Town of Cortland

RIGHT-OF-WAY USE LICENSE AGREEMENT

THIS RIGHT-OF-WAY USE LICENSE AGREEMENT (hereinafter referred to as this "Agreement"), made and entered into this ____ day of September 2020, pursuant to authority of the Illinois Constitution, State Statutes, and the Code of the Town of Cortland, between the TOWN OF CORTLAND, an Illinois municipal corporation and non-home rule unit of local government, with its principal office located at 59 S. Somonauk Road, Cortland, Illinois 60112, (hereinafter referred to as the "TOWN") and EVERSTREAM GLC HOLDING COMPANY LLC, a Delaware limited liability company, (hereinafter referred to as the "LICENSEE"). The TOWN and the LICENSEE may be hereinafter referenced individually as "Party" or cumulatively as "Parties." This Agreement pertains to the public right-of-way described and depicted on **Exhibit A** attached hereto and made part hereof.

IT IS THEREFORE, AGREED by and between the TOWN and the LICENSEE, in consideration of the public health, welfare and safety, and the promises and mutual covenants contained herein, as follows:

1. RECITALS INCORPORATED BY REFERENCE: The Recitals set forth above are specifically incorporated into and made a part of this Agreement as though fully set forth in this Section 1.

2. INTERPRETATIONS AND DEFINITIONS:
    a. Interpretation:
        i. Word Use: When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" or "will" are always mandatory and not merely directory, and the word "may" is permissive.
        ii. Conflicting Provisions:
            1. In no event shall prior drafts of this Agreement be used, considered or relied upon in interpreting or construing any provision of this Agreement.
            2. Headings and captions contained in this Agreement are for convenience and reference only and are not a part of this Agreement and shall not be used in construing this Agreement and shall not in any way affect the construction or interpretation hereof.

b. Definitions: Whenever used in this Agreement, the following terms shall have the following meanings:

i. **Effective Date**: The date of this Agreement as set forth on the beginning of the first page of this Agreement, which date shall be used for reference purposes and all other purposes;

ii. **Facilities**: The individual parts that together make the LICENSEE's Telecommunications System operational for the purposes set forth herein, including, without limitation, all cables, conduits, access manholes, pedestals, boxes, equipment, devices and other appurtenances in the Public Way.

iii. **Final Plans and Specifications**: Those certain plans and specifications for the Telecommunications System approved by the TOWN pursuant to this Agreement.

iv. **Governmental Authority**: The United States of America, the State of Illinois, the County of DeKalb and any political subdivision thereof, including, without limitation, the TOWN and any agency, department, commission, board, bureau or other instrumentality of any of them that has jurisdiction over the Telecommunications System or any property over, under, above or along which the Telecommunications System shall be installed.

v. **License**: The nonexclusive, revocable license granted to the LICENSEE in this Agreement, to use certain Public Ways within the license area for the purposes of constructing, installing, using, maintaining, testing, inspecting, operating, repairing and removing the Telecommunications System pursuant to and in accordance with this Agreement.

vi. **Permits**: All approvals, consents, permits, certificates, licenses, easements and authorizations required to be obtained from all Governmental Authorities and Persons, in connection with the Telecommunications Systems, including those needed to obtain access to or use of any real property.

vii. **Person**: Any natural person, or association, firm, partnership, join venture, corporation, limited liability company or other legally recognized entity or organization, whether for profit, not-for-profit, excluding Governmental Authorities.

viii. **Preliminary Plans and Specifications**: Those certain plans and specifications for the Telecommunications System submitted by the LICENSEE to the TOWN's project manager, or his or her designee, pursuant to this Agreement.

ix. **Public Way**: A public street or drive, utility easement or utility facility or other public right-of-way now or hereafter held by the TOWN in a governmental/regulatory capacity.

x. **Public Street**: A public highway, lane, path, alley, sidewalk, boulevard, or other public right-of-way under the municipal street system, now or hereafter held by the TOWN in its governmental/regulatory capacity.

xi. **Service**: The provision or offering of all telecommunications services (either directly or as a carrier for others) and other services authorized by law to persons or entities by means of the Telecommunications System, provided that such service shall not include the operation of a cable television system as defined under the Cable Acts of 1984 and 1992.

xii. **Telecommunications System**: The telecommunications network consisting primarily of fiber optic cables to be constructed and installed by the LICENSEE pursuant to and in accordance with this Agreement, including, without limitation, all Facilities to be used by the LICENSEE to make the telecommunications network fully operational, for the purposes of transmitting, receiving and distributing telecommunications and other information, including, without limitation, voice, data, signals and other forms of communications, provided that the LICENSEE shall not be a cable operator, as such term as defined under the Cable Acts of 1984 and 1992, as amended or as may be amended in the future.

3. GRANT AND ACCEPTANCE OF LICENSE

a. Grant of License: The TOWN hereby grants to the LICENSEE a License for the Term of this Agreement to occupy and use only those certain Public Streets and Public Ways within the TOWN as detailed in the Final Plans and Specifications referenced in this Agreement for the purposes of constructing, installing, using, maintaining, testing, inspecting, operating, repairing and removing the Telecommunications System. This License is limited to only the specific route and those certain Public Streets and Public Ways, within the TOWN detailed in the Final Plans and Specifications. This Agreement does not convey any right, title or interest in the Public Streets, Public Ways or property of the TOWN, but shall be

deemed a license only to use and occupy the Public Streets, Public Ways or property of the TOWN for the limited purposes stated in this Agreement. Neither this Agreement nor the License shall be construed as any warranty of title.

b. Acceptance of License: The LICENSEE hereby accepts the License and agrees to strictly comply with this Agreement.

c. License, Permits and Approvals: With the exception of those rights granted herein, this Agreement shall not take the place of any license, permit or approval that is or may in the future be required to be, secured by the LICENSEE from any Governmental Authority or Person in order to:

   i. install, use, maintain, test, inspect, operate, repair or remove the Telecommunications System;
   ii. access, possess or otherwise use any real property; or
   iii. engage in, maintain, operate or carry on a business within the TOWN.

d. Non-exclusivity of Grant: This Agreement does not confer any exclusive right, privilege, license or franchise to occupy or use the Public Streets, Public Ways or property of the TOWN for the provision of any services or any other purpose. Nothing contained in this Agreement shall prohibit the TOWN from granting any other Governmental Authority or Person a license similar to the one granted herein to construct, install, maintain and operate a telecommunications system in the TOWN.

e. License Term: The Term of the License shall begin on the Effective Date and shall expire five (5) years from the Effective Date and may be renewed or terminated pursuant to this Agreement.

   i. Renewal

      1. The LICENSEE may seek to renew its License by filing a Renewal Application, not more than one hundred fifty (150) days, nor less than sixty (60) days before expiration of the current license Term. Said Application shall include the information required pursuant to Chapter 7-7 of the Code of the Town of Cortland and any other information required by the TOWN.
      2. Within ninety (90) days after the receiving the Renewal Application, the TOWN's Mayor shall issue a written determination granting or denying the Renewal Application in whole or in part, applying the following standards. If the Renewal Application is denied, the written determination shall

include the reasons for nonrenewal, which include, but are not limited to the following:

a. The financial and technical ability of the LICENSEE to provide the services permitted and perform its obligation under the license agreement and applicable laws and ordinances.

b. The legal ability of the LICENSEE to provide the services permitted and perform its obligations under the license agreement and applicable laws and ordinances.

c. The continuing capacity of the public streets or ways or other TOWN property to accommodate the LICENSEE's existing facilities.

d. The LICENSEE's compliance with the requirements of the Code of the Town of Cortland and this Agreement.

e. Applicable Federal, State and local laws, rules and policies.

f. Such other factors as may demonstrate whether the continued license for use of the public ways will serve the community interest.

3. The LICENSEE's License shall not be renewed until any and all ongoing violations or defaults in the LICENSEE's performance of this Agreement, as the case may be, or of the requirements of Chapter 7-7 of the Code of the Town of Cortland, have been cured, or a plan detailing the corrective action to be taken has been approved by the TOWN's Mayor.

4. FEES, COSTS AND COMPENSATION

a. TOWN Costs: For and in consideration of the License and as a condition of this Agreement and of the License granted pursuant to this Agreement, the LICENSEE shall pay all actual and reasonable costs and expenses of the TOWN related to the enforcement and administration of this Agreement.

b. State Tax: LICENSEE will maintain its status as a Telecommunications Retailer under the Telecommunications Municipal Infrastructure Maintenance Fee Act (TMIFMA) (35ILCS 635) and timely pay the taxes imposed by the Simplified Municipal Telecommunications Tax Act (SMTT) (35 ILCS 636/5) to the State of Illinois.

c. Electrical System Connection Fees and Charges: The LICENSEE shall, prior to connection of any of its facilities to the TOWN's electric distribution system, pay the TOWN all required connection fees, including any applicable infrastructure availability charges; and shall agree to comply with all service rate requirements under the Code of the Town of Cortland.

d. Cable Franchise Fees and Other Regulatory Fees and Compensation:
The LICENSEE is separately responsible for all applicable franchise, PEG (public, educational and governmental), and other federal, state, and local regulatory fees related to the LICENSEE's facilities in the TOWN's rights-of-way and the TOWN does not waive and in fact reserves its rights to all other applicable fees and compensation. The Parties acknowledge that the right and authority of the TOWN to impose and collect a franchise fee for the installation and use of fiber optic lines in public streets has been defined by federal and state law. This Agreement has been negotiated and does not include a franchise fee or other payment to compensate the TOWN for use of its Pubic Streets. In the event the state or federal law, now or in the future, requires the imposition and collection of a franchise fee for use of public streets in the way the, the TOWN may cause this Agreement to be amended to provide for the payment of a lawful franchise, license or permit fees to replace the fees and charges imposed under this Agreement by serving written notice on the LICENSEE.

e. Other TOWN Costs: The LICENSEE shall reimburse the TOWN for all actual and reasonable additional costs and expenses incurred by the TOWN in connection with any issuance, modification, amendment, renewal or transfer of this Agreement or of the Right-Of-Way Use License granted pursuant to this Agreement.

f. Nondiscrimination: The LICENSEE shall make its Services available to any customer within its area who shall request such Service, without discrimination as to the terms, conditions, rates or charges for the LICENSEE's Services; provided, however, that nothing shall prohibit the LICENSEE from making any reasonable classifications among differently situated customers consistent with public utility, Federal Communications Commission (FCC), Illinois Commerce Commission (ICC) or other applicable regulatory standards.

g. Leased Capacity: The LICENSEE shall have the right, without prior TOWN approval, to offer or provide surplus or excess capacity to its customers; provided the LICENSEE shall furnish the TOWN with a report, in a form satisfactory to the TOWN, documenting the Simplified Municipal Telecommunications Tax Act paid to the Illinois Department of Revenue for

eligible services rendered in the City, as well as the gross eligible revenue amount from which the payment was derived.

5. BILLING AND PAYMENTS

a. To the extent LICENSEE is subject to any fees, costs, or compensation due to the TOWN from the LICENSEE pursuant to this Agreement, the provisions of this Section shall apply.

b. The TOWN shall issue the LICENSEE invoices for any other fees, costs and compensation due to the TOWN from the LICENSEE pursuant to this Agreement.

c. Each invoice shall be paid by the LICENSEE within thirty (30) days from the date of issuance of said invoice.

d. Any payment more than 30 days past due shall be deemed delinquent and shall accrue interest at the rate of eighteen percent (18%), compounded annually.

e. The LICENSEE agrees to pay the TOWN's reasonable attorney's fees and costs of collection, including litigation costs, should the LICENSEE default on this Agreement.

f. The acceptance by the TOWN of any payment shall not be construed as an accord by the TOWN that the amount of such payment is the correct amount due from the LICENSEE pursuant to this Agreement, nor shall such acceptance of any payment be construed to be a release or waiver of any claim the TOWN may have for further or additional sums due and payable pursuant to this Agreement.

g. All payments due to the TOWN from the LICENSEE pursuant to this Agreement shall be paid without counterclaim, setoff, deduction or defense. In the event the LICENSEE does setoff or deduct any amount from any such payment or otherwise reduces the amount due based on a counterclaim or defense, the TOWN shall have the right to, without any liability to the LICENSEE, its customers or any third Persons, pursue all remedies available to it at law or in equity, including without limitation, revocation of the LICENSEE's License.

h. Payment by the LICENSEE to the TOWN of the fees and charges set forth in this Agreement are compensation for TOWN services and shall not be considered in the nature of a tax. Such payments shall be separate from, and additional to, all federal, state, local and municipal taxes, as may be due, which are separate and distinct obligations of the LICENSEE.

6. INTER-TOWN CIRCUITS AND REPORTING REQUIREMENTS

a. This Agreement contemplates that the LICENSEE might construct circuits from within the TOWN limits of the TOWN extending to points beyond such TOWN limits and

providing point-to-point non-switched interexchange telecommunications services with no intermediate Services within the TOWN ("Inter-Town Circuits"). Should Inter-Town Circuits be established, the LICENSEE agrees to bill its customers separately for telecommunication Services provided through Inter-Town Circuits.

b. The LICENSEE shall furnish to the Town Treasurer such information as may be reasonably required by the Town Treasurer to effect compliance by the LICENSEE and the LICENSEE's customers with the Section 3-2-1 of the Code of the Town of Cortland and any other ordinances of the TOWN which shall be in effect from time to time regulating, taxing or otherwise concerning the LICENSEE's operation of a Telecommunications System pursuant to this Agreement. The Parties hereto expressly intend and acknowledge that the LICENSEE's fiber optic cables and telecommunication lines will be personal property of the LICENSEE and not fixtures. The LICENSEE also specifically acknowledges its duty to collect and remit to the TOWN the TOWN's Utility Tax and acknowledges its duty and obligation to comply with the ordinances of the TOWN, including any ordinances that require the payment or collection of another TOWN tax or the obtaining of any TOWN licenses. Breaching the provisions of this Section shall be a default under this Agreement.

7. LOCATION OF FACILITIES: All facilities shall be constructed, installed and located in accordance, with the following terms and conditions:

a. The LICENSEE shall locate all its Facilities underground in new or existing ducts, conduits or vaults.

b. The LICENSEE shall use existing ducts, conduits or vaults whenever excess capacity exists within such facilities.

c. Whenever any existing electric utilities or facilities are located underground within a public way of the TOWN where the LICENSEE also seeks to occupy the same public way, the LICENSEE must also locate its facilities underground.

d. Whenever any new or existing TOWN-owned electric utilities, or other TOWN-owned facilities are located or relocated underground within a public way of the TOWN, the LICENSEE that currently occupies the same public way shall relocate its facilities underground, at its sole expense within eighteen (18) months, which in no event shall be later than the end of the grant term. Such relocation shall be made concurrently to minimize the disruption of the public ways.

e. The LICENSEE's facilities permitted to be installed underground shall be installed within an existing underground duct or conduit owned by the LICENSEE whenever surplus capacity is reasonably available within such existing facilities. The LICENSEE's facilities permitted to be installed on overhead facilities shall be installed on pole attachments to existing utility poles owned by the LICENSEE whenever surplus capacity is reasonably available within such existing facilities.

f. The LICENSEE's facilities permitted to be installed underground shall be installed within an existing underground duct or conduit owned by other entities using or occupying the right-of-way, street or other property whenever surplus capacity is reasonably available within such existing facilities, and permission for such use is reasonably available from the other entity. The LICENSEE's facilities permitted to be installed on overhead facilities shall be installed on pole attachments to existing utility poles owned by other entities whenever surplus capacity is reasonably available within such existing facilities, and permission for such use is reasonably available from the other entity.

g. Whenever surplus capacity on the LICENSEE's or other entity's existing facilities, or permission for the LICENSEE to use surplus capacity on other entity's facilities, is not reasonably available to reasonably accommodate the LICENSEE's new facilities, thereby requiring the LICENSEE to construct or install new facilities within public streets, utilities or easements, the LICENSEE shall so construct and install such facilities to industry standards so as to provide additional capacity in the form of ducts, conduits, manholes and other facilities to reasonably accommodate future entities on a nondiscriminatory access basis, and shall reasonably permit such use by such future entities; provided however, the TOWN shall pass any necessary ordinances and take all reasonable steps legally available to require any such future entities to utilize the LICENSEE's excess capacity if the LICENSEE's excess capacity will reasonably accommodate such future entity's needs, and such future entity pays the LICENSEE compensation in accordance with Federal Communications Commission (FCC), Illinois Commerce Commission (ICC) or other applicable regulatory standards.

h. The LICENSEE must obtain written permission from the TOWN to install any aerial or overhead facilities within the jurisdictional limits of the Town of Cortland. If permission is granted to install any aerial or overhead facilities, the LICENSEE shall install its facilities on

pole attachments to existing utility poles only, and then only if surplus space is available and in accordance with any applicable pole attachment agreements.

i. Before making any attachments to any TOWN owned poles, the LICENSEE and the TOWN shall in good faith negotiate and agree upon a reasonable and lawful pole attachment fee to be paid by the LICENSEE to the TOWN for the use of such poles.

j. Pursuant to provisions of the Illinois Administrative Code, Title 83, Part 305, within fourteen (14) days of the TOWN's request, the LICENSEE shall provide all pertinent data and information, including data relative to proposed and existing construction, and changes in operating conditions which may affect or likely affect situations of proximity.

8. CONSTRUCTION OF TELECOMMUNICATIONS SYSTEM

a. Plans and Specifications

i. **Submission of Plans and Specifications**: The LICENSEE shall, within forty-five (45) days after the Effective Date, submit to the TOWN's designated project manager, for review and comment, six (6) complete sets of the Preliminary Plans and Specifications which shall include, without limitation:

1. A map in sufficient detail indicating:

a. the proposed route for all cable lines, including detailed drawings of the location in each Public Street where such cables are proposed to be placed underground;

b. all existing utilities in such Public Streets;

c. all trees, structures, improvements and obstructions in such Public Ways; and

d. the names of owners of all properties, public or private, under, over or across that the cable lines are proposed to be constructed and/or installed. Such map shall also identify which trees, utility facilities, structures, other improvements and all other obstructions that the LICENSEE proposes to temporarily or permanently remove or relocate.

2. A complete list of all permits required to be obtained from Governmental Authorities.

3. A written traffic control plan delineating the proposed construction schedule and traffic impacts on Public Ways. The plan shall be proposed

in accordance with the Manual on Uniform Traffic Control Devises published by the United States Department of Transportation, Federal Highway Administration.

ii. **Review by the TOWN**: The TOWN's designated project manager, or his or her designee, shall review, within thirty (30) days, the Preliminary Plans and Specifications. After said review, TOWN's designated project manager, or his or her designee, shall submit any comments in writing to the LICENSEE.

iii. **Submission of Final Plans and Specifications**: The LICENSEE shall, within thirty (30) days of the date the LICENSEE receives the written comments respecting the Preliminary Plans and Specifications, submit to the TOWN's designated project manager, or his or her designee, for review and approval, six (6) complete sets of the Final Plans and Specifications. The Final Plans and Specifications shall consist of final, complete and revised versions of each of the Preliminary Plans and Specifications. If the TOWN's designated project manager, or his or her designee, is satisfied that the Final Plans and Specifications are in order and reflect all the revisions that the TOWN's designated project manager, or his or her designee, requested in connection with the review of the Preliminary Plans and Specifications, then the TOWN's designated project manager, or his or her designee, shall approve the Final Plans and Specifications not later than thirty (30) days after receipt thereof. In the event the Final Plans and Specifications do not meet the requirements of the TOWN's designated project manager, or his or her designee, he or she shall notify the LICENSEE, in writing, of the denial of the Final Plans and Specifications. No construction of any kind shall commence, and the TOWN shall not be required to issue any permits for any construction, unless and until the TOWN's designated project manager, or his or her designee, approves the Final Plans and Specifications.

iv. **Resolution of Engineering Disputes**: The TOWN and the LICENSEE agree to use their respective best efforts to resolve all engineering issues regarding the Final Plans and Specifications to the mutual satisfaction of both Parties, provided, however, that under no circumstances shall the TOWN be obliged or required to revise, amend, modify or waive any of the codes, ordinances, rules or regulations of the TOWN.

b. Coordination of Construction Activities

i. The LICENSEE is required to and shall cooperate with the TOWN and other licensees.

ii. By February 1 of each year, the LICENSEE shall provide the TOWN with a schedule of its proposed construction activities in, around or that may affect the public streets and ways.

iii. If work is proposed or planned for the year, the LICENSEE shall meet with the TOWN, other licensees and users of the Public Ways and Public Streets to schedule and coordinate construction in the Public Ways and Public Streets.

iv. All construction locations, activities and schedules shall be coordinated, as ordered by the TOWN's project manager, or his or her designee, to minimize public inconvenience, disruption or damages.

c. The LICENSEE shall adjust to depth, line, and/or grade at its sole expense all appurtenances related to its telecommunications system in the street or public way at the time the street or public way rehabilitation, repair or reconstruction occurs.

d. Permits

i. Obligation to Obtain Permits: The LICENSEE shall, before commencing construction of any kind in the TOWN, obtain all permits as may be necessary or required for the use of property in connection with, and for the construction of, the Telecommunication System. The LICENSEE shall submit copies of all permits received by it, with the exception of those issued by the TOWN, to the TOWN's designated project manager, or his or her designee, prior to the commencement of construction. Each permit application submitted by the LICENSEE to the TOWN shall contain plans and specifications sufficiently detailed to demonstrate to the TOWN that the Telecommunications System will be constructed in accordance with all applicable codes and ordinances and shall meet the requirements of this Agreement, provided, however, whenever the LICENSEE elects to engage in construction or maintenance of a lateral connection from its Telecommunications System to a customer location which was not included within the Final Plans and Specifications, such permit application and plans and specifications shall demonstrate that such lateral is consistent with the overall concept of the Final Plans and Specifications, presents no threat to the public health and safety, and

meets all other requirements of this Agreement. In each such case, the TOWN shall issue the permit within twenty-one (21) days of application. The permit application shall include a drawing depicting the proposed depth of underground burial.

ii. **Membership in JULIE**: The LICENSEE shall, before commencing construction, become a member of Joint Utility Locating Information for Excavators ("JULIE") and shall at all times during the term of this Agreement, comply with all regulations of JULIE.

iii. **Construction in Accordance with Permits**: The LICENSEE shall construct the Telecommunications System in strict accordance with all permits issued and all applicable codes, rules and regulations of all Governmental Authorities, and the failure to comply with the permit documents shall constitute a material breach of this Agreement. The LICENSEE shall, as diligently as possible but in no event later than thirty (30) days after delivery of a violation notice by the TOWN, correct such violation. If, in the City's judgment, the violation cannot reasonably be corrected within the thirty (30) day period provided herein, the TOWN may extend the period in which LICENSEE must correct the violation. Notwithstanding the foregoing, if the violation constitutes a potential threat to the public, the LICENSEE shall correct the violation immediately following notice of the violation or threat.

e. <u>Construction on and In Public Streets</u>

i. **Minimal Interference**: All work performed on, in, under, across or along the Public Streets shall be conducted so as to minimize any interference with all existing utilities and the rights and convenience of the general public, including traffic flow, the LICENSEE shall, at all times, employ reasonable care to avoid damage or interference with existing utilities, and while performing work: (a) employ reasonable care to protect the health and safety of the public, and (b) operate in accordance with the traffic control plan as approved by the project manager, or his or her designee.

ii. **Barricades:** The LICENSEE shall use suitable barricades, flags, lights, flares or other protective devices at such times and places as are required by its traffic control plan, all applicable ordinances, codes, rules and regulations and at such additional times and places as are required for the safety of all members of the general

public, so as to prevent injury to any Person or damage to any vehicle by reason of any work being performed, as determined by the TOWN in its sole judgment and discretion.

f. Excavation Work Time Periods

i. **Prior Notification**: The LICENSEE shall notify the TOWN's project manager, or his or her designee, and the owners of all private property abutting the proposed excavation at least seventy-two (72) hours prior to any excavation which comes within ten (10) feet of any existing TOWN utilities or in any Public Street. Nothing herein shall be construed as preventing the LICENSEE from making immediate repairs to any damage caused to any Facilities, provided that the LICENSEE shall notify the TOWN's project manager, or his or her designee, as promptly as possible before such repair work or if an emergency, as soon thereafter as possible, and in any event, shall notify JULIE before such repair work.

ii. **Excavation Plans**: No excavation on any Public Street or private property shall be conducted more than twenty-four (24) hours prior to the installation therein of any Facilities.

iii. **Excavations in Lawns and Parkways**: All excavations in lawns or grassy parkways within any Public Street or Public Way shall be immediately backfilled and tamped. If such excavations are performed between May 1st and October 1st, they shall be restored with sod within fourteen (14) days of completion of such excavation, and if performed between October 1st and May 1st, they shall be restored with sod no later than May 15th, all in accordance with the applicable provisions of this Agreement, provided, however, the time for restoring with sod shall be extended as may be reasonably necessary under the circumstances in the event adverse weather conditions prevent completion of such restoration within the time periods provided herein.

g. Trimming Trees Prohibited: The LICENSEE shall be prohibited from cutting or trimming any tree, shrub or other vegetation, in or on any Public Street prior to receiving the written approval of the TOWN's project manager, or his or her designee. The LICENSEE may cut or trim trees on private property as necessary, provided, however, the LICENSEE shall first obtain the permission of the affected property owner. All such trimming shall be in accordance with standard local arboricultural practices, and no trimming shall occur until

the wires, cables or other Facilities have first been attached to the poles to ensure trimming to the minimum extent necessary. All trimming debris shall be removed from the work area on a daily basis.

h. General Construction Standard: All work performed on the Telecommunications System shall be performed in a good and workmanlike manner using materials of good and durable quality. If at any time a governmental authority determines that any part of the Telecommunications System, including, without limitation, any means used to distribute signals over or within the Telecommunications System, is harmful to the health or safety of any Person, then the LICENSEE shall, at its sole cost and expense, promptly correct all such conditions to the reasonable satisfaction of such governmental authority.

i. "As-Built" Plans: The LICENSEE shall furnish to the TOWN two (2) complete sets of all "as-built" plans for the Telecommunications System as originally constructed and for all reconstruction, repair, relocation and other work performed thereon within sixty (60) days after completion of such work. The LICENSEE shall also furnish to the TOWN one (1) digital copy of the "as-built" plans in "DWG" format for inclusion in the TOWN's GIS system. Notwithstanding the foregoing, the LICENSEE shall not be required to provide "as-built" plans for routine maintenance work performed.

j. Town Right of Inspection: The TOWN shall have the right to inspect all construction to ensure compliance with this Agreement and all applicable codes, laws, ordinances, rules, regulations and Permits. In non-emergency situations, the TOWN shall give the LICENSEE not less than 24 hours prior notice of its intention to inspect, and, in such instances, the LICENSEE shall have the right to accompany the TOWN during any such inspections provided the TOWN shall not be required to unreasonably delay its inspection to satisfy the LICENSEE's schedule.

9. RESERVATIONS OF PUBLIC STREET RIGHTS AND CONSTRUCTION RESTRICTIONS

a. Interest in Public Ways and Public Streets: All rights granted herein to the LICENSEE in the Public Ways and Public Streets are granted based on the information and belief of the TOWN that it has title or an interest in such Public Ways and Public Streets and the right and power to grant the rights and interests granted to the LICENSEE in this Agreement. This Agreement shall be deemed to grant only such rights to use Public Ways and Public Streets as the TOWN may have the right and power to grant in this Agreement. The LICENSEE has the right to conduct or obtain a title search of the Public Ways and Public

Streets to ascertain the status of the TOWN's rights and interests in the same, which shall be at the LICENSEE's sole cost and expense.

b. Nonexclusive Use: The LICENSEE's right to use and occupy the Public Ways or Public Streets shall not be exclusive. The TOWN hereby reserves the right to grant any right or use of such Public Ways or Public Streets to any Person or at any time during the period of the License and any renewal or extension thereof, provided and subject to this Agreement, that such grant does not obstruct, injure or prevent the use and operation of the Telecommunications System or any Facilities.

c. Other Utilities: The TOWN hereby retains the right to lay and permit to be laid, sewer, gas, water, electric, and other pipelines, cables and conduits in any Public Way, to change any curb or sidewalk or the grade or dimension of any street, and to perform and to permit to be performed any other work as the TOWN shall deem necessary or proper, in its sole judgment and discretion. All such work shall be performed, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of Facilities. If any such Facilities shall interfere with the construction or repair of any Public Way or public utility or other improvement therein, the LICENSEE shall, at is sole cost and expense, commence and diligently prosecute to completion, the relocation, removal or replacement of such Facilities, within ninety (90) days after the delivery of such written notice by the TOWN. Such work shall be performed as reasonably directed by the TOWN. In the event the Facilities must be so relocated, the TOWN's project manager, or his or her designee, shall use best efforts to identify alternative rights of way for the relocated Facilities. In the event relocation of the Facilities or any part thereof is necessary in order to accommodate improvements or construction performed by or on behalf of a federal, state or county governmental agency from which the TOWN receives payment for relocation of existing facilities, the TOWN shall reimburse the LICENSEE for its pro-rata share of such relocation payments received from the governmental agency. In the event relocation of the Facilities or any part thereof is necessary in order to accommodate improvements or construction performed by or on behalf of any non-governmental third party, such third party shall pay for the entire cost of relocation of the Facilities.

d. Creation or Dedication of Public Street: The LICENSEE shall discontinue any use of the Public Street, if the TOWN reasonably determines that such use is inconsistent with the Public health or safety or with the purposes for which such Public Street was created or

dedicated or is currently being used. The LICENSEE acknowledges and accepts at its own risk that the TOWN may make use in the future of the Public Ways and Public Streets in which the LICENSEE's Telecommunications System is located in a manner inconsistent with the LICENSEE's use of such Public Ways and Public Streets for its placement of its Telecommunication System. In the event the Facilities must be relocated, the TOWN's project manager, or his or her designee, shall use best efforts to identify alternative Public Ways and Public Streets for the relocated Facilities.

e. Improvements or Changes on Public Streets: If the TOWN shall desire to make any improvements or changes on, or to all, or any part of any utilities or Public Ways and Public Streets, over, under or along which any part of the Telecommunications System has been installed, then the LICENSEE shall, at its sole expense after ninety (90) days written notice from the TOWN, proceed to alter, change, vacate or remove as directed by the TOWN any part of the Telecommunications System necessary to accommodate the TOWN's planned improvements or changes. In the event such Facilities shall be required to be removed, the TOWN's project manager, or his or her designee, shall use best efforts to identify alternative areas or Public Ways and Public Streets for the relocation of the LICENSEE Facilities and provide the LICENSEE with additional time up to one hundred twenty (120) days total to remove said Facility, provided, however, that nothing in this subsection shall be construed as requiring or obligating the TOWN to identify alternative areas or Public Ways and Public Streets. In the event an emergency should arise wherein the TOWN deems it necessary to have the LICENSEE move its Facilities, the TOWN's project manager, or his or her designee, shall certify, in writing, the basis of the emergency and shall give the LICENSEE fourteen (14) days to move its Facilities. The TOWN shall not have liability for any damages as a result of such movement, unless such damages are caused by or arise from the gross negligence or willful misconduct of the TOWN, its employees, agents or contractors. Wherever, in case of fire or other disaster, it becomes necessary in the judgment of the TOWN to remove or damage any of the LICENSEE's Facilities, no charge shall be made by the LICENSEE against the TOWN for restoration and repair.

f. Vacation or Abandonment of a Public Street: In the event any Public Ways or Public Streets or portion thereof used by the LICENSEE shall be vacated by the TOWN, then, upon request and notice from the TOWN, the LICENSEE shall, at its sole cost and expense, remove its Facilities therefrom within one hundred twenty (120) days of the date of such notice. In

the event such Facilities shall be required to be removed, the TOWN's project manager, or his or her designee, shall use best efforts to identify reasonably equivalent alternative areas or Public Ways and Public Streets for the relocation of the LICENSEE's Facilities, provided, however, that nothing in this subsection shall be construed as requiring or obligating the TOWN to identify alternative areas of Public Ways and Public Streets.

g. Temporary Removal or Relocation of the Telecommunications System: In the event it is necessary to temporarily remove or relocate any Facilities in order to move any object, vehicle, building or other structure, the LICENSEE shall, upon sixty (60) days written notice from the TOWN and at its sole cost and expense, temporarily remove or relocate such Facilities. The TOWN will allow LICENSEE to place and use temporary structures necessary to the operation (on a temporary basis) of facilities removed pursuant to this section.

10. RESTORATION

a. The LICENSEE's Obligation: Upon completion of any construction work, the LICENSEE shall, at its sole cost and expense, and in the manner approved by the TOWN or the affected property owner, in their sole judgment and discretion, as the case may be, promptly repair the Public Ways and Public Streets, private property, utility or improvement and restore the same to, as nearly as practicable, the condition existing prior to the performance of the work. Each site of completed construction shall be immediately placed in a safe temporary condition and restoration of the same shall be completed within fourteen (14) calendar days after the date of commencement of such restoration work, provided, however, the time for completing restoration work shall be extended as may be reasonably necessary under the circumstances. In the event that the LICENSEE fails to commence or complete the restoration work in the manner and within the time periods prescribed herein, the TOWN may, but shall have no obligation to, perform such work and recover from the Security Fund established pursuant to this Agreement any costs and expenses the TOWN may incur. In the event such Public Street, private property, utility, or improvement cannot be so repaired or restored, the LICENSEE shall pay the TOWN or the affected owner of the same, as the case may be, just compensation.

b. Continuing Responsibility: Where any such destruction, damage or disturbance is not immediately discovered, or where any such restoration effort fails or is otherwise inadequate or insufficient, the LICENSEE's obligation for restoration shall survive the

termination or expiration of this Agreement for a period of two (2) years after termination of this Agreement.

c. Failure, Neglect or Refusal to Repair: In the event of any failure, neglect or refusal by the LICENSEE, after ten (10) days written notice from the TOWN, to repair or provide just compensation for such destruction, damage or disturbance within the time period as provided in this Agreement, the TOWN may, but shall be under no obligation to, perform such work, or cause it to be performed, and the actual and reasonable documented cost thereof, shall be paid by the LICENSEE within thirty (30) days after demand therefor. If the LICENSEE fails to so reimburse the TOWN, the TOWN may collect the amount due from the Security Fund established pursuant to this Agreement or if the Security Fund is insufficient to satisfy the amount due, the TOWN may pursue its remedies by court action or otherwise.

11. RECORDS

a. Books and Records: The LICENSEE shall maintain, at all times during the Term of this Agreement: (1) complete, accurate and properly totaled books and records showing the business conducted by the LICENSEE in the TOWN, and (2) complete, accurate and up to date maps of the Telecommunications System. The TOWN may require the LICENSEE to keep additional records and maps which it determines are reasonably necessary.

b. Inspections and Audits: All of such books and records and originals of all maps and other documents pertaining to this Agreement shall be maintained in and made available for inspection by the TOWN, its agents or employees, at the LICENSEE's office, at reasonable times and intervals. The TOWN shall have the right to make or obtain copies, at its expense, of all non-confidential documents, maps or records (except customer lists) pertaining to this Agreement. The LICENSEE shall fully cooperate in assisting in this regard.

c. Inquiries: The TOWN may, at any time, make inquiries pertaining to the License and the operation of the Telecommunications System. The LICENSEE shall respond to such inquires within five (5) business days of such inquiry.

d. Duty to Provide Information

i. Within ten (10) business days of a written request from the TOWN's project manager, or his or her designee, the LICENSEE shall furnish the TOWN with information sufficient to demonstrate:

1. That the LICENSEE has complied with all requirements of Chapter 7-7 of the Code of the Town of Cortland.
2. That all Municipal taxes and fees due the TOWN in connection with the Services and Facilities provided by the LICENSEE have been properly collected and paid by the LICENSEE.
3. All books, records, maps and other documents, maintained by the LICENSEE with respect to its facilities within the public streets and ways shall be made available for inspection by the TOWN at reasonable times and intervals.

e. Confidentiality: If either party provides confidential information to the other in writing and identified as such, the receiving party shall protect the confidential information from disclosure to third parties with the same degree of care afforded its own confidential and propriety information, except that neither party shall be required to hold confidential any information (1) which becomes publicly available other than through the recipient, (2) which is required to be disclosed by a governmental or judicial order (notice of which shall be provided to the original disclosing party prior to such required disclosure), (3) which is required to be disclosed by statute, (4) which is independently developed by the receiving party, or (5) which becomes available to the receiving party without restriction from a third party. These obligations shall survive expiration or termination of this Agreement for a period of three (3) years. In addition, upon termination of this Agreement, the receiving party of any written confidential information shall promptly return to the disclosing party all copies of such confidential information.

12. PERFORMANCE AND CONSTRUCTION SURETY

a. Amount: On or before the Effective Date, and as necessary thereafter, the LICENSEE shall establish, provide and deposit with the TOWN a construction and performance bond written by a corporate surety acceptable to the TOWN equal to at least one hundred ten percent (110%) of the estimated cost of the constructing the LICENSEE's Facilities within the Public Ways and Public Streets (also referred to herein as "Security Fund").

b. At a minimum, construction and performance bond shall (1) provide that it shall not be canceled without the prior written consent of the TOWN, and (2) not require the consent of the LICENSEE prior to the collection by the TOWN of any amounts covered by said construction and performance bond.

c. The construction and performance bond shall guarantee, to the satisfaction of the TOWN:
   i. Timely completion of construction;
   ii. Construction in compliance with applicable plans, permits, technical codes and standards;
   iii. Proper location of the facilities as specified by the TOWN;
   iv. Restoration of the Public Ways, Public Streets and other property affected by the construction;
   v. The submission of "as-built" drawings after completion of the work as required by Section 9-1B of the Code of the Town of Cortland; and
   vi. Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

d. The construction and performance bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the project manager, or his or her designee, including restoration of Public Ways, Public Streets and other property affected by the construction, provided that on such date there are no claims of any type outstanding at such time asserted against the LICENSEE or the TOWN, arising out of any acts or omissions of the LICENSEE relating to the License.

e. The construction and performance bond shall be maintained at the LICENSEE's sole cost and expense.

f. Purpose: The construction and performance bond shall serve as security for (1) the faithful performance by the LICENSEE of all provisions of this Agreement, (2) any expenditure, damage or loss incurred by the TOWN occasioned by the LICENSEE's failure to comply with all codes, ordinance, rules, regulation, orders, permits, the Final Plans and Specifications and other directives of the TOWN issued pursuant to this Agreement, (3) the payment by the LICENSEE of all liens and taxes and all damages, claims, costs or expenses that the TOWN has paid or incurred by reason of any act or default of the LICENSEE including, without limitation, any restoration work that the TOWN must perform itself or have completed as a consequence of the LICENSEE's failure to so perform or complete, and all other payments due the TOWN from the LICENSEE pursuant to this Agreement, (4) any costs, expenses, fees or other payments due under this Agreement and (5) any expenses incurred by the TOWN pursuant to this Agreement.

g. Replenishment: Within fourteen (14) days after receipt of written notice from the TOWN that any amount has been withdrawn from the construction and performance bond, the LICENSEE shall restore the construction and performance bond to the amount specified in this Agreement.

h. Withdrawals: If the LICENSEE (1) fails to make any payment required to be made by the LICENSEE hereunder after notice is given pursuant to this Agreement, or (2) repeatedly fails to make timely payment hereunder, or (3) fails to pay any taxes or liens relating to the Telecommunications System that are due and unpaid, or (4) fails to pay to the TOWN any damages, claims, costs or expenses which the TOWN has been compelled to pay or incur by reason of any act or default of the LICENSEE, or (4) fails to comply with any provision of this Agreement that the TOWN determines can be remedied by an expenditure of an amount in the Security Fund, then, after three (3) days advance written notice from the TOWN of its intention to exercise its rights under this subsection if not paid by the LICENSEE and the failure of the LICENSEE to pay the monies due, the TOWN may withdraw the amount thereof from the construction and performance bond.

i. Closing and Return of Security Fund: Upon any termination of this Agreement, the LICENSEE shall be entitled to the return of the construction and performance bond, or portion thereof as remains on deposit at such termination, and after account is taken for all offsets necessary to compensate the TOWN for the failure by the LICENSEE to comply with any provision of this Agreement. In the event of any revocation of the License, the construction and performance bond, and all accrued interest therein, shall become the property of the TOWN to the extent necessary to cover any costs, loss or damage incurred by the TOWN as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the LICENSEE.

j. Rights Not Limited: The rights reserved to the TOWN with respect to the construction and performance bond are in addition to all other rights of the TOWN, whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to said construction and performance bond shall affect any other right the TOWN may have.

13. LIABILITY, INDEMNIFICATION AND INSURANCE

a. Liability

i. **The LICENSEE**: The LICENSEE shall be responsible for any damage or loss to any real or personal property of the TOWN or of any Person, and for any injury to or death of any individual person, or any officer, employee or agent of the TOWN, arising out of or in connection with the LICENSEE's negligence or misconduct in the construction, installation, use, operation, maintenance, repair and/or removal of the Telecommunications System or its failure to act in connection therewith.

ii. **The TOWN**: Except as may result from their gross negligence or misconduct, the TOWN, its officers, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any individual person, arising out of or in connection with the LICENSEE's negligence or misconduct in the construction, operation, maintenance, repair or removal, or other action or event with respect to, the Telecommunications System.

iii. **Emergency and Other Action**: The TOWN may at any time in case of fire, disaster or other emergency as reasonably determined by the TOWN, cut or move any Facilities, in which event the TOWN shall not be liable therefore to the LICENSEE. When practical, as determined by the TOWN, the LICENSEE shall be consulted prior to any such cutting or movement of its Facilities and be given the opportunity to perform such work itself. In the event it is not practical to notify the LICENSEE prior to any such cutting or movement, the TOWN shall notify the LICENSEE within a reasonable time after the TOWN has actual knowledge of such cutting or movement.

iv. Unless caused by the gross negligence, malicious or intentional acts, or willful misconduct of the TOWN, its agents, employees or contractors, the TOWN shall not be liable to the LICENSEE for any damage to or loss of all or any part of the Telecommunications System, or otherwise, as a result of or in connection with the protections, breaking through, movement, removal, alteration or relocation of any part of the Telecommunications System by or on behalf of the LICENSEE or the TOWN in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Public Way, or the elimination, discontinuation and closing of any Public Way, as provided herein. When practical, as determined by the TOWN, the LICENSEE shall be

consulted prior to any such cutting or movement of its Facilities and be given the opportunity to perform such work on the Telecommunications System itself.

v. Neither Party, including its officers, employees, and agents shall be liable to the other Party or any of its affiliates for any special, incidental, consequential, punitive or other damages as a result of the exercise of any right pursuant to this Agreement, including, without limitation, the right of the TOWN to terminate the License, and to take any action subsequent thereto.

b. Indemnification

i. Hold Harmless: The LICENSEE releases and shall, and does hereby agree to save, defend, indemnify and hold the TOWN, its officers, employees and agents harmless from and against any and all injury, claim, demand, suit, cause of action, judgment, execution, liability, debt, losses, damages or penalty as a result of bodily injury, sickness, death or property damage or as a result of any other claim or suit of any nature whatsoever, (the "Claims") that may at any time arise out of, result from, or be alleged to arise out of or result from or in any manner connected with, directly or indirectly, the LICENSEE's use of the License, TOWN property, TOWN Public Ways, TOWN Public Streets, or related to any of the LICENSEE's activities related to this Agreement or License, including but not limited to challenges to the LICENSEE's License, and including but not limited to the LICENSEE's negligence, including its failure to act, or misconduct in the construction, operation, maintenance, repair, or removal of the Telecommunications System or the distribution of any Service over the Telecommunications System whether such acts or omissions are authorized, allowed or prohibited by this Agreement.

The LICENSEE shall, and does hereby agree to, pay any and all damages, losses and expenses, including reasonable attorney fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the LICENSEE or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its Facilities, and in providing or offering Service over the Facilities, Systems or Telecommunications System, whether such acts or omissions are authorized, allowed or prohibited by

the Town of Cortland Municipal Code or by this Agreement or any other agreement.

ii. **Defense Expense**: The LICENSEE shall and does hereby agree to, pay all reasonable and documented expenses incurred by the TOWN in defending itself with regard to any and all Claims mentioned in this Agreement. These expenses shall include all reasonable and documented out-of-pocket expenses, such as attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employee of the TOWN with respect to the TOWN's defense of such Claims. The LICENSEE shall have the right to approve counsel selected by the TOWN for defense of any Claims. In addition, the TOWN shall provide prompt notice to the LICENSEE of any Claims made against the TOWN and the LICENSEE shall have the right to approve the compromise or settlement of any Claims made against the TOWN for which the LICENSEE is responsible for the defense or payment thereof.

iii. **Release and Waiver of Claims**: Except as expressly provided Section 13(a)(ii) and 13(a) (iv) above, the LICENSEE shall have no recourse against the TOWN for any loss, expense or damage resulting from the terms and conditions of this Agreement nor because of the TOWN's enforcement thereof. The LICENSEE shall be deemed to expressly agree that it accepts the License relying solely upon its own investigation and understanding of the power and authority of the TOWN to grant said License and that, in partial consideration of the grant of said License, the LICENSEE waives and releases the TOWN from all Claims of damages of any kind whatsoever, either known or unknown, which it may have in connection with any matter specified in this Agreement.

iv. Nothing contained herein shall be construed as a limitation or waiver of defenses available to the TOWN and its agents, including, but not limited to the Illinois Local Government and Local Governmental Employees Tort Immunity Act.

v. The obligations provided for in this Section shall survive the expiration or termination of this Agreement.

vi. The LICENSEE shall give the TOWN prompt written notice of any claim or cause of action falling within the terms of this Section that is filed against the LICENSEE, and

shall fully cooperate with the TOWN in the investigation and defense of the claim or cause of action.

c. LICENSEE Insurance: The LICENSEE, as a condition of this License, shall secure and maintain the following liability insurance policies insuring the LICENSEE and adding the TOWN, and its officers, boards, commissions, elected and appointed officials, agents and employees as additional insureds outlined below as their interest may appear under this Agreement:

i. General Liability: The Licensee shall maintain, throughout the Term of this Agreement, adequate proof of self-insurance (subject to the prior written approval of the TOWN) or commercial comprehensive general liability insurance insuring both the LICENSEE and the TOWN, and its officers, boards, commissions, elected and appointed officials, agents and employees as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the LICENSEE. General liability coverage can be provided in the form of an endorsement to the LICENSEE's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used) with coverage limits at least:

1. Five million dollars ($5,000,000.00) per occurrence for products and completed operations, property damage, bodily injury and personal & advertising injury (including death); and

   If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. The limits of insurance may be provided by a combination of underlying and excess policies.

2. Coverage shall include premises-operations, explosion collapse and underground hazards, contractual liability and products/completed operations.

3. For any claims related to this contract, the LICENSEE's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as

respects the TOWN, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the TOWN, its officers, officials, employees, or volunteers shall be excess of the LICENSEE's insurance and shall not contribute with it.

ii. **Automobile**: The LICENSEE shall maintain in its own name automobile liability insurance with coverage limits of not less than three million dollars ($3,000,000) combined single limit each accident for bodily injury and property damage with respect to owned, non-owned and hired vehicles for the operations of which the LICENSEE is responsible. Such policy of automobile liability insurance shall name the TOWN as an additional insured. The limits of insurance may be provided by a combination of underlying and excess policies.

iii. **Workers' Compensation and Employer's Liability**: The LICENSEE shall also maintain Workers' Compensation Insurance within the statutory limits and Employer's Liability Insurance with coverage limits of not less than one million dollars ($1,000,000) each accident, one million dollars ($1,000,000) disease each employee, one million dollars ($1,000,000) disease policy limit.

iv. **Waiver of Subrogation**: LICENSEE hereby grants to TOWN a waiver of any right to subrogation which any insurer of said LICENESEE may acquire against the TOWN by virtue of the payment of any loss under such insurance. LICENSEE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the Entity has received a waiver of subrogation endorsement from the insurer.

v. **Evidence of Insurance Policies**: On or prior to the Effective Date, the LICENSEE shall furnish proof to the TOWN's Mayor that the foregoing self-insurance is being maintained or insurance policies have been obtained in the form of a certificate of insurance or adequate proof of self-insurance approved by the TOWN.

vi. **Maintenance of Insurance Policies**: The liability insurance policies required by this section shall be maintained by the LICENSEE throughout the Term of this Agreement and such other period of time during which the LICENSEE operates or is engaged in the removal of the Telecommunications System as subject to TOWN inspection and approval. Each such insurance policy shall contain the following endorsement: 30 days' notice of cancellation except for non-payment of premium.

The termination or expiration of insurance without replacement insurance as provided herein, shall automatically terminate the LICENSEE's License.

vii. **Alterations of Minimum Limitations**: The TOWN may, following the Effective Date, increase the minimum limitation(s) of the self-insurance or insurance policy or policies required in this Section by a percentage not to exceed the percentage increase in the Consumer Price Index for the Chicago Metropolitan Statistical Area as of the Effective Date.

viii. **No Limit of Liability**: The legal liability of the LICENSEE to the TOWN and any Person for any of the matters that are the subject of the insurance policies required by this Section, shall not be limited by said insurance policies or by the recovery of any amounts thereunder.

14. ASSIGNMENTS, TRANSFERS, LEASES AND SIMILAR ACTIONS

a. Town Approval Required: Neither the License nor any rights or obligations of the LICENSEE pursuant to this Agreement nor any of the LICENSEE's interest in the Telecommunications System shall be assigned or transferred, in whole or in part, to any Person, nor shall title thereto, either legal or equitable, or any right or interest therein, or any property or assets relating to the license or the Telecommunications System, pass to or vest in any Person, nor shall any substantial change in control of the LICENSEE occur, either by act of the LICENSEE, by operation of law or otherwise, without the prior written consent of the TOWN, which consent shall not be unreasonably withheld or conditioned, nor unduly delayed, and then only on such reasonable conditions as may there be prescribed. Any such action completed without such prior consent of the TOWN shall be a violation of this Agreement and shall, at the option of the TOWN, which option may be exercised in the TOWN's sole judgment and discretion and without further notice or procedure, render the License void and entitle the TOWN to pursue all remedies available to it. The grant or waiver of any one or more of said consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any said consent constitute a waiver of any other rights of the TOWN.

b. Nothing herein shall prevent the LICENSEE from assigning its rights and obligations to a parent, affiliate or subsidiary of the LICENSEE upon notice to the TOWN, provided such parent, affiliate or subsidiary shall execute such documents and provide such necessary

financial assurances as will reasonably assure performance of all of the LICENSEE's duties and responsibilities under this Agreement.

c. Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control of the LICENSEE, of the ownership or working control of the License, of the ownership or working control of affiliated entities having ownership or working control of the LICENSEE or of a licensed system, or of control of the capacity or bandwidth of the LICENSEE's Telecommunication System, Systems, Facilities or substantial parts thereof, shall be considered an assignment or transfer requiring TOWN approval pursuant to this Section.

d. Transactions between affiliated entities are not exempt from the requirements pursuant to Section (b) above.

e. Notice to the Town: The LICENSEE shall promptly notify the TOWN of any proposed action requiring the consent of the TOWN pursuant to this Section, by submitting to the TOWN at least sixty (60) days prior to the proposed action a petition requesting the approval of the TOWN. The petition shall fully describe the proposed action and shall be accompanied by a justification for the action and such additional supporting information as the TOWN may require in order to review and evaluate said action.

15. FORECLOSURE, CONDEMNATION AND RECEIVERSHIP

a. Foreclosure: Upon the actual scheduled occurrence of any foreclosure or other judicial sale of all or any material part of the Telecommunications System or the involuntary termination of any lease or mortgage covering all or any material part of the Telecommunications System, the LICENSEE shall immediately notify the TOWN of said occurrence. Said notification shall be treated as a notification of a proposed change in control of the LICENSEE, and the provisions of the "ASSIGNMENTS, TRANSFERS, LEASES AND SIMILAR ACTIONS" Section of this Agreement shall apply to any proposed transfer or assignment of this Agreement or the LICENSEE's rights hereunder, but shall not apply to the foreclosure or judicial sale of all or any part of the Telecommunications System itself.

b. Condemnation: In the event that the Telecommunications System or any material part thereof is taken, appropriated, or condemned pursuant to law and the effect of such taking is to materially frustrate or impede the ability of the LICENSEE to carry out its obligations pursuant to, and the purposes of, this Agreement, then the TOWN may revoke the License in accordance with the applicable provisions of this Agreement.

c. Receivership:

i. **Notification by the LICENSEE**: The LICENSEE shall immediately notify the TOWN, in writing, if the LICENSEE files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors, or

ii. The LICENSEE files an answer admitting the jurisdiction of the court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended from time to time, or

iii. The LICENSEE is adjudicated bankrupt, makes an assignment for the benefit of creditors, applies for or consents to the appointment of any receiver or trustee of all or any material part of its property, including all or any material part of the Telecommunications System, or

iv. The LICENSEE institutes dissolution or liquidation proceedings with respect to its business, or

v. an order is entered approving an involuntary petition to reorganize the business of the LICENSEE or to effect a plan or other arrangement with creditors or appointing a receiver or trustee for the license of all or a part of its property, including all or any material part of the Telecommunications System, or

vi. a writ or warrant of attachment, execution, distraint, levy, possession or any similar process shall be issued by any court against all or any material part of the property of the LICENSEE, including all or any material part of the Telecommunications System.

16. SAFETY

a. Standard of Care: The LICENSEE shall at all times utilize the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public or to employees of the LICENSEE.

b. Equipment, Installation, and Maintenance: All installations of the Telecommunications System shall be made so as not to impact the fire integrity of any building or structure. The LICENSEE shall install and maintain its Facilities in accordance with the requirements of all applicable codes, and in such manner that they will not interfere with any installations of

the TOWN, wherever situated or located, shall at all times be kept and maintained in a safe and stable condition and in good order and repair.

17. NO EXTRANEOUS INDUCEMENTS: The LICENSEE acknowledges that it has not been induced to accept the License created herein by any promise, oral or written, by or on behalf of the TOWN or by any third Person regarding any term or condition in this Agreement not expressed herein. The LICENSEE shall further be deemed to warrant that no promise or inducement, oral or written, has been made to any TOWN employee or official regarding receipt of the License, other than as contained in this Agreement.
18. COMPLIANCE WITH LAW: The LICENSEE shall at all times comply with the applicable laws, codes, rules and regulations of all Governmental Authorities, regardless of whether such laws, codes, rules or regulations are expressly referenced in this Agreement. The LICENSEE shall, at all times, comply with all applicable laws, ordinances, resolutions, codes, rules and regulations of the TOWN, and all applicable memoranda and other directives of the TOWN, as such laws, ordinances, resolutions, codes, rules, regulations, memoranda and directives may be modified or amended, provided that such modification or amendment does not impair, conflict with or diminish the rights granted the LICENSEE under this Agreement. The LICENSEE reserves all rights under current and future preemptive state and federal laws.
19. REVOCATION OR TERMINATION OF PRIVILEGES
    a. Town Authority to Revoke: Subject to the provisions of subsection (b) and subsection (c) of this Section of this Agreement, the permission and authority granted by the TOWN to the LICENSEE to use the Public Streets set forth in this Agreement for its Telecommunication System may be revoked by the Mayor whenever any of the following events occur:
        i. The LICENSEE fails to comply with the conditions of occupancy of the Public Ways set forth herein or in the Code or ordinances of the TOWN, or
        ii. The LICENSEE substantially violates other material terms of this Agreement, or
        iii. The LICENSEE practices fraud and deceit upon the TOWN or its customers, or
        iv. The LICENSEE fails to provide or pay any material portion of the compensation or fees owed the TOWN pursuant to this Agreement when due, or
        v. The LICENSEE fails to furnish records when due or fails to cooperate with the reasonable requests by TOWN officials for information or for inspection, or

vi. THE LICENSEE becomes insolvent, or unable or unwilling to pay its unprotested debts, or is adjudged bankrupt or seeks relief under the bankruptcy laws.

b. Notice: If the TOWN's Mayor believes that grounds for revocation exist or have existed, the Mayor shall notify the LICENSEE in writing, setting forth the nature and general facts of such noncompliance. If, within thirty (30) days following the TOWN's mailing of such written notification, the LICENSEE has not furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that the alleged violations did not occur, or that the alleged violations were beyond the LICENSEE's control pursuant to the "FORCE MAJEURE" Section of this Agreement, the Mayor shall thereupon refer the matter to the Town Board. Upon good cause, the thirty (30) day correction period shall be extended for such reasonable time as the parties shall mutually determine is necessary to complete such cure. Such good cause must be detailed in writing to the Mayor within five (5) days prior to the lapse of the thirty (30) day correction period. Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given on the date of mailing.

c. Hearing: The Mayor shall not revoke or terminate the License and the rights granted herein until prior written notice is given to the LICENSEE that the Mayor proposes to take such action and the grounds therefore. Further, the Mayor shall not revoke or terminate the License and the rights granted herein until the LICENSEE has had a reasonable opportunity to be heard.

20. RIGHTS AND REMEDIES: In the event of a material breach of this Agreement by the LICENSEE, as determined in the judgment and discretion of the TOWN, the TOWN may terminate the License and the rights granted to the LICENSEE hereunder. In the event of a breach or an alleged breach of this Agreement by either Party, either Party may, by suit, action, mandamus or other proceeding, in law or in equity, enforce or compel the performance of this Agreement. In the event of a judicial proceeding by any Party to this Agreement against the other Party, the prevailing Party shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

21. DEFAULT: Neither Party shall be in default under this Agreement or in breach of any provisions hereof unless and until it has been given written notice of such default by the other Party and shall have failed to cure such default within a reasonable period of time after receipt of such notice,

except for default in any payment by the LICENSEE in which case the LICENSEE shall cure such default in payment within thirty (30) days after the LICENSEE's receipt of written notice by the TOWN. Where a default other than for payment cannot reasonably be cured within a thirty (30) day period, if the defaulting Party shall proceed promptly to cure the same and prosecute such cure with due diligence, the time for curing such default shall be extended for such period of time as may be necessary to complete such cure. Upon the failure to cure any such default within thirty (30) days after notice thereof or within thirty (30) days plus the extension for curing with due diligence as set forth above, the Party giving notice of the default may thereupon terminate by providing written notice to the defaulting Party. Upon default by either Party, the non-defaulting Party shall have the right to pursue all remedies available at law or equity.

22. AMENDMENTS:

a. This Agreement may be modified or amended from time to time, provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and executed by the Parties by the same procedure as required by Illinois Statutes for its original execution and approval.

b. A new Right-Of-Way Use License Application and Right-Of-Way Use License Agreement shall be required if the LICENSEE desires to extend its license area or to extend or locate its Facilities in Public Ways and Public Streets which are not included in this Agreement.

c. Notwithstanding subsection “a” and subsection “b” above, the LICENSEE may be permitted by the TOWN to use specific Public Ways and Public Streets other than or in addition to the specific Public Ways and Public Streets listed in this Agreement upon approval by the TOWN’s project manager, or his or her designee, of an amended application pursuant to the Town of Cortland Municipal Code.

d. Notwithstanding subsection “a” and subsection “b” above, if the LICENSEE is ordered by the TOWN to locate or relocate its facilities in Public Ways and Public Streets not included in this Agreement, the TOWN shall grant an amendment to the License without further application.

e. The TOWN’s project manager, or his or her designee, may approve in writing appropriate field changes requested by the LICENSEE in the plans and specifications approved by the TOWN, without requiring an amendment to this Agreement. Decisions on requests by the LICENSEE for field changes shall be made not more than ten (10) business days after the

LICENSEE provides all information and/or documentation requested by the TOWN's project manager, or his or her designee.

23. TIME ESSENCE OF AGREEMENT: Whenever this Agreement sets forth anytime for any act to be performed by either Party, said time shall be deemed to be of the essence.
24. TIME FOR NOTICE: In the event of an emergency involving life or property, as determined by the TOWN in its reasonable judgment and discretion, the TOWN may reduce or eliminate the notice requirements set forth in this Agreement, and any such reduction or elimination shall be deemed to be reasonable under the circumstances, provided, however, that the TOWN shall notify the LICENSEE as soon thereafter as possible in accordance with this Agreement.
25. FORCE MAJEURE: Whenever a period of time is provided for in this Agreement for either the TOWN or the LICENSEE to do or perform any act or obligation, neither Party shall be liable for any delays or inability to perform due to causes beyond the control of said Party such as war, riot, insurrection, rebellion, terrorism, strike, lockout, unavoidable casualty or damage to personnel, materials or equipment, fire, flood, storm, earthquake, tornado or any act of God, provided, however, that said time period shall be extended for only the actual amount of time said Party is so delayed. An act or omission shall not be deemed to be "beyond a party's control" if committed, omitted or caused by a party, its employees, officers or agents.
26. TERMINATION: The LICENSEE shall have the right to terminate this Agreement at any time during the term of this Agreement upon one hundred eighty (180) days prior written notice to the TOWN without any additional cost or obligation to the LICENSEE. Upon the expiration or termination of this Agreement, the LICENSEE shall have the option to, without expense to the TOWN and within such time as the TOWN may reasonably require, remove its Facilities located in the Public Streets and Public Ways and restore such Public Streets and Public Ways herein authorized to be used and occupied to a condition reasonably satisfactory to the TOWN, or to abandon said Facilities. In the event the LICENSEE elects to abandon its Facilities located in the Public Streets or Public Ways, the TOWN, after thirty (30) days prior written notice from the LICENSEE, shall be allowed to take control over said Facilities as property of the TOWN, without compensation to the LICENSEE, and in no event, shall the LICENSEE have any obligation to the TOWN for abandonment of said Facilities unless the Facilities pose a public hazard or threat to public health or safety.
27. SEVERABILITY SAVINGS CLAUSE: If any part of this Agreement including any section, subsection, sentence, clause, phrase, or other portion of this Agreement or its application to any person is, for

any reason, rendered or declared invalid in whole or in part by any court, agency, commission, legislative body, or other authority of competent jurisdiction, said decision shall not affect the validity of the remaining parts or portions of this Agreement which shall remain in full force and effect.

28. GENERAL

a. Non-Waiver of Rights: No failure of either Party to exercise any power given to it hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

b. Governing Law, Venue and Waiver of Trial by Jury

i. **Governing Law:** This Agreement and the rights of the parties hereunder shall be subject to, construed, interpreted and enforced in accordance with and governed by the laws of the State of Illinois.

ii. **Venue:** Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Twenty-Third Judicial Circuit, DeKalb County, Illinois or in the Federal District Court for the Northern District of Illinois.

iii. **Waiver of Trial by Jury:** The Parties hereto waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, or for the enforcement of any remedy under any statute.

c. Notices: All notices and other communication or writings which any Party is required, permitted or may wish to serve in connection with or under this Agreement shall be in writing, and shall be deemed delivered to the addressee thereof when sent by certified mail, return receipt requested, or personal service to the Persons and addresses indicated below or to such addresses and Persons as either Party hereto shall notify the other Party of in writing pursuant to the provisions of this subsection. Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given on the date of mailing.

TO THE TOWN:

Mayor Russel Stokes

Town of Cortland
59 S. Somonauk Road
Cortland, Illinois 60112

WITH COPY TO:

City Attorney Kevin Buick
Foster, Buick, Conklin & Lundgren, LLC
2040 Aberdeen Court
Sycamore, Illinois 60178

TO THE LICENSEE:

Everstream GLC Holding Company LLC
1228 Euclid Avenue
Suite 250
Cleveland, Ohio 44115
ATTN: General Counsel

d. Binding Effect: Each of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors, assigns and grantees. Nothing herein shall be deemed to permit a transfer of the License by the LICENSEE.

e. Authority to Execute: The LICENSEE hereby warrants and represents to the TOWN that (1) it has the right, power and authority to enter into this Agreement and to accept to the License granted to it in this Agreement, (2) the individuals executing this Agreement on behalf of the LICENSEE have the power and authority to bind the LICENSEE to this Agreement, and (3) neither the execution of this Agreement nor the performance of the obligations contemplated hereby will (i) result in a breach or default under any agreement to which it is a party or (ii) violate any restriction, court order or agreement to which it is subject.

f. Joint Work Product: This Agreement is the joint work product of both Parties hereto, accordingly, in the event of any ambiguity, no presumption shall be imposed against or in favor of either Party by reason of document preparation.

g. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which together shall constitute one and the same Agreement.

29. ENTIRE AGREEMENT: This Agreement sets forth all the covenants, conditions and promises and contains the entire agreement between the Parties. All negotiations between the Parties are merged in this Agreement, and there are no covenants, promises, agreements, conditions or understandings between the Parties, either verbal or written, other than those contained in this Agreement. In no event, shall prior drafts of this Agreement be used, considered or relied upon in interpreting or construing any provision of this Agreement.

IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be signed by their duly authorized representatives on the day and date first written above and by their signatures acknowledge they have read and understand this agreement and intend to be bound by its terms.

TOWN OF CORTLAND

By: _____

Russell Stokes
Mayor

By: _____

Joe Pellegrini
EVP, Operations

ATTEST

By: _____

Cheryl Aldis
Town Clerk

ATTEST

By: _____

Jara Anton
Office Manager