

ExteNet "Draft" Contract

Legal review is in progress

## DRAFT PROPOSED DARK FIBER LICENSE AGREEMENT

This Dark Fiber License Agreement ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 201\_ by and between ExteNet Systems, Inc, ("Grantor"), and the City of \_\_\_\_\_, \_\_\_\_\_ ("Licensee"). Grantor and Licensee are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

### Background

**WHEREAS**, this Agreement is made in light of the following premises and circumstances, all of which are a part of this Agreement:

- A. Grantor, a Delaware corporation holding a [**Certificate of Public Convenience and Necessity**] issued by the [\_\_\_\_\_ **Public Service Commission**], will be the owner of certain fiber optic cables comprising a component of a distributed antenna system ("DAS") network that Grantor plans to install in, over and/or under the public rights of way ("ROW") within the geographic boundaries of Licensee for the provision of providing telecommunications service (the "Network");
- B. Licensee is a political subdivision of the State of [\_\_\_\_\_] with jurisdiction over the ROW for certain purposes [and is the owner of certain street light and/or utility poles and/or conduits located within the ROW along the Planned Fiber Route];
- C. The planned route of such fiber optic cable is depicted on the Fiber Route Map attached hereto as Exhibit 1;
- D. Licensee is entitled to manage the public ROW and to require fair and reasonable compensation based on principles of cost recovery as a condition to allowing Grantor access to the ROW;
- E. [Licensee requires certain [monetary] and in-kind compensation, the latter being described herein, as a condition to allowing Grantor access to certain streetlight and/or utility poles and/or conduit owned by Licensee for purposes of installing and attaching the fiber optic cable and other components of the Network on or in existing or new utility or streetlight and/or utility poles and/or conduits.]
- F. Grantor and Licensee desire to enter into an agreement to govern the terms and conditions under which Grantor will reserve [one] Dark Fiber strand[s] in Grantor's fiber optic cable for the exclusive use of Licensee as required by Licensee in connection with implementation of the Network installation in the ROW [and attachment of fiber optic cable and other components of the Network on or in existing or new utility or streetlight and/or utility poles and/or conduits.]

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## Agreement Terms and Conditions

**NOW THEREFORE**, in consideration of the promises and mutual covenants contained herein, the Grantor and Licensee, for valuable consideration, hereby agree as follows:

### **1. Definitions**

For the purpose of this Agreement, the following terms when used herein shall have the following meanings:

(i) "Access Point" means a Manhole, Vault, Handhole, Junction Box or Pedestal through which the ExteNet Cable may be accessed for the purposes of splicing fibers to interconnect to other networks or facilities.

(ii) "Authorized Contractors" means third party contractors (whether independent or affiliated with Grantor) that have been approved and authorized by Grantor to utilize Access Points and to make splices or perform other work on the ExteNet Cable as provided for in this Agreement.

(iii) "Dark Fiber" means an unlit optical fiber strand in a Fiber Segment that is separate from and has not yet been connected to any of the equipment, electronics, lasers or additional Fiber Segments necessary to transmit optical signals via the fiber strand or to corresponding fiber strands in other adjacent Fiber Segments.

(iv) "ExteNet Cable" means the several Fiber Segments, whether aerial or undergrounded, comprising the optical fiber components of the Network as deployed and depicted in the Fiber Route Map as may be changed by Licensee from time to time.

(v) "Fiber Route Map" means the map of the composite routes of the various Fiber Segments comprising the fiber cabling to be installed as part of the Network, as depicted on the map attached as Exhibit 1 as the same may be modified during or after construction of the Network. Exhibit 1 shall be replaced with the "As-Built" Fiber Route Map following completion of the Network and thereafter shall be updated from time to time as necessary to reflect modifications to the Fiber Segments or additional Fiber Segments comprising the ExteNet Cable made in accordance with the provisions of this Agreement.

(vi) "Fiber Segment" means a continuous run of multi-strand fiber optic cable covering a portion of the fiber cable route shown on the Fiber Route Map.

(vii) "Handhole" means a buried box, with a lid that is even with the surface of the ground, used to store, terminate, splice or transfer fiber optic cable.

(viii) "Junction Box" means a box where fiber optic cable splices and connections are made and

accessed.

(ix) "Licensed Fiber" means the [one] individual strand[s] of Dark Fiber within each Fiber Segment of the ExteNet Cable, as the same may be modified in accordance with this Agreement that shall be reserved and/or designated for exclusive use by Licensee in accordance with and subject to the terms of this Agreement. [For avoidance of doubt, additional Fiber Segments that are connected to the Network following its initial construction and deployment in accordance with the Fiber Route Map set forth in Exhibit 1 on the effective date of this Agreement shall be deemed a part of the ExteNet Cable and shall be subject to the foregoing obligations on the part of Grantor to reserve and/or designate [one] strand[s] of Dark Fiber for exclusive use by Licensee only if and to the extent that such Fiber Segments and any associated Equipment are located within the geographic boundaries of Licensee and are made subject to the ROW Agreement on terms and conditions no less favorable to Grantor than those that are then in effect with respect to the Network as initially constructed and deployed.]

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(x) "Manhole" means a subsurface enclosure which qualified personnel may enter and use for the purpose of installing, operating and maintaining facilities.

(xi) "Pedestal" means an above ground structure used to store, terminate, splice or transfer fiber optic cable.

(xiii) "Vault" means an underground structure used to store, terminate, splice or transfer fiber optic cable.

## 2. License

### 2.1 License Grant

Subject to the terms, conditions and limitations set forth herein, Grantor hereby grants to Licensee a license and right for the exclusive use of the Licensed Fiber for the transmission of optical signals generated by optical or other equipment owned or employed by Licensee. The duration of the foregoing license shall continue in perpetuity so long as the ExteNet Cable installation remains in place and is in use by Grantor and its successors in interest and assigns, but nothing herein shall obligate Grantor to continue to maintain and operate the ExteNet Cable or any portion thereof or to maintain any attachment rights related thereto during any periods in which Grantor is not otherwise using or planning to use the ExteNet Cable (other than the Licensed Fiber) for the provision of services to Grantor's customers. The foregoing license and right is granted as compensation to Licensee in lieu of any taxes that might otherwise be assessed on any property in the ROW based upon Grantor's installation of its facilities. Grantor or its successors in interest shall give Licensee prior written notice and a reasonable opportunity to assume responsibility for maintaining and operating each Fiber Segment containing Licensed

Fiber before removing such Fiber Segment or ceasing to use such Fiber Segment for the provision of services. Except where Grantor is otherwise legally obligated to remove a Fiber Segment in a shorter period of time, such prior notice shall be given at least ninety (90) days in advance of such removal. Notwithstanding the foregoing, in the event that (i) ExteNet or its successor in interest proposes to cease using a Fiber Segment (other than the Licensed Fiber) for the provision of services to customers and (ii) such Fiber Segment contains Licensed Fiber that is in use by Licensee, Licensee shall have the option, in order to avoid removal of such Fiber Segment, of assuming responsibility for the operation and maintenance of such Fiber Segment.

## **2.2 Scope of Grant**

(i) Grantor shall provide Licensee with access to the Licensed Fiber. To the extent that Grantor has authority to use and authorize third party use of Access Points, it will grant permission to Authorized Contractors to use such Access Points for splicing the Licensed Fiber for the purpose of interconnection to other compatible equipment or facilities as directed by Licensee and at Licensee's sole cost. Grantor shall have no obligation whatsoever to install any additional fiber optic cable or to allocate any additional strands of the ExteNet Cable to meet the needs of Licensee.

(ii) Licensee shall undertake to obtain and provide all approvals, authorizations, coordination and supervision that is necessary in connection with its use of the Licensed Fiber. Without limiting the foregoing, Licensee shall have the sole responsibility for performing all activities and paying all costs necessary to make the Licensed Fiber operational, including but not limited to: (i) splicing the Licensed Fiber to achieve interconnection between or within the applicable Fiber Segments and between the Licensed Fiber and fiber optic cable belonging to others, and (ii) providing, attaching and interconnecting equipment, electronics and lasers as required to transmit or receive optical signals via the Licensed Fiber. Licensee shall further have the sole responsibility for paying all costs and for constructing or otherwise providing facilities needed to connect the Licensed Fiber to any other network or facilities via appropriate Access Points, and for performing all necessary fiber splices for interconnection of the Licensed Fiber to other network facilities. Except as otherwise approved by Grantor (such approval not to be unreasonably withheld) all such splices and other uses of Access Points shall be carried out only by Authorized Contractors and, to the extent practicable, only during regularly scheduled maintenance windows or at other times that are reasonably convenient for Grantor.

(iii) Grantor and Licensee agree and acknowledge that Licensee's use and operation of the Licensed Fiber does not and will not create or convey to Licensee any ownership or property rights of any nature in the Licensed Fiber or any portion of the ExteNet Cable or of any Access Points or of the Network. Licensee may not encumber, offer as collateral, or allow any third party claims of any type on or against the Licensed Fiber.

(iv) In the event that Licensee or any agency thereof fails or refuses to give any approval or issue any permit that is purportedly required for the construction and installation of the Network

or otherwise takes action to prevent or prohibit construction or implementation of the Network substantially as proposed by Grantor in the materials it has heretofore submitted to the **[City Planning Department]** or other division with jurisdiction, then the license and right with respect to the Licensed Fiber as provided in this Agreement shall, without any action on the part of Grantor other than the giving of written notice thereof, be entirely null and void and of no further force or effect.

### 2.3 Designation of Licensed Fiber Strand

(i) At any time following completion of the Network construction and installation, Licensee may notify Grantor of its desire to access the Licensed Fiber reserved for its use by Grantor. Such notice shall be written and shall be provided no fewer than sixty (60) days prior to the date on which Licensee desires to access the Licensed Fiber for purposes of interconnection. Licensee's notice shall identify all of the following: (1) Licensee's planned use for the Licensed Fiber, (2) the specific portions of the Licensed Fiber route (i.e., the Fiber Segments) in which Licensee intends to light and use Licensed Fiber, (3) the Access Points Licensee desires to use (if any) to access and splice the Licensed Fiber and (4) all personnel or contractors that Licensee proposes to use to perform any work activity involving the Licensed Fiber, including but not limited to construction and installation of fiber drops or laterals for interconnection of the Licensed Fiber to ancillary Access Points or to lasers, electronics or other equipment, facilities or networks for purposes of lighting and using the Licensed Fiber, and (5) Licensee's plans for interconnecting with and using the Licensed Fiber, including relevant technical and functional network specifications and design criteria for Licensee's systems that may facilitate consultation and cooperation of Licensee and Grantor in the interest of efficient and effective implementation of Licensee's plans in accordance herewith.

(ii) Within ten (10) days following receipt of such initial notice, Grantor shall provide Licensee with a color-coded diagram designating the specific optical fiber strands within the designated Fiber Segments that have been designated as the Licensed Fiber for all purposes hereunder.

(iii) Grantor shall have the right to determine in advance whether Licensee's personnel and/or proposed contractors are qualified to perform such work activities and may disapprove any proposed personnel or contractor in its sole reasonable discretion. Grantor shall identify the reasons for such disapproval in writing and Licensee may propose alternate personnel or contractors.

(iv) Licensee is solely responsible for obtaining all public, private or government approvals, authorizations, permits, certifications, easements, rights of way and attachment rights beyond those required for installation and maintenance of the ExteNet Cable, if any, that are necessary in order for Licensee to light and transmit or receive signals using the Licensed Fiber, and shall provide documentary evidence thereof as and when reasonably requested by Grantor.

(v) At Licensee's request or in the event that Grantor refuses to approve Licensee's selected

contractor as an Authorized Contractor, Grantor will either propose or exert commercially reasonable efforts to cause one of its Authorized Contractors to propose to perform the work necessary for Licensee's proposed interconnection of equipment and other network facilities with the Licensed Fiber on a time and materials basis at then prevailing commercially reasonable rates for work of substantially similar complexity and difficulty in the relevant market.

#### 2.4 Limitations and Requirements for Use of Licensed Fiber Strand

(i) Grantor and Licensee agree and acknowledge that Licensee may use the Licensed Fiber in the ExteNet Cable for any lawful purpose for which the fiber strand is technically suited, provided that Licensee shall use the Licensed Fiber solely for public purposes, shall not use it for the provision of any telecommunications services in competition with the business of Grantor or for the benefit of any competitor of Grantor, and shall not permit any third party to use or operate the Licensed Fiber except at the direction of Licensee in furtherance of public purposes.

(ii) If Grantor determines for any reason that it is necessary to relocate, modify, underground or otherwise alter ("Relocation or Modification") all or any portion of the ExteNet Cable, including the Licensed Fiber (whether such Licensed Fiber is then lit and/or in use by Licensee), Grantor shall provide Licensee written notification prior to making the proposed relocation, modification or alteration. Such notice shall be given at least sixty (60) days in advance except in circumstances in which Grantor is legally obligated to take action more promptly and the prior notification requirement of this section shall not apply to emergency situations, in which case Grantor will give notice as quickly as is reasonably practicable. Licensee shall have no responsibility for costs and expenses relating to any such Relocation or Modification of the ExteNet Cable. But if and to the extent that such Relocation or Modification is required by reason of events or circumstances beyond Grantor's reasonable control, Licensee shall have sole responsibility for costs and expenses relating to any necessary rearrangement, relocation, modification or alteration of any of Licensee's fiber drops or laterals or other equipment, electronics or lasers installed to light the Licensed Fiber, or other facilities Licensee has interconnected to the Licensed Fiber ("Licensee Facilities Relocation or Modification") that may result therefrom. However, if and to the extent that such Relocation or Modification is made at Grantor's discretion or for Grantor's benefit, Grantor shall bear the reasonable cost of the Licensee Facilities Relocation or Modification resulting therefrom.

(iii) Any equipment, electronics, lasers, or interconnecting fiber or other network facilities provided by Licensee shall be installed and maintained in accordance with the requirements and specifications of the then current editions of the National Electrical Code (NEC), and the National Electrical Safety Code (NESC), each of which are incorporated by reference in this Agreement. Further, Licensee and its consultants and contractors shall at all times comply with the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (OSHA), with all applicable state and federal statutes and laws, and with all applicable regulations, rules and orders issued by any state or federal agency having jurisdiction thereof, including without limitation the Federal Communications Commission and the Insert Public Utility Commission.

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(iv) Grantor reserves the right to make periodic inspections at any time of any part of Licensee's equipment, electronics, lasers, or facilities (including interconnected fiber or copper cable) utilized by Licensee in conjunction with the Licensed Fiber for purposes of assuring compliance with the terms and conditions hereof and with applicable laws, rules and regulations as reasonably necessary to prevent or detect interference with or damage to the Network or breaches of Licensee's obligations hereunder. Except in the case of an emergency, Grantor shall give Licensee 48 hours notice before carrying out such inspections and Licensee shall be permitted, but not required, to have a representative present for such inspections. Such inspections shall be conducted at Grantor's expense unless Grantor determines that Licensee is not in compliance with the terms of this Agreement. In such instance, Licensee shall be responsible for paying Grantor for all reasonable costs incurred by Grantor in making the inspection. Licensee agrees that such periodic inspections by Grantor, or the failure to do so, shall not relieve Licensee of any responsibility, obligation or liability whether assumed under this Agreement or otherwise existing.

### **3. Maintenance**

(i) Grantor shall maintain all facilities interconnected with or comprising a part of the ExteNet Cable that are owned by Grantor, including the Licensed Fiber, provided that Grantor's obligation to maintain such facilities shall not in any way extend beyond the term of any other agreement with the Licensee for ROW use or equipment attachments to Licensee's facilities and provided further that such obligation shall cease earlier as to any Fiber Segment with respect to which Grantor and its successors in interests either: (1) loses the necessary attachment and access rights to enable such maintenance; or (2) permanently ceases to use such Fiber Segment (other than the Licensed Fiber) for the provision of services to their customers, provided that before removing any such Fiber Segment Grantor gives Licensee prior written notice and an opportunity to assume responsibility for maintaining and operating such Fiber Segment as provided in Section 2.1.

(ii) Licensee shall have sole responsibility for maintaining all of its equipment, electronics, lasers, fiber and other facilities interconnected to the Licensed Fiber. Licensee shall maintain its equipment, electronics, lasers and interconnecting fibers and facilities in good repair and in a manner that will not interfere with, or degrade the quality or reach of any signal, transmission or telecommunications carried on the ExteNet Cable. If Licensee's equipment or facilities should cause any type of interference with, or degradation of, any signal, transmission or telecommunications on the ExteNet Cable, Licensee agrees to correct the condition. Such correction shall be made within three (3) hours for any problem causing interference or disruption of any signal, transmission or telecommunications on the ExteNet Cable. Such correction shall be made within six (6) hours for any problem causing a degradation, but not disruption, of any signal, transmission or telecommunications on the ExteNet Cable. If Licensee fails to take such corrective action, Grantor may in its sole discretion correct said condition at Licensee's expense. Grantor shall notify Licensee in writing prior to performing such work

whenever practicable. When Grantor reasonably believes, however, that such conditions pose an immediate threat to public safety or interfere with the performance of Grantor's service obligations to its customers, or pose an immediate threat to the physical integrity of the ExteNet Cable or other facilities, Grantor may perform such work and/or take such action, including temporary disconnection of Licensee's equipment and facilities from the ExteNet Cable, that it reasonably deems necessary without first giving written notice to Licensee. Licensee shall be responsible for paying Grantor for all reasonable costs incurred by Grantor in taking such corrective actions if Grantor shows that the problem was in fact caused by Licensee's equipment or facilities. In the latter case, Grantor shall bear the cost of any reconnection or restoration of Licensee's equipment or facilities that is made necessary as a result of Grantor's mistaken actions. Grantor shall be indemnified by Licensee for such work in accordance with Section 4 below.

#### **4. Liability and Damages**

(i) Only as arising under this Agreement and not in its capacity as a municipality or otherwise, Licensee, its personnel, agents and contractors shall exercise reasonable caution to avoid damaging the facilities of Grantor and shall make an immediate report to Grantor of the occurrence of any such damage caused by its personnel, agents or contractors. Licensee agrees to reimburse Grantor for all reasonable costs incurred by Grantor for repair of such facilities damaged by Licensee, its personnel, agents and contractors.

(ii) Only as arising under this Agreement and not in its capacity as a municipality or otherwise, Licensee shall be liable to Grantor for all of its actions or omissions that cause damage to the ExteNet Cable, the Access Points and all other facilities and equipment associated with the Network, or that interfere with, disrupt or degrade the quality or reach of any signal, transmission or telecommunications carried on the ExteNet Cable or the Network, but shall not be liable for any special, indirect, or consequential damages arising from Licensee's actions or omissions.

(iii) Grantor shall not be liable to Licensee for any special, indirect, or consequential damages arising from any interruption or degradation of Licensee's communications carried on Licensed Fiber.

#### **5. Mutual Indemnification**

(i) Each of Grantor and Licensee (as "Indemnifying Party") hereby agrees to indemnify, defend and hold harmless the other (as "Indemnitee") from and against any third party demand, claim, action, suit or proceeding ("Claim") and any resulting loss, liability, cost, expense or fine, including court and appeal costs and reasonable attorneys' fees and expenses ("Losses"), that are caused by or arise out of the actual or alleged acts or omissions, whether negligent or willful, of the Indemnifying Party, its personnel, agents or contractors, in connection with the performance under this Agreement or otherwise in connection with the construction (including any excavation), installation, operation,



maintenance or use of the Extenet Cable or the Licensed Fiber or any equipment or facilities interconnected or associated therewith.

- (ii) Notwithstanding the foregoing, each party's respective obligations as an Indemnifying Party under paragraph (i) above shall not include any liability or obligation to defend:
  - (a) to the extent that Losses arise out of or are caused by the Indemnitee's intentional misconduct and/or gross negligence;
  - (b) to the extent that the defense of any Claim is prejudiced, or the resulting Losses are caused by the Indemnitee's failure or refusal to provide the Indemnifying Party with timely notice of the Claim, or to cooperate in the defense thereof, or are caused by the Indemnitee entering into a settlement or compromise of the Claim without the prior written approval of the Indemnifying Party; or
  - (c) to the extent that Losses result from the Indemnitee's failure or refusal to take commercially reasonable actions as the Indemnifying Party may request, and at the Indemnifying Party's sole cost and expense, in order to mitigate or lessen such Losses.
- (iii) The Indemnitee shall give the Indemnifying Party timely written notice of any Claim covered by this Section 5. The Indemnitee shall tender the defense of the Claim to the Indemnifying Party and such defense shall be carried out under the control and at the expense of, the Indemnifying Party. The Indemnitee may participate in the defense of a Claim at any time, provided that, during all periods in which such defense has been assumed and is being carried out by the Indemnifying Party with qualified counsel, the incremental costs of the Indemnitee's participation shall be at its own expense. The Indemnifying Party may not agree to any settlement of Claims affecting the Indemnitee's operations or finances without the Indemnitee's prior written approval, provided that if such approval is unreasonably withheld or delayed, then the Indemnifying Party's obligations under this Section 5 shall be limited to the Losses that would have been incurred if such settlement had been approved.
- (iv) Notwithstanding anything herein to the contrary, Licensee shall also indemnify Grantor against any third party claims or charges comprising pass-throughs of property taxes imposed upon structures located in the ROW by reason of Grantor's attachments of facilities to such structures or improvements made to such structures in order to accommodate such attachments.

## **6. Insurance**

- (i) Without limiting any obligations or liabilities of Licensee under this Agreement, prior to interconnecting with the Licensed Fiber, Licensee shall maintain for the duration of such interconnection, at its own expense, Commercial General Liability Insurance including Contractual Liability Coverage, covering liability assumed under this Agreement,

Products/Completed Operations Coverage, Broad Form Property Liability Coverage, and Personal Injury Coverage in the amount of \$1,000,000 combined single limit for Bodily Injury and Property Damage and a \$1,000,000 occurrence aggregate.

(ii) Licensee's insurance policies required by this Agreement shall name Grantor as an additional insured.

(iii) Licensee shall provide Grantor with Certificates of Insurance evidencing coverage currently in effect prior to commencing to place equipment, electronics or lasers to light the Licensed Fiber. All policies are to provide Grantor with thirty (30) days prior written notice of cancellation or any material adverse change in conditions.

#### **7. Assignment**

(i) Licensee may not assign, sub-license, or transfer in any manner, in whole or in part, its rights, duties or obligations under this Agreement.

(ii) Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

#### **8. Termination**

The Parties shall have the right to terminate this Agreement and the license granted herein under the following circumstances:

(i) Grantor. Grantor may terminate this Agreement (a) upon thirty (30) days written notice with an opportunity to cure within ten (10) days therefrom in the event that Licensee commits a material breach of this Agreement, becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute or becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority, or uses the Licensed Fiber for any unlawful purpose, or (b) upon sixty (60) days written notice in the event that Grantor for any reason ceases to have rights to operate and maintain the ExteNet Cable or any significant portion thereof, or (c) immediately upon written notice pursuant to Section 2.2(iv).

(ii) Licensee. Upon sixty (60) days written notice, Licensee may terminate this Agreement, for any reason or for no reason (i.e., for convenience).

(iii) In the event of termination in accordance herewith for any reason, Licensee shall remove all equipment, electronics, lasers and fiber or other facilities interconnected to the ExteNet Cable within sixty (60) days after the effective date of the termination. All costs of any kind arising from removal of Licensee's equipment, lasers and fiber, or other facilities shall be borne entirely by Licensee.

**9. General Provisions**

**9.1 Notices**

- (i) All notices required or permitted to be given to either party by the other party under any provisions of this Agreement shall be in writing. Notice shall be deemed served when delivered by hand or sent by a nationally recognized overnight courier service to the other party's address set forth below during normal business hours. If a Notice is mailed, service is deemed complete upon the earlier of actual delivery or the close of business on the third business day following the date when the Notice is placed in a receptacle regularly maintained by the U.S. Postal Service addressed to the party at the address set forth below with postage pre-paid.
  
- (ii) Notices shall be given to the following:

City of [\_\_\_\_\_]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ExteNet:  
ExteNet Systems, Inc.  
3030 Warrenville Rd, Ste 340  
Lisle, IL 60532  
Attn: Mr. Daniel Timm, CFO and  
Mr. George A. Vinyard, General Counsel

Or to such other addresses and persons as Licensee or Grantor may hereafter designate in a notice given in accordance with this Section 9.1.

**9.2 Non-Waiver**

Failure of Grantor 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, or to exercise any right or privilege hereunder, shall not be construed as a continuing or future waiver of such term, condition, right or privilege, but the same shall be and remain at all times in full force and effect.

### **9.3 Headings**

All headings contained in this agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

### **9.4 Governing Law**

This Agreement and the rights and obligations contained in it shall be construed in accordance with, and governed by, the laws of the State of [STATE], without regard to its choice of law provisions.

### **9.5 Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

### **9.6 Confidentiality**

The parties acknowledge that Grantor will disclose proprietary and confidential network and business information to Licensee in order to perform this Agreement. Licensee agrees to take all reasonable steps to protect such proprietary and confidential information from public disclosure, and to make available such information internally only to Licensee personnel with a need to know or to its legal counsel. Licensee shall not disclose the contents of this Agreement except as required by state law in response to a formal request pursuant to the applicable Freedom of Information Law. Licensee shall notify Grantor within 48 hours of receiving a request under the applicable Freedom of Information Law for information about this Agreement.

### **9.7. Venue**

Venue for any complaint, cause, case or action arising from or related to this Agreement shall be in a state or federal court of competent jurisdiction sitting in the State of [STATE].

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**CITY of [\_\_\_\_\_]**  
**(Licensee)**

**ExteNet Systems, Inc.**  
**(Grantor)**

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

By: \_\_\_\_\_  
Daniel L. Timm, CFO

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

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

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

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

**Exhibit 1**  
**Fiber Route Map dated [REDACTED]**