

**AGREEMENT**

**FOR**

**LICENSED ATTACHMENT**

To

**Hydro Distributor**

By

**XXX**

DATE OF ISSUE: August 9, 2005

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## AGREEMENT FOR LICENSED ATTACHMENT

THIS AGREEMENT made in duplicate on the    day of    is effective as of (the “**Effective Date**”) through until (the “**End of Term Date**”).

BETWEEN:

**Hydro Distributor**  
(hereinafter the “**Owner**”)

OF THE FIRST PART

AND:

**XXX**  
(hereinafter the “**Licensee**”)

OF THE SECOND PART

WHEREAS the Licensee wishes to affix and maintain its material, apparatus, equipment or facilities to poles or equipment of the Owner;

AND WHEREAS all attachments by a cable company or a telecommunications company to poles or other equipment owned by the Owner require an approved permit;

AND WHEREAS the Owner consents to grant access to its poles and other equipment by the Licensee in accordance with the terms and conditions hereof;

AND WHEREAS the Ontario Energy Board released Decision No. RP 2003-0249, in the matter of access to poles;

NOW THEREFORE, THIS AGREEMENT WITNESSES that, in consideration of the premises and the agreements and other considerations herein contained, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 – DEFINITIONS

The terms defined in this Article for the purposes of this Agreement shall have the following meanings unless the context expressly or by necessary implication otherwise requires.

- 1.1 “**Affix**”, “**Affixed**” and “**Affixing**” means to fasten, by the Licensee or its contractors, the material, apparatus, equipment or facilities of the Licensee to poles or other equipment of the Owner or In-span.
- 1.2 “**Annual Licence Fee**” means the annual payment by the Licensee to the Owner determined in accordance with **Article 11**.

- 1.3 “**Approval**” or “**Approved**” means the permission granted by the Owner to the Licensee for the Licensee to Affix its Attachments, as specified in the Permit, to poles or other equipment of the Owner or In-span.
- 1.4 “**Attachment**” means any material, apparatus, equipment or facility owned by the Licensee which the Owner has Approved for Affixing to poles or other equipment of the Owner or In-span, including, but without limiting the generality of the foregoing:
- Licensee-owned cable not directly attached to a pole, but Over Lashed to a cable or Support Strand not owned by the Licensee;
  - Service Drops Affixed directly to the Owner's poles;
  - Service Drops Affixed In-span to a Support Strand supported by poles of the Owner; and
- Unless otherwise agreed by the parties, Attachment excludes Wireless Transmitters and Power Line Carriers.
- 1.5 “**Attachment Licence Fee**” means the licence fee payable in respect of an Attachment.
- 1.6 “**Cable Riser/Dip**” means a cable attached along a vertical portion of a pole to allow the cable to change its position from/to an underground route to/from an overhead route.
- 1.7 “**Clearance Pole**” means a single pole, owned by the Owner and used by the Licensee solely to establish and maintain vertical clearance for its Service Drops.
- 1.8 “**Communications Space**” means a vertical space on the pole, usually 600 mm in length, within which Telecommunications Attachments are made.
- 1.9 “**Construction Verification Program**” means the standards and requirements for conducting inspections and the qualifications of persons conducting inspections.
- 1.10 “**Dispute Resolution**” means the dispute escalation and referral mechanism, described in **Article 21**.
- 1.11 “**Emergency Situation**” means a situation that poses an imminent danger or threat to public safety or public welfare.
- 1.12 “**Good Utility Practice**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in North America during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.
- 1.13 “**Guy Pole**” means a separate pole, used to carry the strain of dead-ending or line deflection to ground.
- 1.14 “**In-span**” means a position between poles, at least one of which is owned by the Owner.

- 1.15 “**IRU**” means Indefeasible Right of Use, which is the effective long-term lease (temporary ownership) of a portion of the capacity of a cable. IRU is granted by the company that owns the cable (usually optical fibre).
- 1.16 “**Joint Use Pole**” means a pole in respect of which its Owner has granted the Licensee Approval to Affix its Attachments.
- 1.17 “**Joint Anchorage**” means a common anchor system, including the anchor rod, to which two or more guy wires are attached, each guy wire providing guying for one party’s conductors and related equipment on a Joint Use Pole.
- 1.18 “**Make-ready Work**” means any necessary and required work by the Owner and/or an existing third party pole user solely to accommodate the Attachment and includes but is not limited to:
- initial Line Clearing,
  - any changes or additions to or Rearrangement of the Owner's poles or the Owner's Attachments; and
- without restricting the generality of the foregoing, Make-ready Work does not include the costs of repairing any pole in order to ensure that it meets the Standard prior to permitting the Licensee to place its Attachments on the said Joint Use Pole.
- 1.19 “**Minor Relocation**” means the relocation of a Support Strand up to one metre (1.0 m) in a vertical and/or horizontal direction and includes relocation associated with pole changes.
- 1.20 “**Over Lash**” means to place an additional wire or cable communications facility onto an existing cable or Support Strand.
- 1.21 “**Permit**” means the formal written request for the adding, materially changing or removal of a Licensee’s Attachments to the Owner’s pole(s). The Permit form is entitled “Request for Licensed Occupancy of Poles”, in the form of **Schedule A** attached hereto, the form of which may be revised from time to time by the Owner.
- 1.22 “**Power Line Carrier**” means the use of existing electricity wire infrastructure to carry voice and data signals simultaneously by transmitting high frequency data signals through the electric power lines.
- 1.23 “**Power Space**” means a vertical space at the top of the pole within which electrical power attachments are made.
- 1.24 “**Rearranging**” or “**Rearrangement**” means the removal of Attachments from one position on a pole and the placing of the same Attachments in another position on the same pole.
- 1.25 “**Service Drops**” means Telecommunications cables or wires, whether Affixed In-span or to a Clearance Pole, owned by the Licensee and connected to a Telecommunications cable, whether owned or not owned by the Licensee, and leading to customers of the Licensee.
- 1.26 “**Standard or Standards**” means Canadian Standards Association Standard C22.3 No.1-M87 “Overhead Lines”; Occupational Health and Safety Act; Part II of Canadian

Labour Code; the Ontario Electrical Safety Code; Electrical & Utilities Safety Association Rules and Safe Practices; Ontario Regulation 22-04 or any other applicable regulation administered by the Electric Safety Authority; and the Owner's Standards, together with any amendments thereto from time to time, it being understood that changes to the Owner's Standards are to be made at the sole discretion of the Owner.

- 1.27 “**Support Strand**” means a bare support strand whose main purpose is to support Telecommunications or low voltage wires or cables.
- 1.28 “**Telecommunications**” or “**Communications**” means the transmission of voice, data, video or information of any kind by electromagnetic or optical signals.
- 1.29 “**Total Direct Cost**” means the costs included in the annual pole access rate pertaining to administration and loss in productivity.
- 1.30 “**Transferring**” means the removal of Attachments from one pole and the placing of the same Attachments on another pole.
- 1.31 “**Wireless Transmitters**” means stand-alone transmitters and/or receivers which use electromagnetic waves (rather than some form of wire or fibre optic cable) to carry voice, data, video or signals over part or all of the communication path.

## **ARTICLE 2 – TERRITORY**

- 2.1 This Agreement shall cover the Affixing and maintaining of the Attachments to the poles or other equipment of the Owner, or In-span, within the area of Ontario where the respective service territories of the Owner and the Licensee overlap.

## **ARTICLE 3 – AUTHORIZATION, PERMISSION AND RIGHT-OF-WAY**

- 3.1 The Licensee shall be responsible for obtaining any and all easements, rights of way, authorizations or permissions from others, including authorization or permission to locate on private property, municipal or provincial road allowances, or any other applicable authorization or permission required for private property or from any municipal, provincial or federal government or any agency, body or board thereof having jurisdiction with respect to the Affixing and maintaining of the Attachments provided for in a Permit.
- 3.2 Where permitted to do so, the Owner may assign benefits of easements or rights of way to the Licensee, on mutually agreeable terms.

## **ARTICLE 4 – TAXES**

- 4.1 The Licensee shall pay, and indemnify and save harmless the Owner against, all taxes, rates, assessments or fees of every nature and kind lawfully assessed, which are directly applicable to or related to the Attachments designated in an Approved Permit or directly resulting from the privileges granted to the Licensee by this Agreement.

- 4.2 The Licensee agrees to remit payment for its portion of such taxes, rates, assessments or fees to the Owner, within thirty (30) days of request for same by the Owner. At the Licensee's request and expense, the Owner shall remit any such taxes under protest. The Licensee shall be free to negotiate with the taxing authority or institute legal proceedings against the taxing authority to have such taxes cancelled or reduced. Any refund of the Licensee's remittance received by the Owner in connection with such taxes shall be paid over to the Licensee with such interest as the Owner will have received from the taxing authority in respect thereof.

## **ARTICLE 5 – PERFORMANCE GUARANTEE**

- 5.1 If the Licensee has not demonstrated satisfactory financial performance such as prompt payment of accounts and no collection action and is not deemed credit-worthy by an external rating agency, the Owner may require that the Licensee deposit with the Owner security in an amount of \$100 per pole to a maximum of \$100,000, or as otherwise agreed by the Parties, securing the due performance of the obligations of the Licensee as provided for in this Agreement. The security shall be in favour of the Owner and shall be in a form satisfactory to the Owner, which may include a performance bond issued by a surety acceptable to the Owner, cash deposited with the Owner, negotiable bonds issued by an entity satisfactory to the Owner or an irrevocable bank letter of credit.
- 5.2 If the security is in the form of negotiable bonds or cash, then, provided that the Licensee is not in default of any of its obligations under this Agreement, the Licensee shall be entitled to receive any and all income therefrom.
- 5.3 The Licensee, when not in default of any of its obligations under this Agreement, shall have the right to substitute the security being held by the Owner with other security authorized by this Article.
- 5.4 The Owner shall be entitled to exercise upon the security in the event that the Licensee defaults on any of its obligations under this Agreement including, without limitation, for the purpose of covering the costs of any of the following:
- removal of Attachments from the Owner's poles or In-span;
  - damage to the Owner's equipment attributed to the joint use activity of the Licensee;
  - payment of any of the Licensee's accounts.
- 5.5 The security payable by the Licensee may be increased or decreased from time to time at the sole discretion of the Owner, who may take into consideration such factors as increases or decreases in the number of Attachments Approved by Permit, an increase or decrease in the estimated cost to remove Attachments, or any other factors that the Owner considers relevant.
- 5.6 If, for a period of three (3) years, the Licensee has demonstrated satisfactory financial performance such as prompt payment of accounts and no collection action, and is deemed credit-worthy by an external rating agency, the security paid by the Licensee shall be reduced by 50% after three (3) years and fully returned after five (5) years. The Owner may reactivate the security payable by the Licensee at any time, in accordance with **Section 5.1**.

## **ARTICLE 6 – COMPLIANCE WITH STATUTES**

- 6.1 This Agreement is subject to all applicable laws, regulations and Standards.
- 6.2 The Licensee and its contractors shall comply with the requirements of all relevant statutes, regulations, directions, guidelines, policies and governmental and regulatory agencies and with the Standards, both at the time of Affixing and thereafter, including, but not limited to:
- the safety qualifications of the Licensee’s employees to carry out the work,
  - the use of safe working practices in carrying out the work,
  - training in safety awareness,
  - Good Utility Practice, and
  - good and workmanlike fashion.
- The Owner reserves the right to have the Licensee’s employees or contractors removed from the jobsite for non-compliance with the above.
- 6.3 Any accident reportable by law to the Workplace Safety and Insurance Board or to the Ministry of Labour or to Human Resources and Development Canada or any notice or fine received from any of these authorities by the Licensee or the Licensee’s contractor while working on the Owner’s poles or In-span must be reported to the Owner within five (5) working days of the accident or notice or fine.
- 6.4 The higher requirements of the *Canada Labour Code*, R.S. 1985, C. L-2 and the *Occupational Health and Safety Act* (Ontario), R.S.O. 1990, Chapter O.1 govern safety regarding the Affixing, Rearranging, Relocating, Transferring, maintenance or other work relating to Attachments. If there is any uncertainty about which Standards are applicable, the Licensee shall ensure that the Licensee or its contractor ceases all work immediately and contacts the Owner.

## **ARTICLE 7 – APPROVAL OF PERMITS**

- 7.1 Prior to submitting a Permit to the Owner, and for the purpose of initiating discussions as to the parties’ requirements, the Licensee shall inform the Owner that the Licensee intends to seek permission to Affix and maintain its Attachments to a pole or other equipment belonging to the Owner or In-span. The Licensee shall provide to the Owner such preliminary information as may be requested by the Owner.
- 7.2 At the Owner’s sole discretion, the Owner may arrange for a joint field visit by both the Owner and the Licensee to inspect the site of the proposed Affixing of Attachments by the Licensee. The Licensee shall also be entitled to request from the Owner a joint visit, and the Owner shall have the obligation to consider the request, acting reasonably.
- 7.3 Subsequent to the joint field visit, if any, the Owner shall form a preliminary, non-binding opinion as to the feasibility and desirability of the proposed Affixing of the Attachments by the Licensee, which opinion shall be communicated to the Licensee within a reasonable period of time.



- 7.4 If the Owner forms a preliminary opinion in favour of the proposed Affixing of the Attachments, the Owner will prepare a preliminary estimate of any costs of Make-ready Work and deliver such estimate to the Licensee with the preliminary opinion.
- 7.5 After the estimate has been received and accepted by the Licensee, the Permit, in duplicate, shall be prepared, signed and delivered by the Licensee to the Owner.
- 7.6 Each Permit shall be accompanied by:
- drawings, plans or designs in a format approved by the Owner (see **Schedule C**) and signed and sealed by a Professional Engineer registered in Ontario, or signed by a Certified Engineering Technologist, or other competent person, who is qualified by knowledge, training and experience, and approved by the Owner, to indicate compliance with all Standards including the Licensee's standard design drawings and standard specifications, which shall have been prepared, signed, and sealed by a Professional Engineer; or drawings, plans or designs, together with a Certificate of Approval of the drawings by the Electrical Safety Authority;
  - a purchase order authorizing the Owner to complete the Make-ready Work on the Owner's facilities pertaining to the applicable Permit; and
  - other items that the Owner may reasonably require and shall have requested from the Licensee pursuant to the terms of this Agreement.
- 7.7 If the Owner is satisfied that the Permit documentation is in accordance with this Article and is compliant with all Standards, the Owner will make best efforts to process the Permit within thirty (30) days from receipt of completed Permit documentation and shall, if deemed necessary to further process the Permit, commence Make-ready Work where a signed purchase order has been received. If, while carrying out the Make-ready Work, the Owner determines that the proposed Attachments are no longer feasible because of previously unknown conditions or constraints or because of the intervention of a third party with jurisdiction, such as a government authority or landowner, the Make-ready Work will be suspended and the Licensee notified of the suspension. If the cause of such suspension cannot be resolved to the satisfaction of the Owner, the Licensee will be invoiced pursuant to **Article 8** for all charges to the time of suspension. If the Permit is Approved, the Owner will sign both copies of the Permit and return a copy to the Licensee's representative, thus Approving the proposed Affixing of the Attachments by the Licensee.
- 7.8 Each Approved Permit shall be deemed to have been issued pursuant to this Agreement, and shall be read and construed in accordance with this Agreement. Subject to **Section 9.8**, Permits approved prior to the Effective Date shall be deemed to have been approved in accordance with the then current Standards.
- 7.9 The Licensee shall retain its copy of the Approved Permit as part of the Licensee's project file and may be required to produce the Approved Permit at any time when requested by the Owner.
- 7.10 Permits for additional Attachments, except Service Drops, to an existing pole or In-span must be submitted and Approved using the same procedure set out in this Agreement for obtaining Approval to Affix new Attachments.

- 7.11 When exercising its discretion as to whether to grant Approval to a Permit, the Owner shall exercise its discretion reasonably where the Licensee has complied with all terms this Agreement.
- 7.12 When exercising the foregoing discretion, the Owner will consider its requirements with respect to, but not limited to, the following:
- safety;
  - operation of the Owner’s electricity distribution network;
  - planning;
  - aesthetics;
  - road authority and property owner requirements; and
  - any other matters which the Owner, acting reasonably, may deem relevant and communicate to the Licensee by notice in writing in accordance with **Article 19**.
- 7.13 It is expressly understood and agreed that Permit Approval, or use under a Permit, will be denied if, in the sole discretion of the Owner, the Attachments, or use derived therefrom could be:
- damaging to the Owner’s existing plant and/or electrical distribution services; or
  - unreasonably constraining on the Owner’s use of plant; or
  - damaging to existing plant and /or service of a third party on the Owner’s poles; or
  - non-compliant with the obligations of the Owner.

Any such denial shall be communicated to the Licensee by notice in writing in accordance with **Article 19**.

- 7.14 If a proposed installation which has been Approved by Permit is cancelled by the Licensee, the Licensee shall reimburse the Owner for the cost of any Make-ready Work completed on the Licensee’s behalf upon receiving the invoice for same, and **Article 13** shall apply.

## **ARTICLE 8 – GRANT**

- 8.1 For each Permit Approved pursuant to **Article 7**, the Owner hereby grants to the Licensee the permission to Affix and maintain such of its Attachments to such poles or other equipment of the Owner, or In-span, as may be designated on each Approved Permit in accordance with the terms of this Agreement and any terms specified in said Permit.
- 8.2 The permission to Affix and maintain Attachments as described in an Approved Permit shall be deemed to be effective as of the date of the Approval of such Permit by the Owner. The Licensee must exercise this permission within one hundred and eighty (180) days of the date of Approval of the Permit or one hundred and eighty (180) days of the date of the completion of the Make-ready Work or within some other time period as mutually agreed to by the parties, whichever is later, failing which the Approval is of no force and effect and the Licensee may be required to submit a new Permit requesting permission to Affix its Attachments.
- 8.3 If the Owner determines that the Attachments Affixed pursuant to the Permit could be:
- damaging to the Owner’s existing plant and/or electrical distribution services; or

- unreasonably constraining on the Owner's use of plant; or
- damaging to existing plant and /or service of a third party on the Owner's poles; or
- non-compliant with the obligations of the Owner,

the Licensee agrees that any Approval to Affix and maintain its Attachments previously granted by the Owner in any Permit may be revoked whether before or after the Affixing of Attachments, at the sole discretion of the Owner, if the Licensee has not carried out such work as required to rectify the situation to the satisfaction of the Owner within thirty (30) days of notice by the Owner.

Any such revocation as it relates to existing Attachments shall be communicated to the Licensee in accordance with **Articles 16 and 19**, and the Licensee shall pay the cost of removal of the Attachments in accordance with **Article 13**.

- 8.4 To the extent that other agreements do not prejudice the Licensee rights, granted hereunder, the Licensee agrees that this Agreement does not restrict the Owner in entering into agreements with other parties respecting the use of the Owner's poles.
- 8.5 At all times:
- the Attachments shall remain the property of the Licensee; and
  - the pole shall remain the property of the Owner, subject to **Sections 16.2 and 16.3**.

## **ARTICLE 9 – INSTALLATION AND MAINTENANCE**

- 9.1 The Licensee agrees that it will not Affix any of its Attachments, except Service Drops, to a pole of the Owner until the Owner approves the Permit designating such Attachment. The Licensee agrees that it is solely responsible for Affixing and maintaining its Attachments to the poles or other equipment of the Owner or In-span.
- 9.2 Service Drops may be added to or altered, without reporting the addition or alteration to the Owner, when Affixed to a pole for which a Permit has been Approved, or Affixed In-span where a Permit has been Approved for the nearest pole. If the pole, or the nearest pole to the Service Drop, is not included in an existing Permit, the Service Drop must be reported to the Owner and a Permit applied for within thirty (30) days. If the Permit application is subsequently refused, the Licensee must revise the Permit application to the satisfaction of the Owner, or the Licensee must remove the Service Drop within thirty (30) days of the Owner notifying the Licensee of the refusal. If such plant is not removed within the specified period, the Licensee shall pay all associated costs of the Owner and third parties for the removal of its Service Drops. Any disputes relating to Service Drops shall be addressed in accordance with the Dispute Resolution process set out in **Article 21**.
- 9.3 In conjunction with the Licensee's system rebuild plans, the Licensee shall make best efforts to consolidate its multiple parallel strands on a pole into one strand during the Initial Term of this Agreement. If a third party seeks access to the Communications Space where the Licensee has parallel Attachments, the Licensee shall, at the Licensee's option, either consolidate its parallel Attachments or transfer title of one of the Licensee's Strands to the Owner at no charge to the Owner, or to the third party. The Owner shall be given the first

opportunity to obtain title in the Licensee's parallel strand, should the Licensee opt to transfer title of the strand. Any such transfer of the Licensee's Strands to a third party shall be subject to the conditions in **Sections 20.01** and **20.02**. The Licensee shall consolidate its multiple parallel support strands on a pole into one support strand within ninety (90) days' notice, or other timing as mutually agreed upon, on a case by case basis, when reasonably requested by the Owner for requirements such as:

- safety;
- operation of the Owner's electricity distribution network;
- planning;
- aesthetics; and
- road authority and property owner requirements

- 9.4 If the Licensee needs to carry out any work within safe electrical limits of approach, as specified by applicable regulation and legislation, in conformance with **Article 6**, the Licensee must use the Owner or an Owner-approved contractor. The Owner shall consider contractors for Approval requested by the Licensee according to the Owner's approval process.
- 9.5 The Licensee covenants and agrees with the Owner to Affix and maintain its Attachments in a safe and serviceable manner satisfactory to the Owner, acting reasonably, and in accordance with the Standards and Good Utility Practice, and in such a way as not to
- interfere with the lines, works or equipment of the Owner; or
  - interfere with the electrical supply carried by the Owner's equipment; or
  - be damaging to existing plant or service of a third party.
- 9.6 Without limiting the generality of the foregoing, the Licensee is responsible for the installation of all guys, anchors and other equipment required for, or related to, the Affixing and maintaining of Attachments in accordance with the Standards.
- 9.7 The Owner and Licensee recognize that, from time to time, existing Standards may be amended or new standards may be enacted and that these amendments or enactments may affect both of the parties to this Agreement. The Owner specifically reserves the right to require the Licensee's compliance with the new standards or amended Standards. Any new standards or changes to the Standards shall be applied in a reasonable manner: - *e.g.*, safety related concerns may have to be resolved by changes to existing plant, whereas other changes may apply only to new installations. Where either party feels it has been substantially prejudiced by any such amendment or enactment, it will advise the other party. The parties agree to engage in discussions with a view to addressing the alleged prejudice and may engage the Dispute Resolution process where necessary. During these discussions or Dispute Resolution, the Agreement and/or Approved Permits will continue in full force and effect.
- 9.8 The Licensee agrees that, upon the Attachments being made in accordance with the provisions of this Agreement, it will not make any alterations to its Attachments, (Service Drops and Emergency Situations excluded), so as to effect technical considerations or safety, unless:
- such alteration is approved by the Owner using the same procedure as for a new Attachment, if required, as described in this Agreement; and

- such alteration is carried out in accordance with the Standards and in such a way as not to interfere with the lines, works or equipment of the Owner or of other permitted users of the pole.
- 9.9 If the Licensee applying for a Permit requires third party Make-ready Work or the use of a third party Support Strand or Attachment, the Licensee shall coordinate the aforementioned with the third party.
- 9.10 The Owner shall use its agreements with Support Strand owners whose Support Strands are attached to its poles to encourage and facilitate Re-arrangement or Over Lash arrangements between the Licensee and third parties for Communication Space management.
- 9.11 The Owner may, at its discretion, require that an employee of the Owner be present when the Licensee is Affixing, Rearranging, or removing its Attachments so as to ensure that the work is carried out in accordance with the terms of this Agreement. The Licensee agrees to provide two (2) working days notice prior to the start of any such work and agrees to pay to the Owner the costs of such employee that may be reasonably necessary for the carrying out of the provisions of this clause in accordance with **Article 13**.
- 9.12 The Licensee shall ensure that its installations are inspected and approved in accordance with any applicable regulation, including, but not limited to, the *Electricity Act 1998*, Regulation 22-04, Section 8, and the Distribution System Code-Appendix C.
- 9.13 The Licensee shall notify the Owner when the Affixing, Rearranging or removing of its Attachments to a pole of the Owner is complete so that the Owner may verify the accuracy and completion of the work, including applicable review under the Owner's Construction Verification Program.
- 9.14 In order to ensure the accuracy and completeness of existing Approved Permits, a field inspection shall be made jointly at intervals mutually agreed upon, but generally, once every five years. Any discrepancies between the field conditions found and the Approved Permits will be corrected and a new Permit to reflect the actual field conditions will be submitted by the Licensee for Approval in accordance with this Agreement. If the new Permit is not Approved, the Licensee will be notified in writing of the reason why Approval was denied and, within thirty (30) days, the Licensee must either remedy the deficiency and reapply for a new Permit or remove the Attachments, and the provisions of **Articles 11** through **13** shall apply. Every effort will be made to include all pole users in the field inspection. Participating parties will come to a negotiated agreement regarding the allocation of costs.
- 9.15 The Licensee agrees to place markers on its cables and Support Strands in a manner acceptable to the Owner to assist in field identification of ownership of Attachments made by various permitted users of the pole. As a minimum, these markers shall be placed at all Cable Risers/Dips and at every second pole, in a manner acceptable to the Owner. Within five (5) years of the Effective Date, the Licensee shall have placed identifying markers on all Affixed cables and Support Strands existing on the Effective Date.

- 9.16 Except where approved by the Owner, Joint Anchorage will not be permitted on all new or reconstructed pole lines. Each party shall be responsible to install and maintain its own separate anchoring system, as may be required.
- 9.17 On any existing pole line which has Joint Anchorage, each party will be responsible to satisfy themselves that the existing anchorage is adequate to sustain its plant.
- 9.18 At the end of each calendar year, the Licensee shall notify the Owner in writing of the Licensee's Attachments, excluding Service Drops that are no longer required for or are no longer being used to provide services, or are being reserved for future capacity. The parties, acting reasonably, shall determine the actions to be taken, which may require the Licensee to remove, reactivate or sell such Attachments. If so required, the Licensee shall remove, sell or reactivate such Attachments within one (1) year, or within such other time period as agreed to by the parties. The Licensee shall pay all associated costs with respect to such Attachments. The Owner reserves the right to carry out periodic audits of the Licensee's Attachments. In the event of false declaration or non-declaration, the Licensee shall pay the full cost of the audit and any associated damages. Any disputes arising from **Section 9.18** shall be addressed in accordance with the Dispute Resolution process set out in **Article 21**.
- 9.19 The Licensee shall, at all times and in accordance with the terms and conditions of this Agreement, maintain and operate its Attachments in a safe and serviceable condition, and replace Attachments as they deteriorate, become defective or unsafe. A public safety audit should be carried out at an interval mutually agreed upon by the Owner and Licensee.
- 9.20 The Licensee agrees that the Owner may change the nature or configuration of its equipment or change the characteristics, such as voltage, frequency or power levels of the electrical supply carried by its equipment at any time.
- 9.20 As stated in the Distribution System Code, issued by the OEB, only persons qualified under the Occupation of Health and Safety Act may be involved in inspection activities.
- 9.21 From time to time, the Owner or Licensee may have safety hazards and significant conditions with its plant, requiring prompt response. Each party will make best efforts to inform the other of safety hazards.
- 9.22 For all poles that have a Power Space, the Owner shall, wherever possible, use the highest position within the Communication Space for the Owner to place the Owner's telecommunications attachments. At the sole discretion of the Owner, the Licensee may use this location to place the Licensee's Strand if insufficient space capacity is available in the other two parallel strand locations. If the Licensee uses this location, the Licensee shall ensure that there is sufficient spare capacity for the Owner to Over Lash to the Licensee's Strand. Nothing in this agreement shall restrict the ability of the Licensee to reasonably charge the Owner to Over Lash Attachments to the Licensee's strand. The Owner shall provide thirty (30) days' prior written notice to the Licensee where the Owner plans to Over Lash to the Licensee's Strand.
- 9.23 Subject to **Article 14**, the Licensee agrees that the Owner is not responsible for any damage, harm or problems of any kind caused to the Attachments or the signals or supply carried by



the Attachments which may arise from the Owner's equipment or the electrical supply carried by its equipment, except for such damages, harm or losses caused by gross negligence or wilful misconduct of the Owner.

## ARTICLE 10 – LINE CLEARING

- 10.1 The Owner and the Licensee agree that vegetation management is required for the ongoing reliable provision of electricity and telecommunication services. The trimming or removing of trees, underbrush or any other items required to establish clearance for the Licensee's Attachments shall be the sole responsibility of the Licensee. The Licensee, or its contractor as approved by the Owner, shall undertake the trimming or removing of trees, underbrush or any other items as required by the Licensee for the Licensee's purposes in the Communications Space, having regard for all safety, technical and engineering concerns of the Owner. If in the sole but reasonable discretion of the Owner, the vegetation on or around the Licensee's plant is or may be damaging to the Owner's existing plant or electrical distribution system or aesthetics, the Licensee shall correct the situation to the satisfaction of the Owner upon notification by the Owner. Nothing in this clause excuses the Licensee of liability in the event of damage to the Owner's plant because of such vegetation. If the Licensee fails to engage in the requisite trimming or removal within seven (7) days of notification from the Owner, the Owner may undertake such work or arrange for it to be completed, all at the risk and expense of the Licensee, and the Owner shall submit an invoice to the Licensee for the reasonable cost of such work, which invoice shall be paid by the Licensee in accordance with **Article 13**.
- 10.2 The Licensee and Owner may, by mutual agreement, make arrangements regarding provision of tree trimming or line clearing services. If such arrangements are made between the Licensee and Owner, the Owner shall inform the Licensee of the timing, location, cost, and extent of the tree trimming or line clearing services to be undertaken on their behalf in advance of the commencement of the tree trimming or line clearing services.
- 10.3 Should any extraordinary services, such as but not limited to tree trimming or line clearing services after storms, be required in order to establish clearances for the Licensee's Attachments for operations, maintenance and safety, the cost of such services shall be the sole responsibility of the Licensee. In the event that such extraordinary services are required, in the sole but reasonable discretion of the Owner, the cost of such extraordinary services undertaken by the Owner shall be charged to the Licensee in accordance with the provisions of **Article 13**.

## ARTICLE 11 – FEES

- 11.1 The Licensee shall pay to the Owner for 2005, and in advance, for each year hereafter, commencing on March 7, 2005, an Annual Licence Fee determined by multiplying the number of poles of the Owner to which the Licensee had Attachments on December 31 in the year prior times the Attachment License Fee as determined in accordance with **Section 11.2**.

- 11.2 The Attachment License Fee for each year during the term of this Agreement shall be \$22.35, or as otherwise amended by the Ontario Energy Board from time to time.
- 11.3 If the Licensee has an Approved Permit for a pole and is thus paying an Attachment License Fee, there is no charge for additional attachments made in the Communications Space, or in-span, if such attachments are approved by the Owner. See also **Schedule B, Interpretive Sketches**.
- 11.4 The Licensee shall pay 50% of the full Attachment License Fee to the Owner in respect of each Clearance Pole of the Owner directly supporting one or more Service Drops of the Licensee, which Attachment License Fee shall be effective from March 7, 2005.
- 11.5 The Licensee shall pay the full Attachment License Fee to the Owner in respect of each Guy Pole of the Owner directly supporting one or more Attachments of the Licensee, which Attachment License Fee shall be effective from March 7, 2005.
- 11.6 If the Licensee has an Approved Permit for a pole and is thus paying an Attachment License Fee, the Licensee shall pay the Total Direct Cost of \$1.92, or as otherwise amended by the Ontario Energy Board, from time to time, for Attachments outside the Communications Space, such as amplifiers, or power supplies. If the Licensee is not paying an Attachment License Fee for said pole, the full Attachment License Fee shall apply to such Attachments outside the Communications Space.
- 11.7 Licensee-owned cables not directly Attached to the Owner's pole but Over Lashed to a cable or Support Strand not owned by the Licensee shall be charged 25% of the full Attachment License Fee, provided said cables were Approved by the Owner and were Over Lashed prior to March 7, 2005. Licensee-owned cables not directly Attached to the Owner's pole but Over Lashed to a cable or Support Strand not owned by the Licensee on or after March 7, 2005 shall be charged the full Attachment License Fee, for which the Licensee shall require an Approved Permit from the Owner pursuant to the terms of this agreement. The Licensee shall inform the Owner of details, including quantity, location, and characteristics of existing, prior to March 7, 2005, Over Lashes within two (2) months of the Effective Date of this Agreement, or as otherwise agreed by the parties.
- 11.8 In addition to the fees payable pursuant to **Section 11.1**, in each year the Licensee shall pay to the Owner, fees for the year, for poles to which Attachments have been made during the year. Any Attachments which are Affixed during the year shall be charged the Attachment License Fee for the full year.
- 11.9 There will only be one Attachment License Fee referable to the Communications Space of any pole regardless of the number of Attachments made by the Licensee thereto or in-span. In assessing the Attachment License Fee to be applied to a pole supporting multiple Attachments, which may have different fees, the highest fee shall apply.
- 11.10 The Attachment License Fee determined in accordance with **Article 11** shall be invoiced by the Owner to the Licensee in one instalment to be paid on or before the first day of January in each year of this Agreement or any renewal hereof.



- 11.11 If at anytime during the term of this Agreement or of any renewals thereof an Attachment is Affixed to a pole of the Owner without a Permit being Approved by the Owner for such Attachment, then the Licensee shall pay to the Owner the Attachment License Fee for each year that the Attachment existed without a Permit, plus a penalty of five (5) times the Attachment License Fee, or as otherwise agreed by the Parties.
- 11.12 In addition to the Annual License Fee and any other payments required under this Agreement, the Licensee is solely responsible for all of the costs associated with Affixing and maintaining the Attachments to the poles of the Owner or In-span. The Owner's cost during regular workday business hours of correspondence, site meetings, preparing cost estimates, joint field visits, reviewing and Approving the Permit, and verifying completed work will be the responsibility of the Licensee. Without limiting the generality of the foregoing, the Licensee shall be responsible for the cost of:
- effecting changes, alterations or rearrangements, other than Minor Relocations, to the Owner's poles;
  - Affixing the Attachments;
  - cleaning up the site around each pole where the Licensee has Affixed Attachments and thereafter ensuring safe disposition of all materials;
  - conducting a field inventory or audit program in accordance with the cost sharing arrangements as mutually agreed between the parties;
  - any other reasonable expenses associated with the Licensee's obligations under this Agreement.
- 11.13 As of December 31st of each year for which the Owner has the Licensee's Attachments Affixed to its poles, the Owner will provide to the Licensee an "Annual Statement of Fees" which will itemize the number of Attachments involved and a breakdown of the calculation of the Annual License Fee. Every effort shall be made by the Owner to ensure that the content of the Annual Statement of Fees is accurate. The Licensee shall remit forthwith to the Owner the difference between the Annual License Fee as set out in the Annual Statement of Fees and the amount remitted to the Owner at the beginning of the year in advance. Any overpayment shall be remitted forthwith by the Owner to the Licensee. The Licensee is obligated to track any requested Attachment changes by Permits during a given year to confirm the Owner's annual Attachment count contained in the Annual Statement of Fees. Any dispute on the numbers shall be settled between the engineering staff of the Licensee and the Owner, and failing resolution, Dispute Resolution shall be applied, with all adjustments (if any) reflected on the following year's Annual Statement of Fees.
- 11.14 All invoices rendered by the Owner pursuant to this Article that are outstanding for longer than forty five (45) days will be subject to interest charged at a rate of one and one-quarter percent (1.25%) per month. The interest shall run from the due date of payment of the invoice until the date the payment should be received by the Owner in the ordinary course of post, following mailing of the payment. If the Licensee fails to pay any invoice within forty five (45) days, the provisions of **Article 13** apply and the Owner may invoke any or all of the measures detailed in **Article 13**.

## **ARTICLE 12 – REMOVAL, REPLACEMENT OR RELOCATION OF POLES OR ATTACHMENTS**

- 12.1 The Licensee agrees that, if at any time the Owner deems it necessary or is required to remove, replace or change the location of any pole designated by a Permit to which Attachments are Affixed, whether the change or removal be on a temporary or permanent basis, the Owner shall notify the Licensee of the requirement to remove or relocate its Attachments, whereupon the Licensee, at the time specified in the notice shall, at the cost and expense of the Licensee, remove its Attachments from that pole and, except when the notice specifies to the contrary, the Licensee may transfer the Attachments to the pole in the new location or to the new pole, as the case may be, and in either case this Agreement and the associated Permits shall continue to apply to the Attachments so transferred. The Licensee acknowledges that in certain situations the Owner may remove a pole and not replace it, so that there would no longer be a pole upon which to Affix the Attachments. In such a situation, the Approval associated with the applicable Permit would cease. The Owner will endeavour to give the Licensee at least sixty (60) days prior written notice of any such removal, replacement or change in location of a pole, but in case of emergency, as reasonably defined by the Owner, the Owner may give no notice or such shorter notice as the Owner deems expedient or the notice may be given verbally. In Emergency Situations, where no notice is given by the Owner or where the Licensee fails to remove or relocate its Attachment after being notified by the Owner, the Owner, or its designate, may remove or relocate the Attachments and the Licensee is responsible for the reasonable costs of the Owner in so removing or relocating the Attachments.
- 12.2 To expedite its own work, the Owner may carry out a Minor Relocation, at no cost to the Licensee, of the Licensee's Support Strand provided that:
- it does not interfere with other Attachments;
  - it does not affect a Cable Riser/Dip pole for the Licensee;
  - Standards and safety are maintained;
  - the Licensee does not require an easement or third party permission; and
  - the Support Strand is attached to the pole in a manner equivalent, in the Owner's view, to that formerly used by the Licensee.

If the Owner relocates the Licensee's Support Strand, the Owner will provide written notification to the Licensee of the Minor Relocation.

- 12.3 If the Licensee fails to comply with a notice given pursuant to this Article, then the Owner, unless notified by the Licensee with regard to an alternative method of compliance acceptable to the Owner, shall be entitled to a delayed removal charge of \$100.00 per pole, or as otherwise determined by the Parties. Alternatively, the Owner may remove or relocate the Attachments, at the Licensee's cost, and if unpaid by the Licensee, the Owner has the right to recover its costs from the Licensee's security deposit established in **Article 5**, until such time as the Licensee has fully complied with the Owner's notice. In addition, the Owner may carry out the work with respect to the Attachments, as specified in the notice, at the risk of damage to the Licensee's plant and at the expense of the Licensee.

- 12.4 Where, at the time an Approval is granted, the presence of the existing Attachments causes the Owner to perform Make-ready Work to accommodate the new Attachment, the Licensee shall pay to the Owner the cost of such relocation or modification.
- 12.5 In instances where plant adjustments are initiated as a result of work being done by a municipality or a federal, provincial or municipal governing body or authority in Ontario, all conditions of notification and scheduling of work indicated may be null and void. These arrangements may be dictated by the requirements of the Municipality or said governing authority in Ontario.
- 12.6 Subject to **Section 12.5**, in the event that the Owner is subject to any penalty by the Municipality or said governing authority in Ontario, due to the late removal by the Licensee of its Attachments, then in addition to the delayed removal charges as stipulated in this Article, the Licensee shall pay to the Owner, a sum equal to any penalty incurred by the Owner, and any costs related to the payment of the penalty.
- 12.7 All charges to the Licensee for carrying out work referenced in this Article shall be reasonably determined by the Owner and payable by the Licensee in accordance with **Article 13**.

### **ARTICLE 13 – PAYMENT FOR WORK**

- 13.1 The Licensee shall issue a purchase order to the Owner for each project such as Make-ready Work required to meet the terms and conditions of this Agreement, and which is not covered by the Annual License Fee. The Owner will invoice against the applicable purchase order, as work by the Owner for the Licensee is performed.
- 13.2 Upon completion of any work performed by the Owner on the Licensee's behalf as contemplated by this Agreement, the Owner will render an invoice or invoices to the Licensee for the actual cost (including financial overheads) of performing such work and the Licensee shall pay the amount of the invoice within forty-five (45) days of the date of the invoice.
- 13.3 All invoices that are outstanding for longer than forty-five (45) days will be subject to interest at the rate of one and one-quarter percent (1.25 %) per month. The interest shall run from the due date for payment of the invoice until the date payment is received by the Owner.
- 13.4 If an invoice is outstanding for more than sixty (60) days, the Licensee shall forthwith, upon receipt of written notice from the Owner, but at the expense of the Licensee, remove from the poles of the Owner its Attachments covered by the invoice.

If the Licensee fails to remove the subject Attachments within thirty (30) days of receipt of the notice and the invoice is still unpaid, the Owner may remove such Attachments, at the risk and expense of the Licensee. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal. If the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days of receipt of the invoice for same, the Owner shall have the further right to sell the Attachments so removed and apply the proceeds against the cost of

removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the exercise of any security posted by the Licensee with the Owner, to recover the outstanding amounts owed to it by the Licensee.

- 13.5 The Licensee shall notify the Owner in writing of any dispute with respect to an invoice. If the dispute cannot be resolved within thirty days through normal business operations, the Dispute Resolution process, as described in **Article 21** will be initiated. **Section 13.4** will not take effect during the Dispute Resolution process.

## **ARTICLE 14 – LIABILITY, INDEMNITY AND INSURANCE**

- 14.1 The Licensee agrees that the Owner is not responsible for any damage, harm or problems of any kind caused to the Attachments or the signals or supply carried by the Attachments which may arise from the Owner's equipment or the supply carried by its equipment, except for such damages, harm or losses caused by gross negligence or wilful misconduct of the Owner.
- 14.2 The Licensee assumes all risk of loss or damage, including damage to or loss of its Attachments or of its service or its equipment, or to the plant or service of the Owner arising from any act or omission of the Licensee or its agents and contractors under this Agreement, save and except for such portion of losses or damages caused by the gross negligence or wilful misconduct of the Owner, and does hereby release the Owner from all claims and demands with respect thereto.
- 14.3 The Licensee does hereby indemnify and save harmless the Owner from all claims and demands for or in respect to any loss, damage or injury to property or persons (including loss of life), including those of third parties, arising out of, or attributable to, the exercise by the Licensee or its agents or contractors of the Approvals herein granted, save and except for such portion of loss or damage caused by the gross negligence or wilful misconduct of the Owner. Such indemnification shall include, but not be limited to, compensation to the Owner for time required to prepare for and attend hearings, for all reasonable legal fees and costs, for fees and costs of expert witnesses reasonably incurred and for the payment of any judgment, including costs, made by a Court, tribunal or decision maker and any and all appeals with respect thereto.
- 14.4 The Licensee shall, during the term of this Agreement and any renewals thereof, maintain a policy or policies of insurance in which the Owner is named as additional insured in the amount of \$5,000,000 per occurrence and the policy or policies shall contain a cross liability clause, or as otherwise may be agreed between the Licensee and the Owner, against liability due to damage to the property of the Owner or any other person or persons including third parties, and against liability due to injury to, or death of, any person or persons, including third parties, in any one instance. The Owner shall not be responsible for the payment of any premium with respect to any such insurance, which is the sole responsibility of the Licensee.
- 14.5 Prior to the Approval of any Permit and as a condition of any Permit Approval or renewal, the Licensee shall furnish to the Owner annually a certificate of such insurance and for the renewal thereof, so long as this Agreement remains in force.

- 14.6 The Licensee agrees that the insurance described herein does in no way limit the Licensee's liability pursuant to the indemnity provisions of this Agreement.
- 14.7 During the term of the Agreement, the Licensee will immediately notify the Owner of any damage whatsoever to the equipment of the Owner or a third party or to persons arising as a result of the Licensee Affixing, inspecting, maintaining, changing, repairing or removing any of its Attachments to the Owner's poles. The Licensee will also immediately notify the Owner of any claims or notices of claims received by the Licensee related in any way to its Attachments.
- 14.8 During the term of the Agreement, the Owner will immediately notify the Licensee, but not any third party having rights to the Licensee's equipment (whether by Irrevocable Right of Use, sublicense or otherwise) of any damage whatsoever to the Licensee's equipment arising as a result of the Owner Affixing any Attachments to the Owner's poles. The Owner will also immediately notify the Licensee of any claims or notices of claim received by the Owner related in any way to the Licensee's Attachments, or to any claims or notices of claim received by the Owner related in any way to any act or omission of the Licensee pursuant to this Agreement.
- 14.9 The Owner will provide to the Licensee reasonable written notice of its intention to significantly change the nature or configuration of its equipment or change the characteristics, such as voltage, frequency or power levels of the electrical supply carried by its equipment when the Owner has reason to believe that such change might have adverse effects on the Attachments, or the product carried by such Attachments, or place the Licensee in non-compliance with any of the provisions of this Agreement. The Owner is not responsible for any adverse effects on the Attachments, or the product carried by such Attachments, as a result of any changes made by the Owner.
- 14.10 Notwithstanding anything to the contrary in this Agreement, neither the Owner nor the Licensee shall be liable to the other for, and the indemnities set out herein shall be deemed not to include, indirect or consequential damages or damages for economic loss however caused, arising out of this Agreement.

## **ARTICLE 15 – TERM AND TERMINATION OF AGREEMENT**

- 15.1 The Term of this Agreement is five (5) years.
- 15.2 Prior to six (6) months before the End of Term Date, either party may request the other to extend the Term of the Agreement for a further term of five years on the same or amended terms and conditions, as the parties may agree and in such case the Agreement, as amended, shall continue until the new End of Term Date.
- 15.3 If, within 12 months after any End of Term Date, the parties have not agreed on terms and conditions for a renewed Agreement, either party may invoke the Dispute Resolution process as per **Article 21**.

- 15.4 Subject to **Sections 15.3** and **15.6**, the Licensee shall, upon the termination of this Agreement, as mutually agreed upon by the parties, remove from the poles of the Owner its Attachments covered by this Agreement or the terminated Permit and ensure that the site where the removal occurred is left in a safe and equal or better condition than prior to the removal, at the expense of the Licensee.
- 15.5 In accordance with **Sections 15.4** and **15.6**, if the Licensee fails to remove the subject Attachments, within one hundred and eighty (180) days of receipt of notice, or otherwise mutually agreed upon, the Owner may, at the Licensee's sole risk and expense, remove such Attachments. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal, and if the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days, then the Owner will have the further right to sell the Attachments so removed and apply the proceeds against the costs of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the execution of any security posted with it, to recover the outstanding amounts owed to it by the Licensee.
- 15.6 The Agreement shall be deemed to remain in effect during the Dispute Resolution process under **Article 21**. All of the Owner's and Licensee's remedies to enforce outstanding obligations under this Agreement and **Section 15.3** and **Article 21** shall survive termination of this Agreement.

## **ARTICLE 16 – TERMINATION OF APPROVAL**

- 16.1 The Approval granted by each Permit Approved by the Owner pursuant to the provisions of this Agreement shall remain in full force from the date of the Approval until the earliest of:
- the End of Term Date; or
  - the date upon which the Attachment associated with the Approved Permit is removed by the Licensee or the Owner; or
  - subject to **Section 16.5**, the date upon which the Licensee defaults on any of its obligations under this Agreement; or
  - the pole designated by such Permit is abandoned by the Owner.
- 16.2 If the Owner intends to sell a pole designated by an Approved Permit to a third party, the Owner will attempt, on a best efforts basis, to secure the agreement of the purchaser that the Attachments be allowed to continue to be Affixed to the pole and the purchaser be bound to assume all of the Owner's obligations hereunder.
- 16.3 The Owner and Licensee may negotiate terms of sale, from the Owner to the Licensee, of a pole vacated by the Owner and located on public and/or private property. Such sale will be subject to any existing obligations of the Owner to third parties, and subject to the consent of the property owner or any municipal, regional, provincial or federal government or agency having jurisdiction over said lands.
- 16.4 If the condition of sale of any pole pursuant to **Section 16.2** or **16.3** cannot be satisfactorily arranged, the Owner may, by notice in writing at any time, require the Licensee to remove its



Attachments from the poles involved, and the Licensee shall, within one hundred and eighty (180) days after receipt of said notice, remove its Attachments from such poles.

- 16.5 If the Licensee fails or neglects at any time to fully perform and observe all the covenants, terms and conditions herein contained, including a default at any time in the payment of fees or removal of Attachments, the Owner will notify the Licensee in writing of such default and the Licensee shall correct such default within thirty (30) days or such longer period as agreed to by the Owner. If the Licensee fails to cure such default within thirty (30) days of notice by the Owner or such longer period as agreed to by the Owner, the Owner may forthwith terminate the Approvals accompanying each Approved Permit.
- 16.6 The termination of an Approval pursuant to this Agreement shall not be deemed a termination of this Agreement unless the Permit containing such Approval is the last remaining or only Permit Approved pursuant to this Agreement, in which case the termination of such Permit will be deemed to be a termination of this Agreement, subject to the Licensee fulfilling all of its outstanding obligations and the right of the Owner to enforce any such outstanding obligations.
- 16.7 The Parties agree that obligations flowing from this Agreement, or a Permit Approved pursuant to this Agreement, will continue beyond the date of termination of the Agreement or Approved Permit, until the obligations are satisfied in full. All of the remedies to enforce outstanding obligations under this Agreement, including **Article 21** regarding Dispute Resolution, shall survive termination of this Agreement or an Approved Permit.
- 16.8 The Licensee shall, upon the termination of a Permit Approved pursuant to this Agreement, forthwith at the request of the Owner, but at the expense of the Licensee, remove from the poles of the Owner its Attachments covered by this Agreement or the terminated Permit and ensure that the site where the removal occurred is left in a safe and equal or better condition than prior to the removal.
- 16.9 If the Licensee fails to remove the subject Attachments, as per **Sections 16.8**, within thirty (30) days of receipt of notice, or such longer period as agreed to by the Owner, the Owner may, at the Licensee's sole risk and expense, remove such Attachments. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal, and if the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days, then the Owner will have the further right to sell the Attachments so removed and apply the proceeds against the costs of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the execution of any security posted with it, to recover the outstanding amounts owed to it by the Licensee.
- 16.10 When an Attachment on a pole subject to Joint Use is discontinued, the Licensee shall return its copy of the related Permit to the Owner and the Owner shall mark the Permit "cancelled".

## ARTICLE 17 – EXISTING RIGHTS OF OTHER PARTIES

- 17.1 Nothing herein contained shall prevent or limit the right of the Owner from granting to others, not party to this Agreement, the right to occupy its poles.
- 17.2 If the Owner has granted permission to others, not parties to this Agreement, to use any poles owned by the Owner, whether said poles are covered by this Agreement or not, then nothing herein contained shall be construed as affecting such permission. The Owner shall have the right to continue and extend such existing permission. The Licensee agrees that existing rights of third parties are in no way diminished by this Agreement. The Licensee shall treat third party Attachments to the pole with the same duty of care as is required by the Agreement between the Licensee and Owner, and will respect the rights and privileges of third parties.
- 17.3 The Owner shall not grant to any third party which includes, but is not limited to, any Affiliate or any other entity related to it, by contract or otherwise, rights or privileges to use any Joint Use Poles used by the Licensee or any poles for which it has given permission for such Joint Use by the Licensee, unless the Owner includes a requirement substantially the same as **Section 17.2** above in Owners' agreement with the third party.

## ARTICLE 18 – VESTED RIGHTS

- 18.1 It is understood and agreed that neither this Agreement, nor any Approval granted by the Owner, shall confer upon the Licensee any vested right or franchise, by implication or otherwise. Any rights or privileges that are expressly provided for in this Agreement shall come to an end if and when the Agreement has been terminated in accordance with its terms. However, any outstanding obligations of the Parties existing upon termination will survive termination.
- 18.2 It is further understood and agreed that this Agreement shall not confer upon the Owner any vested rights, or franchises, by implication or otherwise, to the Attachments, other than as provided for in this Agreement.

## ARTICLE 19 – NOTICES

- 19.1 Unless otherwise provided herein, any notice or other communication to a party under this Agreement shall be given or served by hand, by registered mail, postage prepaid, email, by same day or overnight courier, or by facsimile transmission (fax) addressed as follows:

TO:  
Attn:  
Address:

Tel. No:  
Fax No:



TO:  
Attn:  
Address:  
Tel. no.  
Fax no.

With a Copy to:

TO:  
Attn:  
Address:  
Tel. no.  
Fax no.

- 19.2 Any notice sent by ordinary mail shall be deemed to have been given or served on the fifth day after it is deposited in any post office in Canada. In the event that mail delivery is impeded for any reason, notice shall be given by email or by fax, and any notice so given shall be deemed to have been given on the day following the day it is sent. Any notice or other communication to a party may also be served in person by delivering same to a responsible person in the offices of the party at the above address. Either party may change its address for service at any time by notice in writing to the other.

## **ARTICLE 20 – ASSIGNMENT**

- 20.1 The Licensee agrees that it will not assign its interest, in whole or in part, in this Agreement, the privileges herein granted or any Approved Permit, without the prior written consent of the Owner, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall extend to, be binding upon, and enure to the benefit of the Owner, its successors and assigns, and the Licensee, its successors or permitted assigns. The Licensee shall have the right to assign its interest in this Agreement in its entirety to one of its affiliates with prior written consent of the Owner which consent shall not be unreasonably withheld, provided that the Licensee shall remain liable for the fulfilment of all of the Licensee's obligations hereunder. Such consent may be requested more than once.
- 20.2 The Licensee may provide to a third party an irrevocable right of use (IRU) to any part of the Licensee's equipment that is Affixed to the Owner's equipment. All work shall be done solely by the Licensee or its contractors and the IRU third party shall not have direct access to the Owner's poles or work within close proximity to energized electrical equipment, unless the Licensee has obtained the prior written consent of the Owner and the IRU third party enters into a separate Licensed Attachment Agreement with the Owner. The Licensee shall not confer any vested right, or franchise, by implication or otherwise, to use the Owner's poles or equipment or any privileges under this Agreement to an IRU third party.
- 20.3 The Owner agrees that it will notify the Licensee of assignment of any of the Owner's interest in this Agreement.

## ARTICLE 21 – DISPUTE RESOLUTION

- 21.1 If any Approval is refused or terminations invoked, the Licensee may appeal that decision to the Owner’s Chief Executive Officer. The Owner has the mutual right to bring a complaint to the attention of the Licensee’s Chief Executive Officer. The appeal or complaint shall be heard and decided within thirty (30) days of receiving written notice of the appeal or complaint.
- 21.2 The Owner and the Licensee agree to attempt to resolve any disputes arising under this Agreement in an expedient manner. Where possible, the Owner and the Licensee shall endeavour to resolve any disputes between themselves, at the level at which the dispute arose. If the dispute cannot be so resolved, the Owner and the Licensee agree that either party may refer the matter to higher management (“**Dispute Resolution**”). For both parties, this shall be the Vice President level or designate.
- 21.3 Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its negotiation, existence, validity, breach or termination, or the negotiation of a new Agreement may be referred to the Ontario Energy Board for decision.
- 21.4 Alternatively, disputes arising under this Agreement may be resolved by a mutually agreed upon body of competent jurisdiction or arbitration in accordance with the *Arbitration Act* (Ontario), 1991, S.O. 1991, Chapter 17 (the “**Act**”), as amended from time to time. Arbitration may be initiated by either party by notice in writing. Within twenty (20) days after the written request of either of the parties hereto for arbitration, the parties shall agree upon a single arbitrator, failing which, each of them shall appoint one arbitrator, and the two so appointed shall, within twenty (20) days after the initial twenty (20) day period, jointly select a third, who shall act as the Chair of the tribunal. In case either of the parties hereto fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators appointed are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty (20) day period, application shall be made as soon as reasonably possible to any Judge of the Ontario Superior Court of Justice for the appointment of a third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the *Arbitration Act*, as from time to time amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.

## ARTICLE 22 – SCHEDULES

- 22.1 The following schedules are hereby incorporated into and constitute part of this Agreement:
- **Schedule A - Permit Form**
  - **Schedule B - Interpretive Sketches**
  - **Schedule C - Minimum Permit Drawing Requirements**

## **ARTICLE 23 – INTERPRETATION**

- 23.1 The terms of this Agreement shall be governed by the laws of the Province of Ontario and Canada, as applicable. In the event that any court or arbitration tribunal declares any portion of this Agreement invalid, the remainder of this Agreement shall remain in full force and effect.
- 23.2 Nothing in this Agreement or its performance shall create a partnership, tenancy or agency relationship between the parties, each of which is the independent operator of its facilities.

## **ARTICLE 24 – ENTIRE AGREEMENT**

- 24.1 This Agreement, as of its Effective Date, is the entire Agreement between the parties and supersedes and replaces any prior verbal or written agreement between the Owner and Licensee relating to the Attachments on the Owner’s poles or In-span, but any Permit granted Approval and outstanding under any prior agreement shall, notwithstanding anything contained in such prior agreement, remain in force and effect as if such Permit had been Approved pursuant to this Agreement, in accordance with **Section 7.8** on the express condition that the Licensee satisfies all of the terms of this Agreement.

## **ARTICLE 25 – HEADINGS**

- 25.1 The division of this Agreement into Articles and Sections, and the headings of those Articles, are for convenience of reference only and shall not affect the interpretation of this Agreement.

## **ARTICLE 26 – LEGISLATIVE REFERENCES**

- 26.1 Any references in this Agreement to any statute, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

## **ARTICLE 27 – WAIVER**

- 26.1 The failure of any party to this Agreement to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any rights under this Agreement, and the party shall be at liberty to enforce such terms and conditions at any time thereafter.

## **ARTICLE 28 – ENVIRONMENTAL OBLIGATIONS**

- 28.1 The Owner makes no representation or warranty with respect to condition, defects, nature, composition, use (past, present or future) of land or plant. The Licensee hereby accepts land and plant of the Owner on an “as is” basis.
- 28.2 The Licensee shall comply with the provisions of any federal, provincial or municipal environmental laws which, during the continuance of this Agreement shall become applicable

to the land, plant or Attachments pertaining to Approved Permits. If any governmental authority exercising jurisdiction with respect to environmental protection requires, in respect of any Attachments, the installation of equipment or apparatus, or requires that any other action be taken, then the Licensee shall promptly notify the Owner and install such equipment or apparatus or take such measures as may be required by such governmental authority. The Licensee shall be solely responsible for the cost of all work carried out to comply therewith.

- 28.3 Upon the termination of this Agreement, the Licensee shall leave the pole, plant and land upon which the pole is situated free of any environmental contamination resulting from the Licensee's Attachments. If and when challenged in the future, the Licensee shall have the burden of proving that any environmental contamination has not resulted from its Attachments.
- 28.4 In the event the Licensee fails to comply with its obligations in this Article to the satisfaction of the Owner, the Owner may undertake any such work that it considers necessary to correct any environmental contamination which may have resulted from the Attachment or conduct of the Licensee, and all expenses incurred by the Owner, either directly or indirectly, shall be payable by the Licensee upon receipt of the Owner's invoice.
- 28.5 The responsibility of the Licensee to the Owner with respect to the environmental obligations contained herein shall continue to be enforceable by the Owner notwithstanding termination of this Agreement.

### **ARTICLE 29 – FORCE MAJEURE**

- 29.1 If as a result of force majeure a party is delayed in or prevented from performing or observing any of its obligations (except any obligation to pay a sum of money) under this Agreement: (i) the said party shall, for a period of time equal to the duration of the force majeure, be relieved from the performance of the said obligation and shall not be deemed to be in default hereunder during such period, and (ii) the other party shall not be entitled to any compensation for losses, damages, costs or expenses caused by such non-performance or delay.

### **ARTICLE 30 – REASONABLENESS**

- 30.1 Each party agrees that it shall at all times act reasonably in the performance of its obligations and the exercise of its rights under this License.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the day and year first above written.

For Owner (signature and seal):  
I have the authority to bind the corporation

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

For Licensee:  
We have the authority to bind the corporation

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

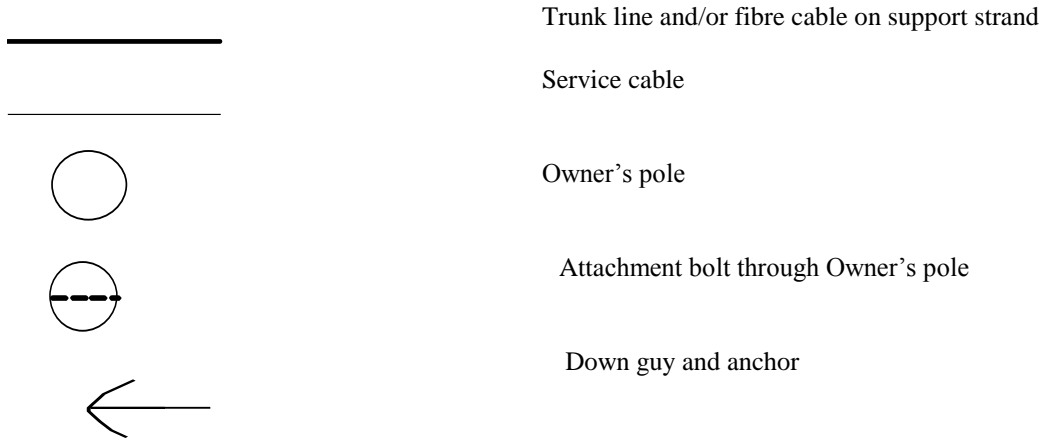
\_\_\_\_\_  
Date

**SCHEDULE 'A' - PERMIT - CABLE/TELECOM CO./OWNER**

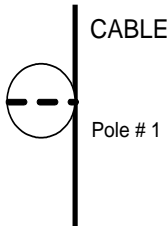
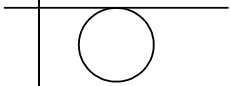
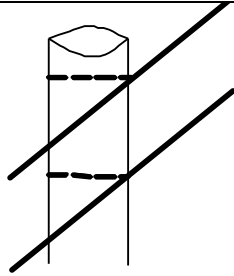
TO:		PERMIT NUMBER:
PERMISSION IS REQUESTED BY:		NUMBER OF POLES:
LOCATION:		
		SUPERSEDES/CANCELS PERMIT No.
APPLICANT'S REFERENCE:	POLE OWNER'S REFERENCE:	
APPLICANT'S FILE	POLE OWNER'S FILE	
APPLICANT	APPROVED	
_____	_____	
SIGNATURE AND TITLE	- SIGNATURE AND TITLE	
DATE:	DATE:	

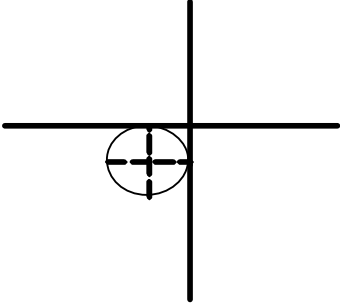
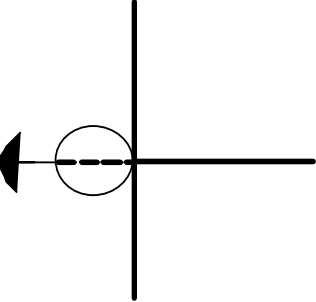
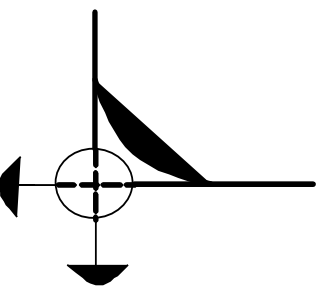
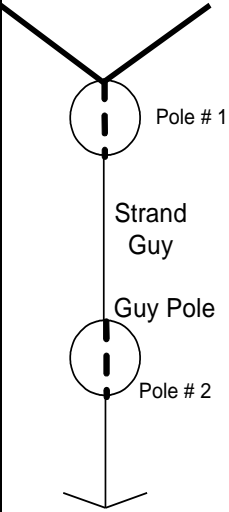
## SCHEDULE 'B' INTERPRETIVE SKETCHES

### LEGEND

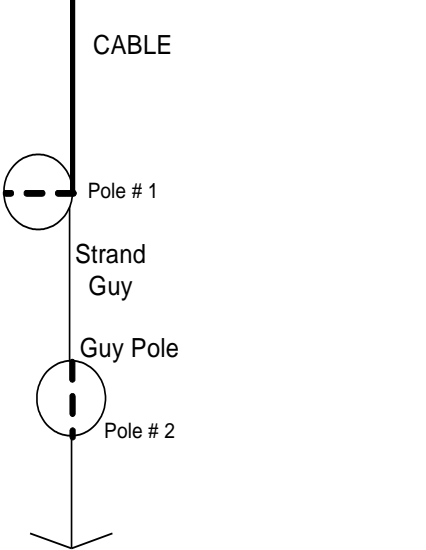
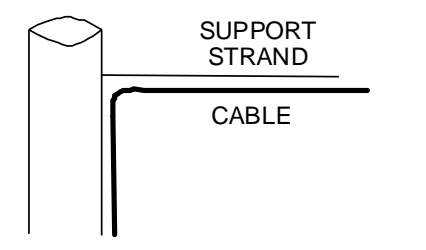
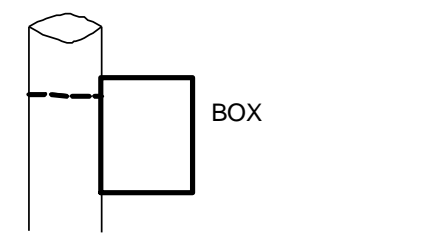
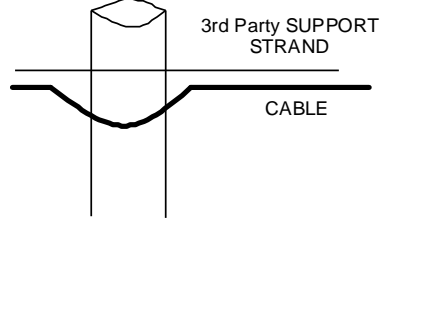
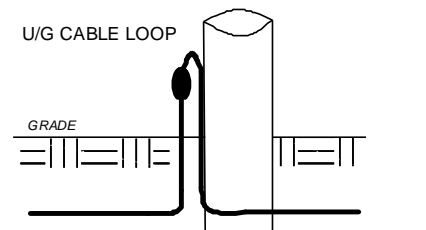


Note: All sketches include any overhead or underground services, and service clearance attached to the pole.

ITEM	SKETCH	DESCRIPTION	ATTACHMENT \$
# 1		Attachment at Pole	One FULL
#2		Service Drop on Clearance Pole	50% of One FULL
# 3		Two separate support strands	One FULL(subject to consolidation requirements)

# 4		Two intersecting support strands	One FULL
# 5		"T" tap support strands	One FULL
# 6		Dead end & change direction	One FULL
# 7		<p>Angle pole attachment At Pole # 1</p> <p>Guy Pole to support Pole #1</p>	<p>One FULL</p> <p>One FULL</p>



<p># 8</p>		<p>Cable on support strand at Pole # 1</p> <p>Guy Pole- Dead end support strand at Pole # 2</p>	<p>One FULL</p> <p>One FULL</p>
<p># 9</p>		<p>Cable dip/riser</p>	<p>One FULL</p>
<p># 10</p>		<p>Amplifier or power supply</p>	<p>Total Direct Cost, if existing permit or One FULL, if no existing permit</p>
<p># 11</p>		<p>Over Lashed to a 3<sup>rd</sup> Party support strand</p>	<p>No Charge if Licensee is paying for an Attachment; Otherwise One FULL (after March 7, 2005) or 25% (prior to March 7, 2005)</p>
<p># 12</p>		<p>Underground cable loop pole</p>	<p>Total Direct Cost, if existing permit or One FULL, if no existing permit</p>

**SCHEDULE 'C' - MINIMUM PERMIT DRAWING REQUIREMENTS  
(AS PER OWNER'S SPECIFICATIONS)**

**1. Basic Drawing Requirements (applies to all drawings)**

- a. Title block (name & address of Licensee, date, north point, drawing/project number, location of project)
- b. Name & phone number of the Project Manager for the specific application
- c. Language: English/French as appropriate
- d. Scale & Dimensions: Metric
- e. Scale Size: Larger than or equal to 1:1000 (e.g. 1:1000, 1: 500, 1: 250)
- f. Legend of symbols
- g. Key Map
- h. Street names: clearly indicated

**2. Project Specific Drawing Requirements**

- a. Sidewalks, driveways, trees, buildings, bridges, rivers, railroads, other utilities if they add clarity to specific issues
- b. Clearly indicated poles and their ownership
- c. Proposed cable and Support Strands clearly indicated with heavier line style
- d. Proposed cable to be Over-lashed to existing Support Strand and indicate owner of that Support Strand
- e. Which side of the pole to be contacted
- f. Slack storage & splice can locations
- g. Electrical bonding locations
- h. Proposed ground rods
- i. Dips and/or risers
- j. Ducts, guards, and/or concrete work on poles for dips and/or risers
- k. Cable dip/riser details
- l. Proposed and existing Licensee anchoring
- m. Make ready work anticipated by the Licensee with the Owner's poles or third party Attachments
- n. Existing & proposed pedestal locations along route
- o. Railroad, major highway, & river crossing engineering details & associated profiles
- p. Pole height contact detail (by drawing or table) indicating dimensions above grade for all existing Telecommunications / CATV contacts by name, streetlight contacts, lowest Hydro contacts (neutral, secondary, primary, transformers, unprotected Hydro riser/dips) for both new and existing Support Strands.
- q. Horizontal offset measurements for proposed pole contact close construction to buildings, other non-Owner overhead systems (ex. traffic, street lighting, signs), and/or bridges.
- r. Wiring, wire routing, and Attachment methods to the pole.
- s. Curbs
- t. Lot lines and/or buildings, and house numbers in front of poles