

**STANDARD POLE ATTACHMENT LICENSE AGREEMENT**

**BETWEEN**

**HILLSDALE BOARD OF PUBLIC UTILITIES**

**AND**

---

**DATED:**

Click here to enter a date.

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## PREAMBLE

**HILLSDALE BOARD OF PUBLIC UTILITIES**, (hereinafter called "Electric Utility"), and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ (hereinafter called the "Licensee"), desiring to enter into this Pole Attachment License Agreement ("Agreement") for the use of Electric Utility's poles, erected or to be erected within the areas in which both parties render service in the State of Michigan, whenever and wherever such use shall, in the estimation of both parties, be compatible with their respective needs and consistent with the terms of this Agreement, do hereby, in consideration of the promises and the mutual covenants herein contained, covenant and agree for themselves and their respective successors and assigns as follows, effective [Click here to enter a date](#). ("Effective Date").

## WITNESSETH

WHEREAS, Electric Utility and the Licensee desire to begin or continue to jointly use wood or other types of poles and in the future to further jointly use the poles of the Electric Utility when and where joint use shall be advantageous; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

### ARTICLE I - SCOPE OF AGREEMENT

A. This Agreement shall be in effect in the area in which both of the Parties render service in the State of Michigan, and shall cover all poles now existing or hereafter erected in the above territory when said poles are brought under this Agreement in accordance with the procedure hereinafter provided.

B. Electric Utility reserves the right for good cause to exclude from use any of its facilities for objective, nondiscriminatory reasons of safety, reliability, and generally applicable engineering standards.

### ARTICLE II - EXPLANATION OF TERMS

For the purpose of this Agreement, the following terms shall have the following meanings:

- A. **Attachment** is any Licensee cable, wire, strand, circuit, service drop, over-lashing, appurtenance, equipment, pedestal or apparatus of any type attached to the pole.
- B. **Bonded-Ground** is a pedestal or other ground mounted equipment bonded to the vertical ground on a pole but not attached to the Pole.
- C. **Communication Space** is the space on joint-use poles where Licensee facilities are separated from the Electric Utility Supply Space by the Communication Worker Safety Zone.
- D. **Communication Worker Safety Zone** is the forty-inch (40") zone below the Electric Utility Supply Space, above the Communication Space. See Figure D-1 Communication Space (NESC).
- E. **Cost in Place** is the cost of the bare pole, labor to install the pole and associated overheads, including engineering.
- F. **Initial Safety Inspection** is a safety inspection of Electric Utility poles to identify and remediate non-conforming Attachments (e.g. NESC violations) and other safety conditions on Electric Utility poles, performed after the Effective Date as explained in ARTICLE VIII hereof.
- G. **Joint Pole** is a pole for which joint use is established or continued pursuant to the terms of this Agreement and does not imply the presence of a joint use or joint ownership agreement or relationship between the parties.
- H. **Joint Use** refers to a pole which is being jointly used by the parties pursuant to the terms of this Agreement and does not imply the presence of a joint use or joint ownership agreement or relationship between the parties.

- I. **Licensee** is the party having the right under this Agreement to make and maintain Attachments on a Joint Pole that Electric Utility owns.
- J. **Make-Ready** is all work, including engineering and construction, necessary or appropriate to make space for or otherwise accommodate new or changed Attachments, including, if necessary or appropriate, Rearrangements; removal and replacement of the pole; transfers; and other work incident thereto.
- K. **NESC** is the National Electrical Safety Code.
- L. **Non-guyed Service Drop** is a Service Drop that requires no guys under the Licensee's design standards or the applicable specifications of ARTICLE III - SPECIFICATIONS. (If, atypically, a wire used to connect to a customer's location were to require guying under the Licensee's design standards or the applicable specifications of ARTICLE III, then it would not be treated as a Non-guyed Service Drop under this Agreement but would be treated as a cable.)
- M. **Standard Pole** is a pole which is just tall enough to provide Electric Supply Space, a Communication Worker Safety Zone and Communication Space, as herein defined, for the respective parties and just strong enough to meet the requirements of the specifications mentioned in ARTICLE III - SPECIFICATIONS for the Attachments ordinarily placed by the parties in their respective spaces. Such pole for the purpose of this Agreement shall be as described in Appendix D. The definition of Standard Pole is not intended to preclude the use of Joint Poles shorter or of less strength than the Standard Pole in locations where such poles will meet the requirements of the parties hereto.
- N. **Supply Space** is the following described space:
  - 1. For Electric Utility, Electric Supply Space is as described in Appendix D.
  - 2. For the Licensee, a Communication Space of one (1) foot on both thirty-five (35)-foot and forty (40)-foot poles below the Communication Worker Safety Zone. The Supply Space shall provide at all times the minimum clearance required by the specifications mentioned in ARTICLE III - SPECIFICATIONS and at a sufficient height above ground to provide the proper vertical clearance above ground or track rails for the lowest horizontally run line wires or cables attached in such space. When practicable, the Licensee will, after the Effective Date, make its initial Attachments one foot above the lowest possible point that provides such ground clearance, which is within the Communication Space.
  - 3. In the event Electric Utility installs a pole larger than the Standard Pole solely in anticipation of its future requirements or additions, the Supply Space for Electric Utility, as defined above, for that pole shall be increased to include the additional above ground space provided by Electric Utility. For avoidance of doubt, in any case the attacher shall be responsible for attaching at a height to provide the minimum ground clearance required by the specifications mentioned in ARTICLE III.
- O. **Outside Party** is any person or entity which is not a party to this Agreement and which has a right to use the pole of the Electric Utility.
- P. **Permit** means authorization from Electric Utility to the Licensee to attach an Attachment pursuant to this Agreement.
- Q. **Rearrangement** is the moving of Attachments from one position to another on a pole.
- R. **Service Drop** means a wire used to connect to a customer's location. A Service Drop may run directly from a pole used to service many customers to a specific customer's location, without the use of any other poles, or a Service Drop may itself be supported by more than one pole to carry the Service Drop to the customer's location.
- S. **Simple Transfer** is the transfer, relocation, or alteration of any Attachment or overlash on an existing Pole or onto a new Pole that does not require cutting and splicing of the Communication Facility subject to such transfer, relocation, or alteration.
- T. **Space** is the linear portion of a joint pole parallel to its axis reserved for the exclusive use of one of the parties (subject only to the exceptions provided for in this Article and the specifications

mentioned in ARTICLE III - SPECIFICATIONS which in certain instances permit the making of certain Attachments by one party in the space reserved for the other party).

- U. **Street/Outdoor Light pole** is a pole supporting a light fixture of any type owned by Electric Utility.
- V. **Transfer** is the removal of Attachments from one pole and the placement of them or substantially identical Attachments upon another.

### **ARTICLE III - SPECIFICATIONS**

Except as otherwise provided in ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS, referring to construction that has not yet been brought into conformity with the specifications mentioned herein, the joint use of the poles covered by this Agreement shall at all times be in conformity with all applicable: (1) accepted published modern methods; (2) requirements of the National Electrical Safety Code and subsequent revisions thereof ("NESC"); (3) lawful requirements of public authorities; and (4) the requirements of APPENDIX B. It is understood by both parties that the requirements of the NESC are minimum requirements and that reasonable, additional requirements for height and strength may be required for good practice for the given local conditions.

Modifications of, additions to, or construction practices supplementing wholly or in part the requirements of the NESC, shall, when accepted in writing by both parties hereto through their agents authorized to approve such changes, likewise govern the joint use of poles, which acceptance shall not be unreasonably withheld.

### **ARTICLE IV - ESTABLISHING ATTACHMENT TO POLES**

A. Before Licensee shall make use of Electric Utility's poles under this Agreement, it shall comply with the requirements set forth herein. APPENDIX A shall be sent by first class mail, email, or other electronic notification system as designated by the Electric Utility.

B. **REQUEST TO ATTACH PROCEDURE.** Except in connection with (i) the placement of Non-Guyed Service Drops; (ii) the placement of dead-end or riser poles; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; (v) making safety corrections; (vi) Rearrangements or Transfers required by Electric Utility, whenever the Licensee desires to place an Attachment on any pole that is not then in joint use (including road improvement projects and reconstruction of pole lines) or where existing joint use consists solely of one or more Non-guyed Service Drops, it shall submit a completed written application therefor on the form attached hereto and identified as APPENDIX A or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on APPENDIX A. In the case of overlashing, Licensee may submit after-the-fact notification, so long as APPENDIX A information and application fee, along with supporting engineering design data for each such Attachment, are submitted. Within thirty (30) days after the receipt of such completed application Electric Utility shall notify the applicant in writing whether the application is approved or rejected. If Electric Utility rejects the application in whole or in part, Electric Utility will specify the reason(s). The application shall be rejected only for good cause, such as failure to comply with reliability, safety, and engineering standards. Upon receipt of notice from Electric Utility that the application has been approved, and after the completion of any transferring or rearranging which is required to permit the attaching of the applicant's Attachments on such poles, including any necessary pole replacements, the applicant shall have the right as Licensee hereunder to place such Attachments on such poles in accordance with the terms of the application and of this Agreement (including ARTICLE III).

C. **REQUEST TO MODIFY ATTACHMENT PROCEDURE.** Except in connection with (i) the placement of Non-guyed Service Drops; (ii) the placement of dead-end or riser poles; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; (v) the vertical use of the unused space on a pole as provided in ARTICLE IV.E. below; (vi) Rearrangements; (vii) Transfers required by Electric Utility and (viii) overlashing (which will be handled by an after-the-fact notification as described in ARTICLE IV.B above), whenever the Licensee desires to modify its existing Attachments or place one or

more additional Attachments on a Joint Pole, the Licensee shall submit a completed written application therefor on the form attached hereto and identified as APPENDIX A or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on APPENDIX A. Unless Electric Utility rejects the completed form within thirty (30) days from the date of receipt, the Licensee may proceed with making such Attachments or changes as are identified in the form in accordance with the terms of the application and this Agreement (including ARTICLE III - SPECIFICATIONS). If Electric Utility rejects the application in whole or in part, Electric Utility will specify the reason(s). The application shall be rejected only for good cause. If Electric Utility determines that any such Attachments do not comply with the terms of this Agreement (including the provisions of ARTICLE III), then the parties will work together to minimize the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

D. Any Non-guyed Service Drop that is placed by Licensee on Electric Utility's pole shall be subject to all the terms and provisions of this Agreement, except as expressly provided in this Agreement. The placement of one or more Non-guyed Service Drops shall not, alone and without more, create additional Communication Space.

E. Either party, without following the REQUEST TO ATTACH or REQUEST TO MODIFY ATTACHMENT procedure, may utilize vertical unused space below its defined space in ARTICLE II - EXPLANATION OF TERMS for street lighting, terminals, risers or other vertical Attachments if the existing joint use of such pole is authorized, such use does not interfere with the other party's operations, and such use complies with the terms of this Agreement (including the provisions of ARTICLE III - SPECIFICATIONS).

F. Each party shall place, Transfer and Rearrange its own Attachments, and shall place guys and anchors to maintain all unbalanced loads caused by its Attachments. On existing poles, each party will perform any tree trimming or cutting necessary for their initial or additional Attachments. Anchors and guys shall be in place and in effect prior to the installation of Attachments and cables. Each party shall, with due diligence, attempt at all times to execute such work promptly and in such manner as not to interfere with the service of the other party.

G. The cost of establishing the joint use of existing poles as provided herein, including the making of any necessary pole replacements, shall be borne by the parties hereto in the manner provided in ARTICLE IX - DIVISION OF COSTS.

H. Joint use of a pole shall automatically be continued under the terms of this Agreement if either of the following circumstances applies:

1. The pole was a Joint Pole under a Previous Agreement as of the Effective Date.
2. Both parties had Attachments on the pole - the pole was actually in joint use – as of the Effective Date.

I. Both before and after any termination of the right to place Attachments on additional poles, the Licensee shall have the right to Transfer its Attachments from an existing pole to a new pole installed as part of a road widening project and to continue joint use on such pole. If the Licensee is materially breaching this Agreement or acting in bad faith or failing to cooperate or communicate as provided in this Agreement, Electric Utility may terminate the Licensee's rights under this ARTICLE IV.I.

J. To facilitate the implementation of this Agreement, each party will share with the other party information about its future pole line projects, as appropriate, to facilitate the other party's planning and budgeting.

K. To facilitate any preparation of APPENDIX A, the parties' representatives will, as reasonably necessary and appropriate and if requested by a party, discuss with one another the matters that are the subject of APPENDIX A.

#### **ARTICLE V - PLACEMENT OF NEW POLES**

A. Whenever either party hereto requires new pole facilities for any reason, including an additional pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, it may promptly notify the other party to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location and character of the new pole(s) and the character of circuits it intends to use thereon and indicating whether or not such pole facilities will be, in the estimation of the party proposing to construct the new pole facilities, suitable for joint use. In case of emergency verbal notice, the other party will preliminarily respond verbally on an expedited basis that it does or does not want to seek initial joint use of the new poles and will generally describe its planned initial Attachments. Within a reasonable period (not to exceed thirty (30) business days) after the receipt of such written notice, the other party will submit an APPENDIX A if required by ARTICLE IV above, and the provisions of ARTICLE IV will govern.

B. Each party shall place its own Attachments on the new Joint Poles and place guys and anchors to sustain any unbalanced loads caused by its Attachments except as otherwise provided under ARTICLE IV - ESTABLISHING ATTACHMENT TO NEW POLES. Each party shall, with due diligence, attempt to execute its work promptly and in such manner as not to interfere with the service of the other party.

#### **ARTICLE VI - RIGHT OF WAY FOR ATTACHER'S ATTACHMENTS**

While Electric Utility and Licensee will cooperate as far as may be practicable in obtaining rights-of way for both parties on Joint Poles, Electric Utility does not warrant or assure to the Licensee any right-of-way privileges or easements on, over or across streets, alleys and public thoroughfares, and private or publicly owned property, and if the Licensee shall at any time be prevented from placing or maintaining its Attachments on Electric Utility's poles, no liability on account thereof shall attach to Electric Utility of the poles.

#### **ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS**

A. Electric Utility shall maintain all Joint Poles in a safe and serviceable condition and in accordance with the specifications mentioned in ARTICLE III - SPECIFICATIONS and shall replace, reinforce or repair should a pole become defective.

B. When replacing a Joint Pole carrying terminals of aerial cable, underground connection, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, or immediately adjacent, and in a manner to facilitate Transfer of Attachments, unless special conditions make it desirable to set it in a different location. Replacement poles where risers (dips) are installed should be set as close as possible to the existing pole. Electric Utility will make reasonable effort to conduct a joint field review or otherwise coordinate with Licensee to determine the location of the proposed pole. Reasonable effort will be made to coordinate locations of risers and Non-guyed Service Drops with the locations of the power facilities serving the customer.

C. Whenever it is necessary to replace or relocate a Joint Pole, Electric Utility shall, before making such replacement or relocation give reasonable notice thereof in writing or by electronic means (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing or by electronic means) to the Licensee, specifying in such notice the time of such proposed replacement or relocation and the Licensee shall at the time so specified Transfer its Attachments to the new or relocated Joint Pole.

1. Should the Licensee fail to Transfer its Attachments to the new Joint Pole on the date specified for such Transfer of Attachments (after all Electric Utility Transfers have been accomplished), Electric Utility

may elect to relinquish the ownership of the old pole from which it has removed its Attachments, with the giving of verbal notice to be subsequently followed in writing. If Electric Utility so elects, such old pole shall thereupon, at no cost to the Licensee, become the property of the Licensee, as is, and the Licensee shall save harmless Electric Utility from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of, or arising out of, the presence or condition of such pole or of any Attachments thereon. The unused portion of the pole above the Licensee's Attachments shall be cut off and removed by Electric Utility before relinquishing ownership, if the pole remains in structural conflict with the power route. Upon mutual agreement by Electric Utility and the Licensee, Electric Utility personnel may perform simple transfers for the Licensee at a mutually agreed upon price.

2. Should the Licensee fail to Transfer its Attachments to the new Joint Pole after the receipt of notification in writing or through electronic means for such Transfer of Attachments and after all third party and Electric Utility responsible Transfers have been accomplished, whichever is later ("Licensee Transfer Date"), and if Electric Utility does not elect to relinquish the ownership of the old pole from which it has removed its Attachments, the parties will have the following rights, in addition to any other rights and remedies available under this Agreement:

a. The Licensee shall pay Electric Utility the following amounts until the Licensee has transferred its Attachments and notified Electric Utility in writing or through electronic notification means that the Transfer has been accomplished:

i. Five dollars (\$5.00) per pole per month beginning with the sixty-first (61st) day after the Licensee Transfer Date and through and including the two hundred fortieth (240th) day after the Licensee Transfer Date,

ii. Ten dollars (\$10.00) per pole per month (instead of five dollars (\$5.00)) beginning with the two hundred forty-first (241st) day after the Licensee Transfer Date. In addition, the cost incurred by Electric Utility to return to the job site and remove the old pole will be paid by the Licensee. In the event the Licensee notifies Electric Utility that the Transfer has been accomplished, and Electric Utility returns to the job site to remove the old pole and discovers that the Transfer has not been made, then the Licensee will pay Electric Utility's cost of the trip to and from the job site. The intent of this paragraph is to ensure timely Transfers and minimize situations of two or more poles needlessly remaining at the same location for extended periods of time. The aforementioned provisions of this paragraph will only apply when poles are installed in a manner consistent with ARTICLE VII B.

D. Each party shall at all times maintain all of its Attachments in accordance with the specifications mentioned in ARTICLE III and shall keep them in safe condition and in thorough repair.

E. Each party shall be responsible for right-of-way maintenance for its own circuits at its own expense.

F. Any existing joint use construction of the parties hereto which does not conform to the specifications mentioned in ARTICLE III - SPECIFICATIONS shall be brought into conformity therewith as soon as practicable. To the extent such construction is compliant with the specifications in effect at the time of installation, neither party will be required to retrofit such existing, compliant attachments and at all times NESC grandfathering rules will apply. When such existing construction shall have been brought into conformity with said specification, it shall at all times thereafter be maintained as provided in Sections A and D of this ARTICLE VII.

G. The cost of maintaining poles and Attachments and of bringing existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in this Agreement.

H. Where a pole currently exists, and different, new or replacement poles are needed in substantially the same place to accommodate the Licensee's desired additional Attachments or desired new joint use,



then, if joint use is established or to be established as provided in this Agreement, Electric Utility will construct and own the new poles, and the costs will be paid as provided in ARTICLE IX - DIVISION OF COSTS.

I. Electric Utility shall have the right to require the Licensee, within one hundred twenty (120) days after the Licensee Transfer Date (as defined in ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS), either (a) to Transfer its Attachments from an existing pole to a new pole that is erected to carry the same or a similar service or Attachments as those on the existing pole, or (b) to remove its Attachments from the existing pole and terminate joint use as to the existing pole. The choice of option (a) or (b) will be the Licensee's. Or, if neither Electric Utility nor the Licensee desires a Transfer, Electric Utility may elect to abandon the existing pole to the Licensee as provided in ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS C. I. In the case of any such Transfer, the costs of transferring the Licensee's Attachments will be paid by the Licensee, unless such Transfer is required due to the requirements of an Outside Party, in which case the Outside Party shall reimburse the Licensee upon demand.

### **ARTICLE VIII - SAFETY INSPECTIONS**

A. INSPECTION PERFORMANCE. If Electric Utility has reasonable cause to believe Code Violations or unsafe conditions (or other violations of ARTICLE III) involving all parties exist on its system, it will provide documentation of this belief to all parties, and it may, not more than once every five (5) years, perform a periodic safety inspection of Electric Utility's Poles, including Attachments under this Agreement. The scope of the safety inspection may include the entire system or may be limited to a smaller portion of the system, such as one circuit or the circuits fed by one substation, at the discretion of Electric Utility. At least three (3) months prior to any such safety inspection, Electric Utility shall provide notice of the safety inspection to the Licensee, which shall describe the scope of the inspection and provide Licensee with notice of the anticipated date of the inspection. Electric Utility and all Attachers shall share equally in the cost of the Initial Safety Inspection and any subsequent safety inspections.

B. CORRECTIONS. In the event Licensee has caused any violations of the specifications set forth in ARTICLE III, and such violation poses an imminent danger to persons or property ("Imminent Danger Violation"), such party shall correct such violation immediately, but at least within twenty-four (24) hours, unless otherwise agreed to by the parties. Should Licensee fail to correct such violation after notice, Electric Utility may correct the violation and bill the Licensee for the Actual Costs incurred. Following the Initial Safety Inspection, if Licensee has caused a Non-Imminent Danger Violation, Licensee shall have ninety (90) days to correct any such violation upon written notice from Utility, or within a longer, mutually agreed-to time frame if correction of the violation is not possible within ninety (90) days, such extended time to be not more than an additional ninety (90) days. Notwithstanding the foregoing grace periods, in the event Electric Utility or any other third party prevents Licensee from properly correcting a Non-Imminent Danger Violation, the timeframe for correcting such violation shall be extended to account for the time during which Licensee was unable to correct the violation due to such actions of the Electric Utility or third party. Licensee will not be responsible for the costs associated with violations caused by Electric Utility or its agents or Outside Parties. In all circumstances, all of the parties on the pole will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures associated with violations caused by Licensee, including removal and replacement of the pole and all Transfers or other work incident thereto. Licensee shall insure that its employees, agents, or contractors, which Licensee causes to work on Joint Poles, will be notified of pending, unresolved poles requiring corrective actions, prior to activities on such poles, and Licensee shall not allow unqualified or improperly equipped personnel to work on poles. If causation cannot be established, the cost to correct the violation will be split equally among all parties on the pole.

C. PENALTIES. Electric Utility may impose a penalty in the amount of one hundred (\$100) dollars for any violation caused by Licensee that is not corrected in accordance with the terms of this Agreement.

D. OBSERVED SAFETY VIOLATIONS. For avoidance of doubt, Licensee shall be required to correct any safety violations as provided herein whether or not such are observed or noticed.

### **ARTICLE IX - DIVISION OF COSTS**

A. NEW POLES INSTALLED WHERE NONE CURRENTLY EXIST. Whenever Electric Utility requires new pole facilities within the Licensee's service territory for any reason, including an additional Pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing Pole line, it shall make a best effort to notify Licensee to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location of the new pole. In the case of emergency, the Licensee will preliminarily respond verbally on an expedited basis that it does or does not want to attach its Attachments and will generally describe its planned Attachments. Within a reasonable period (not to exceed fifteen (15) business days) after the receipt of such written notice, the Licensee shall submit the notice required under ARTICLE IV - ESTABLISHING JOINT USE OF POLES AND PERMISSION FOR JOINT USE. If Licensee chooses to attach to a newly installed pole(s) and requires more than the 12" of space on such pole, then the Licensee shall pay the incremental cost of the required new pole. If in connection with the construction of a pole(s) the Licensee makes the payment required by this paragraph, then the Licensee shall in the future be entitled to attach on such pole(s) even if the pole(s) does not at that time become a Joint Pole. If joint use is established pursuant to ARTICLE V – PLACEMENT OF NEW POLES A. above, the cost to erect new Joint Poles coming under this Agreement, to construct new pole lines, or to make extensions to existing pole lines shall be borne by the parties as set forth in this ARTICLE IX – DIVISION OF COSTS A. If joint use is not established pursuant to ARTICLE V - PLACEMENT OF NEW POLES A. above, the provisions of ARTICLE IX – DIVISION OF COSTS below will control.

1. A Standard Pole, or if adequate a Joint Pole smaller than the Standard Pole, shall be erected at the sole expense of Electric Utility.
2. A pole larger than the Standard Pole, the extra height or strength of which is due wholly to Electric Utility's requirements including owner's requirements for pole space in excess of Supply Space set forth in ARTICLE II - EXPLANATION OF TERMS and requirements as to keeping Electric Utility's wires clear of trees shall be erected at the sole expense of Electric Utility.
3. In the case of a pole larger than the Standard Pole, the extra height or strength of which is due wholly to the Licensee's requirements including Licensee requirement for pole space in excess of Communication Space set forth in ARTICLE II - EXPLANATION OF TERMS and requirements as to keeping the Licensee's wires clear of trees, Electric Utility shall pay all costs associated with the construction of a Standard Pole and the Licensee shall pay to the owner the remaining costs of erecting the larger than Standard Pole. If in connection with the construction of a pole the Licensee makes the payment required by this paragraph, then the Licensee shall in the future be entitled to its Space on such pole even if the pole does not at that time become a Joint Pole; provided, however, if the Licensee does not attach to the pole within three years from the date the pole was set, then the Licensee shall no longer be entitled to its Space on such pole.
4. In the case of a pole larger than the Standard Pole, the extra height or strength of which is due to the requirements of both parties for greater Space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such pole and the Cost in Place of a Standard Pole shall be shared equally by the Licensee and Electric Utility, with the rest of the cost of erecting such pole to be borne by Electric Utility.
5. A pole, including all appurtenances or fixtures, erected between existing poles to provide sufficient clearance and furnish adequate strength to support the circuits of both the owner and the Licensee, which it would have been unnecessary except solely due to Licensee's use had not been undertaken, shall be erected at the sole expense of the Licensee.

B. PAYMENTS DO NOT AFFECT OWNERSHIP. Any payments for poles made by the Licensee under any provisions of this Article shall not entitle the Licensee to the ownership of any part of the poles for which it has contributed in whole or in part.

C. REPLACEMENT OF EXISTING POLES. Where an existing pole is replaced for maintenance purposes, Electric Utility shall erect a pole adequate for the existing Attachments and additional Attachments for which Applications have been previously delivered to Electric Utility, unless such Application is denied in accordance herewith, and Electric Utility will pay all the costs of installing the replacement pole. Licensee will pay to replace its existing Attachments. The replaced pole shall be removed by Electric Utility.

1. A pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to Electric Utility's requirements, such as providing service, normal maintenance, or keeping Electric Utility's wires clear of trees, shall be erected at the sole expense of Electric Utility. Electric Utility shall bear the full expense of replacing or transferring all Electric Utility's Attachments and the Licensee shall bear the full expense of replacing or transferring all the Licensee's Attachments.

2. A pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to the Licensee's requirements, including Licensee's requirements as to keeping the Licensee's wires clear of trees, the Licensee shall pay to Electric Utility the Make-ready cost of the new pole.

3. A pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to Licensee's requirements such as providing service, correcting a safety violation or keeping Licensee's wires clear of trees, Licensee shall pay all of the Make-ready cost of the new pole, including any costs associated with replacing or Transferring Licensee's Attachments.

4. In the case of a pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength which is due to the requirements of all parties on the pole, such as when the parties share responsibility for correcting a safety violation, the difference between the Cost in Place of such pole and the Cost in Place of the existing pole shall be shared equally by the Licensee and Electric Utility, and other third parties, if applicable, the rest of the cost of erecting such pole to be borne by Electric Utility. Electric Utility and Licensee shall replace or Transfer all Attachments at their own expense.

5. In the case of a pole larger than the existing pole, which is installed to replace an existing pole, the extra height or strength which is due wholly to the requirements of an Outside Party, the Outside Party shall pay all of the Make-Ready cost of the new pole, including any costs associated with replacing or Transferring Licensee's Attachments.

D. RESPONSIBILITY FOR OWN ATTACHMENTS. Each party shall place, maintain, rearrange, Transfer and remove its own Attachments at its own expense except as otherwise expressly provided herein.

E. SERVICE DROPS. Where an existing pole is replaced by a taller one to provide the necessary clearance for the Licensee's Service Drop, the Licensee shall pay to Electric Utility the installed cost of the new pole plus the labor costs of replacing or transferring of the Attachments on the existing pole and the cost to remove the existing pole, minus any salvage value to Electric Utility.

F. PAYMENT BASIS. Payments made under the provisions of this Article may be based on the estimated or Actual Cost, as mutually agreed upon (including overhead), of making such changes but in no event, however, shall either Party be required to pay for such changes more than 120% of the estimated cost supplied by the other if such cost estimate shall have been requested and furnished before the changes were made.

G. ELECTRIC UTILITY INSTALLING LARGER POLES FOR ELECTRIC UTILITY'S FUTURE USE. In the event Electric Utility installs a pole larger than is initially required for Electric Utility's and Licensee's use in anticipation of Electric Utility's future requirements or additions, the additional space provided by Electric Utility shall be reserved for Electric Utility's sole use. Licensee may request documentation to validate the need for future space.

H. CORRECTIVE MEASURES.

1. If any Attachment of the Licensee is found to be in violation of the terms of this Agreement, then the parties will work together to minimize the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole(s) and all Transfers or other work incident thereto.

2. If any Attachment of Electric Utility is found to be in violation of the terms of this Agreement, then the parties will work together to minimize the cost of correcting any such deficiencies, but Electric Utility shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole(s) and all Transfers or other work incident thereto.

3. If there exists a violation of the terms of this Agreement (including the provisions of ARTICLE II - EXPLANATION OF TERMS and ARTICLE III - SPECIFICATIONS), and it cannot be determined whose Attachment has caused such violation or there is a mixture of the parties causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies; provided, however, that if a party can modify its Attachments so that they no longer may be a cause of the violation or deficiency, then such party may elect to make such modification instead of otherwise sharing in any costs. Such a modification shall not relieve a party from sharing in such costs if the party making the modification could still have been a cause of any deficiency that remains.

4. If one or more Outside Party Licensee(s) caused the violation, then such Outside Party Licensee(s) will pay the corrective costs incurred by all who have Attachments on the pole, including for the Licensee, Electric Utility and any other Attachers; and Electric Utility will make reasonable effort to cause the Outside Party to make such payment.

I. WHEN EXISTING POLES NOT IN JOINT USE BECOME JOINT POLES.

1. If an existing pole not in joint use was constructed before the Effective Date and becomes a Joint Pole, the Licensee shall pay all necessary Make-ready costs associated with the Licensee attaching to the pole.

2. If an existing pole not in joint use was constructed after the Effective Date and becomes a Joint Pole, then:

a. The Licensee shall pay all Make-ready costs associated with the Licensee attaching to the pole if Electric Utility gave notice pursuant to ARTICLE V.A. but the Licensee did not, if required, submit an APPENDIX A as provided in ARTICLE IV and, if applicable, ARTICLE V.A.

b. If Electric Utility did not give notice pursuant to ARTICLE V.A. with respect to the pole, then Electric Utility shall pay all Make-ready costs associated with the Licensee attaching to the pole.

J. BUILDING DOWN. If one party installs Attachments that encroach or needs to install Attachments that would encroach upon the other party's use of its own Space (sometimes known as "building down"), the party installing or needing to install such Attachments must pay the Make-ready costs necessary to permit the other party to use its own Space.

K. MAKE-READY WHEN APPENDIX A NOT REQUIRED. Except as provided in ARTICLE IX.I. above, Electric Utility shall not be obligated to pay Make-Ready costs for any initial or additional Licensee Attachment for which an APPENDIX A is not required.

## **ARTICLE X - UNAUTHORIZED ATTACHMENTS**

If any Attachment made after the Effective Date of this Agreement is identified for which the APPENDIX A requirements (as set forth herein) have not been satisfied ("Unauthorized Attachment"), then, provided Licensee has 90 days to verify or deny the unauthorized attachments, upon receiving written notice the Licensee shall pay to the Electric Utility a one-time fee of fifty dollars (\$50) per pole plus a sum equal to the adjustment payments that would have been payable from and after the date the Attachment was first placed on the Electric Utility's pole as determined from Licensee's records or other evidence; provided, however, that if the date on which the Attachment was made cannot be determined, then the Licensee will pay a sum equal to the adjustment payments that would have been payable from and after the date the last Actual Inventory of Joint Poles was conducted, subject to any applicable laws regarding statutes of limitations. If the Licensee does not respond within 90 days, it will not have the right to dispute the unauthorized attachment fee. In addition, the Electric Utility may, without prejudice to its other rights or remedies under this Agreement, require the Licensee to submit within fifteen (15) business days of verification by Licensee that an Attachment is an Unauthorized Attachment (provided that Licensee has 90 days to verify or deny that an Unauthorized Attachment exists upon receiving written notice from Utility), an APPENDIX A along with supporting engineering design data for each such Attachment, and upon review of such information, the Electric Utility may require the Licensee to make or pay for such modifications as may be specified by mutual consent of the parties or if non-approval of APPENDIX A is justified, remove the Unauthorized Attachment at Licensee's expense within 90 days or by mutual agreement after Licensee has verified that the Attachment is an Unauthorized Attachment. If Licensee has failed to submit an APPENDIX A or has not removed such Unauthorized Attachments within the 90 days or by mutual agreement if such non-approval is justified, then the Electric Utility may remove such Attachments at the Licensee's expense and with no liability to the Electric Utility, in which event the Licensee shall reimburse the Electric Utility upon demand for the cost the Electric Utility incurred in making such removal and shall indemnify and save the Electric Utility harmless from and against all loss, liability, or expense (including but not limited to claim of third parties) resulting from the removal of such Unauthorized Attachment, except in cases of negligence, gross negligence or intentional misconduct. Nothing herein shall relieve the Licensee of its obligation to maintain Attachments at all times in conformity with ARTICLE III - SPECIFICATIONS.

## **ARTICLE XI - ABANDONMENT OF JOINT USE POLES**

A. If Electric Utility desires at any time to abandon any Joint Pole, it shall, except as provided in ARTICLE VII - MAINTENANCE OF POLES AND ATTACHMENTS C., give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If at the expiration of said period Electric Utility shall have no Attachments thereon, but Licensee has not removed its Attachments, such pole shall thereupon become the property of the Licensee, as is, and the Licensee shall save harmless Electric Utility from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of or arising out of the presence or condition of such pole or of any Attachments thereon; and shall pay Electric Utility the then depreciated value in place of the pole to Electric Utility. Electric Utility shall further evidence transfer of title to the pole by appropriate means. Credit shall be allowed for any payments which the Licensee may have made under the provisions of ARTICLE IX - DIVISION OF COSTS, when the pole was originally set, provided the Licensee furnishes proof of such payment. However, if the Electric Utility is putting its facilities underground, the pole shall not be sold to the Licensee, and the Licensee will comply with the undergrounding of the facilities or remove its facilities.

B. The Licensee may at any time abandon the use of a Joint Pole by removing therefrom any and all Attachments it may have thereon and by giving written notice thereof.

C. Licensee shall comply with reasonable and nondiscriminatory requirements that prohibit installation of structures on or above ground in an area designated solely for underground or buried cable and utility facilities.

**ARTICLE XII – ADJUSTMENT PAYMENTS**

A. At intervals of five (5) years, unless otherwise mutually agreed by the parties, an actual inventory of Joint Poles shall be made by representatives of the parties (the "Actual Inventory"). At the request of either party, an Actual Inventory shall be initiated within a year of the Effective Date and be promptly completed as the parties may more particularly agree. For the purpose of such Actual Inventory, any pole used by the Licensee for the sole purpose of attaching wires or cables thereto shall be considered a Joint Pole. Each Outside Party shall pay a prorated share of the cost of performing the Actual Inventory, based on the number of poles to which each Licensee has Attachments on Electric Utility’s poles.

B. For a year in which there is no Actual Inventory, the number of Joint Poles used in calculating the adjustment payments provided for herein shall be based on the previous inventory plus any subsequent Permits submitted by the Licensee.

C. For a year for which there is an Actual Inventory, the adjustment payments provided for herein shall be based on the Actual Inventory; but there shall also be the adjustment provided for in ARTICLE XII.D. below.

D. For a year for which there is an Actual Inventory, the following adjustment shall be made:

1. The difference between the number of Joint Poles found by the Actual Inventory for the year in question and the number of Joint Poles currently being billed, whenever conducted, including any Actual Inventory conducted prior to the Effective Date of this Agreement, shall be prorated evenly based on the assumption that such poles were added evenly over the years between the Actual Inventories in order to calculate, on the basis of such proration, a prorated number of poles for each year between the year of the previous Actual Inventory and the year of the present Actual Inventory.

2. If the adjustment payment so calculated pursuant to this section is greater than the adjustment payment that was actually made, the difference shall constitute an additional amount owed by the Licensee to Electric Utility; if less, the difference shall constitute an amount owed by Electric Utility or a credit to the Licensee.

**ARTICLE XIII – FEES AND CHARGES**

A. Payment of Fees and Charges. Licensee shall pay to Electric Utility fees and charges and shall comply with the terms and conditions specified in the Agreement.

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

C. The applicable computation of payments and calculations as above provided shall be made on or about January 1st of the calendar year following the Attachment rental year, each party acting in cooperation with the other. For example, on or about January 1, 2019, Electric Utility will issue the rental invoice for the rental period covering January 1, 2018 through December 31, 2018.

D. Annual Pole Attachment Fee per foot of occupied usable space per year shall be as follows:

Rate: Maximum allowable rate pursuant to 47 USC 224(d) and (e) as established in Federal Communications Commission Order on Reconsideration 15-151. Calculations will be provided to Licensee annually upon request.

E. Non-Recurring Fees:

1. Permit Application Fee:

Number of Poles Affected	Application Fee (Per Application)
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1-10	\$50
11-20	\$150
21-25	\$250
26+	Cost Estimate Will Be Provided

2. Make Ready Charges: See Article IX
3. Miscellaneous Charges: See Article IX
4. Unauthorized Attachment Fee: See Article X
5. Safety Inspection Fees: See Article VIII
6. Inventory Inspection Fees: See Article XII
7. Timely Transfer Fees: See Article VII

**ARTICLE XIV – DEFAULTS**

A. If either party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after due notice thereof in writing by the other party, the party not in default may suspend the rights of the party in default insofar as concerns the granting of future joint use and if such default shall continue for a period of ninety (90) days after such suspension, the party not in default may forthwith terminate this Agreement.

B. If after reasonable notice either party shall make default in the performance of any work it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such a payment within thirty (30) days upon presentation of bills therefor shall, at the election of the other party, constitute a default under this ARTICLE XIV.

**ARTICLE XV - RIGHTS OF OTHER PARTIES**

A. If Electric Utility, prior to the execution of this Agreement, conferred upon Outside Parties, by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing Attachments of such Outside Parties, which Attachments shall continue in accordance with the present practice; all future Attachments of such Outside Parties shall be in accordance with the requirements of ARTICLE XV.B. below, except where such Outside Parties have by agreements entered into prior to the execution of this Agreement acquired enforceable rights or privileges to make Attachments which do not meet such space allocations. Electric Utility shall derive all of the revenue accruing from such Outside Parties. Any contractual rights or privileges of Outside Parties recognized in this paragraph shall include renewals of or extensions of the term (period) of such contracts.

B. If Electric Utility desires to confer upon Outside Parties, by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, it shall have the right to do so, provided all such Attachments of such Outside Parties are made in accordance with the following: (1) such Attachments shall be maintained in conformity with the requirements of ARTICLE III - SPECIFICATIONS, and (2) such Attachments shall not be located within the space allocation of Licensee. Electric Utility shall derive all of the revenue accruing from such Outside Parties.

C. With respect to any rights and privileges granted by Electric Utility under this Article to others not parties hereto, Electric Utility shall reimburse Licensee's cost for transferring and rearranging Licensee's Attachments to provide space for Attachments for such Outside Parties.

D. Outside Parties shall be responsible for their pro rata share of any costs mentioned in ARTICLE IX-DIVISION OF COSTS.

#### **ARTICLE XVI - ASSIGNMENTS OF RIGHTS**

Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the Joint Poles, or the Attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party, except to the United States of America or any agency thereof; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage or in case of lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser at foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided further that, subject to all of the terms and conditions of this Agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it or associated or affiliated with it, the use of all or any part of the space reserved hereunder on any pole covered by this Agreement for the Attachments used by such party in the conduct of its said business; and for the purpose of this Agreement, all such Attachments maintained on any such pole by the permission as aforesaid of either party herein shall be considered as the Attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this Agreement, with respect to such Attachments, shall be the same as if it were the actual owner thereof.

#### **ARTICLE XVII - WAIVER OF TERMS OR CONDITIONS**

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

#### **ARTICLE XVIII - PAYMENT OF TAXES**

Each party shall pay all taxes and assessments lawfully levied on its own property upon Joint Poles, and the taxes and the assessments which are levied on Joint Poles shall be paid by Electric Utility, but any tax, fee, or charge levied on Electric Utility's poles solely because of their use by the Licensee shall be paid by the Licensee.

#### **ARTICLE XIX - BILLS AND PAYMENT FOR WORK**

A. Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, the party performing the work shall present to the other party within ninety (90) days after the completion of such work an itemized statement of the costs and such other party shall within thirty (30) days after such statement is presented pay to the party doing the work such other party's proportion of the cost of said work.

B. All amounts to be paid by either party under this Agreement shall be due and payable within thirty (30) days after the invoice is received. Except as provided in ARTICLE XIX.C. below, any payment not made within thirty (30) days from the due date shall bear interest at the rate of one and a half percent (1.5%) per month until paid, or if one and a half percent (1.5%) exceeds the maximum rate allowed by law, then at the maximum rate allowed by law. If party bills the interest provided for in this paragraph but then receives a payment showing that the payment was timely made, the billing party will write off and cancel the interest.

C. A party receiving a bill may, in good faith and for good cause, dispute the amount or adequacy of substantiation for the bill. In the event that a party so disputes only a portion of a bill, then such party shall



promptly pay the undisputed amount. Upon resolution of the dispute, if the amount and substantiation were correct and sufficient, interest will be paid on the unpaid balance from the date of the initial bill at the rate of one and a half percent (1.5%) per month until paid, or if one and a half percent (1.5%) exceeds the maximum rate allowed by law, then at the maximum rate allowed by law; but, if the amount was not correct or substantiation was not sufficient, no interest will be payable unless the amount determined to be correct is not paid within thirty (30) days of receipt of substantiation and determination of the correct amount.

**ARTICLE XX – NOTICES**

A. Except as otherwise provided in this Agreement, all notices and writings shall be made to the following people, who from time to time may be changed by written notice:

Licensee:

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Electric Utility:

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B. By written notice pursuant hereto a party may from time to time specify a person in lieu of the person designated in ARTICLE XX.A. above to receive notices or writings with respect to specified matter(s) and/or geographic area(s), in which case such notices or writings shall be sent to that person as to such matter(s) and area(s).

C. Response to any notice or APPENDIX A shall be made to the sender rather than to the person designated in ARTICLE XX.A. or ARTICLE XX.B. above.

D. Unless otherwise provided in this Agreement, any notice shall be in writing, which may, when mutually agreeable, include preservable electronic means, such as email or facsimile.

E. A second copy of any notice given under ARTICLE XIV – DEFAULTS or ARTICLE XXI - RESOLUTION OF CERTAIN DISPUTES shall be given to the following persons, who may from time to time be changed by written notice:

Licensee:

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Electric Utility

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. The parties will develop and maintain a joint form designating the people to whom notices shall be given pursuant to the foregoing.

**ARTICLE XXI - TERM OF AGREEMENT**

A. This Agreement shall become effective upon its execution and, if not terminated in accordance with the provisions of this agreement, continue in effect for a term of five (5) years. Following the initial term, either party may terminate this Agreement by giving to the other party written notice of an intention to terminate the Agreement at least 90 days in advance of termination; but, upon failure to give such notice, this Agreement shall continue in force upon the same terms and conditions.

B. The Licensee shall have 180 days from the date Electric Utility has issued a Permit to complete attachment of Licensee’s Attachment. If the Attachment has not been completed within the 180-day period, the Permit shall terminate without further notice to Licensee as to any pole or poles covered by the Permit to which Licensee has not attached its Attachment.

C. If at any time after Licensee has attached its Attachment to Electric Utility’s poles, Electric Utility is informed or has reason to believe that such Attachment is not authorized by any governmental authority or private property owner, then Licensee shall remove its Attachment from any of Electric Utility’s poles immediately after receiving notice from Electric Utility of such circumstance and the Permit covering such poles shall automatically terminate, provided, however, if Licensee is in the process of disputing such lack of authority, and has received permission to remain on the pole pending the outcome of the dispute, Licensee may maintain its Attachment without any liability to Electric Utility thereto.

D. Electric Utility may, in addition to seeking any other remedy available to it, terminate this Agreement or any Permit issued under this Agreement if Licensee fails to comply with any of the provisions of this Agreement and fails within 30 days (or such longer reasonable period if a 30 day cure period is not possible) after written notice from Electric Utility to correct such neglect, refusal, or default.

E. In the event a governmental entity at any time requires Electric Utility to remove 1 or more of its poles, any Permit issued to Licensee for such poles shall automatically terminate as to such poles, in which event Electric Utility shall refund to Licensee any unearned payments made pursuant to this Agreement.

F. Licensee may at any time terminate any right to attach an Attachment to any pole by removing its Attachment from such pole and notifying Electric Utility of such removal. The Permit covering such pole shall terminate upon receipt of such notice by Electric Utility. Licensee may at any time terminate this Agreement by removing all of its Attachments from all of Electric Utility’s poles and notifying Electric Utility of such removal.

G. Except as otherwise provided in this Agreement, the Licensee shall have 60 days within which to remove its Attachments from Electric Utility's pole or poles upon termination of this Agreement or of a Permit issued under this Agreement. If the Licensee fails to remove its Attachments from Electric Utility's pole or poles within such 60-day period, Electric Utility shall have the right to remove the Licensee's Attachments from said pole or poles, without notice or liability of any kind to the Licensee, in which event the Licensee shall reimburse Electric Utility upon demand for the cost Electric Utility incurred in making such removal. The Licensee shall indemnify and save Electric Utility harmless from and against all loss, liability, or expense resulting such removal, including but not limited to claims of third parties.

H. All Permits issued under this Agreement shall automatically terminate upon termination of this Agreement.

## **ARTICLE XXII - EXISTING CONTRACTS**

All existing agreements for Pole attachment license between the parties, and all amendments thereto are by mutual consent hereby abrogated and superseded by this Agreement.

Nothing in the foregoing shall preclude the parties to this Agreement from entering such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

## **ARTICLE XXIII – LIABILITY**

Licensee agrees to indemnify, defend and hold harmless Electric Utility, its directors, officers, shareholders and employees (collectively "Indemnified Persons") from and against any and all claims, liabilities, losses, damages, costs, discovery requests, demands, judgments, actions, causes of action, disbursements and expenses in connection therewith (including, without limitation, the reimbursement of all such costs, fees, expenses and disbursements, including reasonable attorneys' fees, as and when incurred, of investigating, preparing for, responding to or defending against any action, suit, proceeding, investigation, subpoena or other inquiry (whether or not Electric Utility is a party to the proceedings or litigation at issue) in connection with actual or threatened actions ("Losses") relating to or arising out of this License or any matter relating to the License; provided, however that Licensee will not be liable under this indemnity to the extent any of the foregoing Losses are determined, in a final judgment by a court of competent jurisdiction, not subject to further appeal, to have resulted from the sole negligence of any Indemnified Person in connection with the performance of the License.

## **ARTICLE XXIV – CONSTRUCTION**

This Agreement was drafted by all parties to it and is not to be construed against any party. Neither the negotiations of the language of this Agreement, nor prior drafts of this Agreement, nor the inclusion or exclusion of any language from prior drafts shall be admissible or probative as to the meaning of this Agreement.

## **ARTICLE XXV - REMEDIES CUMULATIVE**

Unless otherwise provided in this Agreement, all remedies set forth in this Agreement are cumulative and in addition to any other remedies that may be available herein or at law or in equity, if any.

In witness whereof the parties hereto, have caused these presents to be executed in two (2) counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

## **ARTICLE XXVI – INSURANCE**

A. Policies Required. At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below and shall name Electric Utility as an additional insured on all such policies, except workers compensation:

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 Electric Utility. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
  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 \$5,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.
  3. Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
  4. Umbrella Liability Insurance. Coverage is to be in excess of the sum of the 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.
  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 Electric Utility structures, fencing, or support systems that may be placed on, within, or around Electric Utility facilities to protect fully 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 for such exposures.
  6. Performance Bond. Prior to making any Attachments under this Agreement, Licensee shall provide to Electric Utility a performance bond in an amount corresponding with the requirements of Appendix C. The bond shall be executed with a proper surety through a company licensed and qualified to operate in the State of Michigan and listed with the U.S. Department of the Treasury as published in the Federal Register. In addition, the bond shall not be for an amount greater than the surety's approved limit as referenced in the current Federal Register and shall be accompanied by a certified power-of-attorney document, all still subject to the final approval of Electric 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 the Licensee of any damages, claims, liens, taxes, liquidated damages, penalties, or fees due to Electric Utility which arise by reason of the construction, installation, operation, maintenance, transfer, relocation, or removal of Licensee's Attachments or Communications Facilities on or about Electric Utility's Poles. This shall include claims for damages to Electric Utility Facilities caused by Licensee, or its contractors and agents. Electric Utility shall have the right to draw funds from the bond to recover damages to Electric Utility Facilities caused by Licensee, its contractors, or agents. Provision shall be made to permit Electric Utility to draw against the bond. Licensee shall not use such bond for other purposes and shall not assign, pledge or otherwise use the bond as security for any other purpose. The amount and form of the performance bond applicable to Licensee is based on the requirements provided in Appendix C.
- B. Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the state of Michigan 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 XXVI with the same limits.
- C. 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, the Licensee will furnish Electric

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. Electric Utility shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. Electric 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. 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 Electric Utility. Licensee shall defend, indemnify and hold harmless Electric 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 Electric Utility upon request.

D. Limits. The limits of liability set out in this Article XXVI 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 that would materially increase or decrease Licensee's exposure to risk.

E. Prohibited Exclusions. No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions that: ( 1) exclude coverage of liability assumed by this Agreement with Electric Utility except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to Electric Utility's employees or agents, or (4) 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.

F. Additional Insurance. Electric Utility shall have the right at any time to require public liability insurance and property damage liability insurance in greater amounts than those required in this ARTICLE XXVI. In any such event, the additional premium or premiums payable solely as the result of such additional insurance coverage shall be payable by Electric Utility within thirty (30) days of the Licensee providing proof of such additional premium to Electric Utility and requesting payment therefor.

## **ARTICLE XXVII- GOVERNING LAW AND VENUE**

This Agreement shall be construed in accordance with the laws of the State of Michigan without regard to its rules regarding choice of law. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the State Courts within Hillsdale County in the State of Michigan, and the parties expressly waive the right to bring any legal action or claims in any other courts.

## **ARTICLE XXVIII - SEVERABILITY**

The provisions (or parts thereof) of this Agreement shall be severable. In the event that any provision (or part thereof) of this Agreement is determined to be illegal, invalid, or otherwise enforceable, then such illegality, invalidity or unenforceability shall not affect or impair the remainder of this Agreement.

In witness whereof the parties hereto, have caused these presents to be executed in two (2) counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

Electric Utility

By:

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Printed Name

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Title

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Date

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Licensee

By:

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Printed Name

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Title

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Date

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**APPENDIX A – REQUEST TO ATTACH/MODIFY ATTACHMENTS TO POLE(S)**

Attacher Job # \_\_\_\_\_ (to be completed by Attacher)  
 Electric Utility Work Order #: \_\_\_\_\_ (to be completed by Electric Utility)

**SECTION 1 - REQUEST FOR APPROVAL TO PLACE ATTACHMENTS ON A POLE (to be completed by Attacher)**

Company		Poles with Attachments (specify quantity)	Added	
Project			Removed	
Request Date			Overlashed	
Name			Modified	
Title		Estimated Construction Dates	Start	
Phone			Completion	
Email		Fees Submitted:	Application	
Signature:			Other	
Make Ready Anticipated? (Yes or No)				

Location of Attachment Request (Street Address and Coordinates (Lat, Long)):

**Checklist of Attached Documents (Containing Attacher Job #):**

- Detailed construction plans and drawings
- Necessary maps, containing the following:
  - Poles that we wish to use
  - Point of attachment (proposed height) on each pole
  - Number and type of attachments to be placed on each pole (including anchor type and distance from
  - Relocations or replacements of poles
  - Rearrangements of fixtures and equipment necessary
  - Additional poles required

*The included information represents our proposed facilities. Any changes will be submitted to Electric Utility for approval prior to construction. The Attacher will obtain all authorizations, permits, and approvals from all Municipal, State, and Federal authorities for the Attacher's proposed service and all easements, licenses, rights-of-way and permits necessary for the proposed use of these poles.*

**SECTION 2 - APPROVAL/DENIAL OF REQUEST (to be completed by Electric Utility)**

Response Date		Utility Make Ready Construction Required?	
Name		Total Estimated Cost to Attacher	
Title		(Detailed invoice to be provided)	
Phone		Permit #	
Email			
Request Response	Approve		If denied, reason for denial:
	Deny		
Signature:			

## **APPENDIX B – SPECIFICATION FOR ATTACHMENTS TO POLES**

Licensee, when making Attachments to Electric Utility Poles, will adhere to the following engineering and construction practices.

A. All Attachments shall be made in accordance with ARTICLE III – SPECIFICATIONS.

B. Clearances

1. Attachment and Cable Clearances: Licensee's Attachments on Electric Utility Poles, including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum 40" separation specified in the National Electrical Safety Code ("NESC") Table 235-5(1a) and in drawings and specifications Electric Utility may from time to time furnish Licensee.

2. Service Drop Clearance: From the pole to the home/building the parallel minimum separation between Electric Utility's service drops and communications service drops shall be twelve (12) inches, per NESC 235C1b (exception 3). (see drawing A-5)

3. Other Drop Clearances: All other drop clearances at the mid-span must conform to NESC table 235-6 (or its successor).

a. Sag and Mid-Span Clearances: Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are: (a) achieved at poles located on both ends of the span; and (b) retained throughout the span. At mid-span, a minimum of twelve (12) inches of separation must be maintained between all telecommunication cables that meet NESC rule 230E 1 (includes common phone, CATV, and fiber optic cables lashed to an effectively grounded messenger strand, or self-supporting cables).

NESC table 235-6 requires:

- 30" from neutral (May be 12" when exception #16 is adequate)
- 30" from supply lines carrying 0 to 8.7 kV (secondary)
- 30" plus 0.4" per kV in excess of 8.7 (primary)

4. Vertical Risers: All risers, including those providing 120/240 volt power for Licensee's equipment enclosure, shall be placed on the quarter faces of the pole and must be installed in conduit with weatherhead (if possible), attached to the pole with stand-off brackets.

5. Climbing Space: A clear climbing space must be maintained at all times on the face of the pole. All Attachments must be placed so as to allow and maintain a clear and proper climbing space on the face of Electric Utility pole. Licensee's cable/wire Attachments shall be placed on the same side of the pole as those of other Attaching Entities. In general, all other Attachments and risers should be placed on pole quarter faces.

6. Pedestals and Enclosures: Every effort should be made to install pedestals, vaults and/or enclosures at a minimum of four (4) feet from poles or other Electric Utility facilities, or the distance specified by Electric Utility, whichever is greater.

C. Anchors and Guys

1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on Electric Utility's poles by Licensee's Attachments. Anchors must be guyed adequately.



2. Anchors and guy wires must be installed on each Electric Utility pole where an angle or a dead-end occurs. Licensee shall make guy attachments to poles at or below its cable attachment. No proposed anchor can be within five (5) feet of an existing anchor.

3. Licensee may not attach guy wires to the anchors of Electric Utility or third-party user without the anchor owner's specific prior written consent.

4. No Attachment may be installed on an Electric Utility pole until all required guys and anchors are installed. No Attachment may be modified, added to, or relocated in such a way as will materially increase the stress or loading on Electric Utility poles until all required guys and anchors are installed.

5. Licensee's down guys, if needed, shall be bonded, to the vertical ground wires of Electric Utility's pole, in accordance to NESC rule 092C3a. Electric Utility will determine if guys should be grounded or insulated.

#### D. Certification of Licensee's Design

1. Licensee's Attachment Permit application must be signed by an engineer certifying that Licensee's aerial cable design fully complies with the NESC and Electric Utility's Construction Standards and any other applicable federal, state or local codes and/or requirements, or Licensee will pay Electric Utility for actual costs for necessary engineering and post-construction inspection and to ensure Licensee's design fully complies with the NESC and Electric Utility's Construction Standards and any other applicable federal, state or local codes and/or requirements.

2. This certification shall include the confirmation that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of Electric Utility's facilities and other Attaching Entities' facilities that exist on the poles without regard to the condition of the existing facilities.

#### E. Miscellaneous Requirements

1. Attachments: All Licensee Attachments will be made on the street side of the pole unless otherwise approved by Electric Utility.

2. Cable Bonding: Licensee's messenger cable shall be bonded according to NESC rule 092C1 as a minimum, or at every pole with a vertical ground, as determined by Electric Utility.

3. Customer Premises: Licensee's service drop into customer premises shall be protected as required by the most current edition of the NEC.

4. Communication Cables: All communications cables/wires not owned by Electric Utility shall be attached within the communications space that is located below the Communication Worker Safety Zone

6. Tagging: On at least every other pole to which the Licensee is attached, Licensee's facilities shall be identified with a band-type communications cable tag or other identification acceptable to Electric Utility within twelve (12) inches of the pole. The communications tag shall be consistent with communication industry standards and shall include at least the following: Licensee name and emergency contact number.

## **APPENDIX C – PERFORMANCE BONDS**

The performance bond requirements applicable to Licensee are listed below. Attachers operating Private Networks that select Option A are exempt from the performance bond requirements.

- Option A. Private or public Attaching Entity operating a Private Network and not providing Communications Services regardless of the number of Attachments installed on Electric Utility Poles. No performance bond required.
- Option B. Attaching Entity providing Communications Services with Attachments installed on Electric Utility Poles. Require a performance bond in the amount of \$10,000 or \$50 per Attachment, whichever is greater.

## **APPENDIX D – ELECTRIC UTILITY STANDARD POLE AND SUPPLY SPACE**

Electric Utility to insert chart or definition of standard pole(s) and corresponding supply space.