

POLE ATTACHMENT AGREEMENT

THIS POLE ATTACHMENT AGREEMENT (the “Agreement”) made on this the ____ day of _____, 20__ between the Huntsville Utilities Electric Board, a municipal public utility board created by the City of Huntsville, Alabama (the “Utility”) and _____ (the “Licensee”).

WITNESSETH

WHEREAS, Licensee proposes to erect, attach, and install aerial cables, wires, and/or associated appliances to utility poles owned by Utility in Huntsville and Madison County, Alabama, and vicinity; and,

WHEREAS, Utility is willing to grant a license to Licensee to permit the erection, attachment, and installation of said cables, wires and/or appliances to Utility’s poles where, in Utility’s sole judgment, such use will not interfere with Utility’s own service requirements, including considerations of economy and safety;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

1. **Agreement Documents.** This Agreement, along with the attached Exhibits, constitutes the entire Agreement between the Parties. The Exhibits include Exhibit A, the Licensee Information Statement, Exhibit B, the Rent and Fee Schedule, Exhibit C, the Pole Attachment Permit Procedure, and Exhibit D, the Pole Attachment Construction Specifications. Utility has the right to update and revise the Exhibits as necessary and will either email and/or post on Utility’s website the new versions. Where there is a conflict between any of these Exhibits and this Pole Attachment Agreement, the Exhibits shall prevail.
2. **Licensee Information Statement.** Upon execution of this Agreement, Licensee shall complete the Licensee Information Statement attached hereto and incorporated by reference herein as Exhibit A (the “Licensee Information Statement”). The Licensee shall notify Utility in writing within thirty (30) days of the following events: (1) the merger, consolidation or other transfer of all or substantially all of the assets of Licensee or the line of business of Licensee which is served by the Utility; (2) change of the legal name of the Licensee; or (3) change of any information contained in the Licensee Information statement. Licensee shall be responsible for any and all expenses, including late fees, fines, damages, and penalties, resulting from incorrect information on the Licensee Information Statement.
3. **Grant of License.** In accordance with this Agreement, the Utility hereby grants to Licensee the non-exclusive right to install, mount, maintain, modify, operate, replace or remove its cables, wires, and/or appliances described in the Licensee Information Statement (the “Attachments”), at Licensee’s own expense, to the Licensee’s Assigned Space (as hereinafter defined) on Utility’s poles (the “License”). Utility expressly grants Licensee the right to access the area in and around Utility’s pole attachments and other pole facilities for the purpose of complying with all government rules and regulations and approved codes, and the terms of the Agreement Documents.

4. **Governmental Compliance.** Licensee acknowledges that the License does not eliminate requirements imposed by any local, state, or federal agencies that may have legal jurisdiction. Licensee shall not operate under this Agreement without first obtaining any necessary permits, licenses, or approvals to do work, including, but not limited to, local business license and franchise agreement.
5. **Term.** The initial term of the License shall be for five (5) years from the date of this Agreement (the “Initial Term”) unless earlier terminated in accordance with the terms of this Agreement. This Agreement shall automatically renew for additional one (1) year terms at the end of the Initial Term and each renewal term thereafter unless the terminating party provides the other party with at least six (6) months’ prior written notice. At the expiration of the term of this Agreement, Licensee, at its own expense, shall have six (6) months to remove all of the Licensee’s Attachments from the Utility’s poles after which six-month period, the Utility shall have the option to either 1) assume ownership of the Attachments or 2) arrange for removal of the Attachments. In the event Utility elects to remove the Attachments, Licensee will be invoiced for the full amount of the cost of removal, payable within forty-five (45) days.
6. **Rental Rate; Payment.** Licensee shall pay to Utility for the License granted under this Agreement a rent at the rate set forth in the attached Exhibit B (the “Rent and Fee Schedule”).
 - 6.1. Annual per pole rental payments shall be calculated based upon the number of Attachments on the first day of October each year during which this Agreement remains in effect. As set forth in Exhibit B, Utility shall have the right to adjust the Rent on October 1st of each calendar year.
 - 6.2. Rent shall be invoiced annually during the last quarter of the calendar year each year during which this Agreement remains in effect. Invoices for rent, expenses and any other charges under this Agreement shall be payable by the Licensee within forty-five (45) days of receipt of notice as defined in Section 27 hereof, such invoice by Licensee. Utility may assess a late fee of one percent (1%) per month (not to exceed the maximum rate allowed under applicable law) on all amounts payable pursuant to this Lease Agreement.
 - 6.3. A cash deposit or other suitable guarantee, as determined by mutual agreement of the parties, equal to the estimated annual rental rate, shall be required of Licensee upon Licensee’s execution of this Agreement and prior to construction of any Attachments. Annually, Utility will review the sufficiency of the required guarantee. Should the review reveal that additional guarantee is required Licensee will have sixty (60) days to provide additional deposit or suitable guarantee. If additional deposit or guarantee is not provided within sixty (60) days then Licensee must not proceed with further Attachments until additional deposit or guarantee is provided.
 - 6.4. Non-payment of invoices by Licensee shall constitute a default of this Agreement.
7. **Inventory of Attachments.** Both the Licensee and the Utility have a responsibility and an opportunity to participate in the inventory so that accuracy may be determined at the time of the inventory. At Utility’s sole discretion, and at intervals no less than five (5) years, an inventory of Attachments shall be made by representatives of the Parties or by a third-party.

- 7.1. If there is any difference in the number of Attachments found by the inventory and the number of Attachments which is the basis for the calculation of the pole rental payment set forth in Section 6.1, then an inventory correction will be made and Utility will retroactively bill Licensee for the difference between the number of Attachments identified by the current inventory and the number of Attachments listed on each invoice since the first invoice after the most recent inventory of Attachments.
- 7.2. In the event that Utility elects to perform the inventory with a third-party, each Licensee shall pay its proportionate share of the cost of the inventory, such cost to be allocated among Licensees based on the number of Attachments attributed to each license in the inventory.
- 7.3. In the event that Utility elects to perform the inventory with representatives of the parties and Licensee elects not to have its personnel participate in the actual inventory, it shall so notify Utility in writing, and it shall, prior to the scheduled beginning date of the inventory, provide a written statement of its intent to accept the inventory results as determined by the Utility. Whether or not Licensee gives such written notice to Utility, Licensee shall, on receipt of invoice, reimburse Licensor its cost, including without limitation applicable taxes and overhead to perform the inventory, and Licensee shall in any event abide by the inventory results as determined by Utility.
8. **Assigned Space.** As used herein, “Assigned Space” shall mean an allocation of twelve (12) inches of space on the Utility’s pole requested by Licensee in order for Licensee to erect, attach, install, maintain, service and repair the Attachments, not to exceed six (6) inches either above or below the bolted attachment. The only Attachment allowed in the Assigned Space is the hardware for the wireline attachments. All other hardware attachments are subject to additional rental fees.
9. **No Conflict.** Licensee shall at its own expense attach, erect, install, maintain, and repair its Attachments in a manner suitable to Utility in its sole discretion.
 - 9.1. Licensee shall exercise its best efforts to avoid damage to Utility’s poles and facilities, and the facilities and authorized attachments of other parties.
 - 9.2. The Attachments shall not conflict with the use of the poles by Utility or other parties.
 - 9.3. The Attachments shall not extend outside the Licensee’s Assigned Space on each pole.
 - 9.4. In the event of a conflict between Licensee’s use and the use of the pole by a third party or by Utility, Utility shall have the right to resolve the conflict in its sole discretion.
10. **Permit Application.** Licensee shall submit a permit application for any new Attachment or modification of any existing Attachment following Utility’s Pole Attachment Permit Procedure (“Permit Procedure”). The Permit Procedure and form is attached hereto for future reference as Exhibit C.
 - 10.1. Licensee understands that work may be required by Utility in order to accommodate the requested Attachments, and that Licensee would be responsible for the cost of this work as set forth in the Permit Procedure.
 - 10.2. Licensee understands that there is a per pole permit fee, defined in Exhibit B, to be submitted with each Permit Application, and that both attachment height measurements and pole loading analysis may be required.

- 10.2.1. Utility, at its sole discretion, will determine when a pole loading analysis is required whether such analysis will be performed by Licensee or Utility. Pole loading analysis requirements are further described in the Permit Procedure.
- 10.2.2. Inaccurate or incomplete permit data may result delays and/or requirements to re-initiate the permit process. At Utility's sole discretion, Licensee will be required to either submit a new permit or reimburse Utility, based on the fees defined in Exhibit B, for collecting the existing attachment heights.
- 10.3. All fees arising as part of the permitting process must be paid before the Permit will be issued.
- 10.4. Licensee understands that certain poles may be deemed unsuitable for attachment because of location, existing equipment on the poles, or for other reasons.
- 10.5. Licensee understands that it may be necessary for other attachers to relocate their attachments in order for the Permit to be approved. Licensee is responsible for requesting and coordinating relocation of other attachers attachments in order to provide space for Licensee's proposed Attachments
- 10.6. Licensee may install Drop Attachments, at its own expense, without a prior permit from Utility. A "Drop Attachment" is a cable span directly connecting a Licensee's cables to a customer's point of connection with no utility pole in between and involving no additional hardware attachments to the pole.
- 10.7. Any facilities installed without issuance of a permit are subject to immediate removal.
11. **Priority of Work.** Licensee recognizes that requests for work to be completed by Utility pursuant to this Agreement shall be addressed, if appropriate, in accordance with procedures established by Utility as to priority and order of work to be performed. Utility shall determine in its sole discretion, whether to undertake to perform the works requested and in what sequence the work requests are to be performed.
12. **National Joint Use Notification System.** The Parties recognize that improved coordination of activities such as pole attachments and pole attachment transfers by pole owners and pole attachers is to the benefit of all Parties, and that Licensee's and Utility's participation in the National Joint Utilities Notification System ("NJUNS"), a Web-based system developed for the purpose of improving the coordination of such joint activities, shall be used to coordinate such joint activities under this Agreement. Licensee will join NJUNS within 30 days of the execution of this Agreement. Licensee shall actively monitor and manage that account. Should Licensee fail to actively participate in NJUNS and should such failure cause Utility to incur expense or liability to others, Licensee shall reimburse Utility its expense and indemnify and hold harmless Utility from any damages or liability arising out of such failure. For the purposes of this Agreement, any work being managed with NJUNS will be considered incomplete until the NJUNS ticket is completed in the system, regardless of whether or not the work is physically completed in the field.
13. **Marking of Attachments.** Licensee shall mark or tag Attachments in accordance with the Pole Attachment Construction Specifications and shall maintain marks and tags in readable condition. New attachments shall be marked or tagged at the time they are placed on the pole. Any pre-existing Attachments shall be marked or tagged in accordance with the Pole

Attachment Construction Specifications within one (1) year of the date of this Agreement, unless otherwise mutually agreed upon by the Parties.

14. **Maintenance of Attachments.** Utility shall have the right to inspect the Attachments at any time.
 - 14.1. Licensee shall at its own expense, maintain the Attachments in a safe condition, in thorough repair, and in accordance with Utility's Pole Attachment Construction Specifications attached hereto as Exhibit D.
 - 14.2. Licensee shall be solely responsible to clear any trees, limbs, and/or vegetation or like matter which interferes with Licensee's Assigned Space.
 - 14.3. Unused Drop Attachments shall be removed completely from the pole and not left dangling. Unused cables shall be removed and not used as support for additional cables.
 - 14.4. Utility may provide Licensee notice of non-compliance with Utility's Pole Attachment Construction Specifications. In the event Licensee fails to correct the non-compliance within sixty (60) days, Utility may perform the corrections and invoice Licensee for actual costs including Utility's customary overhead expense. Licensee may request and be given additional time to correct the deficiencies identified by Utility in the written notice of non-compliance. Licensee must submit such request in writing within thirty (30) days of written notice of non-compliance.
15. **Replacement or Relocation of Poles.** Licensee acknowledges that it is sometimes necessary for the Utility to relocate or replace existing poles to which the Licensee may be attached. The relocation or replacement of existing poles may be caused by Utility or by another entity. Should the Utility move or replace a pole, the Utility will give notice via NJUNS, once the pole is moved or replaced, to the Licensee that their permitted Attachments are required to be relocated. .
 - 15.1. Licensee agrees to relocate their Attachments within sixty (60) days of receiving notice of relocation.
 - 15.2. Should Licensee fail to complete the relocations within sixty (60) days then Utility may relocate the Attachments and invoice the Licensee the actual cost, including Utility's customary overhead expense. Licensee shall be responsible for all costs arising out of such work.
 - 15.3. Alternately to Section 15.2, HU may contract a third-party after sixty (60) days to transfer the Attachments. Licensee shall be responsible for all costs arising out of such work.
 - 15.4. In the even that any pending transfers, in Utility's sole discretion, pose a safety risk, Utility may immediately make an emergency/temporary transfer and notify Licensee. Licensee shall be responsible for costs for simple transfers as set forth in Exhibit B, and any other work based on actual charges plus Utility's customary overhead expense. Simple transfers are defined as transfers requiring relocation of hardware only and involving no splicing or interruption of service to Licensee's customer(s); further not causing any disfigurement to Licensee's Attachments.

- 15.5. Licensee is responsible for monitoring and updating NJUNS tickets. NJUNS tickets not completed within sixty (60) days will be assumed to be an incomplete transfer and may result in administrative fees to cover Utility's investigation of that ticket.
- 15.6. If Licensee is unable to manage the NJUNS tickets in the required amount of time, and upon written request to Utility by Licensee, Utility and Licensee may mutually agree upon a written remediation plan.
- 15.7. In no event are the deadlines in this section meant to take precedence over a shorter deadline required by a third-party's project or government entity's requirement. In the event a project is planned by a third-party or government entity, the project may not allow for the advanced notice called out in this section. Licensee is responsible for meeting any deadlines set by the third-party or government entity.

16. Overhead to Underground Relocation Projects.

- 16.1. Licensee acknowledges that it is sometimes necessary for the Utility to move electric distribution lines from overhead to underground. Licensee agrees to relocate or reroute their Attachments within ninety (90) days of receiving notice that Utility has removed its facilities from the poles. Should the Licensee not complete the relocate or reroute before ninety (90) days, Utility will remove and dispose of all Attachments and invoice Licensee the actual cost, including the Utility's customary overhead expense.
- 16.2. Licensee acknowledges that relocation of utilities is often driven by governmental or other third-party sources which may impose more stringent deadlines. Licensee will be solely responsible for any additional costs caused by Licensee not meeting external deadlines, even if the Attachments are moved within ninety (90) days of receiving notice from Utility.
- 16.3. Utility will give as much advance notice as possible to Licensee of any upcoming overhead to underground relocation work.
- 16.4. Licensee will restore the public rights-of-way to a condition substantially similar to that which existed immediately prior to Licensee's entry and use, reasonable wear and tear excepted. Utility agrees and acknowledges that the Licensee's Attachments shall remain the personal property of Licensee and Licensee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws.
- 16.5. In no event are the deadlines in this section meant to take precedence over a shorter deadline required by a third-party's project or government entity's requirement. In the event a project is planned by a third-party or government entity, the project may not allow for the advanced notice called out in this section. Licensee is responsible for meeting any deadlines set by the third-party or government entity.

17. Responsibilities Associated with Licensee's Work on Poles of the Utility.

- 17.1. With respect to the installation of its Attachments to Utility's poles or other work undertaken by Licensee pursuant to this Agreement, Licensee shall be solely responsible for ensuring that all work is performed in accordance with the requirements of this Agreement, the National Electric Safety Code ("NESC"), and other applicable codes, regulations, and laws. Utility shall not exercise any control over the manner in

which such work is performed. Licensee shall not cause or permit any person, other than a qualified and authorized worker who knows and appreciates the character of electricity and the danger of working in proximity to wires and other electric distribution facilities which are or may be energized with electricity at the various voltages used in supplying electricity for public use, to climb any pole, or to work upon any of Licensee's cable, wire, appliance, equipment or facility attached to any pole, equipment, or facility owned or controlled by Utility; and, as to any such person as may be authorized or permitted by Licensee to climb any such pole or to perform any such work, it shall not be Utility's responsibility to warn him of the danger involved in working or being close to Utility's wires and facilities, nor to provide supervision over the work being done by such person at any time. Before any person performs any work for Licensee on or near any poles, equipment or facilities owned or occupied by Utility, Licensee must adequately warn such person of the dangers inherent in making contact with the electrical conductors of Utility and of failing to maintain the distance from such conductors required by the NESC and any applicable codes, regulations, or laws. **IN NO EVENT SHALL A LICENSEE REPRESENTATIVE CLIMB OR WORK ABOVE THE COMMUNICATION SPACE ON THE POLE.**

- 17.2. Prior to its employees or contractors climbing or performing other work on any of Utility's poles, Licensee shall determine for itself whether such pole is safe to climb or safe for the performance of other work on or near the pole. Utility or its contractor may from time to time inspect poles to which Licensee is attached, and may place tags or other markings on such poles indicating the condition of the pole and/or whether the pole is safe to climb. **LICENSEE SHALL INFORM ITS EMPLOYEES AND CONTRACTORS OF THE MEANING OF SUCH TAGS OR OTHER MARKINGS.** Utility's election to inspect any pole is not, and shall not be construed as, the assumption or undertaking of any duty, responsibility or liability on Utility's part with respect to Licensee or its Attachments that is not expressly set forth in this Agreement. The placement of an inspection tag or other marking, or lack thereof, on a pole shall not relieve Licensee of its responsibility to determine for itself whether any particular pole is safe for climbing or other work.
18. **Report of Damage.** Licensee shall exercise special precautions to avoid damage to the facilities of Utility and of others supported on Utility's poles and hereby assumes all responsibility for any and all loss of such damage. Licensee shall make an immediate report to Utility of any damages to Utility's poles or surrounding property. Licensee shall reimburse Utility for all expense incurred in making repairs due to damage caused by Licensee.
19. **Environmental.** Each Party will be fully and solely responsible for environmental contamination caused by its facilities, attachments, contractors, agents or employees, and Licensee will undertake the requisite environmental assessments it deems appropriate.
20. **Interruption of Service.** Utility reserves to itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements. Utility shall not be liable to Licensee for any interruption to service of Licensee or for interference with the operation of the cables, fibers, wires, appliances, or Attachments of Licensee arising in any manner out of the use of Utility's poles hereunder.

- 20.1. Licensee acknowledges that the uses of the property or premises may include, but are not limited to, providing traffic control, street lighting, and electric service for the residents inside the Utility's electric service area. The Parties agree that this Agreement does not in any way limit Utility's right to operate and maintain all components of its systems in the manner that best enables the functioning thereof and protects public safety.
- 20.2. In case of an emergency arising from or related to the Licensee's Attachments ("emergency" being defined for purposes of this Agreement as an event which the Utility determines as posing an immediate threat of substantial harm or damage to the health, safety and welfare of the public and/or the property and/or premises), Utility shall have the right to act as necessary to protect the public health and safety of its citizens, and to protect public and private property.
- 20.3. During the course of said emergency, Utility may, in its reasonable discretion, remove Licensee's Attachments, provided, however, that such removal, where possible, be performed only by qualified personnel. Licensee shall be responsible for the costs arising out of such removal, unless the emergency that caused the removal was the result of the acts or omissions of the Utility. Utility shall give Licensee notice of said removal as soon as practicable under the circumstances, and shall work in cooperation with Licensee to restore the removed Attachments expeditiously.
21. **Licensee's Authority.** Licensee shall, upon request of Utility, submit to Utility written evidence, satisfactory to Utility, of its authority to erect and maintain its facilities within public streets, highways and other thoroughfares and shall secure any necessary consent from state, county, or municipal authorities or from the owners of any private property to erect, attach, install, repair, service, and maintain the Attachments. Licensee shall defend, indemnify and reimburse Utility all loss and expense, including attorneys' fees, as provided for in Section 22, which Utility may incur as a result of claims from governmental bodies, owners of property or others that Licensee has not a sufficient right or authority for placing, operating and maintaining Licensee's Attachments on Utility's poles.
22. **Indemnification.** Licensee shall indemnify, defend, protect and save harmless Utility or any other third-party claiming through the Utility from and against any and all claims and demands for damages to property and injury or death to persons, including without limitation attorneys' fees and payments made under any workers' compensation law or under any plan for employee disability and death benefits, which may arise out of or be caused by the erection, attachment, installation, maintenance, servicing, repair, presence, use or removal of the Attachments or by the proximity to the Licensee's Attachments of the Utility's cables, wire apparatus, appliances, utility poles, or other facilities, or by any act of Licensee on or in the vicinity of Utility's poles. Licensee acknowledges and agrees that Licensee's obligations shall include, but are not limited to, indemnity by the Licensee from and against any claim or demand against Utility which alleges negligence or breach of any duty owed by Utility to any claimant, whether or not due in whole or in part to any act, omission, or negligence of Utility and Utility's representatives, employees, agents, or servants..
23. **Insurance.** Licensee will maintain, without lapse, at all times during the term of this Agreement, insurance meeting the following minimum requirements:

- 23.1. Workers' Compensation Insurance covering all employees, in statutory limits, who perform or may perform any of the activities of the Licensee pursuant to this Agreement, and which protects it from all claims under any such laws applicable thereto.
- 23.2. General liability and property damage liability insurance covering all of the Licensee's activities under this Agreement, limits for bodily injury or death not less than five hundred thousand dollars (\$500,000) for one person and one million dollars (\$1,000,000) for each incident; for property damage, not less than two hundred fifty thousand dollars (\$250,000) for each incident and one million dollars (\$1,000,000) aggregate for the incidents during the policy period.
- 23.3. Automobile liability insurance on all self-propelled vehicles used in connection with this Agreement, whether owned, non-owned, hired or otherwise. This policy shall be comprehensive automobile liability policy as approved by the National Bureau of Casualty Underwriters and the Insurance Department of the State of Alabama, with liability limits of not less than three hundred thousand dollars (\$300,000) for one person and one million dollars (\$1,000,000) for each incident; and a property damage limit of not less than two hundred fifty thousand dollars (\$250,000) for each incident.
- 23.4. An umbrella liability policy certificate in addition to the certificates listed above with a minimum limit of liability of not less than one million dollars (\$1,000,000) per occurrence, unless otherwise mutually agreed to by the Parties in writing.
- 23.5. Utility and its officers, employees, and agents will be named as additional insureds on all insurance policies required under this agreement.
- 23.6. Licensee, by signing this Agreement waives, and will require its insurers to issue an endorsement to the above policy or policies to waive, all rights of subrogation against Utility with respect to any claim or loss payable or paid under each of the above policies.
- 23.7. Licensee will provide Utility with the names of all companies issuing insurance as required by this Agreement.
- 23.8. Licensee will provide Utility with a current certificate of insurance evidencing all of the insurance required by the Agreement prior to the installation of its Attachments and at all times thereafter while this Agreement remains in effect. Each insurance certificate will state that the issuer of the insurance certificate will give Utility written notice of any cancellation, modification, or expiration of any insurance policy referred to in the certificate in accordance with the insurer's notice policies. Any replacement certificates will be filed with Utility at least thirty (30) days before the expiration of the then current insurance policies.
- 23.9. All insurance policies required by this section to be maintained by Licensee will be valid and enforceable policies issued by insurers authorized to conduct business in Alabama and in good standing under the laws of Alabama.
- 23.10. Licensee's insurance shall be primary insurance with respect to activities and work related to this Agreement and insurance of Utility shall be excess of Licensee's insurance and shall not contribute with it. To the extent that Licensee utilized deductibles or self-insurance in connection with the insurance coverages required herein, all such deductibles and self-insured amounts shall be for the account and expense of Licensee and shall be

considered the same as primary insurance and Utility's insurance shall not contribute with same.

- 23.11. Each party is solely responsible for ensuring that such Party's contractors and subcontractors maintain insurance coverage that is usual, reasonable and customer for the services provided by such contractors and subcontractors to ensure that such can meet its obligation under this Agreement.
- 23.12. Licensee and its contractors are absolutely prohibited from performing any work under this Agreement on or near any of Utility's poles, including but not limited to removal of Attachments after termination of this Agreement, at any time during which Licensee does not have the insurance required by this Section 23.
24. **Non-Exclusive License.** Licensee recognizes that it holds a non-exclusive license to install, erect, attach, maintain, service and repair Attachments to Utility's poles in Huntsville and Madison County, Alabama, and vicinity, and that other third-parties may seek to install attachments on the same poles desired by Licensee. Licensee agrees that Utility shall be the sole judge of which entity desiring attachments to poles of the Utility shall bear the cost of any necessary adjustments in the height of poles or otherwise necessary to accommodate the desired Attachments. Licensee further agrees to indemnify, protect and save harmless the Utility from and against any and all claims and demands arising out of disputes as to the costs associated with adjustments of height of poles, placement of poles, or other adjustments, including any reasonable expenses and attorneys' fees incurred in defense of or in resolution of any such claims. No use, however extended, of Utility's poles, under this Agreement, shall create or vest in Licensee any ownership or property rights in said poles, and Licensee's rights therein shall not be construed to compel Utility to maintain any of Utility's poles for a period longer than demanded by its own service requirements.
25. **Removal of Attachments by Licensee.** Licensee may at any time remove its Attachments from any pole or poles of Utility, but shall promptly give Utility written notice of such removal. No refund of any rental or other charges shall be due on account of such removal.
26. **Termination.**
- 26.1. If Licensee shall fail to comply with any of the provisions of this Agreement, or shall default in any of its obligations under this Agreement and shall fail within thirty (30) days, or a mutually agreed upon time, written notice from Utility to correct such default or non-compliance, Utility may, at its option, forthwith terminate this Agreement and/or the entire License or any part thereof, granted to Licensee hereunder. In case of such termination, a proportionate refund of all prepaid rentals shall be made, less any costs incurred by Utility for removal of the Licensee's Attachments. In case of a default and termination of this Agreement, the Licensee shall have six (6) months to remove all of the Licensee's Attachments from the Utility's poles after which six-month period, the Utility shall have the option to either 1) assume ownership of the Attachments or 2) arrange for removal of the Attachments. In the event Utility selects to remove the Attachments, Licensee will be invoiced for the full amount of the cost of removal, payable within forty-five (45) days. The terms and provisions of this Section 26 shall survive this Agreement.

26.2. In the event of default of any of the terms or provisions contained herein the party found to have been in default hereby agrees to pay to the other the reasonable attorneys' fees and costs in connection therewith.

27. **Notices.** NJUNS shall be used by both Licensee and Utility to manage requests to transfer Attachments once the initial attachment has been made. Notification of any other operational issues, including requests related to maintenance or technical specifications, shall be documented via email. All other notices or reports required or permitted hereunder shall be delivered by two of the following methods: 1) personally, 2) by email or 3) by certified mail, postage prepaid, in all events to the following addresses of the respective parties:

To Utility: Huntsville Utilities
 112 Spragins Street
 Huntsville, Alabama 35801
 Attention: Pole Attachment Coordinator
 Email: HUPoleAttachments@hsvutil.org

To Licensee: See Exhibit A attached hereto.

Notices shall be effective upon receipt (or refusal of delivery or return unfound) if personally delivered, on the third business day following the date of mailing, if sent by U.S. mail, or upon sending, if sent by facsimile with written confirmation of receipt from the database of the facsimile equipment from which such notice is sent. Any change of address of a party shall be promptly communicated in writing to the other party.

28. **Assignment.** Licensee may not transfer or assign, voluntarily or by operation of law, its rights and obligations under this Agreement (or the Licenses granted hereunder) without the prior written consent of Utility (such consent not to be unreasonably withheld, conditioned, or delayed); provided, however, that Licensee may assign its obligations and rights under this Agreement (and the Licenses granted hereunder) upon notice and without Utility's consent to: (a) an entity that directly or indirectly controls, is controlled with or by, or is under common control with Licensee; (b) an entity resulting from any merger, consolidation or other reorganization involving Licensee, or (c) the purchaser of all or substantially all of Licensee's assets.

29. **No Waiver.** Failure to enforce or to insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions but the same shall be and remain at all times in full force and effect. Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by Utility, by contract or otherwise, to others, not parties to this Agreement, to use any poles covered by this Agreement; and Utility shall have the right to continue and extend such rights or privileges. The attachment privileges herein granted shall at all times be subject to such existing contracts and arrangements.

30. **Successors and Assigns.** Subject to Section 28 hereof, this Agreement shall inure to the benefit of and be binding upon the respective legal representatives, successors and assigns of the parties hereto.

31. **Mutual Representations.** Each Party represents and warrants to the other Party that: (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, (b) it will comply with all applicable laws in connection with the its obligations under this Agreement, and (c) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the effect of bankruptcy, insolvency, and similar laws affecting the rights and remedies of creditors, and general equitable principles.
32. **Insolvency.** In the event that either Party becomes subject to bankruptcy or a custodian, receiver, trustee, intervener, or other officer under the authority of Chapters 7, 9, 11 or 13 of the Bankruptcy Code as defined in the United States Code or any applicable state law within any jurisdiction, whether voluntary or involuntary, or makes an admission or is determined by a court of law to be insolvent, such Party shall be deemed in default of this Agreement and either Party shall have the right to terminate this Agreement within thirty (30) days of its notification of any bankruptcy proceeding or any admission or judicial determination of insolvency.
33. **Limitation of Liability; Warranty Exclusion.**
- 33.1. **IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY INCURRED OR SUFFERED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- 33.2. **UTILITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING THE CONDITION, SAFETY, OR ANY OTHER ASPECT OF ANY POLE OR ANY SERVICE MADE AVAILABLE TO LICENSEE UNDER THIS AGREEMENT.**
34. **Relationship of the Parties.** This Agreement does not make either Party the agent or legal representative of the other Party, and does not create a partnership or joint venture between the Parties. This Agreement is non-exclusive and Utility may enter into similar agreements with third-parties.
35. **Governing Law; Venue.** Any and all disputes arising out of this Agreement will be governed, construed and enforced according to the laws of the State of Alabama, excluding its conflict-of-law principles. A Party seeking to bring an action relating to the validity, construction, interpretation and enforcement of this Agreement will be required to institute such action in the Circuit Court of Madison County, Alabama.
36. **Force Majeure.** Neither Party will be liable for delays or any failure to perform under this Agreement due to causes that prevent the Party from performing its obligations under this

Agreement by reason of a Force Majeure Event. The other Party will not be required to perform or resume performance of those of its obligations that correspond to the obligations of the Party excused by Force Majeure Event, until the end of such Force Majeure Event. Force Majeure Event means an event or circumstance that prevents one Party from performing its obligations under this Agreement, which event is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of commercially reasonable diligence, the claiming Party is unable to overcome or avoid or cause to be avoided, including but not limited to acts of God, fire, explosion, flood, storm or other similar catastrophe, war, revolution, civil commotion, pandemic, acts of public enemies, terrorism or national emergency, or any law, order, or regulation of the government (or any department, agency, commission, court, or bureau of a government) resulting from the above.

37. **Third Party Beneficiaries.** The representations, warranties, covenants and agreements of the Parties set forth in this Agreement are not intended for, nor will they be for the benefit of or enforceable by, any third party or person not a party to this Agreement.
38. **Use of Names or Trademarks.** Neither Party may use any logo or service mark of the other Party without the express written consent of the other Party.
39. **Taxes.** None of the yearly rent payment charged to Licensee pursuant to this Agreement includes any tax or franchise fee charged by any governmental entity. Licensee agrees to pay any and all franchise fees, gross receipts, sales, rental, lease, use, property, excise and other taxes and governmental fees directly applicable to the renting of the Assigned Space for its Attachments. Licensee shall be solely responsible for opposing, protesting, appealing, or challenging any tax or franchise fee imposed or asserted by any entity.
40. **Interpretation.** This Agreement has been negotiated by the Parties and their respective counsel. This Agreement will be interpreted without any strict construction in favor of or against either Party.
41. **Severability.** If any provision of this Agreement is found unenforceable or invalid, the remainder of this Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
42. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which would be deemed to be original and all of which taken together will constitute one and the same agreement.
43. **Survival.** The terms and provisions contained in this Agreement that by their nature and context are intended to survive the performance thereof by the Parties will so survive the completion of performance and termination or early termination this Agreement, including, without limitation, provisions for indemnification and insurance.
44. **Headings; Captions.** The headings and captions used in this Agreement are for convenience only and shall not be construed to limit or expand the terms of this Agreement.
45. **Entire Agreement.** This Agreement constitutes the entire understanding between the Parties relating to the rights, duties and obligations granted and assumed herein. Any prior agreements, promises, negotiations or representations regarding the subject matter of this Agreement are of no force or effect. No alteration, modification, amendment, or variation of the terms of any

provision will be valid unless made in writing and signed by duly authorized representatives of Licensee and Utility.

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed the day and year first above written.

UTILITY: Huntsville Electric Utility Board

ATTEST:

By _____

Print name _____

Its _____

LICENSEE: _____

ATTEST:

By _____

Print name _____

Its _____

EXHIBIT A
LICENSEE INFORMATION STATEMENT

Legal Name of Licensee (include type of entity and State of incorporation/formation):

LOCAL CONTACT (for operational correspondence)

Name: _____ Address: _____

Phone: _____

Email: _____

After hours/emergency phone number: _____

NJUNS Member Code(s): _____

BILLING CONTACT

Name: _____ Address: _____

Phone: _____

Email: _____

Brief description of tag to be placed on Attachments (ALSO attach color picture): _____

LICENSEE'S AUTHORIZED REPRESENTATIVE:

(printed name)

(signature) (date)

(printed title)

EXHIBIT B
RATE, RENT, AND FEE SCHEDULE

- A. Pole Attachment Rate for Wireline Attachments: \$17.88 per attachment per pole per year
- B. Pole Attachment Fee for Small Cell Antennas: \$270.00 per site per year
- C. Pole Attachment Rent for equipment associated with permitted wireline attachments:
\$60.00 per linear foot per year
- D. Permit Application Fees:
 - a. Wireline Attachment
 - i. Permit Fee: \$50.00 per pole
 - ii. Collection of Existing Attachment Heights (if performed by Utility): \$100.00 per pole
 - iii. Pole Loading Analysis (if performed by Utility): \$50.00 per pole
 - b. Small Cell Antenna Attachment: \$100.00 per pole (minimum \$500.00)
 - c. Other Equipment call for pricing
- E. Tangent Wireline Simple Transfer Fee: \$100.00
- F. Dead-end Wireline Simple Transfer Fee: \$150.00
- G. Removal of Hanging Drop or Cable: \$100.00
- H. Attachment Rate Adjustments for Wireline Attachments: All attachment rates will be calculated annually according to TVA guidelines.
- I. Fee Adjustment: Utility reserves the right to adjust any of the fees on Exhibit B and add fees for services required under this Pole Attachment Agreement.

EXHIBIT C

POLE ATTACHMENT PERMIT EXTERNAL PROCEDURE

Huntsville Utilities Procedure # OP-EO-10-30-0x