

## FIBER OPTIC COMMUNICATIONS EASEMENT AGREEMENT

This Fiber Optic Communications Easement Agreement (this “Agreement”) is made as of \_\_\_\_\_, 2021, by and between the City of Somerville, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts with a usual address of 93 Highland Avenue, Somerville, MA 02143 (“Grantor”) and TOWARDEX Technologies International, Inc., a Delaware corporation with principal address at One Marina Park Drive, 14th Floor, Boston, Massachusetts 02210 (“Grantee”).

WHEREAS, a portion of Inner Belt Road in Somerville, Middlesex County, Massachusetts is a private way under the control of Grantor (the “Private Way”);

WHEREAS, Grantee desires to construct underground multi-conduit or multi-cable fiber optic communications system and associated facilities, including underground vaults and manholes (the “Fiber Optic Facilities”) within portions of the Private Way (defined below as the “Easement Areas”) identified on the plan of land entitled “Plan of Communications Easement Inner Belt Road, Somerville, MA 02143” prepared by Chappell Engineering Associates, LLC dated August 30, 2021, attached hereto as Exhibit A and incorporated herein, and Grantor desires to grant certain perpetual easement rights in and under the Easement Areas to Grantee for said purposes;

WHEREAS, the Fiber Optic Facilities are intended to serve development in the Inner Belt area in City of Somerville and directly connect the Inner Belt to the North Point area in City of Cambridge over the adjacent lot owned by the Massachusetts Bay Transportation Authority (“MBTA”) under telecom licenses from MBTA’s Office of Real Estate and Asset Development, and create a new direct, high speed route connecting key internet infrastructure facilities in the region, including a transatlantic cable landing station in Lynn, Massachusetts (collectively, the “Hub Express System”), and will promote economic development in the cities of Somerville, Cambridge and Boston serviced by the Fiber Optic Facilities; and

WHEREAS, the construction of the Hub Express System cannot proceed without the construction of Fiber Optic Facilities within the Private Way in the City of Somerville;

WHEREAS, the Grantee has agreed to accept the cost of construction, reconstruction, inspection, renewal, and maintenance of the Fiber Optic Facilities that will be located in the City of Somerville, and the City of Somerville will not have any financial responsibility for these Fiber Optic Facilities.

NOW, THEREFORE, for consideration of One Dollar (\$1.00) and other good and sufficient consideration, the receipt of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of Easements

Subject to the terms and conditions hereof, Grantor hereby grants to Grantee the following perpetual non-exclusive rights and easements:

- (a) Easements for Utilities. (a) A perpetual non-exclusive easement under the Private Way for the installation, maintenance, operation, use, upgrade, and inspection or abandonment in place of the Fiber Optic Facilities and having a width of twenty (20) feet centered on the duct bank as the same is installed within the Public Way (“Permanent Easement”); and (b) a temporary easement from time to time when necessary for the purpose of construction, reconstruction, repair, replacement, upgrade, and maintenance of the Fiber Optic Facilities, which easement shall have a width of thirty (30) feet centered on the duct bank as the same is installed within the Private Way (“Temporary Easement”). The Permanent Easement and Temporary Easement shall collectively be referred to herein as the “Easement Areas”. A legal description of the permanent and temporary easement areas is attached hereto and incorporated herein as Exhibit B.
- (b) The Grantee’s use of the Easement Areas is non-exclusive and is subject to all encumbrances, restrictions, reservations, other matters of record title and rights of possession in others, including, without limitation, future grants of use to others. The Grantor shall have the right, in its sole discretion, to do all things necessary and appropriate in the exercise of its municipal authority in the Easement Areas, including, but not limited to the right to install, maintain, operate, use, upgrade, separate, relocate, renew, repair, replace and abandon in place its public and private ways and any and all underground utilities located now or hereafter within the Easement Areas.
- (c) Grantor’s Use of Fiber Optic Facilities. The Grantor shall be permitted to install, use, upgrade, inspect, replace or remove two (2) fiber optic cables, with each cable having size of not more than 1.05 inches in outer diameter in the Fiber Optic Facilities located in the Public Way, provided that all use and access shall be in accordance with reasonable rules and regulations established by Grantee with respect to management of the Hub Express System.
- (d) Access. The right to enter upon and pass over, on, under, across, and through the Permanent Easement and/or Temporary Easement, as appropriate, by foot, motor vehicle, and heavy equipment for all of the purposes set forth in paragraph 1(a) above in perpetuity.
- (e) Grantee Permittees. The perpetual right to have Grantee’s officers, employees, contractors, subcontractors, representatives, agents and other telecommunications providers licensed by the Grantee to access and use the Fiber Optic Facilities enter upon the Easement Areas for the purposes provided in this Agreement.

## 2. Maintenance

- (a) Fiber Optic Facilities. The Fiber Optic Facilities shall be and remain the property of Grantee. Grantee shall be solely responsible for the maintenance, repair and replacement of the Fiber Optic Facilities, and for restoration of the Easement Areas to its condition immediately prior to Grantee’s maintenance, repair, or replacement activities hereunder.

- (b) Prior Notice. Grantee shall give Grantor reasonable prior written notice of its intention to access the Easement Areas if it is undertaking maintenance and construction activities including details of construction activities to be undertaken and the expected amount of disturbance. Such prior written notice shall be in addition to Grantee's application for and acquisition of all required state and local permits for the work to be undertaken. Grantee agrees to work with Grantor to minimize disruption, and shall, if requested by Grantor, undertake public outreach, and reasonably address the concerns of affected Somerville residents. Notwithstanding the foregoing, prior notice shall not be required in the event of an emergency but in such event, Grantee shall give Grantor notice (which can be via oral communication) as soon as is reasonably practicable under the circumstances.
- (c) Grantor's Retained Rights. Grantor and Grantee acknowledge and agree that they shall cooperate with one another in connection with the installation of utilities and other improvements within the Permanent Easement. Grantor shall consult with Grantee and give Grantee reasonable prior written notice of its intention to construct or permit others to construct improvements in the Permanent Easement. Notwithstanding the foregoing, Grantor shall not be liable for delays, obstructions or like occurrences affecting the Grantee arising out of the work of Grantor, its other licensees, or parties in interest.

3. Insurance.

Grantee will carry, at its own cost and expense, the following insurance: (i) commercial general liability for personal injury, bodily injury, and property damage in an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate; and (ii) Workers' Compensation Insurance as required by law. Grantee will name the Grantor as an additional insured under its commercial general liability policy as its interests may appear under this Agreement, but only for Grantee's legal liability arising from the performance of the Agreement.

4. Miscellaneous

- (a) Only Uses Specified. The perpetual rights and easements granted to Grantee herein shall be limited to and solely for the uses specified. Any other uses shall only occur with the prior written consent of Grantor.
- (b) Successors and Assigns. Whether or not specific reference is made to successors and assigns in each term or provision of this Agreement, the perpetual rights and easements granted in this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns in perpetuity.
- (c) No Waiver. In no event shall the rights granted herein be deemed to be waived or abandoned because of any delay in the exercise thereof.

- (d) Amendment. This Agreement may only be amended or modified by an agreement in writing signed by the parties hereto. Upon request of either party, such amendment shall be recorded with the Middlesex South District Registry of Deeds.
- (e) Notice. All notices required or permitted to be given hereunder shall be in writing and delivered by hand, mailed by a nationally recognized overnight carrier or mailed by registered or certified mail, return receipt requested, all charges prepaid, addressed to Grantor or to Grantee; in the case of Grantee, Attention: General Manager with copies to Joint Trench Administrator and Corporate Counsel; in the case of Grantor, Attention: Mayor with copies to City Engineer and City Solicitor. Notices shall be deemed given upon receipt or refusal thereof.
- (f) Captions. Captions and headings are supplied herein for convenience only and shall not be deemed a part of this Agreement for any purpose.
- (g) Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such terms or provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- (h) No Personal Liability. No elected official, employee or agent of any party hereto shall have any personal liability under this Agreement.
- (i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

*[Signatures follow on next page]*

**GRANTOR:**

**CITY OF SOMERVILLE**

Name: \_\_\_\_\_  
Joseph A. Curtatone, Mayor

Attest:

Approved as to form:

By: \_\_\_\_\_  
Francis X. Wright, Jr.,  
Its: City Solicitor

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF MIDDLESEX )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the Mayor of the City of Somerville, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily in such capacity for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:  
(Official Signature and Seal of Notary)



Exhibit A

Plan of Communications Easement

*[Attached]*

Exhibit B

Legal Description of Communications Easement Area

*[Attached]*