Public Right of Way affected by its Wireless Communications Facilities to its prior condition at the commencement of this Agreement, reasonable wear and tear excepted.
- 8.6. If not so removed within the time period specified in the preceding section, the District shall have the right to remove Licensee's Facilities. The Department also may proceed with an enforcement action and recover cost of removal as described in Section 16.5 of this Agreement.

9. **FEES AND CHARGES.**

- 9.1. **Payment of Fees and Charges.** In exchange for the right of use granted under this Agreement and applicable Permit(s) for the installation and operation of Wireless Communications Facilities in the Public Right of Way, Licensee agrees to pay the fees and charges, and any other agreed-upon compensation described in this Section 9, described more particularly in Appendix A.
- 9.2. **Right of Way Fee.** Licensee shall be charged a one time District Right of Way fee, as set out in Appendix A.
- 9.3. **Payment Period.** The Right of Way Fee shall be payable upon execution of this Agreement.
- 9.4. **Monitoring and Records.** Licensee shall be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements. The Department shall maintain records of all actions taken pursuant to this Agreement, and shall make records available to Licensee for inspection, if requested.
- 9.5. **Application Fee.** To recoup some or all of the costs to the Department for review a Permit application, Licensee shall pay to the Department an application fee, as described in Appendix A.
- 9.6. **Permit Fees.** Licensee shall also pay to the Department permit fees to install equipment in the public space, as described in Appendix A.
- 9.7. **Other Services.** Subject to the availability of appropriated funds to compensate Licensee, the District may require Licensee to provision equipment and perform installation/construction activities for District Wireless Access Points and associated fiber optic strands related to the District's "Smart City" program or other District initiatives as set forth in Appendix C. Any such arrangements shall be made public, and shall be adopted on a nondiscriminatory basis.

- 9.8. **Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by the District, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. The District shall bill its services based upon actual costs, and such costs will be determined in accordance with the District's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used.

10. **LIABILITY AND INDEMNIFICATION.**

- 10.1. **Indemnification.** Licensee shall defend, indemnify, and hold harmless the District, its elected/appointed officials, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively "the Indemnified Parties"), from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorney's fees), which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of any and all legal liabilities associated with the use of the Public Right of Way by Licensee, provided that Licensee shall not be so obligated to the extent that the claim or occurrence at issue arose out of the gross negligence or willful misconduct of the Indemnified Parties or any one of them.

10.2. **Procedure for Indemnification.**

- 10.2.1. The District shall give prompt written notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against the District, the District shall give reasonable notice after the District receives written notice of the action, suit, or proceeding.
- 10.2.2. The District's failure to give the required notice will not relieve Licensee from obligation to indemnify the District unless, and only to the extent, that Licensee is materially prejudiced by such failure.
- 10.2.3. If Licensee assumes the defense of a third-party claim as described above, then in no event will the District admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Licensee's prior written consent.

- 10.3. **Environmental Hazards.** Licensee represents and warrants that its use of the Public Right of Way for the installation and use of Wireless Communications Facilities will not generate any Hazardous Substances, that it will not store or dispose on or about the Public Right of Way any hazardous substances and that Licensee's Wireless Communications Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal or District law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, unsafe levels of radio frequency radiation as established by FCC standards, or other similar terms by any federal or District laws, regulations or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, its Wireless Communications Facilities would not release any Hazardous Substances.

10.4. **No Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS TO ANY PERSON ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

10.5. **Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the District of any applicable limits on municipal liability or governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies the District shall be construed in any way to limit any other indemnification provision contained in this Agreement.

10.6. The duties described in this Section 10 shall survive termination of this Agreement.

11. **DUTIES, RESPONSIBILITIES, AND EXCULPATION.**

11.1. **Duty to Inspect.** Licensee acknowledges and agrees that the District does not warrant the condition or safety of the Public Right of Way surrounding the location of proposed or existing Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect the site surrounding the Poles, prior to commencing any work upon or entering the premises surrounding such Poles.

11.2. **Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

11.3. **DISCLAIMER.** DISTRICT MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE PUBLIC RIGHT OF WAY, ALL OF WHICH ARE HEREBY DISCLAIMED, AND DISTRICT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. DISTRICT EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11.4. **Damage to Public Right of Way or District Facilities.** If Licensee damages the Public Right of Way, or damages or interferes with the operation of any District Facilities or equipment, Licensee shall, at its own expense, immediately do all things reasonable to avoid further injury or damages, direct and incidental, resulting therefrom and shall notify the District immediately.

11.5. **Risk of Loss or Damage.** Licensee acknowledges and agrees that the District shall not be liable for any cost of repair to Licensee's Facilities, equipment or materials installed in the Public Right of Way pursuant to this Agreement, including, without limitation, damage caused by the District's removal of Facilities pursuant to Section 6.7, except to the extent that such loss or damage was caused by the gross negligence, or willful misconduct of the District, including without limitation, each of its commissions, departments, officers, agents, employees and contractors.

12. INSURANCE.

- 12.1. General Requirements.** The Licensee at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Licensee shall have its insurance broker or insurance company submit a Certificate of Insurance in the Transportation Online Permitting System (TOPS) giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the Office of Risk Management (ORM). All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Licensee shall require all of its contractor to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Licensee and its contractor (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Licensee or its contractor (including without limitation the liability to pay premiums) shall be the sole obligation of the Licensee or its contractor, and not the additional insured. The additional insured status under the Licensee's and its contractor's Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by ORM in writing. All of the Licensee's and its contractor's liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Licensee or its contractor, or anyone for whom the Licensee or its contractor may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Licensee and/or its contractor maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and contractor.

- 12.1.1. Commercial General Liability Insurance ("CGL")** - The Licensee shall provide evidence satisfactory to ORM with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by ORM in writing), covering liability for all ongoing and completed operations of the Licensee, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract), liability arising out of cyber incidents as evidenced by an affirmative cyber endorsement, and acts of terrorism (whether

caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$3,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$3,000,000 products-completed operations aggregate limit.

12.1.2. Automobile Liability Insurance - The Licensee shall provide evidence satisfactory to ORM of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by ORM in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Licensee, with minimum per accident limits equal to the greater of (i) the limits set forth in the Licensee's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

12.1.3. Workers' Compensation Insurance - The Licensee shall provide evidence satisfactory to ORM of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Employer's Liability Insurance - The Licensee shall provide evidence satisfactory to ORM of employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph 12.1.3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

12.1.4. Environmental Liability Insurance - The Licensee shall provide evidence satisfactory to ORM of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the Licensee. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Licensee's pollution legal liability policy or (ii) \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Licensee warrants that any retroactive date applicable to coverages under the policy precedes the Licensee's performance of any work under the Contract and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Licensee also must furnish to the Owner certificates of insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Licensee for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Licensee's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

12.1.5. Installation-Floater Insurance - For projects not involving structures, the Licensee shall provide an installation floater policy with a limit equal to the full contract value. The policy shall cover property while located at the project site, at temporary locations, or in transit; deductibles will be the sole responsibility of the Licensee.

- 12.1.6. Railroad Protective Liability Insurance (RPL)** – If applicable, the Licensee shall provide evidence satisfactory to ORM of a RPL policy with respect to activities Licensee, or any of its officers, agents, employees, members, successors and assigns, or contractors, perform within fifty (50) feet vertically or horizontally of railroad tracks, but only prior to the initiation of any such activity, Licensee shall provide Railroad Protective Liability Insurance (ISO CG 00 35 or equivalent), in the name of The Government of the District of Columbia. The policy shall have limits of liability of not less than Ten Million Dollars (\$10,000,000.00) per occurrence, combined single limits, for coverage A & B, for losses arising out of injury to or death of any person, and for physical loss or damage to or destruction of property, including the loss of use thereof. A Ten Million Dollar (\$10,000,000.00) annual aggregate may apply.
- 12.1.7. Commercial Umbrella or Excess Liability** - The Licensee shall provide evidence satisfactory to ORM of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Licensee's umbrella or excess liability policy or (ii) \$25,000,000 per occurrence and \$25,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.
- 12.1.8. United States Longshore & Harbor Workers' Act** – If applicable, licensee shall provide evidence satisfactory to ORM of United States Longshore & Harbor Workers insurance for maritime employees who work on or near navigable waters, excluded under the standard workers compensation coverage. Coverage should be on an "if any" basis.
- 12.2. Primary And Noncontributory Insurance.** The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.
- 12.3. Duration.** The Licensee shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this Agreement and two years for non-construction related contracts.
- 12.4. Liability.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE LICENSEE'S LIABILITY UNDER THIS AGREEMENT.**
- 12.5. Licensee's Property.** Licensee and contractor are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- 12.6. Measure Of Payment.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Licensee shall verify all of the required insurance and bonds have been secured in the permitting process.

- 12.7. **Notification.** The Licensee shall ensure that all policies provide that the ORM shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Licensee shall provide the ORM with ten (10) days prior written notice in the event of non-payment of premium. The Licensee will also provide the ORM with an updated Certificate of Insurance should its insurance coverages renew during the Agreement.
- 12.8. **Certificates of Insurance.** The Licensee shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

And mailed to the attention of:

**District of Columbia Office of Risk Management
Insurance Program Officer
441 4th Street, NW, 800 South
Washington, D.C. 20001
(202) 727-8600
orm@dc.gov**

The ORM may request and the Licensee shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Licensee expires prior to expiration of the Agreement, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the ORM prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the ORM on an annual basis as the coverage is renewed (or replaced).

- 12.9. **Disclosure of Information.** The Licensee agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Licensee, its agents, employees, servants or contractor in the performance of this Agreement.
- 12.10. **Carrier Ratings.** All Licensee's and its contractor's insurance required in connection with this Agreement shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.
13. **ASSIGNMENT.**
- 13.1. **Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement or any Permit, nor any part of such rights or obligations, without the prior written consent of the District, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 13.2. Notwithstanding Section 13.1 above, Licensee may, during the term of this Agreement, assign or transfer this Agreement to (i) any Affiliate of Licensee or to a partnership of which at least fifty percent (50%) of the units are owned directly or indirectly by Licensee or its parent company; or (ii) to any successor to Licensee's business, or a substantial part thereof, whether

through merger, amalgamation, consolidation or sale of assets (each, an "Assignee"), without the prior consent of the District; provided, however, such assignment or transfer shall be subject to the following conditions:

13.2.1. In the case of a sale of assets, (i) the Licensee has assigned its Public Service Commission issued certificate of authority and/or other authorization issued by the District to such Assignee, and such assignment has been approved (if applicable law requires approval), or the Assignee otherwise holds an applicable and effective public right of way occupancy authorization; and (ii) the Assignee has received and accepted an assignment or transfer of the assets comprising the Licensee's business, or a substantial part thereof.

13.2.2. Notice of the assignment or transfer has been provided to the District, in writing, within sixty (60) days of the date an application for transfer or assignment of the certificate of authority and any applicable franchise, if such application for transfer or assignment is required by applicable law under the circumstances, or in the case of a sale of assets, within seven (7) business days after the assignment or transfer.

13.3. Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this Section shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish the District at least one hundred twenty (120) days prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, or conditions of this Agreement without the express written consent to the release of Licensee by the District, which shall be provided at the sole discretion of the District, and which shall not be unreasonably withheld, conditioned, or delayed.

13.4. Sub-licensing. Absent the District's prior written consent, Licensee shall not sub-license, lease, or otherwise allow to any third party to place Wireless Communications Facilities in the Public Right of Way pursuant to the authority granted under this Agreement. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Wireless Communications Facilities by third parties that involves no additional facility or which is otherwise functionally integrated with Licensee's Wireless Communications Facilities is not subject to this Article. A Sublicensee shall be required to execute a Master License Agreement and shall assume all associated costs for access to the Right of Way and attachment to District Poles, as applicable.

14. FAILURE TO ENFORCE.

Failure of the District or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

15. ISSUE RESOLUTION PROCESS.

- 15.1. Dispute Resolution.** Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, either party may invoke the dispute resolution procedures in this section at any time to resolve a controversy, claim, or breach arising under this Agreement, in which case the other party shall in good faith cooperate to effect the requirements of this section. Each party will bear its own costs for dispute resolution activity.
- 15.2. Initial Meeting.** At either party's written request, each party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The parties will conduct any meeting in-person or via conference call, as reasonably appropriate.
- 15.3. Executive Meeting.** If ninety (90) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the parties may agree in writing to use mediation or another alternative dispute resolution procedure.
- 15.4. Unresolved Dispute.** If after sixty (60) days from the first in-person Executive Meeting, the parties have not resolved the dispute to their mutual satisfaction, either party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Section 16.
- 15.5. Confidential Settlement.** Unless the parties otherwise agree in writing, communication between the parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 15.6. Business as Usual.** During any dispute resolution procedure or lawsuit, the parties will continue performing their obligations under this Agreement.
- 15.7. Penalties.** Penalties will continue to accrue pending the Issue Resolution Process unless the dispute specifically involves a dispute over the application of the fee or penalty.

16. DEFAULT.

- 16.1.** An Event of Default (each of the following being an "Event of Default") shall be deemed to have occurred hereunder by Licensee if:
- 16.1.1.** Licensee shall breach any material term or condition of this Agreement or any permit condition; or
- 16.1.2.** Licensee shall fail to perform, observe or meet any material covenant or condition made in this Agreement; or
- 16.1.3.** At any time, any representation, warranty or statement made by Licensee herein shall be incorrect or misleading in any material respect.

16.2. Either Party may terminate this Agreement upon forty-five (45) days prior written notice to the other Party upon a material default by the other Party that is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting Party fails to commence such cure within forty-five (45) days thereafter diligently to prosecute such cure to completion). The cure period for any monetary default shall be twenty (20) days from receipt of notice. In the event of an uncured material default, the District, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon the performance bond for any fees, costs, expenses or penalties that Licensee has not paid.

16.3. Without limiting the rights granted to the District pursuant to the foregoing Section 16.2, the Parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort to meet and to resolve outstanding issues, including but not limited to the Issue Resolution Process of Section 15.

16.4. Upon Termination for Default Licensee shall remove its Wireless Communications Facilities from the Public Right of Way within six (6) months of receiving notice, or at a rate of twenty-five (25) of its Attachments per month, whichever period results in the greatest length of time for completing removal. Licensee shall restore the Public Right of Way to its prior condition at the commencement of this Agreement, reasonable wear and tear excepted. If not so removed within that time period, the District shall have the right to remove Licensee's Wireless Communications Facilities. The Department also may proceed with an enforcement action and recover the costs of removal as described in Section 16.5 of this Agreement.

16.5. **Enforcement by Department.** For a violation of Department rules or any material term of this Agreement or a Permit, the Department may issue a notice of infraction pursuant to D.C. Code §50-921.19 and take other enforcement action as specified therein, including but not limited to recovery by the Department of three hundred percent (300%) the cost and expense of removing and disposing of property unlawfully occupying public space, repairing any damage to the public space caused by the violation, and taking action to protect the public from the effects and potential effects of the violation.

17. **RECEIVERSHIP, FORECLOSURE OR ACT OF BANKRUPTCY.**

17.1. The right to the use the Public Right of Way granted hereunder to Licensee shall, at the option of the District, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all Defaults under this Agreement.

17.2. In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, the District may serve notice of termination upon Licensee and the successful bidder at such sale, in which event this Agreement herein granted and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless: a) the District shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and

b) such successful bidder shall have covenanted and agreed with the District to assume and be bound by all the terms and conditions to this Agreement.

18. PERFORMANCE BOND.

Licensee shall furnish a performance bond executed by a surety company reasonably acceptable to the District which is duly authorized to do business in the District of Columbia in the amount of either fifty thousand dollars (\$50,000) or thirty-five percent (35%) of the total cost of Pole Attachment Fees, whichever is higher, for the duration of this Agreement as security for the faithful performance of this Agreement and for the payment of all persons performing labor and furnishing materials in connection with this Agreement. 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 District to remove Wireless Communications Facilities from the Public Right of Way and other District-owned infrastructure, and to the extent practical, restore such sites to their prior condition, reasonable wear and tear excepted, pursuant to this Agreement, and any unpaid permit and administrative fees. Licensee shall keep such performance bond, at its expense, in full force for at least one (1) year from the termination of this Agreement, to insure the faithful performance by Licensee of all of the covenants, terms and conditions of this Agreement. Such bond shall provide for thirty (30) Days prior written notice to the District of cancellation or material change thereof. If the bond is cancelled or not extended, Licensee shall replace it with another at least ten (10) calendar days prior to expiration and if Licensee fails to do so the District shall be entitled to present its written demand for payment of the entire face amount of such bond and to hold the funds so obtained as a security deposit. Cancellation shall not affect any liability incurred under the bond prior to the effective date of the cancellation. Any unused portion of any such security deposit shall be returned to Licensee upon replacement of the bond or deposit of cash security in the full amount required.

19. AMENDING AGREEMENT.

No amendment, alteration or modification to this Agreement or any Permit shall be effective unless agreed to in writing by both Parties.

20. KEY OFFICIALS AND CONTACT PERSONS.

All notices, requests, modifications, and other communications that are required to be in writing regarding permits granted hereunder shall be personally delivered or mailed via first class mail or emailed to the addresses below:

A. For District of Columbia

KEY OFFICIAL

Jeffrey M. Marootian
Director
District Department of Transportation
55 M St., SE
Washington DC 20003
(202) 761-4097 (office)
(202) 671-0650 (fax)
jeff.marootian@dc.gov

B. For Licensee

KEY OFFICIAL

ExteNet Systems, Inc.
ATTN: CFO
3030 Warrenville Rd.
Suite 340
Lisle, IL 60532
(630)-505-3800

CONTACT PERSON

Matthew Marcou
Associate Director
Public Space Regulation Division
District Department of Transportation
55 M St., SE
Washington DC 20003
(202) 359-6497 (office)
matthew.marcou@dc.gov

CONTACT PERSON

ExteNet Systems, Inc.
Network Operations Center
3030 Warrenville Rd.
Suite 340
Lisle IL 60532
(866) 892-5327
noc@extenetsystems.com

KEY OFFICIAL

Barney Krucoff
Interim Chief Technology Officer
Office of the Chief Technology Officer
200 I Street, SE
Washington DC 20003
(202) 478-5835 (office)
barney.krucoff@dc.gov

CONTACT PERSON

David Clow
Program Manager
Office of the Chief Technology Officer
655 15th Street, NW
Washington DC 20005
(202) 715-3823 (office)
David.clow@dc.gov

The Parties may change the persons, addresses, and numbers for receipt of notices, requests, modifications and other communications by written notice to the other Party at the last noticed address.

The above notwithstanding the Parties may agree to utilize electronic communications such as email for notifications related to the Permit application and approval and construction processes.

Notices and/or communications sent via first-class mail shall be deemed received three (3) days from the date of the document. Notices sent via electronic communication shall be deemed received one (1) day from the date the communication was sent. This does not apply to the submission of any applications in the TOPS system.

Licensee shall maintain a staffed 24-hour emergency telephone number where the District can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the Parties. Such contact person shall be qualified and able to respond to the District's concerns and requests. Failure to maintain a qualified and responsive emergency contact shall subject Licensee to a penalty of one thousand dollars (\$1,000) per incident, and shall eliminate the District's liability to Licensee for any actions that the District deems reasonably necessary given the specific circumstances.

21. ENTIRE AGREEMENT.

This Agreement and its appendices, together with any associated Permit documents, constitute the entire agreement between the parties concerning Licensee's use of the Public Right of Way for the installation and operation of Wireless Communications Facilities. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between the District and Licensee with respect to Licensee's installation and use of Wireless Communications Facilities within the public Rights-of-Way are superseded and of no further effect.

22. SEVERABILITY.

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either Party, such provision shall not render unenforceable this entire Agreement. Rather, the Parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

23. NO PARTNERSHIP.

This Agreement does not create or constitute a partnership or joint venture between the Parties.

24. APPLICABLE ONLY TO PARTIES.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns. Except as otherwise expressly provided in this Agreement, this Agreement shall not inure to the benefit of, or be enforceable by, or create any right or cause of action to, any person or entity other than the Parties hereto.

25. CONFIDENTIAL INFORMATION.

The District and Licensee will use, restrict, safeguard and dispose of all information related to this Agreement and associated permits, in accordance with all relevant federal and local statutes, regulations, and policies.

26. GOVERNING LAW.

All matters relating to this Agreement shall be governed by the laws (without reference to choice of law) of the District of Columbia.

27. INCORPORATION OF RECITALS AND APPENDICES.

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

28. AUTHORITY TO EXECUTE.

The District and Licensee represent that all Parties and named individuals that sign this Agreement, respectively, have the full right, power, and authority to execute this Agreement and to bind the District and Licensee, respectively.

29. FORCE MAJEURE.

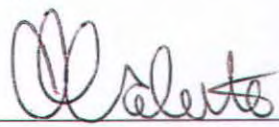
If either the District or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the Party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected Party shall endeavor to remove or overcome such inability as soon as reasonably possible.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate on the day and year first written above.


DISTRICT OF COLUMBIA

LICENSEE

BY: Bry LM 8/30/18
Title: Interim Chief Technology Officer
Office of the Chief Technology Officer

BY: 
Title: Oliver Valente
EVP-COO

Date: 5/21/18

BY:  7/31/18
Title: Director
Department of Transportation

APPENDIX A

FEES and CHARGES

A. Non-Recurring Fees:

Application Fee. The Licensee shall pay the application fee set forth in DC Municipal Regulations (DCMR) Title 24, Section 225, as that fee may be amended from time to time. The Department will not process an application until the application fees are paid.

Permit Fees. If the application is approved, the Licensee shall pay a Permit fee equal to the fee paid for Overhead/Telecommunication equipment installed in public space set in DCMR Title 24, Section 225, as that fee may be amended from time to time. The Department will not issue a Permit until the Permit fees are paid.

Right of Way Fee. The Licensee shall pay a one-time District Right of Way fee of one thousand dollars (\$1,000).

Additional Fees. Licensee may be subject to additional nonrecurring fees based upon Licensee's particular activity in the Public Right of Way, as set forth in the DCMR, which may include, for example, permits and fees relating to traffic management, removal of facilities, and other use-specific permits and fees.

B. Applications:

A single Public Space Permit Application for Wireless Communications Facilities may be submitted for the installation of Wireless Communications Facilities on up to the lesser of fifteen (15) Streetlight Poles or three (3) contiguous City blocks. Licensee shall only include proposed Facilities of the same type and design, for the same type of Poles owned by the same entity on a single Public Space Permit Application. A Permit Fee shall be assessed for each Wireless Communications Facility referenced in the Public Space Permit Application.

C. Penalties:

Licensee shall be financially responsible for any/all penalties and fines, as a result of permit violations or other enforcement actions.

APPENDIX B

ATTACHMENT TO DISTRICT OWNED POLES

RECITALS

WHEREAS, the District owns and controls Streetlight Poles throughout the District for the purpose of providing public illumination; and

WHEREAS, Licensee proposes to furnish Wireless Communications Services in various areas within which the District maintains Streetlight Poles, and desires to place and maintain Wireless Communications Facilities and equipment on or in the District's Streetlight Poles in such areas; and

WHEREAS, the District's Streetlight Poles have limited capacity for access and use by others for attachments to provide Wireless Communications Services; and

WHEREAS, the District's lighting, public safety, and other governmental public purpose requirements, including on-going Smart City initiatives, have priority over all other competing uses of the District's Streetlight Poles; and

WHEREAS, the District is willing to authorize the placement of Licensee's Wireless Communications Facilities and equipment on or in District Streetlight Poles on a non-exclusive basis, where such use will not interfere with the District's service requirements, or the lawful use of the District's facilities by others, and only under the terms and restrictions imposed in the Master License Agreement and the individual Public Space Permits (issued by the District's Department of Transportation ("DDOT") in accordance with the provisions of 24 DCMR Chapters 1, 2 and 13 as amended), as well as the payment by Licensee of the consideration required by this Appendix; and

WHEREAS, the Parties intend that the terms and conditions in this Appendix shall govern and supersede all previous arrangements and agreements between the Parties concerning the use of District-owned Streetlight Poles as of the Effective Date of the Master License Agreement;

NOW, THEREFORE, in consideration of the foregoing, Licensee hereby agrees to the terms and conditions in this Appendix as follows:

ARTICLE I. DEFINITIONS

For the purposes of this Appendix, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific article or paragraph of this Appendix. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be attributed the definition as described in Article 1 of the Master License Agreement. If there is no such definition, terms shall be given their common and ordinary meaning.

- A. Applicable Streetlight Installation Standards**: means all applicable safety, engineering and operational safety standards governing the installation, maintenance, and operation of Wireless Communications Facilities and the performance of all work on or around District Streetlight Poles or other District Facilities, and includes District's Department of Transportation ("DDOT") codes, policies and standards related to installations in and around District Streetlight Poles, including the Standard Specifications for Highway Structures, "DDOT Design and

Engineering Manual,” and “Streetlight Policy and Design Manual,” and DDOT requirements for obtaining Public Space Permits and Public Occupancy Permits, as well as applicable requirements related to maximum Radio Frequency (“RF”) exposures to District employees working on and around District Facilities, each of which is incorporated by reference herein, and/or other reasonable safety, engineering, architectural or aesthetic requirements of the District or federal authority having jurisdiction over such District Streetlight Poles or Wireless Communications Facilities, including but not limited to the National Capital Planning Commission, the Commission of Fine Arts, and the Historic Preservation Review Board.

- B. **Attaching Entity:** means any public or private non-District entity, including Licensee, that places an authorized Attachment on District Streetlight Pole(s).
- C. **Attachment(s):** means Wireless Communications Facilities that are placed directly on or within District Streetlight Poles, including but not limited to radios, antennae, and associated cables and hardware.
- D. **DDOT or Department:** means the District Department of Transportation.
- E. **Master License Agreement:** means the license agreement entered into by the District and Licensee authorizing and governing the installation, use and maintenance of Licensee’s Wireless Communications Facilities within the Public Right of Way of the District.
- F. **Streetlight Pole:** means a streetlight pole owned by the District that is used for lighting or other District purposes and is capable of supporting Attachments for Wireless Communications Facilities. This term shall not include District streetlight facilities attached to non-District owned poles, where the District does not have the authority to authorize third-party use of the pole.
- G. **Tag:** means distinct markers placed on Wireless Communications Facilities, coded by color or other means specified by the District that will readily identify the owner of the Attachment.

ARTICLE II **SCOPE**

- A. **Grant of License.** Subject to the provisions of the Master License Agreement, the terms and conditions of which are incorporated by reference herein as if set out in full, and issuance of individual Permits, the District grants Licensee a revocable, nonexclusive license to install and maintain Attachments to Streetlight Poles.
- B. **No Right, Title, or Interest.** Licensee expressly acknowledges that associated Permits do not constitute a conveyance of real property. All Streetlight Poles, whether modified or replaced at the expense of Licensee, shall continue to be the property of the District.
- C. **Not a License Agreement to do Business.** A Permit is not an authorization or a license agreement to do business in the District. Separate and apart from a Permit, Licensee must obtain a Business License and/or register, as well as all applicable authorizations from the Department of Consumer and Regulatory Affairs in order to operate as a Wireless Communications Facility within the District.
- D. **Certain Streetlight Poles Excluded.** The District reserves the right to exclude certain categories of or specific individual Streetlight Poles from consideration for Attachments under this Permit, including but not limited to decorative Streetlight Poles (e.g., Washington Globes) or Streetlight

Poles located within historic districts requiring compliance with specific historic architectural preservation guidelines. The District shall make available information on the categories of District Streetlights that are subject to this exclusion, as well as copies of the applicable historic architectural preservation guidelines.

- E. **Reserved Capacity.** DDOT reserves the right to identify and reserve capacity or space on specific Streetlight Poles, at the time of the Permit Issuance, for future District requirements. DDOT may reclaim such reserved capacity at any time following the installation of Licensee's Attachment if required for the District's future public service and public safety requirements or other District uses.
- F. **District Retained Rights.** The Parties agree that individual Permits issued pursuant to an application to attach to Streetlight Poles do not in any way limit the District's right to locate, operate, maintain, or remove its Streetlight Poles in the manner that will, at the District's sole discretion, best enable it to fulfill its public service responsibilities or to comply with any federal or District legal requirement.
- G. **Other Agreements.** Except as expressly provided in a Permit, nothing shall limit, restrict, or prohibit the District from fulfilling any agreement or arrangement regarding its Streetlight Poles into which the District has previously entered with others not party to this Permit, nor shall this Permit limit, restrict, or prohibit the District from granting rights to other parties in the future, provided that such rights do not adversely affect Licensee's rights under this Permit
- H. **Electric Power.** Unless otherwise agreed in writing, to the extent Licensee requires electric service for its Wireless Communications Facilities, it shall obtain such power pursuant to standard application to the electric utility company. Licensee shall not tap into or otherwise utilize the District's electric service at a Streetlight Pole. The District agrees to operate in good faith as the Licensee seeks to obtain utilities service from a location provided by the District or the servicing utilities.
- I. **Removal of Attachments.** Licensee may at any time remove its Attachments from any District Facility with prior written notice of such removals, and coordinate such removal activities with the DDOT to prevent an interruption of lighting service. No refund of any rental fee will be due on account of such removal. No additional Attachment Fees will accrue once Attachments have been removed and District has been notified of such removal. Licensee shall restore Streetlight Poles, Streetlights, and surrounding areas affected by its Wireless Communications Facilities to their prior condition at the commencement of applicable Permits for the particular Streetlight Poles, absent reasonable wear and tear and agreed upon modifications to Streetlight Poles, pursuant to D.C. Code § 10-1141.03(e). If DDOT determines that the structure is not structurally stable once the Attachment is removed, Licensee is responsible for replacing the Streetlight Pole to DDOT standards at time of removal.

ARTICLE III **FEES AND CHARGES**

- A. **Payment of Fees and Charges.** Licensee shall pay to the District the following fees and charges specified herein:
 - 1. **Annual Pole Attachment Fees.** Licensee shall pay to the District an annual Attachment Fee per Class A Wireless Communications Facility Streetlight Attachment in advance, per calendar year, prorated for partial years, as follows:

▪	1 – 25 poles:	\$1,500 per pole
▪	26 – 100 poles:	\$1,300 per pole
▪	101 – 200 poles:	\$1,100 per pole
▪	201 – 300 poles:	\$900 per pole
▪	301 – 400 poles:	\$700 per pole
▪	401 – 500 poles:	\$500 per pole
▪	501+ poles:	\$300 per pole

The Attachment Fees will increase by one and one-half percent (1.5%) on the anniversary of the Effective Date, and each year during the term or renewal term thereafter.

- 2 Non-Recurring Fees – Application and Permit Fee.** The Licensee shall pay all applicable application and permit fees required under the Master License Agreement, and set out in DC Municipal Regulations (DCMR) Title 24, Section 225.

- B. Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the District pursuant to this Appendix within thirty (30) calendar days of receipt of invoice.
- C. Attachment Fees.** Licensee shall pay District an annual Attachment Fee per Streetlight Pole on which Licensee has an Attachment Occupancy Permit, based on the amount specified in Section A of this Article.
- 1. Billing of Attachment Fee.** The Attachment Fee shall be payable in advance, invoiced on a calendar year basis, and prorated. The Attachment Fee for existing Attachments for the forthcoming year shall be payable by the Licensee within thirty (30) days of Licensee's receipt of an annual invoice by the District, which shall set forth the total number of Streetlight Poles for which Licensee possessed an Attachment Occupancy Permit during such annual rental period, including any previously authorized and valid Permits.
- 2. Authority.** The DC Code authorizes the Mayor, or his agent, designee, or representative to impose such conditions on the issuance of said Permit as the Mayor may require, pursuant to section 603 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code §§ 10-1141.03) and 18 DCMR § 2406.18. That authority has been delegated to the District Department of Transportation ("DDOT"), pursuant to sections 6 and 7 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.05 and 50-921.06)
- D. Refunds.** No fees and charges specified in Section A of this Article for a particular year shall be refunded, unless such surrender is the result of a District revocation.
- E. Charges and Expenses.** Licensee shall reimburse the District for those actual, and documented costs incurred by the District for make-ready work or other expenses that the District incurs in order to accommodate Licensee's Attachments for which Licensee is otherwise responsible in accordance with Permits issued hereunder.

- F. **Determination of Charges.** The charge for any work performed by the District on behalf of Licensee under this Appendix shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. The District shall bill its services based upon actual costs, and such costs will be determined in accordance with the District's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used.
- G. **Interest.** All payments shall be subject to audit by the District and assessment or refund if the payment is found to be in error. In the event that such audit results in the assessment of an additional payment to the District, such additional payment may be subject to interest at the rate of one percent (1%) per month retroactive to the date such payment originally should have been paid, which shall be due and payable immediately, in addition to the cost of the audit. Any overpayment to the District shall be credited against Licensee's next rental payment.

ARTICLE IV. **INDEMNIFICATION**

- A. **Indemnification.** Licensee shall defend, indemnify, and hold harmless the District, its elected/appointed officials, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively "the Indemnified Parties"), from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorney's fees), which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of any and all legal liabilities associated with the use of Streetlight Poles and associated public space by Licensee's Attachments, provided that Licensee shall not be so obligated to the extent that the event that the claim or occurrence at issue arose out of the gross negligence or willful misconduct of the Indemnified Parties or any one of them.
- B. **Procedure for Indemnification.** The District shall give prompt written notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against the District, the District shall give reasonable notice after the District receives written notice of the action, suit, or proceeding.
- C. Licensee also agrees to hold harmless the District and its officers and employees for any loss or damage to persons or property, arising out of or in any way related to Licensee's use of the public space, Public Right-of-Way, or public structure, or the discontinuance of any use.

ARTICLE V. **SPECIFICATIONS**

- A. **Installation.** Licensee's Wireless Communications Facilities shall be installed and maintained in accordance with the requirements, specifications, and conditions of the Master License Agreement (including this Appendix B) and all associated Permits, and must comply with all Applicable Standards, and Applicable Streetlight Pole Installation Standards. Licensee shall be responsible for the installation and maintenance of its Wireless Communications Facilities. All installation activities shall be undertaken without the attachment of any liens to the District's Streetlight Poles or other District Facilities.
- B. **Maintenance of Facilities.** Licensee shall, at its own expense, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards,

and Streetlight Pole Installation Standards. Notwithstanding anything in the Master License Agreement or associated Permits to the contrary, Licensee shall not be required to update or upgrade its Attachments if they met Applicable Standards and Streetlight Pole Installation Standards, and Permit conditions, at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards and/or Streetlight Pole Installation Standards.

- C. **Minimal Disruption.** Licensee shall coordinate construction and maintenance of its Wireless Communications Facilities with the appropriate District agencies to minimize unnecessary disruption. Prior to commencing construction, installation or maintenance activities Licensee shall acquire all necessary Permits from DDOT.
- D. **Tagging.** Licensee shall place distinct markers on Wireless Communications Facilities, coded by color or other means specified by DDOT that will readily identify the owner of the Attachment and all of its Attachments, to DDOT Streetlight Poles.
- E. **Interference.** Licensee shall not allow its Wireless Communications Facilities to impair the ability of DDOT to use Streetlight Poles nor shall it interfere with the operations of District Streetlights or other DDOT Facilities.
 - 1. If, after considering the results of Licensee 's inspection and tests or any technical evaluation performed by DDOT, DDOT determines that Licensee's Wireless Communications Facilities are directly causing interference to the District's operations, DDOT shall notify Licensee of such determination and Licensee shall immediately cease interfering with the District's operations and Facilities. In any event, if the Licensee fails to cease its interference with the District's operations within twelve (12) hours of receiving a notice of determination, DDOT shall have the right to take the necessary steps, in its reasonable judgment and sole discretion, to cause the interference to cease, including but not limited to powering down or deactivating Licensee's Wireless Communications Facilities on District's Streetlight Poles that are causing such interference. Licensee shall be responsible for all reasonable payments/expenses that occur as a direct result of DDOT having to correct any interference problems to the extent caused by Licensee.
 - 2. Licensee may not resume operation of its Wireless Communications Facilities on any Streetlight Poles that have been determined to cause interference to District's Facilities, until Licensee is able to demonstrate to the District's reasonable satisfaction that the interference has been resolved. In furtherance of such corrective action, Licensee may request, and, if its request is approved by the District, to remain on District property or public space and perform intermittent testing of potential cures during specified hours, provided that such testing does not have the potential to interfere with public safety or any public safety communications. The District's approval of a request to remain and conduct intermittent testing during specified hours shall not be unreasonably withheld, delayed or conditioned. Licensee shall reimburse the District for all actual documented and actual costs incurred by District in assisting in such testing and evaluations.
- F. **Remote Monitoring System Interference.** Evaluation of its proposed small cell technology and footprint, on a site-by-site basis, as to whether it will interfere with DDOT's remote monitoring system signal transmission. Documentation meeting this requirement shall be provided upon request. DDOT will review such evidence and may publish it publicly (e.g., on its website) for transparency purposes. Any proprietary or business confidential information should not be

submitted. All such submissions shall be deemed by the act of submission to be free of proprietary and business confidential information.

- G. **Power Down.** In order to protect the safety of District workers and contractors working on or around Streetlight Poles, Licensee shall implement a process, subject to the District's prior review and approval, through which Facility emissions may be reduced or turned off by the District or its contractors, through means accessible by the District, its employees, contractors.
- H. **Restoration of District Service.** DDOT's service restoration requirements shall take precedence over any and all work operations of Licensee on Streetlight Poles.
- I. **Emergency Contact Information.** Licensee shall provide emergency after hours contact information to DDOT to ensure proper notification in case of an Emergency. Information will include 24/7 contact information.
- J. **No Unreasonable Discrimination.** DDOT shall evaluate and approve or deny Permit applications on a competitively neutral basis, with no unreasonable discrimination among similarly situated applicants and installations.
- K. **Failure to Exercise Access Rights.** If Licensee does not diligently exercise any construction or installation rights to particular Streetlight Poles granted pursuant to applicable Permits within one hundred twenty (120) days of the effective date of such Permits (unless such time period is extended in writing), the District may, but shall have no obligation to, use the space on such Streetlight Poles for its own needs, make the space available to other entities, or for other purposes. If an authorized Wireless Communications Facility at a particular location is not activated and used for its intended use within twelve (12) months from the date of Permit issuance, no refunds for Permit Application Fees or Attachment Fees will be issued.
- L. **Applications.** A single Public Space Permit Application for Wireless Communications Facilities may be submitted for the installation of Wireless Communications Facilities on up to the lesser of fifteen (15) Streetlight Poles or three (3) contiguous City blocks. Licensee shall only include proposed Facilities of the same type and design, for the same type of Streetlight Poles on a single Public Space Permit Application. A Permit Fee shall be assessed for each Wireless Communications Facility referenced in the Public Space Permit Application.

ARTICLE VI. **DUTIES, RESPONSIBILITIES, AND EXCULPATION**

- A. **Duty to Inspect.** Licensee acknowledges and agrees that the District does not warrant the condition or safety of the District's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect the District's Streetlight Poles or premises surrounding the Streetlight Poles, prior to commencing any work on the District's Streetlight Poles or entering the premises surrounding such Streetlight Poles.
- B. **Knowledge of Work Conditions.** By executing a Permit, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under a Permit and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

- C. **DISCLAIMER.** THE DISTRICT MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE DISTRICT'S STREETLIGHT POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE DISTRICT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN A PERMIT. THE DISTRICT EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- D. **Damage to Facilities.** If Licensee damages or interferes with the operation of any District Facilities or equipment, Licensee shall, at its own expense, immediately do all things reasonable to avoid further injury or damages, direct and incidental, resulting therefrom and shall notify the District immediately.

ARTICLE VII. INSPECTIONS AND COMPLIANCE

- A. **General Inspections.** The District reserves the right to make periodic inspections, as conditions may warrant, of Licensee's Attachments. Such inspections, or the failure to make such inspections, shall not operate to relieve Licensee of any responsibility or obligation or liability assumed under a Permit.
- B. **Periodic Safety Inspections.** The District may perform a safety inspection to identify any safety violations of all Attachments and facilities on Streetlight Poles or Facilities ("Safety Inspection"). Licensee shall cooperate with the District in the conduct of any Safety Inspection.
- C. **Monitoring and Records.** Licensee shall be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements. Licensee shall maintain records of the payments made to DDOT, and shall make records available to DDOT for inspection, if requested. DDOT shall maintain records of all actions taken pursuant to a Permit, and shall make records available to Licensee for inspection, if requested.

ARTICLE VIII. EFFECTIVE DATE AND TERM

- A. **Term.** The Terms and Conditions of Appendix B shall be effective on the date of issuance of a Permit, and shall be coterminous with the Master License Agreement.
1. All Permits for Attachments to particular Streetlight Poles shall terminate upon the expiration of the Permit authorizing the attachment for that pole.
 2. Licensee shall continue to pay all Pole Attachment Fees and continue to comply with all obligations, Applicable Standards and Streetlight Installation Standards hereunder pending the actual removal of all Wireless Communications Facilities.
- B. Within six (6) months of the termination of this Permit and/or individual Permits, Licensee shall remove its Attachments from all DDOT Streetlight Poles. Licensee shall restore Streetlight Poles and surrounding areas affected by its Wireless Communications Facilities to their prior condition at the issuance of the Permit, reasonable wear and tear and agreed upon modifications to Streetlight Poles excepted, pursuant to D.C. Code § 10-1141.03(e).
1. If an Attachment is not removed within the six (6) month time period, DDOT shall have the right to remove Licensee's Attachments, and Licensee agrees to pay the actual and

documented cost thereof and a penalty of three hundred percent (300%) of the actual and documented cost thereof within forty-five (45) calendar days after it has received an invoice from the District.

2. The above notwithstanding, Licensee shall be allowed to continue its removal work beyond six months as long as, in the sole opinion of the DDOT, Licensee is diligently pursuing such removal.

- C. Default of the material terms of attachment to Streetlight Pole shall be governed by Section 16 of the Master License Agreement.

APPENDIX C

DISTRICT WIRELESS ACCESS POINTS

Licensee agrees to assist the District in extending wireless broadband communications in public spaces. The parties agree that the following general obligations and process shall apply, the specific terms and conditions of which shall be detailed and incorporated within the applicable Permit authorizations for particular Wireless Communications Facilities.

1. **Wireless Access Points.** On each Pole, including District-owned Streetlight Poles, for which Licensee seeks to install a Class A Wireless Communications Facility, the District will have the option to have Licensee install, where technically feasible, without cost to the District, a District-owned outdoor Wi-Fi Wireless Access Point on the same Pole on which the Licensee is installing its own Wireless Communications Facilities.
 - 1.1 The Licensee will furnish and install the outdoor Wireless Access Point, which will thereafter be owned and maintained by the District.
 - 1.2 The District will pay for the recurring costs to supply electrical power to the Wireless Access Point.
 - 1.3 The District will provide type, design, installation, and power specifications.
2. **Fiber Connection.** At the time that Licensee is installing any fiber optic cable or conduit for its Wireless Communications Facility, the Licensee will install, without cost to the District, District-owned fiber from the nearest manhole/handhole, Pedestal, or Vault that the Licensee is using, up to the District's Wireless Access Point on the same Pole.
 - 2.1 The District will furnish the fiber to Licensee, and such fiber will be owned by the District.
 - 2.2 If applicable, the District will install a manhole/handhole adjacent to the Licensee's nearest manhole/handhole where the District's slack coil will be placed for an agreed upon window of time.
 - 2.3 The District will build a conduit to interconnect the Licensee's manhole/handhole to the District's communications infrastructure.
 - 2.4 The District will provide fiber test parameters.
3. **Pre-Design Coordinating Meetings.** Consistent with applicable Department policies and procedures, the parties agree that the District's Office of the Chief Technology Officer (OCTO) will participate in pre-design coordination meetings in advance of the Licensee filing Permit applications with the Department, for the purpose of coordinating where Licensee intends to install Wireless Communications Facilities, to identify particular Poles where the District may desire to have a Wireless Access Point/fiber connection installed, and to allow the Licensee time to include the information relating to the District's Wireless Access Point in the Licensee's Permit application design specifications.

- 3.1 All applications that Licensee files with Pole owners for the installation of Wireless Communications Facilities shall include District design specifications for District Wireless Access Points, so that such facilities can be included in the Pole owner's evaluation of the proposed application and potential make-ready work necessary to accommodate both the Licensee's proposed Wireless Communications Facilities and the District's Wireless Access Points.
4. **Post-Application Coordination.** Consistent with applicable Department policies and procedures, the parties agree that OCTO will coordinate with the Department to obtain electronic notification when the Licensee files for Permits to install Wireless Communications Facilities. The Department will proceed with the Permit application concurrent with OCTO's review of the application with respect to its Wireless Access Point requirements. OCTO's review will not add time or delay to the Department's review of the Permit application.
5. **Notification of Installation.** Within thirty (30) calendar days of installation of the Wireless Access Point/and or fiber, Licensee shall notify OCTO. Whereupon, OCTO will inspect and performance test the Wireless Access Point and associated fiber facilities within thirty (30) calendar days of receipt of notice. If the Wireless Access Points and associated fiber facilities do not pass the performance testing the parties will work to resolve any issues.
6. **Ownership and Responsibility.** The District will own all Wireless Access Points and associated fiber, and once installed and accepted by the District, the District shall be responsible for all maintenance of such facilities.
7. **Compensation for Wireless Access Points.** Licensee shall be compensated for Wireless Access Points as follows:
- A. For purchase of Wireless Access Points on behalf of the District, Licensee shall be compensated for the cost of the Wireless Access Point up to Five Thousand Dollars (\$5,000) per pole for each Wireless Access Point, subject to the availability of appropriated funds.
- B. For installation of Wireless Access Points and fiber on behalf of the District, Licensee shall be compensated for actual costs incurred up to Two Thousand Five Hundred Dollars (\$2,500) per pole for each installation, subject to the availability of appropriated funds. Such compensation shall be based on submission of invoices for installation demonstrating reasonable costs for installation consistent with best practices and industry standards.