



**STANDARD FORM**  
**POLE ATTACHMENT AGREEMENT**  
**OF**  
**Archtop Fiber, LLC**  
**AND**

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THIS AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_, 202\_ (the “Effective Date”), by and between Archtop Fiber, LLC, a corporation organized and existing under the laws of the State of New York, with an office for the transaction of business at 300 Enterprise Drive, Kingston, NY 12401, (hereinafter referred to as “Licensor”) and \_\_\_\_\_ a corporation organized and existing under the laws of the [Incorporation State-Commonwealth] of [Incorporation State] with an office for the transaction of business at [Licensee Address] (hereinafter referred to as “Licensee”). Licensor and Licensee may be referred to hereinafter, each, individually as a “Party,” and, collectively, as the “Parties.”

## **I. RECITALS**

WHEREAS, Licensee, for its own use, desires to attach and maintain communication cable and/or accessory telecommunication equipment on the distribution poles of Licensor, on those geographic areas in the State of New York, specifically served by Licensor and all public utilities not party to this agreement; and

WHEREAS, Licensee is responsible for identifying pole ownership and obtaining permission, as required, from the public utility referenced above not party to this agreement, to place facilities on poles solely or jointly owned, or jointly used by the public utility; and,

WHEREAS, Licensor is willing to license, to the extent it may lawfully do so, the attachment of such cable and/or equipment on Licensor’s distribution poles.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein, and other valuable consideration, the sufficiency of which is hereby acknowledged, and on the terms and subject to the conditions herein set forth, the Parties, intending to be legally bound, do hereby mutually covenant and agree as follows:

## **II. DEFINITIONS**

### **(a) General Rule and Interpretation**

- 1.1 All references to Sections are to those set forth in this Agreement. Reference to any document means such document as amended in writing from time-to-time by the Parties. Reference to either Party includes any permitted successor-in-interest or permitted assignee thereof.
- 1.2 Terms used in a Tariff shall have the meanings stated in the Tariff.
- 1.3 Unless expressly stated otherwise, the following definitions, and any other terms defined internally in this Agreement, shall apply to this Agreement and all notices and communications made pursuant to this Agreement.

- 1.4 A defined term intended to convey the meaning stated herein is capitalized when used. Additional definitions that are specific to the matters covered in a particular provision of this Agreement may appear in that provision. To the extent that there may be any conflict between a definition set forth in this Section II and any definition in a specific provision, the definition set forth in the specific provision shall control for the purposes of that provision.
- 1.5 Unless the context clearly indicates otherwise, any term defined in this Agreement which is defined or used in the singular shall include the plural, and any term defined in this Agreement which is defined or used in the plural shall include the singular. Words importing the masculine gender shall include the feminine and neuter genders and vice versa, and words importing individuals shall include Persons and vice versa.
- 1.6 The words “shall” and “will” are used interchangeably throughout this Agreement and the use of either indicates a mandatory requirement. The use of one or the other shall not confer a different degree of right or obligation for either Party.
- 1.7 “Herein” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or Exhibit; references to this Agreement include the Exhibits to this Agreement; and, unless the context requires otherwise, references to Exhibits refer to the Exhibits to this Agreement.
- 1.8 The calculation of time within which or following which any act is to be done or step is to be taken pursuant to this Agreement excludes the date which is the reference day in calculating such period.
- 1.9 Performance on holidays and days other than Business Days except in the event of an emergency is not required hereunder. Whenever anything is required to be done or any action is required to be taken hereunder on or by a day which is not a Business Day, other than in the event of an emergency, then such thing may be validly done and such action may be validly taken on or by the next succeeding day that is a Business Day.
- 1.10 The term “including” shall be deemed to mean “including without limitation.”
- 1.11 Except as otherwise specifically provided in this Agreement, all accounting terms used herein that are not specifically defined shall have the meanings customarily given them in accordance with generally accepted accounting principles.

(b) Definitions.

- 2.1 Administrator means any Person appointed by the Joint Owners of Poles or Anchors to represent both of the Joint Owners for purposes of licensing individual Attachments of Licensee. Such appointment may only be made by written consent of both Joint Owners.

- 2.2 Affiliate means any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Person specified. The term “control” (including the terms “controlled by” and “under common control with”) and its derivatives means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- 2.3 Agreement means this Agreement, as the same may be amended or modified as set forth herein.
- 2.4 Anchor means an assembly of a rod secured to a fixed object or plate designed to resist a Guy Strand or Strands.
- 2.5 Annual Pole Attachment Rent means an annual license fee per Attachment at a rate approved by the Commission, as may be revised periodically, (“Annual Pole Attachment Rental Rate”) calculated and billed to the Licensee as provided for in the Operating Procedures, and payable to the Licensor for each Attachment covered by a license issued by Licensor to Licensee as provided for in the Operating Procedures, and, in accordance with Section V(l)(ii) for each Drop Pole or Pole that contains an Unauthorized Attachment.
- 2.6 Applicable Laws means all effective laws, statutes, common law, government rules, codes, ordinances, regulations and orders, applicable to this Agreement, each Party or each Party’s performance of its obligations under this Agreement.
- 2.7 Appurtenances means any article of equipment attached to a point on a Pole not normally occupied by a strand attachment (i.e. equipment cabinets, terminals, or other types of equipment).
- 2.8 Attachment or Attachments means the communication cables and accessory telecommunications equipment, Appurtenances and hardware, which are in any manner supported by the Poles or in the right of ways for the purposes set forth in this Agreement, including any of the following:
- (i) A Single Messenger or Wire-Span Facility, utilizing one foot or less of usable Pole space on distribution Poles. Each Messenger will be counted as a separate Attachment. Notwithstanding the foregoing, a single or multiple Wire-Span Facility used to carry information which is supported by a Messenger, where both the Wire-Span Facilities and the Messenger are owned by the same Licensee, shall be deemed a single Attachment. The sag of the Licensee’s Facilities will be included in determining the Pole space utilized.
  - (ii) Each Wire-Span Facility installed in such a manner as to utilize the Messenger for support.

(iii) Equipment mounted in non-usable Space. Each piece of equipment which prevents that space from being utilized by Licensor, a Joint Owner, Joint User or a third party will be counted as a separate Attachment.

- 2.9 Attachment Audit means the examination of billing and licensing records against a field count (inventory) of Licensee Attachments to Licensor Poles, including the associated reconciliation and record update thereof, if any.
- 2.10 Blue Book means the Telcordia Blue Book - Manual of Construction Procedures, as the same may be modified, amended or supplemented.
- 2.11 Boxing means attaching wires on opposite sides of a Pole in order to meet required distances and clearances between and among Attachments and reduce the need for Pole replacements, regardless of whether such wires are owned by the same or different Persons.
- 2.12 Business Day means Monday through Friday, except for holidays on which the U.S. Mail is not delivered.
- 2.13 Claims means any and all claims, demands, suits, actions, settlements, judgments, fines, awards, obligations, orders, penalties, taxes, liabilities, injuries, damages, losses, debts, costs (including court costs), and expenses (including reasonable attorney's fees).
- 2.14 Commission or NYPSC means the New York State Public Service Commission, or any successor agency.
- 2.15 Cost means the full cost and expense for inspections, surveys, estimating, rearrangements, transfers, removals, engineering, reviews, analysis, project management, processing and recording, or fees paid or incurred by Licensor on account of Licensee's request or Attachments, and any other work performed for Licensee. The Cost, which may be expressed as a unit cost or on a time and material basis, shall include the costs of all materials, supplies, engineering, labor (including overtime and board and lodging where necessary to meet the Licensee's requirements), supervision, transportation, applicable taxes, general overhead (including administrative and general), including appropriate loadings for relief and pension accruals, social security, taxes, vacations, holidays, sickness, worker's compensation, and any other items associated with the work which are chargeable to the Licensor's accounts under the Uniform System of Accounts applicable to the Licensor as prescribed by the Commission. With respect to the replacement of any Pole, the cost shall include the cost of a new pole, removal of the old Pole, transfer of the Licensor's and any Joint Owner's, Joint User's or Other Licensee's attachments from the old to the new pole, as provided herein, and such other costs necessitated by the Licensee requirements, all as defined above.
- 2.16 Drop Pole means a Pole supporting Licensor's service and/or cable or telecommunication line serving a single building or structure between the public

way and such building or structure, when such building or structure is a significant distance from the main distribution pole where, if Licensor is an electric utility, no supply line on such Pole exceeds 750V.

- 2.17 Environmental Laws means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.; such other laws as now exist or may be enacted in the future relating to environmental protection; all rules and regulations promulgated pursuant to any of the above; and other foreign, federal, state or local laws, statutes, ordinances, rules, orders, permits and regulations pertaining to (i) the control of any pollutant or protection of the air, water, or land, (ii) solid, gaseous, or liquid waste generation, handling, treatment, storage, disposal, or transportation, or (iii) release to the environment of hazardous, toxic, or other substances alleged to be harmful, as any of the items set forth in this paragraph may be modified or amended from time to time.
- 2.18 Extension Arm means a Licensor approved metal or fiberglass bracket used to support attaching wires away from the face of the Pole in order to meet required distances and clearances between and among attachments and reduce the need for Pole replacements, regardless of whether such wires are owned by the same or different Persons.
- 2.19 Good Utility Practice means any of the practices, methods and acts engaged in or approved by a significant portion of Licensor's industry during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.
- 2.20 Governmental Authority means any nation or government, any state or other political subdivision thereof, a Person or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any government authority, agency, department, board, official, commission, court, tribunal, arbitral body or instrumentality of the United States, any state of the United States or any political



subdivision thereof, including the Commission and any tribunal or arbitrator having, in each case, jurisdiction over Licensor, Licensee, the Licensor's poles, the License, this Agreement or the Licensor's or Licensee's business or activities.

- 2.21 Guy or Guy Strand(s) means a metal cable which is attached to a Pole, Anchor or another pole for the purpose of reducing Pole stress.
- 2.22 Hazardous Material means any substance or material meeting any one or more of the following criteria: (a) it is or contains a substance designated as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or toxic substance under any Environmental Law; (b) its presence, manufacture, possession, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling is prohibited, controlled or regulated by any Environmental Law; or (c) it contains, without limiting the foregoing, asbestos, polychlorinated biphenyls, petroleum hydrocarbons, petroleum derived substances or waste, crude oil or any fraction thereof, nuclear fuel, or radioactive materials or waste.
- 2.23 Knowledge means that in acquiring such knowledge, the Party representing or warranting such knowledge has engaged in reasonable inquiry and investigation.
- 2.24 Joint Owner means a public utility which shall now or hereafter have an ownership interest in a pole and/or anchor with the Licensor pursuant to a joint ownership or similar agreement.
- 2.25 Joint User means any other public utility to which the Licensor has extended or may hereafter extend joint use privileges of the Licensor's pole or anchors pursuant to a joint use or similar agreement. The term "Joint User" shall not include Licensee or Other Licensees.
- 2.26 Licensee means the Person authorized by the Licensor under this Agreement to attach its facilities to Licensor's Poles and Anchors, and the Party responsible for compliance with the applicable Standards for such Attachments.
- 2.27 Licensee's Facilities means the Attachments and all associated equipment and hardware installed for the use of the Licensee, and any facilities of an overlasher.
- 2.28 Licensor means the owner, custodian or Administrator of a Pole and the Party permitted to issue licenses to that Pole and its associated Anchor.
- 2.29 Make-Ready Work means all work, including reinforcement, adjustment, reconstruction, anchoring, guying, protection, inspections, rearrangement and/or transfer of existing facilities, replacement of a pole or any other changes required to be performed prior to the attachment of Licensee's Facilities to a Pole or any other changes required to accommodate the attachment of Licensee's Facilities to a Pole or Anchor, including converting a Temporary Attachment to a permanent Attachment, and as further described in the Operating Procedures. Make-Ready Work shall not include any work required to bring Licensor's facilities into

compliance with Licensor's specifications, applicable at the time of the installation of Licensor's facilities, unless such non-compliance is caused by Licensee's Unauthorized Attachments.

- 2.30 Messenger Cable or Messenger means any cable owned by any Person extending between Poles which is used as support for Wire-Span Facility.
- 2.31 Ombudsman means the individual within the organization of the Licensor and Licensee who has been designated by the Licensor or Licensee, as applicable, to participate in the dispute resolution process set forth in this Agreement on behalf of the Licensor or Licensee, as appropriate.
- 2.32 Operating Procedures means Licensor's documents containing, among other things, the operating procedures, processes and instructions that Licensee must follow in connection with Pole Attachments, including applying for a license and attaching and maintaining Licensee's Facilities, as the same may be modified, amended or supplemented.
- 2.33 Other Licensees means any Person, other than the Joint Owner, Joint User or Licensee, to whom the Licensor has or hereafter shall extend an authorization to attach facilities to a Pole or Anchor.
- 2.34 Overlashing or Overlash refers to the physically tying of wiring facilities to other wiring or a Messenger of Licensee already secured to the Pole in order to accommodate additional strands of fiber or coaxial cable or other Wire-Span Facility on existing Attachments. Leasing by third parties of dark fiber within a fiber optic cable that is part of Licensee's Facilities is not Overlashing for purposes of this Agreement.
- 2.35 Periodic Inspection means work performed by Licensor to determine that Attachments are maintained in conformance with the applicable Standards.
- 2.36 Person means a corporation, a company, a limited liability company, an association, a joint venture, a partnership, a limited liability partnership, an organization, a business, an individual, a trust, a Governmental Authority or any other legal entity, their heirs, executors, administrators, legal representatives successors-in-interest and permitted assigns.
- 2.37 Pole or pole means the distribution poles owned solely by the Licensor, or the distribution poles jointly owned by the Licensor with others, and used to support Licensor's facilities, Joint Owner's or Joint User's facilities or facilities of Licensee or Other Licensees, including Drop Poles.
- 2.38 Post-Construction Inspection means work performed within thirty (30) days after receipt of Licensee's notice of completion of construction of the facilities covered by a license, to determine that all of Licensee's Attachments have been authorized and construction conforms to the Standards.

- 2.39 Pre-construction Survey means the work performed in order to process an application for Attachments, and to identify any necessary Make-Ready Work. Generally, there are two elements of the Pre-construction Survey: 1) field inspection of the existing facilities, and 2) administrative, engineering and other work required to process the application and prepare the Make-Ready Work estimate.
- 2.40 Simple Make-Ready Work means only such Make-Ready work that can be completed without cutting, splicing, or discontinuation of service.
- 2.41 Specifications means the specifications for the installation and maintenance of Licensee's Attachments as set forth in the Operating Procedures.
- 2.42 Standards means all Applicable Laws, all Federal, state and local laws, rules, codes and regulations applicable to the Parties, this Agreement or the work to be performed under or pursuant to this Agreement, including the National Electric Safety Code, the Blue Book, the Occupational Safety and Health Act, the American National Standards Institute, municipal permitting requirements, the Operating Procedures and all applicable standards, safety rules and requirements of Licensor, all as the same may be modified, amended, supplemented or superseded.
- 2.43 Subsequent Inspections means inspections performed to confirm the correction of non-conformance to Standards that was observed during a Post-Construction or Periodic Inspections, or at such other time by Licensor.
- 2.44 Tariff means any applicable currently-effective New York State tariff of Licensor, as amended from time-to-time, which relates to access, use, rent or rates in connection with Licensor's Poles.
- 2.45 Temporary Attachment means a Licensor approved Licensee Attachment made for emergency purposes, or during a rebuild or upgrade of Licensor's facilities, or to compensate for delays in completing Make-Ready Work or other impediments to accessing Poles.
- 2.46 Unauthorized Attachments means
- (i) An Attachment to Licensor's Pole for which a Pole is not identified in any license approved in accordance with this Agreement.
  - (ii) An Attachment that occupies more space than allocated to Licensee by Licensor.
  - (iii) An Attachment that is not placed in accordance with the provisions of this Agreement or the appropriate License issued pursuant to this Agreement.

(iv) An addition or modification by Licensee to its pre-existing Attachments that impairs the structural integrity of the Licensors Pole or facilities or the facilities of a Joint Owner, Joint User or Other Licensee.

(v) An Attachment that consists of facilities owned or controlled by and for the use of a party other than Licensee without consent of Licensors.

(vi) An Attachment that is overlashed to Licensees Facilities, where prior notification of Overlapping has not been made to Licensors.

2.47 Violation means a Violation of applicable Standards and/or safety-related provisions of the Operating Procedures. A "Serious Violation" is a Violation that places individuals working on or near a Pole and/or any persons at or near a Pole or Appurtenance in imminent danger of death or bodily harm.

2.48 Wire-Span Facilities means the telecommunications, cable television, internet provider, and utility telecommunication cables, wires, fiber optic cables, communication cables of any other composition and/or Attachments owned or controlled by the Licensee, or by a third party.

### **III. SCOPE OF AGREEMENT**

(a) Franchise Area

Subject to the provisions of this Agreement, the Licensors will issue to Licensee, for any lawful purpose described in paragraph (b) following, a revocable, nonexclusive license authorizing the attachment of Licensees Facilities to Licensors Poles listed on and located in the geographic area described on Exhibit 1, attached hereto and incorporated herein. Notwithstanding any other provision of this Agreement to the contrary, other than Section IX(c)(iii) hereof relating to Drop Poles, Licensee shall not make an Attachment to any Pole unless and until it has received a license from Licensors for that specific Attachment. This Agreement is not in and of itself a license to any Pole, and before making any Attachment to any Pole, Licensee must apply for and obtain a license.

(b) Licensees Franchise or Other Appropriate Authorization

The license issued to Licensee is limited to the attachment to the Licensors Poles solely for the purposes of the operation by the Licensee of its service, as more particularly described and authorized in its franchise or other authorizations from a Governmental Authority, copies of which have been provided to Licensors or will be provided to Licensors if required by the Operating Procedures. Licensee must obtain separate authorization from, and pay all applicable Fees and Charges and related Costs to each Licensors any Joint Owner or Joint User of any Pole, as required.

(c) No Ownership Rights in Poles and Anchors

No use, however extended, of a Pole or Anchor or payment of any fee or charge required hereunder shall create or vest in the Licensee any ownership or property right in such Pole or Anchor, but Licensee's rights therein shall be and remain a nonexclusive license to attach on Licensor's facilities, revocable pursuant to the terms and conditions set forth herein. Nothing herein contained, including any license granted Licensee hereunder, shall be construed to compel Licensor to construct, reconstruct, retain, extend, repair, replace, place or maintain any facilities not needed for its own requirements.

(d) Superseding Prior Agreements

This Agreement supersedes all prior agreements between the Parties, their predecessors in interest and such predecessors' assignees, for maintenance and placement of aerial cables, equipment and facilities by the Licensee, and constitutes the entire agreement between the Parties, except as provided in Section XXI(c). Notwithstanding any other provision to the contrary, the provisions relating to Unauthorized Attachments will be effective as provided in Section V(l)(iii) hereof. Currently effective licenses, if any, issued pursuant to prior agreements shall remain in effect and shall be considered as if issued pursuant to this Agreement.

(e) Non-Exclusivity

(i) It is recognized by Licensee that Licensor has heretofore entered into, or may in the future enter into, agreements and arrangements with others not parties to this Agreement regarding the Poles, Anchors and other Licensor facilities covered by this Agreement. Nothing contained herein shall be construed as a limitation, restriction or prohibition with respect to such other agreements and arrangements by Licensor, existing or future, except that any such arrangements made hereafter, other than those pursuant to Tariff, shall not unreasonably interfere with Licensee's Facilities or rights hereunder.

(ii) The rights of Licensee shall at all times be subject to any present or future arrangement between Licensor and any Joint Owner, Joint User, or Other Licensees, utilizing the Licensor's facilities, including the facilities covered herein.

(iii) Licensor reserves to itself, its successors and assigns, the right to maintain its Poles and Anchors and operate Licensor's facilities consistent with Good Utility Practices and in such manner as will best enable it to fulfill Licensor's service obligations, duties and responsibilities.

(f) Non-Traditional Uses

This Agreement is not intended to and should not be construed or interpreted in any manner to apply to or as permitting non-traditional uses or Attachments on Licensor's Facilities. In the event Licensee submits an application for any such use or Attachment, Licensor will reject the same by written notification to Licensee, without any liability on the part of Licensor as a result of such rejection.

#### **IV. TERM OF AGREEMENT**

(a) Expiration Date

Unless terminated sooner in accordance with its terms, this Agreement shall continue in effect for a term of three (3) years from the date hereof, and thereafter until three (3) months after prior written notice of termination is given by either Party. Such notice of termination may be given three (3) months prior to the expiration of said three (3) year term to take effect at the end of the original three (3) year period or it may be given at any time thereafter.

(b) Inactivity

(i) If Licensee does not have any existing licenses with Licensor, and no license is applied for by Licensee within one (1) year from the date of this Agreement, or no license is issued by Licensor to Licensee within two (2) years from the date of this Agreement, then Licensor or Licensee shall have the option of terminating this Agreement, upon not less than thirty (30) days prior written notice, which termination shall be effective on the date set forth in the notice.

(ii) Once Licensee has obtained an approved License, Licensee shall have thirty (30) days from the date the License is issued to begin the placement of Licensee's Attachments on the Licensor's Poles covered by the License. If Licensee has not begun placing its Attachments within that thirty (30) day period, Licensee shall, in writing, inform Licensor with a reasonable explanation for the delay. If Licensee fails to advise Licensor of its delay with a written explanation thereof or if Licensee fails to act in good faith by not making a bona fide effort to begin placing its Attachments within the thirty (30) days prescribed herein, the previously authorized license shall be deemed rescinded by Licensor and Licensee shall have no further right to place Attachments pursuant to such License .

(iii) If within one (1) year after the issuance of a license, Licensee Facilities are not attached to Poles covered by the license, Licensor or Licensee shall have the option of modifying the license to exclude those particular Poles to which no Licensee Facilities have been attached. The Party exercising such option shall provide the other Party with not less than thirty (30) days prior written notice of any exclusion, which exclusion shall be effective on the date set forth in the notice. Following the modification of a license to exclude Poles, future attachments to such excluded Poles will require a Pre-construction Survey and a new license, and may require Make-Ready Work. In accordance with Section V, Licensee shall not be entitled to a refund of any Application Fees, Costs or Annual Pole Attachment Rent, however any reduction in Attachments shall be reflected in the next billing cycle in accordance with the Billing and Payment provisions contained in Section VI hereof.

(c) Surrender of License

(i) Licensee may surrender any license by providing not less than fifteen (15) days prior written notice to the Licensor, which notice shall be substantially in the form of Exhibit 2 and Exhibit 3, attached hereto and incorporated herein, and removing the Licensee's Facilities. Licensor may, at its discretion, conduct a Post-Construction Inspection to verify the

proper removal of Licensee's Attachments and that Licensor's facilities are in the same condition as they were prior to the Attachment of Licensee's Facilities, normal wear and tear excepted. The license shall terminate on the date the Licensee's Facilities are removed, and shall be reflected in the next billing cycle in accordance with the Billing and Payment provisions contained in Section VI hereof.

(ii) Following such removal by Licensee, no Attachment shall again be made to such Pole by Licensee until Licensee complies with the provisions of this Agreement as though no such Attachment previously had been made.

## **V. FEES AND CHARGES**

### **(a) General**

The Licensee is responsible for payment of all rates, rents, fees, charges and Costs as specified in this Agreement, the Operating Procedures or Tariff.

### **(b) Non-Refundable Payment**

Licensee shall be responsible for payment of all charges in connection with the Pre-construction Survey and Make-Ready Work, payable in advance for work performed or expenses incurred by the Licensor.

### **(c) Application Fee**

Upon submission of an application for a license pursuant to this Agreement, Licensee shall pay to Licensor a non-refundable application fee as set forth in the Licensor's Operating Procedures.

### **(d) Annual Pole Attachment Rent**

(i) The Annual Pole Attachment Rate for each licensed Attachment shall be the rate set forth in the Licensor's Tariff filed with and approved by the Commission. The total Annual Pole Attachment Rent due hereunder shall be calculated and paid as set forth in the Operating Procedures.

(ii) Changes in the Annual Pole Attachment Rental Rate approved by the Commission shall be effective and payable by Licensee in accordance with the order or determination by the Commission.

### **(e) Security Deposit/Prepayment**

(i) Licensee shall furnish evidence of financial security, satisfactory to Licensor, in an amount sufficient to guarantee the payment of any sums which may become due to the Licensor for Annual Pole Attachment Rent, fees and other charges due or to become due to the Licensor hereunder, including the removal of Licensee's Facilities upon expiration or termination of this Agreement or any license issued hereunder. Such financial security shall be

sufficient to guarantee payment of any additional sums which may become due to Licensor, including the removal of any Unauthorized Attachments made to Licensor's Poles prior to execution of this Agreement, and the restoration of Licensor's Facilities.

(ii) Licensee, at the option of the Licensor, shall furnish a cash deposit, bond, irrevocable Letter of Credit or other security satisfactory to the Licensor in the amount and on the terms set forth in the Operating Procedures.

(iii) The amount of any financial security shall not operate as a limitation upon the obligations of the Licensee hereunder.

(iv) Licensee shall meet the credit requirements of Licensor, and will provide, upon written request of Licensor and subject to the Confidentiality provisions contained in Section XVIII hereof, to Licensor such financial information as is necessary for Licensor to conduct a credit review. Should the creditworthiness (defined as minimum investment grade for senior securities as rated by Standard & Poor's Ratings Group and Moody's Investors Service), financial responsibility or ability to perform of Licensee reasonably become unsatisfactory to Licensor during the term of this Agreement, satisfactory assurances may be required as a condition to further performance under the Agreement. Such assurances include, but are not limited to, a prepayment, a letter of credit in a form and amount satisfactory to Licensor, or a parent guarantee in an amount and form satisfactory to Licensor.

(f) Pre-construction Survey Costs

(i) Pre-construction Survey Costs shall be cost based and calculated based upon the charges set forth in the Operating Procedures.

(ii) If Licensor performs a Pre-construction Survey and Licensor's employees must work overtime in order to meet the deadline for completing the Pre-construction Survey, Licensor shall notify Licensee of such overtime requirement, and if Licensee approves of such overtime, Licensee shall pay such overtime costs incurred by Licensor. If Licensee does not reject overtime within three (3) Business Days after receipt of the notice provided hereunder, then such overtime shall be deemed approved.

(iii) In the event Licensor cannot complete the Pre-construction Survey work within the time set forth in the Operating Procedures using Licensor's employees, Licensor may utilize a contractor for such work. If Licensor employs such contractor, the Licensor shall provide prior written notice to Licensee of the contracted activities and of any changes in the Pre-construction Survey Costs resulting from such contract. Licensor, upon written notice to Licensee, may assign personnel to oversee such contractor's activities, and the Cost of Licensor's personnel providing such oversight shall be paid by Licensee.

(iv) If Licensor employs a contractor to perform the Pre-construction Survey, Licensee shall pay to Licensor an amount equal to the contractor's costs and charges plus ten percent (10%) of those costs and charges. Contractually required overtime costs necessitated by the use of outside contractors, if any, will be charged as provided in the Operating Procedures. Licensor, upon written request of Licensee, shall make available copies of all written contracts,



agreements, understandings and work orders pertinent to the Pre-construction Survey activities performed by such contractors employed by Licensor.

(v) In the event Licensor cannot complete the Pre-construction Survey work within the time set forth in the Operating Procedures using Licensor's employees, or Licensor does not utilize a contractor to perform such work. Licensee may hire an approved contractor from the list of approved contractors maintained by the Licensor. Licensor, upon written notice to Licensee, may assign personnel to oversee such contractor's activities, and the Cost of Licensor's personnel providing such oversight shall be paid by Licensee.

(vi) If Licensee submits an application to Joint Owners, and Joint Owners have appointed an Administrator to coordinate the Attachment process, the cost of such Administrator shall be included in the Licensor's Pre-construction Survey Costs.

(g) Make-Ready Work Costs

(i) Make-Ready Work Costs shall be cost based and calculated based upon the charges set forth in the Operating Procedures.

(ii) Licensor shall submit an estimate of Make-Ready Work Costs to Licensee within fourteen (14) days after completion of the Pre-construction Survey. In the event such estimate is not provided to Licensee within the required time hereunder, the time for Licensor to complete Make-Ready Work shall be reduced by the number of days beyond the fourteen (14) days that it took Licensor to provide the estimate.

(iii) Licensee must pay Make-Ready Work Costs within fourteen (14) days of receipt of the Make-Ready Work estimate, provided, however, that upon receipt of such estimate, Licensee may request, in writing, information and data used by Licensor to calculate the amount of the estimate. In connection with such estimate, Licensor, at the request of Licensee, will provide Licensee with necessary documentation to support the calculation of loaded labor rates. If an estimate utilizes unit costs, however, such costs are not subject to negotiation by the Licensee.

(iv) In the event Licensee questions or disputes any Make-Ready Work estimate, or any portion thereof, the Parties will meet as soon as practicable to make a good faith effort to resolve such questions or disputes.

(v) Licensor shall not be obligated to commence or continue any Make-Ready Work, until it has received payment of the Make-Ready Work estimate from the Licensee, and any additional amounts due as a result of the use of a contractor or change in scope of work as provided herein. In the event Licensee disputes the Make-Ready Work estimate or additional amounts due, or any part thereof, Licensor shall not be required to commence or continue any work unless and until Licensor pays the full amount that is not in dispute plus fifty percent (50%) of the disputed amount.

(vi) Make-Ready Work estimates shall be binding for the scope of work described in such estimate for sixty (60) days from the date such estimate is received by the Licensee. Any change to the scope of work may result in a change in the Make-Ready Work

estimate, which change shall be submitted to Licensee for payment prior to commencing work covered by such change.

(vii) If Licenser does not receive payment for the Make-Ready Work estimate, as revised or determined in connection with the resolution of any dispute, within sixty (60) days, Licenser shall deem Licensee's application as having been withdrawn.

(viii) In the event Licenser cannot complete the Make-Ready Work within the time set forth in the Operating Procedures, Licenser, as set forth in the Operating Procedures, may utilize a contractor for such work. If Licenser employs such contractor, the Licenser shall provide prior written notice to Licensee of such contracted activities and of any changes in the Make-Ready Work estimate resulting from such contract. Licenser, upon written notice to Licensee, may assign personnel to oversee such contractor's activities, and the Cost of Licenser's personnel providing such oversight shall be paid by Licensee.

(ix) If Licenser employs a contractor to perform Make-Ready Work, Licensee shall pay to Licenser an amount equal to the contractor's costs and charges plus ten percent (10%) of those costs and charges. Contractually required overtime costs necessitated by the use of outside contractors, if any, will be charged as provided in the Operating Procedures. Licenser, upon written request of Licensee, shall make available copies of all written contracts, agreements, understandings and work orders pertinent to Make-Ready Work performed by such contractors employed by Licenser. Licenser, upon written notice to Licensee, may assign personnel to oversee such contractor's activities, and the cost of Licenser's personnel providing such oversight shall be paid by Licensee.

(x) Licenser shall not be obligated to commence or continue any Make-Ready Work, until it has received payment of the Make-Ready Work estimate from the Licensee, and any additional amounts due as a result of the use of a contractor or change in scope of work as provided herein. In the event Licensee disputes the Make-Ready Work estimate or additional amounts due, or any part thereof, Licenser shall not be required to commence or continue any work unless and until Licenser pays the full amount that is not in dispute plus fifty percent (50%) of the disputed amount.

(xi) If Licenser or its contractor performs the Make-Ready Work, Licenser shall notify Licensee within three (3) Business Days of the completion of the Make-Ready Work set forth in the Make-Ready Work estimate.

(h) Post-Construction Inspection Costs

(i) Post-Construction Inspection Costs shall be cost based and calculated based upon the charges set forth in the Operating Procedures.

(ii) The Cost of the Post-Construction Inspection may be billed in advance with the charges for Make-Ready Work. If Licenser elects to conduct a Post-Construction Inspection, and the cost of such inspection was not billed with the Make-Ready Work estimate, Licenser shall invoice Licensee for such inspection at the time Licenser provides Licensee notice of the Post-Construction Inspection. Licensee shall pay such invoice within five (5) Business Days of receipt of the same.

(iii) If Licensors employ a contractor to perform the Post-Construction Inspection, Licensee shall pay to Licensors an amount equal to the contractor's costs and charges plus ten percent (10%) of those costs and charges. Contractually required overtime costs necessitated by the use of outside contractors, if any, will be charged as provided in the Operating Procedures. Licensors, upon Licensee's written request, shall make available copies of all written contracts, agreements, understandings and work orders pertinent to the Post-Construction Inspection performed by such contractors employed by Licensors.

(iv) If a Violation, Serious Violation or other failure to properly attach Licensee's Facilities is discovered during an inspection by Licensors, or review of an inspection by Licensors or otherwise, Licensee shall, at its cost and expense, correct such Violation, Serious Violation or failure immediately, and pay the Licensors' Cost of the Subsequent Inspection or review of the correction.

(v) If Licensee fails to correct a Violation, Serious Violation or other failure to properly attach Licensee's Facilities within thirty (30) days, or ten (10) days in the case of a Serious Violation or such other time as may be required hereunder, after notice from the Licensors, Licensors may correct the same. Licensee shall reimburse Licensors for Costs incurred by Licensors in correcting such Violation, Serious Violation or other failure to properly attach Licensee's Facilities.

(vi) Such inspection shall not limit Licensors' right to inform Licensee of Violations, Serious Violations or other failure to properly attach Licensee's Facilities found by Licensors at times other than during a Post-Construction Inspection.

(i) Periodic Inspections

(i) Periodic Inspection Costs shall be cost based and calculated based upon the charges set forth in the Operating Procedures.

(ii) The Cost of a Periodic Inspection by Licensors or its designee will be billed to and paid by Licensee prior to commencement of the inspection by the Licensors. Licensors shall provide Licensee with the results of such inspection.

(iii) If Licensors employ a contractor to perform the Periodic Inspection, Licensee shall pay to Licensors an amount equal to the contractor's costs and charges plus ten percent (10%) of those costs and charges. Contractually required overtime costs necessitated by the use of outside contractors, if any, will be charged as provided in the Operating Procedures. Licensors, upon written request of Licensee, shall make available copies of all written contracts, agreements, understandings and work orders pertinent to the Periodic Inspection performed by such contractors employed by Licensors.

(iv) In the event a Violation, Serious Violation or other failure to properly attach Licensee's Facilities is discovered during such inspection, Licensors shall notify Licensee of such discovery, and Licensee shall, at its cost and expense, correct such Violation, Serious Violation or other failure to properly attach Licensee's Facilities and pay the Licensors' Cost of the Subsequent Inspection or review of the correction. If Licensors' notice identifies the Violation as a Serious Violation, Licensee must correct the same within ten (10) days after

receipt of notice. Except as otherwise provided herein, all other Violations or other failure to properly attach Licensee's Facilities must be corrected within thirty (30) days after receipt of such notice.

(v) If Licensee fails to correct a Violation, Serious Violation or other failure to properly attach Licensee's Facilities in the time provided above, Licensors may correct the same. Licensee shall reimburse Licensors for Costs incurred by Licensors in correcting such Violation, Serious Violation or other failure to properly attach Licensee's Facilities.

(vi) Such inspection shall not limit Licensors' right to inform Licensee of Violations, Serious Violations or other failure to properly attach Licensee's Facilities found by Licensors at times other than during a Periodic Inspection.

(j) Subsequent Inspections

(i) Subsequent Inspection Costs shall be cost based and calculated based upon the charges set forth in the Operating Procedures.

(ii) The Cost of a Subsequent Inspection will be billed to the Licensee upon completion of the inspection by the Licensors. Licensors shall provide Licensee with the results of Subsequent Inspections where Violations, Serious Violations or other failure to properly attach Licensee's Facilities have not been corrected.

(iii) If Licensors employ a contractor to perform the Subsequent Inspection, Licensee shall pay to Licensors an amount equal to the contractor's costs and charges plus 10 percent (10%) of those costs and charges. Contractually required overtime costs necessitated by the use of outside contractors, if any, will be charged as provided in the Operating Procedures. Licensors, upon written request of Licensee, shall make available copies of all written contracts, agreements, understandings and work orders pertinent to the Subsequent Inspection performed by such contractors employed by Licensors.

(iv) If Licensee failed to correct a Violation, Serious Violation or other failure to properly attach Licensee's Facilities as required by Section V(h) or V(i), Licensors may correct such Violation, Serious Violation or other failure to properly attach Licensee's Facilities or at Licensors' option, terminate this Agreement. Licensee shall reimburse Licensors for Costs incurred by Licensors in correcting such Violation, Serious Violation or other failure to properly attach Licensee's Facilities.

(v) Subsequent Inspections may be made at any time by the Licensors to determine if the appropriate actions have been taken by the Licensee to correct Violations, Serious Violations or other failure to properly attach Licensee's Facilities found during the Post-Construction Inspection or Periodic Inspection or at any other time by Licensors.

(k) Changes in Make-Ready Charges

Unless otherwise prescribed by the Commission, the Licensors may, once each year, change its Make-Ready Work and other charges hereunder upon thirty (30) days prior written notice to Licensee.

(l) Unauthorized Attachments

(i) If any equipment and/or facilities of the Licensee shall be found attached to a Pole and/or Anchor for which an authorization or license has not been granted by the Licensor, the Licensor, without prejudice to any other rights or remedies it may have under this Agreement, including termination, at law or in equity, may impose a charge and require the Licensee to submit, within ten (10) days, an application as provided in this Agreement for the Unauthorized Attachments. If such application is not received by the Licensor within the specified time period, the Licensee will be required to remove its Unauthorized Attachment within ten (10) days of the final date for submitting the required application, or the Licensor may remove the Licensee's Facilities without liability, and the Cost of such removal and disposal, or return to Licensee, if requested by Licensee, shall be borne by the Licensee.

(ii) If any equipment and/or facilities of the Licensee shall be found attached to a Pole and/or Anchor and were made prior to execution of this Agreement, or any prior existing Agreement, between Licensee and Licensor, then Licensee shall pay Licensor \$500 per such Unauthorized Attachment. Licensee shall be required to remove all such Unauthorized Attachments made prior to execution of a pole attachment agreement with Licensor within ten (10) days of notification from Licensor identifying such Unauthorized Attachments and requesting removal, or the Licensor may remove the Licensee's Facilities without liability, and the Cost of such removal and disposal, or return to Licensee, if requested by Licensee, shall be borne by the Licensee.

(iii) Except as otherwise provided herein, if Licensor and Licensee have stipulated to or performed an audit of the Licensee's Facilities that are on Licensor's Poles and Anchors, and it is later determined that Licensee has any Unauthorized Attachments, the Licensee shall pay Licensor upon receiving a bill from Licensor, an amount equal to three (3) times the current Annual Pole Attachment Rental Rate times the number of Unauthorized Attachments times the number of years, or portions thereof, between the date of the stipulation or completion of the audit and the dates the Unauthorized Attachment is corrected or removed. Other charges and fees applicable to Attachments will also be billed for Unauthorized Attachments, as may be appropriate. The provisions of this paragraph (iii) shall apply to Unauthorized Attachments on Licensor's facilities on a prospective basis after the stipulation is signed or the audit is completed.

(iv) If Licensor and Licensee fail to stipulate to the number of Attachments, and until an audit is completed, the provisions relating to Unauthorized Attachments, including the payment obligations for Unauthorized Attachments in the pole attachment agreement between the Parties in effect immediately prior to the Effective Date of this Agreement, shall survive the termination or expiration of the prior agreement, and continue in full force and effect and be controlling as if incorporated herein and made a part hereof. If Licensor and Licensee do not have a prior pole attachment agreement, then the provisions of paragraph (ii) shall apply to all Unauthorized Attachments made prior to the Effective Date of this Agreement.

(v) In the event the parties enter into a stipulation or a Party or the Parties conduct an audit, and Unauthorized Attachments are disclosed in the stipulation or discovered during the audit, the provisions of paragraph (iv) preceding will apply to Unauthorized

Attachments for the period prior to and including the date of the stipulation or the completion of the audit, and the provisions of paragraph (iii) will apply to Unauthorized Attachments subsequent to the date of the stipulation or the completion of the audit until such Unauthorized Attachments are corrected or removed.

(vi) If Unauthorized Attachments are found on a Pole and such Attachment causes excessive Pole loading, or the Pole to be inadequately guyed or anchored, and if Licensee does not install the necessary Guys or Anchors or do such other work, including the necessary work to relocate and/or modify Licensee's Facilities, if such work can be done safely by Licensee or its contractors, to meet the applicable Standards within five (5) days of notification by the Licensor, the Licensor will install the necessary Guys and Anchors or do such other Make-Ready Work to meet Standards, and the Cost thereof shall be borne by the Licensee. Such Make-Ready may include but is not limited to correction of NESC Violations, rearrangement of existing attachments, reinforcement, replacement, or other modifications required as a result of Licensee's Unauthorized Attachment. In connection with the foregoing, Licensor may require Licensee, at its cost and expense to perform the work, analyses and Assessment for Unauthorized Attachments as is required by Section IX(c)(vii) relating to Overlashing.

(vii) No act or failure to act by the Licensor with regard to said Unauthorized Attachment shall be deemed as the authorization of the Unauthorized Attachment; and, if any authorization should be subsequently issued, said authorization shall not operate retroactively or constitute a waiver by the Licensor 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 regard to said Unauthorized Attachment from its inception. In the event Licensee is required to remove Unauthorized Attachments to a Pole and wishes to re-attach its facilities to such Pole, Licensee shall be required to comply with the application requirements set forth in Section VII of this Agreement. Notwithstanding any of the foregoing provisions, if Licensor does not, for any reason, elect to remove Licensee's Unauthorized Attachments itself, then Licensee shall be required to remove the Unauthorized Attachments in accordance with this Section. If Licensee fails to remove the Unauthorized Attachments in the required time period, then Licensee shall pay Licensor an additional \$100 per Unauthorized Attachment per month until such Unauthorized Attachments are removed by Licensee.

(m) Right to Refuse Pole Applications

(i) Notwithstanding anything in this Agreement to the contrary, no pole attachment application will be accepted from, and no pole attachment license will be granted to, any prospective Licensee which has attached to any pole solely or wholly owned by Licensor which prospective Licensee does not have a fully executed Pole Attachment Agreement with Licensor, or which has attached to any such pole without a valid license issued by Licensor.

## **VI. BILLING AND PAYMENT**

### **(a) Invoice**

(i) Licensors, in accordance with the Operating Procedures, shall render an invoice to Licensee for all fees payable to, including those based on estimates, and charges incurred by Licensors at the address set forth in the Notice provision in Section XVII hereof.

(ii) In the event that Licensee claims that an invoice was not received, the Licensors will provide, by electronic medium or facsimile, a duplicate copy of the invoice, and Licensee shall pay such invoice on the later of the original due date or ten (10) days after receipt of the second invoice.

(iii) All payments due hereunder shall be made at the time and by the method of payment set forth in the Operating Procedures.

### **(b) Payment Due**

(i) Unless otherwise specifically provided in this Agreement or in the Operating Procedures, Licensee shall pay all invoices within thirty (30) days from the dates of billing thereof.

(ii) If any portion of an amount billed by Licensors under this Agreement is disputed in good faith by the Licensee, the Licensee shall give written notice to Licensors of the amount it disputes ("Disputed Amount") and include in such notice the specific details and reasons for disputing each item. Notice of a dispute may be given by Licensee, either before or at the time payment is made. Licensee's payment of a Disputed Amount shall not constitute a waiver of Licensee's right to subsequently seek a refund of any amount paid. The Licensee shall pay all undisputed amounts by the due date. All Disputed Amounts shall be paid within ten (10) days after the dispute has been resolved, with interest from the date payment was originally due until the date of payment.

(iii) Failure to present invoices to the Licensee in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges by the Licensors under this Agreement, and the Licensee shall not be entitled to dispute the Licensors' statement based on the Licensors' failure to submit invoices in a timely fashion.

### **(c) Interest**

In the event Licensee fails to pay an amount due and owing within the period of time set forth for payment in this Agreement or in the Operating Procedures, interest shall accrue on the unpaid balance thereof at the rate of one and one-half percent (1 1/2%) per month from the date payment was originally due until payment is received by Licensors.

### **(d) Dishonored Payment Charge**

Should the Licensors agree to receive a negotiable instrument from a Licensee in payment of any invoice, and such instrument is subsequently dishonored by any financial

institution or is uncollectible for any reason, the Licensee shall pay, in addition to the amount due with interest, a handling charge equal to the financial institutions' handling and other applicable charges, as such charges may be modified from time to time, plus any costs incurred by Licensor in processing any dishonored payment.

## **VII. LICENSING PROCESS**

### **(a) Operating Procedures**

(i) Licensor shall develop and make available to Licensee by posting on Licensor's website, if available, Operating Procedures that provide the specific details of the processes and procedures that Licensees must follow to obtain licenses and perform work, for both Attachments and maintenance on or removal from the Licensor's facilities.

(ii) Licensor may change its Operating Procedures on not less than thirty (30) days prior written notice to Licensee. Such change shall take effect on the effective date set forth in such notice and the Parties shall operate in accordance with such change, from and after such effective date, provided, however, that Licensee may dispute such change in accordance with the Dispute Resolution provisions set forth in Section XIV hereof. Any modifications to such change resulting from the dispute resolution process shall be made retroactive to the effective date of such change.

### **(b) Application**

(i) Except as otherwise provided in Section IX(c)(v) hereof relating to Drop Poles, prior to the Licensee attaching Licensee's Facilities to any Pole or Anchor, Licensee shall make written application to Licensor and the Joint Owner of any Poles and have received an executed, revocable, nonexclusive License therefor from all owners of the Pole, which application shall be substantially in the form of Exhibit 4 and Exhibit 5, attached hereto and incorporated herein.

(ii) Licensee shall file complete applications for licenses in accordance with the Operating Procedures. The Operating Procedures set forth the requirements for submitting a complete application, including any applicable fees, number of copies, the address where the application is to be submitted and any limitations on the volume of Poles that may be included in each application. Licensee is required to review the Operating Procedures prior to submitting an application.

(iii) The Licensor will accept applications on a first-come first-served basis and shall endeavor to satisfy the Licensee's designated priority of completions. Licensor will promptly review each application submitted by Licensee for completeness, and notify the Licensee of any deficiencies found during such review. Licensor's failure to notify Licensee of deficiencies after such review does not preclude Licensor from finding and disclosing deficiencies during the approval process or anytime thereafter.

(iv) Licensor shall process an application for a license within five (5) Business Days after receipt of a complete application. An application will not be considered complete if



any required information that is reasonably available to Licensee, as set forth in Exhibit 4 and Exhibit 5 or in the Operating Procedures, is not included with the application. If required information is not reasonably available to the Licensee, the Licensee shall note the same in the appropriate sections of the application, and, if such information is not reasonably available to Licensee for the reason set forth, the application will not be considered incomplete for processing and scheduling purposes. Notwithstanding the foregoing, any required information not submitted with the application shall remain the responsibility of the Licensee if such information is necessary for Licensor to exercise or perform any of Licensor's rights, duties or responsibilities in this Agreement.

(v) If Licensor is unable to review or process an application within the time set forth in (iv) above, because of multiple applications from the Licensee or other reason beyond the reasonable control of Licensor, Licensor shall, within such time period, contact Licensee and propose an alternate schedule to Licensee for processing the applications and commencing the Pre-construction Survey. Licensee shall respond to Licensor's proposal within three (3) Business Days of receipt of the same by either accepting, rejecting or making a counter-proposal. If Licensee rejects or makes a counter-proposal, and the Parties cannot agree on an alternate schedule within five (5) Business Days from Licensor's receipt of Licensee's response, the dispute will be subject to resolution in accordance with the Dispute Resolution Provisions set forth in Section XIV hereof.

(c) Multiple Applicant Attachment Applications

(i) The provisions of the Operating Procedures shall govern the processes and procedures to be used by Licensor in the case of applications received by the Licensor from two or more Applicants for Attachment authorizations on a Pole.

(ii) Where multiple applications are received by Licensor and Licensor cannot meet the time frames for reviewing, processing and completing work as set forth herein, the Licensor and multiple applicants will develop a mutually agreeable processing schedule, order of facility availability and overall Make-Ready Work completion schedule. Where mutual agreement cannot be reached within fifteen (15) days of written notification from the Licensor, the Licensor will process the applications and complete the total Make-Ready Work required for all multiple applicants before simultaneously granting Attachment authorizations to the multiple applicants as set forth in a schedule proposed by Licensor.

(iii) Any multiple applicant who fails to agree to the alternate arrangement and schedule set forth in (ii) above within ten (10) days after being advised in writing of the availability of such alternate arrangement by the Licensor, shall have the right to resolve a dispute in accordance with the Dispute Resolution provisions set forth in Section XIV hereof. All processing and work with respect to the applications of the multiple applicants that are in dispute shall cease pending final resolution of a dispute.

(iv) Pre-construction Survey Costs and Make-Ready Work Costs will be allocated between and among multiple applicants in accordance with the Operating Procedures.

(d) Surveys and Inspections

(i) A Pre-construction Survey will be required for each Pole and Anchor for which Attachment is requested to determine, among other things, the location and nature of other facilities on the Pole and adequacy of the Pole and Anchor to accommodate Licensee's Facilities. Pre-construction Surveys and inspections may be performed:

(1) by Licensor, or a contractor designated by Licensor, and Licensee with optional participation by Joint Owner, Joint User or Other Licensees, or

(2) upon Licensor's explicit written consent, by an approved contractor, selected in accordance with Section VII(f) hereof. If such Pre-construction Survey is performed by an approved contractor, the Licensee shall, prior to commencement of the field inspection, obtain from the Licensor, subject to the confidentiality provisions of this Agreement, information as to the Licensor's planned future construction on the Poles and/or Anchors involved. Licensee shall furnish the required field inspection data to the Licensor in a format specified by the Licensor.

(ii) The Pre-construction Survey data shall be of an accuracy and completeness necessary to permit the performance of Make-Ready Work and other work required to accommodate Licensee's Facilities in a manner consistent with the requirements of this Agreement and the Standards. The Licensee and Licensor may employ contractors to perform the field inspection, and if so, the costs and expenses shall be recoverable in accordance with Section V(f) hereof.

(iii) If Licensee, or its authorized designee, fails to participate in the Pre-construction Survey, and such failure is not caused by Licensor, then Licensee shall have waived its right to challenge or dispute the determination of the Licensor as to the Make-Ready Work needed to attach Licensee's Facilities.

(iv) Licensor shall determine, among other things, whether to accommodate the Attachments of Licensee's Facilities, and whether any rearrangements or changes are necessary to Licensor's facilities so as to meet Standards, and also whether any rearrangements or changes are necessary in the facilities of other Joint Owners, Joint Users or Other Licensees or Wire-Span of all other third parties with attachment rights. The Pre-construction Surveys shall determine whether: (i) any Poles require strengthening (guying and anchoring), (ii) any Poles require placement or replacement, and (iii) Licensee's Facilities need to be bonded or grounded to Licensor's facilities or those of other Joint Owners.

(v) The Operating Procedures specify the typical point of Licensee Attachment on each of the Poles and/or Anchors. Notwithstanding the foregoing, the Licensor may specify a different or unique point of Attachment on any Poles and/or Anchors to be occupied by Licensee's Facilities. Where multiple Licensee's Attachments are involved, the Licensor will attempt, to the extent practical and consistent with Good Utility Practice, to designate the same relative position on each Pole for each of Licensee's Facilities.

(vi) Licensors' inspections of Licensee's Facilities may not be relied upon by the Licensee for any purpose other than the fact that Licensors' requirements were met, and shall in no way diminish Licensee's obligations under this Agreement. Licensors explicitly disclaims any representations and warranties in connection with the facilities of any Joint Owner, other than Licensors, Joint User or Other Licensee.

(e) Make-Ready Work

(i) Unless Licensors inform Licensee that it will not meet the schedule set forth in the Operating Procedures, or such other schedule otherwise agreed to by the Parties, subject to the receipt of multiple applications, the quantity limitations of Poles per application set forth in the Operating Procedures, or other situations beyond the reasonable control of Licensors, including the action or inaction of a Joint Owner, Joint User or Other Licensee, Licensors shall adhere to the following timetable in the performance of Make-Ready Work:

(1) If Make-Ready Work is required and there are Other Licensees with Attachments on the Poles, Licensors shall notify all such Other Licensees describing the proposed modifications to such Other Licensees' facilities to the Poles and/or Anchors based on Licensee's application. Licensors, at its option, may redesign the Make-Ready Work to accommodate reasonable concerns raised by Other Licensees.

(2) If Licensors designs the Make-Ready Work, or redesigns the Make-Ready Work, to incorporate any additional requirements submitted by Other Licensees, the Make-Ready Work estimate will be prepared or revised to include the Costs of addressing the requirements or concerns of the Other Licensees.

(3) Licensors shall complete all Make-Ready Work within forty-five (45) days of receipt of payment by Licensee of the Make-Ready Work estimate.

(4) If Licensors is unable to meet the time periods for completing the Make-Ready Work, as required hereunder, Licensors may utilize a contractor to perform such work, and the costs associated with such contractor shall be recoverable in accordance with Section V(g) hereof. Upon explicit written consent from Licensors, Licensee may hire an approved contractor selected in accordance with Section VII(f) hereof to complete Make-Ready work. Licensors may assign personnel to oversee such contractor's activities, and the cost of Licensors' personnel providing such oversight shall be paid by Licensee.

(ii) In the event the Licensors determines that a Pole to which Licensee desires to make Attachments is inadequate or that a Pole or Anchor needs rearrangement of the existing facilities thereon to accommodate the Licensee's Facilities, the Licensors will include the Cost of such replacement or rearrangement as a part of the Make-Ready Work estimate.

(iii) Licensee shall reimburse each owner of other facilities attached to said Poles or Anchors for any expense incurred by them in transferring or rearranging such facilities to accommodate Licensee's Facilities.

(iv) When additional Make-Ready Work or related work is required as a result of circumstances beyond either Party's control, including but not limited to storms, vehicular accidents, or public work projects, Licensee is responsible for the timely repairing, relocating, removing or replacing of Licensee's Facilities.

(f) Use of Contractors

(i) In the event Licensee is authorized to use a contractor for surveys, inspections or Make-Ready Work because Licensor or Licensor's contractor is unable to meet a deadline such contractor hired by Licensee must be selected from the list of approved contractors maintained by the Licensor and provided to the Licensee upon request.

(ii) If Licensee wishes to use a contractor not on Licensor's approved list of contractors and such contractor has been previously reviewed and found qualified by the Licensee, the Licensee may submit such contractor to Licensor for review and approval. Licensee shall provide Licensor with such contractor's name and qualifications and such other information reasonably requested by Licensor. In considering such contractor, Licensor shall apply the same tests and requirements Licensor applied to those contractors on the approved list. Notwithstanding the foregoing, Licensor provides no warranty for or has any liabilities associated with the Licensee's contractor's performance.

(g) Use of One-Touch-Make-Ready Process

(i) the One-Touch-Make-Ready ("OTMR") process set forth in 47 C.F.R. § 1.1411(j) shall be available to Licensee for all Make-Ready work on attachments requiring only Simple Make-Ready work. Licensee shall provide required notice to Licensor and all affected attachers of its intent to utilize the OTMR process at the time of application.

(ii) Licensee shall use a qualified contractor, who is pre-approved by the Licensor, to complete the construction of its attachments and comply with all other standards and specifications in constructing and maintaining its attachments. The qualified contractor shall be subject to the provisions of this Agreement and shall submit all relevant proof of insurances and performance securities to Licensor prior to commencing any work on Licensor's facilities.

(iii) Notwithstanding the foregoing, OTMR shall only be permitted if it does not conflict with existing collective bargaining agreements governing Make-Ready work.

(h) Issuance of License

Upon completion of the Make-Ready Work of all Persons performing such work, Licensor will: (i) inform Licensee, any Joint Owner and any other third parties of such completion within three (3) Business Days, and (ii) issue any applicable Licenses to the Licensee substantially in the form of Exhibit 4 and Exhibit 5. Licensee shall not attach to any Poles until Make-Ready Work is completed by all Joint Owners, Joint Users and /or Other Licensees. Any Attachments made prior to issuance of a License shall be considered Unauthorized Attachments and License shall be required to pay all Costs caused by such Unauthorized Attachments in accordance with Section V.(l)(vi).

(i) Post-Construction Inspection

(i) Licensee shall provide written notice to the Licensors, not less than fifteen (15) days prior to performing work on a Pole, of the exact Pole locations where Licensee's Facilities are to be constructed, and shall also notify the Licensors in writing of the actual dates of Attachment, including Overlashing, within five (5) days after the dates of such Attachments.

(ii) Within thirty (30) days after written notice from Licensee of completion of construction of Licensee's Facilities by Licensee, Licensors, on not less than three (3) Business Days notice to Licensee, may perform or utilize a contractor to perform a Post-Construction Inspection. Licensee shall notify Licensors at least twenty-four (24) hours prior to the inspection if Licensee intends to participate in such inspection. The purpose of such Inspection is to (i) inspect for compliance with prior agreed-to Attachment locations, (ii) inspect for compliance with the requirements of the Standards and (iii) confirm that a License has been applied for and issued for each Licensee's Attachment. Licensors will inform Licensee in writing as to any such Post-Construction Inspection work which needs to be performed. Any Post-Construction Inspection work required as a result of such Inspection will be completed at Licensee's expense. All work required to be performed as a result of Violations or Serious Violations will only be performed by properly qualified personnel.

(iii) Licensee, upon not less than three (3) Business Days prior notice to Licensors, and with the consent of the Licensors, may perform a Post-Construction Inspection within thirty (30) days after completion of construction by Licensee. Upon completion of such inspection, Licensee shall notify the Licensors, and provide Licensors with such data and information reasonably requested by Licensors for Licensors to ensure Licensee's compliance with the terms of the license and the provisions of this Agreement.

(iv) Licensors shall have thirty (30) days after receipt of all data and information requested to complete its review and inform the Licensee of any Violations, Serious Violations or other failure to properly attach Licensee's Facilities.

## **VIII. SPECIFICATIONS AND LEGAL AUTHORITY**

(a) Standards and Specifications

(i) Licensee's Facilities shall be placed, maintained, relocated or removed in accordance with the Applicable Standards and Specifications. Licensors may provide for more stringent Specifications or Standards than those provided hereunder. Where a difference in Specifications or Standards may exist, the more stringent shall apply. Licensee's Facilities shall not physically, electronically or inductively interfere with the Licensors's facilities or the facilities of Joint Owners, Joint Users or Other Licensees located on the Pole or Anchor.

(ii) If any part of Licensee's Facilities are not placed, maintained, relocated or removed in accordance with the Standards, Licensee shall correct such Violations or Serious Violations immediately. If Licensee fails to correct said Violations within thirty (30) days or Serious Violations within ten (10) days after written notice to the Licensee, the Licensors may correct said Violations or Serious Violations. However, when such Violations or Serious

Violations pose an immediate threat to the safety of the Licensor's employees, interfere with the performance of the Licensor's service obligations, or pose an immediate threat to the physical integrity of the Licensor's facilities, the Licensor may perform such work and/or take such action that the Licensor deems necessary without prior notice to Licensee. The Cost of Licensor's work and/or actions shall be borne by Licensee.

(iii) Subject to the Applicable Laws, each of the Licensee's Facilities shall be marked near each point of attachment in such a manner as to allow identification of the ownership of Licensee's Facilities. In addition, each Pole at intersecting roads shall be tagged by Licensee in such a manner as to permit Licensee's Facilities to be readily identified from the ground. Licensee's Pole tag shall have sufficient information to identify the owner of the Facilities and the form shall be preapproved by Licensor.

(b) Legal Authority

(i) The rights granted to Licensee under this Agreement are granted pursuant to the terms of the applicable contracts, deeds, agreements, easements, leases, licenses, permits or franchises conveying to Licensor its individual legal rights in the property. It is understood that Licensor's rights may not be sufficiently broad under law to permit Licensee to use a Pole or real property where Licensor's facilities are located. In any instance where it is determined that the Licensor's rights may not be sufficiently broad under law to permit Licensee to use a Pole or real property, Licensee shall obtain the required consent, authority or land use rights directly from the necessary third parties. All costs and expenses arising out of, in connection with or as a consequence of obtaining such required consents, authority or land use rights (including, but not limited to, settlements made with fee owners to purchase land use rights) shall be paid by Licensee.

(ii) On making application for a license to attach to Licensor's poles, Licensee shall submit to Licensor, upon Licensor's request or if required by Licensor's application, or Operating Procedures, evidence satisfactory to Licensor, of Licensee's lawful authority to place, maintain and operate its facilities within the public streets, highways, and other thoroughfares and public places of the municipalities in which the Poles are located. Licensee shall be deemed to have represented on making an application to attach to Licensor's Poles that it has for the Pole, or has applied for, (1) easements or licenses from the owner of private property affected or such other lawful right, applicable to the specific situation or location involved, granted pursuant to statute, ordinance or Court decision granting Licensee the right to place, maintain and operate its facilities at the location of the Pole, including permission to trim trees in accordance with the requirements of the Operating Procedures, in order to keep Licensee's Facilities free from interference, and (2) all necessary permits and consents from Federal, state, county and municipal authorities.

(iii) It is expressly understood that Licensor makes no representation that such easements, licenses, permits, consents or purported legal rights referred to in Section VIII(b)(i) are sufficient, proper, appropriate or valid. Licensee agrees that it will not represent to property owners or to the public generally that easements, permits and consents granted to Licensor accrue to the Licensee. Licensor expressly disclaims any warranty or representation that the easements, rights-of-way or permissions granted by property owners, municipalities or others

relating to Licensor's Poles and the attachments of Licensor, Joint Owners and Joint Users will cover or apply to Licensee's Attachments or activities under this Agreement. Licensee's obligation to indemnify and defend Licensor, as provided herein, shall expressly extend to any claims by third parties concerning Licensee's Attachment to Licensor's facilities.

(iv) Where Licensor has an easement over a public or private rights-of-way sufficiently broad under New York State law to permit the Attachments, Licensee shall not be required to obtain independent permission of the municipality or property owner to attach. Licensor shall not be required to obtain permission for Licensee to use rights-of-way where the existing easement is not broad enough to allow such usage. Licensor, at Licensee's expense, shall make available to Licensee copies of all relevant real property records and easements in Licensor's possession. In any other case, where the Licensor seeks to obtain any necessary permission from a property owner for Licensee's Facilities, the fully allocable costs of such efforts shall be paid by Licensee together with the Make-Ready Work Costs, if any.

(v) Licensee will exercise due care when upon the property owner's property, and take reasonable steps to inform such property owner prior to making any Attachments to or performing tree trimming around or near Licensor's facilities.

## **IX. USE AND MAINTENANCE OF FACILITIES**

### **(a) Licensor**

Any license granted to Licensee is at all times subject and subordinate to Licensor's statutory duty to supply uninterrupted, safe and reliable service. Notwithstanding anything to the contrary, if at any time in the sole judgment of Licensor, consistent with Good Utility Practice, Licensor's ability to fulfill its statutory duty may be threatened by reason of Licensee's Facilities, or other condition that so threaten Licensor's ability and impacts Licensee's Facilities, Licensee shall immediately comply with any request of Licensor to remove or alter its Attachments. If Licensee shall fail to comply with any request made hereunder, Licensor shall have the right, at Licensor's option, to remove, rearrange or alter the Licensee's Facilities at the Licensee's cost and expense, cancel any license or terminate this Agreement, which cancellation or termination shall be effective immediately upon removal of the Licensee's Facilities.

### **(b) Attachment of Licensee's Facilities**

(i) Licensor, at its option, may require Licensee, during periods of construction of Licensee's Facilities, to inform Licensor, at stated intervals, of the exact locations of construction. Licensor may conduct reasonable inspections of such construction in progress in lieu of or in addition to a Post-Construction Inspection. Any such inspection shall be at the expense of the Party designated in accordance with the terms and conditions of this Agreement.

(ii) In the event that deficiencies constituting Violations or Serious Violations in Licensee's Attachments are discovered, or if it is determined by Licensor that any hazardous or unsafe condition exists, the Licensor, in addition to any other rights or remedies Licensor may have, may prohibit Attachment of any other facilities until such deficiency or condition is

remedied. In the event that Attachments to the Pole have been made, Licensor may require correction of any and all such deficiencies before commencement of operation of any Licensee's Facilities attached to such Poles, or require Licensee to cease operations immediately until the deficiencies are corrected.

(iii) Licensor also reserves the right to require Licensee to stop any work on the Licensor's facilities if, in Licensor's opinion, Licensee's activities involve any safety Violations or Serious Violations, including Violations or Serious Violations of the Occupational Safety and Health Act of 1970 and any regulations issued pursuant thereto, which could affect employees or contractors, Persons working on or in close proximity to the Poles and facilities thereon or the public generally. Licensor shall not be liable for any delays or other costs relating to any such stoppage. Licensee may not resume work unless and until Licensee notified Licensor, in writing, that the Violation or Serious Violation has been corrected, and Licensor authorizes the Licensee, in writing, that Licensee or its contractor may resume work.

(c) Special Attachments

(i) Temporary Attachments

Temporary Attachments can be made by Licensee if such Attachments can be made in a safe and reliable manner in accordance with applicable Standards.

(1) Temporary Attachments may be permitted only when (a) such Attachments meet all applicable Standards, (b) such Attachments utilize equipment that was manufactured for the intended use, (c) Licensor or a contractor selected by the Licensor will not be able to complete the Make-Ready Work within the prescribed time for completing such work or (d) other impediments prevent access to the Pole. Licensee shall provide not less than ten (10) days prior written notice to Licensor if Licensee intends to make a Temporary Attachment, which notice must specify the reason for such Attachment, the location where such Attachment will be made, and the date such Attachment will be made. If Licensor shall notify the Licensee, within three (3) Business Days of receipt of Licensee's notice, that Licensor believes that such Temporary Attachment is not authorized, or other reason why such Temporary Attachment cannot be made, the Parties shall meet to resolve the situation. The Parties, if unable to reach a mutual agreement, will resolve any dispute in accordance with the Dispute Resolution provisions set forth in Section XIV hereof.

(2) Licensee shall be required to pay for any Pre-construction Survey or Make-Ready Work necessary for a Temporary Attachment and for the change from a temporary to a permanent Attachment. The Pre-construction Survey and Make-Ready Work for Temporary Attachments shall be completed within a reasonable time agreed to by the Parties.



(3) All Temporary Attachments shall be replaced with permanent Attachments, at Licensee's expense, within thirty (30) days after receipt of notification from Licensors that the Make-Ready Work for the permanent Attachment is completed.

(ii) Rebuilds or Upgrades

(1) Licensee shall provide written notification to Licensors not later than thirty (30) days prior to commencement of Temporary Attachment work by Licensee. Temporary Attachments shall be permitted as provided herein for facilities of Licensee. Receipt of notice from Licensee will serve as a reservation for the Licensee of Licensee's intent to work in the area, subject to prior notifications from other Persons and to emergency situations or Licensors' existing plans for such area. If Licensors have existing plans for the area that would prohibit Temporary Attachments or if Temporary Attachments would interfere with existing plans or rights of Joint Owners, Joint Users or Other Licensees, then Licensors shall disclose the same to Licensee, subject to the Confidentiality provisions set forth in Section XVIII hereof. Any disputes involving the conflicting plans and rights of Persons in connection with rebuilds and upgrades shall be resolved between the Persons involved, or, if no agreement can be reached, any disputes may be resolved in accordance with the Dispute Resolution provisions set forth in Section XIV hereof.

(2) A Pre-construction Survey and pole loading analysis acceptable to Licensors, and any other analysis required by the Operating Procedures, shall be conducted by the Licensee intending to temporarily attach. The survey data and results of such analysis shall be provided to Licensors prior to making any Temporary Attachments, and shall demonstrate that such Temporary Attachments will meet the Standards and not excessively burden the Poles and Anchors.

(3) If the proposed Temporary Attachments meet the permitted span tensions and other requirements set forth in the Standards and provisions of this Agreement, then Temporary Attachments shall be permitted to the prescribed maximum loads authorized for the specified span tension. Where the analysis shows that the Temporary Attachments will result in weight and load greater than the authorized prescribed maximums, further assessment for the impact on overall Pole loading shall be performed by Licensee, and the results provided to Licensors. Such assessment must show, on a "worst case" analysis, that the Temporary Attachments will not excessively burden the Pole or Anchor, or shall not be permitted.

(4) Where the survey data shows that the Temporary Attachments will result in Make-Ready Work or other work required by the Licensors, Joint Owner, Joint User and Other Licensees to accommodate the Licensee's Facilities, the Licensors, at its discretion, may perform a field inspection for those Poles that the Licensee has identified as inadequate or requiring the rearrangement of the existing facilities thereon.

(5) The field inspection and Make-Ready Work for Temporary Attachments shall be completed within a reasonable time agreed to by the Parties.

(6) A Post-Construction Inspection, Periodic Inspections and Subsequent Inspections may be conducted in accordance with the provisions of this Agreement.

(7) Licensee shall be required to pay for any Pre-construction Survey or Make-Ready Work necessary for Temporary Attachments.

(8) All Temporary Attachments shall be replaced with permanent Attachments, at Licensee's expense, within thirty (30) days after receipt of notification from Licensor that the Make-Ready Work for the permanent Attachment is completed.

(9) A Post-Construction Inspection of the permanent Attachments may be conducted in accordance with the provisions set forth in this Agreement.

(10) Licensee shall be required to pay for any Pre-construction Survey or Make-Ready Work necessary for a Temporary Attachment and the change from a temporary to a permanent Attachment.

(11) Licensor shall be entitled to Annual Pole Attachment Rent for any Temporary Attachments, pro-rated for the time such Attachment is maintained by Licensee.

(iii) Emergency Installations

All Temporary Attachments installed in connection with an emergency situation shall be replaced with permanent Attachments, at Licensee's expense, as soon as practical, but in no event later than thirty (30) days after receipt of written notice from Licensor that the Make-Ready Work, if any, for the permanent Attachment is completed.

(iv) Boxing and Other Alternative Construction Methods

(1) Boxing, or other alternative construction methods, shall be permitted only if such techniques do not create a specific safety or reliability issue.

(2) The Parties agree that Boxing or other alternative construction methods, is not the preferred method of Attachment, and its use shall be determined on a case-by-case basis. Licensor may deny Licensee's request to utilize boxing or other alternative construction methods due to a reasonable explanation regarding the specific safety or reliability concerns, with reference to applicable NESC Code provisions or other safety code, as they relate to that Pole. Where practicable and of assistance, Licensor may provide engineering plans and drawings to Licensee to describe the basis of the denial. Boxing, or other alternative construction methods, will only be permitted in those situations where

the cost for a conventional attachment is exorbitant and worker safety is not compromised by the proposed construction method and such method is in compliance with such other applicable requirements set forth in the Operating Procedures.

(3) The initial determination for any alternative construction method may be made during a Pre-construction Survey, but such determination shall be subject to verification and approval by Licensor during the preparation of the Make-Ready Work estimate. Licensor, prior to or with the Make-Ready Work estimate, shall provide written notice to Licensee of any determination that the proposed construction method is not permitted, setting forth the reasons for such determination. If the Licensee disagrees with any such determination, the Parties shall attempt to resolve their differences, and if the Parties are unable to do so may resolve any dispute in accordance with the Dispute Resolution provisions set forth in Section XIV hereof.

(v) Drop Poles

(1) Attachments on Drop Poles can be made by Licensee if such Attachments can be made in a safe and reliable manner in accordance with applicable Standards.

(2) If Licensee can meet the requirements in paragraph (1) preceding, then Licensee may place Attachments on a Drop Pole without the prior consent of Licensor, or without complying with the requirement to obtain a license before making such Attachment.

(3) Licensee, within six (6) months from the Effective Date of this Agreement, shall report to Licensor the location of each Drop Pole that does not have an existing license as of the Effective Date of this Agreement. Upon receipt of such information, Licensor and Licensee shall agree on a schedule to license such Drop Poles.

(4) Except as provided in paragraph (3) preceding, if Licensee attaches to a Drop Pole without first obtaining a license, then Licensee, within ten (10) Business Days after an Attachment is made, shall provide Licensor with written notice of such Attachment, and, within fifteen (15) Business Days after such Attachment is made, submit an application for a license pursuant to the terms of this Agreement.

(5) If it is discovered that Licensee has failed to provide written notice of an Attachment to a Drop Pole, such Attachment shall be considered an Unauthorized Attachment and shall be subject to the terms and conditions of Section V(l) of this Agreement.

(6) Upon receipt of Licensee's application under paragraph (4) preceding, Licensor in its discretion, may conduct a Post-Construction Inspection, Periodic or Subsequent Inspections.

(7) Licensor may invoice the Licensee for all Drop Poles, including those not previously licensed, in accordance with the provisions of Section V and Section VI of this Agreement, and the applicable provisions of the Tariff and Operating Procedures.

(vi) Extension Arms

(1) Extension Arms may be used for temporary or permanent Attachments according to the provisions of this Agreement and the requirements for such Attachments set forth in the Operating Procedures. Licensor shall identify those Poles where Extension Arms are requested in its application or during the Pre-construction Survey if the field inspection discloses conditions that were not known at the time the Application was submitted.

(2) A permanent Extension Arm may only be used where Licensee can demonstrate that Make-Ready Work Costs are exorbitant, and such Attachment can be done in a safe and reliable manner in accordance with applicable Standards.

(3) Temporary Extension Arms may be permitted when Licensor, or a contractor selected by Licensor, will not be able to complete the Make-Ready Work for Poles where Extension Arms were requested by Licensee within the prescribed time for completing such work. Additionally, temporary Extension Arms will only be permitted if Licensee can demonstrate that it can be done in a safe and reliable manner in accordance with applicable Standards.

(4) Any Temporary Extension Arm shall be replaced with a standard Attachment within thirty (30) days after receipt from Licensor that the Make-Ready Work for a standard Attachment has been completed. Temporary Extension Arms may not be replaced by permanent Extension Arms unless Licensor agrees that such permanent Extension Arm is in compliance with the provisions of this Agreement.

(5) The initial determination for Extension Arms shall be made during the Pre-construction Survey, but such determination shall be subject to review and approval by Licensor during the preparation of the Make-Ready Work estimate. Licensor, prior to or with the Make-Ready Work estimate, shall provide written notice to Licensee of any determination rejecting the use of an Extension Arm, setting forth the reasons for such determination. If the Licensee disagrees with any such determination the Parties shall attempt to resolve their differences, and if the Parties are unable to do so may resolve any dispute in accordance with the Dispute Resolution provisions set forth in Section XIV hereof.

(vii) Overlapping

(1) Licensee shall provide written notification to Licensor not later than thirty (30) days prior to commencement of Overlapping work on Licensee's Facilities. Overlapping shall be permitted as provided herein for facilities of

Licensee or any third-party Overlashing its facilities to Licensee's licensed Attachments. Receipt of notice will serve as a reservation for Licensee of Licensee's intent to work in the area, subject to prior notification from other persons and emergency situations or Licensor's existing plans for such area. If Licensor has existing plans for the area that would prohibit Overlashing or if Overlashing would interfere with existing plans or rights of Joint Owners, Joint Users or Other Licensees, then Licensor shall disclose the same to Licensee, subject to the Confidentiality provisions set forth in Section XVIII hereof. Any disputes involving the conflicting plans and rights of Persons shall be resolved between the Persons involved, or, if no agreement can be reached, any disputes may be resolved in accordance with the Dispute Resolution provisions set forth in Section XIV hereof.

(2) A Pre-construction Survey and Pole loading analysis acceptable to Licensor, and any other analysis required by the Operating Procedures, shall be conducted by the Licensee or third-party intending to Overlash. The survey data and results of such Pole loading analysis shall be provided to Licensor prior to any Overlashing, and shall demonstrate that such Overlashing will meet the applicable Standards and not excessively burden the Poles and Anchors.

(3) If a proposed Overlashing meets the permitted span tensions and other requirements set forth in the Standards and the provisions of this Agreement, then Overlashing shall be permitted to the prescribed maximum loads authorized for the specified span tension. Where the analysis shows that the Overlashing will result in weight and load greater than the authorized prescribed maximums, further assessment for the impact on overall Pole loading shall be performed by Licensee or third-party overlasher, and the results provided to Licensor. Such assessment must show, on a "worst case" analysis, that the Overlashing will not excessively burden the Pole or Anchor, or Overlashing shall not be permitted.

(4) Where the survey data shows that Overlashing will result in Make-Ready Work or other work required by the Licensor, Joint Owner, Joint User and Other Licensees to accommodate the Licensee's Facilities, the Licensor, at its discretion, may perform a field inspection for those Poles that the Licensee has identified as inadequate or requiring the rearrangement of the existing facilities thereon.

(5) The field inspection and Make-Ready Work for Overlashing shall be completed within a reasonable time agreed to by the Parties.

(6) A Post-Construction Inspection, Periodic Inspections and Subsequent Inspections may be conducted in accordance with the provisions of this Agreement.

(7) Licensee shall be required to pay for any Pre-construction Survey or Make-Ready Work necessary for Overlashing.

(8) Licensee may not commence or continue Overlashing until the results of the Pre-construction Survey, Pole loading analysis or further assessment, if applicable, have been provided to Licensor and Licensor agrees that such Overlashing can be done in accordance with the provisions of this Agreement.

(9) Licensor shall not be entitled to charge or collect an Annual Pole Attachment Rate for any overlashed facilities attached to Attachments in accordance with applicable Standards. The foregoing prohibition, however, shall not preclude Licensor from collecting other fees and charges set forth in Section V hereof.

(10) Licensee shall not collect any rental or similar rate, or impose any fee or charge in lieu of a rental or similar rate, for the overlashed facilities. This prohibition, however, shall not preclude Licensee from collecting from the overlasher any cost based charges incurred by Licensee for maintaining such overlashed facilities, including removing, relocating or rearranging such facilities as required by Licensor under this Agreement.

(11) Licensee shall be responsible for compliance by the overlasher with the terms and conditions of this Agreement and the Standards applicable to Overlashing or overlashed facilities.

(12) Licensee shall cause the third-party overlasher to enter into an Overlashing agreement with Licensor, substantially in the form of this Agreement. Licensee shall not permit third-party Overlashing until the third-party overlasher has executed such agreement with the Licensor.

(13) If Licensee fails to comply with the provisions of this, Section IX(c)(vii), Licensee's failure will constitute a default under this Agreement, and Licensor may, at its sole option, cancel any license or terminate this Agreement, which cancellation or termination shall be effective immediately upon removal of Licensee's Facilities as provided in this Agreement.

(d) Emergency Response Capability

(i) Licensee shall maintain fully available, on a twenty-four (24) hour, seven (7) day basis, complete, adequate and fully staffed emergency service, consisting of appropriate equipment and trained personnel sufficient to assure a prompt response to requests or directions by Licensor that Licensee's Facilities be immediately removed or adjusted to accommodate any emergency conditions that may arise. If, in the sole judgment of Licensor, consistent with Good Utility Practice, Licensee fails to properly maintain emergency services as provided herein, Licensee's failure shall constitute a default under this Agreement, and Licensor upon written notice to Licensee shall have the right to cancel any license or to terminate this Agreement, which cancellation or termination shall be effective immediately upon mailing of the written notice to Licensee.

(ii) In the event of emergency conditions, Licensor shall not be liable to Licensee or any other Person for any removal, relocation, rearrangement or damage to Licensee Facilities by Licensor as a result of the Licensor complying with instructions from a responsible Person in authority at the location of the emergency. The foregoing shall not relieve Licensor, however, for gross negligence or intentional wrongdoing in the manner in which it carries out the instructions of such responsible Person.

(e) Emergency Restoration Procedures

(i) In the event of an emergency, restoration procedures may be affected or impacted by the presence of Licensee's Attachments. Although Licensor shall not be responsible for the repair of Licensee's Attachments that are removed, relocated, rearranged or damaged, Licensor shall control access to Poles if the restoration is to be achieved in a safe and orderly fashion. Licensee agrees to reimburse Licensor for the Cost, or its pro-rata share if facilities of other attachers affect restoration procedures, incurred by Licensor in support of any restoration operations which affect or impact Licensee's Attachments.

(ii) Where multiple Attachers are involved in or affected by emergency restorations, access to Licensor's Poles will be controlled by Licensor's on-site representative in accordance with the priorities, procedures and guidelines set forth in the Operating Procedures.

(iii) Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by Licensor regarding access to Licensor's Poles or to Licensee's Attachments, or any action or failure to act by Licensor, under this Section IX(e) shall not constitute a basis for any claim by Licensee against Licensor for any damage to Licensee's Attachments or disruption of Licensee's services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee.

(f) Warnings

Licensee warrants and represents to Licensor that it shall specifically and adequately warn Licensee's field personnel and contractors, or other Persons involved in attaching or inspecting Licensee's Facilities, of the dangers inherent in electrical conductors before any such personnel, contractors or other Persons are permitted to perform any work on or near any Licensor facilities. The warning shall be given to Licensee field personnel and contractors both orally and in writing. The written warning shall be prepared in duplicate, with one copy retained by Licensee and the other by Licensee's field personnel and contractors, acknowledging receipt of both written and oral warnings. The written warning shall be made available for inspection by Licensor at any time an inspection may be requested. If Licensee fails to comply with this provision, Licensee's failure will constitute a default under this Agreement, and Licensor may, at its sole option, cancel any license or terminate this Agreement, which cancellation or termination shall be effective immediately upon removal of Licensee, Facilities as provided in this Agreement.

(g) Safety and Environmental Matters

(i) Licensee shall be solely responsible for assuring the safety of its employees (as well as the public and Licensor's employees) in connection with Licensee's

Attachments. Licensee shall be responsible for compliance with all requirements of Applicable Laws relating to the safety of its employees including all requirements of the Occupational Safety and Health Act. In particular, but not by way of limitation, these requirements include working with Poles that are treated with one or more wood preservatives, potential exposure to lead-containing products, exposure to electric lines, falling from elevated places, determining the appropriate safety practices for its employees, assuring that its employees receive any and all protective equipment and clothing and providing all appropriate training.

(ii) Licensee is responsible for complying with all applicable Standards designed to protect the environment including those relating to any type of discharge to the environment as well as those relating to Hazardous Materials. Licensee or its contractor may not use or bring Hazardous Material, onto or near Licensor's facilities or perform any work or use any machinery that requires an environmental permit or other authorization, except as specifically set forth in the Operating Procedures.

(iii) Licensee shall report to Licensor any condition that could have an adverse environmental impact or that poses a potential safety hazard to any Person of which Licensee is aware, even if Licensee did not cause such condition.

(h) Anchors and Guys

Licensee may attach its Guys to Licensor's Anchors under the following conditions:

(i) Each application pursuant to Section VII hereof for a license, shall also specify the Anchor to which Licensee wishes to attach. If the Anchor has sufficient capacity, and the Attachment is otherwise in compliance with applicable Standards and this Agreement, Licensor shall authorize the Attachment to the Anchor.

(ii) The determination of whether Licensor's Anchor has sufficient capacity to permit the Attachment of Licensee's Guy shall be made as part of the Pre-construction Survey, provided, however, that such determination may be modified or changed based upon circumstances discovered during the Make-Ready Work. Licensor's permission to attach to an Anchor will be subject to Licensor's normal operating practices and will not be unreasonably withheld, delayed or conditioned.

(iii) Licensor is under no obligation to install new Anchors or to replace existing Anchors in order to accommodate Licensee's Facilities.

(iv) No additional Annual Pole Attachment Rental Rate shall be charged to Licensee for any Attachment it makes to Licensor's Anchor, subject however to any determination hereinafter made by any Governmental Authority that may require Licensor to charge rental or other fees for Attachments to Anchors, or that may preclude Licensor, directly or indirectly, from otherwise including its Anchor costs in the calculation of the Annual Pole Attachment Rental Rate.

(v) Should the Licensor, Joint Owner, Joint User or Other Licensee for their own service requirements need to increase its load on the Anchor to which Licensee's Guy



Strand is attached, and where a larger anchor is required that would not have been necessary but for the Attachment of Licensee's Guy Strand, Licensee will either rearrange its Guy Strand on the Anchor or transfer it to a replacement anchor as determined by the Licensor. The cost of such rearrangement or transfer shall be borne by the Licensor, Joint Owner, Joint User or Other Licensee requiring the larger anchor. Licensee shall be solely responsible for collecting its rearrangement or transfer costs incurred by Licensee under such circumstances. Licensor's responsibility shall be limited to reimbursement of its pro rata share of such costs caused by its own additional attachment or modification to the Pole that increases the load on the Anchor. However, Licensor shall, upon receipt of a written request from Licensee, provide Licensee with any information in Licensor's possession which may reasonably facilitate Licensee's collection of such costs. If Licensee fails to rearrange or transfer its Guy Strand within thirty (30) days after receipt or written notice from the Licensor regarding such requirement, the Licensor may perform, or have performed, the work involved and Licensee shall pay the Costs thereof. The foregoing shall not preclude Licensee thereafter from seeking reimbursement of any rearrangement/transfer costs in accordance with this paragraph pursuant to the Dispute Resolution provisions set forth in Section XIV hereof.

(i) Rearrangement, Transfer, Replacement or Relocation

(i) The Licensor and Joint Owner shall have exclusive control of access to its or their Poles and Anchors, and to any facilities attached thereto. Any repairs, maintenance, alterations, additions or improvements to Licensee's Facilities shall be performed at Licensee's cost and expense, by employees or contractors that are properly trained and qualified. Licensee shall be responsible for such training and qualifications.

(ii) If repairs, maintenance, alterations, additions or improvements to Licensee's Facilities are needed, or if Licensee's Facilities are cut, severed, or otherwise rendered substantially inoperable by the Licensor or its agents, Licensor shall follow the applicable notification procedures set forth in the Operating Procedures.

(iii) Licensee shall, at its own expenses, make and maintain its Attachments in a safe condition and in thorough repair, in accordance with the applicable Standards, and in a manner acceptable to Licensor, and so as not to conflict with the use of said Poles by the Licensor, Joint Users, Joint Owners or Other Licensees, or to interfere with other facilities thereon or which may from time to time be placed thereon. Licensee is responsible for any alterations, additions or improvements that are solely for Licensee's benefit or necessitated due to Licensee's fault or presence.

(iv) Should the Licensor, Joint Owners, Joint User or Other Licensee, for their own service requirements, need to attach additional facilities to any Pole or Anchor to which Licensee's Facilities are attached, Licensee will either rearrange its facilities on the Pole or Anchor or transfer them to a replacement pole or anchor, as determined in the sole discretion of the Licensor, so that the additional facilities of the Licensor, Joint Owner, Joint User or other Licensee may be attached. Licensee shall not be required to bear any of the costs of rearranging or transferring its facilities if such rearrangement or transfer is required as a result of an additional attachment or modification of an existing attachment sought by any Person, other than Licensee, including Licensor, Joint Owner, Joint User, or Other Licensees, provided, however,

that Licensee may not improve its facilities as a result of such move, if the improvement would add to the cost, unless the Licensee agrees to pay such additional cost. Any such rearrangement or transfer costs shall be borne by the Person requesting the rearrangement or transfer. Licensee shall be solely responsible for collecting any rearrangement or transfer costs incurred by Licensee pursuant to this paragraph. Licensors responsibility shall be limited to reimbursement of its pro rata share of such costs caused by its own additional attachment or modification to the Pole. However, Licensor shall, upon receipt of a written request, provide Licensee with any information in Licensor's possession which may facilitate Licensee's collection of such costs. If Licensee fails to rearrange or transfer its facilities within thirty (30) days after receipt of written notice from the Licensor requesting such rearrangement or transfer, the Licensor may perform, or have performed, such rearrangement or transfer and Licensee shall pay the cost thereof. The foregoing shall not preclude Licensee from thereafter seeking reimbursement of such rearrangement or transfer costs as if it had performed the work in accordance with this paragraph pursuant to the Dispute Resolution provisions set forth in Section XIV hereof.

(v) Should the Licensee for its own service requirements, need to attach additional facilities or rearrange or relocate existing facilities on any Pole or Anchor to which Licensee is attached, Licensee will either attach, relocate or rearrange its facilities on the Pole or Anchor or transfer them to a replacement pole or anchor as determined by the Licensor. Licensee shall bear the Costs, including any Make-Ready Work, of attaching, relocating, rearranging or transferring Licensee's Facilities and the facilities of Licensor, Joint Owner, Joint User or Other Licensee, if such attachment, relocation, rearrangement or transfer is required as a result of an additional attachment or modification of an existing attachment sought by Licensee, provided, however, that Licensor, Joint Owner, Joint User or Other Licensees may not improve their facilities as a result of such move, if the improvement would add to the cost of such move, unless the party improving its facilities agrees to pay such additional cost. The foregoing shall not preclude Licensee from thereafter seeking reimbursement of such rearrangement or transfer costs pursuant to the Dispute Resolution provisions set forth in Section XIV hereof.

(vi) All Parties shall bear their own costs to comply with Municipal or state mandated Pole relocations or facility relocations.

(vii) If, in the Licensor's judgment, after the granting of any license to the Licensee, any hazardous conditions require the moving of the Licensee's Facilities or any modification in the Licensee's Attachment, the Licensee agrees to make such changes, at its own expense, within five (5) days after the Licensor sends a written notice to such effect or within such shorter period as is feasible and set forth in the notice. In an emergency, the Licensor may rearrange or temporarily remove Licensee's Facilities attached to a Pole and/or Anchor, at Licensee's cost and expense.

(viii) Upon written notice from Licensor, or as otherwise prescribed by the Operating Procedures, Licensee shall promptly rearrange and/or transfer its Attachments and/or Anchors as required by Licensor to permit Licensor to perform any routine maintenance to Licensor's Poles or Anchors, including replacement of worn or defective Poles, Guys or Anchors. Licensee shall be responsible for its pro-rata portion for all Costs associated with such rearrangements/transfers. If Licensee fails to rearrange or transfer its facilities within thirty (30) days after receipt of written notice from the Licensor requesting such rearrangement or transfer,

the Licensors may perform, or have performed, such rearrangement or transfer and Licensee shall pay the Cost thereof.

(j) Tree Trimming

(i) Unless otherwise governed by Applicable Law, all tree trimming made necessary, in the opinion of the Licensor, by reason of the Licensee's proposed Attachments must be performed at or prior to the time of attachment provided the owner(s) of such trees grant permission to the Licensor, and the work shall be performed by contractors under the direction of Licensor, at the sole expense of the Licensee.

(ii) Any such tree trimming that may be required to clear Licensee's cable drop shall be performed by the Licensee at its expense.

(iii) Tree trimming needed as a result of adverse weather conditions such as wind, snow or ice storms, shall be performed by the Licensor or its contractors. Since such tree trimming benefits Licensor, Licensee and other parties that may be lawfully attached to Licensor's Poles, Licensee agrees to pay its proportionate share of costs associated with the tree trimming projects that partially benefit Licensee.

(k) Cooperation of Workforce

The Licensee agrees to ensure that its workforce and contractors perform work in harmony with all trades, crafts, and other Persons while on the property of the Licensor, Joint Owner and/or Joint User.

(l) Discontinue Use

Licensor reserves the right to discontinue the use of, remove, replace, or change the location of any or all of the Licensor's Poles, attachments, or facilities overhead and underground, regardless of any occupancy of the Licensor's Poles by the Licensee. The Licensee shall make such changes in or remove or transfer its Attachments as required by the Licensor by written notice and in the time set forth in the Operating Procedures. In any such case, Licensor shall provide prompt notice to the Licensee, identifying specifically the Licensee's Facilities and Attachments affected, and the action to be taken by Licensee.

(m) Protect Facilities

The Parties shall use Good Utility Practices to avoid damage to each other's facilities or those of a Joint Owner, Joint User or Other Licensee. Each Party shall make an immediate report to the other of the occurrence of any damage, and shall reimburse the appropriate owner of facilities for any costs and expenses incurred by such owner in making repairs, unless the facilities damaged were Unauthorized Attachments or failed to comply with the Standards or other requirements of this Agreement, in which event, the owner of the damaged facilities shall be responsible for such costs and expenses.

(n) Non-interference with Facilities of Others

Whenever the Licensor notifies the Licensee in writing that the Attachments or installations of the Licensee interfere with the operation of the facilities of the Licensor or other Persons with attachment, use or ownership rights, or fail to comply with the Standards, the Licensor shall provide to the Licensee a written notice describing the interference, non-compliance or other problem, and identify specifically the facilities implicated. The Licensee shall immediately, upon receipt of the notice, discuss with the Licensor remedial work to be performed, and shall thereafter, but not later than ten (10) days from the date of receipt of the notice, correct such problem or interference or non-compliance, or remove the facilities in question, performing all such work in compliance with the Operating Procedures or with any other directions that the Licensor may provide.

(o) Additions or Changes in Attachments

Except as otherwise provided in Section IX(c)(vii) hereof relating to Overlashing, Licensee shall obtain the Licensor's prior written consent before adding to, removing, relocating, replacing or otherwise modifying Licensee's Facilities on a Pole or Anchor, where, in Licensor's judgment, additional space or holding capacity may be required, which consent shall not be unreasonably withheld, delayed or conditioned.

(p) Periodic Inspections

Licensor reserves the right to make Periodic Inspections of all or any part of the Attachments of Licensee on Poles and Anchors, at the expense of the Licensee as specified in Section V(i) hereof. Periodic Inspections conducted by Licensor shall not cover more than the entire plant of the Licensee more often than once during each successive five (5) year period (which is not a rolling 5-year period), as set forth in the Operating Procedures, and upon not less than thirty (30) days prior written notice to Licensee for each Periodic Inspection, unless in Licensor's judgment such inspections are required for reasons involving safety or because of an alleged Violation of the terms of this Agreement by Licensee. In addition to inspections conducted in accordance with this Section IX(p), Licensor shall have the right to inspect any Attachment by Licensee on Licensor's Poles as conditions may warrant upon thirty (30) calendar days written notice to Licensee. Licensee shall, upon demand by Licensor, reimburse Licensor all Costs incurred to conduct its inspection. No survey or inspection, or lack thereof, by Licensor shall operate to relieve Licensee of any duty, responsibility, obligation or liability assumed under this Agreement.

(q) Audits

(i) The Licensor may conduct audits of Licensee's Facilities and Attachments on the Licensor's Poles as set forth in the Operating Procedures. The timing of and the Attachments and Poles selected for audits shall be in the sole discretion of the Licensor. Licensor shall provide not less than thirty (30) days prior written notice to Licensee, and provide Licensee with the opportunity to participate in such audit.

(ii) Costs incurred by Licensor in performance of the audit shall be shared pro-rata by all Persons participating in the audit, and by such Persons who were offered the

opportunity to participate and declined or failed to show for the audit. If Licensor is auditing Licensee's Facilities and fails to notify Licensee or fails to offer Licensee an opportunity to participate in an audit, then Licensor shall bear the cost of such audit otherwise attributable to Licensee.

(iii) Upon completion of an audit, Licensor shall provide Licensee with copies of the results of such audit within thirty (30) days from completion of such audit. Licensee shall provide Licensor with a written acceptance or disagreement, setting forth the specific portions of the audit and the reasons for such disagreement, within thirty (30) days of receipt of the audit. If there is a disagreement with the audit results, the Parties will resolve the same in accordance with the Dispute Resolution provisions set forth in Section XIV hereof.

(iv) Notwithstanding any disagreement with an audit's results, Licensor, at its option, may begin to collect fees and charges and invoice Licensee in accordance with Section V and VI of this Agreement, or in accordance with the provisions of any stipulation between the Parties.

(v) The results of any audit, as determined after any final determination of a Dispute Resolution, shall be binding upon the Parties and shall be deemed to be the inventory of Attachments for invoicing and auditing Attachments on a prospective basis.

## **X. REPRESENTATIONS AND WARRANTIES**

### **(a) Disclaimer of Warranties**

(i) EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE POLES, ANCHORS, FACILITIES, EQUIPMENT OR SERVICES PROVIDED, OR TO BE PROVIDED, UNDER THIS AGREEMENT, AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES AGAINST INFRINGEMENT, AND WARRANTIES ARISING BY TRADE CUSTOM, TRADE USAGE, COURSE OF DEALING OR PERFORMANCE, OR OTHERWISE.

(ii) LICENSOR DOES NOT WARRANT TITLE, DESCRIPTION, VALUE, QUALITY, CONDITIONS, WORKS AND ABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE ENGINEERING, WORKMANSHIP OR RIGHTS-OF-WAY SUBJECT TO THIS AGREEMENT, EXCEPT AS IS EXPLICITLY STATED OTHERWISE IN THIS AGREEMENT.

(iii) Licensor does not make any representation or warranty as to the present or future strength, condition, or state of repair of any Poles, Guys, Anchors, wires, equipment, facilities or apparatus. Licensee shall by test or observation determine whether the Poles are safe for Attachments and to climb. If through such test or observation, the Licensee determines that the integrity or safety of any Pole or other Licensor facility is in question or a Pole or other Licensor facility is marked by Licensor as unsafe, Licensee shall confirm said condition with

Licensors in writing and verbally. Thereafter, unless informed in writing by Licensors that said Pole is safe to climb and suitable to attach Licensee's Facilities, Licensee shall refrain from: (i) ascending that Pole; (ii) making any Attachment to that Pole, (iii) Overlashing to a Messenger attached to that Pole or (iv) attaching any equipment to any cable attached to that Pole. Licensee shall assume all risk of loss to any Person who may be injured or any property that may be damaged as a result of any such action, except for such losses as may be caused by Licensors's sole negligence.

(iv) Neither by inspection nor nonrejection, nor in any other way, does Licensors give any warranty, expressed or implied, as to the adequacy, safety or other characteristics of any structures, equipment, wires, pipes, appliances or devices owned, installed or maintained by the Licensee or leased by the Licensee from third parties. The making of any inspection and survey, or the failure to do so, shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement, and shall not constitute a waiver of any rights hereunder of Licensors.

(b) Authority to Conduct Business

Each Party represents and warrants to the other that it is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to do business in all jurisdictions where such qualification is required or where such qualification is necessary for it to perform its obligations hereunder.

(c) Authority to Enter Agreement

Each Party hereby represents and warrants to the other that it has full power and authority to carry on its business as now being conducted, to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and the performance of this Agreement have been duly authorized by all necessary corporate action and do not and will not contravene its organizational documents or corporate policies or conflict with, result in a breach of, or entitle either Party (with due notice or lapse of time or both) to terminate, accelerate or declare a default under, any agreement or instrument to which it is a Party or by which it is bound. The execution, delivery and performance by it of this Agreement will not result in any Violation by it of any law, any order of any court or other agency of government, rule or regulation applicable to it. It is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other Governmental Authority which may restrict or interfere with the performance of this Agreement by it.

(d) Enforceability of Agreement

Each Party represents and warrants to each other that this Agreement is its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as such enforcement may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, avoidance, preferential transfer, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and by general principles of equity that may limit the availability of equitable remedies and contractual obligations generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law), and the remedy of

specific performance and injunctive relief may be subject to the discretion of the court before which any proceeding therefor may be brought.

(e) All Regulatory Approvals

Each Party represents and warrants to the other that no consent, waiver, order, approval, authorization or order of, or registration, qualification or filing with, any court or other Governmental Authority is required for the execution, delivery and performance by such Party of this Agreement, and the consummation by such Party of the transactions contemplated hereby, except for such consents which have been obtained, and as to such consents the same are final, are in full force and effect, and are not subject to any appeal or further judicial or administrative proceedings. No consent or waiver of either Party to any contract to which such Party is a party or by which it is bound is required for the execution, delivery and performance by such Party of this Agreement.

(f) Actions and Proceedings

Each Party represents and warrants to the other that there is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of such Party, threatened against or affecting such Party at law or in equity, before any Federal, state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality which prohibits or impairs its ability to execute and deliver this Agreement. Such Party has not received written notice of any such pending or threatened investigation, inquiry or review by any Governmental Authority.

(g) Bankruptcy

Each Party hereby represents and warrants to the other that there are no bankruptcy or receivership proceedings pending against, being contemplated by, or to the knowledge of such Party threatened against such Party.

(h) All Licenses and Franchises

(i) Licensee shall be responsible for obtaining from private and/or public authority any necessary easement, right of way, license, permit, permission, certification or franchise to conduct its business and to construct, operate and/or maintain its facilities on private and public property at the location of the Pole and/or Anchor to which Licensee attaches its facilities. The Licenser does not warrant the validity or apportionability of any rights it may hold to place Licenser's facilities on private property. The Licenser will, upon written request by the Licensee, provide available information and copies of any documents reasonably available and in its files pertinent to the nature of the rights the Licenser possesses to place Licenser's facilities, on which Licensee seeks a license to attach, over private property. The Cost of providing such information and reproducing documents shall be borne by Licensee.

(ii) Where Licenser has an easement over a public or private right of way sufficiently broad under New York State law to permit Licensee's Attachment, Licensee shall not be required to obtain independent permission of the property owner to attach.

(iii) If Licensee is a cable television operator, or is otherwise subject to the Applicable Laws governing such operators, represents that it has or shall secure, prior to making Attachments, any consents, permissions or licenses that may be legally required by any television broadcasting company or others by reason of Licensee pickup, transmission and furnishing of program material to its customers, or by reason of other operations of Licensee hereunder.

(i) Understanding and Consultation

Each Party hereby represents and warrants to each other that it has (i) read and fully understands this Agreement, and (ii) consulted with counsel to the extent it deemed necessary prior to its execution and delivery of this Agreement.

## **XI. LIABILITY, INDEMNITY AND INSURANCE**

(a) Limit on Liability

(i) The Licenser reserves to itself, its successors and assigns, the right to remove, replace, repair, relocate and maintain its Poles and Anchors and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its public service and related requirements. The Licenser shall be liable to Licensee only for and to the extent of any damage caused by the sole negligence of the Licenser's agents or employees to Licensee's facilities attached to Licenser's Pole or Anchor in accordance with Applicable Laws, the applicable Standards and this Agreement. The Licenser shall not be liable to Licensee for interference with the operation of Licensee's Facilities arising in any manner out of Licensee's use of Poles or Anchors.

(ii) Compliance with directives of a Governmental Authority shall, without limitation, constitute a circumstance beyond the control of Licenser for which Licenser shall not be liable; provided, however, that Licenser shall not be absolved from any liability to which it may otherwise be subject for gross negligence or intentional wrongdoing in the manner in which it carries out the instructions of a Governmental Authority.

(iii) The provisions of this Agreement are not intended to apply to the Licenser's obligation to provide services to its customers or to render such services, which obligation and provision are governed by Applicable Laws and the Tariff.

(iv) Except as otherwise provided in this Agreement, the Tariff or the Operating Procedures, either Party, its Affiliates, and the directors, officers, shareholders and employees of either Party and its Affiliates, shall not be liable to the other Party, the other Party's subscribers or customers for loss of service or otherwise, or to any other Person, in connection with this Agreement (including in connection with a service failure or any breach, delay or failure in performance, of this Agreement) for special, indirect, incidental, consequential, reliance, exemplary, punitive, or like damages, including, but not limited to, damages for lost revenues, profits or savings, or other commercial or economic loss, even if the Person whose liability is excluded herein has been advised of the possibility of such damages.



(b) Indemnity

(i) Licensee shall indemnify, defend and save harmless the Licensors, its officers, directors, shareholders, employees, agents, contractors, representatives and Affiliates (the "Licensor Indemnitees"), from and against any and all liabilities, claims, demands, suits, losses, fines, penalties, royalties, obligations, expenses, causes of action, damages, diminution in value of any kind, and costs, including reasonable attorneys' fees of any kind and description (referred to individually and collectively as "costs, claims and liabilities"), for damages to property and injury or death to persons, including injury or death to Licensee's employees, payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, to which Licensors may be subjected, become liable for or suffer, which may arise out of or be caused by, attributed to, or in any manner connected with, the supplying, erection, installation, maintenance, operation, handling, placing, connecting, repair, replacement, presence, use, relocation or removal of Licensee's Facilities or by their proximity to the facilities of all parties attached to Poles or Anchors, or by any act or omission of Licensee's employees, agents or contractors.

(ii) Licensee shall indemnify, defend and save harmless the Licensors and Licensor Indemnitees from any and all costs, claims and liabilities imposed on the Licensors and Licensor Indemnitees as a result of the presence of the Licensee's Facilities on or the Attachment to the Pole or Anchor and/or acts by the Licensee, its employees, or its agents or contractors, including damages, costs and expense of relocating Poles or Anchors resulting from loss of right-of-way or property owner consents and/or the costs and expense of defending these rights.

(iii) Licensee shall indemnify, defend and save harmless the Licensors and Licensor Indemnitees from any and all costs, claims, and liabilities which, directly or indirectly, arise out of, are caused by or are the result of the operation of Licensee's Facilities, including taxes, special charges by others, claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims, demands and costs, including reasonable attorneys' fees, for infringement of patents with respect to the manufacture, use and operation of Licensee's Facilities in combination with Poles, Anchors or otherwise.

(iv) Should the Licensors remove Licensee's Facilities from a Pole and/or Anchor pursuant to this Agreement, the Licensors will deliver to the Licensee the facilities so removed upon payment by Licensee of the cost of removal, storage and delivery, and all other amounts due the Licensors. The Licensors shall have a lien on Licensee's Facilities attached to Poles and/or Anchors or removed therefrom, with power of public or private sale, to cover any amounts due the Licensors. Such liens shall not operate to prevent the Licensors from pursuing, at its option, any other remedy in law, equity or otherwise.

(v) To the fullest extent permitted by law, Licensors shall indemnify, defend and save harmless Licensee, its directors, officers, shareholders, employees, representatives, contractors and Affiliates ("Licensee Indemnitees"), from and against any and all costs, claims and liabilities to which Licensee may become liable for or suffer, arising out of the sole negligence of the Licensors or of any of the Licensor Indemnitees working in the vicinity of Licensee's Facilities (for which Licensee has been issued a license pursuant to this Agreement)

or in moving and/or removing Licensee's Facilities (for which a License has been issued pursuant to this Agreement) if Licenser is permitted to do so pursuant to this Agreement.

(vi) The Licensee expressly acknowledges that the Licensee's Facilities are exposed to many risks beyond the reasonable control of the Licenser, including acts of God or the public enemy, wind, rain, sleet, ice, floods, fire, riots, sabotage, terrorist acts, expropriation or confiscation of facilities. Except as expressly provided in this Agreement, the Licensee shall assume all risk of loss to Licensee Facilities that may arise in connection with such hazards.

(vii) Licensee agrees to indemnify, defend, hold harmless and reimburse each of Licenser and Licenser Indemnitees, for, from and against all Environmental Liabilities (defined below) due to any event, act or omission on the Licenser facilities or property, including those arising out of the storage, transportation or disposal of Hazardous Materials, to the extent caused by or resulting from the ownership, operation or maintenance of the Licensee's Facilities, and which was not caused by the sole negligence or intentional misconduct of Licenser. "Environmental Liabilities" shall mean those Indemnifiable Losses (defined below) asserted, resulting, imposed or incurred under any Environmental Laws or any Federal, state, local or foreign statute or common law relating to pollution or protection of the environment, including, costs for response, removal, remediation, containment, cleanup, investigation, design, engineering and construction and damages for personal injury (including death) and injury to, destruction of, or loss of property or natural resources. For purposes of this Agreement, "Indemnifiable Losses" include any and all demands, claims, actions or causes of action, assessments, liabilities, losses (including, without limitation, loss of use or economic benefit or diminution in value), costs (including, without limitation, relocation or replacement costs), actual damages, penalties, interest, fines, charges or expenses, including, court costs, reasonable investigation costs and counsel and expert witness fees, disbursements and expenses.

(viii) Licenser agrees to indemnify, defend, hold harmless and reimburse each of Licensee and Licensee Indemnitees, for, from and against all Environmental Liabilities due to any event, act or omission of the Licenser, including those arising out of the storage, transportation or disposal of Hazardous Material, to the extent caused by or resulting from the ownership, use or maintenance of the Licenser's facilities by Licenser and which was not caused, directly or indirectly, by the sole negligence or willful misconduct of Licenser, or from facilities that have been owned and operated solely by Licenser prior to the date of this Agreement.

(ix) With respect to third-party claims, after receipt by an indemnified party of notice of the commencement of any action or the presentation or other assertion of any claim which could result in any indemnification claim pursuant to this Section XI(b) hereof, or upon discovery of any facts which the indemnified party reasonably believes may give rise to a claim for indemnification hereunder, such indemnified party shall give reasonably prompt notice thereof to the indemnifying party and the indemnifying party shall be entitled to participate therein, investigate or, to the extent that it shall wish, assume the defense thereof with its own counsel, provided that (i) the counsel for the indemnifying party who shall conduct the defense on such claim or litigation shall be reasonably satisfactory to the indemnified party and (ii) the indemnified party may participate in such defense. If the indemnifying party elects to assume the defense of any such action or claim, the indemnifying party shall not be liable to the

indemnified party for any fees or any other expenses of other counsel, in each case subsequently incurred by such indemnified party, in connection with the defense thereof. Except with the prior written consent of the indemnified party, which consent shall not be unreasonably withheld, or delayed or conditioned, no indemnifying party, in the defense of any such claim or litigation, shall consent to entry of any judgment or enter into any settlement that provides for injunctive or other non-monetary relief affecting the indemnified party or that does not include as an unconditional term thereof the giving by the claimant or plaintiff to the indemnified party a release of all liability in respect of such claim or litigation. If an indemnifying party elects not to assume the defense of any action or claim, the indemnified party may compromise or settle such action or claim over the objection of the indemnifying party. The parties agree to cooperate to the fullest extent possible in connection with any claim for which indemnification is or may be sought under this Section XI(b).

(c) Insurance

(i) Licensee, for the Term of this Agreement, shall carry insurance policies, of the kind, in the amounts and satisfying the terms and conditions set forth in the Operating Procedures, issued by an insurance carrier licensed to operate in the State of New York to protect the Licensor, Joint Owners and Joint Users, as named or additional insureds.

(ii) All insurance must be effective before the Licensor shall issue a license for Attachment of Licensee's Facilities to any Pole or Anchor, and shall remain in force as long as Licensee's Facilities remain attached to any Pole or Anchor. In the event that Licensee shall fail to maintain the required insurance coverage, the Licensor may pay any premiums thereon falling due and the Licensee shall reimburse the Licensor for any such payments made.

(iii) Licensee shall submit to the Licensor certificates by each company insuring Licensee for all liabilities of Licensee hereunder.

(iv) Licensee shall promptly advise the Licensor of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence, use, operation or removal of the Licensee's Facilities. Copies of all accident reports and statements made to the insurer by the Licensee, or others, shall be furnished promptly to the Licensor.

(d) Additional Named Insured and Primary Insurance

(i) Except with respect to Worker's Compensation and Employers' Liability, Licensor and its Affiliates and their officers, directors, agents, representatives, contractors and employees shall be included as additional insureds in Licensee's insurance policies and such insurance shall be considered as primary insurance. Any separate insurance maintained in force by Licensor shall not contribute with insurance extended by Licensee's insurer(s) under this requirement.

(ii) In the event that any Joint Owner, other than Licensor, or a Joint User may be required to consent to this Agreement for any reasons, the insurance and indemnification previously contained herein shall also cover and run to said Joint Owner and Joint User with the

same force and effect as if said Joint Owner and Joint User were signatories to this Agreement and shall be specifically named in said certificates insuring the Licensee.

(e) Licensors's Contractors

Licensee shall be responsible for ensuring that Licensee's contractors and subcontractors maintain insurance that meets the requirements set forth in this Section XI and in the Operating Procedures. If Licensee or Licensee's contractors or subcontractors fail to maintain insurance as required, Licensors may (but shall not be obligated to) purchase such insurance and Licensee shall reimburse Licensors for the cost of the insurance.

(f) Replacement

In the event that Licensee's insurance is cancelled or is expiring, or Licensee intends to terminate or allow the insurance to lapse, Licensee shall procure and provide Licensors, not less than ten (10) days prior to such cancellation, expiration or lapse, with evidence of a replacement insurance policy or policies meeting the requirements set forth in this Agreement.

(g) Evidence of Insurance

Licensee shall, prior to seeking any license hereunder, or at the time of each renewal of, or material change in, Licensee's insurance policies, and at such other times as Licensors may reasonably specify, furnish certificates or other proof of insurance reasonably acceptable to Licensors. Licensors shall require its contractors and subcontractors, if any, to maintain insurance in accordance with this Section XI hereof and the Operating Procedures, and, if requested, to furnish adequate proof of such insurance acceptable to Licensors.

(h) Term and Policy and Notice of Cancellation

Certificates furnished by Licensee or Licensee's contractors or subcontractors shall contain a clause substantially in the form of the following: "Licensors shall be notified in writing at least thirty (30) days prior to the cancellation of, or any material change in or change affecting the Licensors's rights in or to the insurance."

(i) Notice of Claim

(i) Any Claim for indemnification hereunder shall be made as provided in this Section XI(i) hereof. Otherwise, this Section XI shall be null, void and without effect.

(1) In the event that an Indemnified Party sustains or incurs any Losses in respect of which indemnification may be sought pursuant to this Section XI, such Indemnified Party may assert a Claim for indemnification by giving written notice (the "Claim Notice"), to the indemnifying Party, which will describe in reasonable detail the facts and circumstances on which the asserted Claim for indemnification is based. The Claim Notice will also specify how the Indemnified Party intends to recover such funds pursuant to this Agreement. Unless the Claim described in the Claim Notice is contested by the indemnifying Party by written notice to the Indemnified Party of the amount of the Claim that is

contested, given within thirty (30) Days of the receipt of the Claim Notice, the Indemnified Party may recover such undisputed amount of the Claim described in the Claim Notice.

(2) If, within thirty (30) Days of the receipt by the indemnifying Party of the Claim Notice, the indemnifying Party contests in writing to the Indemnified Party that such Loss constitutes an indemnifiable Claim (the “Dispute Notice”), then the Indemnified Party and the indemnifying Party, acting in good faith, shall attempt to reach agreement with respect to such Claim. If the Indemnified Party and the indemnifying Party should so agree, a written memorandum setting forth such agreement shall be prepared and signed by the Indemnified Party and the indemnifying Party.

(3) With respect to Claims for indemnification resulting from or in connection with any legal proceeding commenced by a third party, the Indemnified Party will give the Claim Notice to the indemnifying party no later than twenty (20) Days prior to the time any initial answer or response to the asserted Claim is legally required under any applicable court or procedural rule. Nothing in this Section XI shall limit in any way the right of the Indemnified Party to defend against any Claim in such manner as it may deem appropriate, including, but not limited to, settling the Claim (after giving notice of the same to the indemnifying Party) on such terms as the Indemnified Party may in good faith deem appropriate (provided, however, that no such settlement shall occur without the indemnifying Party’s prior written consent, which shall not be unreasonably withheld, delayed or conditioned). Subject to the foregoing, the indemnifying Party will promptly indemnify the Indemnified Party in accordance with the provisions of this Section XI hereof.

(4) An Indemnified Party’s right to indemnification provided for in this Section XI hereof will remain in effect notwithstanding any investigation at any time by or on behalf of either Party or any waiver by either Party of any condition to such Party’s obligations to consummate the transactions contemplated hereby.

(5) The rights and remedies contained in this Section XI are cumulative with the other rights and remedies contained herein, and the exercise of the remedies contained in this Article does not preclude either Party from exercising any other rights or remedies contained in this Agreement, or existing at law or equity.

(ii) The provisions of this Section XI shall survive the expiration, cancellation or termination of this Agreement.

## **XII. EVENTS OF TERMINATION AND DEFAULT**

### **(a) Termination**

(i) Provided Licensee is not in default hereunder and has made all payments due hereunder, Licensee may terminate this Agreement, at any time, by prior written notice to Licensors. Such termination shall be effective on a date stated in the notice, which date shall be not sooner than sixty (60) days after the date Licensors receives the notice. In case of such voluntary termination, or an early termination as provided in Section IV hereof, Licensee shall pay to Licensors all rents, costs, charges, fees and expenses (including reasonable attorney's fees and the Costs incurred by Licensors in removing Licensee's Facilities) incurred by Licensors to effect such termination. In the event of a voluntary or early termination as provided herein, Licensee shall not be entitled to a return of any portion of the Annual Pole Attachment Rent paid by Licensee that is applicable to the period subsequent to the termination date. The Parties agree that forfeited amounts under the Annual Pole Attachment Rent shall not be an offset or deduction against any other termination or other amounts for which Licensee is responsible to pay under this Agreement.

(ii) If Licensors, consistent with Good Utility Practice, should determine that it requires the portion of the Pole or other facilities of Licensors on which Licensee's Facilities are located, for the purpose of meeting its obligation to provide safe and adequate service, Licensors may terminate this Agreement or any license issued hereunder by prior written notice to Licensee, specifying a date on which such termination shall be effective. If Licensors should terminate the Agreement or any license issued hereunder, Licensee shall pay pro-rated rent, determined as a proportion of the total Annual Pole Attachment Rent corresponding to the proportion of the year during which the Agreement or any license issued hereunder remained in effect. In the event of such termination by Licensors under this Section XII(a)(ii), Licensee shall, at its own expense, remove Licensee's Facilities by the date set forth in the notice. If Licensee fails to remove Licensee's Facilities by such date, Licensors may perform the removal work, at Licensee's expense, and Licensee shall reimburse Licensors for the Costs incurred by Licensors to remove such facilities and return them to Licensee.

### **(b) Events of Default**

In addition to rights of termination provided to the Licensors under other provisions of this Agreement, upon the occurrence of any one of the events identified herein ("Events of Default"), the Licensors shall have the right to terminate this Agreement and/or any Attachment authorizations and rights granted under any provisions of this Agreement by providing written notice to the Licensee identifying specifically the Event of Default that has occurred, and stating that the Agreement and/or any license issued hereunder shall expire and terminate upon the date specified in the notice, which shall not be less than ten (10) days after the date of receipt of the notice, and shall otherwise be determined in accordance with the terms hereinafter for different Events of Default. Upon the date specified, the Agreement and/or any license issued hereunder specified in the notice shall be terminated and shall be of no further effect, Licensee's rights hereunder and thereunder shall expire and Licensee's obligations incurred under and during the term of the Agreement, including without limitation the obligation to make payments in the prescribed amounts hereunder, shall continue in effect until discharged.

The following Events of Default shall be grounds for termination of this Agreement and/or any license issued hereunder by Licensor:

(1) If Licensee shall default in any payment obligation contained in this Agreement and such default shall continue for five (5) days after written notice is given by Licensor to Licensee that such payment is due; or

(2) If Licensee shall fail to comply with any requirement of, or to perform any of its obligations under, this Agreement, the Operating Procedures or the Tariff for a period of thirty (30) days after written notice from Licensor specifying any obligation that Licensee has failed to fulfill or requirement with which it has failed to comply, or if, in the case of a default of a covenant which cannot with due diligence be cured within said thirty (30) day period, such party fails to commence within said thirty (30) day period to cure such default and to diligently and continuously proceed therewith and complete such cure within a reasonable period of time agreed to by Licensor; or

(3) A Governmental Authority has issued an order, decree or ruling or taken any other action (which the Parties shall have used reasonable efforts to resist, resolve or lift), as applicable, permanently restraining, enjoining or otherwise prohibiting the attachment of Licensee's Facilities or other transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and non-appealable or (ii) has failed to issue an order, decree or ruling or to take any other action (which order, decree, ruling or other action the Parties shall have used reasonable efforts to obtain), and such denial of a request to issue such order, decree, ruling or take such other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section XII(b)(3) shall not be available to any Party whose failure to comply with the provisions of this Agreement has, to any extent, been the cause of such action or inaction; or

(4) The Licensee's Facilities are maintained or used in Violation of any applicable Standards, transfers, franchises or licenses, or aid unlawful act or undertaking law or in aid of any unlawful act or undertaking; or

(5) The Licensee ceases to have authority to construct and operate Licensee's Facilities on public or private property at the location of the particular Pole or Anchor covered by the authorization; or

(6) The Licensee attaches to a Pole and/or Anchor without having first been issued authorization therefor; or

(7) The Licensee, subject to the Assignment provisions specified in Section XX hereof, should cease to provide its services; or

(8) The Licensees' Facilities are used by others not a party to or entitled to use Licensee's Facilities pursuant to this Agreement; or

(9) The Licensee sublets or apports all or any part of the Licensed Pole Attachment to an entity not a party to or entitled to use Licensee's Facilities pursuant to this Agreement; or

(10) The Licensee's insurance carrier shall at any time notify the Licenser that the policy or policies of insurance as required in Section XI hereof will be or have been cancelled or amended so that those requirements will no longer be satisfied and Licensee has not provided replacement coverage as required herein; or

(11) Any authorization which may be required by any Governmental Authority or Person for the construction, operation and maintenance of the Licensee's Facilities on a Pole or Anchor is denied, revoked, terminated, expired or cancelled without issuance of a new or replacement authorization that would permit the Attachment of Licensee's Facilities on the Pole or Anchor; or

(12) Licensee fails to provide assurances of performance within five (5) Days of a request for such assurances made in accordance with Section V(e)(iv) hereof; or

(13) Licensee fails to comply with the Operating Procedures, and such failure continues unremedied for a period of thirty (30) days after notice from the Licenser specifying in detail the nature of such failure; or

(14) A custodian, receiver, liquidator or trustee of Licensee or of the property of Licensee, is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or Licensee makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or Licensee is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against Licensee or any of the material property of Licensee is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against Licensee under the bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) days after filing; or

(15) Licensee files a petition in voluntary bankruptcy or seeks relief under the provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment or debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of Licensee or any of its property.

- (c) The Licensee shall take corrective action as necessary to eliminate the non-compliance and shall confirm in writing to the Licenser, prior to expiration of an applicable cure period, if any, that the non-compliance has ceased, been corrected or will be corrected



prior to expiration of such applicable cure period. If Licensee fails to discontinue such non-compliance or to correct same and fails to give the required written confirmation to the Licensors within the time stated above, the Licensors may terminate this Agreement or any license for which Attachment authorizations granted hereunder for Poles and/or Anchors as to which such non-compliance shall have occurred.

(d) Removal of Licensee's Facilities.

(i) In the event of termination of this Agreement or any of the Licensee's authorizations hereunder, the Licensee will remove Licensee's Facilities from the Poles and Anchors within thirty (30) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to the provisions of this Agreement. If the Licensee fails to remove Licensee's Facilities within the specified period, the Licensors shall have the right to remove such facilities, at the Licensee's expense, without any liability on the part of the Licensors for damage or injury to such facilities or interruption of Licensee's services to its customers.

(ii) When Licensee's Facilities are removed from a Pole or Anchor, no Attachment to the same Pole or Anchor shall be made until the Licensee has first complied with all of the provisions of this Agreement as though no such Pole or Anchor Attachment had been previously made, and all outstanding amounts due to the Licensors for such Pole or Anchor Attachment, including the Costs to remove the Licensee's Facilities, have been paid in full.

(iii) If either Party disputes the right of the other Party to terminate this Agreement or any license issued pursuant to this Agreement, the Party disputing the same may submit the dispute for resolution in accordance with the Dispute Resolution provisions set forth in Section XIV hereof.

### **XIII. REMEDIES FOR DEFAULT**

(a) Suspension or Termination

If an Event of Default occurs and has not been cured as required hereunder, in addition to any other rights or remedies a non-defaulting Party may have under this Agreement, at law or in equity or otherwise, the non-defaulting Party may, by written notice to the Defaulting Party, (a) suspend its performance under this Agreement or any license issued hereunder, or (b) cancel this Agreement and terminate its performance under this Agreement or any license issued hereunder.

(b) Surrender of Licenses and Occupancy

Upon any termination of this Agreement, Licensee shall peacefully surrender the licenses that have been terminated and the right to occupy any Poles and Anchors related thereto, to Licensors, and Licensors, upon or at any termination, may, without further notice, possess and repossess the Poles and Anchors thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Licensee and remove Licensee's Facilities from the Poles and

Anchors and may have, hold and enjoy the Poles and Anchors and the right to license the same to others.

(c) Payment to Licensor.

In the case of any such termination as a consequence of default by the Licensee, Licensee shall pay the fees and charges required to be paid up to the date of such termination, or for such other period of time as provided for in this Agreement. Licensee shall also pay to Licensor all reasonable expenses which Licensor may then or thereafter incur for legal expenses, attorney's fees, and all costs incurred by Licensor in terminating this Agreement or any license issued hereunder, recovering possession of the Licensor's facilities, removing Licensee's Facilities therefrom, and for restoring the Licensor's facilities to good order and condition. For any labor performed by Licensor's employees in connection with such activities, Licensor shall charge Licensee rates under the existing Operating Procedures for Make-Ready Work. Licensor may, at any time and from time to time, license the Licensor's facilities to others without any liability to Licensee.

(d) Reinstatement of License

In the event Licensor has terminated this Agreement or any license issued hereunder, and it is determined by the Commission or any court with jurisdiction, as provided for in the Dispute Resolution provisions in Section XIV hereof, or in the Governing Law and Forum provisions set forth in Section XXI(f) hereof, that such termination was not proper, then notwithstanding any other provision of this Agreement to the contrary, Licensor, at the request of the Licensee, will reinstate any and all licenses that were determined to be improperly terminated.

#### **XIV. DISPUTE RESOLUTION PROCESS**

(a) Submission to Parties

Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. Such dispute must be submitted in writing by the disputing Party and set forth the position of the disputing Party, with supporting documentation, and a proposed resolution. A dispute shall be discussed at the intermediate level within the Licensor and Licensee organizations for ten (10) days before being taken to the Commission for alternative dispute resolution.

(b) Submission to Commission

An initial filing for alternative dispute resolution shall be sent to the Secretary of the Commission.

(c) Work During Pendency of Dispute

Disputed work shall continue to the extent possible during a dispute. Where the dispute is over cost, the work shall continue as long as the Licensee pays the undisputed portion of the invoice plus fifty percent (50%) of the total amount of the disputed portion of the invoice. Payment of the disputed invoice shall note that it is being paid under protest and subject to reconciliation following resolution of the dispute. If the dispute is over the form or location of the Attachment, compliance with applicable Standards, or the use of a Temporary Attachment, the disputed work shall not commence or continue.

(d) Expedited Resolution.

If either Party believes that special circumstances exist, including public safety, system reliability or significant financial risk that require a more expeditious resolution of a dispute, then such Party may, after notice to the other Party that a dispute is being submitted directly to the Commission, submit such dispute in writing directly to the Commission in accordance with the Commission's expedited process as set forth in the Commission's rules and regulations, and concurrently provide a copy to the other Party. The Commission can agree to the existence of special circumstances and attempt to resolve the dispute in an expeditious manner, or it can find that the dispute can be resolved in accordance with the normal process provided hereunder.

(e) Submission of Documents.

All correspondence or documents relating to a dispute or complaint, and sent from one Party to the other must be sent in a manner that provides verification that they were received within the time periods specified in this Section XIV hereof.

## **XV. FORCE MAJEURE**

(a) Excuse of Performance

(i) If the Licensor or Licensee is rendered unable, wholly or in part, by Force Majeure, as hereinafter defined, to perform its obligations under this Agreement, other than the obligation to make payments under this Agreement, when, as and if due hereunder, it is agreed that the performance of the respective obligations of Licensee and the Licensor, so far as they are affected by Force Majeure, shall be excused and suspended from the inception of any such inability until it is corrected, but for no longer period. The Licensor or Licensee, whichever is claiming such inability, shall give notice thereof to the other as soon as practicable after the occurrence of the Force Majeure. Such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, giving reasonably full particulars. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of reasonable diligence by the Party claiming inability by reason of Force Majeure.

(ii) "Force Majeure" shall mean acts of God, including epidemics, landslides, lightning, earthquakes, hurricanes, storms, fires, explosions, floods, washouts and other similar unusual and severe natural calamities; acts of the public enemy, wars, terrorist acts, blockades,

insurrections, riots, civil disturbances, arrests, breakage or accidents, or necessity of repairs to machinery, facilities, equipment or electric or telephone lines, interruption or curtailment of service due to an event of Force Majeure, or governmental actions such as necessity for compliance with any court order, law, statute, ordinance or regulation promulgated by a Governmental Authority having jurisdiction, and any other laws, orders, rules, regulations, acts, or restraints of any government or Governmental Authority, civil or military, which have the effect of prohibiting or substantially impairing performance of a Party's obligations hereunder; shortage or unavailability of materials, supplies and/or equipment, strikes, lockouts, or other labor disturbances; and any other cause or event, whether of the kind herein enumerated or otherwise, not foreseeable or otherwise within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome. Notwithstanding anything to the contrary in this Agreement, Force Majeure shall not include the failure or loss of Licensee's markets or the inability of the Parties to perform their obligations at a profit.

(iii) If a Force Majeure Event occurs, the non-performing Party shall give prompt notification of its inability to perform to the other Party. During the period that the non-performing Party is unable to perform, the other Party shall also be excused from performance of its obligations to the extent such obligations are reciprocal to, or depend upon, the performance of the non-performing Party that has been prevented by the Force Majeure event. The non-performing Party shall use commercially reasonable efforts to avoid or remove the cause of its non-performance and both Parties shall proceed to perform once the cause is removed or ceases.

(iv) Upon receipt of a Force Majeure notice hereunder, the Parties will work cooperatively to resolve or mitigate such Force Majeure event.

(v) Notwithstanding the foregoing, a Party shall not be required to settle a strike, lockout or other labor disturbance if it believes that such settlement would not be in the best interests of such Party.

## **XVI. TAXES**

### **(a) Taxes Imposed**

If the presence of the Licensee or Licensee's Facilities on Licensor's Poles or Anchors causes Licensor to pay any new or additional Federal, state or local tax, fee, surcharge or other tax-like charge (a "Tax") which Licensor would not otherwise pay, Licensee shall reimburse Licensor to the full extent of such new or additional Tax, within thirty (30) days of receiving a bill therefor from Licensor.

(i) Unless Licensee provides Licensor with an appropriate direct pay permit or other certificate evidencing an exemption, Licensee shall be responsible for the payment of the taxes and surcharges that Licensor is required or authorized to collect from Licensee for any work performed, service rendered or rate, charge or fee imposed hereunder, as set forth in or authorized by Licensor's Tariff. The taxes and surcharges shall be in addition to any other amounts Licensor collects from Licensee hereunder.

(b) Collection and Remittance

If any Tax is required or permitted by Applicable Law or a Tariff to be collected from the Licensee by the Licensors, then (a) the Licensors shall properly bill the Licensee for such Tax, (b) the Licensee shall timely remit such Tax to the Licensors and (c) the Licensors shall timely remit such collected Tax to the applicable taxing authority.

**XVII. NOTICE PROVISION**

Unless otherwise expressly provided herein, any notice, request, or other communication under this Agreement (herein a “notice”) shall be given in writing and shall be deemed effectively given (a) upon personal delivery to the Party to be notified, (b) on confirmation of receipt by facsimile by the Party to be notified, (c) one (1) Business Day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, or (d) three (3) days after deposit with the U.S. Post Office, postage prepaid, registered or certified, with return receipt requested, and addressed to the Party to be notified at the address indicated for such Party below, or at such other address as such Party may, at any time, or from time to time, designate by ten (10) days advance written notice to the other Party given in the foregoing manner.

IF TO THE LICENSOR:

Notices:

Archtop Fiber, LLC \_\_\_\_\_  
300 Enterprise Drive \_\_\_\_\_  
Kingston, NY 12401 \_\_\_\_\_

Facsimile: N/A \_\_\_\_\_  
Attention: Office of Joint Use \_\_\_\_\_

with a copy to:

OJU@archtopfiber.com \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Billing:

Archtop Fiber, LLC \_\_\_\_\_  
300 Enterprise Drive \_\_\_\_\_  
Kingston, NY 12401 \_\_\_\_\_

Facsimile: N/A \_\_\_\_\_  
Attention: Payables \_\_\_\_\_

with a copy to:

Payables@archtopfiber.com \_\_\_\_\_  
OJU@archtopfiber.com \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IF TO LICENSEE:

Notices:

\_\_\_\_\_  
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\_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Attention: \_\_\_\_\_

Billing:

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Facsimile: \_\_\_\_\_  
Attention: \_\_\_\_\_

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Attention: \_\_\_\_\_

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Facsimile: \_\_\_\_\_  
Attention: \_\_\_\_\_

## **XVIII. CONFIDENTIAL INFORMATION**

### **(a) Definition**

(i) As used in this Section XVIII, “Confidential Information” means the following information that is disclosed by one Party (“Disclosing Party”) to the other Party (“Receiving Party”) in connection with, or anticipation of, this Agreement:

(1) Books, records, documents and other information disclosed in an application, audit or otherwise pursuant to any provisions of this Agreement; or

(2) Any forecasting information provided pursuant to this Agreement;  
or

(3) Customer information (except to the extent that (a) the customer information is published in a directory, (b) the customer information is disclosed through or in the course of furnishing a service, or (c) the customer to whom the customer information is related has authorized the Receiving Party to use and/or disclose the customer information); or

(4) Information related to specific Licensor facilities, Licensee’s Facilities or equipment; or

(5) Any information that is in written, graphic, electromagnetic, or other form, and marked or declared at the time of disclosure as “Confidential;” “Proprietary;” or “Trade Secret;” or

(6) any information that is communicated orally or visually and declared to the Receiving Party at the time of disclosure, and by written notice with a statement of the information given to the Receiving Party within ten (10) days after disclosure, to be “Confidential,” “Proprietary” or “Trade Secret.”

(ii) Notwithstanding any other provision of this Agreement to the contrary, a Party shall have the right to refuse to accept receipt of information which the other Party has identified as Confidential Information.

### **(b) Use of Confidential Information**

(i) Except as otherwise provided in this Agreement, the Receiving Party shall:

(1) use the Confidential Information received from the Disclosing Party only in performance of this Agreement; and

(2) using the same degree of care that it uses with similar confidential information of its own (but in no case a degree of care that is less than commercially reasonable), hold Confidential Information received from the Disclosing Party in confidence and restrict disclosure of the Confidential

Information solely to those of the Receiving Party, the Receiving Party's Affiliates and the directors, officers, employees, agents and contractors of the Receiving Party and the Receiving Party's Affiliates, Joint Owners and Joint Users that have a need to receive such Confidential Information in order to perform their or the Receiving Party's obligations under this Agreement. The Receiving Party, the Receiving Party's Affiliates and the directors, officers, employees, agents and contractors of the Receiving Party and the Receiving Party's Affiliates, Joint Owners and Joint Users shall be required by the Receiving Party to comply with the provisions of this Section XVIII(b)(2) in the same manner as the Receiving Party. The Receiving Party shall be liable for any failure of the Receiving Party's Affiliates or the directors, officers, employees, agents or contractors of the Receiving Party or the Receiving Party's Affiliates, Joint Owners and Joint Users to comply with the provisions of this Section XVIII(b)(2) hereof; and

(3) not disclose any Confidential Information to a third-party without the prior, written consent of the Disclosing Party, which consent may be withheld or delayed for any reason or no reason; provided, however, that any information or data may be disclosed by a Receiving Party without the consent of the Disclosing Party (a) to the extent required by Applicable Laws, rules and regulations, by a request, requirement, recommendation, or an order of any Governmental Authority, or by any subpoena or similar legal process so long as the Party whose information is being disclosed, when practicable, is given prompt written notice prior to such disclosure, and the opportunity to contest such disclosure or to seek a protective order prohibiting the same; (b) to the extent the Disclosing Party shall have otherwise made the information public or shall have consented in writing prior to any such disclosure; or (c) in connection with the lawfully required submission or disclosure of this Agreement or any of its terms to a Governmental Authority.

(c) Return of Confidential Information

The Receiving Party shall return or destroy all Confidential Information received from the Disclosing Party, including any copies made by the Receiving Party, within thirty (30) days after a written request by the Disclosing Party is delivered to the Receiving Party, except for Confidential Information that the Receiving Party reasonably requires to perform its obligations under this Agreement, and copies for archival purposes only. In the event the Receiving Party destroys the Confidential Information rather than returning the same, the Receiving Party shall provide an officer's certificate to the Disclosing Party certifying that such Confidential Information has been destroyed.

(d) Information that may be Disclosed

Unless otherwise agreed to by the Disclosing Party and the Receiving Party, information and data disclosed hereunder shall not be considered Confidential Information to the extent it:



(1) was known to the receiving Party, or an Affiliate thereof, prior to the date of its disclosure pursuant to this Agreement, and to which there is no existing obligation of confidentiality; or

(2) is or becomes generally available to the public other than through the act or omission of the receiving Party in breach of the terms of this Agreement; or

(3) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided that such source is not known to the Receiving Party, after due inquiry of such source, to be bound by a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality with respect to such information; or

(4) is independently developed by the Receiving Party or any of its Affiliates without the use of or reliance upon such information or data; or

(5) is approved for disclosure or use by written authorization of the Disclosing Party (including, but not limited to, in this Agreement).

(e) Disclosure to Enforce Rights

Notwithstanding the provisions of this Section XVIII, the Receiving Party may use and disclose Confidential Information received from the Disclosing Party to the extent necessary to enforce the Receiving Party's rights under this Agreement or Applicable Law. In making any such disclosure, the Receiving Party shall make reasonable efforts to preserve the confidentiality and restrict the use of the Confidential Information while it is in the possession of any Person to whom it is disclosed, including by requesting any Governmental Authority to whom the Confidential Information is disclosed to treat it as confidential and restrict its use to purposes related to the proceeding pending before it.

(f) Retention of Ownership Rights

The Disclosing Party shall retain all of the Disclosing Party's right, title and interest in any Confidential Information disclosed by the Disclosing Party to the Receiving Party. Except as otherwise expressly provided in this Agreement, no license is granted by this Agreement or by the disclosure pursuant to the provisions of this Agreement with respect to any Confidential Information (including under any patent, trademark or copyright), nor is any such license to be implied solely by virtue of the disclosure of Confidential Information.

(g) Survival of Obligations

Each Party's obligations under this Section XVIII shall survive expiration, cancellation or termination of this Agreement.

## **XIX. AMENDMENTS**

### **(a) Amendment on Notice**

This Agreement may be modified or amended by Licensor, upon not less than twenty (20) days prior written notice to Licensee setting forth the amendment or modification, if Licensor determines that such amendment or modification is necessary to conform this Agreement to any determination of a Governmental Authority. Such amendment or modification shall become effective on the date set forth in Licensor's written notice, unless, prior to such date, Licensee provides Licensor with its written objections to such amendment or modification setting forth the reasons why the amendment or modification does not conform this Agreement to any determination of a Governmental Authority. Unless Licensee objects as provided herein, the amendment or modification shall be effective and binding on Licensee and Licensor on the date set forth by Licensor. If Licensee does object, Licensor may revise or withdraw such amendment or modification to satisfy such objections, or the Parties may settle such dispute in accordance with the Dispute Resolution provisions set forth in Section XIV hereof.

### **(b) Amendment by Mutual Agreement**

Except as provided in Section XIX(a), this Agreement may not be modified or amended, nor may any obligation of either Party be changed or discharged except in writing signed by the duly authorized officer or agent of the Party to be charged.

### **(c) Notice of Name Change**

Licensee shall provide Licensor with written notification of any Licensee legal name changes or of a new Affiliate of the Licensee that does not require an assignment in accordance with Section XX. Upon receipt of such notification, the Parties shall amend this Agreement, as necessary, to reflect the proper Parties.

## **XX. ASSIGNMENT AND SUBLETTING**

### **(a) No Assignment or Subletting of License**

(i) Licensee shall not assign, sub-license, sublet or transfer this Agreement or any license granted herein, and such authorization shall not inure to the benefit of Licensee's successors or assigns without the prior written consent of the Licensor, which consent shall not be unreasonably withheld, delayed or conditioned. In the event such consent is granted by the Licensor, the provisions of this Agreement shall apply to and bind the Licensee's successors and assigns.

(ii) No assignment or subletting of this Agreement or the rights, duties and obligations by Licensees without the prior written consent of Licensor, which consent is not to be unreasonably withheld, delayed or conditioned shall be approved by Licensor unless, at a minimum, Licensee has paid all balances due to Licensor hereunder and is not otherwise in default hereunder, the assignee is financially and operationally able to perform the obligations of Licensee hereunder, and assignee assumes the obligations of Licensee hereunder.

(iii) Other requirements in connection with requesting consent to an assignment or subletting, including time for requesting such consent, are set forth in the Operating Procedures.

(b) Consent of the Licensors shall be deemed received if Licensors do not specify objections within sixty (60) days after receipt of Licensee's request for consent.

(c) At the time Licensee requests consent to assignment or subletting, Licensee shall provide Licensors with an assignment and assumption agreement that is reasonably satisfactory to Licensors.

## **XXI. GENERAL PROVISIONS**

### **(a) Headings for Convenience**

The headings used throughout this Agreement are inserted for convenience of reading and reference only and are not intended to be a part of or to define, limit, describe or affect the scope, intent, meaning, construction or interpretation of this Agreement.

### **(b) Order of Precedence**

Except as otherwise expressly provided in this Agreement, to the extent that there are conflicts among provisions in this Agreement, Tariffs, Operating Procedures and any order, ruling or determination by a Governmental Authority that affects one Party, but has been accepted by the other Party, such conflicts shall be resolved in accordance with the following order of precedence, where the document identified in subsection "(a)" shall have the highest precedence: (a) this Agreement; (b) the Tariffs; (c) the Operating Procedures and, (d) an order, ruling or determination by a Governmental Authority that affects one Party, but has been accepted by the other Party. The fact that a provision appears in one document but not in another document shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section XXI(b) hereof.

### **(c) Entire Agreement**

(i) This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and, except as otherwise specifically provided in this Agreement, supersedes any prior or contemporaneous agreement, understanding, or representation on the subject matter hereof and binds and inures to the benefit of the Parties, their successors-in-interest and permitted assigns.

(ii) Notwithstanding any other provision of this Agreement or otherwise, this Agreement is an amendment, extension and restatement of the Parties' prior pole attachment agreement, if any, and, as such, this Agreement is not intended to be, nor shall it be construed to

create, a novation or accord and satisfaction with respect to any prior pole attachment agreement and, accordingly, all obligations, including monetary or indemnity, of the Parties to one another under any prior pole attachment agreement shall remain in full force and

effect and shall constitute continuing obligations of the Parties under this Agreement, provided, however, that nothing contained in this Agreement shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in a bankruptcy case into a post-petition claim or debt. In connection with the foregoing, the Licensor expressly reserves all of its rights under the Bankruptcy Code and Applicable Law to seek or oppose any relief in respect of the assumption, assumption and assignment, or rejection of any pole attachment agreement between the Licensor and the Licensee.

(d) Cumulative Rights and Remedies

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any other remedies that may be available under this Agreement or at law, in equity or otherwise.

(e) Waiver

A failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement, at law, in equity or otherwise, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options. No waiver by either Party of one or more defaults or breaches by the other Party in performance of any of the terms or provisions of this Agreement shall operate or be construed as a waiver of any future default or breach, whether of a like or different character.

(f) Governing Law and Forum

(i) This Agreement, including all of its terms, conditions and provisions, and the Parties' acts and omissions hereunder, shall be governed by, interpreted under and construed in accordance with the internal laws of the State of New York, without giving effect to any conflict of law or choice of law principles of such State, as if all events, acts and omissions hereunder had occurred in the State of New York.

(ii) In the event of any dispute between the Parties as to a matter referred to herein, or as to the interpretation of any part of this Agreement, or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement, the Parties shall, prior to litigating under the provisions of this Section XXI, first submit to the Dispute Resolution Process in accordance with the provisions set forth in Section XIV. Should the Parties fail to resolve the dispute through the dispute resolution process, the Parties may litigate such matter in accordance with this Section XXI hereof.

(iii) To the fullest extent permitted by law, each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of any New York State Court located in Kingston, New York, or, to the extent permitted by law, the Federal District Court for the Southern District of New York, and any appellate court from which an appeal may be taken therefrom, in any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably and unconditionally agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court, or to the extent permitted by law, in

such Federal court. Each of the Parties hereby irrevocably and unconditionally waives, to the fullest extent it may effectively do so, any defense of any inconvenient forum or improper venue to the maintenance of such action or proceeding in any such court and any right of jurisdiction on account of the place of residence or domicile. Each of the Parties irrevocably and unconditionally consents to the service of any and all process in any such action or proceeding in such New York or Federal court by the sending of such process to the applicable party at the address and in the manner specified in the Notice provision in Section XVII hereof. Each of the Parties agrees that the final judgment in any such action or proceeding, following exhaustion of all remedies by appeal, shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the Parties waives its right to trial by jury in any such action or proceeding and consents to trial without a jury, as evidenced by its execution and delivery of this Agreement.

(iv) The Licensee and the Licensor shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the Parties, provided, however, that nothing contained herein shall preclude either Party from contesting the validity or enforceability of the same as they apply to either Party or this Agreement, including any limitation of the rights of any Person or Governmental Authority to interfere with a contract.

(v) Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any Governmental Authority or official.

(vi) Each Party shall promptly notify the other Party in writing of any action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.

(g) Severability

If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall endeavor to renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law, provided that neither Party shall be required to agree to any provision that would materially alter any of its rights or obligations under this Agreement, and the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

(h) Notice of Change in Service Provided

(i) In the event Licensee decides to provide telecommunications services or other services in addition to or in lieu of cable television services, Licensee shall so notify Licensor in writing at least sixty (60) calendar days prior to the date the telecommunications services are to be provided.

(ii) Telecommunications services shall include the offering of telecommunications services by Licensee, a third party telecommunications service provider Overlashing the Licensee's Pole Attachments, and/or a third party telecommunications provider leasing fiber from the Licensee.

(i) No Agency or Third-Party Beneficiary

Except as expressly set forth in this Agreement, this Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein shall create or be construed to provide any third-persons (including, but not limited to, customers or contractors of a Party) with any rights (including, but not limited to, any third-party beneficiary rights) hereunder. Except as expressly set forth in this Agreement, a Party shall have no liability under this Agreement to the customers of the other Party or to any other third person.

(j) Reservation of Rights

Notwithstanding anything to the contrary in this Agreement, neither Party waives, and each Party hereby expressly reserves, its rights: (a) to appeal or otherwise seek the reversal of and changes in any decision associated with this Agreement; (b) to challenge the lawfulness of this Agreement and any provision of this Agreement; (c) to seek changes in this Agreement (including, but not limited to, changes in rates, charges and the services that must be offered) through changes in Applicable Law; (d) to challenge the lawfulness and propriety of, and to seek to change, any Applicable Law, including, but not limited to any rule, regulation, order or decision of a Governmental Authority or a court of applicable jurisdiction; and (e) to collect amounts owed under any prior pole attachment agreements. Nothing in this Agreement shall be deemed to limit or prejudice any position a Party has taken or may take before a Governmental Authority, any other state or Federal regulatory or legislative bodies, courts of applicable jurisdiction, or industry forum. The provisions of this Section shall survive the expiration, cancellation or termination of this Agreement.

(k) Execution in Counterparts

This Agreement may be executed simultaneously in counterparts, and provided that each Party executes an original of this Agreement, each counterpart shall be deemed to be an original and which counterparts together shall constitute one and the same agreement of the Parties.

(l) Interpretation

The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this

Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.

(m) Assumption of Responsibilities

Notwithstanding any assignments of rights or duties hereunder, neither Party shall be relieved of any duties or responsibilities under this Agreement, and this Agreement shall continue in accordance with its terms and such Party shall be and remain liable to the other under all provisions of this Agreement, unless the other Party has expressly consented in writing to such release of duties and responsibilities, such consent not to be unreasonably withheld, delayed or conditioned. Further, any payments made by one Party to a permitted assignee of the other Party or any other actions taken by such Party with respect to such permitted assignee shall be in full satisfaction of any duties or responsibilities which the Party would otherwise owe to the other Party, as if made or taken directly to such other Party.

(n) Survival

Notwithstanding any provision of this Agreement to the contrary, the provisions of Sections II, III, III(f), V, VI, VIII(a), VIII(b), IX(a), IX(b)(ii), IX(c)(i)(2)(3)(6)(7)(10)(11), IX(c)(v)(5)(6), IX(c)(vi)(4), IX(c)(vii)(6)(7)(11), IX(d)(ii), IX(e)(i)(iii), IX(g), IX(i)(iii)(v)(vi)(viii), IX(j)(i)(iii), IX(l), IX(p), IX(q), X, XI, XII(d), XIII, XIV, XVII, XVIII, XXI and XXI(j) shall survive the expiration, cancellation or termination of this Agreement.

(o) Preparation and Operating Costs

Except as otherwise provided herein, each of the Licensor and Licensee shall pay all fees, costs and expenses incurred by, or on behalf of, such Party in connection with preparing, negotiating, consummating and operating under this Agreement.

(p) Independent Contractors

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

(q) Further Assurances

In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have caused this Agreement to be duly executed by their respective duly authorized and empowered officers as of the date and year first above written.

Witness: [Licensor]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Witness: [Licensee]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



# EXHIBITS

**EXHIBIT 1**

**FRANCHISED MUNICIPALITIES**

DATE OF REVISION \_\_\_\_\_

NAME OF LICENSEE \_\_\_\_\_ AGREEMENT DATED \_\_\_\_\_

MUNICIPALITY

( )

DATE OF FRANCHISE

(C) CITY  
(T) TOWN  
(V) VILLAGE

## EXHIBIT 2

### FORM OF NOTIFICATION OF REMOVAL OF POLE AND/OR ANCHOR ATTACHMENT BY LICENSEE

TO: Name of Pole Owner: \_\_\_\_\_ (“Licensor”)

Address of Pole Owner: \_\_\_\_\_

In accordance with the terms and conditions of the Standard Form Pole Attachment Agreement (“Agreement”) between the Licensor and Licensee, dated as of \_\_\_\_\_, \_\_\_\_\_ please cancel from your records the poles and/or anchors listed on the attached “Notification Attachment Removal Sheet, “Exhibit ,” and covered by the licenses identified in Exhibit \_\_ from which our attachments were removed on \_\_\_\_\_, 20\_\_\_\_\_.

(Name of Licensee)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Receipt of the above Notification is hereby acknowledged on \_\_\_\_\_, 20\_\_\_\_

Licensor: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

License will not be rescinded until actual field verification of removal. The current Annual Pole Attachment Rental Rate will apply until verification of removal has been made. Attachments rescinded will be reflected in the next invoice as set forth in the Operating Procedures.

Notification shall be submitted as set forth in the Operating Procedures.

## EXHIBIT 3

### Example of Pole Application, Page 1:

#### ARCHTOP FIBER, LLC. ITEMIZED POLE MAKE READY WORK AND CHARGES

**Licensors:**

1) ARCHTOP FIBER, LLC.

300 ENTERPRISE DRIVE, KINGSTON, NY 12401

Email completed application to: OJU@ARCHTOPFIBER.COM

**Licensee:**

2) Applicant Name & Address:

Company:

ATTN.:

Address:

Phone #:

Email to send make ready invoice:

3) Date of Application:

4) No. of  
Poles:

(Max: 150)

5) Municipality:

6) State:

7) Prepared By:

Email:

Phone:

8) ELCO Name:

Engineer Name:

Engineer Phone:

9) Licensee Project #:

10) Connect All Project: (enter "MIP" or "BEAD")

11) CAO Project #:

**To Be Filled in by ARCHTOP FIBER, LLC.**

12) SAP Debtor Code:

13) License No.:

14) Pole Att. Agreement Date:

15) Surveyed By/Date:

16) Reconciled w/ ELCO on:

17) ELCO Contact Email:

18) Effective Date of License:

19) Current Annual Rental Rate:\$ \_\_\_\_\_ per attachment

20) Prepared By:

21) Phone#:

**To Be Filled in by Engineering Vendors:**

22) Engineering Vendor for Initial Make Ready Work:

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[illegible]

## EXHIBIT 4

### STANDARD POLE ATTACHMENT LICENSE APPLICATION

TO: Name of Pole Owner: Archtop Fiber, LLC \_\_\_\_\_ (“Licensor”)

Address of Pole Owner: 300 Enterprise Drive, Kingston, NY 12401 \_\_\_\_\_

In accordance with the terms and conditions of the Standard Form Pole Attachment Agreement (“Agreement”) between the Licensor and Licensee, dated as of \_\_\_\_\_, \_\_\_\_\_, application is hereby made for a license to make attachment to the Distribution Poles which are indicated on the attached “Application Attachment Sheet,” Exhibit A-2. Each application is limited to a maximum of [EACH LICENSOR TO PROVIDE NUMBER] Poles with complete descriptions of all facilities, including quantities, sizes, and types of cable and equipment to be installed. This application has been prioritized to reflect the order in which the application should be worked.

The enclosed payment for the Pre-construction Survey fee of \$ \_\_\_\_\_ reflects the Licensor’s unit price of \$ \_\_\_\_\_ per Attachment, and the amount of \$ \_\_\_\_\_ for the Post-Construction Inspection fee reflects the Licensor’s unit price of \$ \_\_\_\_\_ for each Attachment listed on the Application.

In accordance with the Agreement, each Attachment will be subject to an Annual Pole Attachment Rental Rate and will be pro-rated by Licensor at time of licensing. Fees and rates are subject to change.

**EXCEPT AS PROVIDED IN THE AGREEMENT, THE LICENSEE AGREES TO NOT ATTACH TO LICENSOR’S JOINT OR SOLE OWNED POLES UNTIL MAKE-READY WORK IS COMPLETED BY ALL PARTIES.**

**THIS APPLICATION IS TO BE COMPLETED AND SUBMITTED IN ACCORDANCE WITH THE GUIDELINES AND PROCEDURES SET FORTH IN THE OPERATING PROCEDURES.**

(Name of Licensee)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## FORM OF LICENSE

This revocable, non-exclusive License, License Number \_\_\_\_\_, is hereby granted, for attachment to such of the Poles listed on the attached "Application Attachment Sheet" as have not been stricken from the attached list. This License is issued under the terms and conditions of the Standard Form Pole Attachment Agreement between the Licensors and Licensee, dated as of \_\_\_\_\_, 20\_\_.

Walk Number: \_\_\_\_\_

Number of Poles: \_\_\_\_\_

Number of Attachment: \_\_\_\_\_

Licensors: Archtop Fiber, LLC. \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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