

**ARTICLE VI**  
**INDEMNIFICATION AND DAMAGES**

1. To the extent permitted by law, ECS's liability arising from building, operating, maintaining and owning the Conduit System, granting Tenant licenses hereunder to access and Occupy space in the Conduit System, and performing Custom Work for Tenant, shall be limited to any property damage to Tenant's Facilities in the Conduit System caused by the exclusive negligence or willful act or omission of ECS. ECS shall not be liable to Tenant for any interruption of Tenant's services or for interference with the operation of Tenant's Facilities arising in any manner out of Tenant's use of the Conduit System.

2. To the maximum extent permitted by law, Tenant shall and does hereby defend, indemnify and hold harmless Empire City Subway (Limited), Verizon New York Inc., the City of New York, and each of their respective parents, subsidiaries, related entities, officers, agents, heirs, assigns, members, shareholders, officers, directors, employees and any other entity that this Agreement may require ("Indemnitees") from and against all claims, third-party claims, demands, actions, suits, costs, liabilities, losses, injuries and damages (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, experts, and other professionals and all court or arbitration or other dispute resolution costs to the extent reasonable) caused by, arising out of or resulting from, or allegedly resulting from, or in any way related to the performance or nonperformance of this Agreement or the work activities of Tenant or any portion thereof, or from the work activities or any portion thereof of anyone hired by Tenant, including any Contractors, Subcontractors, or any other person or entity hired or retained by Tenant, so long as such is not caused exclusively by the negligence of Empire City Subway (Limited) or Verizon New York Inc. or the indemnitees listed above. Tenant shall include a similar indemnity agreement in all subcontracts and ensure that all subcontractors require the same agreement from all sub-subcontractors. Notwithstanding the above, no owner, officer, director, employee or agent of Tenant shall have any personal liability caused by, arising out of or resulting from the performance or nonperformance of this Agreement.

3. To the fullest extent permitted by law, Tenant's duty to indemnify the indemnitees shall arise whether or not caused in part by the active or passive negligence or other fault of any of the indemnitees, provided, however, that Tenant's duty hereunder shall not arise as to a specific indemnitee to the extent that any such claim, damages, loss, or expense was caused by the sole negligence of that indemnitee. To the fullest extent permitted by law, nothing herein shall limit the Tenant's duty to indemnify any indemnitee that is not the solely negligent party.

4. Should ECS remove any of Tenant's Facilities from the Conduit System consistent with the Articles of this Agreement, ECS shall deliver the Facilities to Tenant so removed upon payment by Tenant of the reasonable cost of removal, storage and delivery, and all other amounts due ECS. Nothing in this Article shall be construed as preventing ECS or Tenant from pursuing, at its option, any other remedy in law, equity or otherwise.

5. Notwithstanding any other provision contained herein, in no event shall either party have any liability for any special, consequential, indirect, punitive or exemplary damages arising out of this Agreement, except for any such damages arising from third-party claims that are the subject of an undertaking of indemnity under this Agreement.

