

CONDUIT LICENSE AGREEMENT

DATED 11/03/2022

BETWEEN

City of Pflugerville (LICENSOR)

AND

Cebridge Acquisition, L.P. (LICENSEE)

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## CONDUIT LICENSE AGREEMENT

THIS AGREEMENT, made as of this \_\_\_\_ day of 2022, between the City of Pflugerville organized and existing under the laws of the State of Texas, having its principal office at 100 E Main Street, Pflugerville, TX 78660, (hereinafter called "Licensor") and Cebridge Acquisition, L.P. organized and existing under the laws of the State of Delaware, having its principal office at 1111 Stewart Avenue, Bethpage, NY 11714 (hereinafter called "Licensee").

### WITNESSETH

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

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

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

### **ARTICLE I - DEFINITIONS**

- A) Conduit. A structure, usually underground, containing one or more ducts.
- B) Conduit Occupancy. Occupancy of a conduit system by any item of Licensee's Facilities.
- C) Conduit Record Search and Manhole Survey. There are two elements of the Conduit Record Search and Manhole Survey: 1) administrative effort required to process the application and review conduit records and 2) field inspection of the existing conduit facilities to determine any necessary Make-ready work to accommodate Licensee's Facilities and prepare the cost estimate for Make-ready Work, if applicable.
- D) Conduit System. Any reinforced passage or opening in, on, over, under or through the ground capable of containing communications facilities, and includes: main conduit; underground dips and short sections of conduit under roadways, driveways, parking lots, right of ways and similar conduit installations; laterals to conduits and into buildings; ducts; and manholes.
- E) Conduit Work Inspection. Licensor's Contract Work Inspectors' visual observation of Licensee work in Licensor's Conduit System during the placement of

Licensee's Facilities and whenever a Licensee is working in the Licensor's conduit and/or manhole system or buried splice pit. The purpose is to ensure the Licensee's Facilities are placed in the proper location, work is performed in a manner so as not to disturb or damage Licensor's facilities, and Licensee's work conforms to the standards required by this Agreement.

- F) Duct. A single enclosed raceway for wire conductors or cables.
- G) Innerduct. A small - diameter, semi-flexible duct, located in a conduit system to provide a means for compartmentalizing conventional ducts into multiple pathways for housing and protecting smaller cables.
- H) Licensee's Facilities. The cable and all associated equipment and hardware owned by the Licensee which occupies Licensor's Conduit System.
- I) Licensee's Maintenance Work. Work performed by Licensee on its facilities for repair, replacement and daily servicing of its plant.
- J) Manhole. A subsurface enclosure which personnel may enter and use for the purpose of installing, operating and maintaining facilities.
- K) Make-ready Work. All work, including but not limited to, rearrangement and/or transfer of existing facilities, rodding, roping and slugging ducts, innerduct placement or other changes required to accommodate the Licensee's Facilities in a conduit system.
- L) Right-of-Way (ROW). A strip of land acquired by Right-of-Way Reservation, dedication or condemnation and intended for use as a public way. The ROW normally incorporates the roadway, curbs, parking strips, sidewalks, lighting and drainage facilities, other utilities, and may include special features (required by topography) such as grade separation, landscape areas, viaducts or bridges.
- M) Right-of-Way Management. Chapter 96: Right-of-Way Management provides principles and procedures for the placement of structures and facilities, construction, excavation, encroachments, and work activities within or upon any public right-of-way and to protect the integrity of the road and City utility system. To achieve these purposes, it is necessary to require permits of private users of the public rights-of-way, except as prohibited by law, and to establish permit procedures, rules, and regulations for work done within or upon the public rights-of-way.

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

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

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

- 3.1 Before Licensee occupies any conduit, Licensee shall make application for and have received a license therefore according to the Right of Way Management Ordinance. Licensor may update Right of Way Management Ordinance from time to time during the term of the Agreement.
- 3.2 Licensee agrees to limit the filing of applications for conduit occupancy licenses for minimal manhole sections of conduit on any one application. All manholes listed in the application must be located in the same municipality. Licensor reserves the right to limit the filing of conduit on all applications that are pending approval by Licensor at any one time. Licensee further agrees to designate a desired priority of completion of the Conduit Record Search and Manhole Survey and Make-ready Work for each application relative to all other of its applications on file with Licensor at the same time.

Licensor or Licensee may request a project management meeting with each other to facilitate Licensee's request for a conduit license.

- 3.3 Properly completed license applications received by Licensor on the same day from two or more licensees for installation accommodations in the same conduit(s), shall be processed together. All Conduit Record Search and Manhole Survey or Make-ready Work required to accommodate the applicants will be completed simultaneously for the benefit of all applicants.
- 3.4 Any license granted hereunder for placement of Licensee's facilities in Licensor's conduit system may terminate upon thirty (30) days notice to Licensee as to individual sections of Licensor's conduit system covered by the license in which Licensee has not placed its facilities within one-hundred and eighty days (180) days from the date that Licensor has notified Licensee that such sections of the conduit system are available for placement of Licensee's Facilities.

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

- 4.1 A Conduit Record Search and Manhole Survey for each manhole for which an installation is requested is required to determine the adequacy of the conduit to accommodate Licensee's installations and facilities. The Licensee may accompany the Licensor when Licensor performs the Manhole Survey.
- 4.2 Licensor will process all requests for access to conduit on a non-discriminatory basis in the order such requests are received.

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

- 5.1 Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of Right of Way Management Ordinance. Licensor may update Right of Way Management Ordinance from time to time. Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of the latest editions of "National Electrical Code" (NEC), published by the National Fire Protection Association, Inc. and the "National Electrical Safety Code" (NESC), published by the Institute of Electrical and Electronics Engineers, Inc.
- 5.2 Licensee shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain Licensee's Facilities on public and private property at the location of Licensor's conduit. This permission shall be in the form of a license or other writing.
- 5.3 No license granted under this Agreement shall extend to any of the Licensor's conduit where the placement of Licensee's Facilities would result in a forfeiture

of the rights of Licensor to occupy the property on which such conduit is located. The Licensor does not warrant the validity or apportion ability of any rights it may hold to place facilities on public or private property.

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

### **6.1 General Provisions**

- 6.1.1 Licensee shall, at its own expense, construct and maintain its Facilities within Licensor's conduit in a safe condition and in a manner acceptable to Licensor. Licensee shall construct and maintain its facilities so as not to conflict with the use of Licensor's conduit by Licensor or by other authorized users of Licensor's conduit, nor electrically interfere with Licensor's facilities occupying the conduit system.
- 6.1.2 Licensor shall specify the location within Licensor's conduit system to be occupied by Licensee's Facilities.
- 6.1.3 Licensee shall provide written notice to the Licensor of the actual dates of installation of its Facilities within two (2) business days of the date of installation so that Licensor may promptly schedule a Conduit Work Inspection as required by the Right of Way Permit application.
- 6.1.4 When Licensor deems it an immediate threat to safety and/or an emergency exists, it may rearrange, transfer, or remove Licensee's Facilities in Licensor's conduit at Licensee's expense. Licensor shall make reasonable efforts to contact Licensee as circumstances permit.

### **6.2 Licensee's Maintenance Work**

Licensee shall work cooperatively with the City of Pflugerville Public Works when performing Maintenance Work on its facilities and/or installations. Licensee shall contact the Public Works department via phone to request approval for work on advance of proceeding.

## **ARTICLE VII - UNAUTHORIZED CONDUIT OCCUPANCY**

- 7.1 If any of Licensee's facilities are occupying Licensor's conduit without being licensed, Licensor shall recover fees as specified in subpart 9.2, without prejudice to its other rights or remedies under this Agreement, including termination, or otherwise, and require Licensee to submit in writing, within thirty (30) days after receipt of written notification from Licensor of the unauthorized occupancy, conduit license applications. If such application is not received within the

specified time period, Licensee shall remove its unauthorized Facilities within thirty (30) days of the final date for submitting the required application, or Licensor may remove Licensee's facilities without liability at the Licensee's expense.

## 7.2 Licensee's Removal of Facilities

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

## **ARTICLE VIII - ASSIGNMENT OF RIGHTS**

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

## **ARTICLE IX - LIABILITY AND DAMAGES**

9.1 Licensor reserves to itself, its successors and assigns, the right to locate and maintain its conduit and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruption of Licensee's service nor for interference with the operation of Licensee's communications services arising in any manner, except from Licensor's negligence, out of the use of Licensor's conduit.

9.2 Licensor shall exercise reasonable care to avoid damaging the facilities of Licensee occupying Conduits under this Agreement, and shall make an immediate report to Licensee of the occurrence of any such damage caused by Licensor's employees, agents or contractors. Licensor agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of damage to such Licensee's facilities proximately caused by the negligence of Licensor; however, Licensor shall not be liable to Licensee for any loss of Licensee's revenue or profits resulting from any interruption of Licensee's service caused by such damage or interference with the operation of Licensee's Facilities caused by such damage.

9.3 Licensee shall exercise reasonable care to avoid damaging the facilities of Licensor and of others occupying Licensor's conduits, and shall make an



immediate report of damage to the owner of facilities so damaged. Licensee assumes all responsibility for any and all direct loss from damage caused by Licensee's employees, agents or contractors; however, Licensee shall not be liable to Licensor for any loss of Licensor's revenue or profits resulting from any interruption of Licensor's service caused by such damage or interference with the operation of Licensor's facilities caused by such damage.

- 9.4 **The Licensee shall indemnify, protect and save harmless Licensor from any and all claims, demands, causes of action and costs, including attorneys' fees, which arise directly or indirectly from the construction, attachment or operation of Licensee's facilities in Licensor's conduits and duct bank, including, but not limited to, damages, costs and expense of relocating conduits due to the loss of right-of-way or property owner consents, taxes, special charges by others, claims and demands for damages or loss from infringement of copyright, personal injury or property damage, and from and against all claims, demands and costs, including attorneys' fees, for infringement of patents with respect to the manufacture, use and operation of Licensee's facilities in combination with conduits or otherwise. The foregoing indemnity shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of Licensor. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct, or joint fault of Licensee and Licensor, but in such case the amount of the claim for which Licensor is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Licensee.**
- 9.5 Licensor and Licensee shall promptly advise each other of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by the erection, maintenance, repair, replacement, presence, use or removal of facilities governed by this License Agreement. Copies of all accident reports and statements made to a Licensor's or Licensee's insurer by the other Licensor or Licensee or affected entity shall be furnished promptly to the Licensor or Licensee.
- 9.6 Unless expressly provided for otherwise herein, neither Licensor nor Licensee shall be liable to the other for any special, consequential or other indirect damages arising under this Agreement.
- 9.7 The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued hereunder.

## ARTICLE X – INSURANCE

10.1 Licensee shall secure and maintain (and ensure its subcontractors, if any, secure and maintain) all insurance and/or bonds required by law or this Agreement including without limitation:

- (a) Commercial General Liability insurance (including, but not limited to, premises-operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least \$2,000,000 combined single limit for each occurrence.
- (b) Commercial Automobile Liability insurance with limits of at least \$2,000,000 combined single limit for each occurrence. Notwithstanding, if the Licensee does not own or operate any vehicles or automobiles associated with the Licensee's business or associated with the work related to this Agreement, then Licensee must only provide satisfactory evidence that its subcontractor(s) have purchased and maintained Commercial Automobile Liability insurance in such amount.
- (c) Workers' Compensation insurance as required by statute and Employer's Liability insurance with limits of not less than \$1,000,000 per occurrence.

10.2 The above limits may be satisfied by a combination of underlying/primary and excess/umbrella insurance. All policies provided by the Licensee shall be deemed primary and non-contributory to all other applicable coverages. The Licensee shall waive its right of subrogation for all insurance claims. The Commercial General Liability and Commercial Auto Liability policies must name Licensor, as additional insureds. The Licensee's insurance companies must be licensed to do business in the applicable state(s) and must meet or exceed an A.M. Best rating of A-X or its equivalent.

10.3 All insurance must be in effect before Licensor will authorize Licensee to place facilities in Licensor's conduit and shall remain in force until such facilities have been removed from all such conduit. For all insurance, the Licensee must deliver an industry-recognized certificate of insurance evidencing the amount and nature of the coverage, the expiration date of the policy and the waiver of subrogation and stating that the policy of insurance issued to Licensee will not be cancelled or changed without thirty (30) days written notice to Licensor. Also, where applicable, such certificate of insurance shall evidence the name of the Licensor as an additional insured. The Licensee shall submit such certificates of insurance annually to the Licensor as evidence that it has maintained all required insurance.

10.4 Licensee is responsible for determining whether the above minimum insurance coverages are adequate to protect its interests. The above minimum coverages shall not constitute limitations upon Licensee's liability.

## ARTICLE XI - GENERAL PROVISIONS

### 11.1 Authorization Not Exclusive

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

### 11.2 Failure to Enforce

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

### 11.3 Notices

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

### 11.4 Severability

TC "27.1 **SEVERABILITY**" \f C \l "2" If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions. If the invalid or unenforceable provision or provisions shall be considered an essential element of this Agreement, the parties shall promptly attempt to negotiate a substitute therefor.

### 11.5 Use of Information

TC "16.8 **USE OF INFORMATION**" \f C \l "2" Licensee may provide to Licensor license applications and business plans of its future needs for conduit installations. Such information will allow Licensor to better forecast personnel and equipment requirements. However, as to business plans, such information shall be deemed for use as advance planning purposes only, and no obligation shall be created that Licensor hire personnel or purchase equipment, or Licensee submit license applications for the conduit installations. Such information shall be used only by such employees or contractors of Licensor who have responsibilities relating to the administration of, or to work to be performed

under, this Agreement and said employees shall treat such information as Licensor treats its own confidential information of similar type and value. Licensor's obligations hereunder shall not extend to any information that is now available to the public or become available by reason of acts or omissions not attributable to Licensor.

11.6 Emergency Conditions

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

**ARTICLE XII - TERM OF AGREEMENT**

Except as provided below, this Agreement shall remain in effect and shall renew annually unless Licensor determines otherwise. The Agreement may be terminated by either party with written notice of termination no less than 30 days prior to the effective date of such termination.

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

**CITY OF PFLUGERVILLE**

Licensor

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

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

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

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

**CEBRIDGE ACQUISITION, L.P.**

Licensee

By: Gus Kawell \_\_\_\_\_

(Print Name) Gus KAWELL \_\_\_\_\_

(Title) SR Dir CONSTRUCTION \_\_\_\_\_

(Date) 11/3/22 \_\_\_\_\_