

**A CABLE FRANCHISE RENEWAL AGREEMENT**

**between the**

**Village of Croton-on-Hudson, Westchester County,**

**State of New York**

**and**

**Cablevision of Wappingers Falls, Inc.**

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# **A CABLE FRANCHISE RENEWAL AGREEMENT**

**between the**

**Village of Croton-on-Hudson, Westchester County, State of New York**

**and**

**Cablevision of Wappingers Falls, Inc.**

**WHEREAS**, the Village of Croton-on-Hudson, New York (hereinafter referred to as “Municipality”) has the requisite authority to grant franchises permitting and regulating the use of its streets, rights of way, and public grounds; and,

**WHEREAS**, Cablevision of Wappingers Falls, Inc. (hereinafter referred to as “Franchisee”), having previously secured the permission of the Municipality to use such streets, rights of way, and public grounds under a Franchise Agreement that has since expired, has petitioned the Municipality for a renewal of such franchise; and,

**WHEREAS**, the Municipality has determined that Franchisee is and has been in substantial compliance with all terms and provisions of its existing franchise and applicable law; and,

**WHEREAS**, the Municipality and Franchisee have complied with all Federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal; and,

**WHEREAS**, the Municipality has determined, after consideration in a full public proceeding affording due process, that Franchisee has the financial and technical to provide Cable Service to Subscribers in the Municipality; and,

**WHEREAS**, during said public hearings and proceedings, various proposals of the parties for constructing, maintaining, improving, and operating the Cable System described herein were considered; and,

**WHEREAS**, this franchise renewal, as set out below, is non-exclusive and complies with the franchise standards of the New York State Public Service Commission; and,

**WHEREAS**, imposition of the substantially equivalent burdens and costs on other franchised competitors by the Municipality is a basic assumption of the parties in this Agreement;

## **THEREFORE**

The Municipality and Franchisee agree as follows:

## **DEFINITIONS**

### **1. DEFINITION OF TERMS**

- 1.1 “Affiliate”: any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership and control with, the Franchisee.
- 1.2 “Area Outage”: a total or partial loss of video or audio signals carried on the “Communications System” in a location affecting five or more subscribers.
- 1.3. “Basic Cable Service”: shall have the meaning established by federal law and regulation and shall include all public, education and government access channels as provided for herein.
- 1.4 “Board”: the Board of Trustees of the Village of Croton-on-Hudson.
- 1.5 “Cable Act”: Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.
- 1.6 “Cable Service” or “Service”: shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), as amended, which as of the Effective Date of this Agreement currently reads: the one-way transmission to subscribers of (i) video programming, and (ii) other programming service, including subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; or as otherwise defined in the Communications Act of 1934, as amended, together with such other services as may hereafter be deemed cable services by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto.
- 1.7 “Cable System” or “System”: shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), as amended, which as of the Effective Date of this Agreement currently reads: a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers,

unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system;

- 1.8 “Capability”: the ability of the Franchisee to activate a described technological or service aspect of the Cable System without delay.
- 1.9 “Control”: the ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Franchisee’s affairs.
- 1.10 “Emergency”: a condition that constitutes a clear and immediate danger to the health, welfare, or safety of the public.
- 1.11 “FCC”: the Federal Communications Commission.
- 1.12 “Franchise”: the authorization granted by the Municipality to construct, operate and maintain a Cable System within the corporate limits of the Municipality as embodied in the terms and conditions of this agreement, and used interchangeably with the term “Agreement”.
- 1.13 “Franchise Fee”: the fee paid by the “Franchisee” to the “Municipality” in exchange for the rights granted pursuant to the “Franchise.”
- 1.14 “Franchisee”: Cablevision of Wappingers Falls, Inc., and its lawful successors and assignees.
- 1.15 “Gross Revenues”: all revenue received by Franchisee derived from the operation of Franchisee’s Cable System in the Municipality to provide Cable Services, as calculated in accordance with generally accepted accounting principles (“GAAP”). Gross Revenues shall include, but are not limited to, the following:
  - (1) Basic Service fees;
  - (2) fees charged to Subscribers for any Cable Service tier other than Basic Service;
  - (3) fees charged for premium Cable Services;
  - (4) fees for all digital video tiers;
  - (5) fees for pay-per-view and video-on-demand Cable Service over the Cable System;
  - (6) fees charged to Subscribers for any optional, per-channel or per-program Cable Services;
  - (7) revenue from the provision of any other Cable Services;
  - (8) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for Cable Service.
  - (9) fees for changing any level of Cable Service programming;
  - (10) fees for service calls pertaining to Cable Services;
  - (11) inside wire maintenance fees for Cable Services;
  - (12) service plan protection fees for Cable Services;

- (13) convenience fees;
- (14) early termination fees on Cable Services;
- (15) fees for leased access channels;
- (16) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (17) rental or sales of any and all equipment, including converters and remote control devices;
- (18) advertising revenues attributable to the local Cable System and Cable Services;
- (19) revenues or commissions from locally-derived home shopping channels;
- (20) Cable Service subscriber revenues in the Municipality from DVR functionality
- (21) regional sports fee;
- (22) late payment fees on Cable Services;
- (23) billing and collection fees on Cable Services;
- (24) NSF check charges; and
- (25) Franchise Fees.

“Gross Revenues” shall not include: (i) uncollected bad debt; (ii) refunds, rebates or discounts provided to Subscribers; (iii) sales of capital assets; (iv) program launch fees; (v) any collections or pass-through to customers for taxes of general applicability; and (vi) any fees or charges collected from Subscribers or other third parties for any PEG access support. Notwithstanding anything herein to the contrary, should revenue from any service provided by the Franchisee over the “Cable System” become classified as “Cable Service” during the term of this “Franchise” by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the “Municipality” shall be entitled, after notification to “Franchisee,” to amend this “Agreement” in the manner prescribed under applicable state law or this “Franchise” to include revenue from “Franchisee’s” provision of such service as “Gross Revenues,” and Franchisee shall include revenue from such service as “Gross Revenues” on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the “NYSPSC” approving such amendment; and further provided, that no such amendment shall be made to this “Agreement” until such time as all other providers of cable service (as such term may be defined by other providers) operating in the “Municipality” are also obligated to provide revenue from such service as gross revenue or gross receipts to the “Municipality,” and the “Municipality” takes action to enforce said obligation in the new or renewed franchise agreements of all other providers of Cable Service (as such term may be defined by other providers).

- 1.16 “Municipal Law”: all generally applicable ordinances, laws and regulations, to the extent not inconsistent with the rights and privileges granted herein and preempted by Federal or State law or regulation.
- 1.17 “Municipality”: the Village of Croton-on-Hudson, New York and/or its authorized representatives.

- 1.18 “NYSPSC”: the New York State Public Service Commission or any successor State agency with similar responsibilities.
- 1.19 “Person”: an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 1.20 “State”: the State of New York.
- 1.21 “Transfer of the Franchise”: any transaction in which:
  - 1.21.1. a fifty percent (50%) ownership or greater interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or
  - 1.21.2. the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

However, notwithstanding Sub-subsections 1.21.1 and 1.21.2 above, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

## **PART I -- THE FRANCHISE**

### **2. GRANT OF FRANCHISE**

- 2.1 Franchisee is hereby granted, subject to the terms and conditions of this Agreement, a non-exclusive and revocable Franchise to construct, operate, and maintain a Cable System within the streets, alleys, and public ways of the Municipality and such other areas where authorized by private or public property owners or applicable law, if such authorization is necessary, as now exist and may hereafter be changed.
- 2.2 Franchisee may erect, install, extend, repair, replace, and retain in, on, over, under, or upon, across and along the public streets, alleys, and ways within the Municipality, and such other areas where authorized by private or public property owners or applicable law, if such authorization is necessary, such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as, in Franchisee's discretion, are necessary and appurtenant to the operation of the System in conformance with Municipal Law. Consistent with Federal law, Municipality, insofar as it may have the authority to so grant, hereby authorizes Franchisee to use any and all easements dedicated to compatible uses, such as electric, gas, telephone or other utility transmissions, for the purposes described in this Section 2 and further agrees, on request and at Franchisee's sole expense, to assist Franchisee in gaining access to and use of such easements. The Municipality reserves the right to reasonably designate where the Franchisee's facilities are placed within the public rights-of-way.
- 2.3 Nothing in this Agreement shall be deemed to waive the requirements of Municipal Law regarding permits, fees to be paid to the Municipality for permits or construction, or the manner of construction, provided, however, that to the extent the installation, repair and/or maintenance by Franchisee of any component of the Cable System is lawfully subject to permitting and/or review by the Municipality pursuant to Municipal Law, such permitting and/or review shall not be unreasonably denied or delayed, nor shall any fees be required other than those consistent with applicable law.
- 2.4 No privilege nor power of eminent domain shall be deemed to be bestowed by this Agreement other than that conferred pursuant to statutory law.

### **3. NON-EXCLUSIVE NATURE OF THIS FRANCHISE**

- 3.1 This Agreement shall not be construed as any limitation upon the right of the Municipality to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public ways or public places to the extent permitted under applicable law. The Municipality specifically reserves the right to grant at any time such additional Franchises for this purpose as it deems appropriate, subject however, to the provisions of Section 34 of this Agreement. Any such additional Franchises and/or

other grants of rights to use the streets, alleys or other public ways or public spaces shall not adversely impact the authority granted under this Agreement and shall not interfere, except as permitted by applicable law, with existing facilities of the Cable System.

#### **4. TERRITORIAL LIMITS**

- 4.1 The rights and privileges awarded pursuant to this Agreement shall relate to and cover the entire present territorial limits of the Municipality. In the event that any area outside the territorial limits of the Municipality is annexed during the term of this Agreement, the Franchisee shall be authorized to serve such area and shall extend service therein under the same general terms and conditions that exist in this Agreement to the extent that such area is not served by another Person providing Cable Service over a Cable System.

#### **5. FRANCHISE SUBJECT TO LAW AND REGULATION**

- 5.1 All terms and conditions of this Agreement are subject to Federal and State law and to the regulations of the FCC and the NYSPSC, as now exist or may be hereafter amended.
- 5.2 All terms and conditions of this Agreement are subject to the approval of the NYSPSC to the extent required by applicable law.
- 5.3 All rights and privileges granted hereby are subject to the police power of the Municipality to adopt and enforce laws, rules and regulations. Expressly reserved to the Municipality is the right to adopt, in addition to the provisions of this Agreement and existing laws, rules, and regulations, such additional laws, rules, and regulations as it may find necessary in the exercise of its police power; provided, however, that such additional laws, rules and regulations are properly within the authority of the Municipality to enact, not materially in conflict with the privileges granted in this Agreement, and consistent with all Federal and State laws and regulations.
- 5.4 The Municipality agrees to enforce all applicable law in a non-discriminatory manner against all providers of Cable Service doing business in the Municipality.
- 5.5 Within sixty (60) days of receipt of formal notification of the Municipality's approval of this Franchise, Franchisee shall file a request for certification of this Franchise with the NYSPSC and shall provide the Municipality with evidence of such filing.
- 5.6 The Village Manager, or other person as designated by the Municipality, shall have responsibility for the continuing administration of the rights and interests of the Municipality under this Franchise. Notwithstanding the foregoing, however, any award or denial of a franchise, revocation, termination or final notice of default shall require vote of the Municipality's governing body.

## **6. CONDITIONS ON USE OF STREETS AND PUBLIC GROUNDS**

- 6.1 Any work by Franchisee in the public rights-of-way shall be undertaken in accordance with Municipal Law.
- 6.2 No poles, underground conduits or other wire-holding structures shall be erected by Franchisee without the approval of the appropriate municipal official through established permit procedures to the extent that same now or hereafter may exist, with regard to the location, height, type and any other pertinent aspect of such wire-holding facilities provided however, such approval may not be unreasonably withheld or delayed, consistent with applicable law.
- 6.3 To the extent commercially practicable, all structures, lines and equipment erected by Franchisee within the Municipality shall be so located as to cause minimum interference with the proper use of streets, alleys, easements and other public ways and places, and to cause minimum interference with rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. Existing poles, posts and other structures of the electric power company or any telephone company or any other public utility that may be available to Franchisee shall be used to the extent commercially practicable in order to minimize interference with travel. Where both power and telephone utilities are placed underground or relocated underground, Franchisee's cable also shall be placed underground, at its own cost and expense provided that such power and telephone utilities are required to do so at their own expense, provided that such installation or relocation is required by the Municipality. Should such location or relocation be requested by a developer or homeowner but not required by the Municipality, the homeowner or developer shall bear the costs thereof. The Franchisee shall remove, to the extent practical, any above ground equipment that is no longer used for present services or anticipated to be used for the provision of services in the future within thirty (30) days of determination by Franchisee that such above ground equipment will no longer be used. Underground equipment that is no longer used for current services or anticipated to be used for future services shall be removed by the Franchisee upon request by the Municipality if such equipment is interfering with a valid public use.
- 6.4 Franchisee shall have the right and authority to trim trees and bushes upon and overhanging all streets, alleys, easements, sidewalks, and public places in the Municipality to the minimum extent necessary to keep same clear of poles, wires, cables, conduits and fixtures. Such trimming shall be performed in a professional manner and shall be the minimum necessary to prevent such trees and bushes from contacting the Franchisee's equipment. No trees or bushes shall be removed, except in the case of an Emergency, nor shall any widespread pruning be undertaken without the express permission of the Municipality, which shall be given within ten (10) business days of written request by Franchisee.

- 6.5 In the case of any disturbance of pavement, sidewalk, driveway or other public or private property, Franchisee shall, at its own cost and expense in accordance with Municipal Law, and within twenty (20) business days, replace and restore such pavement, sidewalk, driveway or surfacing so disturbed to as reasonably good a condition as existed before said work was commenced. In the event that any municipal property is damaged or destroyed by Franchisee, such property shall be repaired or replaced by Franchisee within twenty (20) business days and restored to as reasonably good a condition as existed before said work was commenced. The Parties may elect to extend such timeframe as necessary to complete such replacement or restoration, provided that Franchisee has commenced such replacement or restoration within the twenty (20) day timeframe detailed above. Upon failure of Franchisee to comply within the time specified and the Municipality having notified Franchisee in writing of the repair or replacement required, the Municipality may cause proper repair and restoration to be made and the expense of such work shall be paid by Franchisee upon demand by the Municipality.
- 6.6 Franchisee shall take reasonable measures to ensure that all structures and all lines, equipment and connections, in, over, under and upon streets, sidewalks, alleys and public ways and places of the Municipality, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, and substantial condition, and in good order and repair.
- 6.7 In exercising rights pursuant hereto, Franchisee shall not endanger or interfere with the lives of persons, nor interfere with any installations of the Municipality, any public utility serving the Municipality or any other person permitted to use the streets and public grounds, nor unnecessarily hinder or obstruct the free use of the streets and public grounds. All rights granted for the construction and operation of the System shall be subject to the continuing right of the Municipality, pursuant to Municipal Law, to require such reconstruction, relocation, or change of the facilities and equipment used by Franchisee to provide Cable Service in the streets, alleys, avenues, and highways of the Municipality, as shall be reasonable under the circumstances, necessary in the public interest and without undue interference to the rights and privileges granted Franchisee pursuant to this Agreement.
- 6.8 Nothing in this Agreement shall hinder the right of the Municipality, under Municipal Law, or any governmental authority to perform or carry on, directly or indirectly, any public works or public improvements of any description. Should the System in any way materially interfere with the construction, maintenance, or repair of such public works or public improvements, Franchisee shall, at its own cost and expense, protect or relocate its System, or part thereof, as directed by the Municipality within thirty (30) days of written notice to Franchisee or such longer time as is reasonably determined to be necessary by the Municipality for Franchisee to complete such protection or relocation.
- 6.9 Upon notice and payment as set forth herein by a person holding a building or moving permit issued by the Municipality, Franchisee shall temporarily raise or

lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings to the extent practicable. The expenses of any such temporary removal, raising or lowering of wires or other property shall be paid in advance to Franchisee by the person requesting same. In such cases, Franchisee shall be given not less than ten (10) working days prior written notice in order to arrange for the changes required.

7. **ASSIGNMENT OR TRANSFER OF FRANCHISE**

7.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the Municipality, provided that such consent shall not be unreasonably withheld or conditioned. In considering an application for the Transfer of the Franchise, the Municipality may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise.

7.2 No consent of the Municipality shall be required for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness, for any transaction in which Franchisee retains the right, title or interest in the Franchise granted herein, or for transactions otherwise excluded under Section 1.21 above.

8. **DEFAULT, REVOCATION, TERMINATION, ABANDONMENT**

8.1 Liquidated Damages.

8.1.1. For the violation of any of the following provisions of this Franchise, liquidated damages shall be paid by the Franchisee to the Municipality. Any such liquidated damages shall be assessed as of the date that is thirty (30) days from the Franchisee's receipt of the written notice to Franchisee of a claim of violation, provided that the Franchisee has not cured the noncompliance in accordance with the procedures set forth in Sections 8.2, 8.3 and 8.5 below. On an annual basis from the Effective Date, the Franchisee shall not be liable for liquidated damages that exceed Ten Thousand Dollars (\$10,000) in the aggregate payable to the Municipality. Liquidated damages shall be assessed as follows:

8.1.1.1. For failure to provide Cable Service as set forth in Sections 15.1-15.3: \$200 per day for each day the violation continues;

8.1.1.2. For failure to maintain the system standards as set forth in Article 12: \$200 per day for each day the violation continues;

8.1.1.3. For failure to comply with Article 17: \$200 per day for each day the violation continues;

8.1.1.4. For failure to comply with reports or records requests

consistent with this Agreement: \$200 per day for each day the violation continues;

8.1.1.5. For failure to carry the insurance specified in Subsection 19.1: \$200 per day for each day the violation continues;

8.1.1.6. For a transfer specified in Article 7 without required approval: \$200 per day for each day the violation continues.

8.1.2 Any liquidated damages assessed pursuant to this section shall not be a limitation upon any other provisions of this Franchise and applicable law, including revocation, or any other statutorily or judicially imposed penalties or remedies; provided, however, that in the event that the Municipality collects liquidated damages for a specific breach for a specific period of time, pursuant to this Section 8.1, the collection of such liquidated damages shall be deemed to be the Municipality's exclusive remedy for the specific breach for such specific period of time only.

8.1.3 The parties agree that each case of non-compliance as set forth in this Section 8.1 shall result in damage to the Municipality, compensation for which will be difficult to ascertain. The parties agree that the liquidated damages in the amounts set forth in this Section 8.1 are fair and reasonable compensation for such damage.

8.2 Subject to the other terms and conditions of this Agreement, the Municipality may revoke this Franchise and all rights of Franchisee hereunder for any of the following reasons:

8.2.1 Franchisee fails, after thirty (30) business days prior written notice from the Municipality, to comply or to take reasonable steps to comply with a provision or provisions of this Agreement. Notwithstanding the above, when Franchisee is once again in compliance, the right to revoke this Agreement shall no longer remain with respect to the condition that precipitated the notice; or

8.2.2 Franchisee attempts or does practice a fraud or deceit in its securing of this Franchise; or

8.2.3 Franchisee practices fraud or displays repeated negligence in the accurate reporting of information to the Municipality, including but not limited to information pertaining to Franchisee's calculation of the Municipality's Franchise Fee; or

8.2.4 Franchisee fails to pay any legally owed taxes or fees due the Municipality, unless the amount of such payment is part of a good faith dispute or the failure to pay is caused by inadvertent error; or

- 8.2.5 Franchisee fails to maintain adequate insurance as specified in Section 19 of this Agreement; or
- 8.2.6 Franchisee fails to obtain the prior approval of the Municipality for transfer or assignment of the Franchise pursuant to Section 7 of this Agreement.
- 8.3 Notwithstanding the above, no revocation or termination shall be effective unless and until the governing board of the Municipality shall have adopted an ordinance or resolution setting forth the cause and reason for the revocation and the effective date thereof. The procedures for adoption of such an ordinance or resolution shall be as follows: Municipality shall provide thirty (30) business days prior written notice to Franchisee of a claim of violation and reasons therefore in sufficient detail for Franchisee to address the particulars of the claim; during said thirty (30) business day period Municipality shall cooperate with Franchisee and provide Franchisee an opportunity for Franchisee to cure the alleged violation, or provide a cure plan that reasonably satisfies the Municipality. If Franchisee has failed to cure after the expiration of said thirty (30) business day period or fails to provide a cure plan that reasonably satisfies the Municipality, the Municipality shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice to the Franchisee. Franchisee shall be provided an opportunity to offer evidence and be fully and fairly heard at said public hearing held on the proposed adoption of such ordinance or resolution. Municipality shall obtain and make available to Franchisee, at a reasonable expense to Franchisee, a transcript of said hearing. Franchisee shall have the right to appeal any such administrative decision, within a time period consistent with the requirements of federal and state law, to a court of competent jurisdiction as Franchisee may choose, and revocation of the Franchise shall not become effective until any such appeal has become final or the time for taking such appeal shall have expired. During this period, the Franchisee shall continue to provide Cable Service as required herein, if required by federal and state law.
- 8.4 In no event, and notwithstanding any contrary provision in this section or elsewhere in this Agreement, shall this Agreement be subject to default, revocation or termination, or Franchisee be liable for non-compliance with or delay in the performance of any obligation hereunder, where its failure to cure or to take reasonable steps to cure is attributable to acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the State of New York or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; epidemics; civil commotion; strikes or work stoppages; fires; hurricanes; floods; washouts; explosions; or other events beyond the immediate control of Franchisee.
- 8.5 In the event of such circumstances as described in 8.4, Franchisee shall be automatically excused from its obligations herein during the course of any such events or conditions. Franchisee shall notify the Municipality of the existence of circumstances described in Section 8.4. The time specified for performance of Franchisee's obligations hereunder shall automatically extend for a time period

equal to the period of the existence of the events or conditions and such reasonable time period thereafter as may be necessitated by any such events or conditions.

8.6 Unless otherwise permitted by law and subject to the provisions of this Agreement, Franchisee shall not voluntarily abandon any service or portion thereof required to be provided pursuant to the terms of this Agreement without the prior written consent of the Municipality and the NYSPSC. Deletion of or changes to a programming service or functionality of the System shall not constitute abandonment of service for purposes of this Agreement.

8.7 Within six (6) months of the expiration, termination or revocation of this Franchise, Franchisee, at its sole cost and expense and upon written direction of the Municipality, shall remove the cables and appurtenant devices constructed or maintained in the public right-of-way in connection with the services authorized herein and provided to subscribers within the Municipality, unless Franchisee, its affiliated entities or assignees should, within six (6) months after such expiration, termination or revocation obtain certification from the FCC to operate an Open Video System or any other Federal, State, or local certification or are otherwise authorized to provide service over the System.

## **9. SEVERABILITY**

9.1 With the exception of Section 17 and Section 18 of this Franchise, should any other provision of this Agreement be held invalid by a court of competent jurisdiction or rendered a nullity by Federal or State legislative or regulatory action, the remaining provisions of this Agreement shall remain in full force and effect.

## **10. EFFECTIVE DATE AND TERM**

10.1 The effective date of this Agreement shall be the date this Agreement is granted a certificate of confirmation by the NYSPSC.

10.2 Subject to Section 10.3, the term of this Agreement shall be ten (10) years from the effective date.

10.3 Should any change to state or federal law, rules or regulations have the lawful effect of materially altering the terms and conditions under which an operator may provide cable service in the Municipality, then Franchisee may, at its option, request that the Municipality modify this Franchise to ameliorate the negative effects of the change on Franchisee or terminate this Agreement without further obligation to the Municipality. To the extent required by applicable law, modifications to and/or termination of this Agreement shall be subject to NYSPSC review and approval. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement upon one hundred eighty (180) days' notice to the Municipality without further obligation to the Municipality or, at Franchisee's option, the

parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

## **PART II -- THE SYSTEM**

### **11. COMPLIANCE WITH FEDERAL AND STATE LAW AND REGULATIONS**

11.1 Franchisee shall comply with all applicable Federal, State, and local laws and regulations pertaining to the construction, erection, installation, operation, maintenance, and/or repair of the System, including the regulations of the FCC and the NYSPSC, Federal and State occupational safety and health regulations, and applicable codes including the National Electric Code, and National Electric Safety Code, all as may now exist or hereinafter amended. In addition, the System shall meet or exceed all applicable technical and performance standards of Federal and State law, including those of the FCC and the NYSPSC, as now exist or hereinafter amended.

### **12. SYSTEM SPECIFICATIONS**

12.1 Subject to Federal and State law and the rules and regulations of the FCC and NYSPSC, and subject to the System's capability of providing the services and facilities prescribed in this Agreement, the technical design of the System serving the Municipality shall be at the option of Franchisee and as further described in this section.

12.2 All such construction and any subsequent maintenance, repair, or improvement of said System shall use materials of good and durable quality and shall be performed in a safe, workmanlike, thorough, and reliable manner to the extent practicable.

12.3 Franchisee's System shall provide for a minimum channel capacity of not fewer than seventy-five (75) channels on the effective date of this Agreement. In accordance with the requirements of the NYSPSC, the exercise of this Agreement shall include reasonable efforts in good faith to maximize the number of energized channels available to subscribers, subject to the rights and obligations granted and imposed by Federal law and regulation, and to the extent economically reasonable and commercially practicable, including Franchisee's right to consider how such actions may impact upon its commercially reasonable rate of return on investment over the remaining term of the Franchise.

12.4 The System shall incorporate equipment capable of providing standby powering of the System so as to minimize, to the extent practicable, Area Outages caused by interruption of power furnished by the utility company. The standby powering equipment shall activate automatically upon the failure of the utility power and automatic reversion to the utility power upon resumption of AC power service. The

equipment also shall be so designed as to prevent the standby power source from powering a “dead” utility line.

- 12.5 The design and construction of the System will include substantial utilization of fiber optic technology.
- 12.6 Franchisee shall offer Cable Service throughout the territorial limits of the Municipality. The System shall be so constructed so as to be capable of providing Cable Service to all residential housing units throughout the territorial limits of the Municipality, subject to the provisions of Section 15.1. The Franchisee shall design the System to be able to offer Cable Service to any commercial or business customer that Franchisee is authorized to serve, subject to the provisions of Section 15.1.2.

### **13. SYSTEM PERFORMANCE STANDARDS**

- 13.1 All Cable Service signals carried by the System shall be transmitted with the technical quality prescribed by the rules and regulations of the Federal and State regulatory agencies having jurisdiction. Franchisee shall not be deemed to be out of compliance with this Section 13 to the extent another user of radio spectrum interferes with the signal quality provided by Franchisee to subscribers within the Municipality and Franchisee takes reasonable measures within its control to mitigate signal quality problems.
- 13.2 Operation of the System shall be such that, except as permitted by applicable law, no harmful interference will be caused to broadcast and satellite television and radio reception, telephone communication, amateur radio communication, aircraft and emergency communications, or other similar installation or communication within the Municipality, provided such communications are authorized and licensed, as required by applicable law.

### **14. SYSTEM MAINTENANCE AND REPAIR**

- 14.1 Franchisee shall establish and take reasonable measures to adhere to maintenance policies which provide Service to subscribers at or above the performance standards set forth herein. When interruption of Service is necessary for the purpose of making repairs, adjustments, or installations, Franchisee shall do so at such time and in such manner as will reduce inconvenience to subscribers. Unless such interruption is unforeseen or immediately necessary, Franchisee shall give reasonable notice thereof to subscribers.

## **PART III -- THE SERVICE**

### **15. GENERAL SERVICE OBLIGATION**

- 15.1 Franchisee shall provide Service within the Municipality upon the lawful request of any and all persons who are owners or tenants of residential dwellings, subject to the following:

- 15.1.1 With the exception of customized installations, all residential structures located along public rights-of-way served by aerial plant within the territorial limits of the Municipality and situated within two-hundred (200) feet from the trunk or feeder cable shall receive such Service at the standard installation charge. For underground Installations and aerial installations in excess of two-hundred (200) feet, Franchisee shall extend the Cable Service if the Subscriber pays Franchisee the actual cost of installation from its main distribution system with such cost being only the incremental portion beyond two hundred (200) feet for aerial installations.
- 15.1.2 All commercial structures within the territorial limits of the Municipality shall be able to receive such Service, provided the owners or tenants of such structures, and such structures themselves, meet the reasonable requirements and conditions of Franchisee, including any line extension charge for the provision of said Service.
- 15.1.3 Franchisee shall extend the System to provide Service to all areas of the Municipality along public rights-of-way which have a density of fifteen (15) homes per linear mile of aerial cable or greater, or areas with less than fifteen (15) homes per linear mile of aerial cable where residents agree to a contribution-in-aid-of construction as per the standards established in Section 895.5 of the rules and regulations of the NYSPSC.
- 15.1.4 Franchisee shall not unlawfully discriminate against any person as to the availability, maintenance, and pricing of Cable Service. Nothing herein shall require Franchisee to provide service to any person who fails to abide by Franchisee's terms and conditions of service.
- 15.2 Nothing herein shall be construed to limit the Franchisee's ability to offer or provide bulk rate discounts or promotions where applicable, to the extent permitted under Federal and State law.
- 15.3 It is agreed that Service offered to subscribers pursuant to this Agreement shall be conditioned upon Franchisee having legal access to any such subscriber's dwelling unit or other units wherein such service is provided.

## **16. MUNICIPAL AND SCHOOL SERVICE**

- 16.1 Franchisee shall provide a Cable Service drop and Basic Cable Service with any necessary cable box to one outlet at each location listed in Exhibit A provided that the location is a standard installation and within two hundred (200) feet of the Franchisee's Cable distribution plant. For underground installations, Franchisee shall charge the recipient its actual cost. Such cost estimates shall be submitted to said recipient, in writing, before installation is begun. If Franchisee intends to charge for the services required by this section, it will give the Municipality at least one hundred twenty (120) days' written notice of the commencement of charges. The charges shall be consistent with applicable law, which as of the Effective Date,

is defined as the “marginal cost” of providing such Cable Service. Franchisee shall provide to the Municipality in writing reasonable detail sufficient to define the marginal cost and the amount due and shall arrange with the Municipality for invoicing or deductions from the Franchise Fee. Charges may include those for services and equipment, if any, at each location. Charges may include all applicable fees and taxes and shall be subject to adjustment if consistent with applicable law. The Municipality may remove locations or change the level of Cable Service indicated on Exhibit A with thirty (30) days’ written notice to Franchisee. The Municipality may elect in writing not to receive the Cable Service, in which case it will not be invoiced and no deduction will be taken from the Franchise Fee.

- 16.2 During the term of the Franchise, the Municipality may change any of the locations listed in Exhibit A upon ninety (90) days’ written notice to Franchisee, provided that the new location is within two hundred (200) feet of existing Franchisee cable distribution plant.

## **17. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS**

- 17.1 Franchisee shall provide a minimum of one full time public access channel and one full time governmental/educational access channel to be used for local, non-commercial PEG access programming. Upon request by the Municipality and in compliance with the applicable rules of the NYSPSC, Franchisee shall provide an additional access channel. Franchisee shall comply with applicable Federal and State law, rules, and regulations pertaining to non-commercial public, educational, and governmental (PEG) access to the System.
- 17.2 Franchisee shall provide the Municipality and the residents of the Municipality with equitable access to all non-commercial PEG access services provided by Franchisee as part of its PEG access policies, rules, and procedures. Should Franchisee’s said policies, rules, and procedures be inconsistent with the standards established in Section 895.4 of the rules of the NYSPSC pertaining to non-commercial governmental, educational or public access, such NYSPSC rules shall govern.
- 17.3 All PEG channels provided by the Franchisee may be offered in any format using any transmission method.
- 17.4 To enable the Municipality to utilize the PEG Channels, Franchisee shall continue to maintain direct links, including activation equipment capable of transmitting high quality video and audio between the video origination locations and the Franchisee headend such that live programming can originate from these selected locations and be distributed via the Cable System to Subscribers in the Municipality. These links and equipment shall be collectively known as the “Return Lines.”
- 17.5 Franchisee shall be responsible for maintaining, at its expense, the Return Lines in good working order to the origination sites of the PEG Channels so long as the Municipality provides Franchisee with access to such locations and access to the

PEG Channel equipment within such locations. Franchisee shall continue to provide and maintain the Return Lines for the PEG Channels. Franchisee shall maintain the PEG Channels in accordance with the same FCC technical specifications and at the level of audio and visual quality that is comparable to the specifications used to maintain commercial channels transmitted to Subscribers on the Cable System, except that Franchisee shall not be responsible for the technical signal quality of the programming produced by any PEG Channel programmer.

- 17.6 Within one hundred eighty (180) days of a written request by the Municipality, Franchisee shall, at its expense, relocate one PEG origination site and the associated Return Line as follows: (i) Franchisee's obligation shall be subject to the same terms and conditions that apply to the original PEG origination sites; and (ii) the Municipality shall provide access to such site at least ninety (90) days prior to the anticipated use of the new PEG origination site. The timeline for relocation of the PEG origination site shall be subject to the timely granting of any and all required permits, walk-out, and make ready.
- 17.7 Franchisee shall use its best efforts to maintain the channel assignments for the current PEG Channels as of the Effective Date. Notwithstanding the foregoing, in the event that Franchisee deems a change in any PEG Channel assignment to be necessary and changes any channel assignment in accordance with this Section, Franchisee shall provide the Municipality with thirty (30) days' advance written notice of any such change in PEG Channel assignments.
- 17.8 In consideration of the grant of the rights in this Agreement for the term described herein, and subject to Section 17.5.1. and 17.5.2., Franchisee shall tender to Municipality, for the support of PEG access capital needs, the sum of fifty cents (\$0.50) per subscriber per month of ten (10) years commencing on the Effective Date. Franchisee shall make 37 payments to the Municipality during the term of the Franchise. The first such payment shall be made within thirty (30) days of the Effective Date of this Agreement and shall be for the full amount due for the first year of the term ( $\$0.50 \times$  the current number of Subscribers  $\times$  12). Subsequent payments shall be made no later than forty-five (45) days following the end of the each calendar quarter following the first anniversary of the Effective Date. The Municipality shall use the funds described in this Section 17.5 only for PEG access capital support and for the sole benefit of Franchisee's subscribers. Nothing herein requires or shall be deemed to require payments which constitute a franchise fee under 47 U.S.C. 542.
- 17.8.1 The Municipality shall impose the same obligations as those in this Section on all new and renewed providers of Cable Service in the Municipality.
- 17.8.1.1 In any event, if any new or renewed franchise agreement contains obligations that are lesser in amount than the obligations imposed in this Section 17.8, Franchisee's aggregate obligations under Section 17.8 shall be reduced to an equivalent amount.

- 17.9 To the extent permitted by and consistent with applicable law, Franchisee may, in its sole discretion, pass through to subscribers the costs of support for PEG access provided in this Agreement.

## **PART IV – FRANCHISEE’S OBLIGATIONS TO THE MUNICIPALITY**

### **18. FRANCHISE FEE**

- 18.1 Beginning sixty (60) days after the effective date of this Agreement, Franchisee shall pay to the Municipality during the term of this Agreement an annual sum equal to five percent (5%) of Franchisee’s Gross Revenues for the preceding year, provided however that any obligation specified herein shall be consistent with limits on Franchise Fees established under applicable law and demanded, imposed and enforced against all other providers of Cable Service doing business in the Municipality. Franchisee shall not deduct or otherwise credit against the Franchise Fee any tax, fee or assessment of general applicability, unless required by law. The Municipality may amend the Franchise Fee upon written notice to Franchisee provided that the Franchise Fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or local law authorizing the Franchise Fee rate adjustment by the Municipality shall accompany such written notice. Any change in Franchisee’s Franchise Fee obligation shall commence ninety (90) days from the date of such written notice. Such payment shall be made on a quarterly basis, and each payment shall be due no later than forty-five (45) days after the close of each calendar quarter.
- 18.1.1 The Municipality shall impose a Franchise Fee of the same amount as in this Section 18.1 on all new and renewed providers of Cable Service in the Municipality. In the event any new or renewed franchise agreement contains a Franchise Fee that is lesser in amount than the obligations imposed in this Section 18.1, Franchisee’s obligations under this Section 18.1 shall thereafter be reduced to an equivalent amount.
- 18.2 Franchisee may use electronic funds transfer to make any payments to the Municipality required under this Agreement.
- 18.3 Within ten (10) days of each Franchise Fee payment described in Section 18.1 above, a brief report showing the basis for the Franchise Fee computation shall be provided to the Municipality. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Franchisee.
- 18.4 Franchisee may, in its sole discretion, apply Franchise Fees paid pursuant to this Agreement against special franchise assessments pursuant to Section 626 of the New York State Real Property Tax Law.
- 18.5 Franchisee Fee Audits.

- 18.5.1 Municipality may conduct an audit related to the Franchise Fee payments required under this Agreement no more than once every three (3) years during the term. Any audit shall be initiated through written notice to Franchisee by Municipality, and Municipality or auditor employed by Municipality shall submit its complete request for records within sixty (60) days of Municipality providing written notice of an audit; provided, however, that the parties shall work cooperatively on an ongoing basis during the audit review in the event that Municipality or its designated auditor identifies reasonable follow-up record requests to the extent necessary to complete the audit. Subject to the confidentiality provisions of Section 25.5, and execution of a non-disclosure agreement with an auditor directly employed by Municipality, all records necessary for an audit shall be made available by Franchisee to Municipality or its auditor for inspection at an office of Franchisee during Franchisee's regular business hours.
- 18.5.2 Franchisee shall provide the records reasonably necessary for the audit and requested by Municipality within sixty (60) days of written request. Any such audit conducted by Municipality or auditor employed by the Municipality shall be completed in an expeditious and timely manner. If upon completion of the audit, Municipality does not make a claim for additional payments, then Municipality shall provide Franchisee with written documentation of closure of the audit. The Municipality's claim for additional Franchise Fee payments or its written notice of the audit closure shall be provided to Franchisee within sixty (60) days from the date on which the audit is completed by the Municipality or its auditor in accordance with subsection 18.5.1, above, or by such other date as mutually agreed to by the parties.
- 18.5.3 Each party shall bear its own costs of an audit.
- 18.5.4 If the results of an audit indicate an underpayment of Franchise Fees, as indicated in a report to be provided by the auditor to Franchisee, the parties agree that such underpayment shall be remitted to the Municipality within forty-five (45) days; provided, however, that Franchisee shall pay the underpaid amount plus interest from the due date equal to the then-current prime rate of interest as published in *The Wall Street Journal* on the underpayment amount.
- 18.5.5 All audits conducted by an independent third party should be performed using Generally Accepted Auditing Standards and no auditor so employed by the Municipality shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any.
- 18.6 Limitation on Franchise Fee Actions: The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due. Unless agreed to in writing by the

parties, the acceptance of any Franchise Fee payment shall be not be construed as an accord and satisfaction that such payment is in fact that correct amount, nor shall such acceptance of payment be construed as a release or satisfaction of any claim the Municipality may have for further or additional Franchise Fee sums payable under the provisions of this Franchise.

- 18.7 Bundled Services. If Cable Services subject to the Franchise Fee required under this Section 18 are provided to Subscribers in conjunction with Non-Cable Services, then the calculation of Gross Revenue shall be adjusted, if needed, to include only the value of the Cable Services billed to Subscribers, as reflected on the books and records of Franchisee in accordance with Generally Accepted Accounting Principles and applicable FCC regulations.

## **19. INDEMNITY AND INSURANCE**

- 19.1 Franchisee shall purchase and maintain commercial general liability insurance that shall include the following minimum coverage levels during the term of this Agreement that will protect Franchisee and the Municipality from any claims against either or both which may arise directly or indirectly as a result of Franchisee's performance hereunder:

19.1.1 Personal injury or death: \$1,000,000.00 per occurrence;

19.1.2 Property damage: \$1,000,000.00 per occurrence;

19.1.3 Excess liability or umbrella coverage: \$5,000,000 per occurrence;

19.1.4 Worker's Compensation Insurance, with statutory limits, and Employer's Liability Insurance with limits of not less than \$500,000.

- 19.2 The Municipality shall impose at least the same insurance obligations as those in this Section 19 on all new and renewed providers of Cable Service in the Municipality. In the event any new or renewed franchise agreement contains insurance requirements that are lesser in amount than the obligations imposed in this Section 19, Franchisee's obligations under this Section 19 shall thereafter be reduced to an equivalent amount.

- 19.3 Franchisee shall indemnify and hold harmless the Municipality, its officers, employees, and agents from and against all losses and claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description, resulting from bodily injury, property damage or personal injury, brought or recovered, by any act or omission of Franchisee, its agents, employees, contractors and subcontractors in the construction, operation, maintenance, service or repair of the Communications System or any portion thereof, or of any failure to comply with any law, ordinance, or regulation, or by reason of any suit or claim for royalties, license fees, or infringement of patent rights arising from Franchisee's performance under this Agreement. Municipality shall promptly notify Franchisee of any claim for which it seeks indemnification, afford Franchisee the opportunity to fully

control the defense of such claim and any compromise, settlement resolution or other disposition of such claim, including selection of counsel and by making available to Franchisee all relevant information under Municipality's control. Notwithstanding any provision contained herein and to the contrary, Franchisee shall have no obligation to indemnify or defend the Municipality with respect to any programming provided by the Municipality or from the Municipality's gross negligence or willful misconduct.

- 19.4 Each insurance policy shall bear the name of the Municipality as an additional insured. The insurance coverage referred to in this Section 19 may be included in one or more policies covering other risks of Franchisee or any of its parent companies, affiliates, subsidiaries or assigns.
- 19.5 All Franchisee insurance policies and certificates of insurance shall stipulate that the coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Municipality. If any policy is canceled, it shall be replaced forthwith with insurance that meets the requirements of this Agreement so that there is no lapse in coverage. In addition, each policy shall contain an endorsement that the insurer shall have no right of subrogation or recovery against the Municipality, it being the intention that the insurance policies shall protect the Franchisee and the Municipality and shall be primary coverage for all losses covered by the policies if franchisee is negligent.
- 19.6 No later than sixty (60) days after the effective date of this Agreement and upon written request of the Municipality, Franchisee shall furnish to the Municipality copies of certificates of insurance in conformity with the requirements of this Franchise.
- 19.7 Franchisee shall obtain all insurance required pursuant to this Agreement from companies authorized to do business within the State of New York and approved by the Superintendent of Insurance, which companies shall maintain a rating of at least Best's A-. In the event Franchisee's insurance carrier is downgraded to a rating of lower than Best's A-, Franchisee shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-, during which time all prior policies shall remain in full force and effect. The Municipality may, at any time after reasonable notice, review Franchisee's compliance with the provisions of this Section. Should the policies or certificates of insurance provided by Franchisee hereunder differ from accepted insurance industry forms, the Municipality shall have the right to review and approve such policies or certificates, provided such approval shall not be unreasonably withheld or delayed.

## **20. RATES AND CHARGES**

- 20.1 Rates and charges imposed by Franchisee for cable television service shall be subject to the approval of the Municipality, the NYSPSC, and the FCC to the extent consistent with applicable State and Federal law.

20.2 Franchisee shall comply with all notice requirements contained in Federal and State law, rules, and regulations pertaining to rates and charges for cable television service.

**21. EMPLOYMENT PRACTICES**

21.1 Franchisee will not unlawfully refuse to hire, nor will it unlawfully bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges of employment because of age, race, creed, color, national origin, or sex.

**22. MUNICIPALITY'S RIGHT TO INQUIRE ABOUT AND INSPECT SYSTEM**

22.1 The Municipality, at any time, may make reasonable inquiries related to its regulatory responsibilities concerning the operation of the System. Franchisee shall respond to such inquiries within thirty (30) days of receipt of a written request by the Municipality.

22.2 When repeated subscriber complaints cause the Municipality to question the reliability or technical quality of Cable Service, the Municipality shall have the right and authority to test or require Franchisee reasonably to test, analyze, and report on the performance of the System consistent with the requirements of NYSPSC Rule 896 (or any subsequently enacted rule relating to testing and reporting of such tests). Franchisee shall cooperate fully with the Municipality and the NYSPSC in performing such testing.

22.3 Within thirty (30) days of written request, and for the purpose of enforcement of this Agreement, Franchisee shall permit examination by any duly authorized representative of the Municipality, of all System facilities, together with any appurtenant property of Franchisee situated within the Municipality and outside of the Municipality if such property is utilized in the operation of the System serving the Municipality.

**23. MUNICIPALITY'S RIGHT TO INSPECT FRANCHISEE'S BOOKS AND RECORDS**

23.1 The Municipality reserves the right to inspect all pertinent books, records, maps, plans, financial statements and other like material of Franchisee, within thirty (30) days of written request, and during normal business hours, subject to the provisions of Section 25.

23.2 If any of such information is not kept in the Municipality, or upon notice Franchisee is unable to provide the records in the Municipality, and if the Municipality shall reasonably determine that an examination of such maps or records is necessary or appropriate to the performance of the Municipality's responsibilities under this Agreement, then all travel and maintenance expenses, in excess of one-hundred miles (100) miles per day, necessarily incurred in making such examination shall be paid by Franchisee.

**24. REPORTS TO BE FILED BY FRANCHISEE WITH THE MUNICIPALITY**

- 24.1 Within thirty (30) days of written request of the Municipality, Franchisee shall make available to the Municipality a copy of any technical, operational, or financial report Franchisee submits to the NYSPSC, the FCC, or other governmental entities that concern Franchisee's operation of the System in the Municipality, subject to the provision of Section 25.
- 24.2 Within thirty (30) days of written request, Franchisee shall furnish to the Municipality such additional information and records with respect to the operation of the System in the Municipality, and the Cable Service provided to the Municipality under this Agreement, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Municipality in connection with this Agreement.
- 24.3 Subject to the requirements of Section 895.1(t) of the NYSPSC rules and regulations, any valid reporting requirement in this Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

**25. MANDATORY RECORD KEEPING**

- 25.1 Franchisee shall comply with all record keeping requirements established by Federal and State law, rules, and regulation.
- 25.2 The Franchisee shall maintain a full and complete set of plans, records, and "as built" maps showing the exact location of all cable installed or in use in the Municipality, exclusive of subscriber service drops. Franchisee shall provide for inspection by the Municipality such "as built" maps of the Cable System within the Municipality within thirty (30) days of request. Municipality specifically recognizes that "as built" maps submitted pursuant to this Section 25.2 shall be treated as confidential and proprietary, in accordance with the provisions of this Section 25 and applicable law.
- 25.3 All records, logs, and maps maintained pursuant to this Agreement shall be made available to the Municipality or its designee during Franchisee's regular business hours within thirty (30) days of request, subject to the provisions of Sections 25.4 through 25.6 and applicable privacy laws.
- 25.4 All information specifically marked by Franchisee as proprietary or confidential in nature and furnished to the Municipality or its designated representatives shall be treated as confidential by the Municipality so long as it is permitted to do so under applicable law. Municipality shall make such information available only to those persons who must have access to such information in order to perform their duties on behalf of the Municipality.
- 25.5 In the event Municipality receives request for disclosure of information provided by Franchisee to Municipality that Franchisee has marked as proprietary or

confidential, then Municipality shall provide Franchisee with written notice of such request as soon as possible prior to disclosure to allow Franchisee to take such measures as it deems appropriate to redact records submitted to Municipality in an unredacted form and/or to seek judicial or other remedies to protect the confidentiality of such information.

- 25.6 If Franchisee determines in its sole discretion that information requested by Municipality contains proprietary or confidential data, or if records requested by Municipality must be kept confidential under applicable law, Franchisee may present redacted versions of documents responsive to Municipality's request.

**26. MUNICIPAL EMERGENCIES**

- 26.1 Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and the State of New York, including the NYSPSC's rules and regulations and the current New York EAS Plan in order that emergency messages may be distributed over the System.

**PART V -- FRANCHISEE'S OBLIGATIONS TO SUBSCRIBERS AND CUSTOMER SERVICE REQUIREMENTS**

**27. COMPLIANCE WITH FEDERAL AND STATE LAW AND REGULATION**

- 27.1 Franchisee shall comply with all Federal and State laws and regulations that regulate Franchisee's customer service responsibilities. These include, but are not limited to, the customer service standards that are set forth in Chapter VIII, Part 890 of the Rules and Regulations of the NYSPSC, as amended, and Title 47, Section 76.309 of the FCC regulations, as amended.

**28. EMPLOYEE IDENTIFICATION/TRAINING**

- 28.1 Each employee of Franchisee entering upon private property, including employees of contractors and subcontractors employed by Franchisee, shall have on their person, and shall produce upon request, picture identification that clearly identifies the person as a representative of Franchisee and, notwithstanding any local law, shall display such identification when entering upon private property for the purpose of installing, repairing, soliciting or removing services.
- 28.2 Franchisee shall provide proper training for employees and shall institute policies and procedures that foster courteous and professional conduct.
- 28.3 Notwithstanding any other provision of law regulating door-to-door solicitation or other sales activities undertaken on public or private property within the Municipality, including any licensing or permit obligations required for such activities, the obligations set forth in this section shall be the sole conditions governing the authorization and identification required for the entrance onto public or private property imposed upon Franchisee or its employees, agents, contractors

or subcontractors for the purpose of selling, marketing or promoting services offered by Franchisee to residents of the Municipality.

**29. REQUIREMENT FOR ADEQUATE TELEPHONE SYSTEM**

- 29.1 Franchisee shall utilize a telephone system that shall meet, at a minimum, the customer service standards set by Federal and State law.
- 29.2 Franchisee shall have the ongoing responsibility to take reasonable measures to ensure that the telephone system utilized meets the reasonable customer service needs of its subscribers. In evaluating the performance of Franchisee under this section, the Municipality may review telephone systems in use in other jurisdictions by other cable companies, cable industry-established codes and standards, pertinent regulations in other jurisdictions, evaluations of telephone system performance commonly used in the industry, and other relevant factors.

**30. MISCELLANEOUS PROVISIONS**

- 30.1 To the extent practicable, Franchisee shall ensure that the subscriber's premises are restored to their pre-existing condition within twenty (20) business days if damaged by Franchisee's employees or agents in any respect in connection with the installation, repair, or disconnection of Cable Service. The Franchisee shall be liable for any breach of provisions of this Agreement by its contractors, subcontractors or agents.
- 30.2 The Municipality shall have the right to promulgate new, revised or additional reasonable consumer protection standards, and penalties for Franchisee's failure to comply therewith, consistent with the authority granted under Section 632 of the Cable Act (47 U.S.C. Sec. 552).
- 30.3 Nothing in this Agreement is intended to or shall confer any rights or remedies on any third parties to enforce the terms of this Agreement.
- 30.4 Municipality shall, without further consideration, execute and deliver such further instruments and documents and do such other acts and things as Franchisee may reasonably request in order to effect and confirm this Agreement and the rights and obligations contemplated herein.
- 30.5 This Agreement supersedes all prior agreements and negotiations between Franchisee and Municipality and shall be binding upon and inure to the benefits of the parties and their respective successors and assigns.
- 30.6 This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.
- 30.7 Franchisee shall offer a discount of \$1.50 off the monthly service charge to senior citizens, sixty-two (62) years of age and older, who are the heads of household, and receive the broadcast basic stand-alone cable television service from Franchisee.

Such discount shall not be available to senior citizens that receive a monthly discounted bulk rate from Franchisee for cable television service or to Subscribers that take a level of service beyond broadcast basic (the lowest level of service currently offered by Franchisee). The Franchisee may, at its discretion, require participating seniors to furnish proof of qualification in such form as it may determine to be necessary to demonstrate eligibility for such senior citizen discount program.

### **31. NOTICE**

31.1 Notices required under this Agreement shall be in writing and shall be mailed, first class, postage prepaid (and, in the case of notices required under Sections 5.5, 7.2, 18.3 and 19.6, shall be mailed return receipt requested; or in the alternate, via FedEx or an equivalent service), to the addresses below. Either party may change the place where notice is to be given by providing such change in writing at least thirty (30) days prior to the time such change becomes effective. The time to respond to notices under this Agreement shall run from receipt of such written notice.

Notices to the Franchisee shall be mailed to:

Optimum Communications  
1 Court Square West  
Long Island City, NY 11101  
Attention: Vice President, New York

With a copy to:

Cablevision of Wappingers Falls, Inc.  
c/o Optimum Communications  
1111 Stewart Avenue  
Bethpage, NY 11714  
Attention: Vice President, Suburban New York

Notices to the Municipality shall be mailed to:

Village of Croton-on-Hudson  
1 Van Wyck Street  
Croton-on-Hudson, NY 10520  
Attention: Village Manager

Notwithstanding anything herein to the contrary all notices from Franchisee to the Municipality may be served electronically upon the Municipality, instead of by first class mail as described above, to an email address provided by the Municipality.

## **PART VI -- GUARANTEE OF FRANCHISEE'S PERFORMANCE**

### **32. PERIODIC PERFORMANCE EVALUATION SESSIONS**

- 32.1 Upon sixty (60) days prior notification by the Municipality, Franchisee shall participate in a meeting or series of meetings evaluating the performance of its Cable Service under this Agreement. The timing of such performance evaluation sessions shall be solely in the discretion of the Municipality; however, each such evaluation shall not be initiated sooner than one year after the close of a previously conducted performance evaluation, absent repeated and material customer complaints. All performance evaluation meetings shall be open to the public.
- 32.2 Not less than thirty (30) days prior to any performance evaluation, Municipality shall provide notice to Franchisee of the topics that it wishes to address. Topics which may be discussed at any performance evaluation shall be within the regulatory authority of Municipality and reasonably related to the offering of Cable Service in the Municipality, and may include System performance, compliance with this Agreement and applicable law, customer service and complaint response, services provided, fees described in this Agreement, free services, applications of new technologies, and judicial, Federal or State filings.
- 32.3 During review and evaluation, Franchisee shall reasonably cooperate with the Municipality and shall provide such information, and documents, as the Municipality may reasonably need to perform its review, subject to the provisions of Section 25 of this Agreement.
- 32.4 Each performance evaluation session shall be deemed to have been completed as of the date the Municipality issues a final report on its findings.
- 32.5 No evaluation session may be the basis of a revocation proceeding, nor shall notice to Franchisee of such a session constitute the notice required under Section 8.3 of this Agreement.

### **33. EFFECT OF MUNICIPALITY'S FAILURE TO ENFORCE FRANCHISE PROVISIONS**

- 33.1 Franchisee shall comply with any and all provisions of this Agreement and applicable local, State and Federal law and regulation.
- 33.2 Any claims arising out of any actual breach of this Agreement shall be effective from the date such breach is found to have commenced and notice is provided as in Section 8. Franchisee's responsibility to cure any such breach shall not be diminished by the failure of the Municipality to enforce any provision of this Agreement, provided however that the claimed breach has occurred no later than six (6) years prior to Municipality providing notice to Franchisee.

**34. COMPETITIVE EQUITY**

34.1 In the event that the Municipality grants or renews another franchise(s) for the construction, operation and maintenance of a Cable System, such franchise(s) shall not contain economic or regulatory burdens which, when taken as a whole, are greater or lesser than those burdens contained herein. The Municipality shall provide Franchisee written notice of any public hearing or other official action related to such proposed grant or renewal of a franchise. If Franchisee finds that a proposed franchise or franchise renewal contains economic or regulatory burdens which, when taken as a whole, are greater or lesser than those burdens that are imposed by the provisions of this Agreement, then Franchisee will identify those terms to the Municipality in writing in advance of any vote to adopt the franchise or franchise renewal and, if the Municipality approves such franchise or franchise renewal for the other provider with the identified terms, or any subsequent modification thereof, then Franchisee may request an amendment to provide it with competitive equity. If, when taken as a whole upon consideration of all of its material obligations, the subsequent franchise is more favorable or less burdensome, then Franchisee and the Municipality shall enter into good faith negotiations to modify this Agreement to the mutual satisfaction of both parties to provide Franchisee with competitive equity.

34.2 Nothing in this Section 34 shall be deemed a waiver of any remedies available to Franchisee under Federal, State or Municipal Law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. Section 545.

**35. APPROVAL OF THE NYSPSC**

35.1 The terms of this Agreement, and any subsequent amendments hereto, are subject to applicable Federal, State and local law, the Rules and Regulations of the FCC, the NYSPSC, and any other applicable regulatory body with appropriate jurisdiction. Further, the terms of this Franchise Agreement and any subsequent amendments are subject to the approval of the NYSPSC.

**IN WITNESS WHEREOF**, the parties hereto have hereunto executed this Agreement as of the date written below.

Village of Croton-on-Hudson

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

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

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

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

Cablevision of Wappingers Falls, Inc.

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

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

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

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

**EXHIBIT A**

**VILLAGE OF CROTON-ON-HUDSON**

**BUILDINGS TO BE PROVIDED FREE CABLE SERVICE**

Village Hall (Manager's Office &  
Community Room  
1 Van Wyck Street  
Croton-on-Hudson, NY 10520

Village Office (Parking Lot at Train  
Station)  
4 Gateway Plaza  
Croton-on-Hudson, NY 10520

Croton Water Department  
4 Gateway Plaza  
Croton-on-Hudson, NY 10520

Carrie E. Tompkins Elementary School  
10 Gerstein Street  
Croton-on-Hudson, NY 10520

Police Department  
1 Van Wyck Street  
Croton-on-Hudson, NY 10520

Pierre Van Cortlandt Middle School  
3 Glen Place  
Croton-on-Hudson, NY 10520

Croton Public Library  
171 Cleveland Drive  
Croton-on-Hudson, NY 10520

Croton Harmon High School  
36 Old Post Road  
Croton-on-Hudson, NY 10520

Chemical Engine Co. #1/  
Columbia Hook & Ladder Co. #1  
154 Grand Street  
Croton-on-Hudson, NY 10520

Washington Engine Co. #2  
81 Riverside Avenue  
Croton-on-Hudson, NY 10520

Harmon Engine Co. #3/  
Croton Fire Patrol #1  
30 Wayne Street  
Croton-on-Hudson, NY 10520

Emergency Medical Services  
30 Wayne Street  
Croton-on-Hudson, NY 10520

Village DPW Garage  
435 Yorktown Road  
Croton-on-Hudson, NY 10520