

INFRASTRUCTURE USE AGREEMENT

BETWEEN

KNOXVILLE UTILITIES BOARD

AND

Effective Date: _____

INFRASTRUCTURE USE AGREEMENT

This Infrastructure Use Agreement (“Agreement”) dated this ____ day of _____, 20____ is made by and between Knoxville Utilities Board (“KUB”), an agency of the City of Knoxville and a municipal corporation of the State of Tennessee, and _____, having its principal place of business at _____, (“Operator”)

Recitals

- A. Whereas, Operator proposes to install and maintain Communications Facilities and associated communications equipment on KUB Infrastructure to provide Communications Services, or Operator proposes to install and maintain municipal Streetlight Facilities and associated equipment on KUB Infrastructure for the safety and convenience of the general public; and
- B. Whereas, KUB, in connection with its provision of utility services, owns and operates various towers, building, rooftops, pole lines, underground conduit, and other structures and facilities at various locations in its service area that are suitable for the placement of certain communications equipment and facilities; and
- C. Whereas, KUB is willing, when it may lawfully do so, to issue one or more Licenses authorizing the placement or installation of Operator’s Attachments on KUB Infrastructure, provided that KUB may refuse to issue a License where KUB determines there is insufficient Capacity or for reasons relating to safety, reliability, general applicable engineering purposes and/or any other Applicable Standard.

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AGREEMENT

Article 1—Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate**: when used in relation to Operator, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Operator.
- 1.2 **Anchor**: shall mean a KUB anchor, including “guy wire”, with shielding, where appropriate, which is utilized to stabilize a KUB pole.
- 1.3 **Annual Attachment Fee**: means the fees paid over the course of one (1) calendar year by Operator under the terms of this Agreement as outlined in Appendix A.
- 1.4 **Applicable Standards**: means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around KUB Infrastructure and includes the most current versions of the National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”), the regulations of the Occupational Safety and Health Administration (“OSHA”), as well as the engineering and safety standards established by KUB, each of which is incorporated by reference in this Agreement, and/or other reasonable KUB provided safety and engineering requirements or standards of any other federal, state or local governmental entity with jurisdiction over KUB Infrastructure.
- 1.5 **Application**: means the form and process by which Operator submits a request to make attachment to any portion of KUB’s Infrastructure. At all times, Applications shall follow the process set forth in the Attachment Guidelines published by KUB.
- 1.6 **Assigned Space**: means space on or within KUB Infrastructure that can be used, as defined by the Applicable Standards, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service or electric service. The Communication Worker Safety Zone is not considered Assigned Space.
- 1.7 **Attachment**: means any piece of equipment, device used to place or affix the equipment, or cable/messenger of the Operator, regardless of its purpose or type, which contacts or affixes to KUB Infrastructure. This does not include a Riser Attachment, support, or

safety attachments attached to a single Pole where Operator has an existing Attachment on such Pole. A new or existing Service Drop that is attached to the same pole as an Operator's existing attachment is considered a component of the existing attachment for purposes of this definition. Each wired Pole Attachment provides one foot of vertical space on a Pole and provides for one point of contact. Each Conduit Attachment provides one linear foot of conduit space and provides for one point of contact.

- 1.8 **Capacity:** means the ability of a Pole to accommodate an Attachment based on Applicable Standards, including space and loading considerations as determined by KUB.
- 1.9 **Climbing Space:** means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable KUB employees and contractors to safely climb, access, and work on KUB Infrastructure.
- 1.10 **Common Space:** means space on KUB Poles that is not used for the placement of wires or cables, but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safe clearance between attaching entities and electric Infrastructure.
- 1.11 **Communication Worker Safety Zone:** means that space between the lowest supply conductor or equipment and the highest communication cable or equipment. Spacing requirements are as specified by KUB.
- 1.12 **Communications Facilities:** means wired and/or wireless facilities including but not limited to fiber optic, copper and/or coaxial cables, wireless antennas, receivers or transceivers utilized to provide Communications Service including any and all associated equipment.
- 1.13 **Communications Service:** means the offering of the transmission, between or among points specified by the Operator, of information of the Operator's choosing, without change in the form or content of the information as sent and received
- 1.14 **Conduit Attachment:** shall mean an attachment to, or a location in, the KUB Network system of a single cable, wire or other authorized facility owned by Operator and occupying one linear foot of a single conduit, duct, Innerduct, or other enclosed structure in KUB's underground Network.
- 1.15 **Facility Attachment:** shall mean an Attachment or ground placement of equipment, cables, wires, or associated Communication Facilities to Infrastructure other than Poles or conduits.
- 1.16 **Ground Space:** means the ground space containing ground mounted equipment that is a certain distance from each Pole being using to mount wireless Communication Facilities.

- 1.17 Infrastructure:** shall mean KUB distribution Poles, transmission Poles with or without distribution underbuild, ducts, KUB-owned lighting poles, conduit, vaults, Anchors, fiber optic cable capacity and active communications capacity, facilities, and all other utility infrastructure and associated materials and equipment on or connected to these structures which are owned by, or under the control of, KUB.
- 1.18 Innerduct:** shall mean a flexible conduit installed by KUB inside a larger conduit for the placement of fiber optic cable.
- 1.19 Joint Use Agreement:** shall mean an agreement by two parties owning poles whereby each party has agreed to give the other party a right, under certain terms and conditions, to attach to poles or conduits, and to occupy space in the other's poles, conduits or facilities.
- 1.20 License:** means a nonexclusive, revocable authorization, either written or in electronic format, issued by KUB for Operator to make or maintain Attachments to specific KUB Infrastructure pursuant to the requirements of this Agreement and as described in the submitted Application.
- 1.21 Make Ready Work:** means the changes to be made to KUB's Infrastructure, its own Attachments, the Attachments of other Users, or the existing additional equipment associated with such Attachments, which KUB reasonably determines to be required to accommodate Operator's proposed Attachment(s). Such Make Ready Work is to be approved by KUB and performed by Operator's employees, KUB's employees, a certified contractor approved by KUB and employed by Operator, or a third party. The definition includes all administrative work, engineering work, inspection, design, planning, construction, permitting, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, or Network clearing, or other work reasonably necessary for the installation of Operator's Attachments to poles or within conduit or duct systems. This includes, without limitation, work related to transfers, rearrangements and replacement of existing Poles or other Infrastructure, the addition of new Infrastructure, and the rearrangement of third party pole attachments.
- 1.22 Network:** means all underground conduits owned by KUB.
- 1.23 NJUNS:** shall mean the National Joint Utility Notification System, an organization that facilitates efficient utility communications through an electronic online system built to communicate and track information regarding joint utility ventures.
- 1.24 Occupancy:** means the use or specific reservation of Assigned Space for Attachments on a KUB Pole.
- 1.25 Overlash:** means to place an additional wire or cable onto an existing Attachment owned by Operator.

- 1.26 Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that are not attached to KUB Poles.
- 1.27 Pole:** means a utility pole owned by KUB used for the transmission/distribution of electricity and/or Communications Service that is capable of supporting Attachments of Communications Facilities.
- 1.28 Post-Construction Inspection:** means the inspection required by KUB to determine and verify the Attachments have been made in accordance with Applicable Standards and the License.
- 1.29 Rearrangement of Attachment; or Rearrange:** shall mean the moving of Attachments from one position to another on the same Pole or in the same conduit.
- 1.30 Reserved Capacity:** means capacity or space on a Pole or in a portion of the Network, that KUB has identified and reserved for its own requirements pursuant to a reasonable projected need or business plan.
- 1.31 Riser Attachment:** means metallic or plastic encasement materials placed vertically on KUB Infrastructure to guide and protect communications wires and cables when transitioning from underground to overhead or overhead to underground. Riser Attachments shall not be counted as an additional Pole Attachment for rental fee purposes on Poles where Operator has an existing licensed Pole Attachment.
- 1.32 Service Drop:** shall mean (i) a cable used to connect directly to an Operator's customer's location from one Pole, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600 volts; or (ii) a Cable used to connect an Operator's customer's location through the use of multiple Licensed Poles where Service Drop Make Ready has been performed pursuant to Article 7. Service drops shall not be counted as an additional Pole Attachment for Annual Attachment Fee purposes as long as such Service Drop is within the attachment space of a Licensed Attachment subject to the Annual Attachment Fee.
- 1.33 Site:** means an individual Pole upon which Operator has attached wireless Communication Facilities and the Ground Space portion of each enclosed or nearby property upon which Operator has constructed facilities.
- 1.34 Streetlight Facilities:** Facilities and equipment owned and operated by a municipal governmental agency for the purpose of lighting public roadways.

- 1.35 Tag:** means the placement of distinct markers on Attachments coded by means specified by KUB and applicable federal, state or local regulations, which will readily identify its owner and the nature of the Attachments and be legible from the ground.
- 1.36 Transfer of Attachments; or Transfer:** shall mean the removing of Attachments from one Pole and placing these onto another Pole or moving of Attachments from one location in KUB's Network to another location in KUB's Network.
- 1.37 TVA's Attachment Regulatory Scheme:** means the cost recovery model and procedural regulations that determine attachment rates promulgated by the Tennessee Valley Authority in its role as the regulator of Pole Attachments in KUB's service area. This shall include any and all Pole Attachment requirements/regulations as may be adopted by TVA from time to time to include rules and regulations contained in KUB's wholesale power contract, as amended, with TVA.
- 1.38 Unauthorized Attachment:** shall mean the placement of any Attachment on KUB Infrastructure without proper authorization as required by this Agreement. An Unauthorized Attachment shall not include any Attachment that Operator is permitted to affix to KUB Infrastructure pursuant to the terms and conditions hereof, even if the installation of such Attachment does not meet Applicable Standards or differs from the design described in the applicable Application. Notwithstanding the foregoing, the deliberate installation of an Attachment or Overlash in knowing violation of Applicable Standards constitutes an Unauthorized Attachment.
- 1.39 User:** means any public or private entity, other than KUB or Operator, which, pursuant to a license agreement with KUB, places an Attachment on or within KUB Infrastructure.
- 1.40 Work:** shall mean, and be understood to include, but not necessarily be limited to, all Make Ready, supervision, installation, repair, maintenance, transportation, operation, labor, materials, equipment, administration, design, engineering and overhead required of a party, or agreed to be done by a party, under this Agreement.

Article 2—Scope of Agreement

- 2.1 Grant of License.** Subject to the provisions of this Agreement, KUB, when it may lawfully do so, grants Operator a revocable, nonexclusive license authorizing Operator to install and maintain Attachments to KUB Infrastructure, in accordance with Operator's Agreements with City of Knoxville, Knox County, or other entities, as needed, in effect at the time of this Agreement.
- 2.2 Parties Bound by Agreement.** Operator and KUB shall be bound by all provisions of this Agreement.
- 2.3 License Issuance Conditions.** KUB will issue a License(s) to Operator only when KUB determines, in its sole judgment, which shall not be unreasonably withheld, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Operator meets all requirements set forth in this Agreement, (iii) such License(s) comply with all Applicable Standards, and (iv) Operator is current in all its obligations owed to KUB.
- 2.4 Reserved Capacity.** Access to space on KUB Infrastructure will be made available to Operator with the understanding that such access will not be within Reserved Capacity for future KUB use. On giving Operator at least sixty (60) calendar days prior notice, KUB may reclaim such Assigned Space any time during the period following the installation of Operator's Attachment in which this Agreement is effective if required for KUB's future use. If reclaimed for KUB use, KUB may at such time also install associated facilities, including the attachment of communications lines for internal KUB operational or governmental communications requirements. KUB shall give Operator the option to remove its Attachment(s) from the affected Pole(s) or other KUB Infrastructure, or to pay for the cost of any Make Ready Work needed to expand Capacity so that Operator can maintain its Attachment on the affected Infrastructure. The allocation of the cost of any such Make Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9. Operator shall not be required to bear any of the costs or rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity.
- 2.5 No Interest in Property.** No use, however lengthy, of any KUB Infrastructure, and no payment of any fees or charges required under this Agreement, shall create or vest in Operator any easement or other ownership or property right of any nature in any portion of KUB Infrastructure. Neither this Agreement, nor any License granted under this Agreement, shall constitute an assignment of any of KUB's rights to KUB Infrastructure.

- 2.6 Operator's Right to Attach.** Nothing in this Agreement, other than a License issued pursuant to Article 6, shall be construed as granting Operator any right to attach Communication Facilities or Streetlight Facilities to any portion of KUB Infrastructure.
- 2.7 KUB's Rights over Infrastructure.** This Agreement does not in any way limit KUB's right to locate, operate, maintain or remove its Infrastructure in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state, or local legal requirements.
- 2.7.1** KUB may retain for its own use transmission structures, the electric supply area on Poles, and conduit that is co-resident with electric service or terminates in electric service vaults or manholes.
- 2.7.2** Specific units of KUB Infrastructure may be reasonably determined by KUB to be necessary for KUB's exclusive use due to legal, mechanical, structural, safety, environmental, service or other requirements, and therefore, will be unavailable for use by others; provided, however, the foregoing clause will not be applicable to Poles, for which KUB's right to deny access to Operator is set forth in Article 6.
- 2.8 Expansion of Capacity.** KUB will take reasonable steps, at Operator's sole expense, to expand Infrastructure Capacity when necessary to accommodate Operator's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require KUB to install, retain, extend or maintain any portion of Infrastructure for use when such Infrastructure is not needed for KUB's own service requirements.
- 2.9 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit KUB from fulfilling any agreement or arrangement regarding Infrastructure into which KUB has previously entered, or may enter in the future, with others not party to this Agreement. The rights of Operator shall at all times be subject to any present or future Joint Use Agreement between KUB and any other party regarding the use of the Infrastructure covered herein; provided, however, that nothing in any such present or future Joint Use Agreement shall restrict, modify, or abridge the rights of Operator set forth in this Agreement.
- 2.10 Licensed Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without KUB's express written consent to such use. Nothing in this Agreement shall be construed to require KUB to allow Operator to use KUB Infrastructure after the termination of this Agreement.

- 2.11 **Enclosures.** Operator shall not place Pedestals, Vaults and/or other Enclosures on or within four (4) feet of any Pole or other KUB Infrastructure.
- 2.12 **Relationship of Parties** No provision of this Agreement shall create a partnership or joint venture between the parties nor result in a joint communications service offering to the customers of either Operator or KUB. Notwithstanding anything in this Agreement to the contrary, Operator shall, at all times, be and remain an operator only.

Article 3—Fees and Charges

- 3.1 **Payment of Fees and Charges.** Operator shall pay to KUB the fees and charges specified in Appendix A and shall comply with the terms and conditions specified herein.
- 3.1.1 The Attachment Fees shall be subject to an annual adjustment during the term of this Agreement (decrease and increase), as set forth in Appendix A hereto, in accordance with the Handy Whitman Index, as allowed by TVA's Pole Attachment Regulatory scheme.
- 3.2 **Payment Period.** Unless otherwise expressly provided herein or in writing agreed to by both parties, Operator shall pay any invoice it receives from KUB pursuant to this Agreement within thirty (30) calendar days of the billing date on the invoice.
- 3.3 **License Application Fee.** Operator shall be charged a License Application Fee for each unit of KUB Infrastructure (Pole, section of conduit, etc.) on which new Attachments are proposed under this Agreement. There shall be no Application Fee for Service Drops, Riser Attachments, and Overlashing qualifying for exclusion under Article 6. KUB reserves the right to adjust the License Application Fee from time to time. Failure to pay the License Application Fees will cause the Application(s) to be deemed incomplete, and KUB will not process such Application(s) until the License Application Fees are paid.
- 3.4 **Billing of Annual Attachment Fee.** KUB shall invoice Operator in advance for the Attachment Fee semi-annually (one-half of the annual Attachment Fee at each billing period) as specified in Appendix A. KUB will submit to Operator an invoice for the semi-annual rental period on or about January 1 and on or about July 1 of each year. The initial rental period shall commence on _____, _____, 20____ and conclude on December 31, 20____. Attachment fees for the initial rental period will be billed on a pro-rated basis and, if applicable, attachment fees collected under a previous contract for this same initial rental period will be credited toward this billing on the same pro-rated basis. Each subsequent annual rental period shall commence on the following January 1st and conclude on December 31st of the same year. The invoice shall set forth the total units of

KUB Infrastructure on which Operator was issued and/or holds a License(s) for Attachments during such annual rental period, including any previously authorized and valid Licenses. Attachment fees for Licenses issued throughout a rental period shall commence on the date of License approval and be pro-rated for the remainder of the rental period.

3.4.1 These fees are calculated in accordance with TVA's Pole Attachment Regulatory Scheme, or in the case of non-pole attachments, in another commercially reasonable manner.

3.4.2 If an Application is submitted by Operator and steps are taken by KUB to carry out review of the Application by performing necessary engineering and administrative work, and the Application is subsequently canceled, Operator shall reimburse KUB for all of the actual and documented costs incurred by KUB through the date of cancellation, including engineering, clerical, administrative and Make Ready construction costs.

3.5 **Refunds.** No fees or charges as specified in Appendix A shall be refunded due to any surrender of a License granted hereunder. Nor shall any refund be owed if KUB abandons any portion of its Infrastructure.

3.6 **Late Charge.** If KUB does not receive payment for any fee or other amount owed within thirty (30) calendar days of the billing date, Operator, upon receipt of written notice, shall pay interest on the amount due to KUB within fifteen (15) calendar days, at the maximum rate allowed by Tennessee State law, currently One and One Half Percent (1.5%) per month, and provision for the payment of such interest shall not relieve the Operator of its obligation to pay all Fees when the same are due.

3.7 **Payment for Work.** Operator will be responsible for payment of all reasonable costs to KUB for all Work KUB or KUB's contractors perform pursuant to this Agreement to accommodate Operator's Attachments.

3.7.1 Such expenses and reimbursements shall include, but not necessarily be limited to, all design, engineering, administration, supervision, Make Ready expenses, labor, overhead, materials, equipment, and applicable transportation used for Work on, or in furtherance of, Operator's Attachments, as provided for herein. Upon request of Operator, KUB will provide Operator an estimate of the expenses for Work associated with Make Ready Work associated with KUB Facilities in advance of commencing the Work.

- 3.7.2** KUB shall provide Operator with Monthly invoices for such Work and payment shall be due and payable upon receipt but shall not draw interest at KUB's prevailing rate until thirty (30) days overdue.
- 3.8** **Advance Payment.** At the discretion of KUB, Operator may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections, and Make Ready Work expenses, in connection with the initial installation or rearrangement of Operator's Attachments pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.9** **True Up.** Wherever KUB, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Operator and the actual cost of activity exceeds the advance payment of estimated expenses, Operator agrees to pay KUB for the difference in cost. To the extent the actual cost of the activity is less than the estimated cost, KUB agrees to refund the Operator the difference in cost.
- 3.10** **Determination of Charges.** Wherever this Agreement requires Operator to pay for Work done or contracted by KUB, the charge for such Work shall include all reasonable material, labor, engineering and applicable overhead costs. KUB shall bill its services based upon actual costs, and such costs will be determined in accordance with KUB's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of Work, location of Work, labor costs per hour, number of persons employed by classification, and cost of materials used. In addition, if Operator is required to perform Work and fails to perform such Work necessitating its completion by KUB, KUB will charge the actual cost to perform such Work plus either an additional ten percent (10%) of its costs, or assess the fee specified in Appendix A, whichever is the greater amount.
- 3.11** **Work Performed by KUB.** Wherever this Agreement requires or allows KUB to perform any Work, KUB, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such Work.
- 3.12** **Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a default of this Agreement.

Article 4—Specifications

- 4.1** **Installation/Maintenance of Communications Facilities.** When a License is issued pursuant to this Agreement, Operator's Attachments shall be installed and maintained in accordance with the requirements and specifications of KUB's Attachment Guidelines,

construction standards, and all Applicable Standards. Operator shall be responsible for the installation and maintenance of its Communications Facilities. Operator shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards. Upon execution of this Agreement, Operator is not required to modify, update or upgrade its existing Attachments where not required to do so by the terms and conditions of this or prior Agreements, if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards.

- 4.2 NJUNS.** Operator shall become a participating member of NJUNS, utilized by KUB to facilitate required notices, including but not limited to, any need to Rearrange or Transfer Operator's Attachments. KUB will determine the extent to which notifications via NJUNS will be utilized for Attachments, Transfers, Rearrangements, Attachment, abandonment and removal. KUB will also determine the extent to which such use will satisfy the notification requirements of this Agreement and provide notice thereof to Operator; provided that KUB's determinations in respect thereto shall be made applicable to all other Users placing or affixing facilities within or on Infrastructure and provided further that KUB will provide Operator with contact information for any other User which is not using NJUNS. To the extent that KUB determines to use NJUNS, Operator and KUB agree to perform their respective tasks set forth in NJUNS tickets in a timely fashion and in accordance with the timeframes specified in this Agreement.
- 4.3 Tagging.** Operator shall Tag all Communication Facilities/Attachments to KUB Infrastructure as specified by KUB Attachment Guidelines upon installation of such Attachment(s). Operator shall have twelve (12) months from the Effective Date of this Agreement to tag any untagged Attachments to KUB Infrastructure. Failure to provide proper tagging will be considered a violation of the Applicable Standards. Should KUB encounter any of Operator's Attachments without approved permanent identification markers, KUB may notify Operator, provided that KUB can identify the Attachments as belonging to Operator. Operator shall be responsible for periodically inspecting its Attachments to ensure they are Tagged with approved permanent identification markers.
- 4.4 Interference.** Operator shall not allow its Attachments to impair the ability of KUB or any third party to use KUB's Poles nor shall Operator allow its Attachments to interfere with the operation of any KUB Facilities or third-party facilities. The attachment rights subsequently granted by KUB to other attaching entities pursuant to licenses, Licenses, or rental agreements shall not limit nor interfere with any prior attachment rights granted to the Operator hereunder or result in further rearrangement or Make Ready costs without reimbursement.

- 4.4.1** Operator is solely responsible for the radio frequency (RF) emissions emitted by its wireless Attachments and associated equipment. Operator is jointly responsible for ensuring RF exposure from its emissions, in combination with the emissions from all other contributing sources of RF emissions within range, is within the limits permitted under all applicable rules of the Federal Communications Commission (FCC). To the extent required by FCC rules, Applicable Standards, or KUB specifications, whichever is stricter, Operator shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions. Operator will communicate and cooperate with other Users which emit RF to minimize the number of signs.
- 4.4.2** Operator is under a duty and obligation in connection with the operation of its own facilities, existing or future, to protect against RF interference with the RF signals of KUB, Operator, or any Users, provided that such obligation shall not extend to any interference caused to Operator for any other Users as a result of incidental RF radiation from the operation of KUB's electric lines. KUB shall be under no obligation to remedy or resolve RF interference between Operator and other Users and shall not be liable for any such RF interference between Operator and Users. KUB will, however, endeavor to have all Users coordinate and cooperate with each other relating to the resolution of interference.
- 4.5** **Protective Equipment.** Operator, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities, consistent with Applicable Standards. Operator shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor, as specified in Applicable Standards. Except as provided in Section 16.1, KUB shall not be liable for any actual or consequential damage to Operator's Attachments, Operator's customer's facilities, or any of Operator's employees, contractors, customers, or other persons.
- 4.6** **Temporary Power Supply.** Except for back-up batteries contained within Operator's standard equipment for a Site, Operator shall not install power generators or fuel storage facilities on the property or at the Site. On a temporary basis during an extended loss of commercial power, Operator may install and operate a portable mobile propane or diesel fueled emergency generator. Operator shall comply with KUB's reasonable safety, interconnection and other rules relating to the operation of such generator, and the generator shall be promptly removed from the Site after restoration of commercial power.
- 4.7** **Violation of Specifications.** If Operator's Attachments, or any part thereof, are installed, used or maintained in violation of this Agreement, and Operator has not corrected the violation(s) within sixty (60) calendar days from receipt of written notice of the violation(s) from KUB, KUB may, at its option, correct such conditions or declare the violation an

Unauthorized Attachment, pursuant to Section 14.1. KUB will attempt to notify Operator in writing prior to performing such work whenever practicable. When KUB reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of KUB's service obligations or pose an immediate threat to the physical integrity of KUB Facilities, KUB may perform such work and/or take such action as it deems necessary without first giving written notice to Operator. As soon as practicable thereafter, KUB will advise Operator of the Work performed or the action taken. Operator shall be responsible for all costs incurred by KUB in taking action pursuant to this Article.

- 4.8 Restoration of KUB Service.** KUB's service restoration requirements shall take precedence over any and all work operations of Operator on KUB Poles.
- 4.9 Effect of Failure to Exercise Access Rights.** If Operator does not exercise any access right granted pursuant to this Agreement and/or applicable License(s) within the specified calendar days of the effective date of such right and any extension to such License(s), KUB may, but shall not have any obligation to, use the space scheduled for Operator's Attachment(s) for its own needs or other Users. In such instances, KUB shall endeavor to make other space available to Operator, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make Ready Work provisions.
- 4.10 Cable Television Signal Interference Test Equipment.** To the extent Operator furnishes cable television service, it shall maintain test equipment to identify signal interference to its customers and shall not identify KUB as the source of such interference absent a test report verifying the source.
- 4.11 Removal of Nonfunctional Attachments.** At its sole expense, Operator shall remove any of its Attachments or any part thereof that become nonfunctional and/or no longer fit for service ("Nonfunctional Attachment") as provided in this Section 4.11. A Nonfunctional Attachment that an Operator has failed to remove as required in this Section shall constitute an Unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A. Except as otherwise provided in this Agreement, Operator shall remove Nonfunctional Attachments within one year (365 days) of the Attachment becoming nonfunctional, unless Operator receives written notice from KUB that removal is necessary to accommodate KUB's or another User's use of the affected Pole(s), in which case Operator shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Operator has received a License to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until KUB notifies Operator that removal is necessary to accommodate KUB's or another User's use of the affected Pole(s). Operator shall give KUB notice of any Nonfunctional Attachments as provided in Article 15.

- 4.12 Possession of License and Permits.** At all times while performing work in the field on KUB Infrastructure, Operator and its authorized contractors shall maintain a copy of all required permits and licenses of inspection by KUB and all applicable State and local jurisdictions.

Article 5—Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Operator shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Attachments on public and/or private property before it occupies any portion of KUB's Infrastructure. Operator's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Operator shall defend, indemnify and hold harmless KUB for all loss and expense, including reasonable attorney's fees, that KUB may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Operator does not have sufficient rights or authority to attach Operator's Attachments on KUB's Infrastructure or provide particular services.
- 5.2 Lawful Purpose and Use.** Operator's Attachments must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.
- 5.3 Forfeiture of KUB's Rights.** No License granted under this Agreement shall extend to any Infrastructure on which the Attachment of Operator's facilities would result in a forfeiture of KUB's rights. Any License that would result in forfeiture of KUB's rights is deemed invalid. Further, if any of Operator's existing Attachments, whether installed pursuant to a valid License or not, would cause such forfeiture, Operator shall remove its facilities within thirty (30) calendar days of receipt of written notice from KUB. Notwithstanding the foregoing, Operator shall have the right to contest any such forfeiture before any of its rights are terminated, provided that Operator shall indemnify KUB for liability, costs, and expenses, including reasonable attorney's fees, that may accrue during the Operator's challenge.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by KUB to the construction or maintenance of any Attachments by Operator shall not be deemed consent, authorization or an acknowledgment that Operator has the authority to construct or maintain any other such Attachments. It is Operator's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

Article 6—License Application Procedures

- 6.1 License Required.** Operator shall not install any Attachments on any KUB Infrastructure without first applying for and obtaining a License pursuant to the applicable requirements of KUB's Attachment Guidelines. Unless otherwise notified, pre-existing Attachment(s) of Operator as of the effective date of this Agreement shall be grandfathered with respect to Licensing but shall be subject to the Attachment Fees specified in Appendix A in future billing periods. Operator shall provide KUB with a list, on KUB's provided format, of all such pre-existing Attachments within six (6) months of the effective date of this Agreement. All such pre-existing Attachments shall comply with the terms of this Agreement within one year (365 days) of the effective date of this Agreement. Attachments to or rights to occupy KUB Facilities not covered by this Agreement must be negotiated separately.
- 6.2 Licenses for Service Drops.** Operator may attach a Service Drop, without Application, from one Pole with an existing licensed Operator Attachment to connect directly to Operator's or Operator's customer's building, premise, or location, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V.
- 6.2.1** On any Pole where Operator has applied for an Attachment License, Operator may, in its discretion, perform or have performed such Make Ready, subject to the terms and conditions hereof governing the Application process and Make Ready, as is necessary or advisable for future installation of a Service Drop ("Service Drop Make Ready") on (i) any Pole at the time Operator performs other Make Ready on such Pole in conjunction with installation of Operator's Communication Facilities ("Mainline Pole"), and (ii) any other Pole that Operator contemplates using for purposes of connecting a Cable directly to a customer's premises from a Mainline Pole (a "Service/Lift Pole"). KUB may inspect related Service Drop Make Ready at Operator's cost and expense at the time KUB inspects Operator's Make Ready on such Pole.
- 6.2.2** Where Operator desires to connect cable directly to a customer's premises from a Mainline Pole, and such connection to a customer's premises requires the use of more than one Service/Lift Pole, Operator's placement of an Attachment on such Service/Life Pole(s) for connecting cable to a customer's premises shall be treated like any other Attachment under this Agreement. For any Pole where Operator has already performed authorized Service Drop Make Ready pursuant to Section 6.2.1 Operator shall only be required to provide notice that it has connected Service Drops to such Poles.

6.2.3 Operator may attach its Service Drop in its Assigned Space, or in a space tagged and identified for use by Operator as a Service Drop as indicated in Section 6.2.1 more than one hundred twenty (120) days after completing the Service Drop Make Ready for such Service Drop.

6.3 **Licenses for Overlashing.** Overlashing shall be allowed without separate Application up to the design capacity of the strand (all Attachments to be guyed for the capacity of the strand) and if the final diameter of the Attachment bundle (to include strand and all attached cables) does not exceed two inches (2”) in diameter. A new Application shall be required if the underlying strand must be replaced or if the final diameter of the Attachment bundle (to include strand and all attached cables) exceeds two inches (2”) in diameter. A License shall be obtained for each Overlashing pursuant to this Article. Absent such authorization, Overlashing constitutes an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A.

6.3.1 If Operator demonstrates the Overlashing of Operator’s Attachment(s) is required to accommodate Operator’s Communications Facilities, and such overlashing does not exceed a combined cross-sectional area of three square inches (two-inch diameter), KUB shall not withhold Licenses for such Overlashing if it can be done consistent with this Section. Overlashing performed pursuant to this Paragraph shall not increase the Annual Attachment Fee paid by Operator pursuant to Appendix A. The Operator, however, shall be responsible for all Make Ready Work and other charges associated with such an Overlashed Attachment.

6.3.2 In the case of emergency, Operator may make an Overlash Attachment to a Nonfunctional Attachment; provided, however, that Operator’s overlashing of such Nonfunctional Attachment does not modify or alter Operator’s obligations as set forth in Article 14.

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

6.4 **Licenses for Riser Attachments.** The installation of a Riser Attachment shall be allowed without separate Application on a Pole with an existing licensed Operator Attachment.

6.5 **Additional Provisions for Service Drops, Overlashing, and Riser Attachments.** The following additional provisions apply to Service Drops, Overlashing, and Riser Attachments authorized pursuant to Sections 6.2, 6.3, and 6.4, respectively:

6.5.1 It is Operator’s responsibility to verify the Pole, Riser, or strand on which it proposes to attach, meets all Applicable Standards before attaching/installing. If existing

standards issues are identified, it is the responsibility of the Operator to notify KUB of the issue. Operator shall not be allowed to attach until the standards issue is resolved.

6.5.2 If it is determined by KUB that Operator has attached to a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Attachment into compliance with Applicable Standards to the extent that it is Operator's underlying Attachment that is non-compliant. Subject to the provisions of Article 26, KUB will provide written notice to Operator and Operator will have thirty (30) days from receipt of such notice to correct the existing standards issue and notify KUB, otherwise the provisions of Article 14 shall apply. If the Attachment that is non-compliant belongs to another User, then Operator shall coordinate with KUB and the other User concerning any necessary rearrangement of Operator's Service Drop in conjunction with the correction of the non-compliant Attachment.

6.5.3 Except in instances where Attachment shall require a separate Application pursuant to Articles 6.2, 6.3, and 6.4, respectively, Operator shall take all reasonable steps to provide KUB advance notice of attachment/installation on KUB Pole(s), and in no event shall such notice be given later than twenty-four (24) hours prior to the commencement of such overloading activity. Any Attachment that KUB discovers more than seven (7) days after installation will be considered an Unauthorized Attachment subject to the provisions of Article 14.

6.5.4 Any Attachment that was deliberately installed in knowing violation of Applicable Standards will be considered an Unauthorized Attachment subject to the provisions of Article 14.

6.5.5 If the Pole or conduit is located on public rights-of-way, Operator shall obtain all necessary permits from the City of Knoxville, Knox County, surrounding counties KUB serves, or the State of Tennessee, as applicable, and present evidence thereof to KUB at the time the request is made to attach to said Pole(s) or in conduit (unless evidence is already on file with KUB).

6.6 **Licenses for Wireless Attachments.** The installation of wireless Communication Facilities upon a Site shall be subject to the process below:

6.6.1 Operator shall provide KUB with detailed plans and engineering analysis for how all pieces of equipment will either attach to a structure or be mounted on the ground. Such plans shall provide sizing for all pieces of equipment and exact locations and distances for mounting arrangements, including a description of any Make Ready to accommodate the attachments. In all cases, installation must conform to Applicable Standards and specifications laid out in KUB's Attachment

Guidelines. Plans and engineering analysis should be certified by a professional engineer licensed in the state of Tennessee in accordance with Section 6.7.

- 6.6.2** Operator shall install a power cut-off switch as directed by KUB and consistent with Applicable Standards and KUB Attachment Guidelines for every Site where Operator has attached facilities. In ordinary circumstances, KUB personnel will contact Operator's designated point of contact to inform Operator of the need for a temporary power shutdown. Upon receipt of the call, Operator will power down its antenna remotely, and the power-down will occur during normal business hours and within 24 hours advance notice. In the event of an unplanned power outage/cut-off of power, or emergency, the power-down will be with such advance notice as may be practicable and, if circumstances warrant, employees and contractors of KUB may accomplish the power-down operation of the power disconnect switch without advance notice to the Operator and shall notify the Operator as soon as possible. In all such instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore the power and inform KUB and the Operator as soon as possible that power has been restored.
- 6.6.3** It is the Operator's responsibility to verify the supporting structure or Pole to which the equipment will be attached meets all Applicable Standards before installing any and all equipment. If the proposed Pole does not meet the requirements for supporting the Communication Facilities, Operator shall perform any required Make Ready as directed in Section 7.
- 6.6.4** The conditions of this Agreement shall only apply to Sites installed on KUB Infrastructure and not to any other Operator-owned structures supporting wireless Communication Facilities.
- 6.6.5** Operator acknowledges and agrees that, for purposes of this Agreement, KUB is acting as a landowner and in a proprietary capacity, and any Infrastructure or Sites selected for the installation of wireless Communication Facilities shall not be considered "personal wireless service facilities" as that term is defined in 47 U.S.C. §332(c) or a "base station" as that term is defined in 47 CFR §24.5. The limitations applicable to local governments with regard to the placement, construction, and modification of "personal wireless service facilities" under 47 U.S.C. §332(c) shall not apply to KUB with respect to its Infrastructure or Sites, nor shall any federal regulations limiting the authority of local governments with regard to the placement, construction, and modifications of "base stations" or "towers" apply with regard to Operator's rights and obligations under this Agreement.

- 6.7 Professional Certification.** Unless otherwise waived in writing by KUB, as part of the License application process and at Operator's sole expense, a qualified and experienced professional engineer, registered in the State of Tennessee, must participate in and certify any structural loading analysis on Facilities that Operator intends to install wireless Communications Facilities or as requested by KUB. The professional engineer's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.
- 6.8 KUB Review of License Application.** Upon receipt of a properly executed Application for License, which shall include detailed plans for the proposed Attachments in the form specified in KUB's Attachment Guidelines, KUB will review the License Application and discuss any issues with Operator, including engineering or Make Ready Work requirements associated with the License Application. KUB's acceptance of the submitted design documents does not relieve Operator of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed, the License Application process shall be consistent with the following timeline:
- 6.8.1** KUB shall review and respond to properly executed and complete License Applications for routine installations as promptly as is reasonable with a goal of providing a response during normal circumstances of within forty-five (45) days of receipt. If numerous applications for Attachments are received within a month, KUB may require additional time to review due to workload as determined and communicated by the Infrastructure Use Team within KUB. KUB's response will either (i) grant permission to undertake such Make Ready as described in Operator's Application; (ii) grant permission to undertake such Make Ready as KUB reasonably determines is required; or (iii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability, or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.
- 6.8.2** For attachments within the Network, KUB will provide an estimate of the costs of all necessary Make Ready Work to KUB Facilities. If desired, estimates for Make Ready work to facilities owned by other Users on KUB Facilities shall be acquired from those respective Users by the Operator. Upon receipt of KUB's Make Ready estimate, Operator shall have fourteen (14) days to approve the estimate and provide payment in accordance with this Agreement and the specifications of the estimate.
- 6.9 License as Authorization to Attach.** After receipt of payment of all costs and fees required by this Agreement, and review/inspection and approval of final Make Ready work for Attachments, including Overlapping of existing Attachments and work upon

facilities owned by other existing Users, KUB will sign and return the License Application, which shall serve as authorization for Operator to make its Attachment(s). If Operator does not exercise any access right granted pursuant to an applicable License(s) within the specified calendar days in the Attachment Guidelines from the issuance of a License to make Attachments (unless such time period is extended by mutual agreement between Operator and KUB), KUB may, but shall have no obligation to, use the space scheduled for Operator's Attachment(s) for its own needs or make the space available to other Users. In such instances, KUB shall endeavor to make other space available to Operator, upon submission of a new Application under this Article, as soon as reasonably possible and subject to all requirements of this Agreement including Make Ready provisions.

Article 7—Make Ready Work/Installation

- 7.1 Estimate for Make Ready Work.** In the event KUB determines that it can accommodate Operator's request for Attachment(s), including Overlapping of an existing Attachment, and upon request by Operator, KUB will advise Operator of any estimated Make Ready Work charges necessary to accommodate the Attachment. Such estimate shall be limited to Make Ready Work within the electric supply space or Make Ready Work applying directly to KUB Facilities. If KUB is requested/approved to complete the Make Ready Work in accordance with the estimate provided, KUB shall invoice the Operator for the actual cost of such Make Ready Work. Alternatively, at KUB's discretion, payment may be required in advance of Make Ready Work based upon the estimated cost of such work. In such cases, upon completion, Operator shall pay KUB's actual cost of Make Ready Work. The costs of the work shall be itemized in accordance with Article 3.10 and trued up in accordance with Article 3.9. Make Ready Work for conduit Attachments are provided in accordance with Article 7.5.
- 7.2 Who May Perform Make Ready Work.** Overhead Make Ready work in the electric supply space may only be performed by KUB and/or a qualified contractor authorized by KUB to perform such work. Under normal circumstances, KUB will allow Operator to complete Make Ready work through the use of qualified contractors authorized by KUB and under contract to Operator, or, in certain circumstances, KUB may self-perform any necessary Make Ready Work, at Operator's expense. Make Ready work outside of the electric supply space or on facilities owned by other Users shall be fully coordinated by Operator, using means and methods as directed by the owner of those facilities as described in Section 7.3. Make Ready work for the Network System shall be as directed in Section 7.5 and the Applicable Standards.

7.2.1 If KUB is performing Make Ready work, it will use good faith efforts to complete routine Make Ready work within sixty (60) days or receipt of payment for such efforts. If there are extenuating circumstances that make the necessary Make Ready more complicated or time-consuming, including, but not limited to, the number of Poles or seasonal weather conditions, KUB shall identify those factors in the Make Ready estimate and the parties shall agree upon a reasonable timeframe for completion. If KUB does not complete agreed upon Make Ready work within ninety (90) days or the agreed upon timeframe, it will allow Operator to use a KUB approved qualified contractor to complete such Make Ready work and refund any amounts paid by Operator to KUB for performing such Make Ready work that is not completed.

7.2.2 The conditions of Section 7.2.1 notwithstanding, if KUB has substantially completed the Make Ready, the parties will reasonably determine whether it makes more sense from an operational efficiency perspective to have KUB complete the work rather than have Operator's authorized qualified contractors do the work.

7.2.3 In instances where Operator is performing Make Ready in the electric supply space using a KUB approved qualified contractor to complete such Make Ready Work, KUB will supply, at Operator's cost, all materials necessary to Rearrange or Transfer Facilities owned by KUB as directed by the proposed Make Ready Work approved by KUB. A complete listing of needed materials to complete such approved work to be performed by Operator's approved and qualified contractor shall be given to KUB for its issuance of those materials to Operator or its approved and qualified contractor. KUB shall work with Operator to supply all required materials for proposed Make Ready in a timely and responsible manner.

7.3 **Coordination with other Users.** Operator shall be responsible for entering into an agreement with existing Users to reimburse them for any costs they incur in Rearranging or Transferring their facilities to accommodate the Operator's Attachments. Operator shall be responsible for all coordination with other existing Users concerning notification of proposed Make Ready work, and for gaining associated approval.

7.3.1 In instances where a User has not relocated or otherwise undertaken required Make Ready Work (such as repairing existing Attachments not in compliance with Applicable Standards) within thirty (30) days of notice by Operator, and upon written request by Operator to KUB, KUB shall diligently enforce all contractual or legal rights to require such other User to relocate or repair its Attachments.

7.4 Operator's Installation/Removal/Maintenance Work.

7.4.1 All of Operator's installation, removal and maintenance work shall be performed at Operator's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of KUB's Infrastructure or other User's facilities or equipment. All such work is subject to the insurance requirements of Article 18.

7.4.2 All of Operator's installation, removal and maintenance work performed on KUB Infrastructure or in the vicinity of other KUB Facilities, either by its employees or contractors, shall be in compliance with all Applicable Standards and specification identified in Section 4.1. Operator shall assure that any person installing, maintaining, or removing its facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the specifications provided in KUB's Attachment Guidelines.

7.5 Conduit Attachment Work. If Operator seeks to utilize a portion of KUB Network for placement of its Cables, Operator shall follow the procedures in the KUB Attachment Guidelines. Make Ready work within the Network and all installations in conduit must be approved and performed by KUB. KUB shall provide the Operator an estimate of the Make Ready Work to be performed (reimbursing KUB for all actual and documented costs incurred) and will require payment prior to performing Work. The costs of the work shall be itemized in accordance with Section 3.10 and trued up in accordance with Section 3.9.

Article 8—Transfers

8.1 Transfers of Operator's Facilities. If KUB determines a Rearrangement or Transfer of Operator's Attachments is necessary, including as part of Make Ready to accommodate another User's Attachment, Operator shall perform such Rearrangement or Transfer within thirty (30) days after receiving notice from KUB or the User, including notice via NJUNS or other agreed upon notification system. If Operator fails to Rearrange or Transfer its Facilities within sixty (60) calendar days after receiving such notice from KUB, KUB shall have the right but not the obligation to transfer Operator's Facilities using its personnel and/or contractors at Operator's expense. In addition, KUB shall have the right to charge Operator for both the non-transferred attachment and the reserved space on the new KUB facility being held for the required Rearrangement or Transfer. KUB shall not be liable for damage to Operator's Facilities except to the extent provided in Section 16.1. KUB shall then provide written notice of any such actions taken within ten (10) days of the occurrence. Irrespective of who owns them, Operator shall be

responsible for the Transfer of Facilities that are overlashed on to Operator's Attachments, and any related costs. KUB will bill Operator at KUB's cost in accordance with Section 8.3.

- 8.2 Emergency Transfers of Operators Facilities.** When KUB determines that a Transfer of Operator's facilities is immediately necessary, Operator will allow such transfer. In such instances, KUB may, at its option, perform the Transfer using either its personnel and/or contractors. KUB shall not be liable for damage to Operator's facilities except to the extent provided in Section 16.1. KUB shall provide written notice of any such actions taken within ten (10) days of the occurrence. Irrespective of who owns them, Operator shall be responsible for the Transfer of Facilities that are overlashed on to Operator's Attachments and any related costs. KUB will bill Operator at KUB's cost in accordance with Section 8.3.
- 8.3 Billing for Transfers Performed by KUB.** If KUB performs Transfer(s), KUB will invoice the Operator for actual costs per Section 3.10. Operator shall reimburse KUB within thirty (30) calendar days of the billing date of the invoice.
- 8.4 Pole Removal.** The last Operator on a Pole shall be required to remove the Pole as part of the Transfer and dispose of the Pole in a manner acceptable to KUB. If Operator is incapable of removing the Pole, Operator shall provide prompt notification to KUB, and KUB will perform the removal and charge Operator a Pole Removal Fee.
- 8.5 Transfer Indemnification.** Operator agrees to save, defend, indemnify and hold KUB harmless from all claims under all theories of recovery for personal injury, death or property damage arising out of the presence or use of the Pole following KUB's termination of its use of the Pole.

Article 9—Modifications and/or Replacements

- 9.1 Operator's Action Requiring Modification/Replacement.** In the event that any Pole or portion of the Network, as constructed, to which Operator desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, KUB will notify Operator of the necessary Make Ready Work, and associated costs, to provide an adequate Pole or conduit space, including but not limited to replacement of the Pole, and rearrangement or transfer of KUB's Facilities as well as the Facilities or other Attaching Users. Operator shall be responsible for separately entering into an agreement with existing Users concerning the allocation of costs for the Rearrangement or Transfer of such Users' Attachments. If Operator elects to go forward with the necessary changes, Operator shall pay to KUB and any other existing Operators,

the actual cost of the Make Ready Work performed by KUB per Section 3.10 or performed by the other Operators to accommodate the new Operator. KUB and existing Users, at their discretion, may require advance payment.

9.2 Treatment of Multiple Requests for Same Pole. If KUB receives a License Application for the same Pole or place in the Network from two (2) or more prospective Users within one hundred twenty (120) calendar days of the initial request for such Attachment, and has not yet completed the licensing of the initial applicant, and accommodating their respective requests would require additional modification of the Pole or replacement of the Pole, KUB will make reasonable and good faith efforts to inform the prospective Users of the desired attachment point(s) from all involved parties. Multiple Users shall be responsible for coordinating their actions and facilitating Make Ready Work and, if desired, share allocated costs resulting from such necessary Make Ready Work for any modifications of Attachment(s) or replacement of Pole(s).

9.3 Guying. The use of guying to accommodate Operator's Attachments shall be provided by, and at the expense of, Operator and to the satisfaction of KUB, as specified in Applicable Standards and specifications outlined in KUB's Attachment Guidelines. Operator shall not attach its guy wires to KUB's Anchors. If permission is granted, any Make Ready charges, and a fee will be negotiated between KUB and Operator on a case-by-case basis.

9.4 Allocation of Costs. The costs for any Rearrangement or Transfer of Operator's Attachments or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of KUB's cables or wires) shall be allocated to KUB and/or Operator and/or other Users on the following basis:

9.4.1 If KUB intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Operator shall not be responsible for costs associated with the Rearrangement or Transfer of Operator's Attachments, unless and to the extent the Rearrangement or Transfer is necessary in connection with KUB's reacquisition of Reserved Capacity from the Operator. Prior to making any such modification or replacement, KUB shall provide Operator written notification of its intent in order to provide Operator a reasonable opportunity to modify or add to its existing Attachment. Should Operator choose to do so, it must seek KUB's written permission in accordance with this Agreement. If Operator elects to add to or modify its Communications Facilities, Operator shall bear the total incremental costs incurred by KUB in making the space on the Poles accessible to Operator.

- 9.4.2** If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by a User other than KUB or Operator, the User requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Operator's Attachments. Operator shall cooperate with such User to determine the costs of moving Operator's facilities.
- 9.4.3** If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities, including but not limited to storm, accident, or deterioration, KUB shall pay the costs of such modification or replacement; provided, however, that Operator shall be responsible for the costs of Rearranging or Transferring its facilities.
- 9.4.4** If the modification or replacement of a Pole is necessitated by the requirements of Operator, Operator shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other User's Attachments. Operator shall submit to KUB evidence, in writing, that it has made arrangements acceptable to all Operators, for reimbursement for the cost to transfer or rearrange such Operator's facilities at the time Operator submits a License Application to KUB. KUB shall not be obligated in any way to enforce or administer Operator's responsibility for the costs associated with the Transfer or Rearrangement of another User's facilities pursuant to this Section 9.4.4.
- 9.5** **Installation of Grounds.** When KUB is requested by Operator to install grounds or make connections to KUB's system neutral, Operator shall within thirty (30) days of demand reimburse KUB for the total actual and documented costs, including engineering, clerical and administrative cost thereby incurred on initial installation only. All grounds installed by Operator shall be in accordance with Applicable Standards and KUB's Attachment Guidelines.
- 9.6** **KUB Not Required to Relocate.** No provision of this Agreement shall be construed to require KUB to relocate its Attachments or modify/replace its Poles for the benefit of Operator.

Article 10—Abandonment or Removal of KUB Facilities

- 10.1 Notice of Abandonment or Removal of KUB Facilities.** If KUB desires at any time to abandon, remove or underground any KUB Facilities to which Operator's facilities are attached, it shall give Operator notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such KUB Facilities. Notice may be limited to thirty (30) calendar days if KUB is required to remove or abandon its Facilities as the result of the action of a third party or other good cause and the lengthier notice period is not practical. Such notice shall indicate whether KUB is offering Operator an option to purchase the Pole(s). If, following the expiration of the notice period, Operator has not yet removed and/or transferred all of its Attachments from the Facilities in question and has not entered into an agreement to purchase KUB's Facilities pursuant to Section 10.2, KUB shall have the right, but not the obligation, subject to any applicable laws and regulations, to have Operator's Attachments removed and/or transferred from the Pole at Operator's expense. KUB shall give Operator prior written notice of any such removal or transfer of Operator's Facilities.
- 10.2 Option to Purchase Abandoned Poles.** Should KUB desire to abandon any Pole, KUB, in its sole discretion, may grant Operator the option of purchasing such Pole at a price to be negotiated with KUB. Operator must notify KUB in writing within thirty (30) calendar days of the date of KUB's notice of abandonment that Operator desires to purchase the abandoned Pole. Thereafter, Operator must also secure and deliver proof of all necessary governmental approvals and easements allowing Operator to independently own and access the Pole within forty-five (45) calendar days. Should Operator fail to secure the necessary governmental approvals or should KUB and Operator fail to enter into an agreement for Operator to purchase the Pole prior to the end of the forty-five (45) calendar days, Operator must remove its Attachments as required under Section 10.1. KUB is under no obligation to sell Operator Poles that it intends to remove or abandon.
- 10.3 Underground Relocation.** If KUB moves any portion of its aerial system underground, and purchase of the Poles under Section 10.2 is not an option, Operator shall remove its facilities from any affected Poles within sixty (60) calendar days of receipt of notice from KUB and either relocate its affected facilities underground with KUB or find other means to accommodate its Facilities. Operator's failure to remove its Facilities as required under this Section 10.3 shall subject Operator to the provisions of Appendix A.

Article 11—Removal of Operator’s Facilities

At the expiration or other termination of this Agreement or individual License(s), Operator shall remove its Attachments from the affected Poles at its own expense. If Operator fails to remove such facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by KUB, KUB shall have the right, but not the obligation, to Remove or Transfer such Facilities at the Operator’s expense.

Article 12—Termination of License

- 12.1 Automatic Termination of License.** Any License issued pursuant to this Agreement shall automatically terminate when Operator ceases to have authority to construct and operate its facilities on public or private property at the location of the particular Pole(s) or segment of the Network covered by the License. Notwithstanding the foregoing, to the extent Operator is pursuing a challenge of the revocation of any such permission; Operator may remain on the particular Pole(s) until such time as all appeals and remedies are exhausted.
- 12.2 Surrender of License(s).** Operator may at any time surrender any License for Attachment(s) and remove its facilities from the affected Pole(s) or segment of the Network. Before commencing any such removal Operator must submit to KUB a License Application indicating the name of the party performing such work, the number of attachments being removed, a sketch showing the location of the removal(s) and the proposed date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. If Operator surrenders such License pursuant to the provisions of this Article but fails to remove its Attachments from KUB’s Facilities within the time frame set forth in the approved plan above, KUB shall have the right, but not the obligation, to Remove or Transfer Operator’s Attachments at Operator’s expense.

Article 13—Inventory and Inspection of Operator’s Facilities

- 13.1 Inventory.** KUB will, at intervals of not more often than once every five (5) years, perform an inventory of the Attachments to Infrastructure in all or in part of the territory covered by this Agreement, for the purpose of checking and verifying the number of Poles and segments of Network on which Operator has Attachments. Such field checks shall be made jointly by both parties and shall be at the cost of Operator. If

KUB is also performing an inventory of multiple Users with Attachments on KUB Infrastructure, then the actual and documented costs shall be shared proportionately among all such Users based upon the number of Attachments.

13.2 Inspections. KUB may, as conditions warrant, conduct an inspection of the entire system of Attachments at any time. Operator shall correct all Attachments that are not found to be in compliance with Applicable Standards within thirty (30) calendar days of notification or such lesser time as may be required for safety reasons. Except as provided for in Section 6.1, if it is found that Operator has made an Attachment or installed upon Infrastructure without a License, Operator shall pay an Unauthorized Attachment Fee as specified in Appendix A in addition to applicable License and Make Ready charges. If it is found that five percent (5%) or more of Operator's Attachments are either in non-compliance or not Licensed, including unapproved Overlashing, whether by Operator or a User associated with Operator, Operator shall pay its *pro-rata* share of the costs of the entire inspection. Operator will not be responsible for the cost associated with violations caused by other Users that are not affiliated or acting under the direction of Operator.

13.2.1 In the event any of Operator's Communication Facilities are found to be in violation of the Applicable Standards and such violation poses a potential emergency situation, Operator shall use all reasonable efforts to correct such violation immediately. Should Operator fail or be unable to correct such emergency situation immediately, KUB may correct the emergency and bill Operator for one hundred twenty-five percent (125%) of the actual and documented costs incurred.

13.2.2 If any of Operator's Attachments are found to be in violation of the Applicable Standards and such violations do not pose potential emergency conditions, KUB shall, consistent with Article 14 give Operator notice, whereupon Operator shall have thirty (30) calendar days from receipt of notice to correct any such violation, or within a longer, mutually agreed-to timeframe if correction of the violation is not possible within thirty (30) calendar days, such extended time to be not more than an additional sixty (60) calendar days. Notwithstanding the foregoing grace periods, in the event KUB or another User prevents Operator from correcting a non-emergency violation, the timeframe for correcting such violation shall be extended to account for the time during which Operator was unable to correct the violation due to action (or failure to act) by KUB or other User. If Operator fails to correct a non-emergency violation within the specified timeframe, including any agreed upon extensions, the provisions of Articles 14 and 23 shall apply.

13.2.3 In all circumstances, all of the Users on the Pole or Network and KUB will work together to maximize safety while minimizing the cost of correcting any such

deficiencies, but the Operator shall be responsible for the actual and documented cost of any necessary or appropriate corrective measures associated with violations caused by Operator, including removal and replacement of the Pole and all Transfers or other work incident thereto.

13.2.4 If any portion of KUB Infrastructure are found to be in violation of the Applicable Standards and KUB has caused the violation, the parties shall work together to minimize the cost of correcting any such deficiencies, but KUB shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal or replacement of Pole; provided, however, that KUB shall not be responsible for Operator's own costs.

13.2.5 If one or more other Users' Attachments caused the violation, then such User(s) shall pay the corrective costs incurred by all who have Attachment(s) on the Pole, including Operator, and KUB will make reasonable effort to cause the User(s) to make such payment.

13.2.6 If there exists a violation of Applicable Standards and it cannot be determined which User on the Pole caused such violation or there is a mixture of Users causing the violation, the parties will work together to minimize the cost of correcting any such deficiencies, and all Users who may have caused such violation will share equally in such costs to the extent provided for under existing agreements with said Users; provided that Operator shall not be required to pay more than its proportionate share of such costs.

13.3 Post-Construction Inspection.

13.3.1 Within thirty (30) calendar days of notice to KUB that Operator has completed installation of an Attachment (including Overlashing, Riser Attachments, equipment at Sites, and/or Service Drops), KUB or its contractors may perform a Post-Construction Inspection for each Attachment made to KUB Infrastructure. If such Post-Construction Inspections are performed, Operator shall pay the actual and documented costs for the Post-Construction Inspection, including the administrative costs to KUB of the notification and inspection.

13.3.2 If KUB elects to not perform any Post-Construction Inspection, such non-inspection shall not be grounds for any liability being imposed on KUB or a waiver of any liability of Operator.

13.3.3 If the Post-Construction Inspection reveals that Operator's facilities have been installed in violation of Applicable Standards or the approved design described in the Application, KUB will notify Operator in writing and Operator shall have

thirty (30) calendar days from the date of receipt of such notice to correct such violation(s), or such other period as the parties may agree upon in writing, unless such violation creates an emergency in which case Operator shall make all reasonable efforts to correct such violation immediately, as directed in Section 13.2.2. KUB may perform subsequent Post-Construction Inspection within thirty (30) calendar days of receiving notice the correction has been made as necessary to ensure Operator's Attachments have been brought into compliance.

13.3.4 If the Operator fails to correct the violation within the specified timeframe, including any agreed upon extensions, the provisions of Article 14 shall apply.

13.4 **Notice.** KUB will provide reasonable advance notice of inspections to the Operator, except in those instances where safety considerations justify the need for inspection without delay. When notified, Operator will immediately notify KUB if it wishes to participate in the inspection.

13.5 **No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon KUB any liability of any kind whatsoever or to relieve Operator of any responsibility, obligations or liability, whether assumed under this Agreement or otherwise existing.

13.6 **Attachment Records.** Notwithstanding the above inspection provisions, Operator is obligated to furnish KUB, on an annual basis, an up-to-date map depicting the locations of its Attachments in an electronic format specified by KUB. If a map is not available, the Operator will provide a list in an electronic format specified by KUB.

Article 14—Unauthorized Occupancy or Attachment

14.1 **Unauthorized Occupancy or Access.** If any of Operator's Attachments are found occupying any portion of KUB Infrastructure for which no License has been issued (Unauthorized Attachment), including Overlashing, Riser Attachments, Sites or Service Drops for which timely notification was not provided or that were deliberately installed in knowing violation of Applicable Standards, KUB, without prejudice to its other rights or remedies under this Agreement, will assess fees and the following procedures will be followed:

14.1.1 KUB shall provide specific written notice, including electronic notification via NJUNS, within thirty (30) calendar days of discovering such violation, and Operator shall be given thirty (30) calendar days from receipt of notice to contest

an allegation that such Attachment(s) are unauthorized or that Operator failed to timely provide notice.

14.1.2 Operator shall pay back rent for all Unauthorized Attachments for a period of five (5) years, or since the date of the last inventory of Operator's Attachments (whichever period is shortest), at the rental rates in effect during such periods.

14.1.3 In addition to the back rent, where post-construction notification was required but not provided, or where Operator deliberately installed Attachments in knowing violation of Applicable Standards, Operator shall be subject to the penalties as specified in Appendix A for each Unauthorized Attachment, including Service Drops, Riser Attachments and Overlash Attachments, where an existing Licensed Pole Attachment exists. If Operator is found to have (i) repeated instances of Unauthorized Attachments demonstrating a deliberate or consistent pattern of making Unauthorized Attachments; or (ii) a significant number of Poles (comprising 5% or more of Operator's total Attachments), Operator shall be considered to be in material breach and such Unauthorized Attachments shall constitute a breach of this Agreement.

14.1.4 Operator shall submit a License Application in accordance with Article 6 of this Agreement within thirty (30) calendar days of receipt of notice from KUB of any Unauthorized Attachment(s), or such longer time as mutually agreed to by the parties after an inventory. No additional notification is required for Service Drops. In the case of Overlashing requiring a separate License Application under Article 6, Operator shall be required to submit an Application within thirty (30) calendar days of receipt of notice of Unauthorized Attachment(s).

14.1.5 In the event Operator fails to submit a License Application within thirty (30) calendar days, or such longer time as mutually agreed to by the parties after an inventory, the provisions of Article 23 shall apply.

14.2 **No Ratification of Unlicensed Use.** No act or failure to act by KUB with regard to any unlicensed use shall be deemed as ratification of the unlicensed use. If a License should be subsequently issued, such License shall not operate retroactively or constitute a waiver by KUB of any of its rights or privileges under this Agreement or otherwise, and Operator shall remain subject to all liabilities, obligations and responsibilities of this Agreement arising out of or relating to its unauthorized use.

Article 15—Reporting Requirements

- 15.1 Requirement to Report.** At the time that Operator pays the first portion of its annual Attachment Fee, Operator shall also provide complete information on relevant Attachments to KUB, as outlined in this Article and using the reporting format mutually agreed to by both parties.
- 15.2 Listing of Attachments.** Operator shall report all locations within the KUB Infrastructure to which Operator has installed, during the relevant reporting period, including Poles, segments of the Network and even Attachments for which no License may have been required, such as Overlashing, Risers and Service Drops.
- 15.3 Listing of Nonfunctional Attachments.** Operator shall report all Attachments that have become nonfunctional during the relevant reporting period (“Nonfunctional Attachment”). The report shall identify the Pole or segment of Network on which the Nonfunctional Attachment is located, describe the Nonfunctional Attachment, and indicate the approximate date the Attachment became Nonfunctional.
- 15.4 Listing of Removed Equipment.** Operator shall report any equipment removed from Poles or segments of Network during the relevant reporting period. The report shall identify the Pole or segment of Network from which the equipment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Operator is surrendering a License pursuant to Section 12.2.

Article 16—Liability and Indemnification

- 16.1 Liability.** KUB reserves to itself the right to maintain and operate its Infrastructure in such manner as will best enable it to fulfill its service requirements. Operator shall use KUB’s Infrastructure at Operator’s sole risk. Notwithstanding the foregoing, KUB shall exercise reasonable precaution to avoid damaging Operator’s facilities and shall report to Operator the occurrence of any such damage caused by its employees, agents or contractors. KUB will reimburse Operator for all reasonable costs incurred by Operator for the physical repair of such facilities damaged by the gross negligence or willful misconduct of KUB; provided, however, the aggregate liability of KUB to Operator, in any fiscal year, for any fines, penalties, claims, damages, or costs, arising out of or relating in any way to Operator’s service or interference with the operation of Operator’s facilities (including special, indirect, punitive, or consequential damages) shall not exceed the amount of the total Annual Attachment Fees paid by Operator to KUB for that year.

16.2 Indemnification. Operator shall indemnify and save harmless KUB and its commissioners, officers, employees and agents from and against all claims, demands, causes of action, damages and costs, including reasonable attorney's fees through appeals, incurred by or made against KUB as a result of:

16.2.1 Breach of this Agreement by the Operator, its employees, agents or contractors, including but not limited to the cost of Relocation of Facilities resulting from a loss of right-of-way or property owners consent and/or the costs of defending those rights and/or consents;

16.2.2 Damage to property and injury or death to person, including but not limited to, payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits arising from, incident to, related to, in connection with, or growing out of the erection, operation, rearrangement, maintenance, presence, use or removal of Operator's Attachments, the proximity of such facilities to the facilities of all other parties attached to KUB's Infrastructure or the acts or omissions of the Operator's employees, agents, or contractors in the vicinity of KUB's Infrastructure;

16.2.3 The construction and operation of Operator's facilities, including but not limited to, taxes, special charges by others, claims and demands for damages or loss from infringement of copyright, libel, slander, unauthorized use of program material, failure to obtain necessary authority, permits, rights-of-way, and infringement of patents, including attorney's fees, related to the construction, maintenance, use and operation of Operator's facilities and equipment on or in the vicinity of KUB's Infrastructure;

16.2.4 Losses or damages claimed by employees, agents and servants of Operator and its subcontractors including for personal injury, property damage, loss of property or the use thereof, or loss of life resulting from or related to Work or operations under this Agreement.

The indemnification provided by this Section 16.2 shall be limited to the extent that Operator shall not be liable for any claims, demands, or causes of action to the extent that such arise from the gross negligence or intentional misconduct of KUB, its commissioners, officers, employees or agents.

16.3 Procedure for Indemnification.

16.3.1 Operator shall promptly notify KUB of all claims relating to damage of property or injury or death of persons, rising or alleged to have arisen in any manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence,

use or removal of the Operator's facilities. Operator shall promptly notify KUB in writing of any suits or causes of action which may involve KUB and, upon the request of KUB, copies of all relevant accident reports and statements made to Operator's insurer by Operator or others shall be furnished promptly to KUB.

16.3.2 KUB shall promptly notify Operator in writing of any suits or causes of action which may involve Operator, and, upon the request of the operator, copies of all relevant accident reports and statements made to KUB's insurer by KUB or others shall be furnished to Operator.

16.3.3 KUB's failure to give the required notice will not relieve Operator from its obligation to indemnify KUB unless, and only to the extent, that Operator is materially prejudiced by such failure.

16.3.4 Operator will have the right at any time, by written notice to KUB, to participate in or assume control of the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to KUB. KUB agrees to cooperate fully with Operator. If Operator so assumes control of the defense of any third-party claim, KUB shall have the right to participate in the defense at its own expense. If Operator does not so assume control or otherwise participate in the defense of any third-party claim, Operator shall be bound by the results obtained by KUB with respect to the claim.

16.3.5 If Operator assumes the defense of a third-party claim as described above, then in no event will KUB admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Operator's prior written consent. KUB will agree to any settlement, compromise or discharge of any third-party claim which will be paid by Operator or some other third party, and which Operator has recommended, and which releases KUB completely from such claim.

Notwithstanding the foregoing, the provisions set forth above shall not apply in the event that Operator has not assumed responsibility to indemnify KUB in full and satisfied KUB of Operator's financial capacity to satisfy Operator's defense and indemnification obligations to KUB. In the event KUB deems itself at risk, it retains the right to settle the claim and to assert the negligence of Operator, seek recovery against Operator, and settle any claim on such terms as KUB deems proper. In no event will Operator admit the liability of KUB, in whole or in part, without KUB's express, prior, written consent.

16.4 Environmental Hazards. Operator represents and warrants that its use of KUB Infrastructure will not generate any Hazardous Substances, that it will not store or dispose on or about KUB Infrastructure or transport to KUB Infrastructure any Hazardous Substances, and that Operator's Attachments will not constitute or contain and will not

generate any Hazardous Substances in violation of federal, state or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. Operator further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Attachments would not release any Hazardous Substances. Operator and its agents, contractors and subcontractors shall defend, indemnify and hold harmless KUB and its respective officials, officers, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to KUB's Infrastructure attributable to Operator's use of KUB's Infrastructure, provided that Operator shall not be liable for any such claims, demands or causes of action to the extent arising from the gross negligence or intentional misconduct of KUB, its commissioners, officers, employees or agents.

Should KUB's Infrastructure be declared to contain Hazardous Substances, KUB, Operator, and all attaching Users shall share proportionally in the cost of disposal of the affected Infrastructure based on each User's individual percentage use of same; provided, however, if the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties. For Users/Operators, such percentage shall be derived from the sum of space occupied by each User plus its share of the support space, including the NESC Communication Worker Safety Zone. For KUB, such percentage shall be equal to the space above the NESC Communication Worker Safety Zone plus its share of the support space.

16.5 Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by KUB of any applicable State limits on municipal liability or governmental immunity. Nothing herein shall be interpreted as a waiver of rights and protections of any party under the Tennessee Governmental Tort Liability Act. No indemnification provision contained in this Agreement under which Operator indemnifies KUB shall be construed in any way to limit any other indemnification provision contained in this Agreement.

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

Article 17—Duties, Responsibilities, and Exculpation

- 17.1 **Duty to Inspect.** Operator acknowledges and agrees that KUB does not warrant the condition or safety of KUB's Infrastructure, or the premises surrounding the Infrastructure, and Operator further acknowledges and agrees that it has an obligation to inspect KUB Infrastructure and/or premises surrounding the Infrastructure, prior to commencing any work on KUB Infrastructure or entering the premises surrounding such Infrastructure. Operator's responsibility is limited only to the extent necessary to perform Operator's work.
- 17.2 **Knowledge of Work Conditions.** Operator warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Operator will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions attending the execution of such work.
- 17.3 **DISCLAIMER.** KUB MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO KUB INFRASTRUCTURE, ALL OF WHICH ARE HEREBY DISCLAIMED, AND KUB MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. KUB EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 17.4 **Duty of Competent Supervision and Performance.** In the performance of work under this Agreement, Operator and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other KUB Infrastructure. Energy generated, stored, or transported by KUB will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, or threatening grave personal injury or property. Operator shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, agents, and contractors and subcontractors; employees, agents, contractors, and subcontractors of KUB; and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Operator shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. In emergency situations in which it may be necessary to de-energize any part of KUB's equipment, Operator shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

- 17.5 Requests to De-energize.** In the event KUB de-energizes any equipment or line at Operator's request and for its benefit and convenience in performing a particular segment of any work, Operator shall reimburse KUB in full for all costs and expenses incurred, in accordance with Section 3.9, in order to comply with Operator's request. Before KUB de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Operator's request. Notwithstanding the foregoing, de-energization shall be at KUB's sole discretion and KUB shall determine the schedule for de-energization.
- 17.6 Interruption of Service.** In the event that Operator causes an interruption of service by damaging or interfering with any equipment of KUB, Operator at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify KUB immediately.
- 17.7 Duty to Inform.** Operator further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on KUB's Infrastructure by Operator's employees, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Operator's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

Article 18—Insurance

- 18.1 Policies Required.** At all times during the term of this Agreement, Operator shall keep in force and effect all insurance policies as described below:
- 18.1.1 Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Tennessee State law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of KUB. Operator shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- 18.1.2 Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with limits of liability not less than \$2,000,000 general aggregate, \$2,000,000

products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.

18.1.3 Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles used in connection with work under this Agreement. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

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

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

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

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

allowed in writing by KUB. Operator shall defend, indemnify and hold harmless KUB and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Operator shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to KUB upon request.

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

Article 19—Authorization Not Exclusive

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

Article 20—Assignment

- 20.1 Limitations on Assignment.** Operator shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of KUB, which consent shall not be unreasonably withheld.

- 20.2 Obligations of Assignee/Transferee and Operator.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Operator arising under this Agreement. Operator shall furnish KUB with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Operator shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, or conditions of this Agreement without the express written consent to the release of Operator by KUB.
- 20.3 Sub-licensing.** Without KUB's prior written consent, Operator shall not sub-license or lease to any third party, including but not limited to, allowing third parties to place Attachments on KUB's Infrastructure, including Overlapping, Riser, or Service Drops, or to place Attachments for the benefit of such third parties on KUB Infrastructure. Any such action shall constitute a material breach of this Agreement. The use of Operator's facilities by third parties (including but limited to leases of dark fiber) that involves no additional Attachment or Overlapping is not subject to this Section 20.3.

Article 21—Failure to Enforce

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

Article 22—Issue Resolution Process

- 22.1 Dispute Resolution.** Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each party will bear its own costs for dispute resolution activity.
- 22.2 Initial Meeting.** At either party's written request, each party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The parties will conduct any meeting in-person or via conference call, as reasonably appropriate.

- 22.3 Executive Meeting.** If ninety (90) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the parties may agree in writing to use mediation or another alternative dispute resolution procedure.
- 22.4 Unresolved Dispute.** If after sixty (60) days from the first executive-level, in-person meeting, the parties have not resolved the dispute to their mutual satisfaction, either party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 23.
- 22.5 Confidential Settlement.** Unless the parties otherwise agree in writing, communication between the parties under this Article will be treated as confidential information, developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 22.6 Business as Usual.** During any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.

Article 23—Termination of Agreement

- 23.1** KUB shall have the right, pursuant to the procedure set out in this Article 23, to terminate this entire Agreement, or any License issued hereunder, whenever Operator is in default of any term or condition of this Agreement, including but not limited to the following circumstances:
- 23.1.1** Construction, operation or maintenance of Operator’s facilities in violation of law or in aid of any unlawful act or undertaking; or
- 23.1.2** Construction, operation or maintenance of Operator’s facilities after any authorization required of Operator has lawfully been denied or revoked by any governmental or private holder of easements or other rights; or violation of any other agreement with KUB; or
- 23.1.3** Construction, operation or maintenance of Operator’s facilities without the insurance coverage required under Article 18.
- 23.1.4** There shall be filed by or against Operator, or against any successor Operator then in possession, in any court a petition under Title 11 of the United States Bankruptcy Code, any petition alleging an insolvency, for bankruptcy, for reorganization, for the appointment of a receiver, or for an arrangement under the

United States Bankruptcy Code, or if any other similar type of proceeding shall be filed (and, if involuntary, not dismissed within 180 days); or

- 23.1.5** Operator ceases to have authority, as granted by the appropriate licensing body, to construct and operate facilities located on the Site.
- 23.2** KUB will notify Operator in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Section 23.1 above. Operator shall take immediate corrective action to eliminate any such defaults within fifteen (15) calendar days, or such longer period mutually agreed to by the parties and shall confirm in writing to KUB that cited condition(s) has (have) ceased or been corrected, or in the process of being corrected.
- 23.3** If Operator contests the existence of the default, it may invoke the dispute resolution procedures of Article 22.
- 23.4** If the parties are unable to resolve the dispute and Operator fails to discontinue or correct a default in a timely manner or fails to perform the required confirmation, KUB may immediately terminate this Agreement or any License(s) granted under it. In the event of termination of this Agreement or any of Operator's rights, privileges, or authorizations, KUB may seek removal of Operator's facilities pursuant to the terms of Article 11, from any or all of KUB's Infrastructure. In such instance, Operator shall remain liable to KUB for all fees and charges accrued pursuant to the terms of this Agreement.

Article 24—Term of Agreement

- 24.1** This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years and, unless terminated by either party, can be renewed for two additional five (5) year terms. Either party may terminate this Agreement at the end of the initial term or a successor term by giving written notice of intent to terminate the Agreement at the end of the then-current term. Such a notice must be given at least ninety (90) calendar days prior to the end of the then-current term.
- 24.2** Even after the termination of this Agreement, Operator's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Operator's Attachments, as provided for in Article 16.

Article 25—Amending Agreement

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

Article 26—Notices

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

If to KUB, at: **Knoxville Utilities Board
c/o Manager, Procurement
PO Box 59017
Knoxville, TN 37950-9017
attachments@kub.org**

If to Operator, at:

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

26.2 The above notwithstanding, the parties may agree to utilize electronic communications such as NJUNS, email, or other agreed upon notification system related to the License application and approval process, and necessary Transfer or Infrastructure modifications.

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

Article 27—Entire Agreement

This Agreement and its appendices constitute the entire agreement between the parties concerning attachments of Operator’s facilities to KUB Infrastructure within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between KUB and Operator are superseded and of no further effect.

Article 28—Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that remaining provisions be administered as if the Agreement did not include the invalid provision.

Article 29—Governing Law

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Tennessee or any regulatory agency of competent jurisdiction. The sole and exclusive venue of any legal action in regard to this Agreement should be in the court system of the county in the State of Tennessee in which the Infrastructure or portion of Infrastructure in question is located.

Article 30—Incorporation of Recitals and Appendices

- 30.1** The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.
- 30.2** The headings to the various sections of this Agreement have been inserted for purposes of reference only and shall not limit or define the express terms and provisions of this Agreement.

Article 31—Performance Bond

On execution of this Agreement, Operator shall provide to KUB a performance bond in an amount that is equal to two (2) times the total annual Pole attachment fee set forth in Appendix A for all Operator's Attachments or Fifty Thousand Dollars (\$50,000.00), whichever is greater. The required bond amount may be adjusted periodically to account for additions or reductions in the total number of Operator's Attachments. The bond shall be with an entity and in a form acceptable to KUB. The purpose of the bond is to ensure Operator's performance of all of its obligations under this Agreement and for the payment by Operator of any claims, liens, taxes, liquidated damages, penalties and fees due to KUB which arise by reason of the construction, operation, maintenance or removal of Operator's facilities on or about KUB Infrastructure. KUB, at its sole discretion, may waive the requirement of a performance bond.

Article 32—*Force Majeure*

- 32.1** In the event that either KUB or Operator is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible.
- 32.2** With the exception of emergency work done to Operator's Attachments to correct for a violation in Operator's Attachments (including emergency transfers), KUB shall not impose any charges on Operator stemming solely from Operator's inability to perform required acts during a period of unavoidable delay as described in Section 32.1, provided that Operator present KUB with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Operator from the timely payment of any fees or charges due KUB under this Agreement.

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

L I C E N S O R

KNOXVILLE UTILITIES BOARD

BY: _____

Title: _____

APPROVAL: _____

Derwin Hagood

Senior Vice President and Chief Operating Officer

O P E R A T O R

[INSERT OPERATOR NAME]

BY: _____

Title: _____

APPENDIX A—FEES AND CHARGES

Annual Attachment Fees and Charges

1. **Annual Wired Attachment Fee:** (fee will be charged on a per Attachment basis per Section 3.3)

Effective January 1, 2019: \$36.00 per attachment per year.

2. **Annual Wireless Attachment Fee:** (fee will be charged on a per Site basis)

Effective January 1, 2019: \$1,000 per Site per year.

3. **Annual Network Attachment Fee:** (fee will be charged on a per linear foot basis)

Effective January 1, 2019: \$3.70 per attachment per year.

4. **Annual Equipment Attachment Fee:** (fee will be charged on a per Site basis)

Effective January 1, 2019: \$50 per attachment per year.

Adjustment of Annual Attachment Fee:

By giving six (6) months' notice to the Operator, KUB may from time to time adjust the rate specified in this section, effective as of the date on which the annual payment hereinabove provided for is to be computed next, following the expiration of the six-month notice period. If such changed rate is not acceptable to the Operator, Operator may terminate this agreement subject to terms provided for in Article 23 of this agreement.

Other Fees and Charges

1. **Non-Recurring Fees:**

- License Application Fee, Wired OH\$1,000 per License Application for up to50 Poles, \$20/pole for each pole over 50.
- License Application Fee, Wireless\$650 per License Application
- License Application Fee, Conduit Use.....\$740 per License Application for up to10 city blocks (approx. 4000 ft)
- License Application Fee, Equipment\$100 per License Application
- Make Ready Work ChargesSee Article 3 of Agreement
- Miscellaneous ChargesSee Article 3 of Agreement
- Inspection Fees.....See Article 3 of Agreement

NOTE: License Application fees may be adjusted periodically, but not more often than annually, to reflect increases in operating costs.

- 2. Late Fee:** Maximum rate allowed by State of Tennessee, currently 1.5% per month.
- 3. Unauthorized Attachment Fee:** 3x Annual Attachment Fee, per occurrence, per month.
- 4. Failure to Timely Transfer, Abandon or Remove Facilities Fee:**
 - 1/5 Annual Attachment Fee per day, per piece of Infrastructure, Day 61- 90 after official notification;
 - Annual Attachment Fee per day, per piece of Infrastructure, Day 91 and thereafter.