

**CABLE TELEVISION FRANCHISE
AGREEMENT**

Between

**CITY OF PITTSFIELD
COMMONWEALTH OF MASSACHUSETTS
and
TIME WARNER CABLE NORTHEAST LLC**

Effective date:

October 1, 2014

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CABLE TELEVISION FRANCHISE AGREEMENT

1.0 DEFINITIONS

1.1 **Meanings**. For the purposes of this Franchise Agreement, the following terms, phrases, words, abbreviations and their derivations shall have the meanings given herein. The word "shall" is always mandatory and not merely directory.

1.2 **"Access" or "Access Cablecasting"**. Cablecasting on the Cable System's access channels for the following purposes: (i) non-commercial and nondiscriminatory use by the public; (ii) carriage of non-commercial educational programs or information from local schools; and (iii) use for non-commercial local governmental purposes.

1.3 **"Access Channel(s)" or "PEG Access Channels"**. A video channel(s) which the Company shall make available to the City of Pittsfield, without charge, for the purpose of transmitting non-commercial access cablecasting programming by/for members of the public, City departments, boards and agencies, public schools, educational institutional, non-profit and similar organizations.

1.4 **"Affiliate" or "Affiliated Person"**. Any Person who or which directly or indirectly controls and owns an interest in Time Warner Cable, any Person which Time Warner Cable directly or indirectly controls and in which Time Warner Cable owns an interest, and any Person directly or indirectly subject to control and owned in whole or in part by a Person or which directly or indirectly controls and owns an interest in Time Warner Cable.

1.5 **"Alphanumeric"**. Consisting of a combination of letters and numbers, used in reference to keyboards permitting communication in such form and in reference to channels or programs transmitting information in such form.

1.6 **"Area Outage"**. An area outage occurs when cable or equipment is damaged, fails or otherwise malfunctions (collectively called "malfunctions"), and ten or more Subscribers receiving services from that section of cable or that equipment receive unusable or no service as a result of that malfunction.

1.7 **"Basic Service."** The minimum service transmitted to all Subscribers, and currently referred to by Company as "basic service" which includes, at a minimum, (1) all signals of domestic television broadcast stations entitled to "must carry" status under FCC rules which are carried on the system, (2) any public educational and governmental programming required by this Franchise Agreement to be carried on the basic tier, and (3) any additional video programming signals added to the basic tier by the cable operator.

1.8 **"Broadcast"**. Over-the-air transmission by a radio or television station.

1.9 **“Cable Act”**. The Cable Communications Policy and Communications Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as further amended.

1.10 **“Cablecast”**. Programming (exclusive of Broadcast signals) carried on the Cable System.

1.11 **“Cable Programming Service”**. Any video programming provided over a Cable System, regardless of service tier, other than (1) video programming carried on the Basic Service tier, (2) video programming offered on a pay-per-channel or pay-per-program basis, or (3) a combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service: (i) consists of commonly-identified video programming; and (ii) is not bundled with any regulated tier of service.

1.12 **“Cable Service”**. The one-way transmission to Subscribers of video programming or other programming service, together with Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.13 **“Cable System”**. 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 (as defined in the Cable Act) which includes video programming and which is provided to multiple Subscribers within the City of Pittsfield.

1.14 **“Channel”** or **“Video Channel”**. A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

1.15 **“Company”**. Time Warner Cable Northeast LLC d/b/a Time Warner Cable or any successor or transferee in accordance with the terms and conditions of this Franchise Agreement.

1.15 **“Converter”**. A special tuner or device attached to the Subscriber’s television set that expands reception capacity and/or unscrambles coded signals distributed over the Cable System.

1.16 **“Downstream Channel”**. A channel over which signals travel from the Cable System Headend to an authorized recipient of programming.

1.17 **“Downstream Transmissions”**. Signals traveling from the Headend to the Subscriber’s location.

- 1.18 **“Drop”** or **“Cable Drop”**. The interconnection between each home or building and the feeder line of the Cable System.
- 1.19 **“FCC”**. The Federal Communications Commission, or any successor agency.
- 1.20 **“Feeder Cable”**. The cable, connected to trunk cable, from which cable television signal service is distributed to multiple Subscribers, as distinguished from trunk cable (which distributes cable television service throughout the Franchise area) and drop cable.
- 1.21 **“Franchise Agreement”**. The non-exclusive Cable Television Franchise to be granted to Company by this instrument.
- 1.22 **“Grantor”**. The City of Pittsfield.
- 1.23 **“Gross Annual Revenues”**. Any and all revenues (as determined in accordance with generally accepted accounting principles) received by Company, its Affiliates, subsidiaries, Parents, directly or indirectly, from Subscribers, advertisers or other users of the system in connection with the operation of the Cable System to provide Cable Service within the City of Pittsfield, including but not limited to revenues from Subscribers or users in payment for programs received and/or transmitted, pay and subscription TV, fees paid for pay and/or pay-per-view services and optional programs, charges for connection, disconnection, reinstatement, downgrade, upgrade of cable service, fees paid for channels designated for commercial use, advertising revenue (net of agency fees), all home-shopping service(s) revenues received for carriage of the home-shopping service, rentals of converter boxes, remote control units and other equipment used for the receipt of cable service, revenues from channel leasing; excluding any taxes other than franchise fees on services furnished by Company imposed directly on any Subscriber or user by any governmental unit and collected by Company for such governmental unit. In the event that an Affiliate is responsible for advertising, advertising revenues shall be deemed to be the pro-rata portion of advertising revenues, paid to the Cable System by an Affiliate for said Affiliate’s use of the Cable System for the carriage of advertising. If, during the term of this Franchise Agreement, federal law is amended, or interpreted by the FCC or a court of competent jurisdiction, which decision is a final order not subject to further appeal, to permit local franchise authorities to collect franchise fees on revenues Company or its Affiliate collects for the provision of cable modem service in Pittsfield, then beginning sixty (60) days after the effective date of such amendment or interpretation, Gross Annual Revenues shall include such revenues related to cable modem service. Revenues collected prior to the effective date shall not be subject to franchise fees. Gross Annual Revenues shall not include security deposits paid to Company by Subscribers or refunds, credits, or revenues from the sale of equipment or revenues from telephony or telecommunications services. It is the intention of the parties hereto that Gross Annual

Revenues shall only include such consideration of Affiliates and/or Persons relating to Cable Service over the Cable System and not the gross revenues of any such Affiliate(s) and/or Person(s) itself, where unrelated to Cable Service.

1.24 **“Headend”**. The electronic center through which Broadcast and cablecast signals are electronically translated or modified for distribution over the Cable System.

1.25 **“Leased Channel”** or **“Leased Access”**. A video channel which the Company shall make available pursuant to Section 612 of the Cable Act.

1.26 **“Local Origination”**. Local programming produced by the Company.

1.27 **“Massachusetts DTC”** or **“DTC”**. The Commonwealth of Massachusetts Department of Telecommunications and Cable, or any successor department, agency or commission of the Commonwealth of Massachusetts with jurisdiction over the provision of Cable Service.

1.28 **“Origination Point”**. A connection to the Cable System which is provided to allow for live PEG Access programming to be transmitted from that location upstream to the Headend and from there downstream to the Subscribers over one or more PEG Access Channels.

1.29 **“Other Programming Service”**. Services which Company may make available to all Subscribers generally.

1.30 **“Outlet”**. An interior receptacle, generally mounted in a wall, that connects a Subscriber’s or User’s television set to the Cable System.

1.31 **“Parent”**. When used in reference to Company, any Person holding direct or indirect ownership of fifty percent or more of the Company; and any Person holding such ownership of a Parent to Company.

1.32 **“Pay Cable”** or **“Premium Service”**. Optional additional program services, provided to Subscribers at a monthly charge in addition to the charge for Basic Service.

1.33 **“Pay-Per-View”**. Programming delivered for a fee or charge to Subscribers on a per-program or time basis, in addition to the charge or fee to Subscribers for Basic Service, or for other service tier.

1.34 **“PEG”**. The acronym for Public, Educational and Governmental, used in conjunction with access channels, support and facilities.

1.35 **“PEG Access Provider”**. Pittsfield Community Television (“PCTV”) or such other entity as designated by the City of Pittsfield.

1.36 **“Person”**. Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual or group of individuals acting in concert.

1.37 **“Service”**. Any Basic Service or Standard Cable Service, and Pay Cable Service, or any other Cable Service, whether or not originated by the Company, which is distributed over, the Cable System.

1.38 **“Signal”**. Any transmission of electromagnetic or optical energy which carries Cable Services from one location to another.

1.39 **“State”**. The Commonwealth of Massachusetts.

1.40 **“Street”** or **“Public Way”**. The surface of, as well as the spaces above and below, any and all public streets, roads, avenues, highways, boulevards, concourses, bridges, sidewalks, ways, circles, lanes, tunnels, and parkways, within or belonging to the City of Pittsfield, now or hereafter existing. Reference herein to “Public Way” or “Street” shall not be construed to be a representation or guarantee by the City of Pittsfield that its property rights are sufficient to permit its use for any purpose, or that the City shall gain or be permitted to exercise any rights to use property in the City of Pittsfield greater than those already possessed by the City of Pittsfield.

1.41 **“Subscriber”**. Any Person lawfully receiving service from the Cable System.

1.42 **“Two-way Capability”**. The ability to transmit audio/video Signals upstream and downstream on the Cable System whether in analog, digital or other format.

1.43 **“Upstream Channel”**. A channel over which Signals travel from an authorized location to a Cable System distribution point.

1.44 **“Upstream Transmissions”**. Signals traveling from Subscriber or other originating points on the Cable System to a cable distribution point.

1.45 **Other Definitions**. Any term defined in the Cable Act or FCC rules and/or regulations as of the effective date of this Franchise Agreement, but not included in the foregoing definitions, shall be incorporated herein by reference as if set forth in full, and shall be defined as appears in such Act, rules and/or regulations.

2.0 GRANT OF FRANCHISE AND CONDITIONS

2.1 **Representation by Company**. Company represents to Grantor that neither it, nor its officers, agents, employees or any other Person acting under its control or on its behalf has performed or authorized or caused to be performed or authorized any unlawful act in furtherance of or to obtain the award of this Franchise Agreement. A breach of the

representations contained herein shall constitute a substantial violation of this Franchise Agreement, and shall entitle Grantor to terminate this Franchise Agreement for cause.

2.2 Grant of Authority. Company is hereby granted by Grantor, where it has the right to do so, the non-exclusive right and privilege to construct, install, upgrade, reconstruct, erect, operate and maintain in the City of Pittsfield (herein called the “Franchise area” or the “City of Pittsfield” or “Pittsfield”), in, upon, along, across, above, over and under the Streets and Public Ways now laid out or dedicated, and all extensions thereof and additions thereto, poles, wires, cables, optical fibers, underground conduits, manholes and other conductors and fixtures necessary for the installation, maintenance and operation of a Cable System for the reception, transmission, collection, amplification, origination, interception, sale and distribution of Cable Service. Grantor expressly reserves the right to grant other such franchise agreements in the City of Pittsfield, provided that the terms of such other franchise agreements, taken as a whole, shall not be materially more favorable or materially less burdensome than the terms of this Franchise Agreement. Grantor also expressly reserves the right to operate a City-owned Cable System provided that it does so on terms not materially more favorable or materially less burdensome than the terms of this Franchise Agreement. No privilege or power of eminent domain is bestowed by this grant of authority.

2.3 Exercise of Police Power. All rights and privileges granted hereby are subject to the police power of Grantor to adopt and enforce generally applicable local laws, ordinances, rules and regulations necessary to the health, safety and general welfare of the public. Expressly reserved to Grantor is the right to adopt, in addition to the provisions of this Franchise Agreement and existing laws, ordinances and regulations (collectively “laws”), such additional laws as it may find necessary in the exercise of its police power provided such exercise is not inconsistent with the terms of this Franchise Agreement. Any conflict between the terms of this Franchise Agreement and any present or future exercise of the Grantor’s police and regulatory powers shall be resolved in favor of the former.

2.4 Use of Public Ways. The right to use and occupy the Streets, public ways and public places shall not be exclusive, and Grantor reserves the right to grant similar or other uses of the said Streets, public ways and public places to any Persons at any time during the term of this Franchise Agreement.

2.5 Conflict With Public Works. The rights and privileges granted hereby shall not be in preference or hindrance to the right of Grantor, or other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works or public improvement. Should the Company’s Cable System in any way interfere with the construction, maintenance or repair of such public works or improvements, Company shall protect or relocate its system or part thereof, as directed by

Grantor or other authority having jurisdiction, and shall do so at its own expense to the extent other users of the rights-of-way are so required.

2.6 Use of System by Grantor. Subject to Company's contractual commitments with respect thereto, Grantor shall have the right, at a fee to be negotiated by the Parties, to make attachments to poles owned by Company for Grantor's use, such attachments to be installed and maintained only after written notice to Company, provided, that Company shall assume no liability or expense in connection therewith, and provided further that Grantor's use thereof shall be in such a manner as not to interfere with the cable television operations of Company, and is in compliance with the National Electrical Safety Code and all applicable federal, State and local laws, rules and regulations.

2.7 Removal and Relocation. Grantor shall have the power at any time to order and require Company to remove or relocate any pole, wire, cable or other structure machinery or equipment located within a public way that is dangerous to life or property. In the event that Company, after notice, fails or refuses to act within a reasonable time, Grantor shall have the power to remove or relocate the same at the sole cost and expense of Company.

3.0 EXTENSION OF SERVICE

3.1 Extension Policy. Beginning with the Effective Date of this Franchise Agreement, and continuing throughout the term thereof, the Company shall make service available, upon request, to all homes and businesses located on public and private roads and streets within the City of Pittsfield. Except as provided herein, there shall be no charge to Subscribers for the extension or installation of service under this paragraph, or for future connections of new homes and businesses in Pittsfield, other than the Company's standard installation charge in areas where there is a density of at least twenty (20) homes per cable mile. Density per cable mile shall be computed by dividing the number of residential dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the residential dwelling units in such area in accordance with Company's system design parameters. The cable length shall be measured from the nearest point of access to the then-existing system, provided that tension is technically feasible from that point of access, and located within the public rights of way. The total cable length shall exclude the drop cable necessary to serve individual subscriber premises. There shall be no special construction charges to Subscribers, other than the normal installation charge, for aerial cable Drops from the Company's distribution plant to the Subscriber's home up to one hundred twenty five feet (125') or underground Drops, provided that the Subscriber shall be responsible for the burial of the Drop and any costs associated with such burial. In the event Company is requested to install a Cable Service (aerial or underground) Drop in

excess one hundred twenty five feet (125'), Company may require that the Subscriber pay Company's incremental cost of the installation or service Drop over and above the cost of an aerial cable Drop of one hundred twenty five feet (125'). Where new residential or commercial developments are built in Pittsfield to which Cable Service is to be extended, Company agrees to use diligence to assure that Cable Service is installed in coordination with other utility facilities. If all such other utility facilities are placed underground, Cable Service will be installed underground.

4.0 DURATION OF FRANCHISE AGREEMENT

4.1 **Term.** The term of this Franchise Agreement shall be for a period of ten years, commencing as of October 1, 2014 and terminating on September 30, 2024. The Company shall have no automatic right to renewal of this Franchise Agreement, but any renewal shall be in accordance with any applicable provisions of Massachusetts and Federal law and regulations. During the term of this Franchise Agreement, Grantor has the right to conduct performance reviews in accordance with Section 27.3 and to propose technological improvements to the Cable System in accordance with Section 27.3.

5.0 SIGNAL LEAKAGE

5.1 **No Interference.** The Cable System shall be constructed, operated and maintained to comply with federal law and regulations on Signal leakage and to ensure that there will be no objectionable interference with television reception, radio reception, telephone communications or other electronic installations in the City of Pittsfield or with the operation of any public fire, police, rescue or safety communications system. Should any such interference occur, Company shall promptly eliminate it.

6.0 EMPLOYMENT PRACTICES

6.1 **Equal Opportunity.** Company shall not hire, or refuse to hire or to employ, nor bar or discharge from employment nor discriminate for or against any Person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex. In carrying out the construction, operation, maintenance, service and repair of the Cable System, Company shall not refuse to hire or to employ, nor bar or discharge from employment, nor discriminate against any Person in compensation or in terms, conditions or privileges of employment in violation of any Federal or State statute.

7.0 INSURANCE AND INDEMNIFICATION

7.1 **Company Insurance.** Company shall maintain during the full term of this Franchise Agreement such insurance as will protect it and Grantor from any claims which may arise directly or indirectly or result from Company's ownership, construction, repair, operation

or maintenance of Company's Cable System serving Pittsfield, whether such activities are performed by Company, or by anyone for whose acts Company may be liable, under the following policies:

(i) Worker's Compensation and any other legally required employee benefits shall be supplied in statutory amounts;

(ii) Property insurance, all risk, replacement cost basis, on all insurable Company assets; and

(iii) General Liability insurance shall be supplied in the following amount: combined single limit for bodily injury, personal injury, death or property damage in the amount of at least \$6,000,000 per occurrence (which may be supplied by a combination of primary and excess policy limits) and Company's liability insurance shall include contractual liability, including so much of the indemnity specified in Section 7.7 as is reasonably insurable.

7.2 **Additional Insured.** The liability insurance policy shall name the Grantor as an additional insured.

7.3 **Cancellation Notice.** All such Company insurance policies and certificates of insurance shall stipulate that the coverages afforded by the policies will not be canceled, modified or not renewed until at least thirty days' prior notice has been given to Grantor.

7.4 **Evidence of Insurance.** By not later than thirty days after the effective date of this Franchise Agreement, and thereafter upon Grantor's request, Company shall furnish to Grantor current certificates of insurance demonstrating compliance with the insurance coverage requirements of this Section 7, which shall include the indemnity set forth in section 7.7 herein with respect to liability insurance and shall include Grantor as an additional insured. Failure to furnish and maintain said insurance shall constitute a violation of a material provision within the meaning of section 11.2(i) below, subject to the notice and opportunity to cure provided in Section 11.2(i).

7.5 **Approval.** All insurance coverage shall be with a company authorized to do business in the Commonwealth of Massachusetts.

7.6 **Changes in Limits.** Grantor shall have the right, effective at the end of the fifth year of the term hereof, to require an increase in the amounts of insurance specified in section 7.1; provided, that Grantor gives Company at least 90 days' notice of any such increase and provided further that the increase bears some reasonable relation to increases in the cost of living since the grant of this Franchise Agreement.

7.7 Indemnification. Company hereby indemnifies and holds Grantor, its councilors, officers, agents, employees, members of boards and committees and any other parties to this Franchise Agreement or connected with its award, with respect to the installation, operation and maintenance of the Cable System, harmless from and against all expenses, losses and claims, demands, payments, suits, actions, recoveries, and judgments of any nature and description, other than as a result of the negligence of Grantor, including reasonable attorney's fees, resulting from claims arising out of any act or omission of Company, its agents or employees, in the construction, operation, maintenance, repair or service of its Cable System, or of any failure to comply with any law, ordinance, or regulations in the construction, operation, maintenance, repair or service of its cable system, or by reason of any suit or claim for royalties, license fees, or infringement of copyright or patent rights arising from Company's performance under this Franchise Agreement. In the event of the commencement of any action against Grantor, or its councilors, officers, agents, employees, or members of boards and committees which is within the scope of this indemnification, Grantor will give notice thereof to Company within seven (7) business days after Grantor is formally served in any such action, and Company will have the right to select and furnish counsel acceptable to Grantor for the defense of any such action, at no cost or expense to Grantor. Grantor's failure to give timely notice to Company of the commencement of any such action shall not relieve Company of its obligations under this section unless such failure to give timely notice causes actual prejudice to Company's ability to defend any such claim. Except for settlements involving only the payment of money, no settlement of any such action, or any claim therein, shall be made by Company or by counsel selected by Company without the approval of Grantor, which approval shall not be unreasonably withheld. Notwithstanding the foregoing sentence, Grantor's approval shall not be required as to any claims where Company's defense is provided under the terms of an insurance policy and the policy does not allow for the insured's approval of settlements, and in any such cases Company shall consult with and seek the input of Grantor prior to any such settlement. Grantor will cooperate with Company as reasonably required for the defense of any such action.

7.8 City Immunity. The provisions of this section 7, including the indemnity provisions in section 7.7 and the procurement by Company of insurance policies meeting the requirements of this section 7, shall not be interpreted or construed to effect any waiver, suspension, release or alteration of or to any and all sovereign immunity or other immunities as may be available to the City of Pittsfield by law.

8.0 PERFORMANCE BOND OR SECURITY FUND

8.1 Performance Bond or Security Fund. Company shall obtain and maintain during the entire term of this Franchise Agreement, at its sole cost and expense, and file with

Grantor, an irrevocable performance bond, running to the Grantor, with a surety authorized to do business as a surety in the Commonwealth of Massachusetts, to guarantee the faithful performance by Company of all of its obligations under this Franchise Agreement. Such performance bond shall be in the amount of \$100,000. Company may, if it so elects at any time and from time to time during the term of this Franchise Agreement, satisfy its obligations to maintain a performance bond by depositing with Grantor or its designee as a security fund, the sum of money equal to the amount of the performance bond required pursuant to this section. The security fund shall be maintained in an interest bearing account, with the interest payable to Company

8.2 Conditions. The performance bond shall provide, but not be limited to, the following conditions. There shall be recoverable by Grantor, jointly and severally from the principal and surety, within 30 days after written request by Grantor, any and all penalties due to Grantor and any and all damages, losses, costs and expenses suffered or incurred by Grantor resulting from the failure of Company to comply with one or more provisions of this Franchise Agreement. Such losses, costs and expenses shall include, but not be limited to, reasonable attorney's fees and other legal, consulting and auditing expenses. Not less than thirty days' prior notice to Grantor shall be provided of Company's or the surety's intention to cancel, materially change, or not to renew the performance bond.

8.3 Replenishment. In the event that any portion of the performance bond or security fund is forfeited or withdrawn for any reason, Company shall be required to post an additional bond or replenish the security fund in an amount equal to the forfeiture within 30 days of the date of the forfeiture or withdrawal. Failure to post an additional bond or replenish the security fund on a timely basis shall constitute a violation of a material provision of this Franchise Agreement within the meaning of section 11.2(i) hereof.

8.4 Recovery from Performance Bond or Security Fund. Grantor shall be entitled to recover upon the performance bond or the security fund for any amounts due Grantor from Company under this Franchise Agreement, including amounts due to Grantor because Company:

- a. fails to make timely payment to Grantor or its designee or designees of any amount due as a result of this Franchise Agreement;
- b. fails to make timely payment to Grantor of any penalty due under this Franchise Agreement;
- c. fails to make timely payment to Grantor of any taxes due;
- d. fails to repay to Grantor within ten days of notification that such repayment is due, any damages, costs or expenses which Grantor shall be compelled to pay by

reason of any act or default of Company in connection with this Franchise Agreement; or

In any such event, Grantor may withdraw the amount thereof, with interest, from the security fund, or in the case of a performance bond, may make demand upon the surety for payment of the amount thereof, and utilize the same for any of the aforesaid purposes.

8.5 **Notification.** Within ten business days of a withdrawal by Grantor from the security fund, or a recovery by Grantor from the performance bond, Grantor shall mail notice of the amount, date and purpose of such withdrawal or recovery to Company.

8.6 **Inadequate Fund Balance.** If at the time of a withdrawal from the security fund by Grantor, or of a recovery against the performance bond, the amount of the fund or bond is insufficient to provide the total payment toward which the withdrawal is directed, the balance of such payment shall continue as an obligation of Company to Grantor, until paid.

8.7 **Disposition.** Upon termination of this Franchise Agreement under condition, any balance then remaining in the security fund shall be withdrawn by Grantor and paid to Company within ninety days of such termination, provided that there is then no outstanding default on the part of Company.

8.8 **Grantor Rights.** The rights reserved to Grantor with respect to sections 7.0, 8.0, 9.0 and 12.0 hereof are in addition to all other rights of Grantor, whether reserved by this Franchise Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such sections shall affect any other rights Grantor may have.

9.0 **OWNERSHIP OF CABLE SYSTEM**

9.1 **Company Ownership.** The Company shall at all times during the term of this Franchise Agreement be the full and complete owner of, and have complete possessory rights to, all facilities and property, real and personal, of the Cable System, provided that Company is not precluded from entering into any pledge, mortgage or collateralization of any assets of the Cable System in conjunction with any financing or refinancing in the normal course of Company's business. Nothing herein shall be construed to prevent Company from acquiring an interest in such property as a lessee, provided that the terms of such lease shall provide for continuity of possession by the Company throughout the term of the lease.

9.2 **Restriction on Transfer or Assignment.** The Company shall not consummate any transaction, including but not limited to any transfer, sale or assignment, of ownership or

control of the Company's Cable System in the City of Pittsfield without thirty (30) days prior written notice to the Grantor and without prior written approval of the Grantor, which shall not be unreasonably withheld. No Grantor consent shall be required in the event of a transfer, sale or assignment to an entity under common control with the Company, provided that such entity has the financial, technical and legal capacity, to operate and maintain the Cable System serving Grantor and to comply with the terms of this Franchise Agreement. For purposes of this Franchise Agreement "a change of control" shall include any transaction that changes effective majority control of the ownership of the Company or a Parent of Company.

9.3 **No Waiver or Release.** The consent or approval of the Grantor to any transfer, assignment, Change of Control, lease sublease or mortgage of any part of the Cable System or this Franchise Agreement granted to the Company shall not constitute a waiver or release of the rights of the Grantor in and shall, by its terms be expressly subordinate to the terms and conditions of this Franchise Agreement.

9.4 **Foreclosure.** Upon the foreclosure, other judicial sale or reversion of all or a substantial part of the Cable System, the Company shall notify the Grantor of such fact within five (5) days of its occurrence, and such notification shall be treated as a notification that a change in ownership of the Cable System has taken place, and the provisions of this section governing Grantor approval of such change shall apply.

9.5 **Receivership.** In the event of the appointment of a receiver or trustee, or debtor in possession, to take over and conduct the business of the Company, or a Parent, whether in receivership, reorganization, bankruptcy, or other action or proceeding, the Company shall notify the Grantor of such fact within five (5) days of its occurrence, and such notification shall be treated as a notification that a Change in Control of the Company has taken place, and the provisions of this section governing Grantor approval of such change shall apply. The term "bankruptcy" as used herein shall include an assignment for the benefit of creditors and a petition for rearrangement or other similar procedure.

10.0 REGULATORY CHANGES

10.1 **Application.** This Franchise Agreement is granted under and is subject to Chapter 16A of the General Laws of the State, the Cable Act and all other applicable State, Federal and local laws, rules, ordinances and regulations, including all applicable FCC and DTE regulations. All applicable State and Federal laws, rules and regulations, as well as all City of Pittsfield ordinances, including, without limitation, the rules and regulations of the FCC, as of the effective date hereof are deemed to be part of this Franchise Agreement. In the event

- (i) any such law, rule or regulation is hereafter amended, changed or repealed, or

(ii) any new such law, rule or regulation is adopted or promulgated applicable to Cable Service after the effective date of this Franchise Agreement, and

(iii) the Parties have any option, whether pursuant to such law, rule or regulation or otherwise, as to its applicability to this Franchise Agreement,

such new, amended, or changed law, rule or regulation, or such repeal (collectively called “change”), shall not be applicable to this Franchise Agreement unless the Parties agree in writing to include such change, in which case the change shall be effective as to this Franchise Agreement.

Notwithstanding any other provision in this Franchise: In the event any change to local, state or federal law occurring during the term of this Franchise eliminates the requirement for any persons desiring to construct, operate or maintain a cable system in the City to obtain a franchise from the Grantor for the construction, operation or maintenance of a cable system and any Person operates a cable system in the City without a franchise from Grantor, then, Company shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Company chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise. Company shall remain subject to all applicable laws and regulations with respect to abandonment of service. Furthermore, in the event any change to local, state or federal law occurring during the term of this Franchise materially alters the regime of cable franchising applicable to any persons desiring to construct, operate or maintain a cable system in the City in a way that reduces the regulatory or economic burdens for such person and any Person operates a cable system in the City under the terms of such changed law, then, at Company’s request, the Grantor shall agree with Company to amend this Franchise to similarly reduce the regulatory or economic burdens on Company. It is the intent of this section that, at Company’s election, Company shall be subject to no more burdensome regulation or provided lesser benefits under this Franchise than any other persons that might construct, operate or maintain a cable system in the City.

11.0 TERMINATION OF FRANCHISE AGREEMENT

11.1 **Grantor Option.** Upon termination without right of renewal or revocation of this Franchise Agreement, Grantor shall have the option to purchase the Cable System for a payment as established by Federal law. If Grantor does not elect to purchase the Cable System upon termination or revocation, Grantor shall have the power to require Company to remove, at its own expense, all portions of the Cable System from all public ways and places within the City of Pittsfield and to restore all areas to their original condition;

provided, that Company may not be required to remove its Cable System pursuant hereto earlier than one year after the effective date of any such revocation, expiration or termination.

11.2 **Revocation.** In addition to all other rights and powers of Grantor by virtue of this Franchise Agreement, Grantor may revoke this Franchise Agreement and all rights and privileges of Company hereunder in the event Company either:

- (i) Violates any material provision of this Franchise Agreement or any rule, order or determination of Grantor made pursuant hereto where such violation remains uncured for a period of thirty (30) days following notice to Company by Grantor that such violation is deemed to exist or, if the violation cannot reasonably be cured within thirty (30) days despite the exercise of due diligence by Company, Company has not attempted with due diligence to commence and complete such cure;
- (ii) Attempts to evade any material provision of this Franchise Agreement or practices any fraud or deceit upon Grantor;
- (iii) Has a petition under the Bankruptcy Code filed by or against it, and the Company fails to have the petition dismissed within 60 days;
- (iv) Has a receiver, trustee or liquidator appointed for all or part of the Company's assets;
- (v) Becomes financially insolvent or makes an assignment for the benefit of creditors; or
- (vi) Arbitrarily ceases to provide service over the Cable System or fails to restore service after ninety-six (96) consecutive hours of interrupted service except when approval of such interruption is obtained from the Grantor.

11.3 **Hearing.** Grantor may not revoke this Franchise Agreement pursuant to section 11.2 above unless it shall first have considered the matter at a public hearing before the Pittsfield City Council, held on not less than 60 days' notice to Company, at which all interested parties, including Company, are afforded an opportunity to be heard. Any decision by the City Council to revoke this Franchise Agreement may be appealed by the Company to the DTE.

11.4 **Grantor Purchase Price.** If Grantor exercises its option under section 11.1 to purchase the Cable System, price shall be determined as provided in the Cable Act.

11.5 **Company Removal.** If upon expiration without right of renewal, termination or revocation (collectively “termination”) of this Franchise Agreement, Grantor exercises its option to require Company to remove the Cable System, upon failure of Company to complete such removal within one year of the effective date of such termination, Grantor may deem any property not removed to have been abandoned, and title thereto shall vest in Grantor, or Grantor may remove such property at Company’s expense.

12.0 **FRANCHISE FEE**

12.1 **Fee.** As compensation for the rights and privileges granted by this Franchise Agreement, Company shall pay to Grantor the maximum license fee allowed under Chapter 166A of the General Laws of Massachusetts plus a franchise fee of five percent (5%) of Company’s Gross Annual Revenues under this Franchise Agreement less the amounts paid as the license fee and the Massachusetts general assessment and any similar fees. In computing amounts due Grantor with respect to advertising revenue and other revenue not specifically attributable to Subscribers in Pittsfield, such revenue shall be attributed to Grantor on the basis of the number of Cable System Subscribers in Pittsfield as a percentage of the total number of Subscribers served by the Cable System which serves Pittsfield and other communities.

12.2 **Payment.** Payment of the franchise fee shall be computed and paid quarterly, and payment shall be due and payable no later than forty-five (45) days after the end of the calendar quarter for which payment is made. Each payment shall be accompanied by a statement, certified as correct by a Company controller or officer, showing the factual basis for the payment, including a breakdown by category (e.g. Basic Service revenue, pay cable revenue, advertising revenue, etc.) and source of Company’s Gross Annual Revenues for the period for which payment is intended and for the year to date. Company shall prepare and maintain financial information and records in accordance with generally accepted accounting principles and generally accepted auditing standards in the cable television industry. At Grantor’s option, the information provided by Company shall be subject to audit by an outside firm of certified public accountants selected by Grantor. Any such audit shall be at Grantor’s expense except as provided in section 25.1 hereof. Failure to pay the franchise fee on a timely basis (which shall include a period of ten days after written notice from Grantor) is a violation of a material provision of this Agreement for purposes of section 11.2(i) unless there is a good faith dispute with respect to the payment of franchise fees. Interest shall accrue on any and all overdue franchise fees, including franchise fee underpayments, and on any other payments due Grantor under the terms of this Franchise Agreement, at the rate of prime plus two percent simple interest per annum.

12.3 **Conditions of Acceptance**. No acceptance of any payment shall be construed as an accord that the payment is in fact the correct amount, nor shall such acceptance of payment be construed as a release of (i) any claim Grantor may have for further or additional sums payable under the provisions of this Franchise Agreement or (ii) any other claim whatsoever.

13.0 PARENTAL CONTROL DEVICE

Company shall make available to any Subscriber so requesting, for lease or sale, the ability, at his or her option, to eliminate comprehensible reception of any channels. Company shall provide Subscribers, upon request, with information on the use of parental control devices.

14.0 SEVERABILITY

All terms and conditions of this Franchise Agreement are subject to the rules and regulations of the FCC. If any provision of this Franchise Agreement is held by any court or Federal or State agency of competent jurisdiction to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, said provision shall be considered a separate, distinct and independent part of this Franchise Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof, all of which shall remain in full force and effect for the term of this Franchise Agreement.

Notwithstanding the foregoing, if any part of this Franchise Agreement is declared or found to be invalid by any court or federal or state agency of competent jurisdiction, such part shall, at the option of Grantor or Company, be renegotiated. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with the laws, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto. However, if said provision has been renegotiated, as provided for herein, the parties, at their sole discretion, have the right to retain any such renegotiated provision in force rather than reverting back to the original provision, provided that there is no conflict between said renegotiated provision and any such law, rule or regulation allowing the original provision to be reinstated.

15.0 SUBSCRIBER PRIVACY

15.1 **Privacy**. Company shall maintain due vigilance with regard to possible abuses of the right of privacy of any Subscriber, programmer or resident resulting from any device or

Signal associated with the Cable System, and shall take all reasonable steps necessary to prevent and terminate any such abuses should they occur. Company shall comply with all applicable Federal and State laws and regulations respecting Subscriber privacy. In particular, unless required or expressly permitted by applicable law, the Company shall not disclose an individual's viewing information without the consent of the individual or provide a list of subscriber names and addresses to another Person without giving subscribers an opportunity to prohibit or limit such disclosure.

15.2 **Installation of Equipment**. Except as permitted by the Cable Act or other applicable law or by the terms of an agreement, no cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by Company shall be installed on private property by Company without first securing the permission of the owner or tenant in possession of such property.

16.0 **GOVERNING LAW**

16.1 **Massachusetts Law**. This Franchise Agreement shall be governed by, and be subject to, the Cable Act, all applicable FCC rules and regulations and the laws of the Commonwealth of Massachusetts. Company shall be subject to the jurisdiction of the courts of the Commonwealth of Massachusetts in any suit arising out of this Franchise Agreement except that this provision shall not limit Company's right to initiate proceedings in the United States District Court for the District of Massachusetts to the extent permitted by federal law. Venue over any dispute, action or suit shall be in the Berkshire County Superior Court or the United States District Court for the District of Massachusetts and the parties agree to subject themselves to the personal and subject matter jurisdiction of said Courts for the resolution of any such dispute, action or suit.

17.0 **CABLE SYSTEM CONSTRUCTION AND FACILITIES**

17.1 **Cable Design**. The Company's Cable System serving Pittsfield is currently designed and built to provide a 750 MHz, Hybrid Fiber/Coax (HFC) distribution system, utilizing fiber optic super trunk and trunk, and coaxial cable for feeder and house Drop, with bi-directional capability and a channel capacity of at least 150 downstream video channels. Company agrees that during the term of this Franchise Agreement it will maintain the cable system serving Pittsfield in a condition and with a capacity at least equivalent to its current condition and capacity.

17.2 **Emergency Power**. The Cable System shall incorporate equipment capable of providing standby powering of the Headend and HUBS for a minimum of six hours upon failure of the power furnished by the utility company.

17.3 **Emergency Alert System.** Company shall comply in full with the applicable requirements for an Emergency Alert System (EAS) as provided in FCC regulations, 47 C.F.R. Part 11, and with any applicable State emergency notification requirements not preempted by Federal law.

17.4 **Business Office.** Company's principal local business office for the Cable System is located at 4 Federico Drive, Pittsfield, MA. Company shall maintain a conveniently located business office during the term of this Agreement. This business office shall be open and adequately staffed during normal business hours by trained personnel sufficient to 1) accept payments and answer billing inquiries, 2) exchange or accept return of equipment and 3) accept complaints. Company will provide a minimum of one payment center location (which may be at the business office) convenient to Pittsfield subscribers where Subscribers may drop off payments. Payment centers shall be open during normal business hours. Company's monthly bills shall advise Subscribers of the availability, location and hours of the Company's local office and nearest payment center. Company shall provide Grantor and all Subscribers 30 days advance written notice of any relocation of Company's business office, customer payment centers, or any change in business office hours. Company shall provide Grantor with 30 days advance written notice of any relocation of Company's Headend.

17.5 **General Construction Requirements.** In the construction, reconstruction, maintenance and repair of the Cable System, Company shall utilize materials of good and durable quality and shall perform or cause to be performed all work so associated with the system in a safe, thorough and reliable manner.

17.6 **Compliance With Regulations.** All work, including all working conditions and facilities, associated with the construction, operation, maintenance, repair and removal of the Cable System shall comply with:

- a. All applicable Federal and State laws, rules and regulations;
- b. All applicable laws, codes, ordinances, rules and regulations of Grantor; and
- c. The National Electrical Code.

17.7 **Grantor Rights.** Grantor reserves the right to inspect all construction and installation work in public rights of way and to make such tests as it shall deem necessary to ensure compliance with FCC technical regulations and applicable City of Pittsfield ordinances and applicable Pittsfield building, electrical and safety codes, and with provisions of this Franchise Agreement, and may order corrections of any violations.

17.8 **Restoration of Damage.** Company, at its sole expense, shall restore all damage to property, both public and private, caused by the construction, operation, maintenance or repair of the Cable System, so as to return the damaged property to a condition as good as before the damage was done. Such restoration shall be made as soon as practicable after completion of work necessitating the restoration, and shall be done in a manner approved by the owner or tenant in possession. In no event shall such restoration be made later than ten days, weather permitting, after Company's receipt of notification from the owner of the property so damaged unless otherwise mutually agreed by Company and the property owner or unless the work cannot reasonably be completed in such time in which case it shall be completed as promptly as reasonably possible; provided, that if any such damage involves (i) curbs, sidewalks or driveways, the damage shall be repaired to the satisfaction of Grantor (curbs and sidewalks) or the owner or tenant in possession of the property (driveways) within five days or unless the work cannot reasonably be completed in such time in which case it shall be completed as promptly as reasonably possible; or (ii) Streets, water-mains, storm or sanitary sewers, or other public facilities, such damage shall be repaired to the Grantor's satisfaction within 48 hours or unless the work cannot reasonably be completed in such time in which case it shall be completed as promptly as reasonably possible. If Company fails to make such restoration on a timely basis, Grantor may fix a reasonable time for such restoration and repairs and shall notify Company in writing of the restoration and repairs required and time fixed for performance hereof. Upon failure of Company to comply within the specified time period, Grantor may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by Company upon demand by Grantor.

17.9 **Identification.** Company shall ensure that all of its vehicles are clearly identified to the general public as being associated with Company, and that all of its employees, and the employees of any agents or contractors who enter upon private property wear an employee identification card issued by Company, which card shall bear a picture of said employee and shall be worn in a conspicuous place.

17.10 **Public Ways Hazards.** Any openings or obstructions in Streets or other municipal or public property made by Company shall be guarded and protected at all times by the placement of adequate barriers, fences, boardings or other protective devices at the sole expense of Company. During the periods of dusk and darkness, the protective devices shall be clearly designated by warning lights.

17.11 **Location of Physical Facilities.** Within 60 days after the effective date of this Agreement, Company shall provide Grantor's Mayor with Street maps of the City of Pittsfield clearly showing the location of all cable facilities in the rights of way (indicating underground, where applicable). Thereafter, not more frequently than once

every two years, Grantor may request and Company shall provide revised and updated maps.

17.12 **Cable Location.**

- a. Where the cable or wire facilities of all public utilities are installed underground, Company shall install its cable distribution system underground. Vaults and pedestals shall be suitably landscaped, such landscaping to be subject to the approval of the owner or tenant in possession, which approval shall not unreasonably be withheld.
- b. In all areas where public utility lines are aerially placed, if subsequently during the term of this Franchise Agreement all such utility lines are relocated underground, Company shall similarly relocate its cable distribution system underground at its sole expense unless the utilities are reimbursed for such expenses.
- c. Wherever possible, the distribution system shall use the existing facilities of the public utilities. Poles shall not be installed for the sole purpose of supporting a portion of the distribution system without written justification and approval of Grantor, which approval shall not be unreasonably withheld, pursuant to Grantor's law, ordinances, rules and regulations.

17.13 **Location of Construction.** All lines, cables and distribution structure, and equipment, including poles and towers, erected, installed or maintained by Company within the City of Pittsfield shall be located so as not to obstruct or interfere with the proper use of Streets and Public Ways and to cause minimum interference with the rights of property owners who abut any of the said Streets and Public Ways, and not to interfere with existing public utility installations. Company shall not place new poles, towers or other obstructions in Streets or Public Ways, or relocate existing poles, towers or other obstructions, without first obtaining Grantor's approval, which approval shall not be unreasonably withheld. Company shall have no vested right in any location, and such construction shall be removed by Company at its own cost and expense whenever the same restricts or obstructs or interferes with the operation or location or any future operation or location of said Streets or Public Ways.

17.14 **Grade or Location Changes.** If at any time during the term of this Franchise Agreement Grantor shall elect to alter, or change the grade or location of any Street, or shall engage in any construction, reconstruction, widening, repairs or other public works in, on or under the Streets, Company shall, upon reasonable notice by Grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures ("fixtures") at its own expense (unless other users of the rights-of-way are reimbursed for their similar

expenses), and in each instance comply with the Grantor's generally applicable standards and specifications.

17.15 **No Interference.** Company shall not place fixtures above or below ground where the same will interfere with any gas, electricity, telephone fixtures, water hydrants, or other utility use, and all such fixtures placed in or upon any Street shall be so placed as to comply with all requirements of Grantor or other applicable authority, and fully comply with local regulations, including zoning ordinances.

17.16 **Temporary Relocation.** Company shall, on request of any Person holding a permit issued by Grantor or other appropriate authority, temporarily move its fixtures to permit the moving or erection of buildings or other objects, with the expense of any such temporary removal to be paid in advance by the Person requesting same, and Company shall be given reasonable notice to arrange for such temporary relocation. Company shall bear any expense to temporarily move its fixtures to permit the moving or erection of publicly owned or constructed buildings or other objects to the extent other users of the rights-of-way bear their own similar expenses.

17.17 **Tree Trimming.** Company shall have the authority to trim any trees upon and overhanging Grantor's Streets or Public Ways to the minimum extent necessary to prevent the branches of such trees from coming in contact with the wires and cables of Company; provided that, except for incidental trimming done by Company employees in the course of performing their other duties, any tree trimming within the rights of way of Grantor's Streets and Public Ways done by Company shall be subject, in all respects, to Grantor's prior approval. Except in an emergency, the Company will notify the abutting property owner(s) prior to starting tree trimming work. In performing tree trimming, Company shall employ best management practices, shall use its best efforts to avoid any unnecessary damage or injury to trees, and shall comply in all respects with any City of Pittsfield ordinances governing tree trimming. Except for incidental trimming performed by Company employees in the course of performing their other duties, Grantor may elect to perform tree trimming directly or by agents under Grantor's supervision and direction, at Company's expense unless other users of the rights-of-way are not subject to similar expense.

17.18 **Drops.** In areas where the cable distribution system is located underground, Drop connections to the Subscriber's structure shall be underground; in other areas the Drop connections shall be aerial unless the Subscriber requests underground installation and elects to pay the cost thereof. Insofar as reasonably practicable, Company shall adhere to the Subscriber's desire with regard to point of entry of the Drop connection into the structure. Within the Subscriber's structure, Drop or cable runs shall be made as

unobtrusively as possible. Each Drop shall be properly grounded as may be specified in the National Electrical Safety Code.

17.19. **Zoning and Building Codes.** Any and all construction performed by or under the auspices of Company, and any and all facilities used or operated by Company, shall comply with all applicable zoning and building ordinances, codes or laws of Grantor.

17.20 **Contractors, Subcontractors and Affiliates.** All contractors, subcontractors and Affiliates of Company must be properly licensed under all applicable federal, state and local laws and regulations. Company shall be solely and completely responsible for all acts or omissions of any such contractor, subcontractor or Affiliate, or any employee or agent of any such contractor, subcontractor or Affiliate in the construction, reconstruction, installation, maintenance, operation or removal of Company's Cable System.

17.21 **Completion of Work by Grantor.** Upon failure of Company after thirty (30) days' notice to commence, pursue or complete any work required by law or by the provisions of this Franchise Agreement in any Street or other public place within the time prescribed and to the satisfaction of the Grantor, Grantor may, at its option, cause such work to be done with reasonable expenditures therefor and Company shall pay to the Grantor the cost thereof in the itemized amounts reported by the Grantor to the Company within thirty (30) days after receipt of such itemized report.

18.0 ACCESS CHANNELS, FACILITIES AND EQUIPMENT

18.1 **PEG Access Channels.** Company shall provide Grantor with three video channels for the non-commercial public, educational and governmental ("PEG") Access use by the PEG Access Provider. Such channels shall be shared with other franchising authorities served by the system. All such PEG Access Channels shall be included on the Basic Service tier.

18.2 **Use of PEG Access Channels.** Use of PEG Access Channels shall be subject to such rules as Grantor, or its designee(s), may adopt. Access Channels may not be used to provide commercial services or for any commercial purposes, provided, however, that the Grantor or its designee may cablecast acknowledgements of funding sources and the underwriting of programming costs. There shall be no charge by Company for the use of the PEG Access Channels.

18.3 **PEG Studio Fiber Feed.** Company shall maintain a direct feed from the Grantor's current principal PEG Access studio location to the Company's Headend or equivalent facility (whether at its current location or relocated by the Company), which feed shall be

adequate to permit the simultaneous transport of up to three PEG audio and video Signals to the Headend at a Broadcast quality standard.

18.4 **Live Programming Origination Points and Communications.** To facilitate live PEG programming within the City of Pittsfield the Company shall maintain for the Grantor at no cost live origination points (return feeds) at the locations listed in Exhibit A hereto sufficient to allow Grantor's PEG provider to cablecast live from each such location.

18.5 **Interactive Educational Video Network.** Company shall maintain during the term of this Franchise the existing interactive educational video network.

18.6 **Operation of PEG Access Channels.** All PEG Access channels shall be available for PEG Access programming on a twenty-four (24) hour basis, seven days a week. All PEG Access programming shall be distributed as received from the source specified by Grantor or its designee without delay, alteration or modification. Company shall not interfere with the content of any PEG Access Channel distributed from Grantor-authorized sources except as otherwise required or permitted by law. Company shall monitor the PEG Access Channels for technical quality to the extent it monitors all other channels and shall ensure that they are maintained at standards commensurate with those that apply to the Cable System's commercial Channels. Grantor will be responsible for the quality of the audio/video Signal up to the Cable System insertion equipment. Company shall provide, maintain and align all equipment used to transmit or distribute PEG Access Signals over the Cable System.

18.7 **Access Equipment.**

(a) Company agrees to provide a capital grant, for PEG Access equipment and facilities and other equipment necessary for the above, in the amount of three hundred thirteen thousand dollars (\$313,000) within thirty (30) days of the effective date of this Franchise Agreement. Grantor shall determine the use and distribution of these funds, and all such equipment and facilities shall be the property of the Grantor and shall be housed in locations specified by the Grantor.

(b) Company may audit the records of Grantor at Company's expense to determine that the funds provided under subsection (a) were used for the designated purpose.

18.8 **PEG Channel Listings.** Company shall include appropriate designation of the Grantor's PEG Access Channels on channel cards and channel listings provided to Subscribers in a manner comparable to which it identifies other Channels.

19.0 PERFORMANCE STANDARDS

19.1 **Technical Standards.** All Signals carried on the Cable System shall be transmitted to Subscribers without material degradation and with a quality no less than that prescribed by rules of any Federal or State regulatory agencies having jurisdiction. Anything contained in this Franchise Agreement to the contrary notwithstanding, the technical specifications, operation and performance of the Cable System shall, at minimum, conform at all times to the specifications established by any Federal or State regulatory agencies having jurisdiction thereof.

20.0 MAINTENANCE AND REPAIR

20.1 **Maintenance Policy.** Company shall promulgate and adhere to a preventative maintenance policy directed toward maximizing the reliability (mean-time-between-malfunctions) and maintainability (mean-time-to-repair) of the Cable System with respect to its delivery of service to Subscribers at or above the performance standards set forth in State or Federal law and regulations. Whenever it is necessary to interrupt service for the purpose of making repairs, adjustments, installations or other maintenance activities, Company shall do so at such time as will cause the least inconvenience to Subscribers. Except in an emergency, and except for interruptions of fifteen minutes or less which may occur during the course of normal maintenance, service is to be interrupted only between the hours of midnight and 7:00 a.m.

20.2 **Repair.** Company shall maintain a repair department comprising qualified technicians, service vehicles and equipment to provide prompt and efficient repair service.

20.3 **Notice.** Except in an emergency, and except for interruptions of fifteen minutes or less or interruptions between the hours of midnight and 7:00 a.m., Company shall give Subscribers at least 24 hours' notice of any interruption of service for purposes of maintenance or repair. In an emergency, Company shall give such notice as is reasonable in the circumstances. Notice given on the alphanumeric channels on Basic Service shall be considered sufficient.

20.4 **Unresolved Service Complaints.** In the event that a Subscriber complaint remains unresolved, the Subscriber may file a complaint with the Grantor or its designee. If the complaint remains unresolved for more than ten (10) days, then within thirty (30) days of the date of the filing of the complaint with the Grantor, the Subscriber shall have the opportunity to meet jointly with the Grantor or its designee and a representative of the Company to discuss and resolve the matter. When there have been numerous similar complaints made or when there exists other evidence which in the judgment of the Grantor or its designee casts reasonable doubt upon the reliability or quality of the Cable

Service, the Grantor shall have the right and authority to compel the Company upon written request to test, analyze and report on the performance of the system as provided herein. Such report shall be delivered to the Grantor no later than fourteen (14) days after the Grantor formally notifies the Company and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used; the procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved. In the event that the Grantor reasonably finds that testing and analysis by the Company has not produced a solution to the problem, upon written request of the Grantor the Company shall conduct additional testing and analysis. All costs of such tests, analyses, and reports, and the supervision thereof required under this section shall be borne by the Company if the tests indicate the Company is not in compliance with the requirements of the franchise. If the tests indicate the Company is in compliance, the costs shall be borne by Grantor.

20.5 Subscriber-Owned Equipment Excluded. The requirements for maintenance and repair shall not apply to Subscriber television or radio receivers or other Subscriber-owned equipment.

20.6 Credit for Service Loss. For every loss of service of which Company becomes aware in excess of 12 continuous hours, Company shall, upon request, grant a pro rata credit on the regular monthly charge to each Subscriber so affected. The credit shall be determined by multiplying the applicable monthly service rate by a fraction whose numerator equals the number of hours (or portion thereof) of the outage and whose denominator equals the number of hours in the month of the outage. For purposes of this paragraph, loss of service shall be considered a Subscriber's receipt of less than two-thirds of the respective available Channels, and loss of pay cable or premium service shall be considered the loss of Signal on any pay Channel or premium Channel. Company shall make such credit by way of a credit on the affected Subscriber's next bill.

20.7 Records. Company shall maintain records of all oral and written complaints regarding quality of service, equipment malfunctions, billing procedure, employee attitude and similar matters that require service call action on the part of the Company. Such records shall show the exact date and time of receipt of all such customer complaints, identifying the Subscriber (by name, address and telephone number), the nature of the complaint and the exact time action was taken by Company in response thereto, together with a description of such action. Company shall also maintain a record of all whole or partial system outages, including the date approximate time and duration, type and probable cause of each outage, except for outages caused by routine testing or maintenance. Such records shall be available at Company's local office for at least one year, for inspection by Grantor as it may from time to time request, during regular business hours and upon reasonable notice. Company shall, within ten (10) days after

receiving a written request therefor, send a written report to Grantor with respect to any complaint. Such report shall provide a full explanation of the investigation, finding(s) and corrective steps taken.

21.0 COMMENCEMENT OF SERVICE TO SUBSCRIBERS

21.1 **Commencement of Service.** Company shall furnish Cable Service, as herein provided, in the City of Pittsfield as requested by the owner or occupant at each location, within the time limits specified below.

21.2 **Time of Installation.** Service to any Subscriber served by a standard aerial Drop shall commence by not later than 7 business days after service is requested; service to any Subscriber served by a standard underground Drop shall commence by not later than 45 days after service is requested unless additional time is required by severe weather or other circumstances outside of Company's control; subject, in either case, to section 27.9. Company shall exert every reasonable effort to commence service to a Subscriber served by a non-standard Drop as expeditiously as possible. A standard Drop, for which the Subscriber shall be charged Company's standard installation fee, is an aerial Drop running not more than one hundred twenty-five feet (125') from feeder cable to the Subscriber's structure; provided, that any installation which requires Company to place a Drop underground or cross a Street underground shall be considered a non-standard installation. An aerial Drop in excess of one hundred twenty-five feet (125') in length shall be considered a non-standard installation.

22.0 SUBSCRIBER RATES AND SERVICES

22.1 **Regulation.** Grantor shall have the right, as provided by federal law and regulations (and Massachusetts law to the extent Massachusetts law changes in the future to provide for such regulation and to the extent such Massachusetts law is not preempted by federal law), as the same may be amended, to regulate charges to Subscribers.

22.2 **Rate or Service Discriminations: Special Classifications.** Company shall not deny service or access, or otherwise discriminate against Subscribers, programmers or other residents in violation of law nor subject any Person to any illegal prejudice or disadvantage, preference or advantage in connection with rates, charges, service facilities, rules or regulations other than discounted or complementary service provided to Company's employees and public entities. Nothing herein shall prohibit the establishment of a graduated scale of rates for classified schedules to which any Subscriber within such classification shall be entitled.

22.3 **Free Cable Service.** Company shall provide and maintain one standard free installation, including a Drop, Outlet, and free Basic Service and Cable Programming

Service (or the equivalent) in all municipal buildings, each public school, all public libraries, the local Senior Center, and the recreation room of any government-owned elderly housing. To the extent permitted by applicable law, Company may take a credit against franchise fees for such service.

22.4 **Service Locations**. The Company shall verify the location of each connection, specified in section 22.3 with the proper officials of each of the institutions entitled to such free Drop, Outlet, Converter and/or Cable Service connection prior to installation.

22.5 **Rate Changes**. As required by applicable law, Company shall give Grantor and each Subscriber at least 30 days' individual written notice of any change in Subscriber rates or charges. At Grantor's request, exercised by Grantor giving Company at least fifteen (15) days' notice thereof, Company shall attend, and respond to questions, at any public hearing held by Grantor to consider the rate increase if Grantor has the authority to regulate such rate. If the Grantor elects to regulate rates for Cable Service and equipment, the foregoing provisions on notice and public hearing shall be supplemented by any applicable provisions of the Cable Act, FCC regulations, Massachusetts law and any local rules or ordinances.

22.6 **Programming Changes**. Company shall give Grantor and each Subscriber prior individual written notice of any change, including additions and deletions, or change in channel position, in the programming carried on the Cable System, as required by law. Company agrees to meet regularly with the Grantor, at the Grantor's request, to discuss programming issues and options, and to consider the advice and recommendations of the Grantor. Upon notifying Grantor of a proposed change in programming, Company will, at the request of Grantor, with at least seven days' notice, attend a public hearing on the proposed programming change to hear comments and concerns of Grantor and Subscribers, provided that Company shall have the final decision on programming changes.

22.7 **Billing Practices**. Company's billing and collection practices and policies shall comply with applicable law.

22.8 **Pro-Rated Service**. In the event a Subscriber's service is terminated, monthly charges for service shall be pro-rated on a daily basis and, where advance payment has been made by a Subscriber, the appropriate refund shall be made by Company to the Subscriber within thirty days of such termination.

22.9 **Disconnection For Non-Payment**. Company shall have the right to disconnect a Subscriber for failure to pay an overdue account; provided that:

- a. Company billing practices and policy statement set forth the conditions under which an account will be considered overdue;
- b. At least eight days prior to the proposed disconnection, Company mails to the Subscriber written notice of intent to disconnect for delinquency in payment; and
- c. The Subscriber's account is at least forty five days delinquent at the time said notice is mailed.

In the event of a billing dispute, and at the request of Grantor, Company shall meet with Grantor or its designee to attempt to negotiate in good faith a resolution to the billing dispute. Company shall only disconnect a Subscriber on days when the Subscriber can reach a representative of Company in person or by telephone. In the case of a Subscriber whose service has been disconnected for non-payment, upon payment in full of the delinquent amount, and a reasonable fee for reinstatement, and upon request of the Subscriber, Company shall promptly reinstate the Subscriber's Cable Service.

22.10 **Notice of Rates and Programming.** All rates and charges associated with the provision of Cable Service and the lease of Channel space shall be available and obtainable in person or by mail upon request during business hours at the Company's business office. As required by law, at least once each calendar year, the Company shall provide to each Subscriber and the City of Pittsfield a complete schedule of all services, rates and charges for Cable Service provided by the Company and of the programming offered and Channel alignment. Such information shall also be provided to all new or prospective Subscribers prior to installation or commencement of service.

22.11 **General Customer Service.** Company shall comply with any and all customer service standards provided under Massachusetts law, federal law, FCC regulations, including those regulations found at 47 C.F.R. §76.309, as well as with the provisions of this Franchise Agreement. To the extent of any difference or conflict in the requirements of this Franchise Agreement, State and federal law, FCC regulations and/or cable industry standards, the strictest of such standards shall govern.

23.0 PUBLIC COMMUNICATIONS

23.1 **Emergency Communication.** At least one Person in responsible charge of Company's operation shall be available by local telephone during such hours as the business office is closed, and the telephone number of such Person shall be supplied in advance to Grantor and Grantor's police, fire and public works departments.

24.0 SUBSCRIBER COMPLAINTS

24.1 **Complaint Policy.** Company shall promulgate and maintain and provide to Grantor upon its request a written policy statement setting forth the procedure for reporting and resolving Subscriber complaints and shall furnish a copy thereof to each new Subscriber, and thereafter periodically to Grantor and all Subscribers.

24.2 **Company Response.** Company shall respond to all Subscriber complaints promptly. In the case of a billing complaint, Company shall respond to the complainant by no later than five business days following receipt of the complaint. In the case of a service complaint not requesting repair or adjustment, Company shall respond to the complainant within five business days following receipt of the complaint.

25.0 RECORDS AND REPORTS

25.1 **Financial Records.** Company shall at all times maintain complete and accurate books of account and records of its business and operations and all other records required by this Franchise Agreement, shall allow Grantor to inspect and/or audit all Gross Annual Revenues records necessary to determine whether franchise fees have been properly paid upon not less than seven working days' notice, and shall allow Grantor to inspect such other records as are required to determine whether Company is in compliance with the terms of this Franchise, provided that any audit of financial records shall be limited to the most recent two years. Any audit by Grantor hereunder shall be at its expense unless such audit shall disclose an underpayment by at least five percent (5%) of any franchise fees payable for the period of the audit, in which event Company shall reimburse Grantor for the expense of such audit. Any records which Grantor has the right to inspect which are not maintained at Company's local business office shall be made available to Grantor at such location or at another Company office in the Albany, NY area upon request affording reasonable notice therefor.

25.2 **Confidentiality.** Grantor agrees to treat as confidential any books and/or records that constitute proprietary or confidential information to the extent so designated by the Company. If the Grantor believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise the Company in advance so that Company may take appropriate steps to protect its interests. If the Grantor receives a demand from any person for disclosure of any information designated by the Company as confidential, the Grantor shall, so far as consistent with applicable law, advise the Company and provide the Company with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Company's books and records marked confidential as set forth above to any person.

25.3 **Court and Regulatory Agency Reports and Filings.** Company shall submit to Grantor upon request copies of all pleadings, applications, reports, communications and documents of any kind except tax returns and Company's comments in FCC proposed rulemaking proceedings, submitted by Company or any Parent of Company to, as well as copies of all decisions, correspondence and actions by, any Federal, State and local courts, regulatory agencies and other government bodies relating specifically to Company's cable television operations in Pittsfield.

25.4 **Other Reports.** In addition to the reports herein elsewhere required, Grantor shall have the right to require the submission of such other reports as Company prepares in the normal course of business as necessary to review Company compliance with the terms of the Franchise Agreement.

25.5 **Annual Report.** Upon request, Company shall submit a report to Grantor's Mayor, which report shall include the following information:

- a. Total number of Subscribers in the City of Pittsfield.
- b. Total miles of cable plant in the City of Pittsfield, including length of fiber optic cable.
- c. Miles of cable plant added in the City of Pittsfield in the prior calendar year.
- d. A specific description of any line extensions in the City of Pittsfield in the prior calendar year, including Street names, distances, and start/end points, as well as a description of any projected line extensions planned for the coming year (which projections shall not be binding on Company).
- e. Total homes passed in the City of Pittsfield and density measured in miles of plant divided by homes passed as of December 31 of the prior year.
- f. A brief general description of any new federal or State regulatory changes which Company believes will have a significant effect on the Cable System, and the actual effect on the system in the City of Pittsfield.
- g. A description of any technological upgrades or enhancements in Cable Service over the past year and any projected for the coming year which have been publicly announced (which projections shall not be binding on Company).
- h. The maximum number of amplifiers in cascade on the Company's Cable System in the City of Pittsfield as of December 31 of the prior year.

- i. A listing of any system outages in the City of Pittsfield over the prior year in excess of one hour, including the affected locations, the date, time, duration, cause of the outage, and steps taken to address the outage.
- j. A summary of customer complaint records for the prior year maintained pursuant to section 20.7, including an identification of any significant customer service issues raised in the City of Pittsfield in the prior year and any resolution or changes in service resulting.
- k. Any new programming or changes in programming in the prior year and projected for the coming year which have been publicly announced (which projections shall not be binding on Company), including, where known, specific programming offerings.
- l. Any new or different services offered or made available in the City of Pittsfield in prior year and projected for the coming year which have been publicly announced (which projections shall not be binding on Company).
- m. Any price changes in the prior year.
- n. Updated ownership information referenced in Section 26.0 hereof.
- o. A copy of Company's certificate of insurance as required by Section 7.4 hereof.

Company's representative shall meet with Grantor's City Council or their designee within sixty (60) days of request for such a meeting in order to discuss any of the information described above.

25.6 Technical Audit. In the event the Grantor has reasonably based concerns about the technical status of the Cable System serving the City of Pittsfield and whether it is in compliance with the terms of this Franchise Agreement, the Grantor may retain an independent technical consulting firm to audit the Cable System serving the City of Pittsfield. The Company shall accommodate any reasonable requests for information and access to the cable plant necessary for such consultant to perform this investigation. Such audit shall not interfere with the Company's provision of service. In the event that the independent technical consultant finds that the Cable System serving the City of Pittsfield fails to comply in a material way with the requirements of applicable Federal or State or regulations or the requirements of this Franchise Agreement, the Company shall take immediate steps to remedy the noncompliance as promptly as is reasonably possible, using due diligence.

25.7 **Examination.** Upon reasonable notice to Company, a Company representative shall discuss with Grantor the correctness, completeness or accuracy of any record or report required hereunder.

26.0 **OWNERSHIP INFORMATION**

Upon Grantor's request, Company shall provide Grantor information regarding the ownership of the Company and its Parent(s).

27. **MISCELLANEOUS**

27.1 **Amendment or Modification.** This Franchise Agreement shall not be amended or modified except by written agreement executed by both Parties.

27.2 **Notices.** Notices required to be sent to Grantor shall be in writing and shall be delivered by hand, or shall be sent by certified mail, return receipt requested, in either case to the Mayor, City of Pittsfield, 70 Allen Street, Pittsfield, Massachusetts 01201, or such other address as may be designated by Grantor in writing. Notices required to be sent to Company shall be in writing and shall be delivered by hand, or shall be sent by certified mail, return receipt requested, to Company at:

Time Warner Cable
400 Old County Road
Rockland, ME 04841
Attention: Government Relations

cc: Time Warner Cable
60 Columbus Circle
New York, NY 10023
Attention: Law Department/Regulatory

27.3 **Performance Review.** Grantor may on its own initiative, but not more frequently than once every two years, or may at the request of the Company, schedule a public hearing for identifying the cable-related community needs and interests, reviewing and evaluating the Company's performance of its obligations under this Franchise Agreement, receiving public input, considering new technologies and services applicable to Cable Service, and to hear from the Company. The Grantor shall notify the Company of the time and place of such hearing and provide the Company with an opportunity to be heard. The public shall be afforded appropriate notice and opportunity for comment. Within four (4) months of such meeting, the initiating party (Grantor or Company) shall provide the other with a written copy of the findings. Based on the findings, the Company and the Grantor may mutually agree to amend this Franchise Agreement.

27.4 **Effect on Prior Franchise Agreements.** This Franchise Agreement shall supersede any prior franchise agreements between the parties. Immediately upon the taking effect of this Franchise Agreement, all prior franchise agreements, including the Agreement dated June 6, 1996, and any and all amendments and extensions thereof, shall terminate and shall have no further force and effect; provided, however, that any vested rights relating to billings and the Grantor's rights to receive franchise fees shall not be affected thereby.

27.5 **Failure to Enforce Provisions: No Waiver of Rights.** The Company shall not be excused from complying with any of the terms and conditions of this Franchise Agreement by any failure of the Grantor upon one or more occasions to insist upon or to seek compliance with any such terms or conditions. No course of dealing between the Company and the Grantor, nor any delay on the part of the Grantor in exercising any rights hereunder, shall operate as a waiver of any such rights of the Grantor or acquiescence in the actions of the Company in contravention of such right, except to the extent expressly waived by the Grantor or expressly provided for in this Franchise Agreement. No decision by the Grantor to invoke any remedy under this Franchise Agreement or under any statute, law or ordinance shall preclude the availability of any other such remedy.

27.6 **Warranties.** Company warrants, represents and acknowledges that, as of the Execution Date of this Franchise Agreement:

- a. The Company is duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts;
- b. The Company has the requisite power and authority under applicable law and its bylaws and articles of incorporation and/or other organizational documents to enter into and legally bind Company to this Franchise Agreement and to take all actions necessary to perform all of its obligations pursuant to this Franchise Agreement;
- c. This Franchise Agreement is enforceable against Company in accordance with the provisions herein; and
- d. There is no action or proceedings pending or threatened against Company that would interfere with performance of this Franchise Agreement.

27.7 **Time of the Essence.** Whenever this Franchise shall set forth any time for an act to be performed by or on behalf of the Company, such time shall be deemed of the essence.

27.8 **Acts or Omissions of Employees, Agents and Affiliates.** During the term of this Franchise Agreement, Company shall be liable to the Grantor for the acts or omissions of

its employees, agents or Affiliates while such employees, agents or Affiliates are involved directly or indirectly in the construction, reconstruction, installation, maintenance or operation of the Cable System, as if the acts or omissions of such employees, agents or Affiliates were the acts or omissions of Company.

27.9 **Force Majeure.** If by reason of strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State or any of their departments, agencies, political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities or suppliers, strikes, labor disputes or any other cause or event not reasonably within the control of the disabled party, any party is unable, despite the use of all commercially reasonable due diligence, in whole or in part to carry out its obligations hereunder, that party shall not be deemed to be in violation or default during the continuance of such inability. In the case of a force majeure event, the party claiming force majeure shall promptly notify the other party of the event and of the measures such party is taking to address such event, and shall take all commercially reasonable efforts

28.0 FINAL RESOLUTION

28.1 **General.** The agreement expressed herein in writing constitutes the entire agreement between the parties, and supersedes all prior agreements, proposals, oral statements of any kind, and no oral statement shall add to or supersede any of its provisions.

In witness whereof, the parties hereto have caused this Franchise Agreement to be executed by their duly authorized representatives as of this 1st day of October 2014.

Witness

CITY OF PITTSFIELD

Susan Santolin

Daniel Bianchi

By:
Its Mayor
Thereunto Duly Authorized

TIME WARNER CABLE
NORTHEAST LLC

[Signature]
By: Mark H. Fitzpatrick
Its SVL & CFO of Retail Services

EXHIBIT A –Local Origination Sites Served Per Section 18.4

1. Berkshire Community College, 1350 West Street
2. Crosby Elementary School, 517 West Street
3. Conte Elementary School, 200 West Union Street
4. St Mark Elementary and Middle School, 400 Columbus Avenue
5. Capeless Elementary School, 86 Brooks Avenue
6. Taconic High School, 96 Valentine Road
7. Reid Middle School, 950 North Street
8. City Hall, 70 Allen Street
9. St. Joseph’s Central High School, 23 Maplewood Avenue
10. Allendale Elementary School, 180 Connecticut Avenue
11. Morningside Elementary School, 100 Burbank Street
12. Stearns Elementary School, 75 Lebanon Avenue
13. Crowne Plaza Hotel, 1 West Street
14. Berkshire Athenaeum (Library), 1 Wendell Avenue
15. Pittsfield High School, 300 East Street
16. Williams Elementary School. 50 Bushey Road
17. Egremont Elementary School, 84 Egremont Avenue
18. Herberg Middle School, 501 Pomeroy Avenue
19. First Baptist Church, South Street