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Smart City Managed Services Agreement

Between

City  
And  
SiFi Networks City LLC

Dated [Date], 2022

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## SMART CITY MANAGED SERVICES AGREEMENT

This Agreement is made this \_\_\_ day of \_\_\_, 2022 (“*Effective Date*”), between the City of (the “*City*” or “*Customer*”) and SiFi Networks, a Delaware limited liability company (together with its successors and assigns, “*SiFi*” or “*SiFi Networks*”) (each sometimes referred to as “*Party*” and collectively referred to as “*Parties*”).

### RECITALS

WHEREAS, the City, as a Municipal Corporation, wishes to receive Services to City locations over SiFi’s fiber optics infrastructure for municipal use.

WHEREAS, the City desires to contract with SiFi to provide data services over fiber optic cable connections to City designated locations.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree as follows:

### SECTION 1. DEFINITION OF TERMS.

**Section 1.1. Terms.** For the purpose of this Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. Capitalized terms used in this Agreement that are not defined in this Agreement shall have the meaning ascribed to them in the Development Agreement.

“*Agreement*” or “*MSA*” means this written contract between the City and SiFi, including without limitation all exhibits, schedules, appendices, and/or documents referenced herein, and any renewals, extensions or amendments the Parties make to it in accordance with the terms hereof.

“*Annual Fee*” means the annual fee paid by the City for Services.

“*Boundary*” means the area as defined within Exhibit A attached hereto and made a part hereof.

“*Change*” means any change to a Service or a New Service, any variation, alteration, modification or enhancement, including but not limited to any increase or decrease of the Scope or the volumes, devices, elements, mix, technologies or vendors included in the Services as set out in Annex II of this Agreement.

“*City*” or “*Customer*” means, a [Municipal Corporation] including its officers, employees, agents and volunteers or its lawful successor, transferee, designee, or assignees.

“*City Council*” means the City Council of the City, or any equivalent body.

“*Core*” means the section of the SiFi Networks’ fiber optic network constructed in the Public Way from the interconnect point with the backhaul circuit to a duct or ducts at the boundary of the Drop Location at the edge of the public right of way.

“*Commencement Date*” means the date of the first Drop connection to the Initial Demand Points.

“*Demand Point*” means a singular location or object within the City which the City has designated to receive a fiber connection (Drop) under this Agreement.

“*Drop*” means the drop duct and fiber optic cable run from SiFi Networks’ Core network within the public right of way to the Demand Point.

“*Drop Location*” is the location that a distribution duct crosses from the public right of way to the private right of way where the distribution duct is capped for future use. When a service is required a drop duct is connected to the distribution duct.

“*Drop Location Wall*” means the exterior or interior of a Drop Location at which the fiber optic cable can be terminated.

“*Future Demand Point*” means a singular location or object within the City which the City has designated that they may wish to receive a fiber connection (Drop) under this Agreement in the future.

“*Initial Demand Point*” means the Demand Points designated by the City and identified in the table in Section 2.4.1 below, which are Demand Points for which City is currently receiving service from third party providers.

“*Initial Term*” shall have the meaning as set forth in Section 2.5.1.

“*Monthly Recurring Charge*” or “*MRC*” means the additional monthly recurring charge (“MRC”) payable by City for each new Future Demand Point that the City requests.

“*Network*” means the SiFi Networks fiber optic network that is designed to support the delivery of Service to City Demand Point City locations

“*NTE*” means *Network Terminal Equipment*

“*New Services*” means any Service not defined in Annex II and/or as further described in Annex III of this Agreement.

“*ONT*” means Optical Network Terminal.

“*OLT*” means Optical Light Terminal.

“*Pass*” or “*Passes*” means constructing to the curbside of a Demand Point premise, or the engineered point at or near a Demand Point from which a Drop is to be connected (at the City’s cost).

“*PSS*” means Photonic Switch Service for layer 1 OTN services.

“*Public Way*” shall mean the surface of, and the space below, any now existing or future public street, road, highway, parkway, driveway, freeway, lane, path, court, sidewalk, bridge, alley, boulevard, traffic signals, lamp post, wastewater assets including sanitary and storm systems, public way, or other public right-of-way or easement including, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by, granted or dedicated to or under the jurisdiction of the City in the City. Public Way shall also mean any easement now or hereafter held by the City within the City for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way.

“*Related Documents*” means this Agreement and any exhibits, schedules, instruments or agreements relating thereto, as the same may be amended, modified or supplemented in accordance with the terms thereof and hereof.

“*Renewal Term*” shall have the meaning as set forth in Section 2.5.1.

“*Services*” means the Basic Services and Project services being in the scope of this Agreement as being set out in Annex II of this Agreement as amended from time to time by the Change Management Procedure.

“*Scope*” means the scope of Services under this Agreement as further defined in Annex II of this Agreement.

“*SiFi*” and “*SiFi Networks*” shall have the meaning set forth in the preamble above.

“*Term*” shall have the meaning as set forth in Section 2.5.1.

## **SECTION 2. USE AND MAINTENANCE OF THE SERVICE**

**SECTION 2.1. SERVICE WILL BE PROVIDED** to designated Initial Demand Points and Future Demand Points as described on Sections 2.4.1 and 2.4.2, respectively, within the anticipated development area in Exhibit A, attached hereto and made a part hereof.

**Section 2.2. Title; Use and Access of the Service.** Title shall be held by and remain in SiFi at all times during and after the Term of this Agreement. The City shall have no title to the Service. The City is granted the exclusive right to use and access the Service at the Initial Demand Points for all municipal communications purposes within the City, including, but not limited to, voice, data and internet service for some City governmental functions. The City is not permitted to use the Service directly or indirectly, for any commercial or retail purposes that may compete with the services provided by SiFi.

*Section 2.2.1.* The City may subcontract the use and access of the capacity granted to the City described in this Section 2.2 with the prior written consent of SiFi, which may not be unreasonably withheld, delayed, or conditioned, so long as it does not alter any of the obligations of the City herein. The City is not permitted to use the Service, directly or indirectly, for any commercial or retail purposes that may compete with the services provided by SiFi.

**Section 2.3.** Where power is required for NTE to provide service to City facilities or property, the City will be responsible for providing the electrical connection to the NTE and the City will be responsible for the electric power needed with respect thereto. Subject to the foregoing, SiFi will be responsible for providing the City, at the City's cost, NTE's only at the Future or Initial Demand Points that are compatible with SiFi's fiber to the premise network throughout the City. If required, SiFi shall be responsible for installing and procuring NTE's but applicable charges will be invoiced to and paid by the City for the connection of each Future Demand Point and the City shall be responsible for paying the same in full within thirty days of the City's receipt of the invoice.

**Section 2.4. Installation and Connection Costs.**

Section 2.4.1 Initial Demand Points

City's Initial Demand Points are listed in the table in the table below. SiFi will undertake to terminate into the NTE / fiber patch panel from the Core up to the Drop Location Wall. This shall be the full extent of SiFi's duty, at its own cost, to Drop up to the Initial Demand Point Location Wall. For those locations with no physical buildings or objects to drop the service to a wall, SiFi shall bring fiber into the property and place a duct on the property for future connection. City hereby represents, warrants, and certifies that (i) City currently has 10 Initial Demand Points, and (ii) the annual costs City is currently paying for, or the value of such, similar services received from third party providers to those Initial Demand Points is \$[REDACTED] ("Initial Demand Points Budget"). City will provide in writing to SiFi the detailed address, common name, service description, speed, and annual spend for each Initial Demand Point as provided for in Section 8.3.

Section 2.4.2 Future Demand Points

Prior to commencement of construction, City will provide in writing to SiFi the detailed address, common name, service description requested, speed request, and annual budget for each initial Future Demand Point as provided for in Section 8.3. City further represents and warrants any such Future Demand Points are not receiving similar services from any third party provider. During the construction of the Network, SiFi will undertake the construction to connect one of the Future Demand Points to the distribution point and shall invoice the City for all such connections. When connections are required to be made at any additional Future Demand Points or after construction of the Network is completed, SiFi shall provide an estimate of the cost and, if City agrees, SiFi will undertake the construction to connect each such additional Future Demand Points to the distribution point and shall invoice the City for the cost related to all such connections. The City represents and warrants that the owner of the Future Demand Point locations is neither currently receiving data services' and or paying for data services to any third party provider as of the Effective Date of this Agreement.

### Section 2.4.3 Invoicing and Payments.

Commencing on the Commencement Date and provided the Services are fully functional for the connected Demand Points, SiFi shall invoice and City shall pay SiFi within thirty (30) days (i) the Initial Demand Points Budget which will be payable annually and in advance by City to SiFi, (ii) on a monthly basis and in advance the monthly recurring fees, provided that the initial invoice will include a prorated portion of the initial month's monthly recurring fees in arrears ("MRC") for each Future Demand Point made available to the City in accordance with the table below, and (iii) the applicable one-time installation costs for each Future Demand Point, if any, per Section 2.4.2.

| Number of Demand Points Requested During Construction up to Substantial Completion | Future Demand Point MRC, Per Location Purchased Within 10 years (120 months) of Agreement Effective Date | Future Demand Point MRC, Per Location Purchased After 10 years (121 months) of Agreement Effective Date |
|--|--|---|
| 1-500  | \$40 MRC   | \$75 MRC  |
| 501-1000   | \$35 MRC   | \$65 MRC  |
| 1001-2000  | \$30 MRC   | \$55 MRC  |
| 2001+  | \$25 MRC   | \$45 MRC  |

\* The MRC's above shall increase on an annual basis beginning on the first (1st) anniversary of the Commencement of Date and thereafter at a rate of 2% minimum or 5% maximum per annum based on the previous year's Consumer Price Index for all Urban consumers.

### SECTION 2.5. TERM.

*Section 2.5.1.* The term of this Agreement shall commence on the Effective Date, and renew automatically upon mutual agreement at the start of each fiscal year for and expire at midnight on the date that is twenty (20) years from the Commencement Date ("*Initial Term*"), subject to earlier termination set forth in Section 6. Following the Initial Term, the Term shall automatically renew for one additional term of ten (10) years commencing on the twentieth (20th) anniversary of the Commencement Date ("*Renewal Term*," and, collectively with the Initial Term, the "*Term*") subject to earlier termination set forth in Section 6. Nothing in this section shall impair or diminish the City's non-appropriation rights as set forth in this Agreement.

**Section 2.6. Fees and Expenses.** Except as expressly set forth herein, each Party shall bear and be responsible for all of its own costs, fees and expenses incurred in executing and performing this Agreement and the other Related Documents.

### Section 2.7. Maintenance of City Property and Demand Points

*Section 2.7.1.* Maintenance, repair and operation of the Drop shall be performed by SiFi and/or contractors approved by SiFi.



*Section 2.7.2* SiFi does not have any duty or obligation to upgrade or improve the Services or any of its component parts, however in the event of equipment failure covered by guarantee or warranty, SiFi will use commercially reasonable efforts to collect on such guarantees or warranties. The City, at its sole cost, may make upgrades and improvements to any of its component parts with the prior written consent of SiFi. Prior to seeking SiFi's consent, the City shall provide SiFi with details of the upgrades including, without limitation, the identity and specifications for all parts to be installed required for the provision of the service.

## **Section 2.8. Key Performance Indicators and Service Level Agreements:**

*Section 2.8.1.* Compliance with the performance of the Services will be measured by Key Performance Indicators ("KPIs") which may include agreed Service Level Agreements ("SLAs") as further described in Annex I attached hereto. Each KPI is defined by a Target Level, a High Target Level, Low Target Level, Critical Target Level and a Target Zone as further defined in Annex I – KPIs, SLAs and Service Credits.

*Section 2.8.2.* The Parties have agreed upon initial KPIs to measure SiFi Networks' compliance with the agreed Service levels as from the date the Services have initially been provided. Such KPIs and the related SLAs are set out in Annex I – KPIs, SLAs.

*Section 2.8.3.* Initial KPIs shall be measured as from the date the Services have initially been provided; *provided that*, for the nine (9) months following Service delivery SiFi Networks shall not be in breach of contract for failure to achieve any applicable KPI during such period; *provided* further that with respect to each remaining Future or Initial Demand Point completed after Service has initially been provided, during the nine (9) months following completion of such Future or Initial Demand Point SiFi Networks shall not be in a breach of contract for failure to achieving any applicable KPI with respect to the just completed Future or Initial Demand Point during such period. Such KPI's shall be mutually adjusted by the Parties prior to the end of the latest such nine (9) month period if any KPI's are determined to be not achievable; however until such adjustment and finalization of the KPIs has been agreed between the Parties, SiFi Networks shall remain not liable for achieving any applicable KPIs.

*Section 2.8.4.* In addition to the agreed initial KPIs and related SLAs the Parties may agree upon new KPIs at any time during the Term, including but not limited to any Change or introduction of New Services.

*Section 2.8.5.* For new KPIs or for any modification of a KPI after the adjustment and finalization of the KPIs (as described in Section 2.8.3), Annex III hereto and Section 2.8.6 of this Agreement shall apply.

*Section 2.8.6.* For each new KPI, a grace period of 12 (twelve) months or any other period as agreed between the Parties and set out in Annex I – KPIs, SLAs shall apply during which such new KPIs shall be measured and SiFi Networks shall not be in a breach of contract if not achieving these respective new KPIs. After the grace period, the Parties shall mutually agree upon the final

definition of the new KPIs in writing as an addendum to this Agreement. No new KPI shall be binding unless a mutual agreement has been executed by the Parties.

The Parties may agree upon new KPIs and related SLAs for any Change or New Service in accordance with Annex III to this Agreement. Sections 2.8.5 and 2.8.6 shall apply for such new KPIs.

*Section 2.8.7.* SiFi Networks shall provide the City with a monthly report on the performance of the Services as agreed in Annex I – KPIs, SLAs. The Parties may agree on other reporting intervals for KPIs not being measured on a monthly basis, but in no event shall the reporting interval be shorter than monthly intervals.

*Section 2.8.8.* Any exclusions and/or exceptions affecting the KPI results as defined in Annex I– KPIs, SLAs shall be excluded from these KPI results. SiFi Networks shall provide a written report to the City referring to the applied exclusions and/or exceptions as defined in Annex I – KPIs, SLAs in order to enable a verification of the applied exclusions and/or exceptions by the City.

## **Section 2.9. Quality of Services.**

*Section 2.9.1.* SiFi Networks shall perform the Services at all times exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled, reasonable and experienced provider of such Services under similar or same circumstances.

*Section 2.9.2.* SiFi Networks shall support the further development of the quality of the Network as agreed in writing between the Parties from time to time.

*Section 2.9.3.* Notwithstanding SiFi Networks' obligations as set out in Section 2.9.1, the City shall perform its obligations under this Agreement exercising that degree of skill, diligence, prudence and foresight reasonably necessary for it to meet all of its obligations under this Agreement, as well as not to adversely impact the performance of the Service to be rendered by SiFi Networks and to ensure SiFi Networks may perform its Service as agreed in this Agreement.

## **Section 2.10. Reserved.**

*Section 2.10.4.* All costs incurred by SiFi to adapt the City's properties and facilities or any Future or Initial Demand Points for the provision of a service or SiFi's Service delivery environment shall be borne by the City in line with Section 2.4.2.

## **SECTION 3. INDEMNIFICATION.**

*Section 3.1.* SiFi shall indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, and other representatives from and against any and all claims, damages, liabilities, costs and expenses, including attorney fees, incurred in any action or

proceeding arising from or in connection with (a) the breach or alleged breach by SiFi of any of its representations or warranties or any material provisions of this Agreement; (b) the violation or alleged violation by SiFi of any applicable federal, state or local laws, ordinances, rules or regulations; provided, however, that the City shall promptly notify SiFi of any such claim or litigation; or (c) any action or inaction taken by SiFi in the performance of this Agreement. Such indemnification shall include indemnification for alleged intellectual property infringement by SiFi or by City relating to this Agreement. Notwithstanding the foregoing, the failure to provide such prompt notice shall diminish SiFi's indemnification obligations only to the extent SiFi is actually prejudiced by such failure.

*Section 3.2.* The City shall indemnify, defend, and hold harmless SiFi and its officers, directors, equity owners, employees and other representatives (collectively, the "Representatives") from and against any and all claims, damages, liabilities, costs and expenses, including attorney fees, incurred in any action or proceeding arising from or in connection with (a) the breach or alleged breach by the City of any of its representations or warranties or any material provisions of this Agreement; or (b) the violation or alleged violation by the City of any applicable federal, state or local laws, ordinances, rules or regulations; provided, however, that SiFi shall promptly notify the City of any such claim or litigation. Notwithstanding the foregoing, the failure to provide such prompt notice shall diminish the City's indemnification obligations only to the extent the City is actually prejudiced by such failure.

*Section 3.3.* In any case in which indemnification is sought hereunder:

(a) At the indemnifying party's option, the indemnifying party may assume the handling, settlement or defense of any such claim or litigation. If the indemnifying party assumes the handling, settlement or defense of any such claim or litigation, the party to be indemnified shall cooperate in the defense of such claim or litigation, and the indemnifying party's obligation with respect to such claim or litigation shall be limited to holding the indemnified party harmless from any final judgment rendered on account of such claim or settlement made or approved by the indemnifying party in connection therewith, and expenses and reasonable attorneys' fees of the indemnified party incurred in connection with the defense of such claim or litigation prior to the assumption thereof by the indemnifying party or after the assumption thereof by the indemnifying party but only when such expense and fees are necessary to protect the indemnified parties interest, and any reasonable out-of-pocket expenses for performing such acts as the indemnifying party shall request. If the indemnifying party does not assume the handling, settlement or defense of any such claim or litigation, the indemnifying party shall, in addition to holding the indemnified party harmless from the amount of any damages awarded in any final judgment entered on account of such claim, reimburse the indemnified party for reasonable costs and expenses and reasonable attorneys' fees of the indemnified party incurred in connection with the defense of any such claim or litigation; and

(b) The party seeking indemnification shall fully cooperate with the reasonable requests of the other party in its participation in, and control of, any compromise, settlement, litigation or other resolution or disposition of any such claim.

## **Section 4. Confidentiality and Assignment.**

### **Section 4.1. Proprietary Information and Assignment.**

*Section 4.1.1. Treatment of Confidential and Proprietary Information.* Subject to local, state and federal law, the City agrees that, without the prior written consent of SiFi, technical specifications, system design, pricing, as-builts, project schedules and project reports (“SiFi Confidential Information” or “SCI”), shall be kept confidential and shall not be disclosed to any individuals or entities other than the City’s authorized representatives, staff and consultants, in each case who have agreed to abide by the terms of this Section 4.1.1 with regard to such SiFi Confidential Information. In the event the City is required by applicable law to disclose any of the SiFi Confidential Information, the City agrees to provide SiFi Networks with prompt notice of such requirement and the opportunity to challenge the requirement to disclose such SiFi Confidential Information at SiFi’s sole expense and, in the event such challenge is unsuccessful or does not occur within the limited timeframes provided by law, the City shall furnish only that portion of the SiFi Confidential Information which it is advised by opinion of counsel that is legally required and the City shall exercise reasonable commercial efforts, if it is possible to do so, to obtain reliable assurance that confidential treatment will be accorded such SiFi Confidential Information.

SiFi will minimize any SiFi Confidential Information provided to City. All such SCI will be explicitly labeled as such in writing. Whenever possible, SiFi will retain and not leave with City such SCI where it is not absolutely necessary to do so in order to carry out the terms of this Agreement. City will not be liable to SiFi for any release of SCI which City is required to make, under the reasonable sole opinion of City’s legal counsel, pursuant to the [local applicable law] or other [State] or federal law, or pursuant to a valid subpoena or other legal process.

**Section 4.2. Assignment of Agreement.** SiFi shall have the right to assign, novate, sell, encumber, or transfer this Agreement, or any part thereof, subject to approval by the City. Such approval by the City shall not be unreasonably withheld, conditioned or delayed, and in any event shall be granted or denied in writing within thirty (30) calendar days after request therefor, or if the City fails to respond within thirty (30) calendar days after request, shall be deemed to be approved by the City. Upon any such assignment or novation, SiFi shall be released from all obligations and liabilities under this Agreement from and after the date of such assignment but not until City is in receipt of a fully executed copy of the document evidencing such assignment, sale or transfer and indicating the assignee’s/purchaser’s/transferee’s assumption of SiFi’s performance duties, liabilities, and obligations under this Agreement. To illustrate the foregoing Assignment provision, in order to finance construction, installation, operations and other related matters, SiFi and/or its project partners reserves the right to grant security interests in the Network to one or more third parties. Notwithstanding anything to the contrary in this Agreement, SiFi, and/or its project partners, may assign, mortgage, pledge, hypothecate, or otherwise transfer without consent of any kind its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom SiFi and/or its project partners (1) has obligations for borrowed money or in respect of guarantees thereof, (2) has obligations evidenced by bonds, debentures, notes or similar instruments, or (3) has obligations under or with respect to letters of credit, bankers’ acceptances or similar facilities or in respect of guarantees thereof. There shall be

no restrictions on the ability of SiFi and/or its project partners to assign this Agreement or any other Related Document freely without the consent of any party. The City, at the request of SiFi, shall execute such further instruments, acknowledgments, subordinations and estoppel agreements as may be required in connection with SiFi Network's financings or that of its project partners and in any event granted within fourteen (14) calendar days after request therefor.

**Section 4.3. Assignment by the City.** The City shall not have the right to assign, transfer, pledge or delegate its interest in this Agreement without SiFi Network's express prior written consent which shall not be unreasonably withheld, conditioned, or delayed and in any event shall be granted or denied in writing within thirty (30) calendar days after request therefor, or if the SiFi Networks fails to respond within thirty (30) calendar days after request, shall be deemed to be approved by SiFi Networks. In the event SiFi Network provides written consent to an assignment or transfer by the City, such assignment shall expressly require that any assignee or transferee hereunder: (1) assumes all of the City's obligations under this Agreement; and (2) in the reasonable judgment of SiFi, possesses sufficient financial, managerial and technical capacity to perform under the terms and conditions of this Agreement and the other Related Documents. An assignment, transfer, pledge or delegation of the City's interest in this Agreement in violation of this Section 4.4, at SiFi's option, shall be void, or, give SiFi, in its sole discretion, the right to terminate this Agreement.

## **Section 5. City's Obligations.**

In addition to all other duties and obligations contained elsewhere in this Agreement, the City has the following duties and obligations:

(a) Provide a single point of contact ("*SPOC*") for SiFi, which SPOC will be responsible to address all issues related to this Agreement, providing coordination across, and liaison with, the City departments, and serving as a communication and troubleshooting resource for SiFi.

(b) Offer the full cooperation of all the City departments with respect to relevant issues with respect to this Agreement. Such cooperation will be supervised by the SPOC.

(c) Participate in regular status meetings for the coordination of all matters related to this Agreement and the other Related Documents.

(f) From time to time hereafter, the City will execute and deliver such additional instruments, certificates or documents, and will take all such actions as the SiFi may reasonably request for the purposes of implementing or effectuating the provisions of the Related Documents to which the City is a party or for the purpose of more fully perfecting or renewing the rights of the SiFi with respect to the rights, properties or assets subject to such documents (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by the City which may be deemed to be a part thereof). Upon the exercise by the SiFi of any power, right, privilege or remedy pursuant to the Related Documents to which the City is a party which requires any consent, approval, registration, qualification or authorization of any governmental authority or instrumentality, the City will, to the fullest extent permitted by law, execute and deliver all necessary applications, certifications, instruments and other documents and papers that the SiFi may be required to obtain for such governmental consent, approval, registration, qualification or authorization, at SiFi's sole expense.

## **Section 6. Enforcement of Agreement. Termination.**

**Section 6.1. SiFi Breach or Default.** In the event the City believes that SiFi has not complied with the material terms of this Agreement, the City shall promptly notify SiFi in writing with specific details regarding the exact nature, if known, and if the exact nature is not known, the general nature of the alleged noncompliance or default.

*Section 6.1.1. SiFi's Right to Cure or Respond.* Subject to Section 8 and Section 9.2, SiFi shall have forty-five (45) days (or such longer period described in Section 7.1.2.(iii) below or Section 9.2 below) from its receipt of the City's notice described in Section 7.1 above:

(a) to respond to the City, contesting the assertion of noncompliance or default;

(b) to cure such default; or

(c) In the event that, by nature of the default or noncompliance, such default or noncompliance cannot be cured within the forty-five (45) day period, to initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

*Section 6.1.2. Enforcement by the City for SiFi Breach.* After the City complies with its obligations in Section 7.1 above and if SiFi fails to cure any noncompliance or default within the forty-five (45) day notice period, or if such a cure is not possible within forty-five (45) days pursuant to Section 7.1.1(c) above and SiFi has failed to take reasonable steps to remedy the noncompliance or default as required by Section 7.1.1(c) above, the City may:

(i) Seek specific performance or seek other equitable relief;

(ii) Seek contractual damages from SiFi; or

(iii) In the event no cure of any kind is provided within a period of sixty (60) days following expiration of the cure period set forth in Section 7.1.1, provide written notice to SiFi and its lender(s) of the City's intent to terminate this Agreement. SiFi shall have an additional forty-five (45) day period to arrange for cure. If no cure of any kind is provided within this forty-five (45) day cure period, SiFi's lender shall have forty-five (45) days from the end of the SiFi forty-five (45) day cure period to cure. If SiFi's lender(s) fails to do so within this time period, the City may terminate this Agreement by written notice to SiFi.

*Section 6.1.3. Reservation of Rights.* Except for any rights it explicitly waives in this Agreement, the City reserves all legal and equitable rights it may have to enforce this Agreement.

**Section 6.2. City Breach or Default.** In the event SiFi believes that the City has not complied with the material terms of this Agreement, it shall promptly notify the City in writing with specific details regarding the exact nature of the alleged noncompliance or default.

*Section 6.2.1. City's Right to Cure or Respond.* Subject to 7 below, the City shall have forty-five (45) days from its receipt of SiFi's notice described in Section 6.2 above:

(a) to respond to SiFi, contesting the assertion of noncompliance or default;

(b) to cure such default; or

(c) in the event that, by nature of the noncompliance or default, such noncompliance or default cannot be cured within the forty-five (45) day period, to initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

*Section 6.2.2. Enforcement by SiFi for City Breach.* After SiFi complies with its obligations pursuant to Section 7.2 above and if the City fails to cure any noncompliance or default within the forty-five (45) notice period, or if such a cure is not possible within forty-five (45) days pursuant to Section 6.2.1(c) above and the City has failed to take reasonable steps to remedy the noncompliance or default as required by Section 6.2.1(c) above, SiFi may:

- (i) Seek specific performance or other equitable relief;
- (ii) Seek damages from the City (which are limited in all events to the amounts actually paid in the prior calendar year to SiFi); or
- (iii) Terminate this Agreement by sending written notice to the City if the City has failed to:
  - (a) pay amounts due pursuant to this Agreement;
  - (b) maintain, repair, operate and insure any City property, Public Ways, City furniture, City Premises, Ultimate Demand Points or Initial Demand Points as required by this Agreement, or keep such City property, Public Ways, City furniture, City Premises Ultimate Demand Points or Initial Demand Points in good working order and capable of supporting the Services or any combination thereof consistent with current fiber optic industry standards and specifications as required by this Agreement; or
  - (c) Comply with or perform any other material term of this Agreement.

*Section 6.2.2.4. Termination.* Either party may terminate this Agreement without cause upon no less than 365 day written notice of intent to terminate. In the event either SiFi or the City terminates this Agreement, for any reason, the City shall promptly provide to SiFi all maintenance and repair records for the Services in the City's possession or control.

**Section 6.3. Reservation of Rights.** Except for any rights it explicitly waives in this Agreement, SiFi reserves all legal and equitable rights it may have to enforce this Agreement.

**Section 6.4. Limitation of Liability.** Except for a breach of confidentiality obligations, in no event will either party be liable to the other party for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever. Each Party hereby releases the other party, its subsidiaries and affiliates, and their respective trustees, officers, directors, managers, employees, and agents, from any such claims.

## **Section 7. Dispute Resolution.**

**Section 7.1. Dispute Escalation.** As to any dispute which is not resolved in the ordinary course of business, SiFi and the City may first attempt in good faith to promptly resolve such dispute by negotiations between their respective representatives. Either SiFi or the City may initiate the escalation procedure by delivery of written notice of the dispute ("*Dispute Notice*") to



the other. Not later than thirty (30) days after delivery of the Dispute Notice, a representative with authority to settle the dispute shall meet with the other party's designated representative with authority to settle the dispute at a reasonably acceptable time and place, and thereafter as such representatives deem reasonably necessary. The executives shall exchange relevant information and endeavor to resolve the dispute. Prior to any such meeting, each party's representatives shall advise the other as to any individuals who will attend such meeting with the representative. In the event that the parties are unable to resolve the dispute in the above-described manner within thirty (30) days after the initial meeting between representatives, then the parties may resolve any dispute arising out of or relating to this Agreement, or the parties' respective rights and duties hereunder, by and through the institution of legal proceedings in the United States District Court for the [REDACTED] District of Florida, or if there is no federal court jurisdiction, the state courts of City, Florida. All negotiations pursuant to this Section shall be confidential and treated as compromise negotiations for purposes of Rule 408 of the Federal Rules of Evidence and any other similar law or rule of evidence that is applicable.

**Section 7.2. Non-Binding Mediation.** Notwithstanding Section 8.1, prior to resorting to litigation but after the meeting between the representatives described in Section 8.1, both parties may, at the sole option of each, jointly submit any dispute arising under this Agreement to non-binding mediation. Both parties shall agree on the mediator and in the absence of any such agreement, both parties shall nominate one (1) mediator, and the final mediator shall be selected from the nominated mediators by virtue of a game of chance. All negotiations pursuant to this Section shall be confidential and treated as compromise negotiations for purposes of Rule 408 of the Federal Rules of Evidence and any other similar law or rule of evidence that is applicable.

## **Section 8. Miscellaneous Provisions.**

**Section 8.1. Authority to Enter Agreement.** Each party hereby represents and warrants to the other that (i) it has full power and authority to enter into and perform this Agreement, (ii) it has taken all necessary action to execute, deliver and perform this Agreement and (iii) this Agreement constitutes a valid and binding obligation of such party, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, moratorium, reorganization or similar laws of general applicability relating to or affecting the rights of creditors and to the availability of equitable remedies, regardless of whether such enforceability is considered in a proceeding in equity or at law.

**Section 8.2. Force Majeure.** SiFi shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots; interruptions; major and extended loss or malfunctions of utilities; computers (hardware or software) or communications service; strikes or labor disputes; acts of military authority;. If SiFi shall be unable to carry out the whole or any part of its obligations under this Agreement by reason by a force majeure event, then the performance of the obligations under this Agreement of such party as they are affected by such cause shall be excused for a reasonable time during which such condition exists.

**Section 8.3. Notice.** All notices shall be in writing and shall be served upon the other party by hand delivery, overnight mail, electronic mail, or by facsimile with confirmed transmission and addressed as follows:

City:

City

\_\_\_\_\_

Email: \_\_\_\_\_

SiFi Networks:

SiFi Networks City LLC

Attn: Legal

103 Foulk Road, Suite 500

Wilmington, DE 19803

Email: [NOTICES@SiFiNetworks.com](mailto:NOTICES@SiFiNetworks.com)

Notices shall be deemed received the same day with delivery upon hand delivery, and the next business day with delivery upon overnight mail, electronic mail, or by facsimile.

**Section 8.4. Entire Agreement.** This Agreement, including all exhibits, embodies the entire understanding and agreement of the City and SiFi with respect to the subject matter hereof.

**Section 8.5. Severability.** If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

**Section 8.6. Governing Law.** This Agreement shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Florida, irrespective of conflict of laws principles.

**Section 8.7. Modification.** No provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and SiFi, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

**Section 8.8. No Third Party Beneficiaries.** Nothing in this Agreement or in any prior agreement is or was intended to confer third-party beneficiary status on any person or entity not a party to this Agreement including a member of the public.

**Section 8.9. No Waiver of Rights.** Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural that SiFi or the City may have under federal or state law unless such waiver is expressly stated herein.

**Section 8.10. No Rights to the Drop.** The City expressly agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the SiFi network by virtue of the relationship and rights created by this Agreement.

**Section 8.11. No Joint Venture, Partnership or Alter Ego; Independent Contractor.** Nothing contained in this Agreement, any document executed in connection herewith or any other Related Document or other instrument with any other party shall be construed as making the parties hereto joint partners, joint ventures or alter egos of each other or any other entity. SiFi shall at all times remain an independent contractor. Neither Party shall control or direct the day-to-day affairs of the other Party, or their mode or method of performing their respective obligations hereunder. Neither Party in any manner shall act or indicate to any third party that it is the agent of the other Party.

**Section 8.12. Headings.** The headings and captions of this Agreement are solely for the convenience of the Parties and shall not be deemed to modify or vary any of the substantive terms thereof.

**Section 8.13. Counterparts.** This Agreement may be executed in one or more counterpart copies, all of which counterparts when executed and delivered, each of which shall be an original, and shall have the same force and effect as if all Parties had executed a single copy of this Agreement. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile or email transmission of any signed facsimile or email transmission hereof shall be the same as delivery of an original.

**Section 8.14. No Waiver.** Failure by either Party to assert or declare any one breach or failure to perform shall not be construed as a waiver of any other or subsequent breach or failure to perform.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

**Attest:**

**City, A [Municipal Corporation]**

\_\_\_\_\_  
, City Clerk

By: \_\_\_\_\_  
, [\_\_\_\_\_] of the  
of City, Florida

**Approved as to Form:**

**SiFi Networks City LLC**

\_\_\_\_\_  
, City Attorney

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**Approved as to Content:**

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

\_\_\_\_\_  
, City Manager

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**ANTICIPATED DEVELOPMENT AREA WITHIN CITY**

**ANNEX I**

**KPIs, SLAs AND SERVICE CREDITS**

|   |  |    |
|---|--|----|
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## 1. OVERVIEW

**1.1** This Annex 1 provides detailed descriptions of the Performance Metrics for the operation and management of the Service by SiFi Networks and is the basis for certain service level agreements between City and SiFi Networks. All Performance Metrics will apply to the Network. For the purpose of these Performance Metrics, the Service can be viewed as a point to point service between two city demand points.

**1.1.2** Service Credits are only applicable to diverse Services. City must request a Service Credit within forty-five (45) days of the Outage or City waives the right to the Service Credit. Service Credits, if approved by SiFi Networks, will be applied and credited to the next invoice to City.

**1.2** SiFi Networks will:

**1.2.1** Use commercially reasonable efforts to remedy any delays, interruptions, omissions, mistakes, accidents or errors ("Defect" or "Defects") and restore the Services as soon as possible after any Defect is reported to SiFi Networks using receipted electronic mail, fax or other documentation including, without limitation, an initial phone call made to the SiFi Networks Network Operation Center, which results in the issuance of a trouble ticket. The foregoing process shall be in accordance with the policies of SiFi Networks.

**1.2.2** Collect, measure, and report data to City for Services, Network and operational Performance Metrics described in Article 3. SiFi Networks will provide Metrics upon written request, using a Microsoft Excel spreadsheet or other format mutually agreed to by SiFi Networks and City. SiFi Networks is responsible (at its expense) for providing any equipment, systems, and software necessary to collect and report such Metrics, with it being understood by the parties that such reports will primarily measure uptime availability of the Core Network Elements.

**1.2.3** Analyze and improve processes, as necessary, to achieve Performance Metric Objectives set forth in Article 3.

**1.2.4** Establish, maintain, and use quality improvement teams ("QITs") that meet at least quarterly, and which consist of SiFi Networks process representatives, subject matter experts, and City, as well as potentially other of SiFi Networks service providers, suppliers and subcontractors, to conduct root cause analysis on data indicating inferior performance, act on results and implement improvement plans for those Metrics that fail to meet or exceed the Objectives set forth in Section 3.

## 2 DEFINITIONS AND GENERAL PROVISIONS

**2.1** "*Metric*" or "*Service Metric*" means the performance measures for Network functions and includes the Description, Measurement Method, Objective and Service Credit, if any, that define the capitalized term that is used throughout this Annex 1.



- 2.2** “*Description*” means the specific Networks function to be measured.
- 2.3** “*Measurement Method*” means the tools, process and algorithms for determining Networks performance and the frequency of the measurement.
- 2.4** “*Objective*” means the level of performance that City expects SiFi Networks to achieve.
- 2.5** “*Service Credit*” means the amount SiFi Networks owes to City, where applicable, if the Objective is not met for that month. The amount of any Service Credit shall be calculated as set forth in Section 3.

**2.5.1** City will not receive Service Credits for any Service interruption or other transmission problem (including, without limitation, any inability of SiFi Networks to maintain Performance Metrics commitments contained herein) that is in whole or in part caused by or attributed to City. SiFi Networks will nevertheless use its reasonable efforts to seek a prompt resumption of Service and/or resolution of transmission problems in those circumstances where such efforts have a reasonable likelihood of promptly achieving the cited results.

**2.5.2** In the event that Service Credits are issued for missing Network Core Average Availability Objectives, Service Credits shall not be issued for missing Network Drop Average Availability Objectives for the same reporting month.

**2.5.3** No Service Credits will be issued for missing Network Drop Average Availability Objectives unless the location served at the Network Drop has dual diverse connections to the Network.

**2.5.4** Service Credits expressed as a percent of “Services affected”, “recurring charges”, etc. refer to amounts charged to City by SiFi Networks unless otherwise explicitly stated.

**2.6** “Business hours” means 8:00 AM to 5:00 PM local time in the state the Network is primarily located on a Business Day. “Business Day”, “Working Day” means Monday through Friday, excluding public holidays recognized in the state the Network is primarily located within.

**2.7** “Outage” means Service(s) is/are interrupted such that there is a loss of continuity (unable to transmit or receive traffic to the city facility), or when SiFi Networks agrees that Service is unfit or unavailable for use.

**2.7.1** The following are excluded from Outages:

- Failure of components for which City is responsible and are therefore not part of the Network.
- Time that corrections cannot be made because the City, or access to the facilities necessary for making the repair, are inaccessible.

- Problems caused by City negligence or misconduct, or by the negligence or misconduct of others authorized by the City.
- problems resolved as “No Trouble Found”.
- Scheduled network upgrades and maintenance periods. The upgrades and maintenance will be scheduled when customer services are impacted minimally, typically between 12 AM to 6 AM local time. Furthermore, SiFi Networks will notify the City of such scheduled upgrades or maintenance periods as per 3.4.7.
- Circumstances defined in Clause 2.5 or in Section 8.2 of the Main Contract Body.

**2.8** “Outage Duration” is the time in minutes that an Outage has occurred. An Outage begins when City notifies SiFi Networks NOC and SiFi Networks NOC opens a trouble ticket and ends when service has been restored.

**2.9** “Availability” means time the Network is available for service. Network Average Availability is measured performance of the Network. Even though the Network Core delivers 99.999% Network Average Availability, City is not assured 99.999% availability unless its equipment is appropriately configured and connected over redundant paths to the Network.

Network Average Availability is:

$$1 - \left[ \frac{\sum \text{Network\_outage\_durations}}{\text{Total\_Available\_Time}} \right] \times 100$$

Sum of Network\_outage\_durations = the total of the outage time, in minutes, of all Customers’ Services in service affected by network outages during the reporting calendar month.

Total\_Available\_Time = (number of Services in service on the last day of the calendar month preceding the reporting month) \* ((days in the reporting calendar month) \* (minutes per day)).

**2.10** “Installation” means SiFi Networks will provide Committed Due Dates for installation of Service in less than or equal to the intervals from order date as shown below.

For pre-configured Services to City Demand Points

- Service has been previously installed, no truck roll required: Ten (10) business days
- Service has been previously installed, truck roll required: Ten (10) business days
- Full install fiber and NTE installation is required: Ten (10) business days

**2.10.1** A delayed installation credit will not be applied under the following circumstances:

- Installation is delayed at City’s request.
- Installation is delayed with the approval of City.

- SiFi Networks has not been given necessary access to facilities required for installation or City is not ready or not available to accept the Service until after the committed due date.
- City facilities are unsuitable or unfit for installation
- SiFi Networks has:
  - made reasonable efforts to consult with the appropriate City work center (or such other contact specified by City) by telephone; and
  - taken such further reasonable and prudent actions in an attempt to make installation as City may direct in the course of such consultation.
  - If SiFi Networks' reasonable efforts to consult with City as required above are unsuccessful, SiFi Networks shall notify City of the reason for the delay as soon as reasonably possible.

**2.11** For installations, SiFi Networks will:

- Attempt to contact City prior to the scheduled appointment
- twenty-four (24) hours prior (up to 2 attempts)
- 30 minutes prior to the schedule appointment
- Arrive on site at City premises within the appointment window
- Install Service(s) as ordered and update City status within one (1) business day after the installation.

**2.12** (Reserved)

**2.13** "Repair and/or Maintenance at the Customer Demand Points" means that a SiFi Networks technician or SiFi Networks sub-contractor visits the City's Demand Point to perform needed, requested and scheduled work on Services and associated Network Elements, or in other words the ONT

For Repair and Maintenance visits, SiFi Networks will:

- Attempt to contact City prior to the scheduled appointment
- twenty-four (24) hours prior (up to 2 attempts)
- 30 minutes prior to the schedule appointment
- Arrive on site at City premises within the appointment window
- Repair Service(s) as ordered
- Update City's order status within 1 business day after the installation

Any Repair and/or Maintenance at the City Premises that do not take place in accordance with the foregoing requirements will be performed in a reasonable timeframe and in a reasonable manner, taking into consideration the relevant circumstances.

**2.14** SiFi Networks will provide a sufficient number of qualified staff to answer and respond to all technical support calls and direct trouble ticket system inputs from City to meet the Objectives. The Performance Metrics specify Objectives that include: (1) the target time

for answering/responding to calls, and (2) the percentage of calls that shall meet the target.

SiFi Networks telephone support and trouble ticket system shall be available twenty-four (24) hours a day, three hundred and sixty-five (365) days a year. During normal Business Hours, SiFi Networks shall accept calls from City on all topics. Outside of normal Business Hours, SiFi Networks shall respond to calls relating to Network and Service defects.

The target time or duration is measured from the time City's telephone call enters the SiFi Networks help desk routing queue until the time City speaks to a technician who is capable of resolving the trouble or answering the question.

**2.15** "*Mean Time to Repair (MTTR)*" means the average time of the actual repair needed to restore Services. MTTR is measured in each reporting calendar month.

Number of Outages = Count of Outages less Outage Exclusions

MTTR is calculated as follows: 
$$\left( \frac{\sum \text{Outage Durations}}{\text{Number of Outages}} \right)$$

A separate MTTR is calculated for each Incident Priority Level. The MTTR is measured in hours, days.

**2.16** Incident Priority Level is the measure of the severity of an incident as determined by SiFi in its sole but reasonable discretion based on the impact and urgency of the incident or by the Class of Service (Business data services only). The Incident Priority Level determines the Incident Response Window, the Communication and Escalation Intervals, and the Expected Time to Repair (ETTR) of an incident

The Incident Response Window is time allowed under the specific SLA to begin repair service as dictated by the incident priority.

Communication Interval is the interval between incident status updates provided to City. The communication interval begins when the incident is first reported to SiFi Networks and ends when service is repaired or restored.

Escalation interval is the interval after which an incident can be escalated to the next level of visibility within SiFi Networks. The purpose of escalating an incident is to raise awareness of the incident to proper levels of management in order that the proper resources may be appropriated where necessary in order to ensure the Expected Time to Resolution objectives are met.

Expected Time to Repair (ETTR) is the maximum expected duration of an outage, based on incident priority

The timing of activities associated with incident management are determined by the incident priority as follows:

|                   |             | Timing of Actions |                        |                     |                 |
|-------------------|-------------|-------------------|------------------------|---------------------|-----------------|
|                   |             | Response Window   | Communication Interval | Escalation Interval | ETTR            |
| Incident Priority | 0. Severe   | 15 minutes        | Continuous             | 2 hours             | 4 hours         |
|                   | 1. Critical | 15 minutes        | Continuous             | 6 hours             | 12 hours        |
|                   | 2. High     | 1 hour            | 4 hours                | 12 hours            | 1 Business Day  |
|                   | 3. Medium   | 4 hours           | 1 Business Day         | 24 hours            | 2 Business Days |
|                   | 4. Low      | 1 Business Day    | Upon request           | 1 Business Day      | 3 Business Days |
|                   | 5. Very Low | As required       | N/A                    | 30 days             | N/A             |

The following table lists the default Incident Priority Level for the specified SLA tiers for Smart City services, as indicated in Annex II:

| SLA level                | Incident Priority Level |
|--------------------------|-------------------------|
| Bronze                   | 4.Low                   |
| Silver                   | 3.Medium                |
| Gold, Platinum, Titanium | 2.High                  |

The following table lists the default Incident Priority Level for the Network for select types of outage or event:

| Event Description                            | Incident Priority Level |
|--|-------------------------|
| Service disruption for >50% of Network       | 1. Critical             |
| Service disruption for 25-50% of the Network | 2. High                 |
| Service disruption for 10-25% of the Network | 3. Medium               |

**2.17** SiFi Networks will strive to resolve trouble tickets as quickly as possible. The Direct Measures of Quality (DMOQs) addressing this are the percentage of service outage trouble tickets that are resolved within either one or two days – the concern being those that remain open for longer periods. This metric has two measures: (1) the total number of occurrences, and (2) the corresponding percentage that the total number reflects. SLA Response Window and Repair Time are defined in Section 2.15.

DMOQ Period = 24 hours or 48 hours, depending on the metric

**The percentage is calculated as follows:**

$$\left( \frac{\left( \sum \text{trouble tickets resolved in a calendar month within (1) 24 hrs, or (2) 48 hrs} \right)}{\text{Total number of trouble tickets in the calendar month}} \right) \times 100$$

### 3 SiFi Networks PERFORMANCE METRICS

|       | Performance Metrics                 | Objective  | Description      | Measurement Method | Service Credit   |
|-------|-------------------------------------|--|------------------|--------------------|--|
| 3.1   | Network Availability                |  |                  |                    |  |
| 3.1.1 | Network Core - Average Availability | 99.99% available   | See Section 2.9  | See Section 2.9    | For each reporting month in which the Network fails to achieve the Network Average Availability Objective, SiFi Networks will issue a Service Credit to City for an amount equal to 5% of the Service Credit for Services impacted by outages.   |
| 3.3   | Installation                        |  |                  |                    |  |
| 3.3.1 | On-time installation                | 95% of all installations shall meet Committed Installation Due-dates                                   | See Section 2.10 | See Section 2.10   | Each month that SiFi Networks fails to meet the Objective by the amount indicated below, SiFi Networks will issue the following Service Credit to the Customer:<br>(1) Below 96% but not below 90% then one month of the Service Credit (defined below) for incidents that miss the Committed Due-date;<br>(2) Below 90% then two months Service Credit (defined below) for incidents which miss the Committed Due-date. |
| 3.4   | Service Metric                      |  |                  |                    |  |
| 3.4.1 | Technical Support Response Time     | 85% of City's telephone calls (for installation and/or maintenance) connected to SiFi Networks Network | See Section 2.14 | See Section 2.14   | Not applicable   |

|       | Performance Metrics                               | Objective  | Description      | Measurement Method   | Service Credit  |
|-------|---|--|------------------|--|---|
|       |   | Operations Center within 5 minutes.  |                  |  |   |
| 3.4.2 | Technical Support Resolution Notification to City | 100% of City's trouble ticket resolution (i.e., ticket closed) will be notified to SP within 30 minutes of a ticket being closed via an agreed upon notification method. | See Section 2.14 | See Section 2.14   | Not applicable  |
| 3.4.3 | Mean Time to Repair Service Outage                | Mean Time to Repair shall not exceed the times specified in the SLAs.  | See Section 2.15 | See Section 2.15   | Not applicable  |
| 3.4.4 | % Trouble Tickets Resolved > 24 Hours             | Less than five percent (< 5%)  | See Section 2.16 | See Section 2.16 DMOQ Period – 24 hours  | Not applicable  |
| 3.4.5 | % Trouble Tickets Resolved > 48 Hours             | Less than three percent (< 3%)   | See Section 2.16 | See Section 2.16 DMOQ Period – 48 hours  | Not applicable  |
| 3.4.6 | Missed Appointments                               | Total number of times SiFi Networks technician failed to keep a scheduled appointment with any City within the appointment window to be 0.                               | See Section 2.10 | Incidents of missed appointment windows counted each reporting calendar month. | In the event SiFi Networks fails to appear at a City's Premises for a scheduled installation or repair/maintenance appointment within the appointment window, SiFi Networks will issue the City a Service Credit for one month of the Service Credit for each connection with an incident which misses the appointment window |



|       | Performance Metrics                                      | Objective   | Description  | Measurement Method  | Service Credit |
|-------|--|---|--|---|----------------|
| 3.4.7 | Notification of Scheduled Network Upgrade or Maintenance | 100% Notification to City contacts via electronic mail or other agreed upon method five (5) days in advance the scheduled event                 | Notification of Scheduled Network Upgrade or Maintenance                     | Number of times scheduled network upgrades or maintenance impacting City' Services occur during a calendar month. Without notification  | Not applicable |
| 3.4.8 | Notification of Unscheduled Upgrade, Maintenance event   | 100% Notification to City contacts via electronic mail or other agreed upon method within ten (10) minutes of the start of an unscheduled event | Notification of Unscheduled Upgrade, Maintenance event trouble ticket number | Number of times unscheduled network upgrades or maintenance impacting City Services occur during a calendar month. Without notification in ten (10) minutes of the start of the unscheduled event | Not applicable |

#### 4 SLA's associated with Wholesale Standard Services

- 4.1 **Bronze SLA.** Standard Residential Service has a service level of Bronze SLA. This level is not applicable to Smart City services.
- 4.2 **Silver SLA.** Contended (PON-based), non-diverse, Smart City Services have a service level of Silver SLA. In these cases, Silver SLA is applicable to the Network Core Average Availability Metric for all sections of the SiFi Networks core network. The fiber circuit from the Core OLT to the City Premises ONT is an un-diverse point to point fiber link and therefore no Network Edge Average Availability SLA applies to any services with a Silver SLA. Outages and significant service degradation to Silver SLA services are assigned an Incident Priority Level of 3.Medium.
- 4.3 **Gold SLA.** Dark Fiber or Dedicated (Ethernet L2), non-diverse, Smart City Services have a service level of Gold SLA. In these cases, Gold SLA is applicable to the Network Core Average Availability Metric for all sections of the SiFi Networks core network. The fiber circuit from the Core OLT to the City Premises ONT is an un-diverse point to point fiber link and therefore no Network Edge Average Availability SLA applies to any services with a Gold SLA. Outages and significant service degradation to Gold SLA services are assigned an Incident Priority Level of 2.High.

- 4.4 **Platinum SLA.** Diversely-fed Smart City Services have a service level of Platinum SLA. In these cases, Platinum SLA is applicable to the Network Core Average Availability Metric for all sections of the SiFi Networks core network. The fiber circuits from the Core OLTs to the City Premises ONTs is via two, diverse, point-to-point fiber links and therefore a Network Edge Average Availability SLA of 99.99% applies to all services with a Platinum SLA. Outages and significant service degradation to Platinum SLA services are assigned an Incident Priority Level of 2.High. Note that failures are only considered Outages (and hence Service Credits are only applicable) if the service is unavailable (ie BOTH diverse links have failed).
- 4.5 **Titanium SLA.** Not offered with Smart City Services.

## Annex III – Change Management

|                           |  |
|---------------------------|--|
| Change Management Process | The procedure applying to Changes as set out in Annex III of this Agreement.   |
| Change Request            | Any written request for a Change raised by one of the Parties as set out in this Annex III.  |
| End of Life               | The date on which the manufacturer stops the further development of a Network Element and only provides limited support.                   |
| End of Support            | The date on which a Network Element is no longer supported by the respective manufacturer.   |
| Maintained Product        | A product developed and supplied by SiFi Networks or a Third Party and being subject to maintenance by SiFi Networks.                      |
| Network                   | Customer's network infrastructure which the Customer has a right to use.   |
| Network Element           | Any individual unit of equipment or logically manageable units of equipment which is/are part of Customer's network infrastructure.        |
| Project                   | Any Services not being Basic Services as set out in Annex II of this Agreement which shall be ordered by Customer on a case by case basis. |
| Third Party               | Any supplier other than SiFi Networks having entered into a contractual agreement with Customer or with SiFi Networks.                     |

*1.1* Any Party may request Changes to the Services at any time and submit such request for decision according to the Change Management Process.

*1.1.2* The Change Management Process is attached to this Agreement as Annex III – Change Management.

*1.1.3* No Change Request shall be binding, unless finally agreed between the Parties in writing and duly signed by their authorized representatives, including but not limited to an agreement about the impact on the Fees related to such Change.

*1.2* *New Services.*

*1.2.1* The Parties acknowledge that the Network and the Services shall evolve and be modified, enhanced or supplemented as reasonably necessary over time in order to anticipate or respond to changes in the market and technology, improvement in the methods or processes for delivery of the Services and changes, improvements and innovations in the services and products Customer is providing to its end-customers.

*1.3* *Process.*

*1.3.1* Any Change to Services or any New Services shall be agreed upon through the Change Management Process as described in this Annex.

*1.3.2* The following, not yet covered by the Annual Fee (Section 5, sub-section 5.1.2) or being a Project, shall, if they affect the Services, in particular be considered as a Change to the Services or as New Services:

- (a) any introduction of new technology or new devices in the Network; the introduction of Network Elements from vendors not yet in the scope of the Agreement, or Network Elements from an existing Third Party vendor but different from that Third Party vendor's Maintained Products;
- (b) any additional Services currently not in the Scope of this Agreement;
- (c) any extension or downsizing of the Network which is not covered by Annual Fee (Section 5, sub-section 5.1.2);
- (d) any new services offered;
- (e) any change to the operational or business related processes of Customer;
- (f) any change in the deployment or location of Network Elements resulting in a significant impact on SiFi Networks's ability to provide the Services;
- (g) any planned maintenance extensions for which the vendor has previously issued an End of Support/End of Life notification;
- (h) any modification of agreed or forecasted volumes of Services not covered by Annual Fee (Section 5, sub-section 5.1.2);
- (i) any extension of the Services outside the agreed territory.

*1.3.3.* The Parties shall agree upon the impact of any Change or New Services on the agreed Fees as set out in this Annex. If the Parties, after following the escalation process as set out in Section 8, cannot agree upon such potential adjustment of the Fees within a timeframe of 1 (one) month as from the initiation of these discussions, each Party may submit this topic to the dispute resolution process as set out in Section 8 of this Agreement. No New Services shall be part of the Scope of this Agreement, unless agreed between the Parties in writing and an agreement on the Fees has been found.