



Exclusive BPL Installation and Service Agreement



ACE Multimedia
9410 Wellington Rd.
Manassas, VA 20110

And

COMPANY NAME

COADDRESS

EXCLUSIVE BPL INSTALLATION AND SERVICE AGREEMENT- 10 YEAR

AGREEMENT dated as of _____, by and between ACE Multimedia, a Authorized Intelagrid Powerline Broadband Retailer, having an office at 9410 Wellington Road, Manassas, VA 20110, and **COMPANY NAME**, having an office at **ADDRESS** (“Association”).

WITNESSETH:

WHEREAS, ACE Multimedia is in the business of constructing, maintaining and operating powerline broadband systems for the delivery of data services which include broadband internet access, voice over ip (VoIP), multi-channel video, audio and other services to the public, including property Associations;

WHEREAS, Association has the management responsibility for the common elements of the Condominium and the authority to grant access and easements throughout the Condominium located at **ADDRESS**, (the “Property”); and

WHEREAS, ACE Multimedia desires to have, and Association desires to grant to ACE Multimedia, the exclusive right to install, operate and maintain on the Property a powerline broadband service (the “System”) for the delivery of data transmission over the powerline (as further defined in Section 9(a) below, collectively, the (“Service”) to the residents of units located on the Property;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Services to be Provided by ACE Multimedia.

(a) ACE Multimedia agrees to install, operate and maintain the System on the Property, to provide access for the Service to the residents of units located on the Property which elect to subscribe to the Service (“Subscribers”). The cost involved in the installation, operation and maintenance of the System and providing access for the Service to Subscribers shall be borne by ACE Multimedia.

(b) Association acknowledges that ACE Multimedia will expend substantial time, Resources and money to install the System at the Property and fulfill its other obligations hereunder, and that ACE Multimedia can only recoup this investment by providing the Service to the Property throughout the term of this Agreement. Accordingly, during the term of this Agreement, Association agrees that: The System and the Service provided by ACE Multimedia will be the sole and exclusive Broadband over the Powerline service provided to the residents of the Property, and no other data delivery over the powerline service shall be installed, operated or allowed on the Property or distributed to residents of the Property.

2. Rights of Access and Easement.

(a) Association hereby grants to ACE Multimedia the exclusive right to install and maintain the System on the Property and, in furtherance thereof, hereby grants to

ACE Multimedia the exclusive right of access, easement and right of way, including reasonable rights of ingress and egress, to , over, on , under and through the Property and the buildings and units located thereon, to construct, install, lay, operate, provide, connect, maintain, inspect, repair, replace, relocate, remove and disconnect the System and the Equipment (as defined in Section 3 below), and to sell, advertise, market and promote the System.

(b) Without limiting the generality of Section 2(a) above, Association agrees that ACE Multimedia will have the free and uninterrupted right of access to the Property for the purpose of exercising the rights granted to ACE Multimedia in the Agreement, between the hours of 9:00 a.m. and 6:00 p.m., Monday through Saturday.

3. Installation. ACE Multimedia shall, at its own expense, acquire and install the equipment required to operate the System on the Property and to provide access for the Services to Subscribers (collectively, the "Equipment"). Installation shall be performed in a diligent, safe and professional manner and all materials used by ACE Multimedia shall be of good and durable quality. The System will not be installed so as to preclude or interfere with other television services, interactive two-way communications or security systems for units or the common elements.

4. Title. Title in and to the System and the Equipment shall at all times remain exclusively with ACE Multimedia or its assignees, and no portion of the System or the Equipment will be deemed a fixture of the Property, notwithstanding any method of affixation to the Property or the buildings thereon or any applicable law or doctrine relating to fixtures. Association hereby waives, as against ACE Multimedia and any lender of ACE Multimedia, any landlord's lien, right of distraint or levy, claim, security interests or other interests which Association may now or hereafter have in or relating to any of the Equipment now or hereafter located at the Premises, including any of the foregoing which might otherwise arise or exist in Association's favor pursuant to agreement, common law, statute (including the Federal Bankruptcy Code) or otherwise. Association shall not interfere with, remove, make alternations or modifications to, or attempt to repair, maintain or service the System or the Equipment, or allow persons not authorized by ACE Multimedia to do so.

5. Exclusive Access to Wiring. Property shall grant ACE Multimedia access in and right to use the existing wiring infrastructure whereby ACE Multimedia will provide exclusive powerline broadband data, voice and video services to the Property for the duration of this Agreement. During the term of this agreement, should it be determined by an appropriate government agency or court of law that Property does not actually own said infrastructure, then Property will pay all costs associated with removing ACE Multimedia's services off of the existing infrastructure and all installation, labor, and equipment costs associated with transitioning (also known as "overbuilding") ACE Multimedia's system in order to allow ACE Multimedia to continue providing service to the Property. Property will also be responsible for any damage to ACE Multimedia's equipment that occurs during this transition.

6. Maintenance. ACE Multimedia shall, at its own expense, operate, maintain, and service the System and keep the same in good working order and repair in accordance with all applicable governmental regulations and acceptable industry standards.

7. Covenants. The rights and obligations under this Agreement shall constitute covenants and restrictions running with the land, binding and inuring to the benefit of all future Associations of the Property or of any interest in the Property.

8. Liens and Recordation. To evidence the fact that ACE Multimedia has been granted easements and has retained exclusive Ownership of the System and the Equipment, Association agrees that ACE Multimedia may cause this Agreement (or other documentation evidencing the foregoing as executed by Association and ACE Multimedia), or any statement or other instrument relating to this Agreement showing ACE Multimedia's Ownership of the System and the Equipment including UCC-1 Financing Statements, to be filed or recorded and re-filed and re-recorded, among the public records in all necessary places in order that any and all third parties shall be on notice of the easements and the Ownership of the System and the Equipment. Association agrees to execute and deliver any statement or instrument requested by ACE Multimedia for such purpose. All costs associated with the filing and recording of this Agreement or other forms and documentation shall be paid by ACE Multimedia.

9. Service.

(a) ACE Multimedia will provide to Subscribers access to broadband internet and other data services offered over the existing powerline, as such subscription services may change from time to time in the sole discretion of ACE Multimedia or its affiliates. Subject to ACE Multimedia's Intelagrid Agreement, ACE Multimedia may, from time to time, in its sole discretion: (i) provide new or additional services, (which shall be deemed to be Services) for purposes of this Agreement, and (ii) offer Subscribers a selection of alternate subscription packages and/or services containing all or part of the Services at varying prices. Association shall have no authority over or oversight of the type of Services made available to Subscribers or the prices at which Subscribers may subscribe to the Services.

(b) ACE Multimedia shall not be responsible to Association for: (i) the temporary or permanent loss, unavailability or discontinuance of any signals or services (ii) the contents of the Service. ACE Multimedia hereby disclaims any and all liability that may directly or indirectly result from the exhibition of the Service, including, without limitation, any and all consequential, incidental, indirect or special damages of any nature, whether or not foreseeable, and whether such liability is based on contract, tort, negligence, gross negligence, strict liability, slander, infringement of copyright, trademark or other proprietary rights, or any other theory.

10. Subscriber Charges. ACE Multimedia, in its sole discretion, shall have the authority to charge, bill and collect from Subscribers fees and charges for the installation, hookup, operation and maintenance of the System and/or the Equipment and for providing access to the Service, in such amounts and in such manner as ACE Multimedia shall determine, and Association shall not charge, bill or collect fees or charges of any kind from Subscribers in connection with any of the foregoing.

11. Marketing.

(a) ACE Multimedia reserves the right to exclusively market Powerline Broadband and Data service on the Property throughout the life of this contract subject to such reasonable rules and regulations as the Association may adopt from time to time. This includes, but is not limited to, (i) the right to distribute all

promotional and informational materials to the residents of the property, (ii) the right to reasonably display or post promotional material in major common areas throughout the property and (iii) the right to perform live presentations to residents of the Property or "board" that functions to represent the interests of said residents. Property shall prohibit the: (a) distribution of any and all materials; (b) circulation of any and all materials; (c) posting of any and all materials;

(b) Association will provide ACE Multimedia a reasonable opportunity to make presentations and to distribute its literature in the Condominium. It will also provide on a periodic basis a listing of its unit owners by name and address. It disclaims any obligation to provide telephone numbers.

12. Insurance. ACE Multimedia shall maintain, at its own cost and expense, all workers' compensation insurance required by law and comprehensive general liability insurance with a limit of not less than one million dollars (\$1,000,000) per occurrence for the duration of this Agreement, and, upon request, shall provide to Association a certificate of insurance evidencing such coverage.

13. Final Disposition of Equipment. Upon the termination of this Agreement for any reason, ACE Multimedia has the option to: (a) offer the Equipment to Association for purchase at fair market value; (b) sell the Equipment to a third party; (c) abandon the Equipment without cost or obligation; or (d) remove all or any part of the Equipment at its own expense, restoring the Property to a condition reasonably equivalent to its original condition, normal wear and tear excepted.

14. Representations and Warranties of Association. Association represents and warrants to ACE Multimedia that: (a) Association has the management responsibility for the common elements of the Condominium and the authority to grant access and easements throughout the Condominium.

15. Representations and Warranties of ACE Multimedia. ACE Multimedia represents and warrants to Association that ACE Multimedia's execution of this Agreement shall not violate, conflict with, or result in a default under or a breach of, any contract or agreement, oral or written, applicable to ACE Multimedia.

16. Indemnification.

(a) Each party will indemnify and hold harmless the other party from and against any and all claims, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses, arising out of or resulting from any breach of any representation, warranty or agreement made by the indemnifying party in the Agreement.

(b) If any claim or liability shall be asserted against either party which would give rise to a claim by such party ("Indemnitee") for indemnification under this Section 16, Indemnitee shall provide written notice to the other party ("Indemnitor") within ten (10) days after becoming aware of such claim, and shall provide Indemnitor with copies of all information and documents relating to such claim within twenty (20) days after such notice. Indemnitor, at its sole cost and expense and upon written notice to Indemnitee, may assume the defense of such claim with counsel selected by it in its

sole discretion. If Indemnitor assumes the defense of such claim, Indemnitee shall not admit any liability with respect thereto or settle, compromise, pay or discharge the same without the prior written consent of Indemnitor, and Indemnitee shall Cooperate with Indemnitor in such defense and shall accept any settlement recommended by Indemnitor so long as the amount of such settlement is paid by Indemnitor.

17. Severability. Except with respect to the exclusivity granted to ACE Multimedia in Section 1(b) of this Agreement, if any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other severable provision of this Agreement. Should the exclusivity granted in Section 1(b) above be adjudged invalid or unenforceable, ACE Multimedia, at its sole and absolute option, may continue this Agreement on a non-exclusive basis or terminate this agreement without any continuing obligations, liabilities or penalty to ACE Multimedia of any kind whatsoever.

18. Term.

(a) The term of this Agreement shall commence on the date hereof and, unless otherwise terminated in accordance with the terms hereof, shall remain in full force and effect for a period of ten (10) years from the date of this Agreement. Thereafter, this Agreement shall automatically renew for successive one-year terms unless either party provides the other with written notification of its intention not to renew the initial term or any renewal term not less than sixty (60) days prior to the expiration of such initial term or renewal term, as the case may be.

(b) In the event either party is in material default in the performance of any of its obligations hereunder, and such default continues uncured for a period of thirty (30) days after written notification by the other party, such other party shall be entitled to terminate this Agreement for cause forthwith upon the expiration of such 30-day period.

19. Force Majeure. Neither party shall be liable to the other party or others for any failure to perform its obligations under this Agreement where such failure was caused by act of God, accident, fire, lockout, strike or other labor dispute, riot or civil commotion, act of government instrumentality (whether federal, state or local), or other cause of a similar or different nature beyond the affected party's reasonable control.

20. Governing Law. The validity, interpretation and legal effect of this Agreement shall be governed by and construed in accordance with the laws of the State of Virginia applicable to contracts performed entirely therein, without regard to its conflict of laws provisions.

21. Entire Agreement. This Agreement contains the entire understanding of the parties hereto relating to the subject matter hereof and may be amended, modified, waived or terminated only with the prior written consent of the parties hereto.

22. Assignment and Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. With prior written consent of the Association, ACE Multimedia shall

have the right to assign this Agreement and its rights and obligations hereunder, including the right to subcontract all or any part of the services to be performed by ACE Multimedia under this Agreement.

23. Notices. Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or mailed by registered air mail, return receipt requested, or by commercial courier or delivery service, or by facsimile, addressed to the parties set forth below (or at such other address as any party may specify by notice to all other parties given as aforesaid):

If to Association, to:

Attention: _____
Facsimile: _____

If to ACE Multimedia, to:

ACE Multimedia
9410 Wellington Road
Manassas, VA 20110
703-366-3691

Attention: Costa Apostolakis
Facsimile: 703-783-0736

24. Relationship between the Parties. The relationship of ACE Multimedia to Association is intended to be, and shall be, only that of independent contractor. Nothing herein shall be constructed as creating the relationship of joint venture or partnership. Neither party shall have the right to bind the other party in contract or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, as of the date first above written.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____