

CONDUIT LICENSE AGREEMENT NUMBER \_\_\_\_\_

DATED \_\_\_\_\_

BETWEEN

\_\_\_\_\_  
**VERIZON PENNSYLVANIA INC**

AND

\_\_\_\_\_

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**LICENSE AGREEMENT**

THIS AGREEMENT, entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between **VERIZON PENNSYLVANIA INC.**, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania having its principal office in the City of Philadelphia (hereinafter VZ), and \_\_\_\_\_ a corporation (partnership, or other legal entity) organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office in \_\_\_\_\_ (hereinafter Licensee).

**WITNESSETH:**

WHEREAS, Licensee desires to place and maintain underground cables, equipment and facilities in the Conduit Systems of VZ; 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 do hereby mutually covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

As used in this Agreement and related Appendices, the following terms shall have the meanings stated below. A term listed below intended to convey the meaning stated below is capitalized when used.

1.1 **Conduit**

A tube structure containing one or more Ducts or Innerducts used to house cables, that is owned by VZ.

1.2 **Conduit Occupancy**

Occupancy of a Conduit System by any item of Licensee's Facilities.

1.3 **Conduit Section**

Conduit between two adjacent Manholes or between a Manhole and an adjacent pole or other structure.

1.4 **Conduit System**

Any combination of Ducts, Innerducts, Conduits, Manholes and handholes joined to form an integrated whole. As used in this Agreement, "Conduit System" does not include a controlled environment vault.

1.5 **Duct**

A raceway for facilities that is owned solely or in part by VZ, that is contained in a Conduit.

1.6 **Innerduct**

A Duct contained within another Duct.

1.7 **Joint Owner**

A person, corporation or other legal entity, sharing ownership of a Duct, Conduit and/or Manhole with VZ.

1.8 **Manhole**

A subsurface enclosure used for the purpose of installing, operating and maintaining facilities. As used in this Agreement, “Manhole” does not include a controlled environmental vault.

1.9 **Make-Ready or Make-Ready Work**

All work, including but not limited to rearrangement and/or transfer of existing facilities, and other changes, required to accommodate Licensee's Facilities in a Conduit System.

1.10 **Preauthorization Survey**

All work, including field inspection and administrative processing, to determine the Make-Ready work necessary to accommodate Licensee's Facilities in a Conduit System.

1.11 **Licensee's Facilities**

All facilities, including but not limited to cables, equipment and associated hardware, owned and utilized by Licensee, which occupy a Conduit System.

## **ARTICLE II**

### **SCOPE**

- 2.1 Subject to the provisions of this Agreement, for authorizations granted by VZ in accordance with Article VII, below, VZ hereby grants to Licensee a nonexclusive license authorizing the placement of Licensee's Facilities in VZ's Conduit Systems, as specified in the pertinent application.
- 2.2 No use, however extended, of Conduits or payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easements or any other ownership or property rights of any nature in such Conduits. Licensee's rights herein shall be and remain a mere license.
- 2.3 Nothing contained in this Agreement shall limit VZ's right to locate and maintain its Ducts and Conduits, and to operate its facilities in conjunction therewith, in such a manner as will best enable it to fulfill its own service requirements consistent with its obligations under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act") and any other applicable law or regulation (collectively "Applicable Law").
- 2.4 Nothing contained in this Agreement shall be construed to compel VZ to construct, retain, extend, place or maintain any conduit system or other facilities not needed for VZ's own services requirements.
- .1 To the extent required by Applicable Law, VZ shall grant Licensee nondiscriminatory access to VZ's Conduit Systems.

## **ARTICLE III**

### **FEES AND CHARGES**

- 3.1 Licensee shall pay all fees and charges applicable in connection with the occupancy of a Conduit, as specified in Appendix I attached hereto and made a part of this Agreement.
- 3.2 Nonpayment of any amount due under this Agreement shall constitute a default by Licensee of this Agreement, unless amount due is subject to a bona fide dispute. Late payments shall be subject to a late payment charge as specified in Appendix I, Section 2.5.
- .3 After a failure by Licensee to make payment as required hereunder, or as a condition to occupancy upon VZ's reasonable determination that Licensee may have difficulty meeting its financial commitments hereunder (including, but not limited to, if Licensee's

credit rating indicates that Licensee is delinquent on its obligations), VZ may require a bond in a form satisfactory to VZ or other financial security satisfactory to VZ, in such amount as VZ from time to time may reasonably require, to guarantee the performance of all Licensee obligations under this Agreement. Licensee's provision of the bond or financial security shall not operate as a limitation upon the obligations of Licensee hereunder; and if Licensee furnishes a deposit of money pursuant to this section, such deposit may be held during the continuance of this Agreement at the option of VZ as security for any and all amounts which are or may become due to VZ under this Agreement.

- .4 On an annual basis, changes in the amount of the fees and charges identified in Appendix I may be made by VZ upon at least 60 days prior written notice to Licensee in the form of a revised Appendix I, and Licensee agrees to pay such changed fees and charges provided that they are in accordance with Applicable Law. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such notice period if the change in fees and charges is not acceptable to Licensee, by giving VZ written notice of its election to terminate this Agreement at least 30 days prior to the end of such notice period.

#### **ARTICLE IV**

##### **ADVANCE PAYMENTS**

- 4.1 Licensee shall be required to make an advance payment to VZ prior to:
  - a) any undertaking by VZ of a Preauthorization Survey or the administrative processing of such a survey, in an amount sufficient to cover the estimated charges for completing the specific work operation required, and
  - b) performance by VZ of any Make-Ready work required, in an amount sufficient to cover the estimated charges for completing the required Make-Ready work.
- 4.2 The amount of the advance payment required will be credited against the payment due VZ for performing the Preauthorization Survey and/or Make-Ready work.
- 4.3 Where the advance payment is less than the charge by VZ for such Preauthorization Survey and/or Make-Ready work, Licensee agrees to pay VZ within 30 days of receipt of the bill all sums due in excess of the amount of the advance payment.
- 4.4 Where the advance payment exceeds the charge by VZ for such survey and/or Make-Ready Work, VZ shall refund the difference to Licensee.





## ARTICLE V

### SPECIFICATIONS

- 5.1 Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of Applicable Law, and the requirements and specifications of the following publications, as amended from time-to-time, the Manual of Construction Procedures (Blue Book), the National Electrical Code (NEC), and the National Electrical Safety Code (NESC), the rules and regulations of the Occupational Safety and Health Act (OSHA) and regulations or directives of a governing authority having jurisdiction over the subject matter. Where a difference in requirements or specifications may exist, the more stringent shall apply.
- 5.2 Licensee shall correct all safety violations immediately upon notice from VZ. Licensee shall correct all other non-standard conditions within thirty (30) days from receipt of written notice from VZ. If Licensee does not correct any violation or non-standard condition within the aforementioned time limits, VZ may at its option correct said violations or conditions at Licensee's sole expense and risk.
- 5.3 Notwithstanding Paragraph 5.2 of this Article, when conditions created by Licensee's Facilities pose an immediate threat to the safety of the public or the employees of VZ or occupants, interfere with the performance of VZ's service obligations or the service obligations of other occupants, or pose an immediate threat to the physical integrity of VZ's facilities or structures or the facilities or structures of other occupants, VZ may perform such work and/or take such action as it deems necessary using reasonable care without first giving written notice to Licensee. As soon as practical thereafter, VZ will advise Licensee in writing of the work performed or the action taken and will endeavor to arrange for reaccommodation of Licensee's Facilities so affected. Licensee shall pay VZ for all reasonable costs incurred by VZ in performing such work, except that should VZ damage Licensee's Facilities by willful, reckless or negligent act, VZ will compensate Licensee for the reasonable cost and repair and/or replacement of such damaged Facilities.
- 5.4 The failure of VZ to notify Licensee of violations or non-standard conditions or to correct violations or non-standard conditions pursuant to Paragraph 5.2 or Paragraph 5.3 of this Article shall not relieve Licensee of its responsibility to place and maintain its Facilities in a safe manner and condition in accordance with the terms of this Agreement, and shall not relieve Licensee of any liability imposed by this Agreement.
- 5.5 VZ and Licensee shall each provide a single point of contact for processing authorization applications and access to information needed to prepare an authorization application.

## **ARTICLE VI**

### **LEGAL REQUIREMENTS**

- 6.1 Before Licensee occupies Conduits, Licensee shall be responsible for obtaining from appropriate public and private property owners and authorities any authorization required to construct, operate and maintain Licensee's Facilities. Evidence of Licensee's having obtained lawful authority to so construct, operate and maintain Licensee's Facilities shall be submitted to VZ forthwith upon demand by VZ. To the extent that such evidence constitutes confidential or proprietary information, such information will be disclosed to VZ pursuant to a signed confidentiality agreement.
  
- 6.2 No authorization granted under this Agreement shall extend to any Conduits where the placement of Licensee's Facilities would result in a forfeiture of rights of VZ or VZ's existing occupants to occupy the property on which such Conduits are located. If the existence of Licensee's Facilities in a Conduit System, would cause a forfeiture of the right of VZ or VZ's existing occupants to occupy the property on which the Conduit System is located, Licensee agrees to remove Licensee's Facilities forthwith upon receipt of written notification from VZ. If Licensee's Facilities are not so removed, VZ may perform or have performed such removal after the expiration of 60 days from the receipt of said written notification. All removals of Licensee's Facilities shall be at Licensee's expense.

## **ARTICLE VII**

### **ISSUANCE OF AUTHORIZATIONS**

- 7.1 Before Licensee shall occupy any portion of a Conduit System, Licensee shall make written application for and have received a written authorization from VZ utilizing the following forms: Appendix II, Forms 10256 thru 10256-3.
  
- 7.2 VZ shall process all authorization applications, including the performance of a Preauthorization Survey, on a first-come, first-served basis in accordance with the provisions of Articles VII and VIII. VZ shall make all access determinations in accordance with the requirements of Applicable Law, considering such factors as capacity, safety, reliability and general engineering considerations. VZ shall inform Licensee in writing as to whether an application has been granted or denied (including the reasons for denial) within the following time after receipt of such application: 45 days, plus any time taken by Licensee for action by Licensee, including, but not limited to, time taken by Licensee to respond to VZ's proposal for a Preauthorization Survey. Before denying Licensee access based on lack of capacity, VZ shall explore potential accommodations in good faith with Licensee.

- 7.3 In order to facilitate Licensee's completion of an application, VZ shall use commercially reasonable efforts to provide Licensee, within ten (10) business days of a legitimate request identifying the specific geographic area and types and quantities of required structures, access to such maps or other relevant data reasonably necessary to complete the applications described above, subject to a non-disclosure agreement in a form reasonably agreeable to VZ. Such requests shall be processed by VZ on a "first-come, first-served" basis.
- 7.4 Authorization applications received by VZ from two or more applicants for the same Conduit Section will be processed by VZ according to the order in which the applications are received by VZ. If any additional applicants file an application at least thirty (30) days prior to the commencement of the initial applicant's Make-Ready Work, VZ shall use commercially reasonable efforts to notify all applicants, within 20 days of receipt of the additional application, of the following: 1) that two (or more) applications have been received for some or all of the same structures; 2) the name and address of the other applicant(s); and 3) that the applicants may wish to share Make-Ready costs between them. The responsibility for arranging for the sharing of Make-Ready costs shall be on the applicants, while the responsibility for transmitting to VZ any Make-Ready changes resulting from the additional applicant(s) shall be on the initial applicant. VZ shall bill the initial applicant for the cost of all shared Make-Ready Work pursuant to executed Form B-4, Appendix II.
- .5 Any license granted hereunder for placement of Licensee's facilities in Licensor's conduit system may terminate upon 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 12 months from the date that Licensor has notified Licensee that such sections of the conduit system are available for placement of Licensee's Facilities. Licensee shall be liable for the occupancy charges commencing the date of the authorization grant, at which time, Licensee shall have immediate access to the applicable Duct or Conduit.
- 7.6 Where VZ has available Ducts or Innerducts, VZ shall make available Ducts or Innerducts to Licensee for Licensee's use in accordance with Applicable Law. No more than one full-sized Duct (or one full-sized and one Innerduct if both copper and fiber cable are used in the Conduit) shall be assigned as an emergency Duct in each Conduit Section. If VZ or any other service provider, including Licensee, utilizes the last unoccupied full-sized Duct in the applicable cross-section, that provider shall, at its expense, reestablish a clear, full-sized Duct for emergency restoration as soon as practicable or immediately upon the occurrence of an emergency requiring such space.

## **ARTICLE VIII**

### **PREAUTHORIZATION SURVEY AND MAKE-READY WORK**

- 8.1 When an application for occupation of Conduit is submitted by Licensee, a Preauthorization Survey will be required to determine the existing adequacy of such structures or property to accommodate Licensee's Facilities.
- .2 The field inspection portion of the Preauthorization Survey, which requires the visual inspection of such structures, shall be performed by VZ (with participation by Licensee at its option, for which VZ shall provide at least 24 hours advance notice). VZ shall perform the administrative processing portion of the Preauthorization Survey, which includes the processing of the application, the preparation of the Make-Ready Work orders (if necessary), and the notification of work requirements to other attachers and occupants (if necessary).
- .3 In the event VZ determines that a Conduit which Licensee desires to utilize is inadequate or otherwise needs rearrangement or modification of the existing structures to accommodate Licensee's Facilities, VZ will advise Licensee in writing of the estimated Make-Ready charges that would apply to any rearrangements or modifications that VZ proposes to undertake. If no Make-Ready Work is needed to accommodate Licensee's Facilities, upon receipt of an authorization from VZ, Licensee may proceed with placement of its Facilities. VZ shall complete the steps described in paragraphs 8.1 through 8.3 within forty-five (45) days, excluding the time taken by Licensee to respond to VZ's proposals.
- .4 Licensee shall have thirty (30) business days from the receipt of said Form B-4 to indicate its written authorization for completion of the required Make-Ready Work and acceptance of the resulting charges.
- .5 Make-Ready Work for Licensee will be scheduled and performed in the same manner as VZ's Make-Ready Work is scheduled and performed. Licensee shall pay VZ for all Make-Ready Work performed by VZ in accordance with the provisions of this Agreement.

## **ARTICLE IX**

### **CONSTRUCTION, MAINTENANCE AND REMOVAL OF LICENSEE'S FACILITIES**

- 9.1 Licensee shall, at its own expense, construct and maintain its Facilities in Conduits covered by this Agreement in a safe condition so as not to physically conflict or electrically interfere with the facilities of VZ or other authorized occupants.

- .2 Licensee must obtain prior written authorization from VZ approving of the work and the party performing such work before Licensee may install, remove, or provide maintenance of its Facilities in any of VZ's Conduits or Conduit Systems. VZ shall not unreasonably withhold or delay such authorization.
- 9.3 In each instance where Licensee's Facilities are to be placed in VZ's Conduits, Licensee and VZ shall discuss the placement of Licensee's Facilities. VZ shall designate the particular Duct(s) to be occupied, the location and manner in which Licensee's Facilities will enter and exit VZ's Conduit System, and the specific location and manner of installation for any associated equipment that is permitted by VZ to occupy the Conduit System.
- 9.4 If Licensee requests any modification, or rearrangement of Conduits, other than Make-Ready Work to be performed pursuant to Article VIII, above, Licensee shall reimburse VZ for the costs of such modification, or rearrangement, in accordance with Applicable Law.
- 9.5 Whenever VZ intends to modify or alter any Conduits which contain Licensee's Facilities, VZ shall provide written notification to Licensee at least sixty (60) days prior to taking such action so that Licensee may have a reasonable opportunity to add to or modify Licensee's Facilities. If Licensee adds to or modifies Licensee's Facilities according to this paragraph, Licensee shall bear a proportionate share of the costs incurred by VZ in making modifications or alterations of Conduits, in accordance with Applicable Law.
- 9.6 Licensee shall be notified in writing at least sixty (60) days prior to any modification that will result in the rearrangement or replacement of Licensee's Facilities. Licensee agrees to make such rearrangements or replacements of Licensee's Facilities as are reasonably requested by VZ or other occupants to accommodate the placement of the facilities of VZ or other occupants. If the rearrangement or replacement is required as a result of an additional occupation or the modification of an existing occupation sought by persons other than Licensee, including VZ, then, subject to Section 9.4, above, to the extent such persons are required by Applicable Law to reimburse Licensee for the costs of rearranging or replacing Licensee's Facilities, Licensee may request such persons to reimburse Licensee for the costs actually incurred by Licensee to rearrange or replace Licensee's Facilities. VZ shall not be obligated to reimburse Licensee for any costs incurred by Licensee for a rearrangement or replacement of Licensee's Facilities to the extent such rearrangement or replacement was sought by persons other than VZ.
- 9.7 VZ's Manholes shall be opened only as permitted by VZ's authorized employees or agents, which permission shall not be unreasonably withheld or delayed. Licensee shall be responsible for obtaining any necessary authorization from appropriate authorities to open Manholes and conduct work operations therein. Unless otherwise agreed between the Parties, Licensee's employees, agents and contractors will be permitted to enter or work in VZ's Manholes only when an authorized employee or agent of VZ is present or

prior written authorization waiving this requirement is granted by VZ. VZ's said employee or agent shall have the authority to suspend Licensee's work operations in and around VZ's Manholes if, in the reasonable judgment of said employee or agent, any hazardous conditions arise or any unsafe practices are being followed by Licensee's employees, agents, or contractors. Licensee agrees to pay VZ the charges, as determined in accordance with the terms and conditions of Appendix I, for having VZ's employee or agent present when Licensee's work is being done in and around VZ's Manholes. The presence of VZ's authorized employee or agent shall not relieve Licensee of its responsibility to conduct all of its work operations in and around VZ's Manholes in a safe and workmanlike manner, in accordance with the terms of this Agreement.

a) Upon reasonable request where space is available, VZ will provide Licensee with space in VZ's Manholes for racking and storage of cable and other materials of the type that VZ stores in VZ's Manholes.

b) Licensee, contracting with VZ or a contractor approved by VZ, shall be permitted to add Conduit parts to VZ's Manholes or to add branches to Conduits when existing Conduits do not provide the connectivity required by Licensee, provided that the structural integrity of the Manhole and Conduits is maintained and sound engineering judgment is employed.

9.8 If practicable and if additional space is required, VZ shall within a reasonable period of time remove any of VZ's retired cable from Conduit Systems to allow for the efficient use of Conduit space.

9.9 Licensee, at its expense, will remove its Facilities from Conduits within 60 days after:

a) Within 60 days after:

(1) Termination of the authorization covering such Conduit occupancy, in accordance with the terms of this Agreement; or

(2) The date Licensee replaces its existing Facilities in one Duct with the placement of substitute Facilities in another Duct.

b) VZ may extend the 60-day period in a) above, when, in VZ opinion, Occupant demonstrates good cause warranting such an extension (e.g., major rebuilds, etc.). VZ may extend the 60-day period in the event of delays that are not within the control of Licensee.

9.10 Licensee shall remain liable for and pay to VZ all fees and charges pursuant to provisions of this Agreement for occupancy of a Conduit that continues after the termination of the authorization for such occupancy.

- 9.11 If Licensee fails to remove its Facilities within the specified period, VZ shall have the right to remove such facilities at Licensee's expense and without any liability on the part of VZ for damage to such facilities.
- 9.12 When Licensee's Facilities are removed from a Conduit, no occupancy of such Conduit shall be made until:
- a) Licensee has first complied with all of the provisions of this Agreement as though no such Conduit occupancy had previously been made, and
  - b) All outstanding charges due VZ for such previous occupancy have been paid in full.
- 9.13 Licensee shall advise VZ in writing as to the date on which the removal of its Facilities from each Conduit has been completed.

## **ARTICLE X**

### **TERMINATION OF AUTHORIZATIONS**

- 10.1 Any authorization issued under this Agreement shall automatically terminate when 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.
- 10.2 Licensee may at any time terminate its authorization with respect to the occupancy of a Conduit, and remove its Facilities, by giving VZ written notice of such termination (Appendix II, Form 10245). Once Licensee's Facilities have been removed, they shall not occupy the same portion of such Conduit System, until Licensee has complied with all provisions of this Agreement as though no previous authorization had been issued.
- 10.2 In addition to any other right to terminate Licensee's authorization to occupy a Conduit that VZ may have under this Agreement, upon sixty (60) days advance written notice, VZ may terminate Licensee's authorization to occupy any Conduit, if VZ removes, abandons, terminates VZ's use of or right to use, or loses VZ's right to grant Licensee a right to attach to or occupy, Conduit.

## **ARTICLE XI**

### **INSPECTION OF LICENSEE'S FACILITIES**

- 11.1 The parties understand that post-installation inspections shall be performed by VZ at the sole expense of Licensee to ensure that Licensee's installations or other work has been performed in accordance with all applicable requirements.

- 11.2 Thereafter, VZ reserves the right to make reasonable periodic inspections at its own expense of any part of Licensee's Facilities occupying VZ's Conduits, provided that Licensee shall bear such expenses in the event more frequent inspections are required due to material non-conformances by Licensee that are found by VZ.
- 11.3 VZ will give Licensee advance written notice of such inspections, except in those instances where VZ determines that safety considerations justify the need for such an inspection without the delay of waiting until a written notice has been forwarded to Licensee.
- 11.4 The making of inspections or the failure to do so shall not operate to impose upon VZ any liability of any kind whatsoever nor relieve Licensee of any responsibility, obligations or liability assumed under this Agreement.

## **ARTICLE XII**

### **UNAUTHORIZED OCCUPANCY**

- 12.1 If any of Licensee's facilities are occupying Licensor's conduit without being licensed, Licensor 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 Licensor 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 Licensor may remove Licensee's facilities without liability at the Licensee's expense.
- 12.2 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 Licensor under this Agreement.

## **ARTICLE XIII**

### **SURETY BOND REQUIREMENTS**

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



Poles	Security Amount
1-50	\$10,000
51-500	\$75,000
501-2000	\$300,000
2001-3000	\$450,000
3000 +	\$500,000

Conduit footage	Security Amount
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

The maximum security limit required is \$500,000.

- .2 If the financial security is in the form of a bond, irrevocable Letter of Credit, or other security as deemed acceptable by Verizon, 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 required amount for the terms of the agreement.
- .3 The amount of the bond or the financial security shall not operate as a limitation upon the obligations of the Licensee.

#### **ARTICLE XIV**

##### **LIABILITY AND DAMAGES**

- .1 Verizon shall exercise reasonable care to avoid damaging the Facilities of Licensee attached to Poles, or occupying Conduits or Rights of Way, under this Agreement, and shall make an immediate report to Licensee of the occurrence of any such damage caused by Verizon's employees, agents or contractors. Verizon 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 Verizon; however, Verizon 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.
- .2 Licensee shall exercise reasonable care to avoid damaging the Facilities of Verizon and of others attached to Poles, or occupying Conduits or Rights of Way, 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 Verizon for any loss of Verizon's revenue or profits resulting from any interruption of Verizon's service caused by such damage or interference with the operation of Verizon's Facilities caused by such damage.
- .3 Licensee shall indemnify, protect and save harmless Verizon 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 attached to a Pole or placed in Conduit or Rights of Way, or by any act or omission of the Licensee's employees, agents or contractors on or in the vicinity of Verizon's Poles, Conduits or Rights of Way. 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 Verizon, 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.

- .4 The Licensee shall indemnify, protect and save harmless Verizon 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 on Verizons' Poles, Conduits or Rights of Way, including but not limited to damages, costs and expense of relocating Poles or 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 Poles, Conduits, Rights of Way or otherwise. The foregoing indemnity shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of Verizon. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct, or joint fault of Licensee and Verizon, but in such case the amount of the claim for which Verizon is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Licensee.
- .5 Verizon 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 Party's insurer by the other Party or affected entity shall be furnished promptly to the insured Party
- .6 Unless expressly provided for otherwise herein, neither Party shall be liable to the other for any special, consequential or other indirect damages arising under this Agreement.
- .7 The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued thereunder.

## ARTICLE XV

### INSURANCE

- 15.1 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.
- 15.2 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 Verizon, 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.
- 15.3 All insurance must be in effect before Licensors will authorize Licensee to make attachment to Licensors' pole(s) and shall remain in force until such Attachments have been removed from all such poles. 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 Licensors. Also, where applicable, such certificate of insurance shall evidence the name of the Licensors 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.

- 15.4 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 XVI**

### **AUTHORIZATION NOT EXCLUSIVE**

Nothing contained in this Agreement shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Subject to the rights granted Licensee under the provisions of this Agreement, VZ shall have the right to grant, renew and extend rights and privileges in a nondiscriminatory manner to others not parties to this Agreement, by contract or otherwise, to use any Conduit covered by this Agreement.

## **ARTICLE XVII**

### **ASSIGNMENT OF RIGHTS**

- 17.1 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.
- 17.2 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.

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

## **ARTICLE XVIII**

### **FAILURE TO ENFORCE**

Failure of either party 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.

## **ARTICLE XVIV**

### **TERMINATION OF AGREEMENT**

- 19.1 Subject to provisions of Article XVII hereof, should Licensee cease to use its Facilities in or through the area covered by this Agreement on other than a demonstrably temporary basis not to exceed 6 months, then all of Licensee's rights, privileges and authorizations under this Agreement, including all authorizations issued hereunder, shall automatically terminate as of the date following the final day that such Facilities are used.
- 19.2 Subject to Section 19.3, below, VZ shall have the right to terminate this entire Agreement or any authorization issued hereunder whenever Licensee is in default of any material term of this Agreement, including, but not limited to, the following conditions:
- a) If Licensee's Facilities are used or maintained in violation of any law or in aid of any unlawful act or undertaking; or
  - b) If Licensee occupies any Conduits without having first been issued a authorization therefore; or

- c) If any authorization which may be required of Licensee by any governmental or private authority for the construction, operation, and maintenance of Licensee's Facilities is denied or revoked; or
  - d) If the insurance carrier shall at any time notify VZ or Licensee that Licensee's policy or policies of insurance required under this Agreement will be canceled or changed, or if VZ reasonably determines that the requirements of this Agreement with regard to Licensee's policy or policies of insurance will no longer be satisfied, this Agreement shall terminate upon the effective date of such cancellation or change.
- 19.3 VZ will promptly notify Licensee in writing of any condition(s) applicable to Section 19.2, above. Licensee shall take immediate corrective action to eliminate any such conditions(s) and shall confirm in writing to VZ within 30 days following receipt of such written notice that the cited condition(s) has ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) or fails to give the required confirmation, VZ may immediately terminate this Agreement.
- 19.4 In addition to any other obligation that Licensee may have under this Agreement to remove its Facilities from VZ's Conduits (including, but not limited to, under Section 9.11, above), in the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, Licensee shall remove its Facilities from VZ's Conduit Systems within 6 months from the date of termination; provided, however, that Licensee's obligations under this Agreement with regard to such facilities shall continue following termination of this Agreement, including, but not limited to, Licensee's obligation to pay all fees and charges accruing pursuant to terms of this Agreement for Licensee Facilities occupying Conduit Systems.
- 19.5 If Licensee does not remove its Facilities from VZ's Conduit Systems within the applicable time periods specified in this Agreement, VZ shall have the right to remove them at the expense of Licensee and without any liability on the part of VZ to Licensee therefor.
- 19.6 In the event any of the arrangements, fees and charges provided for under this Agreement are offered under a tariff filed by VZ and in effect with a regulatory commission, this Agreement with respect to those arrangements, fees and charges shall be suspended and shall be superseded by said tariff. Said suspension shall become effective on the day when said tariff becomes effective, and shall remain in effect for the time that the tariff remains in effect.

## **ARTICLE XX**

### **TERM OF AGREEMENT**

- 20.1 This Agreement shall continue in effect until terminated by either party in accordance with the provisions of this Agreement, or by Licensee upon six months prior written notice thereof.
- 20.2 Termination of this Agreement or any authorizations issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination.
- 20.3 This Agreement shall be deemed to have been executed in the state of Pennsylvania and the parties hereto agree that the terms and performance hereof shall be governed by and construed in accordance with the laws of the state of Pennsylvania, 47 U.S.C. § 224, and the rules of the FCC, unless otherwise provided by Federal law.

**ARTICLE XXI**

**NOTICES**

All written notices required under this Agreement shall be given by posting the same in first class mail to Licensee as follows:

**(Name)**  
**(Title)**  
**(Company)**  
**(Address)**

and to VZ as follows:

**(Name)**  
**(Title)**  
**(Company)**  
**(etc.)**

or to such address as the parties hereto may from time to time specify in writing.

**ARTICLE XXII**

**CONFLICTS**

This Agreement, including all exhibits and appendices hereto, shall be subject to the Communications Act of 1934, as amended, and any related rules and regulations, and in the event of any conflicting provisions of this Agreement and such laws, rules or regulations, such laws, rules and regulations shall govern.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in duplicate.

**WITNESS**

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

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

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

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

**WITNESS**

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

**Verizon Pennsylvania Inc.**

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

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

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

## **APPENDIX I**

### **SCHEDULE OF FEES AND CHARGES**

THIS APPENDIX I contains the fees and charges governing the use of VZ's Conduit Systems by Licensee's Facilities.

1. Occupancy Fees

1.1 General

- a) Occupancy fees commence on the date set forth in Section 7.5 of the Agreement. Such fees cease as of the final day of the calendar month in which the occupancy is physically removed or is discontinued; provided, that if an occupancy is terminated as a result of a violation of this Agreement by Licensee, charges shall continue until the end of semi-annual period in which the Attachment or occupancy is physically removed or discontinued.
- b) A six month minimum charge is applicable for all occupancy accommodations.
- c) Fees shall be payable semi-annually in advance on the first day of January and July.
- d) The total occupancy fee due hereunder shall be based upon the number of duct feet of Conduit System (measured from the center to the center of Manholes, or from the center of a Manhole to the end of VZ's Conduit System to be occupied by Licensee) for which authorizations have been issued before the first day of December and the first day of June each year. Charges shall apply for occupancy of a Conduit System for which a authorization has been issued even if Licensee has not actually occupied the Conduit System. Each semi-annual payment shall include a proration of the monthly Attachment and occupancy charges applicable for occupancy initially authorized by VZ during the preceding six (6) month period.

2. Fees

2.1 Annual Fee

- a) Conduit System--Per foot of cable to be placed in the Conduit System
  - Full Duct
  - Half Duct

2.2 Other Charges

- a) Assignment of Agreement \$200.00
- b) Request for Additional Copies
  - Initial Fee \$ 25.00
  - Per Page \$ 2.00

Computation

Charges for all work performed by VZ or by VZ's contractor or authorized representative in connection with the furnishing of Conduit accommodations covered by this Agreement shall be based upon the full cost to VZ for performance of such work, in accordance with VZ's regular and customary methods for determining such costs and Applicable Law. Such charges will apply for, but not be limited to, Preauthorization Survey; Make-Ready Work; inspection of Licensee's Facilities; removal of Licensee's Facilities, where applicable; and supervision, at the option of VZ, of Licensee-performed work in and around the immediate vicinity of a Manhole or Conduit System.

2.3 Payment Date

Payment of fees and charges shall be due thirty (30) days after issuance of VZ's bill. Failure to pay any undisputed fees and charges within thirty (30) days after issuance of the bill therefor shall constitute a default of this Agreement, and in addition shall result in a 1 1/2% per month late charge until paid in full.

**APPENDIX II**

**INDEX OF ADMINISTRATIVE FORMS**

	<b><u>Form Number</u></b>
Application and Conduit Occupancy Authorization	10256
Conduit System Diagram	10256-1
Cable to Occupy Conduit	10256-2
Equipment to be Placed in Manholes	10256-3
Notification of Surrender	10245
Estimated Summary of Costs – Conduit	B-4



S t r e e t  
A d d r e s s \_\_\_\_\_

City and State \_\_\_\_\_

Date \_\_\_\_\_

**VERIZON PENNSYLVANIA INC.**

In accordance with the terms and conditions of Agreement dated \_\_\_\_\_, application is hereby made for an authority to occupy the conduit system shown on the sketch or map, Form 10256-1 attached hereto, with the cable detail on Form 10256-2 attached hereto and equipment on Form 10256-3 attached hereto.

**Location:** \_\_\_\_\_  
**City, Borough, Township, County and State**

This request will be designated Conduit Authority Number \_\_\_\_\_.

\_\_\_\_\_  
**LICENSEE**

**By** \_\_\_\_\_

**Title** \_\_\_\_\_

**Telephone Number** \_\_\_\_\_

Conduit Authority Number \_\_\_\_\_ is hereby granted to occupy Company's conduit system, as indicated on the attached Form 10256-1, with cable, equipment and facilities specified on the attached Forms 10256-2, and 10256-3 Duct and or Innerduct footage this authority \_\_\_\_\_.

**VERIZON PENNSYLVANIA INC.**

**By** \_\_\_\_\_

**Title** \_\_\_\_\_

**Date** \_\_\_\_\_

**Telephone Number** \_\_\_\_\_



Form 10256-1  
Application and Conduit Occupancy Authorization

---

O c c u p a n t \_\_\_\_\_

Location \_\_\_\_\_  
City, Borough or Township, County and State

Authority Number \_\_\_\_\_

Conduit System Diagram



O c c u p a n t \_\_\_\_\_

Location \_\_\_\_\_  
City, Borough or Township, County and State

Authority Number \_\_\_\_\_

**Cable to Occupy Conduit**

Cable Designation	OD. Inches	WT. LBS. Per Foot	Metallic Sheath or Shield		Type of Cable	Max. Voltage to Gnd.		Max. Current In Any Conductor	Type of Jacket
			Yes	No		AC	DC		

1. Cable Designation: Assign letter, alphabetically, to each different type of cable to be installed.
2. O.D. (Inches): Outside diameter of the cable.
3. WT. Lbs. Per Foot: Self-explanatory
4. Metallic Sheath or Shield: Self-explanatory
5. Type of Cable: If coaxial cable show number of tubes.  
If pair cable show pair size and gauge (e.g. 16-22)
6. Max. voltage to Gnd: Self-explanatory
7. Max. Current in any conductor: Self-explanatory
8. Type of Jacket: Enter type of material of the outer jacket of sheath (Polyethylene, PVC. or lead etc.)





**Notification of Surrender**

Street \_\_\_\_\_

City and State \_\_\_\_\_

Date \_\_\_\_\_

**Verizon Pennsylvania Inc.**

In accordance with the terms and conditions of the License Agreement between us, notice is hereby given that the authority covering occupancy of the following conduit is surrendered.

**Authority Number** \_\_\_\_\_ **Dated** \_\_\_\_\_, 20\_\_.

**Location:** \_\_\_\_\_  
City, Borough or Township, County and State

Conduit Location Duct/Innerduct    Modification/Surrender Date Facilities Removed

\_\_\_\_\_  
Licensee

**By** \_\_\_\_\_

**Title** \_\_\_\_\_

**Effective Date** \_\_\_\_\_

**By** \_\_\_\_\_

**Duct Discontinued** \_\_\_\_\_ Ft.

**Title** \_\_\_\_\_

**Innerduct Discontinued** \_\_\_\_\_ Ft.



**Form B-4  
Estimated  
Summary of Costs - Conduit  
Make Ready**

Licensee: \_\_\_\_\_

Municipality: \_\_\_\_\_

MUNI# ID \_\_\_\_\_ Exchange \_\_\_\_\_

CWO# \_\_\_\_\_ File # \_\_\_\_\_

Survey Amount: \$ \_\_\_\_\_

**Explanation of Costs**

To accommodate the proposed request, it will be necessary for the Telephone Company to:

You are authorized to proceed with the above changes and rearrangements. A check in the amount of \_\_\_\_\_ is attached.

By

Title

Date

