

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 15-0528

Introduced by: The Council President
At the request of: The Administration (Department of Transportation)
Introduced and read first time: April 20, 2015
Assigned to: Housing and Community Development Committee
Committee Report: Favorable with amendments
Council action: Adopted
Read second time: July 20, 2015

AN ORDINANCE CONCERNING

Franchise – Extenet Systems, Inc.

1
2 FOR the purpose of granting a franchise to Extenet Systems, Inc., to construct, install, maintain,
3 repair, operate, relocate, replace and remove certain facilities relating to the provision of a
4 distributed Antenna Systems services in and across certain streets and public ways, subject to
5 certain terms and conditions; and providing for a special effective date.

6 BY authority of
7 Article VIII - Franchises
8 Baltimore City Charter
9 (1996 Edition)

10 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That a
11 franchise or right is granted to Extenet Systems, Inc., (the “Grantee”) to construct, install,
12 maintain, repair, operate, relocate, replace and remove certain facilities relating to the provision
13 of a distributed Antenna Systems services in and across certain streets and public ways, subject to
14 the terms and conditions of this Ordinance and the Franchise Agreement between the Mayor and
15 City Council of Baltimore and the Grantee, which is attached and made a part of this Ordinance.

16 **SECTION 2. AND BE IT FURTHER ORDAINED,** That for the franchise or right granted by this
17 Ordinance (the “Franchise”) to become effective, the Grantee must notify the Board of Estimates,
18 within 30 days of the effective date of this Ordinance, that the Grantee accepts the Franchise.
19 The Grantee’s failure to so notify the Board of Estimates constitutes a refusal to accept the
20 Franchise, and, in that event, this Ordinance and the Franchise granted by it will be abrogated and
21 of no further effect.

22 **SECTION 3. AND BE IT FURTHER ORDAINED,** That also for the Franchise to become effective,
23 the Franchise must be executed and enjoyed by the Grantee within 6 months after the effective
24 date of this Ordinance.

25 **SECTION 4. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council of Baltimore
26 expressly reserves the right at all times to exercise, in the interest of the public, full municipal

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.

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1 superintendence, regulation, and control over and in respect to all matters connected with the
2 Franchise and not inconsistent with the terms of this Ordinance.

3 **SECTION 5. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date
4 when it is enacted.

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**BALTIMORE CITY DISTRIBUTED ANTENNA SYSTEM (DAS) AND SMALL CELL
FRANCHISE AGREEMENT**

This Franchise Agreement, (the "Agreement") is made this _____ day of _____, 2015, by and between the MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation of the State of Maryland ("City") and EXTENET SYSTEMS, INC., a Delaware corporation with business headquarters in Illinois ("Franchise").

RECITALS

1. The City, pursuant to Article VIII of the City Charter, is authorized to grant and renew non-exclusive franchises for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the public ways of the City.

2. Franchisee desires to obtain from City as permitted by law, and City as a municipal corporation desires to grant to Franchisee, a franchise for the right to construct, install, maintain, repair, operate, relocate, replace and remove Facilities relating to the provision of Distributed Antenna Systems ("DAS") services in the Public Way within the City (the "Facilities"), in a manner consistent with this Agreement.

NOW, THEREFORE, AND IN CONSIDERATION of mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1.0 Definitions

1.1 "Agreement" or "Franchise Agreement" means this Agreement, together with Appendices and Exhibits attached this Agreement, if any, and any amendments or modifications.

1.2 "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all FCC resolutions, orders, rules, and regulations, and the Baltimore City Charter, and the administrative and judicial decisions interpreting these sources of law.

1.3 "Authorizations" means the permissions Franchisee must have to deploy the Network and/or provide Services, which may include franchises; licenses; permits, zoning approvals; variances, exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

1.4 "City" means the Mayor and City Council of Baltimore, Maryland, or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission or department of, or any other entity of or

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1 acting on behalf of, the Baltimore city government or any officer, official,
2 employees, or agent of the Baltimore City government, any designee of the
3 foregoing, or any successor thereto.

4 **1.5** “Conduit” means enclosed underground raceways capable of protecting fiber optic
5 and other communications cables, including associated individual ducts,
6 innerducts, manholes, handholes, vaults, pull-boxes, and trenches.

7 **1.6** “Distributed Antenna System” or “DAS” means a network of multiple, spatially
8 separate antenna Nodes connected to a common source via a high capacity
9 transport medium (such as fiber optic cable), for the purpose of providing wireless
10 service within a geographic area.

11 **1.7** “Effective Date” means the date upon which this Agreement is adopted and
12 approved by the Mayor and City Council of the City.

13 **1.8** “Facilities” means any and all equipment and assets owned by or under the control
14 of Franchisee that is reasonably necessary and appropriate for the installation and
15 operation of a Network and the offering and provision of Services, including, but
16 not limited to: optical repeaters, converters, power amplifiers, radios,
17 multiplexers, remote radioheads, antennae, aboveground and underground fiber
18 optic and coaxial cable, conduit, wires, meters, pedestals, power switches,
19 electrical generation and transmission facilities, cabinets, enclosures, control
20 boxes, and accompanying support structures, whether referred to singly or
21 collectively.

22 **1.9** “Franchise” means the non-exclusive right granted, by ordinance and subject to
23 this Agreement, to Franchisee to construct, operator, repair, and maintain the
24 Network on, over, under, upon, across, and along the Public Ways.

25 **1.10** “Franchise Area” shall mean all the area within the boundaries of the City.

26 **1.11** “Gross Revenue” means all revenue, as determined in accordance with generally
27 accepted accounting principles, which is derived by the Franchisee from the
28 operation of the Network to provide Services. Gross Revenue shall also include
29 by way of example and without limitation: any revenue generated by the
30 Franchisee through any means which has the effect of avoiding the payment of
31 compensation that would otherwise be paid to the City for the Franchise granted
32 in this Agreement; late fees and administrative fees; revenue derived from
33 forfeited deposits; revenue derived from commissions; any actual bad debt that is
34 written off but subsequently collected (such bad debt shall be included as Gross
35 Revenue for the period in which it is collected); and other revenues that may be
36 posted in the general ledger as an offset to an expense account. Gross Revenue
37 shall not include: any compensation awarded to Franchisee based on City’s
38 condemnation of property of the Franchisee; and to the extent consistent with
39 generally accepted accounting principles, consistently applied, actual bad debt
40 write-offs taken in the ordinary course of business.

41 **1.12** “Network” means, collectively, each of the DAS or Small Cell networks operated
42 by Franchisee to provide Services within the corporate boundaries of the City,

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1 which include Facilities located on or within streetlights, stand-alone poles, third
2 party utility poles, conduit, ducts and other structures located on or within the
3 Public Way as permitted under this Agreement.

4 **1.13** “Node” means a component of a DAS network or Small Cell installation that
5 includes one or more radiofrequency transmitters or antennae, and which is
6 connected via a high capacity transport medium (commonly a fiber optic cable) to
7 a common source with other Nodes. A Node is often placed on or near the top of
8 utility and streetlight poles.

9 **1.14** “Person” means any natural person or any association, firm, partnership, joint
10 venture, corporation or other legally recognized entity, whether for-profit or not-
11 for-profit.

12 **1.15** “Public Way” means the surface of, and the space above and below, any public
13 street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way,
14 lane, public way, drive, circle or other public right-of-way, including, but not
15 limited to, public utility easements, dedicated utility strips, or rights-of-way
16 utilized for compatible uses. Public Way shall not include any City buildings,
17 structures or other improvements, regardless of whether they are situated in a
18 public right-of-way.

19 **1.16** “Services” means the wireless and wireline access, transmission, transport and
20 other communication-related services provided by Franchisee using the Network
21 pursuant to one or more filed tariffs or on individual-case-basis agreements with
22 customers, as authorized by Franchisee’s tariffs or by state or federal law.

23 **1.17** “Small Cell” means a wireless communications technology installation similar to
24 a DAS network, as the term is generally known in the industry.

25 **2.0 Grant of Franchise**

26 The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair,
27 operate, replace and remove Network Facilities within the Public Way for the purpose of
28 providing Services, which shall be exercised at Franchisee’s sole cost and expense, and which
29 shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions,
30 encumbrances, and claims of title of record which may affect the Public Way. Nothing in this
31 Agreement shall be deemed to grant, convey, create or vest in Franchisee a real property interest
32 in land, including any fee, leasehold interest, or easement.

33 **2.1 Compliance With Law**

34 The Franchise granted under the terms and conditions of this Agreement shall be consistent with
35 the Baltimore City Charter, the laws, regulations and rules of the City, and other applicable
36 statutory requirements. In the event of conflict between this Agreement and the terms and
37 conditions on which the City can grant a franchise, the Charter, the laws, regulations and rules of
38 the City, and any such statutory requirements shall control; provided, however, that the terms and
39 conditions of this Agreement may not be affected by any law, regulation, or rule adopted after the
40 Effective Date of this Agreement unless: (1) the content of the law, regulation, or rule was not

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1 permitted to be enacted as of the Effective Date, or (2) the law, regulation, or rule is of general
2 applicability.

3 **2.2 No Waiver of Other Permits and Authorizations**

4 Nothing in this Agreement shall be construed as a waiver of any laws, regulations or rules of the
5 City or of the City’s right to require the Franchisee to secure the appropriate permits or
6 authorizations, provided that the fees and charges imposed upon the Franchisee for any such
7 permit or authorization shall be the standard fees or charges generally applicable to all Persons
8 for such permits or authorizations, and any such standard fee or charge shall not be an offset
9 against the compensation or other payment the Franchisee or other person is required to pay the
10 City or any other entity pursuant to this Agreement.

11 **2.3 No Interference**

12 Franchisee, in the performance and exercise of its rights and obligations under this Agreement,
13 shall not interfere in any manner with the existence and operation of any and all public and
14 private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and
15 underground electrical and telephone wires, cable television, and other telecommunications,
16 utility, or municipal property, without the express written approval of the owner or owners of the
17 affected property or properties, except as permitted by applicable laws and this Agreement. The
18 City agrees to require the inclusion of the same or a similar prohibition on interference as that
19 stated above in all agreements and franchises the City may enter into after the Effective Date
20 with other similarly situated communications or information providers and carriers.

21 **2.4 Closing of Public Ways**

22 Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in
23 and to the Public Ways. In the event that all or part of the Public Ways within the Franchise Area
24 are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable to
25 Services; or (2) vacated or if ownership of the land under the affected Public Ways is otherwise
26 transferred to another Person, all rights and privileges granted pursuant to this Agreement with
27 respect to such Public Ways, or any part of such Public Ways so closed, vacated, or transferred,
28 shall cease upon the effective date of such closing, vacation, or transfer, and Franchisee shall
29 remove its Network from such Public Ways. If such closing, vacation, or transfer of any Public
30 Way is undertaken for the benefit of any private Person, the City shall, as appropriate, condition
31 its consent to such closing, vacation, or transfer of such Public Way on the agreement of such
32 private Person to: (i) grant the Franchisee the right to continue to occupy and use such Public
33 Way; or (ii) reimburse the Franchisee for its reasonable costs to relocate the affected part of the
34 Cable System. The City shall provide reasonable prior notice to Franchisee of any such closing,
35 vacation, or transfer to allow Franchisee to remove its Cable System where the right to continue
36 to occupy and use such Public Way is not reserved for Franchisee.

37 **2.5 Conditions Precedent**

38 The Franchise shall commence upon the Effective Date, provided that the Franchisee shall have
39 met each of the conditions precedent set forth below and otherwise in this Agreement (unless the
40 City agrees to waive any of the conditions precedent), at which time it shall become effective:

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- 1 1. Board and Council Action. All necessary approvals of this Agreement by the City
2 shall have been obtained.
- 3 2. Insurance. The Franchisee shall have secured its insurance policies as set forth in
4 Section 23 of this Agreement and delivered the certificate of insurance to the City
5 Solicitor, together with evidence that the premium for each of such policies have
6 been paid, that the policies will be in effect on or before the Effective Date, and
7 that the policies are in accordance with this Agreement.
- 8 3. Clean Hands Certification. The Franchisee shall have paid all amounts due and
9 owing to the City, including, but not limited to, taxes, fees, fines, penalties and
10 interest.

11 **3.0 Relation to Attachment Rights**

12 This Franchise does not confer upon Franchisee any right to place or attach Facilities directly
13 upon or to structures located in the Public Way that are owned by the City or by a third party,
14 including but not limited to City-owned streetlights and third party electric utility poles.
15 Franchisee shall secure and maintain any license, lease or other right as may be necessary for
16 such desired attachment by way of a separate attachment agreement or other similar instrument
17 executed with such entity.

18 **3.1 Preference for Attachment to City Facilities**

19 In any situation in which Franchisee has a choice in siting or attaching Facilities to City-owned
20 structures or to structures owned and/or controlled by a third party, Franchisee shall attach to City-
21 owned structures, provided attachment to such City-owned structures in that circumstance is at
22 least functionally equivalent, as a technical and operational matter, to such third-party facilities
23 for purposes of the operation of Franchisee's DAS network.

24 **4.0 Term**

25 This Franchise shall be for a period of ten (10) years from the date this Franchise is approved and
26 adopted by ordinance of the Mayor and City of Baltimore City.

27 This Franchise may be automatically renewed for three (3) additional five (5) year terms
28 provided Franchisee is not in default, is not in arrears with regard to, and does not dispute, any
29 amount of Franchise fees, and provided the City has not given notification of its desire to
30 terminate the Franchise at least one hundred twenty (120) days prior to the expiration of the then-
31 current term, and further provided that Franchisee has not given City notice of Franchisee's
32 intention not to renew, such notice to be given not less than one hundred twenty (120) days prior
33 to the expiration of the current Franchise term.

34 **5.0 Franchise Fee**

35 For the right to construct, install, maintain, repair, operate, replace and remove Network
36 Facilities in the Public Way, ~~Franchisee~~ Franchisee shall pay to the City a Franchise Fee in the
37 amount of one hundred dollars (\$100.00) per year. Payment shall be made no later than 30 days
38 following the conclusion of each fiscal year.

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6.0 Use of Facilities

The authority granted by this Franchise extends to the use of Facilities for purposes related to the operation of one or more Networks and the offering of Services. Any non-incidental use of such Facilities for a purpose other than a Network or Service, as described in this Agreement, or the installation of facilities unrelated to a Network or Service, may require additional Authorization from the City.

7.0 Installation Specifications

7.1 Conduit

For the deployment of new fiber optic cable in the Public Way for the Network, Franchisee shall use existing City-owned Conduit. In the event there is no available City-owned Conduit to meet Franchisee's requirements, Franchisee may in coordination with the City causes the construction of additional Conduit in the Public Way. All such construction shall be consistent with City specifications and include at least two additional spare ducts for future use for fiber installation, and Franchisee agrees that title in such property shall transfer to the City upon its substantial completion.

7.2 Installation Plan

The installation of Facilities shall be made in accordance with plans and specifications approved by the City, and after obtaining all necessary permits for all work in the Public Way. Franchisee shall submit to the Baltimore City Department of Transportation an initial installation plan, and any subsequent work plans concerning installations not addressed in the initial work plan, which shall include fully dimensioned site plans and specifications that are drawn to scale and show (1) the specific Facilities, (2) the specific proposed location of such Facilities (including specific identification of each attachment to a City-owned or third-party structure located in the Public Way); (3) the route of fiber optic cable utilized by the Network; (4) the proposed type of construction materials for all structures, and any other details that the City may reasonably request which are also applicable to other regulated utilities operating within the Public Way. Such installation plans may be submitted as part of Franchisee's annual construction report described in Section 14.

7.3 Approval by City

Franchisee shall not attach, install, maintain, or operate any Facilities in or on the Public Way until plans for such work have been approved by the City (which shall not be unreasonably withheld, delayed, conditioned or denied), and all necessary permits have been properly issued. Substantial modification to an installation plan (including, for example, a change of Node site) made in the course of construction shall require the written consent of the City, upon which the City shall act promptly, and may require modification of an existing or issuance of a new permit.

Approval of plans and specifications and the issuance of any permits by the City shall not release Franchisee from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. Franchisee shall be responsible for notifying the City and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected City-approved permits, as may be necessary.

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1 The City shall use its best efforts to promptly respond to a request for plan approval or
2 modification within 60 days, and will cooperate with Franchisee to facilitate the prompt
3 processing and issuance of any required permits.

4 Franchisee is encouraged to submit installation plans and requests for approval as part of
5 Franchisee's annual report described in Section 14.

6 **8.0 Construction**

7 **8.1 Compliance with Standards and Specifications**

8 All construction and maintenance shall be done in a workmanlike manner, and the Franchisee
9 shall meet or exceed all construction and service requirements required by this Agreement, the
10 Baltimore City Code, and Applicable Law. All work involved in the construction, installation,
11 operation, repair, and maintenance of the Network shall be performed in a safe, thorough, and
12 reliable manner using materials of good and durable quality. The Franchisee shall comply with
13 applicable codes and industry standards, including the specifications set forth in the most recently
14 published edition of the "City of Baltimore Department of Public Works Bureau of Highways
15 Manual of Design Procedure and Criteria (1972)," as amended from time to time and the "City of
16 Baltimore Department of Public Works Specifications for Material, Highways, Bridges, Utilities,
17 and Incidental Structures (1979)," as amended from time to time ("Green Book"); administrative
18 orders of the City Department of Transportation, as amended from time to time; the National
19 Electrical Code, as adopted by the City from time to time; the National Electrical Safety Code, as
20 adopted by the City from time to time; all rules, standards, practices, and procedures of the FCC,
21 as amended from time to time; and the requirements of other utilities whose poles and conduits
22 the Franchisee may use, as amended from time to time.

23 **8.2 Safety Precautions**

24 **8.2.1 Standard of Care**

25 The Franchisee shall employ ordinary care at all times and employ commonly accepted methods
26 and devices for the prevention of failures and accidents that are likely to cause damage, injury, or
27 nuisance to the public. In addition, the Franchisee shall, at its sole cost and expense, undertake
28 all necessary and appropriate efforts to prevent accidents at its work sites. The Franchisee shall
29 comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§ 651- 78), as
30 amended, and all other Applicable Law.

31 **8.2.2 Protection of Construction Areas**

32 The Franchisee shall comply with the safety requirements of all permits, licenses, and other
33 forms of approval or authorization. In addition, Franchisee shall maintain reasonable barriers,
34 lights, signs, cones, and other similar warnings and protective devices required for the safety of
35 the public in compliance with this Agreement and Applicable Law. If the Franchisee places any
36 such device in any Public Way, the device shall be placed and maintained in a way that does not
37 interfere with the usual travel or other existing and anticipated uses of the Public Way.

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8.2.3 Emergency Notification

The Franchisee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Franchisee, not voice mail or a recording, can be contacted in the event of an emergency. The Franchisee shall respond within twenty-four (24) hours to address the reported emergency.

8.3 Identification

The Franchisee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. The identification document shall include a telephone number that can be used for verification. In addition, the Franchisee shall clearly identify all personnel, vehicles, and other major equipment operating under its authority.

8.4 Antennas and Towers

Antenna supporting structures and towers shall be designed for the proper loading as specified in Electronic Industry Association's R.S. 222-C Specifications. In addition, antenna supporting structures and towers shall be designed in accordance with the International Building Code, as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Law.

8.5 Disruption, Interference and Damage

Franchisee shall use commercially reasonable efforts to coordinate construction, installation, and maintenance of the Facilities to minimize unnecessary disruption, including, as appropriate, coordination with applicable City agencies. Franchisee shall not interfere with the use or development of any property of the City or any other person, and promptly upon completion of construction, erection or installation of Facilities, Franchisee shall, at its own cost and expense, promptly repair any damage to property resulting from such activity to original condition.

8.6 Materials and Claims

All materials furnished for any work done on the Franchised Premises by Franchisee shall be at Franchisee's sole cost and expense. Franchisee agrees to protect the Franchised Premises, and City, from all claims of contractors, laborers and material men. Franchisee shall promptly pay all contractors and materialmen, so as to minimize the possibility of a lien attaching to the Facilities. Should any such lien be made or filed, Franchisee shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

8.7 One Call Notification System

For the Term of this Agreement, Franchisee shall become a full-time, private sector member of: (A) the DPW Utility Coordinating Committee; and (B) the One Call Notification System (otherwise known as "Miss Utility") and shall comply with all of the marking and location verification requirements of the One Call Notification System.

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1 **8.8 No Advertisement**

2 Franchisee shall not place any advertisement or other notice on or about the Facilities which
3 identifies the Franchisee in any way (except for emergency notification postings).

4 **8.9 Inspection by City**

5 The City shall have commercially reasonable access to inspect any work conducted by Franchisee
6 during the construction of Facilities.

7 **9.0 Maintenance and Repair**

8 **9.1 Generally**

9 Franchisee shall, at its sole cost and expense, perform all maintenance and repairs reasonably
10 needed to maintain Facilities in good condition and neat and orderly appearance, and in
11 compliance with all applicable Laws. Franchisee shall keep the Facilities free of debris and
12 anything of a dangerous, noxious or offensive nature or which would create a hazard or undue
13 vibration, heat, noise or interference. If the City gives Franchisee written notice of a failure by
14 Franchisee to maintain the Facilities, Franchisee shall use its best efforts to remedy such failure
15 within forty-eight (48) hours after receipt of such written notice.

16 **9.2 Access to Facilities**

17 Franchisee will be given reasonable access to each of the Facilities in the Public Way for the
18 purpose of routine maintenance, repair, or removal of Facilities. If any such maintenance
19 activities have the potential to result in an interruption of any City services at the Facility,
20 Franchisee shall provide the City with a minimum of three (3) days prior written notice of such
21 maintenance activities. Such maintenance activities shall, to the extent feasible, be done with
22 minimal impairment, interruption, or interference to City services.

23 **9.3 Repair of Public Way**

24 Franchisee shall be responsible for any damage, ordinary wear and tear excepted, to street
25 pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other
26 public or private facilities, to the extent caused by Franchisee’s construction, installation,
27 maintenance, access, use, repair, replacement, relocation, or removal of Facilities in the Public
28 Way. Franchisee shall promptly repair such damage and return the Public Way and any affected
29 adjacent property to a safe and satisfactory condition to the City in accordance with the City’s
30 applicable street restoration standards or to the property owner if not the City. Franchisee’s
31 obligations under this Section 9.3 shall survive for one (1) year past the completion of such
32 reparation and restoration work.

33 **9.4 Appearance**

34 Franchisee shall cooperate with the City on all issues of aesthetics and appearance and shall
35 obtain design and location approval from the Planning Department for all attachments that are
36 subject to this Agreement. Franchisee shall follow all legally binding City policies and state and
37 local ordinances with respect to aesthetics and appearance for the duration of the Franchise.

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9.5 Graffiti

Franchisee shall at all times keep and maintain the Facilities free of all graffiti located thereon. City shall notify Franchisee in writing if graffiti is located on Facilities. Thirty (30) days after notice in writing is received by Franchisee, City shall have the right to abate any graffiti present on Facilities and Franchisee shall reimburse City all costs directly attributable to graffiti abatement of Facilities which are incurred by City within thirty (30) days of City’s presenting Franchisee with a statement of such costs.

9.6 Performance Bond

At its sole and absolute discretion, City may at any time during the Term require Franchisee to provide a bond in an amount determined by the City to represent the estimated cost of Franchisee’s obligations under this Section, which the City may require Franchisee to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of Franchisee’s obligations under this Section.

10.0 Electricity Use

Franchisee shall be responsible for obtaining and paying for any and all electrical utility service that Franchisee requires for the use or maintenance of Facilities. City will reasonably cooperate with Franchisee in an effort by Franchisee to obtain electrical service from a location serving a City facility.

11.0 New Poles; Pole Replacement

11.1 New Poles

Franchisee shall not erect poles, conduits, or other Facilities in an Public Way without all necessary permits and authorizations and the express permission of the City. Franchisee acknowledges that the installation of new stand-alone or streetlight poles in the Public Way is not the City’s preference and agrees to limit such requests as a last resort. In the event the construction of one or more new poles is necessary to execute Franchisee’s planned installation of Facilities, Franchisee may request City approval to construct, at Franchisee’s sole expense, such poles that will comply with all applicable building permits, applicable City, state and federal specifications and laws (“New Poles”). Any New Poles constructed by Franchisee shall comport with the character of existing poles in the area. City shall consider any request to construct a New Pole in a nondiscriminatory manner and shall accommodate Franchisee’s request to the same or substantially similar extent as the City accommodates such requests from other providers of telecommunications services within the City.

11.2 City Use of New Poles

The City may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere with Franchisee’s use of its Network or Facilities. Franchisee shall not be responsible for maintenance, repair or replacement of City-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles. At the City’s request, Franchisee shall deed any new pole to the City.

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12.0 Removal and Modification of Facilities During Term

12.1 Franchisee Right to Remove

During the Term, Franchisee shall have the right to remove from the Public Way all or any portion of Facilities from time to time, whether before or after a default under this Franchise, in Franchisee’s sole discretion with prior notice to City. Franchisee, at its own cost and expense, shall promptly dispose of any materials used and/or generated any and all removal activities, and shall promptly repair any damage to the Public Way to its condition prior to construction and installation of such Facilities by Franchisee, reasonable wear and tear excepted. Should the Franchisee wish to exercise its right of removal, the Franchisee is required, at its own cost and expense, to leave in place the fiber strands provided for and dedicated to the use of the City.

12.2 Removal Due to Public Project

Upon receipt of a written demand from the City pursuant to this Section 12.2, Franchisee, at its sole cost and expense, shall remove and relocate any part of the Network or Facilities constructed, installed, used and/or maintained by Franchisee whenever the City reasonably determines that the removal is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City or other governmental agency project including but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility; installation of curbs, gutters or landscaping; and construction, maintenance or operation of any underground or aboveground facilities such as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines, and tracks; (b) because the Facilities are reasonably considered to be interfering with or adversely affecting proper operation of City-owned light poles, traffic signals, or other City facilities; or (c) to protect or preserve the public health or safety. The City shall cooperate with Franchisee in relocating any portion of the Network removed pursuant to this Section 12.2 in a manner that allows Franchisee to continue providing Service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of Facilities corresponding to that portion of the Network relocated under this Section. No permitting or other fees may be charged by the City for a removal occurring under this Section.

12.3 Removal Due to Termination or Abandonment

Following the termination of the Franchise for any reason, or in the event Franchisee ceases to operate and abandons the Network, Franchisee shall, within one hundred twenty (120) days, at its sole cost and expense, remove all Facilities from the Public Way and restore the area affected by Facilities to its condition at the commencement of this Franchise, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Franchisee to the Facility or the adjacent property, or as otherwise required by the City. Within 90 days of a written request from City, Franchisee will post a payment bond in the amount of \$500,000.00 to address the City’s cost of removing any Facilities not removed by Franchisee within one hundred twenty (120) days of termination, and as compensation for any damage to the Public Way relating to the Facilities, reasonable wear and tear excepted. Alternatively, the City may allow Franchisee, in the City’s sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

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13.0 Compliance With Laws

13.1 Generally

This Agreement is subject to the terms and conditions of all applicable federal, state and local Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the City or other governmental entity or agency having joint or several jurisdiction over the Parties' activities under this Agreement or having jurisdiction that is applicable to any aspect of this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Agreement.

13.2 Permits and Other Authorizations

Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and City permits and/or Authorizations required in order to construct, operate, or otherwise implement and use Facilities in the Public Way, including, but not limited to, a conduit permit and charge, a right of way construction permit, building permits, encroachment permits, and any variance, conditional use permit, ministerial permit, or special exception required under the Baltimore City Zoning Regulations. Franchisee shall pay, as they become due and payable, all fees, charges, taxes and expenses, including conduit charges, associated with such permits and/or other Authorizations. If Franchisee is unable to obtain any necessary permits or Authorizations as required in this Section, Franchisee shall have the right, without obligation, to terminate this Franchise immediately.

14.0 Required Reports

14.1 Annual Construction Report

Not later than the fifteenth (15th) day after the close of each calendar year in which any work was performed in the Public Way by Franchisee, the Franchisee shall provide the Baltimore Department of Transportation with the following:

- A. An updated "as-built" map clearly indicating each Node, pad-mounted Facility, control box, and associated fiber network route in the Public Way. Specific identification of attachments to City-owned structures or structures owned by a third party located in the Public Way. Specifying owner of underlying facility (i.e., city, BGE);
- B. A construction plan specifically describing, through maps, illustrations, diagrams, and written description, construction or other significant work planned (substantially in the form of an installation plan described in Section __) relating to Network Facilities for the current calendar year and the following calendar year; and
- C. A cumulative written list of the permits that the Franchisee has received from the city through the last day of the preceding calendar year. The report shall list the type of permit, the location(s) of the work being performed under the permit, the date the work started or is projected to start, and the date the work stopped or is projected to

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1 stop. The Franchise shall omit a permit from this list after such permit has expired
2 and has not been renewed for three (3) consecutive months.

3 **15.0 Default and Remedies**

4 Each of the following events shall constitute a default of this Franchise (“Default”):

5 (a) If either Party fails to perform or comply with any of the conditions or covenants of this
6 Franchise Agreement and such failure continues for a period of thirty (30) calendar days after
7 written notice thereof, unless the performance cannot be reasonably completed within the thirty
8 (30) day period, and the Party has commenced good faith efforts to perform and is diligently
9 proceeding to complete performance to the satisfaction of the other Party;

10 (b) If Franchisee fails to pay the Franchise Fee or other sums herein specified within fifteen (15)
11 calendar days after receipt of written notice of said default;

12 (c) If Franchisee is adjudicated as bankrupt, or becomes insolvent.

13 **15.1 Default by Franchisee**

14 In the event of default by Franchisee, the City shall have the right, while any default continues,
15 beyond any applicable cure period, by giving thirty (30) calendar days written notice to
16 Franchisee, to terminate this Franchise and promptly remove or require Franchisee to promptly
17 remove Facilities from the Public Way, at Franchisee’s sole cost and expense, without prejudice
18 to any other remedy which the City might be entitled to pursue, including but not limited to
19 City’s rights under Section 17 to eliminate any interference caused by Facilities. No portion of
20 the Franchise Fee shall be refunded in the event of a termination on default.

21 **15.1.1 Self-Help by City**

22 In the event of any default of this Franchise by Franchisee and upon the expiration of any
23 applicable cure period set forth in this Franchise, the City may at any time, after notice, cure the
24 default for the account of and at the expense of the Franchisee. If City is compelled to pay or
25 elects to pay any sum of money or to do any act which will require the payment of any sum of
26 money or is compelled to incur any expense, including reasonable attorneys’ fees in instituting,
27 prosecuting or defending any action to enforce the City's rights under this Franchise, the sums so
28 paid by City, with all interest, costs and damages shall be deemed to be an Additional Franchise
29 fee and shall be due from the Franchisee to City on the first day of the month following the
30 incurring of the respective expenses.

31 **15.2 Default by City**

32 In the event of default by the City, Franchisee shall have the right to pursue any remedies
33 available to it against the City under applicable law, including, but not limited to, the right to
34 terminate this Agreement after thirty (30) days written notice and an opportunity to cure the
35 default.

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16.0 City Termination Right

In addition to the remedies set forth in this Section 17, the City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the Public Way; (ii) if Franchisee's licenses to operate the Network and/or provide Service are terminated, revoked, expired, or otherwise abandoned; or (iii) for the City's convenience.

17.0 Radiofrequency Interference; MPE Evaluation

Radiofrequency Interference. Franchisee shall install and operate Facilities of a type and frequency that will not cause radiofrequency interference to any FCC-licensed devices or with respect to the City's existing operations. In the event of an emergency relating to interference, upon notification of such emergency by City, Franchisee shall disconnect its operations and Facilities from a remote location. If Franchisee does not promptly disconnect its operations and Facilities after being notified by the City due to an emergency, City shall be permitted to disconnect Franchisee's operations and Facilities immediately, whether such Facilities is located on a City-owned facility or a third-party facility within the public right of way. City may perform, or cause to be performed, upon notice to Franchisee, a technical evaluation to determine the cause of interference. If, after considering the results of Franchisee's inspection and tests or any technical evaluation performed by City, City determines that Franchisee is directly causing interference to City's operations, City shall promptly notify Franchisee and Franchisee shall immediately cease interfering with City's operations. If Franchisee fails to cease its interference with City's operations within twelve (12) hours of such determination, City shall have the right to take any steps it deems necessary, in its reasonable judgment and discretion, to cause the interference to cease. Franchisee shall be responsible for all reasonable payments and/or expenses relating to the City's actions to correct any interference problems caused by Franchisee.

For a period of thirty (30) calendar days after City determines that Franchisee's operations have caused interference, Franchisee may request, and, if its request is approved by the City, may perform intermittent testing of potential cures during specified hours. City's approval of a request to remain and conduct intermittent testing during specified hours shall not be unreasonably withheld, delayed or conditioned.

City's sole liability to Franchisee for action taken pursuant to this Section 18 shall consist of the value of any damage or repairs made necessary to affected Facilities by willful or grossly negligent acts of the City. In no event shall the City be liable for loss in value of Franchisee's Facilities, or any loss of revenue by Franchisee resulting from removal.

MPE Evaluation. Upon request from the City, Franchisee shall provide the City an up-to-date report on Maximum Permissible Exposure (MPE) regarding radio frequency emissions and maximum exposure for humans. A copy of any MPE reports submitted to the FCC shall be given to the City within ten days of FCC submission. Failure to provide the report or failure to comply in a timely manner with FCC standards for limiting human exposure to radio frequency emissions shall be an event of default. Within thirty (30) days after it receives an MPE report from the Franchisee, the City shall make the report available for public review on the City website.

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1 **18.0 Annual Financial Statement**

2 On an annual basis, Franchisee shall provide to the City a financial statement describing services
3 provided within the City and Gross Revenues received from such services.

4 **19.0 Interest**

5 If Franchisee fails to make any payment under this Agreement when due, such amounts shall
6 accrue interest from the date such payment is due until paid, including accrued interest, at an
7 annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

8 **20.0 Taxes**

9 Franchisee agrees that it will be solely responsible for the payment of any and all applicable
10 taxes, fees and assessments levied on its ownership, use and maintenance of the Network and/or
11 Facilities.

12 **21.0 Liability and Indemnity**

13 **21.1 Indemnification**

14 Franchisee agrees to indemnify, defend and hold harmless City, its elected/appointed officials,
15 departments, employees, agents and representatives from any and all claims, demands, suits and
16 actions including attorneys' fees and court costs, connected therewith, brought against the City,
17 its elected/appointed officials, departments, employees, agents and representatives and arising as
18 a result of any direct willful, or negligent act or omission of Franchisee, its agents, officers or
19 employees EXCEPT for any and all claims, demands, suits and actions, including attorneys' fees
20 and court costs connected therewith, brought against City or City's elected/appointed officials,
21 departments, employees, agents and representatives, arising as a result of the sole willful, or
22 negligent act or omission of City, its elected/appointed officials, departments, employees, agents
23 and representatives. This indemnification obligation shall survive the termination of this
24 Agreement.

25 **21.2 Waiver of Claims**

26 Franchisee waives any and all claims, demands, causes of action, and rights it may assert against
27 the City on account of any loss, damage or injury to any Facilities or any loss or degradation of
28 the Services as a result of an event or occurrence which is beyond the reasonable control of the
29 City.

30 **21.3 Limitation of the City's Liability**

31 Except as provided for in this Section, the City shall be liable only for the cost of repair to
32 damaged Facilities arising from the gross negligence or willful misconduct of the City, its
33 council or board members, officers, elected trustees, employees, agents, or contractors.

34 **22.0 Insurance**

35 The Franchisee shall procure and maintain during the term of this Franchise the following
36 required insurance coverages:

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- 1 (a) Commercial General Liability Insurance at limits of not less than One Million Dollars
2 (\$1,000,000.00) per occurrence for claims arising out of bodily injuries or death, and property
3 damages. With those ~~polices~~ policies with aggregate limits, a minimum limit of Three Million
4 Dollars (\$3,000,000.00) is required. Such insurance shall include contractual liability insurance
5 and environmental insurance.
- 6 (b) Business Automobile Liability at limits of not less than One Million Dollars (\$1,000,000.00)
7 per occurrence for all claims arising out of bodily injuries or death, and property damages. The
8 insurance shall apply to any owned, non-owned, franchised, or hired automobiles used in the
9 performance of this Franchise.
- 10 (c) Cyber Liability Insurance at limits of not less than One Million Dollars (\$1,000,000.00) per
11 occurrence With those polices with aggregate limits, a minimum limit of Three Million Dollars
12 (\$3,000,000.00) is required.
- 13 (d) Workers compensation coverages as required by the State of Maryland, as well as any similar
14 coverage required for this work by applicable federal laws.
- 15 (e) The Mayor and City Council of Baltimore (in their official capacity) their elected/appointed
16 officials, departments, employees, representatives and agents, shall be covered, by endorsement,
17 as additional insureds with respect to liability arising out of activities performed by Franchisee,
18 its employees, agents, representatives, contractors and subcontractors in connection with this
19 Franchise. City shall be covered by endorsement as additional insured with respect to liability
20 arising out or activities performed by Franchisee.
- 21 (f) The insurance shall apply separately to each insured against whom claim is made and/or
22 lawsuit is brought, except with respect to the limits of the insurer's liability.
- 23 (g) To the extent of the Franchisee's negligence, the Franchisee's insurance coverage shall be
24 primary insurance as respects to the City, its elected/appointed officials, departments, employees,
25 agents and representatives. Any insurance and/or self-insurance maintained by City, its
26 elected/appointed officials, departments, employees, agents and representatives shall not
27 contribute with the Franchisee's insurance or benefit the Franchisee in any way where Franchisee
28 is found negligent.
- 29 (h) Coverages shall not be suspended, voided, canceled, reduced in coverage or in limits, except
30 by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior
31 written notice has been given to the City. There will be an exception for non-payment of
32 premium, which is ten (10) days notice of cancellation.
- 33 (i) Insurance is to be placed with insurers with a Best's rating of no less than A:VII, or if not
34 rated with Best's with minimum surpluses the equivalent of Best's surplus size VII and must be
35 Franchised/approved to do business in the State of Maryland.
- 36 (j) The Franchisee shall furnish the City a "Certificate of Insurance" with a copy of the additional
37 insured endorsement as verification that coverage is in force. The City reserves the right to
38 require Franchisee to produce a letter from Franchisee's insurance broker verifying that the
39 insurance coverage required herein is in effect.

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1 (k) Failure to obtain insurance coverage as required or failure to furnish Certificates of Insurance
2 required may, after thirty (30) days written notice, opportunity to cure and failure to do so, may
3 render this Franchise null and void; provided, however that no act or omission of the City shall in
4 any way limit, modify or affect the obligations of Franchisee under any provision of this
5 Franchise.

6 **23.0 Assignment and Subletting**

7 Franchisee may not assign, or otherwise transfer all or any part of its privilege in this Franchise
8 without the prior written consent of City ~~which consent shall not be unreasonably withheld,~~
9 ~~conditioned or delayed;~~ provided, however, that Franchisee may assign its privilege to its parent
10 company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or
11 entity acquiring fifty-one percent (51%) or more of its stock or assets, subject to the assignee
12 assuming all of Franchisee's obligations hereunder, and subject to any financing entity's interest,
13 if any, in this Franchise. Notwithstanding anything to the contrary contained in this Franchise,
14 Franchisee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its
15 interest in Facilities or in this Franchise to any financing entity, or agent on behalf of any
16 financing entity to whom Franchisee (1) has obligations for borrowed money or in respect of
17 guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or similar
18 instruments, or (3) has obligations under or with respect to letters of credit, bankers acceptances
19 and similar facilities or in respect of guaranties thereof. Any such assignment to a financing
20 entity or its agent shall be subordinate to the terms of this Franchise Agreement.

21 **24.0 Environmental**

22 (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall not
23 at any time within the Public Way store, treat, transport or dispose of any hazardous substance,
24 hazardous waste or oil as defined by the Resource, Conservation and Recovery Act of 1976
25 ("RCRA"), 42 U.S.C. §§ 6901 et seq., Comprehensive Environmental Response, Compensation
26 and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., Maryland Environment
27 Article Code Ann., Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann.,
28 Title 7, subtitle 2.

29 (b) "Environmental Conditions" as used in this Agreement shall mean discovered or
30 undiscovered contaminants, pollutants, or toxic substances affecting health or the environment,
31 in any way arising from or related to the subject matter of this Franchise which could, or do,
32 result in any damage, loss, cost or expense to, or liability, by City to any person including a
33 government agency or other entity.

34 (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees
35 to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials,
36 employees, agents and representatives ("Indemnified Parties") from and against any and all
37 losses, costs, liabilities, including but not limited to liabilities, demands, obligations, claims,
38 suits, actions and expenses, attorneys' fees, consultant fees and court costs connected therewith,
39 brought against the Indemnified Parties, or incurred by any of them, by reason of injury to
40 persons, including death, and damage to property arising out of Environmental Conditions or
41 resulting from any direct, or indirect, willful, or negligent acts or omissions of Franchisee, its
42 contractors, agents, or employees arising from Environmental Conditions, unless solely caused
43 by the negligent act of City. Notwithstanding anything to the contrary herein, Franchisee agrees
44 to defend, indemnify and hold harmless the Indemnified Parties from and against all

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1 administrative and judicial actions and rulings, claims, causes of action, demands and liability
2 including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses
3 judgments and reasonable attorney fees that the Indemnified Parties may suffer or incur due to
4 the existence of any Hazardous Substances on the Franchised Premises and in the Public Way or
5 migration of any Hazardous Substance to other properties or the release of any Hazardous
6 Substance into the environment, that arise from the Franchisee’s and or its representatives
7 activities on the Franchised Premises or the Public Way. The indemnifications in this section
8 specifically include, without limitation, costs incurred in connection with any investigation of
9 site conditions or any cleanup, remedial, removal or restoration work required by any
10 governmental authority. This provision shall be in addition to, and separate from, any remedies
11 available to City for breach by the Franchisee of its obligations under any of the provisions of
12 this Agreement and shall in no way limit any recourse that the City may have at the time against
13 Franchisee pursuant to any federal, state or local laws. The provisions of this Paragraph shall
14 survive the termination or expiration of this Agreement.

15 (d) City represents to best of its knowledge, without having made inquiry that there is no
16 Hazardous Substance within the Public Way. Hazardous Substance is any substance identified as
17 hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. City
18 shall not introduce or use any Hazardous Substance in the Public Way in violation of any
19 applicable law. City shall be responsible for, and shall promptly conduct any investigation and
20 remediation as required by any applicable environmental laws, all spills or other releases of any
21 Hazardous Substance to the extent caused by the City, that have occurred or which may occur in
22 the Public Way. City agrees to defend, indemnify and hold harmless the Franchisee from and
23 against any and all administrative and judicial actions and rulings, claims, causes of action,
24 demands and liability (collectively, “Claims”) including, but not limited to, damages, costs,
25 expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the
26 Franchisee may suffer or incur due to the existence of any Hazardous Substances in the Public
27 Way or the migration of any Hazardous Substance to other properties or the release of any
28 Hazardous Substance into the environment (collectively, “Actions”), arise from the City’s
29 activities on the Franchised Premises to the extent allowable under subsection 5-303 (a), (b) and
30 (c) of the Courts and Proceedings Article of the Maryland Annotated Code. City agrees to
31 defend, indemnify and hold Franchisee harmless from Claims resulting from Actions on the
32 Franchised Premises Property caused by City prior to and during the Initial Term and any
33 Renewal Term. The indemnifications in this section specifically include, without limitation,
34 costs incurred in connection with any investigation of site conditions or any cleanup, remedial,
35 removal or restoration work required by any governmental authority. This Section shall survive
36 the termination or expiration of this Agreement.

37 **25. Notices**

38 All notices, requests, demands, and other communications hereunder shall be in writing and shall
39 be deemed given if personally delivered or by certified mail, return receipt requested; to the
40 following addresses:

41 **City:** The Mayor and City Council of Baltimore
42 Department of Transportation
43 Attn: Director
44 417 E. Fayette Street, Fifth Floor
45 Baltimore, Maryland 21202

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1 *with a copy which shall not constitute legal notice to:*

2 Baltimore City Department of Real Estate
3 Room 304 City Hall
4 100 North Holliday Street
5 Baltimore, Maryland 21202
6 410-396-4768
7 410-528-1437 (fax)

8 All Franchise Fee payments to the City should be mailed to the following address and to the
9 attention of:

10 Director of Finance
11 Bureau of Treasury Management
12 Collections Division
13 200 N. Holliday Street
14 Baltimore, Maryland 21202

15 **Franchisee:**

16 ExteNet Systems, Inc.
17 3030 Warrenville Road, Suite 340
18 Lisle, Illinois 50532
19 Attn: CFO

20 *with a copy to:*

21 ExteNet Systems, Inc.
22 3030 Warrenville Road, Suite 340
23 Lisle, Illinois 60532
24 Attn: General Counsel

25 *And with a copy which shall not constitute legal notice to:*

26 Gallagher Evelius & Jones, LLP
27 218 N. Charles Street, Suite 400
28 Baltimore, Maryland 21201
29 Attn: Ryan J. Potter, Esquire
30 (410) 951-1404
31 (410) 468-2786 (fax)

32 **26.0 Franchisee Point of Contact Relating to Facilities**

33 Appropriate Franchisee staff shall make available to the employees of any City department
34 having jurisdiction over Franchisee’s activities twenty-four (24) hours a day, seven (7) days a
35 week, regarding problems or complaints resulting from the attachment, installation, operation,
36 maintenance, or removal of Facilities. The City may contact the network control center operator
37 at 866-892-5327 and/or noc@extenetsystems.com regarding such problems or complaints.

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1 **27.0 Miscellaneous**

2 **27.1 Incorporation of Prior Agreements**

3 This Franchise contains all of the agreements of the Parties hereto with respect to any matter
4 covered or mentioned in this Franchise, and no other agreement or understanding pertaining to
5 any such matter shall be effective for any purpose. No provision of this Franchise may be
6 amended or added to except by an agreement in writing signed by the parties hereto or respective
7 successors in interest.

8 **27.2 Non-Waiver**

9 Failure of City to insist on strict performance of any of the conditions, covenants, terms or
10 provisions of this Franchise or to exercise any of its rights hereunder shall not waive such rights,
11 but City shall have the rights to enforce such rights at any time and take such action as might be
12 lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by
13 Franchisee to City after a breach of this Franchise shall not be deemed a waiver of such breach
14 unless expressly set forth in writing.

15 **27.3 Taxes**

16 (a) Franchisee, upon presentation of sufficient and proper documentation will pay, within thirty
17 (30) days, any amount equal to its proportional share of any real estate taxes imposed upon any
18 entity which are directly attributable to the improvements constructed by Franchisee, provided
19 that Franchisee will be entitled to appeal any such increase payable by it.

20 (b) Franchisee shall indemnify City from any and all liability, obligation, damages, penalties,
21 claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees
22 and expenses of attorneys, expert witnesses and consultants), which may be imposed upon,
23 incurred by or be asserted against City in relation to the taxes owed or assessed on the Franchised
24 Premises.

25 **27.4 Force Majeure**

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

35 **27.5 Governing Law; Jurisdiction**

36 This Franchise shall be construed in accordance with the laws of the State of Maryland, without
37 reference to its conflicts of law principles. If suit is brought by a Party to this Agreement, the
38 Parties agree that trial of such action shall be vested exclusively in the state courts of Maryland,
39 or in the United States District Court for the District of Maryland.

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27.6 Change in Law and 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.

If, as a result of a change in law by statute, rule, ruling or otherwise, the total compensation to the City arising as a result of Franchisee’s occupation of the Public Way (including attachments on City-owned facilities therein) is materially reduced, the Parties agree to negotiate in good faith to amend this Agreement to ensure that total compensation to the City remains substantially comparable, to the extent permitted under applicable law.

27.7 Representations

Each of the Parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the Parties’ respective obligations hereunder and that such obligations shall be binding upon such Party.

27.8 Amendment

This Agreement may not be amended except pursuant to a written instrument evidencing agreement by both Parties.

27.9 MBE/WBE Compliance

(a) Franchisee to Comply. Franchisee agrees to comply with the City's statutes, ordinances and regulations regarding participation by minority business enterprises (“MBEs”) and women’s business enterprises (“WBEs”) as if it were a contractor receiving funding from the City, provided that enforcement of this Section shall be exclusively by way of liquidated damages and in no event shall the City seek to suspend or rescind the Franchise for any violation of this Section. The Franchisee shall use reasonable, good faith efforts to meet a goal for participation by MBEs and WBEs for purchases and construction contracts as established by the City's Minority and Women's Business Opportunity Office (“MWBOO”). MWBOO shall administer the provisions of this Section on behalf of the City, and Franchisee shall comply with MWBOO rules and requirements.

(b) Documentation to the City on MBE/WBE Participation. Six (6) months after the Effective Date and every six (6) months thereafter while upgrade construction under this Agreement is in progress, and annually thereafter, the Franchisee shall submit to the City written documentation, including executed contracts, service agreements and utilization commitment forms, that shall identify the particular MBEs/WBEs that are (i) contracting directly with the Franchisee; or (ii) subcontracting with prime contractors who contract directly with Franchisee. The documentation submitted to the City shall specify the dollar value of the participation, type of work to be performed, and such other information as the City may reasonably request.

(c) Waiver of MBE/WBE Goals. In the event that, after the use of reasonable, good faith efforts to meet the goals for MBE and WBE participation established pursuant to this Section, the Franchisee is able to demonstrate to the City's satisfaction that sufficient qualified and willing

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1 MBEs and WBEs are unavailable, the Franchisee may request a waiver or reduction of the
2 MBE/WBE goals.

3 (d) Report on MBE/WBE Compliance. Six (6) months after the Effective Date and every six
4 (6) months thereafter, the Franchisee shall submit to MWBOO a report on its compliance with
5 this Section. Franchisee may satisfy this requirement by copying MWBOO on any such report
6 that it files with another City agency on a semiannual or more frequent basis.”.

7 (the remainder of this page intentionally left blank)

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

3 **ATTEST:** **MAYOR AND CITY COUNCIL OF**
4 **BALTIMORE**

5 _____ **BY:** _____

6 **CUSTODIAN OF THE CITY SEAL** **WILLIAM JOHNSON, DIRECTOR**
7 **DEPARTMENT OF TRANSPORTATION**

8 **WITNESS/ATTEST:** **EXTENET SYSTEMS, INC.**

9

10

11 _____ **BY :** _____ **(SEAL)**

12 **NAME:**

13 **TITLE:**

14 **APPROVED AS TO FORM AND LEGAL** **APPROVED BY THE BOARD OF**
15 **SUFFICIENCY** **ESTIMATES**

16 _____

17 **ASSISTANT CITY SOLICITOR** **CLERK** **DATE**

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Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,
this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City