

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment Licensing Agreement (the “Agreement”) dated this ____ day of _____, 2____ is made by and between **City of Grand Haven Board of Light & Power** (hereinafter referred to as “Utility”), a municipal utility of the State of Michigan, and _____ (hereinafter referred to as “Licensee”).

Recitals

- A. Whereas, Licensee proposes to install and maintain Communications Facilities and associated communications equipment on Utility’s Poles to provide Communications Services to the public; and
- B. Whereas, Utility is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on Utility’s Poles, provided that Utility may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes and/or any other Applicable Standard; and
- C. Whereas, on _____, 20____, Utility and Licensee entered into a _____ *e.g.*, the “20__ Agreement”); [and]
- D. Whereas, by registered letter dated _____, 2____, Utility gave notice to Licensee that Utility/ Licensor was terminating the 19____ Agreement effective _____, 2____; [and]
- E. Whereas, the parties intend that this Agreement replace the 19____ Agreement on its termination; [and]
- F. Therefore, in consideration of the mutual covenants, terms and conditions and remunerations herein provided, and the rights and obligations created hereunder, the parties hereto agree as follows:

AGREEMENT

Article 1—Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within

a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate**: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **Applicable Standards**: means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of Utility or other federal, state or local authority with jurisdiction over Utility Facilities.
- 1.3 **Assigned Space**: means space on Utility’s Poles or within Utility’s Conduit System that can be used, as defined by the Applicable Standards, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service or electric service. The neutral zone or safety space is not considered Assigned Space.
- 1.4 **Attaching Entity**: means any public or private entity, other than Utility or Licensee, who, pursuant to a license agreement with Utility, places an Attachment on Utility’s Pole or within Utility’s Conduit System to provide Communications Service.
- 1.5 **Attachment(s)**: means Licensee’s Communications Facilities that are placed directly on Utility’s Poles or Overlashed onto an existing Attachment or that are placed within Utility’s Conduit System, but does not include either a Riser or a service drop attached to a single Pole where Licensee has an existing Attachment on such Pole.
- 1.6 **Capacity**: means the ability of a Pole or Conduit System segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

- 1.7 **Climbing Space**: means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable Utility employees and contractors to safely climb, access and work on Utility Facilities and equipment.
- 1.8 **Common Space**: means space on Utility’s Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between attaching entities and electric Utility Facilities.
- 1.9 **Communications Facilities**: means wire or cable facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. Unless otherwise specified by the parties, the term “Communications Facilities” does not include wireless antennas, receivers or transceivers.
- 1.10 **Communications Service**: means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.
- 1.11 **Conduit System**: means Utility’s conduits, Innerduct, manholes, vaults, Risers, pull-boxes and trenches.
- 1.12 **Innerduct**: means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.
- 1.13 **Licensee**: means _____, its authorized successors and assignees.
- 1.14 **Make-Ready Work**: means all work, as reasonably determined by Utility, required to accommodate Licensee’s Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, or Conduit System clearing.
- 1.15 **Occupancy**: means the use or specific reservation of Assigned Space for Attachments on the same Utility Pole or portion of Utility’s Conduit System.
- 1.16 **Overlash**: means to place an additional wire or cable Communications Facility onto an existing Attachment owned by Licensee.

- 1.17 Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that shall not be attached to Utility Poles (see Appendix D—Specifications).
- 1.18 Permit:** means written or electronic authorization (see Appendix C) of Utility for Licensee to make or maintain Attachments to specific Utility Poles or spans of the Conduit System pursuant to the requirements of this Agreement.
- 1.19 Pole:** means a pole owned by Utility used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities.
- 1.20 Post-Construction Inspection:** means the inspection required by Utility to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.21 Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or Utility to determine the potential Make-Ready Work necessary to accommodate Licensee’s Communications Facilities on a Pole or within a span of the Conduit System. Such work includes, but is not limited to, field inspection and administrative processing. The Pre-Construction Survey shall be coordinated with Utility and include Licensee’s professional engineer.
- 1.22 Reserved Capacity:** means capacity or space on a Pole or within a portion of the Conduit System that Utility has identified and reserved for its own electric utility requirements, including the installation of communications circuits for operation of Utility’s electric system, pursuant to a reasonable projected need or business plan.
- 1.23 Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.
- 1.24 Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by Utility and/or applicable federal, state or local regulations, that will readily identify the type of Attachment (*e.g.*, cable TV, telephone, high-speed broadband data, public safety) and its owner.
- 1.25 Utility Facilities:** means all personal property and real property owned or controlled by Utility, including Poles and Conduit System.

Article 2—Scope of Agreement

- 2.1 Grant of License.** Subject to the provisions of this Agreement, Utility hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Permitted Attachments to Utility's Poles and to install its Communications Facilities within Utility's Conduit System.
- 2.2 Parties Bound by Agreement.** Licensee and Utility agree to be bound by all provisions of this Agreement.
- 2.3 Permit Issuance Conditions.** Utility will issue a Permit(s) to Licensee only when Utility determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- 2.4 Reserved Capacity.** Access to Assigned Space on Utility Poles will be made available to Licensee with the understanding that such access is to Utility's Reserved Capacity only. On giving Licensee at least thirty (30) calendar days prior notice, Utility may reclaim such Reserved Capacity anytime during the period following the installation of Licensee's Attachment in which this Agreement is effective if required for Utility's future electric service use, including the attachment of communications lines for internal Utility operational or governmental communications requirements. Utility shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9.
- 2.5 No Interest in Property.** No use, however lengthy, of any Utility Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of Utility's rights to Utility Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.
- 2.6 Licensee's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to

attach Licensee's Communications Facilities to any specific Pole or within any specific portion of the Conduit System.

- 2.7 Utility's Rights over Poles.** The parties agree that this Agreement does not in any way limit Utility's right to locate, operate, maintain or remove its Poles or conduit System in the manner that will best enable it to fulfill its service requirements.
- 2.8 Expansion of Capacity.** Utility will take reasonable steps to expand Pole/Conduit System Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require Utility to install, retain, extend or maintain any Pole or portion of the Conduit System for use when such Pole/Conduit System is not needed for Utility's service requirements.
- 2.9 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit Utility from fulfilling any agreement or arrangement regarding Poles into which Utility has previously entered, or may enter in the future, with others not party to this Agreement.
- 2.10 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without Utility's express written consent to such use. Nothing in this Agreement shall be construed to require Utility to allow Licensee to use Utility's Poles or Conduit System after the termination of this Agreement.
- 2.11 Overlapping.** The following provisions will apply to Overlapping:
- 2.11.1** A Permit shall be obtained for each Overlapping pursuant to Article 6. Absent such authorization, Overlapping constitutes an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3.
- 2.11.2** If Licensee demonstrates that the Overlapping of Licensee's Attachment(s) is required to accommodate Licensee's Communications Facilities, Utility shall not withhold Permits for such Overlapping if it can be done consistent with Paragraph 2.3. Overlapping performed pursuant to this Paragraph 2.11.2 shall not increase the Annual Attachment Fee paid by Licensee pursuant to Appendix A, Item 1. Licensee, however, shall be responsible for all Make-Ready Work and other charges associated with the Overlapping but shall not be required to pay a separate Annual Attachment Fee for such Overlapped Attachment.

2.11.3 If Overlashing is required to accommodate facilities of a third party, such third party must enter into a license agreement with Utility and obtain Permits and must pay a separate Attachment Fee (Appendix A, Item 1) as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. No such Permits to third parties may be granted by Utility allowing Overlashing of Licensee's Communications Facilities unless Licensee has consented in writing to such Overlashing. Overlashing performed under this Paragraph 2.11.3 shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item 1. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

2.11.4 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

2.12 **Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within four (4) feet of any Pole or other Utility Facilities without Utility's prior written permission. If permission is granted, all such installations shall be per the Specifications and Drawings in Appendix D of this Agreement and charges as provided in Appendix A. Such permission shall not be unreasonably withheld.

Article 3—Fees and Charges

3.1 **Payment of Fees and Charges.** Licensee shall pay to Utility the fees and charges specified in Appendix A and shall comply with the terms and conditions specified herein.

3.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice its receives from Utility pursuant to this Agreement within thirty (30) calendar days after Utility issues the invoice.

3.3 **Billing of Attachment Fee.** Utility shall invoice Licensee for the per-pole Attachment Fee annually. Utility will submit to Licensee an invoice for the annual rental period no later than July 30 of each year. The initial annual rental period shall commence upon the execution of this Agreement and conclude on June 30 of the next year, and each subsequent annual rental period shall commence on the following July 1 and conclude on June 30 of the subsequent year. The invoice shall set forth the total number of Utility's Poles on which Licensee was issued

and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits.

- 3.4 Refunds.** No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted hereunder. Nor shall any refund be owed if a Pole or portion of Conduit System is abandoned by Utility.
- 3.5 Late Charge.** If Utility does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee, upon receipt of fifteen (15) calendar days written notice, shall pay interest to Utility, at the rate of 1.5 % per month, on the amount due.
- 3.6 Payment for Work.** Licensee will be responsible for payment to Utility for all work Utility or Utility's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities.
- 3.7 Advance Payment.** At the discretion of Utility, Licensee may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.8 True Up.** Wherever Utility, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay Utility for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, Utility agrees to refund to Licensee the difference in cost.
- 3.9 Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by Utility, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with Utility's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. When calculating labor costs, it will be the greater of the loaded costs of municipal labor or that of the going current "Union scale." If Licensee was required to perform work and fails to perform such work necessitating its completion by Utility, Utility may either

charge an additional ten percent (10%) to its costs or assess the penalty specified in Appendix A.

- 3.10 Work Performed by Utility.** Wherever this Agreement requires Utility to perform any work, Licensee acknowledges and agrees that Utility, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.
- 3.11 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement.

Article 4—Specifications

- 4.1 Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee’s Communications Facilities shall be installed and maintained in accordance with the requirements and specifications of Appendix D. All of Licensee’s Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, Licensee is not required to update or upgrade its Attachments where not required to do so by either the NESC or the NEC.
- 4.2 Tagging.** Licensee shall Tag all of its Communications Facilities as specified in Appendix D and/or applicable federal, state and local regulations upon installation of such Facilities, prior authorized Attachments of Licensee shall be tagged within one year of the execution of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.
- 4.3 Interference.** Licensee shall not allow its Communications Facilities to impair the ability of Utility or any third party to use Utility’s Poles or Conduit System, nor shall Licensee allow its Communications Facilities to interfere with the operation of any Utility Facilities.
- 4.4 Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor. Except as provided in Paragraph 16.1,

Utility shall not be liable for any actual or consequential damages to Licensee's Communications Facilities or Licensee's customers' facilities.

- 4.5 Violation of Specifications.** If Licensee's Communications Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from Utility, Utility at its option, may correct such conditions. Utility will attempt to notify Licensee in writing prior to performing such work whenever practicable. When Utility believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of Utility's service obligations or pose an immediate threat to the physical integrity of Utility Facilities, Utility may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, Utility will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all costs incurred by Utility in taking action pursuant to this Paragraph.
- 4.6 Restoration of Utility Service.** Utility's service restoration requirements shall take precedence over any and all work operations of Licensee on Utility's Poles or within Utility's Conduit System.
- 4.7 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, Utility may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. In such instances, Utility shall endeavor to make other space available to Licensee, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. Licensee may obtain a refund on a *pro-rata* basis of any Attachment Fees it has paid in advance with respect to expired Permits.
- 4.8 Interference Test Equipment.** To the extent Licensee furnishes cable television service it shall maintain test equipment to identify signal interference to its customers, and shall not identify Utility as the source of such interference absent a test report verifying the source.
- 4.9 Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment") as

provided in this Paragraph 4.9. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from Utility that removal is necessary to accommodate Utility's or another Attaching Entity's use of the affected Pole(s) or portion of the Conduit System, in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until Utility notifies Licensee that removal is necessary to accommodate Utility's or another Attaching Entity's use of the affected Pole(s). Licensee shall give Utility notice of any Nonfunctional Attachments as provided in Article 15.

Article 5—Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of Utility's Poles. Utility retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse Utility for all loss and expense, including reasonable attorney's fees, that Utility may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on Utility's Poles or within its Conduit System.
- 5.2 Lawful Purpose and Use.** Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.
- 5.3 Forfeiture of Utility's Rights.** No Permit granted under this Agreement shall extend to any Pole or within any Conduit System on/in which the Attachment of Licensee's Communications Facilities would result in a forfeiture of Utility's

rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of Utility's rights, is invalid. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from Utility. Utility will perform such removal at Licensee's expense not sooner than the expiration of thirty (30) calendar days from Utility's issuance of the written notice.

- 5.4 Effect of Consent to Construction/Maintenance.** Consent by Utility to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

Article 6—Permit Application Procedures

- 6.1 Permit Required.** Licensee shall not install any Attachments on any Pole or within any Utility Conduit System without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. Unless otherwise notified, Pre-existing authorized Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to the Attachment Fees. Licensee shall provide Utility with a list of all such pre-existing Attachments within six (6) months of the effective date of this Agreement. Attachments to or rights to occupy Utility Facilities not covered by this Agreement must be separately negotiated.
- 6.2 Permits for Overlapping.** As set out in Paragraph 2.11, Permits are required for any Overlapping allowed under this Agreement and Licensee, Licensee's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlapping.
- 6.3 Professional Certification.** Unless otherwise waived in writing by Utility, as part of the Permit application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by Utility, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles or within specified portions of the Conduit System in compliance with the standards in Paragraph 4.1 and in accordance with the Permit. The professional engineer's qualifications

must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.

Utility, at its discretion, may waive the requirements of this Paragraph 6.3, with respect to service drops.

- 6.4 Utility Review of Permit Application.** Upon receipt of a properly executed Application for Permit (Appendix C), which shall include the Pre-Construction Survey, certified per Paragraph 6.3 above, and detailed plans for the proposed Attachments in the form specified in Appendix D, Utility will review the Permit Application as promptly as possible, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. Utility acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.
- 6.5 Permit as Authorization to Attach.** After receipt of payment for any necessary Make-Ready Work, Utility will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

Article 7—Make-Ready Work/Installation

- 7.1 Estimate for Make-Ready Work.** In the event Utility determines that it can accommodate Licensee's request for Attachment(s), including Overlapping of an existing Attachment, it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.
- 7.2 Payment of Make-Ready Work.** Upon completion of the Make-Ready Work, Utility shall invoice Licensee for Utility's actual cost of such Make-Ready Work. Alternatively, Utility, at its discretion, may require payment in advance for Make-Ready Work based upon the estimated cost of such work. In such case, upon completion Licensee shall pay Utility's actual cost of Make-Ready Work. The costs of the work shall be itemized as per Paragraph 3.9 and trued up as per Paragraph 3.8.
- 7.3 Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by Utility and/or a contractor authorized by Utility to perform such work. If Utility cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within ninety (90) calendar days of Licensee's request for Attachments, Licensee may seek permission from Utility for Licensee to employ a qualified contractor to perform such work.

- 7.4 Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, Utility will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of Utility's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or Utility service restoration.
- 7.5 Written Approval of Installation Plans Required.** Before making any Attachments to Utility's Poles or Conduit System, including Overlapping of existing Attachments, the applicant must obtain Utility's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Paragraph 6.4.
- 7.6 Licensee's Installation/Removal/Maintenance Work.**
- 7.6.1** All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Utility's Poles, Conduit System or other Facilities or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Article 18.
- 7.6.2** All of Licensee's installation, removal and maintenance work performed on Utility's Poles or within its Conduit System or in the vicinity of other Utility Facilities, either by its employees or contractors, shall be in compliance with all applicable regulations specified in Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Minimum Design Specifications contained in Appendix D.

Article 8—Transfers

- 8.1 Required Transfers of Licensee's Communications Facilities.** If Utility reasonably determines that a transfer of Licensee's Communications Facilities is necessary, Licensee agrees to allow such transfer. In such instances, Utility will, at its option, either perform the transfer using its personnel, and/or contractors and/or require Licensee to perform such transfer at its own expense within 60 calendar days after receiving notice from Utility. If Licensee fails to transfer its

Facilities within 60 calendar days after receiving such notice from Utility, Utility shall have the right to transfer Licensee's Facilities using its personnel and/or contractors at Licensee's expense plus the penalty specified in Appendix A. Utility shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations, in which case Utility shall provide such advance notice as is practical given the urgency of the particular situation. Utility shall then provide written notice of any such actions taken within ten (10) days of the occurrence. Irrespective of who owns them, Licensee is responsible for the transfer of Facilities that are overlashed on to Licensee's Attachments.

- 8.2 Billing for Transfers Performed by Utility.** If Utility performs the transfer(s), Utility will bill Licensee for actual costs per Paragraph 3.9. Licensee shall reimburse Utility within thirty (30) calendar days of the receipt of the invoice.

Article 9—Pole Modifications And/Or Replacements

- 9.1 Licensee's Action Requiring Modification/Replacement.** In the event that any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, Utility will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole and rearrangement or transfer of Utility's Facilities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to Utility the actual cost of the Make-Ready Work, performed by Utility, per Paragraph 3.9. Utility, at its discretion, may require advance payment. Licensee shall also be responsible for obtaining, and furnishing to Utility before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities (including Overlashers) concerning the relocation or rearrangement of their Attachments and the costs involved.
- 9.2 Treatment of Multiple Requests for Same Pole.** If Utility receives Permit Applications for the same Pole from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective

requests would require modification or replacement of the Pole, Utility will allocate among such licensees the applicable costs associated with such modification or replacement. Such allocation applies only to those Attachments involving cable/wire and not Risers and/or other equipment.

9.3 **Guying.** The use of guying to accommodate Licensee's Attachments shall be provided by and at the expense of Licensee and to the satisfaction of Utility as specified in Appendix D. Licensee shall not attach its guy wires to Utility's anchors without prior written permission of Utility. If permission is granted, charges may apply.

9.4 **Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of Utility's cables or wires) shall be allocated to Utility and/or Licensee and/or other Attaching Entity on the following basis:

9.4.1 If Utility intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or transfer of Licensee's Communications Facilities. Prior to making any such modification or replacement Utility shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify or add to its existing Attachment. Should Licensee so elect, it must seek Utility's written permission per this Agreement. The notification requirement of this Paragraph 9.4.1 shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the total incremental costs incurred by Utility in making the space on the Poles accessible to Licensee.

9.4.2 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than Utility or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Communications Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's facilities.

- 9.4.3** If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (*e.g.*, storm, accident, deterioration), Utility shall pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or transferring its Communications Facilities.
- 9.4.4** If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Facilities. Licensee shall submit to Utility evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer or rearrange such Entities' Facilities at the time Licensee submits a Permit Application to Utility. Utility shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Paragraph 9.4.4.
- 9.5** **Utility Not Required to Relocate.** No provision of this Agreement shall be construed to require Utility to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, any denial by Utility for modification of the pole is based on nondiscriminatory standards of general applicability.

Article 10—Abandonment or Removal of Utility Facilities

- 10.1** **Notice of Abandonment or Removal of Utility Facilities.** If Utility desires at any time to abandon, remove or underground any Utility Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such Utility's Facilities. Notice may be limited to thirty (30) calendar days if Utility is required to remove or abandon its Utility Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether Utility is offering Licensee an option to purchase the Pole(s). If, following the expiration of the thirty-day period, Licensee has not yet removed and/or transferred all of its Communications Facilities therefrom and has not entered into an agreement to purchase Utility's

Facilities pursuant to Paragraph 10.2, Utility shall have the right, subject to any applicable laws and regulations, to have Licensee's Communications Facilities removed and/or transferred from the Pole at Licensee's expense. Utility shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

10.2 Option to Purchase Abandoned Poles. Should Utility desire to abandon any Pole, Utility, in its sole discretion, may grant Licensee the option of purchasing such Pole at a rate negotiated with Utility. Licensee must notify Utility in writing within thirty (30) calendar days of the date of Utility's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should Utility and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. Utility is under no obligation to sell Licensee Poles that it intends to remove or abandon.

10.3 Underground Relocation. If Utility moves any portion of its aerial system underground, Licensee shall remove its Communications Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from Utility and either relocate its affected Facilities underground with Utility or find other means to accommodate its Facilities. Licensee's failure to remove its Facilities as required under this Paragraph 10.3 shall subject Licensee to the penalty provisions of Appendix A.

Article 11—Removal of Licensee's Facilities

Removal on Expiration/Termination. At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Poles or portions of Conduit System at its own expense. If Licensee fails to remove such facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by Utility, Utility shall have the right to have such facilities removed at Licensee's expense.

Article 12—Termination of Permit

- 12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s)/portion of the Conduit System covered by the Permit.
- 12.2 Surrender of Permit.** Licensee may at any time surrender any Permit for Attachment and remove its Communications Facilities from the affected Pole(s) or segment of the Conduit System, provided, however, that before commencing any such removal Licensee must obtain Utility's written approval of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from Utility's Facilities within thirty (30) calendar days thereafter, Utility shall have the right to remove Licensee's Attachments at Licensee's expense.

Article 13—Inspection of Licensee's Facilities

- 13.1 Inspections.** Utility may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Standards within thirty (30) calendar days of notification. If it is found that Licensee has made an Attachment without a Permit, Licensee shall pay a fee as specified in Appendix A, Item 3 in addition to applicable Permit and Make-Ready charges. If it is found that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall pay its *pro-rata* share of the costs of the inspection.
- 13.2 Notice.** Utility will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon Utility any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

- 13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee is obligated to furnish Utility on an annual basis an up-to-date map depicting the locations of its Attachments in an electronic format specified by Utility.

Article 14—Unauthorized Occupancy or Access

- 14.1 Penalty Fee.** If any of Licensee’s Attachments are found occupying any Pole or segment of the Conduit System for which no Permit has been issued, Utility, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee as specified in Appendix A, Item 3. In the event Licensee fails to pay such Fee within thirty (30) calendar days of receiving notification thereof, Utility has the right to remove such Communications Facilities at Licensee’s expense.
- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by Utility with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by Utility of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

Article 15—Reporting Requirements

Concurrently with Licensee’s Attachment Fee payment and using the reporting form contained in Appendix E, Licensee shall report the following to Utility:

- 15.1** The Poles on which Licensee has installed, during the relevant reporting period, Risers and service drops, where no Permit was required.
- 15.2** All Attachments which have become nonfunctional during the relevant reporting period. The report shall identify the Pole on which the Nonfunctional Attachment is located, describe the nonfunctional equipment, and indicate the approximate date the Attachment became nonfunctional.

- 15.3** Any equipment Licensee has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Paragraph 12.2.

Article 16—Liability and Indemnification

- 16.1 Liability.** Utility reserves to itself the right to maintain and operate its Poles and Conduit System in such manner as will best enable it to fulfill its service requirements. Licensee agrees to use Utility’s Poles and Conduit System at Licensee’s sole risk. Notwithstanding the foregoing, Utility shall exercise reasonable precaution to avoid damaging Licensee’s Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, Utility agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the gross negligence or willful misconduct of Utility, provided, however, that the aggregate liability of Utility, to Licensee, in any fiscal year, for any other fines, penalties, claims or damages stemming from interruption of Licensee’s service or interference with the operation of Licensee’s Communications Facilities (including special, indirect, punitive or consequential damages) shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to Utility for that year as calculated based on the number of Attachments under Permit at the time of the damage per Appendix A, Item 1.
- 16.2 Indemnification.** Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless Utility and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by Utility under any Workers’ Compensation Laws or under any plan for employees’ disability and death benefits), and expenses (including reasonable attorney’s fees of Utility and all other costs and expenses of litigation) (“Covered Claims”) arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee’s officers, directors, employees, agents or contractors, of Licensee’s Communications Facilities, except to the extent of Utility’s negligence or willful

misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

- 16.2.1** Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
- 16.2.2** Cost of work performed by Utility that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer or remove Licensee's Communications Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes Utility to perform on Licensee's behalf;
- 16.2.3** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement;
- 16.2.4** Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of [Insert State] or any other governmental entity or administrative agency.

16.3 Procedure for Indemnification.

- 16.3.1** Utility shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against Utility, Utility shall give the notice to Licensee no later than ten (10) calendar days after Utility receives written notice of the action, suit or proceeding.
- 16.3.2** Utility's failure to give the required notice will not relieve Licensee from its obligation to indemnify Utility unless Licensee is materially prejudiced by such failure.
- 16.3.3** Licensee will have the right at any time, by notice to Utility, to participate in or assume control of the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to Utility. Utility agrees to cooperate fully with Licensee. If Licensee so assumes control of the

defense of any third-party claim, Utility shall have the right to participate in the defense at its own expense. If Licensee does not so assume control or otherwise participate in the defense of any third-party claim, Licensee shall be bound by the results obtained by Utility with respect to the claim.

16.3.4 If Licensee assumes the defense of a third-party claim as described above, then in no event will Utility admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Licensee's prior written consent, and Utility will agree to any settlement, compromise or discharge of any third-party claim which Licensee may recommend which releases Utility completely from such claim.

16.4 **Environmental Hazards.** Licensee represents and warrants that its use of Utility's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Utility's Poles/Conduit System or transport to Utility's Poles/Conduit System any hazardous substances and that Licensee's Communications Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communications Facilities would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless Utility and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to Utility's Poles/Conduit System attributable to Licensee's use of Utility's Poles or Conduit System.

Should Utility's Poles be declared to contain Hazardous Substances, Utility, Licensee and all Attaching Entities shall share proportionately in the cost of disposal of the affected Poles based on each entity's individual percentage use of same. For Attaching Entities, such percentage shall be derived from the sum of Assigned Space occupied by each Attaching Entity plus its share of the Common Space. For Utility, such percentage shall be equal to the space above the NESC 40-inch safety space plus its share of the Common Space. Provided, however, if the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties.

16.5 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by Utility of any applicable State limits on municipal liability. No indemnification provision contained in this Agreement under which Licensee indemnifies Utility shall be construed in any way to limit any other indemnification provision contained in this Agreement.

16.6 Attorney's Fees. If Utility brings a successful action in a court of competent jurisdiction to enforce this Agreement, Licensee shall pay Utility's reasonable attorney's fees.

Article 17—Duties, Responsibilities, And Exculpation

17.1 Duty to Inspect. Licensee acknowledges and agrees that Utility does not warrant the condition or safety of Utility's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Utility's Poles or Conduit System and/or premises surrounding the Poles or Conduit System, prior to commencing any work on Utility's Poles or within Utility's Conduit System or entering the premises surrounding such Poles or Conduit System.

17.2 Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions attending the execution of such work.

- 17.3 DISCLAIMER. UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO UTILITY’S POLES OR CONDUIT SYSTEM, ALL OF WHICH ARE HEREBY DISCLAIMED, AND UTILITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. UTILITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 17.4 Duty of Competent Supervision and Performance.** The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other Utility Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury or property. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of Utility and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of Utility’s equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.
- 17.5 Requests to De-energize.** In the event Utility de-energizes any equipment or line at Licensee’s request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse Utility in full for all costs and expenses incurred, in accordance with Paragraph 3.9, in order to comply with Licensee’s request. Before Utility de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee’s request.
- 17.6 Interruption of Service.** In the event that Licensee causes an interruption of service by damaging or interfering with any equipment of Utility, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify Utility immediately.

17.7 Duty to Inform. Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Utility's Poles or within Utility Conduit System by Licensee's employees, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

Article 18—Insurance

18.1 Policies Required. At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below: The form, content and limits of such insurance, together with the insurer thereof in each case, shall be acceptable to the Owner (Best rating of A or better). Notwithstanding the provisions of this paragraph and regardless of the Owner's acceptance of the Contractor's insurance, it shall be the responsibility of the Contractor to maintain adequate coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve him of any contractual responsibility or obligation.

18.1.1 Workers' Compensation and Employers' Liability Insurance. Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Michigan law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of Utility. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance. This policy shall include a "Broad Form All States" endorsement.

18.1.2 Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.

18.1.3 Automobile Liability Insurance. Business automobile policy covering all owned, hired and nonowned private passenger autos and commercial

vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

18.1.4 Umbrella Liability Insurance. Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$5,000,000 each occurrence, \$5,000,000 aggregate.

18.1.5 Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and utility structures, fencing or support systems that may be placed on, within or around Utility Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

18.2 Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the State of [Insert State] and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.

18.3 Certificate of Insurance; Other Requirements. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish Utility with a certificate of insurance ("Certificate") and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. Utility shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. Utility, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by Utility. Licensee shall defend, indemnify and hold harmless Utility and

Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to Utility upon request.

- 18.4 Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee's exposure to risk.
- 18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with Utility except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to Utility's employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 19—Authorization Not Exclusive

Utility shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use Utility Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

Article 20—Assignment

- 20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of Utility, which consent shall not be unreasonably withheld. It shall be unreasonable for Utility to withhold consent without cause to an assignment of all of Licensee's interests in this Agreement to its Affiliate.

20.2 Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish Utility with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent to the release of Licensee by Utility.

20.3 Sub-licensing. Without Utility's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to allowing third parties to place Attachments on Utility's Facilities, including Overlapping, or to place Attachments for the benefit of such third parties on Utility's Poles or within Utility's Conduit System. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlapping is not subject to this Paragraph 20.3.

Article 21—Failure to Enforce

Failure of Utility or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

Article 22—Termination of Agreement

22.1 Notwithstanding Utility's rights under Article 12, Utility shall have the right, pursuant to the procedure set out in Paragraph 22.2, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:

22.1.1 Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or

22.1.2 Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been

denied or revoked by any governmental or private authority or violation of any other agreement with Utility; or

- 22.1.3** Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article 18.
- 22.2** Utility will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 22.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within fifteen (15) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to Utility that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, Utility may immediately terminate this Agreement or any Permit(s). In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, Utility may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to Utility until Licensee's Communications Facilities are actually removed.

Article 23—Term of Agreement

- 23.1** This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years. Either party may terminate this Agreement at the end of the initial five (5) year term by giving to the other party written notice of an intention to terminate this Agreement at least ninety (90) calendar days prior to the end of the term. If no such notice is given, this Agreement shall automatically be extended for an additional five (5) year term. Either party may terminate this Agreement at the end of the second five (5) year term by giving to the other party written notice of an intention to terminate this Agreement at least ninety (90) calendar days prior to the end of the second term. Upon failure to give such notice, this Agreement shall automatically continue in force until terminated by either party after ninety (90) calendar days written notice.
- 23.2** Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Communications Facilities as provided for in Article 16.

Article 24—Amending Agreement

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

Article 25—Notices

25.1 Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to Utility, at: Board of Light and Power
 1700 Eaton Drive
 Grand Haven, Michigan 49417

If to Licensee, at: _____

or to such other address as either party, from time to time, may give the other party in writing.

25.2 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where Utility can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to Utility's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a penalty of \$100 per incident, and shall eliminate Utility's liability to Licensee for any actions that Utility deems reasonably necessary given the specific circumstances.

Article 26—Entire Agreement

This Agreement supersedes all previous agreements, whether written or oral, between Utility and Licensee for placement and maintenance of Licensee's Communications Facilities on

Utility's Poles or within Utility's Conduit System within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

Article 27—Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

Article 28—Governing Law

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Michigan.

Article 29—Incorporation of Recitals and Appendices

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

Article 30—Performance Bond

On execution of this Agreement, Licensee shall provide to Utility a performance bond in an amount that is equal to _____ Dollars (\$____) per Licensee Pole Attachment, and _____ Dollars (\$____) per linear feet of Conduit System occupied, which amounts shall be adjusted accordingly on an annual basis to account for additions or reductions in the total number of Licensee's Pole Attachments and use of Conduit System. The bond shall be with an entity and in a form acceptable to Utility. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to Utility which arise by reason of the construction, operation, maintenance or removal of Licensee's Communications Facilities on or about Utility's Poles or within its Conduit System.

Article 31—*Force Majeure*

31.1 In the event that either Utility or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible.

31.2 Utility shall not impose any charges on Licensee stemming solely from Licensee’s inability to perform required acts during a period of unavoidable delay as described in Paragraph 31.1, provided that Licensee present Utility with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due Utility under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

(UTILITY)

(LICENSEE)

BY: _____

BY: _____

Title: _____

Title: _____

UTILITY

STATE OF MICHIGAN

: ss

County of OTTAWA

I, the undersigned, a Notary Public in and for the State of Michigan, hereby certify that on the ____ day of _____, 2____, personally appeared before me [NAME] _____, [TITLE] _____ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

Notary Public in and for the
State of Michigan, residing at
_____, Michigan

L I C E N S E E

STATE OF _____

: ss

County of _____

I, the undersigned, a Notary Public in and for the State of _____, hereby certify that on the ____ day of _____, 2____, personally appeared before me [NAME] _____, [TITLE] _____ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

Notary Public in and for the
State of _____, residing at
_____, _____