

LICENSE AGREEMENT

Licensors: **City of Cambridge**
 City Hall
 795 Massachusetts Avenue
 Cambridge, MA 02139

Licensee: _____ **(Name)**
 _____ **(Full Address)**
 _____ **(Phone Number)**
 _____ **(Email)**

THIS License Agreement (“Agreement” or “License” or “License Agreement”) is entered into as of _____, 20____, by and between the **City of Cambridge**, a municipal corporation in the Commonwealth of Massachusetts (hereinafter “Licensor” or “City”), and

_____ **(hereinafter “Licensee”)**.

WHEREAS, the Licensee wishes to access and utilize the public way underneath and surrounding and near a utility pole, including the City’s air rights above the public way, and/or a City pole or other structure, located at

in Cambridge, MA (“Approved Wireless Facility” or “Installation” as further defined in paragraph 2 below).

1. **Definitions.** The following definitions shall apply generally to the provisions of this Agreement:
 - a. “Approval” shall mean each separate authorization, granted by Licensor to Licensee with regard to a specific Equipment installation, each and every of which shall be subject to the terms and conditions of this Agreement.
 - b. “Equipment” means the equipment cabinets, antennas, utilities, and fiber optic cables, wires, and related equipment, whether referred to individually or collectively, to be installed on a Municipal Facility and operated by Licensee under a particular Approval.
 - c. “Hazardous Substance” means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including, but not limited to, petroleum products and asbestos.
 - d. “Laws” means any and all applicable statutes, codes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, court orders, or other requirements of the Licensor or other governmental agency having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

- e. "License Fee" means the compensation paid under any Approval for use of the Municipal Facilities.
- f. "Make-Ready Work" means the work required on or in a Municipal Facility to create space for the Equipment, and/or replacing and/or reinforcing the existing Municipal Facility to accommodate Equipment including, but not limited to, rearrangement or transfer of existing Equipment and the facilities of other entities, and Municipal Facility relocation and replacement if applicable.
- g. "Municipal Facility (ies)" means Licenser-owned structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliners located within the ROW, and may refer to such Municipal Facilities in the singular or plural, as appropriate to the context in which used.
- h. "Person" means and includes any individual, partnership of any kind, corporation, Limited Liability Company, association, joint venture, or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns, or any combination of such persons.
- i. "Right(s)-of-Way" or "ROW" means the improved or unimproved surface or subsurface of any public street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. Right-of-Way includes public streets, roads, lanes, alleys, sidewalks, medians, parkways, public utility easements, and landscaped lots. The Public Right-of-Way does not include private ways.
- j. "Services" means the transmission and reception of communications signals for the provision of personal wireless services, telecommunications services and mobile data services as defined in federal law, but specifically excluding cable services as defined in 47 U.S.C. § 522(6).
- k. "Transfer" means any transaction in which the rights and/or obligations held by Licensee under this Agreement or an Approval are transferred, directly or indirectly, in whole or in part to a party other than Licensee.

2. Term and Termination of License Agreement.

The term of this License Agreement is a period of five (5) years, commencing on the date of execution by both Parties (the "Term"). In the event that the Licensee decides to remove its Equipment at the end of the Term, the term shall extend for ten (10) additional days during which time the Licensee may remove its Equipment and restore the public way and any utility pole(s), subject to proration of any amounts owed as described herein, and subject to the provisions of this License Agreement as further described herein. Licensee agrees that notwithstanding the foregoing, where the City has planned a redevelopment or change to a street, sidewalk, square, or other area of the City and the City informs the Licensee in writing that the City is terminating this License as a result thereof prior to the expiration of the five year Term, Licensee shall remove its Installation forthwith at its own cost and may apply to re-install its Installation in a different location after the City's redevelopment or change to such area.

3. Representation Concerning Services; No Authorization to Provide Other Services.

Licensee represents, warrants, and covenants that its Equipment installed pursuant to this Agreement and each Approval will be utilized solely for providing the Services, and Licensee is not authorized to and shall not use its Equipment installed on Municipal Facilities to offer or provide any other services not specified herein without Licenser's prior written consent. At any

time that Licensee ceases to operate as a provider of Services under federal or state law, it shall provide written notice of the same to Licensors within seven (7) days of such cessation, at which time the Licensors shall have the option, in its sole discretion and upon ten days' written notice to Licensee, to terminate this Agreement and to require the removal of Licensee's Equipment from the ROW and from Municipal Facilities, including the cost of any site remediation, at no cost to the Licensors, without any liability to Licensors related directly or indirectly to such termination. Licensee agrees that any failure to notify the Licensors as provided herein shall result, in addition to any damages incurred by the Licensors, an amount of liquidated damages in the amount of \$100.00 per day until the date upon which the Licensors is properly notified as provided herein.

4. Grant of Location.

Subject to the conditions herein, Licensors hereby authorize and permit Licensee to locate, place, attach, install, operate, maintain, repair, control, remove, reattach, reinstall, relocate, and replace Equipment on identified Municipal Facilities located in the ROW for the purpose of providing Services pursuant to and subject to any limitations or requirements of any grant of location by the Pole and Conduit Commission. If Licensee's Municipal Facility is structurally inadequate or otherwise unsuitable to accommodate its proposed Equipment, Licensors may permit the replacement of the Municipal Facility (a "Replacement Facility") with one that is acceptable to and approved by the Licensors as part of the applicable Approval. Any Replacement Facility shall be installed and maintained in accordance with this Agreement.

5. Unmetered electricity where possible.

Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to the Equipment, including, but not limited to, making payments to electric utilities. Licensee acknowledges that operation of any street lights is part of the camouflage requirements of the facility, and Licensee shall pay for all electricity required for its wireless services and for the street light for purposes of camouflage. Where commercially feasible and available, Licensee shall secure unmetered electricity services.

6. Additional Authority.

Nothing in this Agreement shall limit in any way Licensee's obligation to obtain any additional required regulatory approvals or permits from any state or federal department or agency, or any City department, board, commission, or other governmental agency that has regulatory authority over the Licensee's proposed activities involving use of the Municipal Facilities in the ROW.

7. No Interference.

Licensee acknowledges and agrees that the primary purpose of the Municipal Facilities is to serve the Licensors and the public. In the performance and exercise of its rights and obligations under this Agreement, Licensee shall not interfere in any manner with Licensors' own services or the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the Licensors, electroliners, cable television, location monitoring services, public safety and other then existing telecommunications equipment, utilities, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable laws or this Agreement. If such interference should occur, Licensee shall discontinue using the Equipment, methodology, or technology that causes the interference until such time as

Licensee takes corrective measures to eliminate such interference. In the event that such interference does not cease within three business days after notice, Licensee acknowledges that continuing interference may cause irreparable injury and harm, and therefore, in addition to any other remedies, and without limitation of any other remedy, Licensors shall be entitled to terminate the Service and remove any equipment upon the Municipal Facilities, with no liability on the part of the Licensors for any damage to any property or person of the Licensee..

8. Permits; Default.

In addition to any other remedies available hereunder, whenever Licensee is in default of this Agreement or an applicable Approval, after notice and applicable cure periods, Licensors may deny further encroachment, excavation, or similar permits for work in connection with installations under this Agreement until such time as Licensee cures all of its defaults.

9. Compliance with Laws.

Licensee shall comply with all federal, state and local laws and regulations in the exercise and performance of its rights and obligations under this Agreement.

10. Non-Exclusive Use Rights.

Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Licensee under this Agreement shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the Licensors to use, and to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities, exclusively or concurrently with any other person or persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title (collectively, "Encumbrances") which may affect the ROW or Municipal Facilities now or at any time during the term of this Agreement, including, without limitation any Encumbrances granted, created, or allowed by the Licensors at any time. During the Term of this Agreement, the City hereby grants Licensee the non-exclusive right to enter and to use the public right of way to attach, install, construct, maintain and operate a wireless facility at the above-described location/s (hereinafter "Approved Wireless Facility") in accordance with this License Agreement. In the event that the Federal Communications Commission's Declaratory Ruling and Third Report and Order, Adopted September 27, 2018 is overturned, or the law otherwise changes with respect to the legal requirements with respect to any Approved Wireless Facility, then Licensors shall have the option to cancel this License with 10 days' notice to Licensee.

11. Aesthetic Requirements.

Any Approved Wireless Facility shall comply with the aesthetic requirements of the City, in a manner that is in compliance with any grant of location by the City's Pole and Conduit Commission. Any Approved Wireless Facility shall be camouflaged in the manner as directed by the City. Licensee hereby agrees that the size, shape, and coloring are all elements of camouflage, and any change to such size, shape, and coloring must be pre-approved in writing by the City.

12. Obtaining Required Permits.

Licensee acknowledges that in addition to a signed Approval, each installation of Equipment and maintenance thereof shall also be subject to then-current City permitting requirements as set out in any federal, state, or City or regulation. Licensee agrees to comply with the current applicable ordinances and regulations regarding such Installations and maintenance as well as

any future regulations that may be adopted by the City related to such Installations and maintenance. Licensee shall apply for the appropriate permits and pay any required permit fees.

13. Change in Equipment.

If Licensee desires to install Equipment which is different in any material way from the then-existing and approved Equipment, then Licensee shall first obtain the written approval for the use and installation of such Equipment from an authorized representative of the Licensor. Any such approval shall take the form of an amendment to the applicable Approval. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide “load” (structural) calculations for all Equipment changes. In addition to the foregoing, Licensee shall comply with any other applicable City permitting or approval process for the Equipment change.

14. Unauthorized Equipment.

If Licensor discovers that any Equipment has been installed on Municipal Facilities without authorization pursuant to an Approval or grant of location by the Pole and Conduit Commission, Licensor may send an invoice to Licensee for a sum equal to five (5) times the then-current License Fee as compensation for the unauthorized attachments, and, within sixty (60) days from the date of such invoice, Licensee shall (a) pay the invoiced amount to Licensor and submit an Application for the unauthorized Equipment, or (b) produce documentation showing Licensor’s prior approval of the Equipment identified in the invoice. If, in accordance with this Section, Licensee fails to pay all fees and submit the Application or submit documentation satisfactorily showing Licensor’s prior approval within sixty (60) days of Licensor’s invoice, Licensor may remove the unauthorized Equipment at Licensee’s expense. If Licensor removes such unauthorized Equipment, such Equipment shall become the property of Licensor, who shall have sole rights over such Equipment’s disposition. Licensor’s removal of unauthorized Equipment shall not release Licensee from its obligation to pay those invoiced fees accruing pursuant to this Section.

15. Insurance and Indemnification.

Licensee and its agents, employee, partners, directors, members, agents, employees, contractors, third parties and/or guests (“Licensee”) shall indemnify, hold harmless, release and defend the City, its officials and employees from and against all claims, damages, accusations, complaints, injuries (including worker’s compensation), property damage, requirements to respond to inquiries, breach of contract, violation of law, or other losses and expenses, including but not limited to attorney’s fees, which arise out of or result directly or indirectly, from the Licensee’s use of the public way, the ground underneath the public way, and/or, any air rights above the public way, or with regard to any other matter in any way related to this License and/or Licensee’s application or operation of Licensee’s equipment or facility or emissions therefrom, or any other matter arising from Licensee’s agreement, responsibilities, conduct, acts or lack thereof, including but not limited to any claims or complaints related to any discrimination, alleged defects in the public way wireless or radio interference issues, radiation exposure issues, violation of any telecommunications law or other federal, state or local law, rule or regulation, or FCC order or any other regulation or administrative provision or otherwise, or any other of Licensee’s requirements or responsibilities, or lack of compliance thereof, whatsoever, whether any such claims or damages are caused by the City’s negligence, reckless or willful misconduct or not, brought by any entity, agent, employee, person, governmental agency, other licensee or other member of the public. By this, Licensee agrees to comply with all federal, state, and local laws, rules and regulations, including procurement of any required licenses,

permits, or any other authorizations. Licensee agrees to provide the City with any documents required by any law or in compliance with any request by the City. Licensee shall hire and pay for counsel of the City's choosing to defend and/or represent the City with regard to any such complaints, claims, requests, requirements, or allegations, including for any responses required by any law, rule, or regulation, or any other matter, action, claim or complaints related to any of the above referenced matters herein. The City, its employees, departments, officers, directors, boards, commissions or its agents shall not be liable to Licensee for any claims, causes of action, lawsuits or injury or damage or any other cause of whatever nature arising from or related to this License, nor shall the City be liable to Licensee for any such damage caused by the City or any other person with regard to any matters related hereto, whether caused by negligence, reckless or willful misconduct or not, and Licensee shall hire and pay for counsel of the City's choosing to defend and represent the City with regard to any such complaints, inquiries, claims or allegations.

The parties hereto agree that this License Agreement shall be governed by the laws of the Commonwealth of Massachusetts, and any disputes shall be settled in the state courts of the Commonwealth of Massachusetts, without regard to conflict of law principles, with counsel for the City hired and paid by the Licensee. Licensee agrees that City street lights and any other structure in the public way or otherwise, must be kept operational, both for purposes of camouflage of the Approved Wireless Facility, and for safety and convenience of members of the public, and any damage to such structure, any use of double poles, or any failure of the street lights, including of any such light bulbs, or the failure to comply with any of the City's aesthetics or camouflage requirements for the facility or structure, maintenance or operation of the facility or otherwise, as determined by the City in its sole discretion, must be maintained and repaired immediately, and Licensee agrees to be subject to liquidated damages of \$100.00 per day after notice by the City of any street light malfunction, brightness, color temperature, timing or other issue, damage, or repair needed, whether any such malfunction, damage or failure is caused by any City employee, third party, utility, act of nature, or otherwise. Licensee agrees that any street light is required to be lighted in accordance with any schedule determined by the City, which may change seasonally or by the day, and must be dimmed or brightened depending on the time schedule as determined by the City. Licensee further agrees that the light shall be of a color temperature as directed by the City. Any lighting shall be of an LED or equivalent form of lighting with respect to energy efficiency. Licensee agrees to conduct maintenance and repairs solely at its expense, and which shall be separate and apart from any liquidated damages provisions herein, and if the City is required to perform such repairs due to Licensee's failure to do so within 10 days after notice, the Licensee shall reimburse the City's costs and expenses in conducting such maintenance and repair over and above the liquidated damages provisions herein, and shall fully indemnify the City as provided above. If requested by the City, Licensee shall provide a \$10,000 retainer, to counsel of the City's choosing, for purposes of indemnification and representation of the City, with additional retainers to be paid by Licensee when such retainer has been expended below \$5,000, with regard to the aforementioned matters herein.

The Licensee agrees to obtain and maintain adequate insurance for its use of any Approved Wireless Facility and the public way for its activities. Licensee agrees to maintain general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, worker's compensation insurance not less than the amount of \$100,000 per accident and \$500,000 per illness or the statutorily required amount, whichever is greater, and

umbrella insurance in an amount not less than \$5,000,000. Licensee shall also provide a performance bond in the amount of \$1,000,000.00, which shall cover the City for any breaches by the Licensee with respect to any aspect of this Agreement. All such insurance coverage shall be maintained throughout the License Term and shall be required separately for each Installation or structure in the public way or otherwise. The insurers under such policies shall be satisfactory to the City and such policies shall name as insured parties the City and Licensee, and such policies shall indicate that the insurance company shall provide thirty (30) days' prior written notice to the City of lapse or cancellation. All insurance carriers shall carry an A.M. Best rating of "A-" or better. Such insurance shall provide for the waiver by the insurance carrier of any subrogation rights against City, its agents, servants and employees. The Licensee shall provide the City with a certificate of insurance of each insurance policy and shall provide a full copy of the insurance policy within seven (7) days of request by the City.

16. No Assignment.

Licensee hereby covenants and agrees that neither the License nor any interest herein or therein, shall be assigned, mortgaged, pledged, encumbered or otherwise transferred and that neither the Approved Wireless Facility, any City structure or the public way, nor any part thereof, shall be encumbered in any manner by reason of any act or omission of Licensee, or used or occupied, or permitted to be used for any other purpose other than as described in this License. The License shall not be sublet or offered or advertised for subletting, without in each case, the City's prior written consent. Any such individual or organization, including any parent companies, which sublets such space shall be required to sign a License Agreement with the City.

17. Changes to Approved Wireless Facility.

Licensee shall not make any alterations, additions, improvements, attachments, nor tape, nail, staple or otherwise decorate the Approved Wireless Facility, without the prior written consent of the City.

18. Notices.

Any notice or demand by Licensee to the City shall be served by registered or certified mail, with a return receipt, addressed to Licensors, to the attention of City Manager, City Hall, 795 Massachusetts Avenue, Cambridge, Massachusetts, 02139, to the Cambridge Board of License Commissioners, 831 Massachusetts Avenue, Cambridge, Massachusetts, 02139, and to the City Solicitor, City Hall, 795 Massachusetts Avenue, Cambridge, Massachusetts, 02139, and any notice or demand by City to Licensee shall be served by regular mail, email or in hand addressed to Licensee at the address noted in this License Agreement or as noted in any correspondence or application form with the City.

19. Entire Agreement.

This License Agreement contains the entire agreement of the parties and may not be modified except by an instrument in writing, signed by the parties hereto.

20. Validity.

The invalidity of one or more of the provisions of this License Agreement shall not affect the remaining portions of this License Agreement, and if any one or more of the provisions of this License Agreement should be declared invalid by final order, decree or judgment of a court

of competent jurisdiction, this License Agreement shall be construed as if such invalid provisions were not included herein but every other provision herein shall be considered valid and binding.

21. Choice of Law.

This License Agreement and any dispute arising out of or related to this Agreement or the use of any Authorized Wireless Facility, as well as the terms and conditions set forth in this Agreement, shall be governed and interpreted pursuant to the laws of the Commonwealth of Massachusetts, notwithstanding any principles of conflicts of law. Any dispute related to this agreement and/or the underlying application for installation of small cell wireless facilities, or any City policy or requirement for installation of wireless facilities, shall be brought, if at all, in the Commonwealth of Massachusetts, in the Middlesex Superior Court, and the parties hereto waive any rights to removal to any other court, notwithstanding any federal question or diversity jurisdiction, and with respect to any such dispute, the City shall be entitled to its attorneys' fees and costs, but the Licensee shall in no circumstance be entitled to its attorneys' fees or costs, and Licensee waives any right thereto.. This paragraph, and only this paragraph, shall be binding immediately upon execution of this Agreement by Licensee.

22. Counterparts.

This License Agreement may be signed in counterparts, each of which shall be considered an original execution.

23. City's Right to Cure.

In the event that the Licensee fails to comply with the terms of this Agreement and/or with any maintenance requirements, the Licensee agrees that the City may assume such responsibilities and repair and/or maintain the Approved Wireless Facility, and the Licensee shall reimburse the City for its expenses due to such assumption, in addition to any reimbursement required under Section 4 of this License Agreement.

24. Underground Connections.

There shall be no aerial cable connections to any Approved Wireless Facility, unless approved by the Pole and Conduit Commission. Any connections to the Approved Wireless Facility shall be made underground, subject to the Pole and Conduit Commission's, and any other City departments', requirements and prior approval for common access to any trenches needed for the Approved Wireless Facility, unless otherwise approved by the Pole and Conduit Commission.

25. Expiration of License.

Six months prior to the expiration of this License, Licensee shall either apply for another license for an Installation or other structure or facility at the subject location or inform the City of its plans to remove its Equipment and bring the public way and any City structure back to its original condition prior to installation of the Approved Wireless Facility.

26. Default.

Any default or failure, as determined exclusively by the City, of the Licensee with regard to any term of this License Agreement hereunder, or the application process or policy, including but not limited to any requirement to procure insurance or pay any fees, or comply with the annual re-certification and affidavit required in the application policy, shall constitute a default and authorize the City to immediately terminate this License Agreement with or without notice,

and subject Licensee to any damages claimed by the City arising from such default, in an amount to be exclusively determined by the City, and allow the City to immediately remove any Equipment and dispose of such Equipment as determined necessary by the City, at its sole discretion, and restore the public way, with the City's expenses, including attorneys' fees and costs, to be paid by the Licensee based upon the City's determination, with the provisions of Section 15 hereto being applicable with respect to any such removal and restoration.

27. Late Payments.

Any late payments for any fees or other amounts required by this License Agreement, application fees, permit fees, or otherwise, shall be subject to late fees which shall accrue interest on late payments in the amount of 14 percent per annum. Any such late payments may, in the City's discretion, be considered a default as provided in Section 26 herein.

28. Safety Training.

Upon request of the City to the Licensee, Licensee shall provide to the City's employees who may come in contact with or have access to the Approved Wireless Facility, training that shall include occupational safety training in accordance with applicable laws and Licensee's own policies. Licensee may work collectively with other licensees to provide combined safety training programs to the City's employees. The frequency, scheduling, duration and content of the safety training under this Section shall be determined by the City in cooperation with the Licensee and/or other licensees.

29. Interpretation of Agreement.

This License Agreement has been negotiated at arm's length and between persons and entities sophisticated and knowledgeable in the matters concerned herein and shall be interpreted to achieve the intents and purposes of the parties, without any interpretation against any party responsible for drafting any part of this License Agreement, which shall be considered drafted by all parties hereto.

30. No Estate Created.

This License Agreement shall not be construed as creating or vesting in Licensee any estate in the location of and about the Approved Wireless Facility or any interest in real property.

31. Repair of Damage.

Licensee shall neither cause nor suffer any waste of the location of the Approved Wireless Facility and shall maintain the location of the Approved Wireless Facility in good order at all times. The Licensee's responsibilities shall include the restoration or repair of any and all damage to the location of and about the Approved Wireless Facility resulting from any act, failure to act or negligence of the Licensee. Any time in which any street light or traffic signal, or other structure is not functioning or is damaged, or the public way is not brought back to its original condition, due to any removal or restoration, Licensee shall compensate the City pursuant to the liquidated damages provisions contained herein, in addition to all other expenses required to be borne by the City in any required repair or replacement of the public way or any City structure. This obligation shall survive the termination of the License Agreement.

32. Miscellaneous.

As required by M.G.L. Chapter 62C, Section 49A, the undersigned Licensee certifies under penalty of perjury that he has complied with all laws of the Commonwealth of

Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support, and shall comply with the City of Cambridge's Living Wage Ordinance.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this _____ day of _____, 20_____.

LICENSEE:

By: _____

Print Name: _____

Title: _____

Any Parent Company of Licensee

Company Name

By: _____

Print Name: _____

Title: _____

CITY OF CAMBRIDGE, MASSACHUSETTS

By: _____

Name: Louis A. DePasquale

Title: City Manager

Approved as to form:

By: _____

Name: Nancy E. Glowa

Title: City Solicitor