

Verizon Agreement Number

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**CONDUIT LICENSE AGREEMENT**

DATED \_\_\_\_\_

BETWEEN

VERIZON NEW ENGLAND INC. (LICENSOR)

AND

----- (LICENSEE)

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## APPENDICES

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## CONDUIT LICENSE AGREEMENT

THIS AGREEMENT, made as of \_\_\_\_\_, between VERIZON NEW ENGLAND INC., organized and existing under the laws of the State of New York, having its principal office at 9 Bowdoin Sq Floor 6, Boston, MA 02114, (hereinafter called “Licensor”) and -----, organized and existing under the laws of the State of ----- having its principal office at -----, (hereinafter called “Licensee”).

### WITNESSETH

WHEREAS, Licensee for its own use desires to place and maintain cables, equipment, and facilities in conduit of Licensor, specifically in the Commonwealth of Massachusetts and

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the placement of cables, equipment, and facilities by Licensee in Licensor’s conduit subject to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

### **ARTICLE I - DEFINITIONS**

- A) Conduit. A structure, usually underground, containing one or more ducts.
- B) Conduit Occupancy. Occupancy of a conduit system by any item of Licensee's Facilities.
- C) Conduit Occupancy Fee. A specified amount revised periodically, billed semi-annually or annually to the Licensee.
- D) Conduit Record Search and Manhole Survey. There are two elements of the Conduit Record Search and Manhole Survey: 1) administrative effort required to process the application and review conduit records and 2) field inspection of the existing conduit facilities to determine any necessary Make-ready work to accommodate Licensee’s Facilities and prepare the cost estimate for Make-ready Work, if applicable.

- E) Conduit System. Any reinforced passage or opening in, on, over, under or through the ground capable of containing communications facilities, and includes: main conduit; underground dips and short sections of conduit under roadways, driveways, parking lots, railroad right of ways and similar conduit installations; laterals to conduits and into buildings; ducts; and manholes.
- F) Conduit Work Inspection. Licensors' Contract Work Inspectors' visual observation of Licensee work in Licensors' Conduit System during the placement of Licensee's Facilities and whenever a Licensee is working in the Licensors' conduit and/or manhole system or buried splice pit. The purpose is to ensure the Licensee's Facilities are placed in the proper location, work is performed in a manner so as not to disturb or damage Licensors' facilities, and Licensee's work conforms to the standards required by this Agreement.
- G) Duct. A single enclosed raceway for wire conductors or cables.
- H) Innerduct. A small - diameter, semi-flexible duct, located in a conduit system to provide a means for compartmentalizing conventional ducts into multiple pathways for housing and protecting smaller cables.
- I) Licensee's Facilities. The cable and all associated equipment and hardware owned by the Licensee which occupies Licensors' Conduit System.
- J) Licensee's Maintenance Work. Work performed by Licensee on its facilities for repair, replacement and daily servicing of its plant.
- K) Manhole. A subsurface enclosure which personnel may enter and use for the purpose of installing, operating and maintaining facilities.
- L) Make-ready Work. All work, including but not limited to, rearrangement and/or transfer of existing facilities, rodding, roping and slugging ducts, innerduct placement or other changes required to accommodate the Licensee's Facilities in a conduit system.
- M) Periodic Inspection. Licensors' inspection of Licensee's facilities performed to determine that conduit occupancy is authorized and facilities are maintained in conformance with the required specifications in Article VI of this Agreement.
- N) Planning Manager's Area. A geographic area assigned to a Verizon New England Engineering representative. The Planning Manager's Areas are set forth in APPENDIX III.

## **ARTICLE II – SCOPE OF AGREEMENT**

- 2.1 Subject to the provisions of this Agreement, Licensor agrees to issue to Licensee for any lawful purpose, revocable, non-exclusive licenses authorizing the placement of Licensee's Facilities in Licensor's Conduit System. This Agreement governs the fees, charges, terms and conditions under which Licensor issues such licenses to Licensee. This Agreement is not in and of itself a license, and before making any placement in Licensor's Conduit System, Licensee must apply for and obtain a license.
- 2.2 This Agreement supersedes all previous conduit agreements between Licensor and Licensee with respect to the subject matter contained herein. This Agreement shall govern all existing licenses between Licensee and Licensor as well as all licenses issued subsequent to execution of this Agreement.
- 2.3 No use, however extended, of Licensor's Conduit System or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such Conduit System. Licensee's rights herein shall be and remain a license.
- 2.4 Nothing contained in this Agreement shall be construed to require Licensor to construct, retain, extend, place, or maintain any conduit or other facilities not needed for Licensor's own service requirements.
- 2.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Licensor entering into agreements with other parties regarding the Conduit System covered by this Agreement
- 2.6 Nothing contained in this Agreement shall be construed to require Licensor to grant a license where Licensor believes that placement of Licensee's Facilities would interfere with Licensor's existing service requirements, or the use of Licensor's facilities by other parties, or create a hazardous or unsafe condition.

## **ARTICLE III – FEES AND CHARGES**

- 3.1 General
  - 3.1.1 Licensee agrees to pay to Licensor the applicable Conduit Occupancy Fees and Charges as specified in and in accordance with the terms and conditions of subpart 3.2 of this Agreement and of APPENDIX I, attached hereto and made a part hereof.

- 3.1.2 The Licensor may change the amount of Conduit Occupancy Fees specified in APPENDIX I by giving the Licensee not less than sixty (60) days written notice prior to the date the change is to become effective. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such sixty (60) day notice period if the change in Fees is not acceptable to Licensee. Upon termination, Licensee shall thereafter remove its facilities in accordance with the process set forth in Article X, subpart 10.3 of this Agreement.
- 3.1.3 Changes in the amount of Conduit Occupancy Fees specified in APPENDIX I shall become effective on the date specified by Licensor, subject to the sixty (60) day advance written notice. Licensee shall have the right to challenge the increase to the Conduit Occupancy Fees by submitting the issue to the regulatory body asserting jurisdiction over this Agreement for decision. Licensee shall pay the existing Conduit Occupancy Fees during the time that the issue is being reviewed by said regulatory body, subject to true-up based on the final determination of rates by said regulatory body plus any interest prescribed by said regulatory body.
- 3.1.4 Licensor shall provide licensee with an updated APPENDIX I following the effective date of the new Conduit Occupancy Fees and Charges.

### 3.2 Conduit Occupancy Fees

- 3.2.1 For the purpose of computing the total Conduit Occupancy Fee due hereunder, the length of the cable shall be measured from the center to the center of all manholes or from the center of a manhole to the end of Licensor's conduit system occupied by Licensee's cable.
- 3.2.2 Conduit Occupancy Fees are calculated from the first day of the month following the date a license is issued. Fees shall be payable semi-annually or annually in advance, unless otherwise provided. Payment is due within the later of thirty (30) days from the first day of January and the first day of July or thirty (30) days from the date the bill is issued.

### 3.3 Conduit Record Search and Manhole Survey, Make-ready Work and Inspection Charges

- 3.3.1 Conduit Record Search and Manhole Survey Charges, Make-ready Charges and Inspection Charges shall be calculated by the Licensor on an actual time and material basis plus an amount equal to ten percent (10%) of such costs.
- 3.3.2 Licensee shall make an advance payment of the applicable estimated charge to Licensor prior to any performance by Licensor of any Conduit Record Search and Manhole Survey and Make-ready Work. The Licensee shall be credited for any

amount paid in excess of the Licensor's estimated charges as finally computed and shall be billed for any excess thereof.

- 3.3.3 Licensee shall make payment to the Licensor within thirty (30) days following the invoice date for Inspections or other charges according to this Agreement.

### 3.4 Payment Requirements

- 3.4.1. For any bill rendered by Licensor to Licensee hereunder, except where advance payment is required, payment is due within thirty (30) days from the date of the bill. Late payment of any bill is subject to a late fee of 1.5% per month applied to the outstanding balance from the due date of the bill. Licensor, at its sole discretion, may change this late fee from time to time during the term of this Agreement to reflect prevailing market conditions.
- 3.4.2 Non payment of any amount due hereunder shall constitute a default of this Agreement, and subject this Agreement to termination under the provisions of Article X.
- 3.4.3 For any bill rendered by Licensor to Licensee for advance payment of Conduit Record Search and Manhole Survey Charges or Make-ready Work Charges, hereunder, payment shall be made within thirty (30) days of the bill date. If such payment is not received within thirty (30) days, Licensor shall have the right to issue a letter of cancellation no sooner than fifteen (15) days thereafter, which will cancel the Licensee's application for the license. Thereafter, if Licensee wishes to proceed, Licensee shall submit a new application for a license, as if it had never submitted the initial application.

### 3.5 Billing Disputes

- 3.5.1 Where Licensee in good faith disputes a bill or invoice rendered by Licensor, Licensee shall make payment of all portions of said bill or invoice not in dispute as provided in Article III. Where the cumulative amount of all of Licensee's bills or portion(s) of bills in dispute is in excess of \$10,000.00, Licensee shall deposit said cumulative disputed amounts in an interest-bearing escrow account until such time as the disputes are resolved. The disputed amount deposited together with the proportional interest shall be distributed immediately to Licensor and/or Licensee in accordance with and upon resolution of the dispute. Where the cumulative amount of all of Licensee's bills or portion(s) of bills in dispute are less than or equal to \$10,000.00, Licensee shall make payment to Licensor and shall be rebated an appropriate amount (including interest computed at the prime rate) at a bank mutually agreed upon by the parties based on the resolution of the dispute.

- 3.5.2 Where Licensee fails to pay an amount due and owing under this Agreement (including amounts in dispute that are less than or equal to \$10,000) or fails to establish an escrow account for disputed amounts more than \$10,000, or fails to invoke the dispute-resolution procedures set forth in subpart 15.10 of this Agreement within six (6) months of the establishment of amounts disputed in good faith, in addition to all other remedies available to Licensor including termination under provisions of Article X of this Agreement, Licensor may refuse to perform any Survey, Inspection or Make-ready Work for Licensee and may refuse to issue any license to Licensee until such time as the amount is paid or is deposited in an escrow account.

#### **ARTICLE IV - APPLICATION FOR AND ISSUANCE OF LICENSES**

- 4.1 Before Licensee occupies any conduit, Licensee shall make application for and have received a license therefor in the forms attached in APPENDIX IV. Licensor may update these forms from time to time during the term of the Agreement.
- 4.2 Licensee agrees to limit the filing of applications for conduit occupancy licenses to include not more than 50 manhole sections of conduit on any one application. All manholes listed in the application must be located in the same municipality. Licensor reserves the right to limit the filing of conduit applications to no more than 50 manhole sections on all applications that are pending approval by Licensor at any one time within a single Planning Manager's Area. Licensee further agrees to designate a desired priority of completion of the Conduit Record Search and Manhole Survey and Make-ready Work for each application relative to all other of its applications on file with Licensor at the same time.
- Licensor or Licensee may request a project management meeting with each other to facilitate Licensee's request for a conduit license.



- 4.3 Properly completed license applications received by Licensor on the same day from two or more licensees for installation accommodations in the same conduit(s), shall be processed together. All Conduit Record Search and Manhole Survey or Make-ready Work required to accommodate the applicants will be completed simultaneously for the benefit of all applicants. All applicants will be rebated with the pro rata share of costs based on the number of applicants.
- 4.4 Any license granted hereunder for placement of Licensee's facilities in Licensor's conduit system may terminate upon thirty (30) days notice to Licensee as to individual sections of Licensor's conduit system covered by the license in which Licensee has not placed its facilities within ninety (90) days from the date that Licensor has notified Licensee that such sections of the conduit system are available for placement of Licensee's Facilities.

#### **ARTICLE V - CONDUIT RECORD SEARCH AND MANHOLE SURVEY**

- 5.1 A Conduit Record Search and Manhole Survey for each manhole for which an installation is requested is required to determine the adequacy of the conduit to accommodate Licensee's installations and facilities. The Licensee may accompany the Licensor when Licensor performs the Manhole Survey.
- 5.2 Licensor will process all requests for access to conduit on a non-discriminatory basis in the order such requests are received.
- 5.3 Within forty-five (45) days of receipt of written notification in the form of a complete license application and the correct Survey Fee payment, Licensor shall perform a Conduit Record Search and Manhole Survey and present the Survey results to the applicant. The Survey results will contain one of the following:

If no Make-ready Work is required, a license shall be issued for the conduit.

If Licensor determines that the conduit which Licensee desires to occupy is inadequate or otherwise needs Make-ready Work to accommodate the Licensee's Facilities, in accordance with the specifications set forth in Article VI, Licensor will provide Licensee with an itemized invoice for such anticipated Make-ready Work. The Make-ready Work will be performed following receipt by Licensor of advance payment. Upon receipt of the advance payment, Licensor will provide the Licensee with the estimated start and estimated construction completion date of the Make-ready Work.

If Licensor determines that the conduit may not reasonably accommodate Licensee's Facilities for reasons of capacity, safety, reliability or engineering, the Licensor may refuse to grant a license for conduit occupancy. Licensor shall

provide the specific reason(s) for such denial. Licensor shall not unreasonably exercise the right reserved hereunder.

- 5.4 If, subsequent to the initial installation, service needs of the Licensor or Licensee require modifications of the conduit, the allocation of modification costs that are incurred for the specific benefit of the party requiring such modification shall be assumed by the party benefiting from the modification. Where multiple parties declare their intent to join in the modification, each party shall proportionately share in the total cost. Licensor shall not be required to use revenue that may result from the use of any additional space resulting from such modification to compensate parties that paid for the modification.
- 5.5 Licensor shall make every reasonable effort to complete Make-ready Work within ninety (90) days of receipt of payment for Make-ready Work from Licensee, except for reasons beyond Licensor's control.
- 5.6 To the extent practicable, Licensor shall provide Licensee, no less than sixty (60) days prior to, written notice of any modification of facilities other than routine maintenance, or modifications in response to emergencies, or to a request from a governmental authority.

## **ARTICLE VI - SPECIFICATIONS AND LEGAL REQUIREMENTS**

- 6.1 Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of Appendix V (Verizon New England's Requirements and Specifications for Occupancy of Licensor's Conduit System) attached hereto and made a part hereof. Licensor may update this Appendix V from time to time. Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the "Blue Book - Manual of Construction Procedures" (Blue Book), published by Telcordia Technologies Inc.; the "National Electrical Code" (NEC), published by the National Fire Protection Association, Inc.; the "National Electrical Safety Code" (NESC), published by the Institute of Electrical and Electronics Engineers, Inc.; and rules and regulations of the U.S. Department of Labor issued pursuant to the "Federal Occupational Safety and Health Act of 1970", as amended, (OSHA) or any governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent shall apply.
- 6.2 Licensee shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain Licensee's Facilities on public and private property at the location of Licensor's conduit. This permission shall be in the form of a license or other writing.

- 6.3 No license granted under this Agreement shall extend to any of the Licensor's conduit where the placement of Licensee's Facilities would result in a forfeiture of the rights of Licensor to occupy the property on which such conduit is located. The Licensor does not warrant the validity or apportionability of any rights it may hold to place facilities on public or private property. The Licensor will, upon written request by the Licensee, provide available information and copies of any documents in its files pertinent to the nature of the rights the Licensor possesses over private property. The cost of providing such information and reproducing documents shall be borne by Licensee.

## **ARTICLE VII - CONSTRUCTION AND MAINTENANCE OF INSTALLATIONS**

### **7.1 General Provisions**

- 7.1.1 Licensee shall, at its own expense, construct and maintain its Facilities within Licensor's conduit in a safe condition and in a manner acceptable to Licensor. Licensee shall construct and maintain its facilities so as not to conflict with the use of Licensor's conduit by Licensor or by other authorized users of Licensor's conduit, nor electrically interfere with Licensor's facilities occupying the conduit system.
- 7.1.2 Licensor shall specify the location within Licensor's conduit system to be occupied by Licensee's Facilities.
- 7.1.3 Licensee shall provide written notice to the Licensor of the actual dates of installation of its Facilities within three (3) business days of the date of installation so that Licensor may promptly schedule a Conduit Work Inspection.
- 7.1.4 Should the Licensor, or other Licensee, for their own service requirements, need to install additional facilities in any conduit system in which Licensee occupies conduit space, Licensee will upon written notice from the Licensor of the additional occupancy, rearrange its facilities in the conduit system as reasonably determined by the Licensor so that the additional facilities of the Licensor, or other Licensee may be accommodated, provided that, except to the extent such relocation is required to accommodate the needs of Licensor, such rearrangement does not materially reduce, impair or otherwise diminish Licensee's operations from the property and subject to receipt of all necessary government permits and approvals for such rearrangement or transfer. Licensee shall not be required to bear any of the costs of rearranging its facilities if such rearrangement is required as a result of an additional occupancy by any entity including Licensor or other Licensees. Any rearrangement costs shall be borne by the entity or entities requesting rearrangement. Licensee shall be solely responsible for collecting any rearrangement costs incurred pursuant to this paragraph. Licensor's sole responsibility shall be limited to reimbursement of its pro rata share of such costs caused by its own additional occupancies. However, Licensor shall, upon receipt of written request, provide Licensee with any information in Licensor's possession which may facilitate Licensee's collection of such costs. If Licensee

does not rearrange its facilities within sixty (60) days after receipt of written notice from the Licensor requesting such rearrangement, the Licensor may perform or have performed such rearrangement and Licensee shall pay the cost thereof. The foregoing shall not preclude Licensee from thereafter seeking reimbursement of such rearrangements costs as if it had performed the work in accordance with this paragraph. Licensee shall be permitted to place and operate a temporary communications facility at a location to be agreed upon by the parties, under the same terms and conditions of this Agreement, until such time as the rearrangement/transfer has been completed.

7.1.5 For each new facility placed by Licensee in Licensor's conduit, on or after the date of execution of this Agreement, Licensee shall place identification tags on cables located in conduit and identification apparatus tags on any associated items of Licensee's Facilities. The requirements for identification tags are set forth in the Blue Book.

7.1.6 When Licensor deems it an immediate threat to safety and/or an emergency exists, it may rearrange, transfer, or remove Licensee's Facilities in Licensor's conduit at Licensee's expense. Licensor shall make reasonable efforts to contact Licensee as circumstances permit.

## 7.2 Licensee's Maintenance Work

Licensee shall work cooperatively with the local Verizon New England Reimbursable Construction Engineer when performing Maintenance Work on its facilities and/or installations. Cooperative practices shall include a system of notification by phone, facsimile, answering system, or otherwise for scheduling purposes.

## **ARTICLE VIII - INSPECTION OF LICENSEE'S FACILITIES**

8.1 Licensor reserves the right to make Periodic Inspections of any part of Licensee's Facilities occupying Licensor's conduit system and the Licensee shall pay the Licensor its charges for making such inspections, upon sixty (60) days written notice to the Licensee. Inspections will not be made more often than once every five (5) years unless, in Licensor's judgment, such inspections are required for reasons involving safety or because of an alleged violation by Licensee of the terms of this Agreement. Licensor shall provide Licensee with a copy of any written report of such inspection within thirty (30) days following the inspection. The charge for the inspection shall be in accordance with the terms and conditions of Article 3.3. The making of such inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.

## ARTICLE IX - UNAUTHORIZED CONDUIT OCCUPANCY

- 9.1 If any of Licensee's facilities are occupying Licensors conduit without being licensed, Licensors shall recover fees as specified in subpart 9.2, without prejudice to its other rights or remedies under this Agreement, including termination, or otherwise, and require Licensee to submit in writing, within thirty (30) days after receipt of written notification from Licensors of the unauthorized occupancy, conduit license applications. If such application is not received within the specified time period, Licensee shall remove its unauthorized Facilities within thirty (30) days of the final date for submitting the required application, or Licensors may remove Licensee's facilities without liability at the Licensee's expense.
- 9.2 Upon discovery of unauthorized conduit occupancy, Licensee agrees to pay an amount equal to five times the current applicable annual Conduit Occupancy Fee specified in APPENDIX I times the number of unauthorized feet of conduit occupied. The penalty shall be in addition to all other amounts due and owing to Licensors under this Agreement.

## ARTICLE X - TERMINATION

### 10.1 60-Day Termination

In addition to rights of termination provided to the Licensors under other provisions of this Agreement, the Licensors shall have the right to terminate Licensee's license, authorizations and/or rights granted under provisions of this Agreement where:

- (a) the Licensee's Facilities are maintained or used in violation of any law or in aid of an unlawful act or undertaking;
- (b) the Licensee ceases to have authority to construct and operate its facilities on public or private property at the location of the particular conduit covered by the authorization;
- (c) the Licensee fails to comply with any of the terms and conditions of this Agreement or defaults in any of its obligations thereunder;
- (d) the Licensee occupies the Licensors conduit without having first been issued authorization therefor;
- (e) the Licensee, subject to provisions specified in Article II ceases to provide its services;

- (f) the Licensee sublets or apports part of the licensed conduit space or otherwise permits its licensed conduit space to be used by an entity or an affiliate not authorized pursuant to Article 11.2.
- (g) Except in circumstances in which Licenser has accepted evidence of self-insurance in accordance with Article XIV, the Licensee's insurance carrier shall at any time notify the Licenser that the policy or policies of insurance as required in Article XIV will be or have been cancelled or amended so that those requirements will no longer be satisfied;
- (h) the Licensee shall fail to pay any sum due under Article III or to deposit any sum required under this Agreement, or shall fail to maintain satisfactory surety as required in Article XII;
- (i) any authorization that may be required by any governmental or private authority for the construction, operation and maintenance of the Licensee's facilities on conduit is denied, revoked or cancelled.

10.1.1 The Licenser will notify the Licensee in writing of any instances cited in subpart 10.1. The Licensee shall take corrective action as necessary to eliminate the non-compliance and shall confirm in writing to the Licenser within sixty (60) days following such written notice that the non-compliance has ceased or been corrected. If Licensee fails to discontinue or correct non-compliance and fails to give the required written confirmation to the Licenser within the time stated above, the Licenser may terminate the license(s), authorization and/or rights granted hereunder for the conduit at which such non-compliance has occurred.

## 10.2 General

10.2.1 In the event of termination of any of the Licensee's licenses, authorization and/or rights hereunder, the Licensee shall remove its facilities from the conduit within sixty (60) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to provisions of this Agreement to the Licenser until Licensee's facilities are actually removed from the Licenser's conduit. If the Licensee fails to remove its facilities within the specified period, the Licenser shall have the right to remove such facilities at the Licensee's expense and without liability on the part of the Licenser for damage or injury to such facilities or interruption of Licensee services.

10.2.2 When Licensee's facilities are removed from conduit, no occupancy of the same conduit shall be made until the Licensee has first complied with all of the provisions of this Agreement as though no such conduit had been occupied

previously and all outstanding charges due to the Licensor for such conduit have been paid in full.

10.2.3 Any license issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct, operate and/or maintain its facilities on the public or private property at the location of the particular conduit covered by the license. Such automatic termination shall be stayed if the Licensee has sought judicial or regulatory review of the decision that: (1) has acted to terminate such authority or (2) has declared that the Licensee lacks such authority.

### 10.3 Licensee's Removal of Facilities

10.3.1 Licensee may at any time remove its Facilities from conduit after first giving Licensor written notice of such removal. Licensee shall complete and provide to Licensor "Notification of Surrender of Conduit System Occupancy License by Licensee" form, attached to APPENDIX IV hereto. Licensor shall verify and execute such form within thirty (30) days of the anticipated removal completion date as noted on the Conduit Licensing – Surrender of Conduit Request for CWI form. Billing for the conduit occupancy shall cease as of the last day of the month in which verification occurs. Licensor may update this form from time to time during the term of this Agreement.

10.3.2 Following such removal, no conduit occupancy shall again be made to such conduit until Licensee shall have complied first with all of the provisions of this Agreement as though no such conduit occupancy had been made previously.

## **ARTICLE XI - ASSIGNMENT OF RIGHTS**

11.1 Licensee shall not assign or transfer any license or any authorization granted under this Agreement, and such licenses and authorizations shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of Licensor, which shall be in the form of an assignment agreement satisfactory to the Licensor. Licensor shall not unreasonably withhold, condition, or delay such consent.

11.2 In the event such consent or consents are granted by Licensor, then the provisions of this Agreement shall apply to and bind the successors and assigns of Licensee. Licensee may, however, assign this Agreement without Licensor's consent to an entity controlling, controlled by, or under common control with Licensee or to an entity acquiring fifty-one percent (51%) or more of Licensee's stock or assets provided that any such assignment shall be subject to the assignee's being capable of assuming all of the obligations of Licensee hereunder. Any such assignment shall impose no obligations upon or be effective against Licensor, and Licensor shall have no liability to any assignee of such assignment, until Licensor has received prior notice of any such assignment. Licensee



may also assign this Agreement, without Licensor's consent and without prior notice to Verizon, to an institutional mortgagee or lender providing financing to Licensee with respect to Licensee's Facilities in the event such institutional mortgagee or lender exercises its foreclosure right against Licensee and operates the Licensee Facilities on the Right of Way; provided such institutional mortgagee or lender is capable of assuming all of the obligations of the Licensee hereunder and further provided that such assignment shall not be effective against Licensor unless and until written notice of such assignment and exercise of rights is provided to Licensor. Anything herein to the contrary notwithstanding, Licensee shall not be relieved of any of its obligations hereunder without Licensor's prior written consent.

- 11.3 All notice of such assignments shall include any change to the notice address provided in Article III (8). Within thirty (30) days of the assignment, Licensor and assignee shall execute an assignment agreement.

## ARTICLE XII - SURETY REQUIREMENTS

- 12.1 Licensee shall furnish a Surety Bond or irrevocable Letter of Credit satisfactory to the Licensor according to the following criteria:

<b>Conduit Footage</b>	<b>Security</b>
1-2500	\$10,000
2501-25,000	\$80,000
25,001-75,000	\$250,000
75,001-150,000	\$475,000
150,000 +	\$500,000 Minimum

- 12.2 If the financial security is in the form of a bond, irrevocable Letter of Credit, or other security as deemed acceptable by Licensor, such instrument shall be issued by a surety company or bank satisfactory to the Licensor and shall guarantee Licensee's obligations under the agreement. The Licensee is obligated to maintain the security in the full amount for the terms of the agreement.
- 12.3 The amount of the bond or the financial security shall not operate as a limitation upon the obligations of the Licensee.

## ARTICLE XIII - LIABILITY AND DAMAGES

- 13.1 Licensor reserves to itself, its successors and assigns, the right to locate and maintain its conduit and to operate its facilities in conjunction therewith in such a manner as will best



enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruption of Licensee's service nor for interference with the operation of Licensee's communications services arising in any manner, except from Licensor's negligence, out of the use of Licensor's conduit.

- 13.2 Licensor shall exercise reasonable care to avoid damaging the facilities of Licensee occupying Conduits under this Agreement, and shall make an immediate report to Licensee of the occurrence of any such damage caused by Licensor's employees, agents or contractors. Licensor agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of damage to such Licensee's facilities proximately caused by the negligence of Licensor; however, Licensor shall not be liable to Licensee for any loss of Licensee's revenue or profits resulting from any interruption of Licensee's service caused by such damage or interference with the operation of Licensee's Facilities caused by such damage.
- 13.3 Licensee shall exercise reasonable care to avoid damaging the facilities of Licensor and of others occupying Licensor's conduits, and shall make an immediate report of damage to the owner of facilities so damaged. Licensee assumes all responsibility for any and all direct loss from damage caused by Licensee's employees, agents or contractors; however, Licensee shall not be liable to Licensor for any loss of Licensor's revenue or profits resulting from any interruption of Licensor's service caused by such damage or interference with the operation of Licensor's facilities caused by such damage.
- 13.4 Licensee shall indemnify, protect and save harmless Licensor from and against any and all claims, demands, causes of actions and costs, including attorneys' fees, for damages to property and injury or death to Licensee's employees or other persons, including but not limited to, payments under any Workers Compensation law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use or removal of Licensee's facilities or by their proximity to the facilities of all parties occupying Licensor's conduit, or by any act or omission of the Licensee's employees, agents or contractors on or in the vicinity of Licensor's conduits. The foregoing indemnity, hold harmless and defense provisions shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of Licensor. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct or joint fault of Licensee and Licensor, but in such case the amount of the claim for which Licensor is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Licensee.
- 13.5 The Licensee shall indemnify, protect and save harmless Licensor from any and all claims, demands, causes of action and costs, including attorneys' fees, which arise directly or indirectly from the construction, attachment or operation of Licensee's facilities in Verizon's conduits, including but not limited to damages, costs and expense of relocating conduits due to the loss of right-of-way or property owner consents, taxes, special charges by others, claims and demands for damages or loss from infringement of

copyright, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all claims, demands and costs, including attorneys' fees, for infringement of patents with respect to the manufacture, use and operation of Licensee's facilities in combination with conduits or otherwise. The foregoing indemnity shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of Licensor. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct, or joint fault of Licensee and Licensor, but in such case the amount of the claim for which Licensor is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Licensee.

- 13.6 Licensor and Licensee shall promptly advise each other of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by the erection, maintenance, repair, replacement, presence, use or removal of facilities governed by this License Agreement. Copies of all accident reports and statements made to a Licensor's or Licensee's insurer by the other Licensor or Licensee or affected entity shall be furnished promptly to the Licensor or Licensee.
- 13.7 Unless expressly provided for otherwise herein, neither Licensor nor Licensee shall be liable to the other for any special, consequential or other indirect damages arising under this Agreement.
- 13.8 The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued hereunder.

#### **ARTICLE XIV - INSURANCE**

- 14.1 Licensee shall secure and maintain (and ensure its subcontractors, if any, secure and maintain) all insurance and/or bonds required by law or this Agreement including without limitation:
- (a) Commercial General Liability insurance (including, but not limited to, premises-operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least \$2,000,000 combined single limit for each occurrence.
  - (b) Commercial Automobile Liability insurance with limits of at least \$2,000,000 combined single limit for each occurrence. Notwithstanding, if the Licensee does not own or operate any vehicles or automobiles associated with the Licensee's business or associated with the work related to this Agreement, then Licensee must only provide satisfactory evidence that its subcontractor(s) have purchased and maintained Commercial Automobile Liability insurance in such amount.

- (c) Workers' Compensation insurance as required by statute and Employer's Liability insurance with limits of not less than \$1,000,000 per occurrence.
- 14.2 The above limits may be satisfied by a combination of underlying/primary and excess/umbrella insurance. All policies provided by the Licensee shall be deemed primary and non-contributory to all other applicable coverages. The Licensee shall waive its right of subrogation for all insurance claims. The Commercial General Liability and Commercial Auto Liability policies must name Licensor, its subsidiaries and affiliates as additional insureds. The Licensee's insurance companies must be licensed to do business in the applicable state(s) and must meet or exceed an A.M. Best rating of A-X or its equivalent.
- 14.3 All insurance must be in effect before Licensor will authorize Licensee to place facilities in Licensor's conduit and shall remain in force until such facilities have been removed from all such conduit. For all insurance, the Licensee must deliver an industry-recognized certificate of insurance evidencing the amount and nature of the coverage, the expiration date of the policy and the waiver of subrogation and stating that the policy of insurance issued to Licensee will not be cancelled or changed without thirty (30) days written notice to Licensor. Also, where applicable, such certificate of insurance shall evidence the name of the Licensor as an additional insured. The Licensee shall submit such certificates of insurance annually to the Licensor as evidence that it has maintained all required insurance.
- 14.4 Licensee is responsible for determining whether the above minimum insurance coverages are adequate to protect its interests. The above minimum coverages shall not constitute limitations upon Licensee's liability.

## **ARTICLE XV - GENERAL PROVISIONS**

### **15.1 Authorization Not Exclusive**

Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any conduit covered by this Agreement.

### **15.2 Failure to Enforce**

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

### 15.3 Notices

APPENDIX II sets forth where written notices required under this agreement shall be sent to Licensor and Licensee. Notice shall be acceptable in the following forms: first class mail, or if time-sensitive, facsimile followed by first class mail, or overnight mail with receipt. Licensee shall complete APPENDIX II and submit it to Licensor with this Agreement.

### 15.4 Severability

If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions. If the invalid or unenforceable provision or provisions shall be considered an essential element of this Agreement, the parties shall promptly attempt to negotiate a substitute therefor.

### 15.5 Choice of Law

The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State or Commonwealth where the Licensor's conduit system is located as set forth in this Agreement, without regard to the principles of conflicts of law. All actions under this Agreement shall be brought in a court of competent subject-matter jurisdiction of the county of the capital of such State or Commonwealth or a regulatory agency with subject-matter jurisdiction, and both parties agree to accept and submit to the personal jurisdiction of such court or regulatory agency.

### 15.6 Compliance with Laws

The parties hereto shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this Agreement, so long as such laws, ordinances, or regulations remain in effect.

### 15.7 Survival

All rights and obligations hereunder granted or incurred prior to and which by their nature would continue beyond the cancellation, termination, or expiration of this Agreement shall survive such cancellation, termination, or expiration.

### 15.8 Use of Information

Licensee may provide to Licensor license applications and business plans of its future needs for conduit installations. Such information will allow Licensor to better forecast personnel and equipment requirements. However, as to business plans, such information shall be deemed for use as advance planning purposes only, and no obligation shall be created that Licensor hire personnel or purchase equipment, or Licensee submit license

applications for the conduit installations. Such information shall be used only by such employees or contractors of Licensor who have responsibilities relating to the administration of, or to work to be performed under, this Agreement and said employees shall treat such information as Licensor treats its own confidential information of similar type and value. Licensor's obligations hereunder shall not extend to any information that is now available to the public or become available by reason of acts or omissions not attributable to Licensor.

#### 15.9 Access to Records

Licensor, upon receipt of written request, shall provide access to Licensor's conduit records in accordance with "Job Aid for Requests to Records" attached hereto as APPENDIX VI. Licensor may update this procedure from time to time during the term of this Agreement.

#### 15.10 Dispute Resolution

In the case where Licensee claims that a term or condition is unjust or unreasonable or any dispute arises between the parties relating to this agreement, Licensee shall submit a complaint to the Manager-License Administration Group, specifying all information and its argument relied on to justify its claim. Licensor shall provide a written response to such complaint within 10 business days after receipt of the complaint. Such response shall specifically address all contentions made by Licensee. If Licensee continues to have issues, it may request a meeting with Manager-License Administration Group to discuss such issues. Such meeting shall be held within five (5) business days. If the Licensee is not satisfied with the results of such meeting, it may file a complaint with the regulatory body of competent jurisdiction.

#### 15.11 Emergency Conditions

All parties shall work cooperatively in the case of an emergency to restore service to their respective customers.

### **ARTICLE XVI - TERM OF AGREEMENT**

Except as provided below, this Agreement shall remain in effect; provided, however, that the Licensor may, not less than two years from this date and upon written notice, require the Licensee to engage in good-faith negotiations with the Licensor to amend the Agreement to comport with regulatory changes or obligations. If the parties cannot agree to an amendment, they shall submit the matter to the regulatory agency with jurisdiction to resolve the matter. The Agreement may be terminated by Licensee by written notice of termination no less than 30 days prior to the effective date of such termination; provided, however, that such early termination shall not become effective until the Licensee has discontinued all existing licenses and has removed any and all facilities. The Agreement may be terminated upon written notice by the Licensor if, within one

year from the date of this Agreement, the Licensee has placed no facilities in the Licensor's conduits in accordance with the Agreement.

Upon execution, this Agreement cancels and supersedes all previously executed Agreements between the parties with respect to the subject matter contained herein.

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

VERIZON NEW ENGLAND INC.

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

(Print Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(Date) \_\_\_\_\_

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

(Print Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(Date) \_\_\_\_\_

## **APPENDICES**

### **I. CONDUIT OCCUPANCY FEES**

### **II. NOTICE ADDRESSES**

### **III. PLANNING MANAGER'S AREA**

### **IV. LICENSE APPLICATION FORMS**

Application for Conduit License	Exhibit A
Conduit Route Development	Form 1
Manhole Breakout Request	Form 2
Conduit Licensing Application Checklist	Form 4
Notice of Surrender of Conduit	Form 6
Conduit Schematic	Sample 2

### **V. REQUIREMENTS AND SPECIFICATIONS FOR OCCUPANCY OF LICENSOR'S CONDUIT SYSTEM**

### **VI. JOB AID FOR REQUESTS TO RECORDS**